CHAPTER 16

National Minorities and Secession Today: Surpassing the Right to Self-Determination

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Abstract: The recent decades have broken various secessionist movements related to national minorities existing within liberal-democratic multinational states like Belgium, Canada, United Kingdom and Spain, which, once assimilated by force or free, have maintained throughout History territory, language and cultural traits. They are nations like flemish, quebecois, catalans or scots. In this context, International Law neither authorizes nor prohibits secession, leaving this type of processes in the political sphere. Only in response to the case of colonized peoples through the right to self-determination recognized by the United Nations. However, the holding of referendums as Quebec and Scotland have stressed that they have begun to operate other principles of international law like the democratic principle or the effectiveness principle. The same International Court of Justice stated that the secession of Kosovo could sustain in another kind of legitimacy: the existence of a *de facto* state in the absence of violence after intense negotiations prior well-conducted and good faith, but failed.

Keywords: National minorities, Secession, Self-determination, Unilateral declaration of independence.

1. INTRODUCTION

It is known that the International Law does not consider secession as a right [1]. On the contrary, it establishes the principle of territorial integrity of the States on the basis that the international community is made up by the States, which, logically, are not only the source but also the direct target of the International Law [2]. However, as it is also broadly known, it acknowledges the right to self-determination (external or the right to secession), linked, as has been said, to «oppressed and colonized communities», although it is not specified either in the Charter of the United Nations from 1945 (art. 1.2, 55 and 76) [3], nor in the International Covenants of civil and political Rights and economic, social and cultural Rights (New York Agreements from 1966) [4], or in each of the

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Resolutions of the General Assembly (GAUN) which deal with the issue: 1514 (XV Assembly) and 2625 (XXV Assembly) [5].

The breakup of the Central European empires, the implosion of the old USSR and the beginning of the processes of decolonization, especially in the African continent, lead International Law to accept the creation of new States, already in the first half of last century, with their own identity or national signs. In this way, it legitimized the breakup of the territorial integrity of the original States. However, this right has been progressively more closely associated to the rights of colonized or oppressed peoples. So, the secessionist claims of communities within liberal-democratic States with Constitutions that respect their internal self-determination (cultural rights, language and minimal forms of self-government, *etc.*) can hardly be justified in front of this classical right.

This explains why many states have been generally reluctant to accept the secession of other States, even if they have sporadically accepted them in front of the eventuality of some of the breakup processes such as the one in the USSR or Yugoslavia, or because of internal agreements such as the case of the Czech Republic or Slovakia [6]. Besides, it is obvious that one of the most renowned cases, the independence of Kosovo (2008) does not make a traditional assumption of self-determination, as it took place outside a context of decolonization.

The right to self-determination and the right to decide are not, in fact, equivalent terms. They were linked to one another originally, but this does not imply that they are conceptually the same thing. On the contrary, as has been seen, the right to self-determination in its external aspect is exercised by those communities which are internationally accepted, with equally acknowledged conflicts [7]. On the other hand, the right to decide, that could imply a territory's secession, is not acknowledged by public international law, or by the internal legal system of most States. However, it is known that the *Primary Right Theories* [8] understand that secession is an inalienable right in liberal democracy [9], independent of the treatment of the parent State towards the secessionist sub-state entity [10].

Plebiscite and democratic theories, based on the individual right for association, specifically confirm this possibility from a democratic principle point of view. This, together with the principle of federalism was decisive in the decision of the Canadian Supreme Court regarding Quebec [11], and that, effectively, is leading the traditional constitutional repudiation of any attempt of secession to give way to at least a mutual obligation for all federated parties or those united by constitutional ties to negotiate the needed changes to grant those wishes. This has been reinforced by the fact that referendums or other types of popular consultations are common practice in liberal democracies.

It is also good to remember that, on an international scale, the democratic principle is incorporated in various relevant instruments, like the Universal Declaration of Human Rights from 1948, which establishes «The will of the people shall be the basis of the authority of government» (art. 21.3) [12]. At a European level, there have also been different reformations of founding treaties that reinforce the commitment of respect for human rights and basic freedoms (Charter of Fundamental Rights, EU) [13]. Even at an internal State level, in most cases, once a community's democratic will to peacefully become a State in its own right has been established, this will is given the same importance as the provisions of the constitutional order of the parent State, even if it does not allow secession or simply does not provide for it, as in the case of Quebec or Scotland, that we will analyse in the following pages.

It is undeniable that the Ruling of the Canadian Supreme Court regarding the secession of Quebec in August 1998; the Ruling of the International Court of Justice regarding Kosovo; the agreements between the British and Scottish governments regarding the Scottish referendum; or the Ruling of the Commission of Venice from the Council of Europe regarding the Montenegro referendum, represent an emerging set of guidelines or rules that control the exercise of the right to decide everything, although not legislated by International Law or the internal law of each state, putting to one side the motives behind the secession, seeing as these are understood to be fruit of «the complexity of different political realities» [14], covering the democratic principle, the still well-known doctrine of effectiveness, as is seen in the fact that 69 members of the United Nations acknowledged Kosovo as an independent State, even if Serbia did not accept its existence and keeps claiming its territorial integrity [15].

Therefore for the infra-state groups that aim at their independence or at a given political status, the question is either in the need to reach, and democratically express a wide majority for the separation (or the intended status) by means of the instruments of a negotiation which allows the corresponding reforms in the internal constitutional order, or else, in some extreme cases, a unilateral but legal decision, provided it gathers the support of a critical mass of States in the international community which is enough to make the declaration viable.

2. THE PROBLEMS THAT ARISE IN THE PRESENT NATIONAL MINORITIES IN THE FRAMEWORK OF LIBERAL DEMOCRACIES

2.1. The Recent Case of Catalonia (Spain)

As has been stated, the Spanish Constitution (SC) claims the indissoluble unity of the Spanish nation and, consequently, it does not acknowledge the right to secession. The Sentence 42/2014 from the Spanish Constitutional Court (CC)

[16], regarding the «Resolution 5/X from the Parliament of Catalonia, whereby the Declaration of sovereignty and the right to decide of the Catalan people is passed» declared that the acknowledgement that such a declaration made of the Catalan people as a «legal and political sovereign subject» is contrary to articles 1.2 and 2 SC and articles 1 and 2.4 of the Catalan Statute of Autonomy, and connected to these, contrary to articles 9.1 and 168 SC as well.

In fact, on 21 January 2013 the Catalan Parliament passed the Resolution 5/X [17], previously known as «Sovereignty Declaration», which invoked the «Democratic Principle» [18] and abandoned the classical invocation of sovereignty of the right to self-determination (Resolutions 1514-XV from 1960 and 2625-XXV from 1970 of the United Nations), since they considered that this new right was only applicable in the case of the making up of an independent State *ex novo*, or in the case of secession of colonially-subjugated communities, military-occupied nations or those communities which belong to a repressive State which violates human rights (art. 1.2 of the 1945 Charter and art. 1.1 of the International Agreements on Civil and Political Rights, or New York Agreements, from 1966).

What is relevant is that, even though the «Sovereignty Declaration» of the Catalan Parliament has been declared to be unconstitutional, sentence 42/2014 issued by the Spanish Constitutional Court warned that there is no normative nucleus which is inaccessible to the procedures of a reform of the Spanish Constitution. Besides, it acknowledges the right to decide as a political aspiration protected by the freedom of expression and by the right to participation in political issues established in the Magna Carta. For the Spanish High Court, this right to decide is not the right to self-determination and it has its own nominalization: it is not a conferring of sovereignty but the right of the citizens of Catalonia to decide on their political future. For this, as preparation measures, it would be even possible to call a consultation or a referendum before the opening of a process of constitutional reform which could not lead to a reconsideration of the identity or the unity of the sovereign subject from the start or, even less, a reconsideration of the relationship which only the sovereign subject can establish between the State and the Autonomous Communities (nationalities or regions of Spain).

From this point, on the basis of the democratic principle of article 1 SC, and with a lack of limits to the constitutional reform, several directions can be found in the Spanish legal system by means of which, apart from the constitutional revision *via* article 168 SC [19], a declaration may be allowed with a consultative nature regarding the beginning of this process, and especially the consultative referendums of article 92 SC [20], which have a state scope, but which could be applied to the autonomous communities; the delegation of the state competencies

to allow referendums of article 149.1.32 SC, in line with the events in Scotland with the Order of Council [21] which allowed a Scottish referendum on 18 September 2014 by the Edinburgh authorities; and the referendums and the non referendary consultations of an autonomous or regional scope. Doubtlessly, these examples represent an appeal to the possibility that the members of a political community could define their own legal and political framework on the basis of clear and freely formed majorities, in accordance with the doctrine emanated from the Canadian Supreme Court in the case of Quebec.

So, while the Sentence asserts that «in the constitutional framework, an autonomous community cannot unilaterally call a referendum of self-determination to decide on their integration in Spain», it also explicitly states the possibility of a «constitutional interpretation» of the so-called right to decide, understood as «a political aspiration which is reached by means of a process which comes to terms with the constitutional legality», respectful to the principles of «democratic legitimacy», «pluralism» and «legality», and explicitly put forward in the Declaration of sovereignty of the Catalan Parliament, closely connected to the right to decide.

This is, without a doubt, the most innovating and important aspect of the Sentence, since the Court acknowledges the right to decide as a right which can protect the execution of activities focused on «preparing» and «defending» the separation of Catalonia, and to urge the «effective consecution» of this objective in the framework of the process of the reform of the Constitution. Regarding this point, the Sentence takes the premise, which is already stated in many other resolutions, that the Spanish constitutional legislation does not meet a model of «activist democracy» and that, consequently, there is room for any kind of conception «which aims at modifying the foundations of the constitutional order» such as «the will to change the legal status» of an Autonomous Community. Therefore, according to the Court, the right to decide is not a right to self-determination, since it has its own character. It represents a legitimate political aspiration protected by the freedom of expression and, in broader terms, by the right to participate in political issues. It is worth noting that, furthermore, the Sentence does not restrict or limit the right to decide just to the possibility to motivate a process of constitutional reform but, for the first time, it explicitly states that the public powers of an Autonomous Community can legitimately carry out activities aimed at «preparing and defending» the political objective which they consider convenient.

Notwithstanding what has already been stated, the Spanish government keeps an unyielding attitude in front of all these possibilities and it puts forward that the subject matter of the Catalan consultation clashes with the fact that the

Constitution claims the unity of the Spanish nation, and that the only sovereign subject is the whole of the Spanish people (art. 1.2 and 2 SC).

This means that, in Catalonia, the scenario of the future relationship with the Spanish State has changed in a very short period of time. And even more so if you also take into account that, before the Catalan institutions openly contemplated holding a consultation, there was an attempt to agree a new Statute of Autonomy, passed by the Catalan Parliament in 2005 with a wide political and citizen support, aimed at institutionalizing a status of bilateralism between Catalonia and the State. However, it was frustrated during its development, first by the Spanish Parliament and later, and with final consequences, with Sentence 31/2010 of the Constitutional Court [22], from the 28th of June, that had already been operationally deactivated by a declaration of unconstitutionality or the reinterpretation of a large part of its precepts, regarding key aspects such as financing, competencies or considering Catalonia as a nation.

This Sentence led most of the Catalan society to draw two conclusions: the evidence of the successful actions to politically deactivate the Statute by the powers of the State and, at the same time, a great disappointment –politically speaking- towards the Spanish State in terms of coming to a joint agreement. This second conclusion, of great importance, forced a change in the positions of traditional political catalanism which, from mid-nineteenth century, had accepted an autonomous fitting of Catalonia within Spain which respected its national, linguistic and cultural singularity to a bet by the citizens, which until then was minority-but growing-, to become a singular State [23].

Precisely, the governability agreement subscribed by Convergència i Unió (CiU) (the party of President Artur Mas) and Esquerra Republicana de Catalunya (ERC) (the center-left party, historically for independence) after the last autonomic election, on December 19, 2012 «Agreement for the national transition and to guarantee the Parliamentary stability of the Catalan Government» explicitly added the commitment of the two parties to support every kind of executive an parliamentary actions with the aim of calling for a consultation to the Catalan citizens (finally the 9th of November 2014) with a clear double question: «Do you want Catalonia to be a state?», and if so, «Do you want this state to be independent?». It is, without a doubt a broad political agreement as, apart from the two parties mentioned above, it also included Iniciativa per Catalunya-Esquerra Unida i Alternativa (ICV. EUiA) and the Candidatures d'Unitat Popular (CUP), covering Catalonia's whole political spectrum, from Christian democrats to the alternative left.

The consultation to be held on November 9, 2014, accepted by the majority of the Catalan Parliamentary forces and with a wide support of the public opinion [24], would be regulated by a Catalan law on consultations [25], which will be presumably passed by the Catalan Parliament after the summer. Law 10/2014 from the 26th of September, on popular non-referendum consultations and other forms of citizen participation, anticipated the organization by the *Generalitat de Catalunya* of popular consultations for political questions of special importance. But, as the Spanish Government has repeatedly announced, both this law and the Decree to call the consultation itself, which will be signed by the President of the *Generalitat of Catalunya*, would be appealed in front of the Court, with the intention to declare them unconstitutional after having stopped them. The predetermination which would claim that the Spanish Constitution democratically consecrates the united nature of the Spanish Nation, as well as the united sovereignty of the Spanish people regarding a process based on popular will, would be a positioning which would deny the chance to know the real will of a nation, in this case the Catalan nation, to initiate a political process from a popular consultation, a democratic process that has been indeed considered in Canada or the United Kingdom, with the referendum on the independence of Scotland formally called on September 18, 2014.

On the 30th of September, the Constitutional Court accepted an appeal of unconstitutionality presented by the Spanish government against the law and the decree for a summons to the consultation on the 9th of November. Which is why the summons was automatically suspended, as a precaution, in agreement with article 161, 2 SC. In spite of this, both the Catalan Government and the parties that were supporting the consultation held preparatory meetings, and even selected in Parliament the members who would make up the controlling Commission that should exercise electoral authority over the process, according to the previsions under the suspended law. As a token of support for the Catalan institutional world for the consultation, on the 3rd of October some 800 mayors delivered to the headquarters of the Catalan Government the agreements from their municipal plenary sessions supporting the summons to the consultation.

With the argument that, in the end, the consultation would not be held, even though no secondary legal measures had been made for the provisional suspension by the Constitutional Court, the president of the *Generalitat de Catalunya*, decided on the 14th of October to cancel it and substitute it with a so-called «participative process», that would take place under the protection of the statutory powers of the *Generalitat*, keeping the same date and the double question of the consultation that had been dismissed. Specifically, this act was based, to start with, on article 122 of the Statute of Autonomy, even though the legality had to be judged according to the doctrine of the CC, regarding autonomic and local

referendums, upon which it has had the chance to pass sentence in various occasions, and was collected in the successive appeals of unconstitutionality made by the Catalan Government. Therefore, the «process» is protected, according to the Catalan government, by the provisions of title III of the same Catalan law 10/2014. These precepts that regulate surveys, public audiences, participative forums, and other processes with citizen participation, are currently in force, they have not been impugned by the Govern nor has the State Council reported in favour of doing so (sentence 964/2014 from the 28th of September). The CC has not made even a provisional ruling regarding said «processes».

Once again, the Spanish Government impugned the «actions of the *Generalitat*» related to the participative process and both the impugnation and the previous sentence of the State Council 1092/2014 from the 30th of October 2014, were based on the fact that these actions were legal formal acts, liable to impugnation under title V of the CC's organic law, understating that it was actually a «masked and covered» consultation. Unlike the appeal against law 4/2010, the decision was not immediate; it took two weeks, during which the Spanish government initially chose to congratulate itself for cancelling the consultation, and then went on to discredit the new summons and directly oppose it, presenting it as a mere re-edition of the cancelled summons. Subsequently, the Constitutional Court also provisionally suspended this «process».

However, both the Catalan government and the group of political and citizen forces in favour of the consultation on the 9th of November, carried on with the preparations, having understood, that the CC had once again suspended a consultation, but had said nothing regarding the «participative process.» Supported by the *Generalitat*, the process went ahead with the collaboration of 40.930 volunteers. The voting took place in 1.317 participation points all over Catalonia, using many local venues as well as those belonging to the *Generalitat*. The day went ahead with no remarkable incident and with the participation of 2.305.290 people, as well as the 14.000 Catalan citizens living abroad that placed their ballots in one of the 19 participation points set up in the international headquarters of the *Generalitat* [25]. In light of this, the State's General Attorney, after listening to the Board of Prosecutors and with the opposition of the Attorney for the Superior Court of Justice of Catalonia, presented a lawsuit against the president of the *Generalitat,* Artur Mas, the vice president of the Catalan Government, Joana Ortega and the Catalan Minister of Education, Irene Rigau, who were accused of various crimes such as disobedience, perversion of justice, misuse of public resources and misappropriation of roles.

2.2. The European Union when Facing a Unilateral Declaration of Independence: A Legal and Political Interpretation of the Treaties

At this point, we must briefly revise the position stated by the EU regarding both primary and derived Law on the secession and independence of territories of its member States. In fact, as it has been explicitly stated, the only precept which has any connection to this question is article 4.2 TEU, which states that the EU should respect the essential functions of its member States, amongst which is the one to guarantee their territorial integrity. But essentially, this precept proclaims the non-interference of the European Union in a range of affairs. Nothing is said about the secession or independence of territories of a State, or about the consequences that this secession could have for the residual State or for the new States which emerged from the separation, or about the consequences of a phenomenon of this nature for the Union itself. We must conclude, therefore, that if the consequences of these facts are not contemplated in Treaties, the criteria used in order to establish whether dissident territories from a member State should remain outside the EU have been simply criteria of authority. What is more, after having seen some precedents, what happened at one point with the fusion of the two Germanys is an indicator of the solutions that the European Union can assume beyond what is contemplated in Treaties. Recent mutations of the European Union Law are a good example of «the imaginative solutions that could be given to the new challenges beyond the Union Law» [26].

Apart from this, it is needless to say that, in the case of isolated secessions, it would not only be necessary to consider how the new State would be, but also the consequent situation for the parent state. If we conclude that the secessions of territories of a member state are indeed a rupture from the original state, which results in the creation of two new states (or several ones), the States resulting from this process could be considered heirs of the original State. This would necessarily imply that the two States should ask for their attachment to the EU, as well as to the hundreds of international organizations to which they previously belonged. All of this without forgetting the fact that it seems plausible that the two States could reach a previous agreement, with the unanimous acceptance of its terms by the rest of the States, especially in the case of the EU, which would consist in asking for the continuity of both political units in the international organizations of which they were part originally, although they would have to adjust the conditions of their membership and participation to their new reality. This procedure seems complex, but it is not impossible.

This way, after the secession of a territory of a member state, the Predecessor State would still be the owner of the rights acquired by the original State in the international community, that is, within the European Union and the International

Organizations. According to the mainstream position of the doctrine and the international praxis, the State resulting from the secession would be, to all effects, a new State that should ask for its incorporation or continuity in the European Union and the rest of international organizations, unless we were talking about a State that chooses to remain absolutely isolated.

Nonetheless, the problems that emerge for the parent State in this case do not have an easy solution. Apart from the hardly comparable precedents of Greenland and Algeria, which will be later examined, in the Spanish case, for example, there would be a remarkable decrease of its population, of its internal gross product and its territory. If we were, for example, in front of a supposed secession of Catalonia, we would be talking about the decrease of 16.5% of the Spanish population (7.5 million inhabitants), 18.5% of IGP (around 200,000 million Euros) and 6.3% of its territory (around 32,000 square km), with a tax contribution far beyond its percentage of population, since Catalonia represents 24% of the total tax income in Spain [27]. In terms of the EU, it would be beyond complicated for Spain to keep the same number of representatives in the European Parliament, votes in the Council, or the same contribution to communal expenses or to the European Central Bank. Actually, and this is what is relevant, this casuistry is not contemplated and it would result in an essential reform of the Union Treaties and the derived law, in order to make the necessary adjustments or to adopt political agreements, this time unanimously, to reproduce familiar patterns, such as the one regarding the above-mentioned German reunification, or even the cases of Greenland-Denmark or France-Algeria. In this sense, it is necessary to highlight that the Lisbon Treaty, with effects on 1 December 2009, contemplates the voluntary withdrawal of a member state from the Union for the first time. But previous to the Lisbon treaties there were not any legal procedures that regulated this eventuality [28].

However, in that case, the non-contemplation of a legal procedure of withdrawal in the Treaties was not considered important enough to avoid that a State could decide on its continuity in the European Union. That was the case of Greenland, which left in 1985 due to a dispute regarding fishing rights. As a Denmark territory, this island joined the Economic European Union (EEU) in 1973, although a referendum showed they were against it. Consequently, in a referendum held in 1982, the option to abandon the EU won, with a slight difference of 52% of the votes [29]. Nevertheless, it is still regulated by the EU Treaties through the Association of the Overseas Countries and Territories.

On the other hand, when Algeria stopped being a French colony in 1962, it also abandoned the EU. Precisely, as an answer to a question asked in 2004 by the Welsh socialist representative Eluned Morgan to the College of European

Commissioners regarding the usefulness of the Algerian precedent in the event of independence of a European region, Romano Prodi, president of the College of Commissioners at that time, answered: «A new independent region, because of its independence, would become a third state in connection to the European Union and, from the day of its independence, [Treaties] wouldn't be of application in its territory» [30]. What is relevant, nevertheless, is that the independence of Algeria and its withdrawal from the EEU in 1962 did not have consequences for France, one of the six founding States.

Therefore, we can conclude that, in the event of the rupture of a member state resulting in two states (either if one has split from another or because of the emergence of two new states from an original one), the reform of the EU Treaties is not essential to accommodate them to a new reality if there exists a political agreement, as shown by the Algerian precedent. Regarding the case of Greenland, it must be highlighted that in the adaptation of the EU Treaties, from 13 March 1984, where the withdrawal is articulated, there is no modification of the parent State, Denmark. Besides, Greenland currently keeps an Overseas Territory status associated to the EU. Indeed, from an institutional point of view, there were no changes either in the number of commissioners (two for France, one for Denmark, with or without those territories) or in the assignation of seats in the European Parliament (or Parliamentary Assembly, until 1979), which was not affected until the German reunification took place, when the parity of seats held by the five great States of the Community/European Union was broken.

As additional considerations, and regarding the current situation (with the current TEU and the EUFT, modified in Lisbon), the European Parliament cannot exceed 750 members and the president, and this is nowadays fixed, even if there were other incorporations (nevertheless, due to the recent incorporation of Croatia, this has needed to be temporarily adjusted, but with no effects on the European Election of May 2014). Last, with the present system of each state's own resources (Customs rights, 0.3% tax of the harmonized VAT basis and resources based on a uniform percentage of the gross national income) there is not a direct dependence on fees or contributions by the States depending on their size in terms of territory or population.

Apart from the legal speculations, a different scenario would take place when a unanimous position, or even a majority one among the Union States, was not reached to achieve this political agreement or to reform the Treaties, in particular if most of the States were unwilling to confirm the pulling effect that this process could have within their respective states. In any case, all these precedents show that the Union has always solved these issues politically, regardless of the strict content of the Treaties. In addition, it must be taken into account that, as it has

already been explained, article 49 TEU contemplates that any European State which respects the values mentioned in article 2 of the same Treaty and commits itself to promote them, could apply for membership to the Union.

3. SURPASSING THE RIGHT TO SELF-DETERMINATION: THE INTERNATIONAL LAW IN THE CASE OF THE UNILATERAL DECLARATION OF INDEPENDENCE

Sometimes, regulations go beyond the legislator's initial intentions. This would be the case of the provisions of International Law in connection to the self-determination of the nations, which have occasionally found themselves in contexts which are very different from the decolonization phenomena to which they are associated. As we have already analyzed, Kosovo's UDI, on 7 February 2008, is perhaps the most recent and clearest example of a presumably ultra-active normative if we consider what the ruling of the International Court of Justice, from 22 July 2010 [31], states (see sect. 3). In fact, in this Advisory Opinion, the ICJ concluded that the UDI proclaimed by the Kosovan Assembly was neither opposed to general International Law nor to Resolution 1244 (1999) of the Security Council. For this reason, this is a precedent of unquestionable importance, despite the critical attitude of the *ius-internationalist* doctrine and that of some States towards the position of the ICJ.

This can be explained because, as we have also seen, the position of the ICJ, which would declare the independence of Kosovo as non-opposed to International Law, dismisses the most orthodox thesis regarding the principle of self-determination (see section 1) which distinguishes between the assumptions of external and internal self-determination. Thus, it keeps the cases of external self-determination for classical colonial situations or for sudden similar situations, and relates internal self-determination to the cases in which the citizens of a nation exercise their right by means of their pronouncement in elections and internal consultations. If we consider this thesis, the modality of external self-determination could not be based on the same grounds as those cases of colonial situations inside a formal democracy.

A totally different case is the UDI proclaimed by the institutions of Crimea, because of its later annexation to Russia. The secession of this peninsula on the shore of the Black Sea started on February 27, 2014, when Russian soldiers, who initially tried to hide their nationality, occupied the airports and buildings of the capital city, Simferopol, with the support of the pro-Russian militia. In this situation, a few days later, on March 16, a referendum took place which did not meet the minimum acceptable requirements for electoral processes in Europe, since its aim was to legitimate a decision taken by the Russian authorities and

exercised under conditions of forced subjugation. The «yes» obtained 96.77% of the votes. After the proclamation of the results, on March 17, the authorities of Crimea gave Moscow the formal petition to integrate their territory in the Russian Federation and the Duma voted the annexation project on March 21. In spite of the undeniable historical, cultural and geostrategic bonds that this territory had with Russia (with nearly 57% of Russian speakers), the International Community did not accept the results of the referendum, as they violated the Constitution of Ukraine and Crimea, as well as International Law. Despite the differences, the Russian Authorities argued that the case was presumably analogous to the case of Kosovo, and that the International Community had reacted in an inequitable way in this case. Nonetheless, the subsequent conflicts in the eastern area of Ukraine have led to new international summits which, within diplomatic tensions, have translated into a tacit recognition of the annexation of Crimea to Russia [32].

Thus, if we observe any of the current member states of the EU, it is impossible to appreciate any situation of subjugation, exploitation or violation of the fundamental human rights regarding the sub-state entities that conform them or their citizens. This has a special significance because it means that, with higher or lower intensity, all the states in the EU guarantee the rights and freedom of their citizens with their internal laws, the EU law and International Law. As we know, in general International Law, it is also impossible to find any kind of explicit prevision that normatively allows the passing of a UDI.

Which one is then the basis of secession or independence of those nations that are not entitled to the right of external self-determination? Under which circumstances would International Law allow a UDI to be passed?

3.1. The precedent of Kosovo

The International Court of Justice, in the above-mentioned Advisory Opinion of 22 July 2010 (under the title «Accordance with International Law of the Unilateral Declaration of Independence In Respect of Kosovo» sections 79, 81 and 84) set a doctrine of general interest: No UDI, whether proclaimed by the Parliament or in a popular way, can count on the protection of International Law, but it is not opposed to it [in the same way, Resolution 1244 (1999) of the Security Council, was not opposed to any applicable regulation of International Law]. Moreover, the ICJ states that in order for any UDI to be legitimate, it must be followed (or preceded, for that matter) by a '*de facto* situation', in which the effective presence of the proper elements of a State and, in particular, the exercise of the sovereignty through concluding acts, can be proved.

Consequently, the global High Court states that a UDI which is proclaimed in territories in which the self-determination principle (external) is not applicable is

not opposed to the basis of the principle of state territoriality. [33]. These UDIs, added the Court, are not forbidden if they do not entail any serious fault to general International Law, especially to those issues of imperative nature (*ius cogens*), such as an illegal use of force (par.84). In other words, a UDI cannot be considered opposed to International law if it is the result of a democratic pronouncement (par.79), carried out in a peaceful context, without the use of force or violence. In this sense, The High Court specified that, in those cases where a UDI had been declared in breach of international law (*e.g.* South Rhodesia, North Cyprus or the Srpska Republic), the precise contravention of the international law order had dealt with the illegal use of force (par. 81) [34]. The guarantee of the territorial integrity of the State is a guarantee that corresponds to the States, which cannot violate it. But the prohibition of the use of force, or the threat alone of using it, constitutes an imperative obligation of general nature and, for this reason, it becomes applicable to sub-state entities. [35]

Therefore, it can be seen that the Court disregarded the internal constitutional order of Serbia in that particular case. It is not in vain that art. 8 of the Serbian Charter explicitly banned that possibility: «The Serbian territory is inseparable and indivisible». However, the internal constitution had already been partially replaced by an interim regime of self-government set by the United Nations according to resolution 1244 of the Security Council (1999) [36]. For this reason, the ICJ assumed that the authors of the UDI (the stunning majority of the members of the Kosovan Parliament and its president) had not violated the Serbian constitutional frame given the fact that, when they formally declared their independence, they were not acting as bodies of entities of provisional self-government, but as a real constitutive powers, according to the capacity conferred by their condition of legitimate representatives of the Kosovo nation. After all, the procedure adopted by the Kosovan representatives resulted fully democratically legitimated as it had been their own «decision», making the democratic principle prevail over the principle of constitutionality.

The independence of Kosovo, province of Serbia under international administration since 1999, was unilaterally declared by its Assembly on 17 February 2008 [37], on the basis of a report and a Program made by the Special envoy of the United Nations, Matti Ahtisaari. At the same time as the parliamentary UDI, the same Assembly passed a Constitution which replaced the constitutional framework based on the Resolution 1244 of the Security Council of the United Nations, which the administration of the UN had regulated. However, it did not become effective until 15 June of the same year [38]. The Declaration was supported by the United States and a majority of the member States of the European Union, which did not assume a common position at the Security Council of the UN. Russia and China opposed the proposal. It was in July 2010

when, as it has been repeatedly said, the ICJ issued the Advisory Opinion stating that the UDI neither violated general International law nor resolution 1244 of the Security Council.

Regarding the internal institutionalization process of the new Republic and given the particular concurrent circumstances, the Civil International Office responsible for the supervision of the process was created. On 10 September 2012, the International Steering Group for Kosovo (ISG) considered that its duty in the country had officially concluded, which was interpreted by the Pristina Parliament as the first concluding manifestation of full sovereignty. Progressively, 106 out of the 193 countries of the United Nations recognized the independence of Kosovo. Amongst them, there were 23 out of the 28 States of the European Union [39], 22 out of 27 NATO members and 7 of the 8 members of the G-8, remarkably, the USA [40]. In addition, the Republic of China (Taiwan) has offered its recognition, although Kosovo has not accepted it. Nevertheless, several countries (amongst them Algeria, Argentina, Azerbaijan Belarus, Spain, Slovakia, Georgia, Kazakhstan, Moldavia, Romania, Russia, Sri Lanka, Venezuela, Vietnam and Cyprus) keep their rejection to the Declaration of Independence of Kosovo, and their respect to the territorial integrity of Serbia. On their behalf, Brazil, Chile, Jordan, Mexico, Thailand and Uruguay are waiting for a pronouncement by the Security Council of the United Nations to adopt a final decision.

Concerning the membership to international organizations, it must be noted that the Republic of Kosovo has never formalized an application of membership to the United Nations, due to the announced veto from Russia at the Security Council. In the case of the EU, although it does not formally recognize new states, unanimity would be necessary regardless of the position of its members. This unanimity does not exist nowadays, in spite of the political recognition reached at the European Parliament [41]. The International Monetary Fund started the process of integration of Kosovo as a permanent member in June 2008, and on 5 May 2009, it was accepted with 96 favorable votes. Later on, this fostered its application of entry to the World Bank, which was passed on 4 June 2009 and was made official on 29 June, obtaining, therefore, its first adhesion to a specialized body of the United Nations.

Kosovo is living a strong process of integration into Europe from the negotiation of an Agreement of Stability and Association with the EU initiated by its Council on 16 October 2013. Therefore, it is overcoming the initial refusal of some of the member states to its future integration. It is a negotiation that is coming to a final point in 2014 [42], and which has a direct bond to the application of the case of Serbia, to follow the steps of Croatia and become a new member state of the EU.

4. BEYOND KOSOVO: CASUISTRY OF THE UNILATERAL DECLARATION OF INDEPENDENCE PROCESSES

Next, we will study ten recent cases in which a UDI has been part of the successful process of secession or independence of a territory within the European continent. We will leave out, for now, the processes that have not yet received rulings (Abkhazia, South Ossetia, or Transnistria), or those that have taken place within the African continent (Eritrea or South Sudan).

4.1. The Case of the Baltic Republics and Ukraine

In August 1989 around two million of Estonians, Latvians and Lithuanians formed a human chain of more than 560 kilometers, from Tallinn to Vilnius, to ask for the independence of the Baltic States. Next, the independence of Lithuania was unilaterally declared by its Parliament, on 11 March 1990, after the pro-independence leader Vytautas Landsbergis, was elected president in the elections held in February 1990 (still as part of the USSR) in which the Communist Party was defeated by the Reformation Movement of Lithuania, Sajudis, who obtained 101 out of the 141 seats. After a failed soviet intervention (on 10 January 1991) a referendum was held, on 9 February 1991, in which the support to independence reached 90%, with a turnout of 84.43% of the census. The question, asked in Lithuanian, Russian and Polish was: «Do you want Lithuania to be a new independent republic?». Later, in August 1991, this new republic was recognized at an international level and, on 17 September of the same year it entered the United Nations. Once the constituent process had begun, the Constitution was passed more than a year and a half after the UDI proclamation (on 25 October 1992 to be precise) and it became effective on 11 November 1992.

In Estonia, it was initially a convention of representatives who proclaimed a unilateral declaration of independence in February 1990, on the basis of the Tractu Treaty which was signed on 2 February 1920 with the Bolshevik Russia. According to this Treaty, the Republic of Estonia obtained international recognition and became a member of the League of Nations on 1921. Later, on the election of 8 May 1990, the PFE (Popular Front of Estonia) and other pro-sovereignty groups conquered the Parliament, and the nationalist leader, Edgar Savisaar, was elected president of the first government which had emerged from an election since 1940. Nonetheless, it was not until August 1990 that the Parliament formally proclaimed their independence, although Moscow did not consider it valid.

This UDI was later ratified in a referendum on 3 March 1991. The turnout was 83% and the question was «Do you want the restoration of sovereignty and the independence of the State of the Republic of Estonia?». The supporters of the

«yes» obtained 78.6% of the votes, equivalent to 64.6% of the inhabitants with the right to vote, although no quorum of participation or minimum percentage to validate the «yes» had been previously defined. On 20 June 1992, a referendum ratified the Fundamental Law or Constitution (based on the one from 1983) and a new Parliament was elected (Riigikogu). On 5 October, Lennart Meri, from the National Coalition Party Pro-Patria (NCPP) was elected president. Two days later, the new Constitution became effective. The Constitution was passed on 28 June 1992, a year and a half after the referendum, and it became effective on 3 July of the same year.

In Latvia, on the election of March 1990, the Popular Front obtained 131 seats in the Supreme Soviet (8 together with 55 of the PCUS and 15 independents) which led to a UDI on 4 May 1990, formally proclaimed as a «Declaration of Independence Restoration». At the same time, it was decided to make the Constitution of 1922 effective, as it had been abolished with the Soviet invasion in 1940. On 3 March 1991, a public consultation took place. It had the nature of a referendum in order not to contravene the Soviet legality, but to legitimate it at the same time. The formulation of the question was: «Are you for the democratic and independent constitution of the State of the Republic of Latvia?». While there was a minimum turnout set on 50%, it reached 80%. The supporters of the «yes» were 73.7% (64.47% of the electoral census) and the supporters of the «no», 24.7%. The new Constitution was passed on 15 February 1992, almost a year after the referendum, and became effective on 7 November, a year and five months after the UDI.

In Ukraine, within the framework of the reforms started in 1985 by President Mikhail Gorbachov in the USSR, communists and nationalists Ukrainians started the Popular Movement for Perestroika in Ukraine (RUKH), which claimed a wider political and economic autonomy. In the legislative election of March 1990, the Supreme Soviet (Parliament) unilaterally proclaimed the independence of the Republic and, on 24 August 1991, the Act or Law of Independence was passed, for which a referendum of ratification was called, held on 11 December 1992. In this referendum, the question was «Are you for the Act of proclamation of Independence of Ukraine?». The turnout was 84.18% and the supporters of the «yes» reached 90.2% [43]. At the same ceremony, Leonid Kravchuk, ex-first secretary of the KPU (Communist Party of Ukraine) was elected president. At dawn on 28 June 1996, the Parliament adopted a Constitution which, according to the interpretation of the Constitutional Court, became effective at the same time as the result of the parliamentary election was made public (five years and eleven months after the UDI). Previously, on 8 June 1995, President Leonid Kuchman and spokesman Oleksandr Moroz, in the name of the Parliament, had subscribed a provisional Constitutional Agreement whose validity was extended until the

moment of the passing of the Constitution. Law num. 254/96-BP ratified the Constitution, leaving the above-mentioned provisional Constitutional Agreement without effect.

4.2. Slovenia and Macedonia

On 23 December 1990 a referendum on the independence of Slovenia took place. In this referendum, both the government and the opposition forces unanimously supported the secession. The Parliament set a minimum turnout of 51% and the question was «[S]hould the Slovenia Republic become a sovereign and independent State?». The supporters of the «yes» reached 88.6% of votes and those for the «no» reached 4%. The Independence was formally proclaimed on 25 June 1991 at the same time as the one in Croatia, and on 5 October of the same year, the Parliament approved the end of its official commitment with Yugoslavia. From that moment on, Slovenia set its own currency, the *Tolar*, its own national institutions and applied several measures to make its sovereignty stronger. The National Assembly adopted the Constitutional text on 23 December 1991, and it became effective on the same day. In January 1992, the EEC recognized Slovenia and Croatia as independent States, although there still was a civil war in Croatia. The homogeneity of its population made its secession one of the less bloody ones in the breakdown process in ex-Yugoslavia, and its international recognition was one of the clearest, because the country dominated its borders, kept its own army and issued its national currency.

In Macedonia, on 16 April 1991, the Parliament passed an amendment to the Constitution in which the word «Socialist» was removed from the official name of the State. On 7 June, the new name, Republic of Macedonia, was officially accepted. After the beginning of the breakdown process in Yugoslavia, the Republic of Macedonia proclaimed their independence, after calling a popular consultation on 8 September of that year. The question was: «Are you for an independent Macedonia, with the right to enter in a future union of the sovereign countries of Yugoslavia?». With a turnout of 72%, the supporters of the «yes» were 95.1% and the ones for the «no» 4.8%. There were no minimum turnout requirements to validate the agreements. The Constitution was passed and became effective two months later, on 17 November 1991. Afterwards, a second referendum was held, this time for ratification, on 12 January 1992. This time, the Albanian minority voted for the creation of their own State. In the next month, the Social Democrat Branko Crvenkovski was elected Prime Minister and got the recognition of Macedonia by Russia, Albania, Bulgaria and Turkey. In April 1993, the country obtained its recognition as a member of the United Nations under the provisional name of «Ex-Yugoslavian Republic of Macedonia».

4.3. Montenegro and Bosnia and Herzegovina

The case of Montenegro presents some remarkable singularities, such as the fact that in this republic there was a referendum on independence under constitutional coverage. Indeed, the Serbia and Montenegro Union Constitution of 2003, was one of the few constitutional texts of a federal-confederate nature that explicitly contained a clause on secession. It also contemplated political, institutional, economic and social structures practically divided from Serbia.

But before this, a first referendum (1992) was held, in which those for remaining within the Yugoslavian Federation obtained 95.96% of the votes. The magnitude of this result is explained by the fact that Muslims, Albanians, and Catholic minorities boycotted the consultation, in the same way as the supporters of independence did. All these sectors alleged that the referendum had been organized under non-democratic conditions. As soon as the pro-independence forces, led by Milo Dukanovic, came to power (with a narrow margin of votes, in 1996) the relationships between the two confederated republics got worse. The leadership of Montenegro asked for the celebration of a referendum for independence and decided to set an economic policy aside from Serbia. Among other measures, this policy contemplated the establishment of the German Mark as official currency (which would be replaced by the Euro later on, despite of them not being part of the Eurozone). Nevertheless, both of them reached a new cooperation agreement in 2012, according to which the Yugoslavian Federation allowed the so-called Federation of Serbia and Montenegro, which became constitutionalized, as said before, in 2003, contemplating the possibility of secession and postponing the celebration of a referendum with this purpose to 30 April 2006 (which was postponed once again to May 21).

However, Europe did not support this independence process at first. What most concerned the international community, especially the European diplomacy, led by Javier Solana, was that the case of Montenegro could open, once again, a door to solve other conflicts in European regions (*i.e.* the Srpska Republic, Abkhazia or Nagorno-Karabaj). It must be taken into account that even Transnítria and South Ossetia, called for referendums to be held on 17 September and 12 November 2006, respectively. Finally, however, the EU and the NATO accepted the referendum, and they even fixed the regulations and sent international observers to the process: a minimum turnout of 50% and favorable result of 55%, in addition to other conditions like respect to fundamental rights (especially freedom of speech and demonstration), neutrality in the campaign by the authorities and the media, and clarity in the question. These requirements were outlined by the Venice Commission, which issued a *dictum* requested by the Parliamentary Assembly of the European Council, which was assumed by the Ministry Council

and the High Representative of Foreign Affairs and Security Policy of the European Union [44]. The requirements of the referendum were negotiated with the Montenegrin political representatives and were reflected on the Montenegrin Law on the referendum of the State, from 1 March 2006. From here, the referendum of 21 May 2006 was organized. The consultation was held on 21 May 2006, with a turnout of 86.5% and a question that said: «Do you want the Republic of Montenegro to be an independent State with full legal and international personality?». The «yes» option obtained 55.5% of the votes, five tenths more than what had been stipulated as the minimum percentage, and the «no» obtained 44.5%. The parliamentary UDI was delayed until 17 February 2008. The new Constitution was adopted on 19 October 2007 and replaced the previous one, from 1992, when the country was part of the Yugoslavian federation.

Bosnia and Herzegovina held a referendum on 28 and 29 February 1992. It had a binding nature and participation and results were established on 50% to be valid. The question was: «Are you for a sovereign, indivisible and independent Bosnia and Herzegovina?». The opposition to the referendum by the main Serbian party went beyond the threat of a violent answer and it led to war. However, the Washington Agreement, signed on 18 March 1994 led to the creation of a Constitutive Assembly (Ustavotvorna skupstina/Ustavotvorbeni Sabor), which was kept until 1996. On 21 November 1995, this Assembly adopted the text of a Constitution, enacted on 14 December, which reproduced the fourth annex of the Dayton Peace Agreement, from 21 November 1995. It was formally signed in Paris on 14 December 1995 and the war ceased with it. For this reason, The Constitution of Bosnia and Herzegovina has the nature of an International Treaty.

CONFLICT OF INTEREST

The author (editor) declares no conflict of interest, financial or otherwise.

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Declared none.

REFERENCES

[1] According to T. Musgrave, «[s]ecession is a domestic question and, therefore, a completely neutral act in terms of International Law. Besides, since it is not considered within the jurisdiction of international laws, not just any attempt of secession entails an act of self-determination in juridical terms. Even when consequences for International Law are derived, with the emergence of a new State, the act of secession itself has a rather political and not juridical nature». Musgrave, T. Self-Determination and National Minorities. Oxford. 1997: p. 210

[2] For the most unyielding doctrine, even «in its legal dimension it is evident that self-determination does not subsume today, and probably will not subsume in the future, a general right of secession for the

infra-state groups. On the contrary, what can be concluded from the experience of these last years is that the International Law is still hostile to secession, even in the colonial context […] unless the very exceptional theory of "remedy-secession" can be objectively applicable». (Cristakis, T. Le droit à l'autodetermination en dehors de situations de décolonisation. La Documentation française 1999: 617). For Dieter Murswiek, «the states with a longer history typically have greater stability, but this does not mean that they are not also the object of secession demands. Many states, especially in the East, fear that the concession of autonomy to certain ethnic minorities might be the first step towards secession and the breaking up of the State. However, I am convinced of the opposite. Autonomy is the best prevention against the demands of secession». (Murswiek D. The issue of a right of secession reconsidered. In: Tomuschat C, Ed. Modern Law of Self-Determination. Kluewer Academic Publishers 1993; p. 39)

[3] Art. 1.2 of the Charter from 26 June 1945 establishes that «[t]he Purposes of the United Nations are to maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace». Articles 55 and 76 are expressed in very similar terms

[4] International Covenant on Civil and Political Rights of the GAUN, New York, 23 March 1976. Resolution 2200A (XXI) of 16 December 1966

[5] Resolution 1514 of the GAUN about the Independence to the countries and colonial communities, New York, 14 December 1960. In these lines, see Margiotta, C. L'ultimo dirito. Profil Storici e teorico della secessione, Il Mulino. 2005: 89-209

[6] Many events are closely related to the disappearance of great empires such as the Austro-Hungarian Empire or the Ottoman Empire, after the Great War, or the Soviet Empire at the end of 1980s. Some States also had their origins in unusual national protests against the colonial authorities, such as the English, the French or the Portuguese in the case of Indochina or Africa, after the Second World War and until mid 1960s. In the context of liberal and pluralist democracies, the new States emerged as a result of social and ethnic conflicts. More remotely, we could mention the case of Norway (1904) and Ireland (1921) as well as some insular regions: Cyprus and the Isle of Malta. Finally, there were bursts of several movements of identity assertion of great intensity in plurinational states with a complex structure such as Belgium, Canada, the UK or Spain. In all cases, it is a matter of States drawn together as a result of unions of crowns, religious wars or, as in the case of Quebec, the great colonizing campaigns of the British

[7] As warned by Milano, E.: «the practices of the States and the international community in the Post Cold War era seem to have remodeled the nature and the effects of such a principle, from which one can mainly derive a right of the peoples to become independent from the authority of a foreign, enemy or merely illegitimate government, as a way to reassert the requirement of respect to the principle of territorial integrity of the States» (Milano E. Autodeterminazione dei popoli, Treccani.it, L'enciclopedia giuridicca italiana. 2013; p. 8). No federal Constitution, except for the case of art. 39 of the Constitution of Ethiopia from 1995 or article 60 of the federal Constitution of Serbia-Montenegro from 2003 acknowledge the right to secession and they impose respect to the adopted agreements. See Constitution of Ethiopia (Constitution of the Federal Democratic Republic of Ethiopia, 1995)

[8] No federal Constitution, except for the case of art. 39 of the Constitution of Ethiopia from 1995 or article 60 of the federal Constitution of Serbia-Montenegro from 2003 acknowledge the right to secession and they impose respect to the adopted agreements. See Constitution of Ethiopia (Constitution of the Federal Democratic Republic of Ethiopia, 1995)

[9] In this regard see Roepstorff K. The Politics of Self-Determination. Beyond the Decolonisation Process. Routledge 2013

[10] The opinion of the Supreme Court of Canada [Reference by the Governor-General Concerning Certain Questions Relating to the Secession of Quebec from Canada (Reference re Secession of Quebec, (1998) 2 SCR 217] came to solve a double question raised by the government Canadian federal: «Behold international law the right to unilaterally declare independence of Quebec from Canada by the National Assembly, Parliament or the Government of Quebec»; and in the same sense, There is one

right to self-determination under international law that grants to the National Assembly, Parliament or the Government of Quebec the right to unilaterally declare independence of Quebec from Canada?

[11] Universal Declaration of Human Rights 207 A (III) by the General Assembly of the United Nations. Paris, the 10th of December 1948 http://www.un.org/es/documents/udhr/ [visited: 25th of October 2014]

[12] Charter of Fundamental Rights of the European Union, Nice, 7th of December 2000. Available from http://www.europarl. europa.eu/charter/pdf_es.pdf [visited: 25th of October 2014]

[13] For a general overview of the case of Kosovo, see Arcari M, Balmond L. Questions de droit international autour de l'avis consultative de la Cour Internationale de Justice – International law issues arising from the International Court of Justice advisory opinion on Kosovo. In: Balmond L, Arcari M, Milano E, Pertile M, Martin J, Palchetti P, Czaplinski W, Vitucci M, Tancredi, A: Declarations of independence and territorial integrity in general international law: some reflections in light of the Court's advisory opinion. Giuffré 2011; pp. 59-90; Thürer D, Burri T. Self-Determination. In: Max Planck Encyclopedia of Public International Law. Oxford Public International Law. Oxford University Press 2013; and Milano E. Formazione dello Stato e processi di State-building nel diritto internazionale. Kosovo 1999-2013. Editoriale Scientifica 2013

[14] In fact, even though we will discuss the case of Kosovo further on, we will state now that when this old Serbian province made a unilateral declaration of independence, the EU immediately adopted a joint resolution in which it qualified it as a «unique case», leaving it up to each State whether they accepted it or not. Most states, with Germany, France and the United Kingdom at the forefront, did so. This wide international support was decisive as that same year, the General Assembly of the United Nations, agreed, as proposed by Serbia, to transfer the matter to the International Court of Justice, if the declaration violated international law. Presently the European Commission itself is directly negotiating with the Kosovar authorities regarding their future entry into the EU, after the European Council decided in June 2013, to open negotiations to establish an Agreement for Stabilization and Association

[15] STC 42/2014, 25th March 2014 BOE (Spanish Official Bulletin) number. 87, 10th of April 2014, pp. 77-99. [16] See for further information, Vintró, J. La declaració de sobirania i el dret a decidir del poble de Catalunya: un apunt jurídic. Blog of the Catalan Review on Public Law 2013

[16] The Catalan nation has, for reasons of democratic legitimacy, the nature of political and legal sovereign subject" [and (The) process of the exercise of the right to decide will be strictly democratic and will especially guarantee plurality and respect to all options by deliberation and dialogue within the Catalan society, so that the pronouncement which will emerge as a result will be the majority expression of the popular will, which will be the essential guarantee of the right to decide

[17] When a total revision of the Constitution is proposed, or a partial revision thereof, affecting the Preliminary Title, Chapter II, Section 1 of Title I, or Title II, the principle shall be approved by a two-thirds majority of the members of each Chamber, and the Parliament shall immediately be dissolved. 2. The Chambers elected must ratify the decision and proceed to examine the new Constitutional text, which must be approved by a two-thirds majority of the members of both Chambers. 3. Once the amendment has been passed by the Parliament, it shall be submitted to ratification by referendum

[18] Political decisions of special importance may be submitted for a consultative referendum of all the citizens. 2. The referendum shall be convoked by the King at the proposal of the President of the Government after previous authorization by the House of Representatives. 3. An organic law shall regulate the conditions and the procedure of the different kinds of referendums provided for in this Constitution

[19] See www.legislation.gov.uk/uksi/2013/242/pdfs/uksi_20130242_en.pdf [visited: 15th of November 2014]

[20] BOE num. 172, from the 16th of July 2010: 1- 491

[21] Shortly after this sentence, a massive demonstration took place, which went beyond the citizens' claim against the decision of the Constitutional Court, since its motto was «We are a Nation, We want to

decide». Two years later, after the massive demonstration on September 11, 2012 (National Day of Catalonia) for the independence of Catalonia, and after the results of the Autonomic elections held on November 25, 2012, which granted a majority of pro-sovereignty and for the right to decide at the Parliament, there were different resolutions of the Catalan Chamber for the «right to decide» and for the celebration of a popular consultation within the legal framework regarding the political future of Catalonia and its relationship with Spain (742/IX, 5/X i 323/X)

[22] Information about the survey published by the Center of Opinion Studies of the Generalitat de Catalunya on March 18, 2014 <http://www.ara.cat/politica/ sondeig-CEO-independencia_0_ 1103889719.html> [visited on March 19, 2014]

[23] DOGC (Official Newspaper of the Generalitat de Catalunya) number 6715, 27th of September 2014: 1-19

[24] Despite all the determining factors, the level of participation was similar, if slightly lower, to that of the 2014 European Parliamentary elections. If nothing else, the vote recount offered a vision of the strong mobilization of the independent vote, with 80.76% of the answers in favour of an independent Catalan State

[25] See Linde E. Estado *versus* nación. El fin de la era de los nacionalismos en Europa. Revista de Derecho de la Unión Europea 2013; 25(July-December): 29

[26] A view on the tax effort in Catalonia from a pro-sovereignty point of view. http://www.elpuntavui.cat/ ma/article/4-economia/18-economia/595749-lendeutament- espanyol-ens-fara-lliures.html

[27] See article 50 ETU

[28] There have been speculations about the rejoining of Greenland to the European Union, as seen from the statements by the Greenland Prime Minister reported on the Danish Newspaper Jyllands-Posten on January 4, 2007

[29] Prodi added: «[According to] article 49 of the European Union Treaty, any European State which respects the principles referred to in article 6 of the EU Treaty could apply for membership to the Union.»

[30] Advisory Opinion of the International Court of Justice in accordance with the UDI regarding Kosovo from July 26, 2010. Available from http://www.un.org/es/comun/docs/?symbol=A/64/881 [visited on February 3, 2014]

[31] BBC program on the summit between Ukraine, Russia and the USA in Geneva on the East Ukraine conflict. http://www.bbc.com/news/world-europe-27072351

[32] This clarification was done because several members of the procedure alleged that the principle of territorial integrity had recently been applied in several secessionist conflicts such as the ones in Georgia and Abkhazia and South Ossetia, Azerbaijan/Nagorno-Karabakh. Furthermore, the Security Council had passed several resolutions condemning some given declarations of independence: South Rhodesia [216 (1965) and 217 (1965)] Septentrional Cyprus [541 (1983)] and the Srpska Republic [787 (1992)]. Indeed, the UN does not normally intervene in the authorization of the secession of groups that are not homogeneous nation-communities strictly speaking (e.g, the secession of the Bosnian-Serbians and the Croats from Bosnia)

[33] See article 50 ETU

[34] In several international agreements, prescriptions addressed to sub-state entities regarding the respect of territorial integrity [art.5 of the Convention for the Protection of National Minorities (CPNM); and art. 46 of the International Declaration of the rights of indigenous people] constitute a prohibition to sub-state entities to declare their independence. Respect for territorial integrity must not be understood separately from the object of these rules, addressed to subjects to which this regulation does not acknowledge legal personality (speakers of minority languages, national minorities or indigenous people)

[35] When the UDI was proclaimed, the legal framework of Kosovo was regulated by the Resolution of the

Security Council of the UN 1244 (1999) which basically contemplated the authorization of the creation of international military presence (KFOR) to guarantee peace and demilitarization, as well as civil international presence (Interim Administration Mission called UNMIK). This is what established the frame for the administration of Kosovo, by using a provisional system of self-government and autonomy

[36] The ballot succeeded with the vote of 109 representatives out of 120, because Serbian representatives abandoned the session

[37] Throughout 2006 internal tensions in the governing party led to the resignation of Prime Minister Kosumi in March, his replacement by Agim Çeku and, finally, to the defeat of the Democratic League of Kosovo by the Democratic Party in the election of November 2007. The leader of this party, Hashim Thaçi, became prime minister of a coalition government with the League and it was under his management that the UDI was passed

[38] The Resolution of the European Parliament, from March 29, 2012 on the process of integration of Kosovo in the European Union (2011/2885 (*RSP) (2013/C 257 I/05) acknowledges the satisfactory support and the recognition of Kosovo by many countries, and it also regrets the diplomatic pressure exercised by Serbia

[39] It must be highlighted that the United States had military-strategic interests on the area, where they set Camp Bondsteel, the second biggest North-American base in the world

[40] The resolution of the European Parliament from January 16, 2014, accepts, among other issues, to «Ask the Council to adopt the necessary decisions to allow Kosovo to be part of the programs of the EU as soon as possible». http://www.europarl.europa.eu/sides/ getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2014- 0040+0+DOC+XML+V0//EN [Visited: 25th November 2014]

[41] On April 1st, 2014, there was a Meeting between the European Commissioner, Stefan Füle, and the government of Kosovo, to analyze the final stage of the annexation process to the EU. http://europa.eu/rapid/ press-release_STATEMENT-14-91_en.htm [Visited 25th of November 2014]

[42] Paradoxically, the process was interrupted when, in March 1991, a referendum was held exclusively regarding the preservation of the unit of the Republic within the USSR. It was won by the supporters of the «yes» (70.2%, with a turnout of 86.5%) who widely defeated the independence supporters. The difference in the results of the two referendums is explained with the loss of the Soviet supremacy, as a result of the conspiracy carried out by members of the CPSU and the KGB, which contributed to the fall of president Gorbachov

[43] The Venice Commission, advisory body of the Parliamentary Assembly of the European Council, paid attention to the subject of the majority required to consider the referendum valid and issued a dictum under the petition of the Parliamentary Assembly and the High Representative of Foreign Affairs and Security Policy of the European Union. One of the set requirements was to establish the majority on a 55% of the issued votes for independence as a necessary result of the referendum, as well as a turnout of more than 50% of the electoral census. http://www.venice.coe. int/webforms/documents/CDL-AD (2005) 034.aspx [visited on February 1st, 2014]