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Abstract

This study aims at briefly examining the international reactions to the unilateral declaration of independence with respect to Catalonia, in order to identify possible trends or evolutions in international law. The article departs from the assumption that two main theories have been proposed with respect to the international law applicable to secession attempts and tries to identify elements that may support one theory or the other. The main aspects that will be looked upon when studying the reactions of States shall be references to: territorial integrity and sovereignty, conformity with the Constitution and the domestic laws, and the rule of law.

Keywords: *Catalonia, secession, recognition, territorial integrity, rule of law.*

Introduction

The sequence of events in Catalonia in the autumn of 2017 held the attention of the international community. It was indeed an unprecedented event for a territory (a region or a province) in a Member State of the European Union to attempt to achieve secession. A brief analysis of the international law aspects surrounding this issue, as well as the consequences of such reaction for the evolution

It is not the purpose of this study to make a detailed analysis of the facts, but a short recall of the most important events might be useful: the parliament of the Autonomous Community of Catalonia approved on 6 September 2017,

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called by the Generalitat of Catalonia (the government);[1] however, the High Court of Justice of Catalonia issued orders to the police to attempt to prevent the conduct of such referendum;[2] the referendum took place on 1 October 2017; according to the organizers, 92% of the persons that voted expressed themselves in favour of the independence, while the turnout was 43%;[3] the referendum was on 7 October 2017 the Constitutional Court of Spain, upon the request of the Government of Spain, declared that the referendum infringed the Constitution;[4] a document entitled "declaration of independence" was signed on 10 October 2017 by the members of the pro-independence parties in the Catalan parliament and was voted by a majority of 70 out of 135 members;[5] in the same day, the Spanish Government, with the consent of the Senate, invoked article 155 of the Spanish Constitution and dismissed the head of the Generalitat;[6] upon request of the Spanish

[1] El Govern en pleno firma el decreto de convocatoria del referéndum del 1 de octubre, 6 September 2017, El Diario, http://www.eldiario.es/catalunya/politica/consellers-decreto-convocatoria-referendum-octubre_0_683832560.html (accessed 10 December 2017); En vivo: la Mesa del Parlament aprueba la tramitación de la Ley de Transitoriedad Jurídica, 6 september 2017, El Mundo, http://www.elmundo.es/cataluna/2017/09/06/59af9fe5e2704eaf268b468b.html (accesed 10 December 2017).

[2] Police close voting centres before Catalan referendum, the Guardian, 30 September 2017, https://www.theguardian.com/world/2017/sep/30/police-close-more-than-half-of-voting-centres-ahead-of-catalan-referendum (accessed 11 December 2017).

[3] Los resultados definitivos del referéndum no cuadran con los provisionales, El Pais, 6 October 2017, https://elpais.com/ccaa/2017/10/06/catalunya/1507305113_021426.html (accessed 11 December 2017).

[4] Tribunal Constitucional. Pleno. Sentencia 114/2017, de 17 de octubre de 2017. Recurso de inconstitucionalidad 4334-2017. Interpuesto por el Abogado del Estado en nombre del Presidente del Gobierno frente a la Ley del Parlamento de Cataluña 19/2017, de 6 de septiembre, denominada «del referéndum de autodeterminación», ECLI:ES:TC:2017:114, Boletin Oficial del Estado, Núm. 256 Martes 24 de octubre de 2017 Sec. TC., p/ 10254.

[5] Un Parlament semivacío consuma en voto secreto la rebelión contra el Estado, El Mundo, 27 October 2017, http://www.elmundo.es/cataluna/2017/10/27/59f2feafe2704e491b8b48e2.html (accessed 11 December 2017).

[6] El Senado aprueba aplicar el artículo 155 en Cataluña, El Pais, 27 October 2017, https://politica.elpais.com/politica/2017/10/27/actualidad/1509105725_777595.html (accessed 11 December 2017).

Government, the Spanish Constitutional Court [declared the nullity] of the declaration of independence.[1]

This is only the general picture of the events. The essential feature of the process that should be underlined is the non-conformity with the Spanish Constitution: the entire process, the so-called referendum and the declaration of independence broke the provisions of the Constitution and triggered prompt reaction from the Constitutional Court.

The situation calls upon one of the most important questions in contemporary international law: whether international law allows the secession of a territory without the consent of the State from which it is a part. The answer to this question is not clear, as two opposite theories have been advanced in recent years. This study departs from this assumption: in relation to certain crucial questions, international law is a sequence of arguments that come in pairs.[2] Most of the great problems in international law are subject to "theory A" and "theory B". Sometimes one of the arguments is based on realism, the other on idealism; sometimes one argument is based on one of the values of the international community, while the other argument on another value. In many cases, certain States may support "theory A", while others "theory B". Moreover, over time, the balance between the two theories may oscillate.

Therefore, the purpose of this study is to expose the main theories surrounding the key question whether a territory of a State can achieve secession (section I) and to examine whether the international reactions to the independence of Catalonia contain any legal elements that might be in favour of one of the two theories (section II). It is true, international law has the wonderful feature of allowing an important degree of flexibility, but is also characterized by the fact that every statement of a State matters, as it represents a brick in the construction of future legal arguments. This study

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[1] Tribunal Constitucional. Pleno. Sentencia 121/2017, de 31 d'octubre de 2017. Impugnación de disposiciones autonómicas 4333-2017. Formulada por el Gobierno de la Nación respecto del Decreto de la Generalitat de Cataluña 140/2017, de 7 de septiembre, de normas complementarias para la celebración del referéndum d'autodeterminación, Buletin Oficial del Estado, Núm. 278 Jueves 16 de noviembre de 2017 Sec. TC., p. 110703; Tribunal Constitucional. Pleno. Sentencia 122/2017, de 31 d'octubre de 2017. Impugnación de disposiciones autonómicas 4335-2017. Formulada por el Gobierno de la Nación respecto del Decreto 139/2017, de 6 de septiembre, de convocatoria del referéndum d'autodeterminación de Cataluña, Buletin Oficial del Estado, Núm. 278 Jueves 16 de noviembre de 2017 Sec. TC., p. 110707.

[2] Martti Koskenniemi, 'International Law in the World of Ideas', in J. Crawford, M. Koskenniemi, *The Cambridge Companion to International Law*, Cambdridge University Press, 2011, p. 60.

does not propose a comprehensive analysis of the international law concerning secession, recognition or the creation of States, but a small contribution or a "beginning" in the perspective of a larger research.

1. Main legal theories applicable to secession of a territory

1.1. The outline of the two theories

1.1.1. Theory A – neutrality of international law

The first theory (we will name it theory A) relies on the assumption that international law is neutral with respect to secession. It argues that secession is not prohibited by international law, because there is no rule of international law that would prevent the creation of a new State. It was argued that the rule of territorial integrity relates only to inter-State relations and that the scope of territorial integrity does not cover the relations between a State and internal secessionist movements or entities.

The theory relies on the so-called "Lotus principle", according to which where there is no express prohibition in international law, States are free to adopt whatever conduct they may choose. Practically, what is not expressly prohibited, is permitted under international law.[1]

An important number of arguments presented during the pleadings before the International Court of Justice in the advisory proceedings *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo* were based on this theory.[2] Thus, for example, the United States expressed the view that "For that basic principle calls upon States to respect the territorial integrity of other States. But it does not regulate the internal conduct of groups within States, or preclude such internal groups from seceding or declaring independence".[3] Statements in support of the idea that territorial integrity applies only to inter-State relations were also made by France, Switzerland, the Czech Republic, Albania.[4] The same oral statement of the United States quotes, *inter alia,* Malcolm Shaw, who expressed views that: "as a matter of law the international system neither

[1] *Lotus (France v. Turkey),* Permanent Court of International Justice, P.C.I.J. (ser. A) No. 10 (1927), para. 45-48.
[2] *I.C.J. Reports 2010*, p. 403.
[3] Verbatim Record CR 2009/30, p. 30, para. 20.
[4] Written Statement of France, 17 April 2009, p. 26, para. 2.6.; Written Statement of Switzerland, April 2009, p. 14, para. 55; Written Statement of the Czech Republic, April 2009, pp. 7-8; Verbatim Record CR 2009/26, p. 13, para. 19 (Oral Statement of Albania).

authorises nor condemns such attempts, but rather stands neutral. Secession, as such, therefore, is not contrary to international law".[1]

James Crawford, representing the United Kingdom, stressed that "A prohibition of secession is certainly not to be found in the pre-1919 international law. Nor did this position change after 1919".[2] Daniel Muller, representing the authors of the declaration of independence, formulated the argument that "*le droit international ne crée pas l'Etat, son sujet par excellence, mais constate son existence, en prend acte et en tire toutes les consequences*".[3]

To draw a short conclusion with respect to this « Theory A », it might be appropriate to refer again to a pragraph from Professor Malcolm Shaw (who, ironically, pleaded for Serbia), quoted by Jamew Crawford: "*There is, of course*, no international legal duty to refrain from secession attempts: the situation remains subject to the domestic law. However, should such a secession prove successful in fact, then the concepts of recognition and the appropriate criteria of statehood would prove relevant and determinative as to the new situation" (emphasis added by quotation).[4]

1.1.2. Theory B – "implied" prohibition of secession

The second theory departs from the assumption that the principle of territorial integrity contains the prohibition of unilateral secession. It is argued that international law gives effect to domestic law, meaning that international law accepts the conclusion that, if secession is prohibited by the constitutional law of the State from which secession is attempted, international law will accept that conclusion. In this sense, a paragraph from the case before the Supreme Court of Canada, *Secession of Quebec*, is often quoted:

"*As will be seen, international law places great importance on the territorial integrity of nation states and, by and large, leaves the creation of a new state to be determined by the domestic law of the existing state of which the seceding entity presently forms a part [...]. Where, as here, unilateral secession would be incompatible with the domestic Constitution,*

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[1] Malcolm Shaw, *Re: Order in Council P.C. 1996-1497 of 30 September 1996*, in Anne Bayefsky (ed.), *Self-Determination in International Law: Quebec and Lessons Learned*, Brill, 2000, p. 136, quoted in Verbatim Record 2009/30, p. 29, para. 18; See also John Dugard, *The Secession of States and their Recognition in the Wake of Kosovo,* the Hague Academy of International Law, AIL-Pocket, 2013, p. 139.

[2] Verbatim Record, 32/2009, p. 49, para. 11-12.

[3] Vebatim Record, 25/2009, p. 39, para. 19.

[4] Malcolm Shaw, *International Law,* 6th ed., Cambridge: Cambridge University Press, 2008, p. 218, quoted in Verbatim Record, 32/2009, p. 52, para. 21.

international law is likely to accept that conclusion subject to the right of peoples to self-determination, a topic to which we now turn".[1]

It is true, the Supreme Court is using somehow a volatile language (it does not say „international law prohibits" or „international law protects territorial integrity", but „places a great importance...", or uses words like „by and large" or „is likely to accept"). At the same time, this paragraph is placed after the following general Statement:

„*International law contains neither a right of unilateral secession nor the explicit denial of such a right, although such a denial is, to some extent, implicit in the exceptional circumstances required for secession to be permitted under the right of a people to self-determination, e.g., the right of secession that arises in the exceptional situation of an oppressed or colonial people, discussed below*".[2]

The paragraph above could be commented in two ways. On one side, it may refer to an „implicit" prohibition of secession (which would correspond to the denial of a correlative right), resulting from the exceptional circumstances required for the exercise of the right to „external" self determination.[3] On the other side, this paragraph may refer only to „the right of secession" – which may refer to a specific situation, that may be discussed under „Theoretic point C", below (because, in the conception of theory A, the non-existence of a right does not correspond necessarily to a prohibition – as what is not expressly prohibited is permitted, according to the „Lotus" principle).[4]

Moreover, a supplementary point may be taken. The reference to "circumstances required for the secession to be permitted under the right of a people to self-determination" lead to the so-called "safeguard clause" which is contained by two of the most important documents related to self-determination, namely the *Declaration on Friendly Relations* and the *Helsinki Final Act.* The "safeguard clause" reads as follows:

"*Nothing in the foregoing paragraphs shall be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the principle of equal rights and self-determination of peoples as described above and thus*

[1] Reference re Secession of Quebec, [1998] 2 S.C.R. 217, para. 112.
[2] *Ibid.*
[3] Verbatim Record, 32/2009, p. 27, para. 4 (Oral Statement of Romania).
[4] Verbatim Record, 32/2009, p. 51, para. 19 (Oral Statement of the United Kingdom).

possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or colour.

Every State shall refrain from any action aimed at the partial or total disruption of the national unity and territorial integrity of any other State or country."[1]

Nevertheless this argument was also criticized by the supporters of theory A, as the safeguard clause establishes aslo an inter-statate relation, excluding any prohibition for non-state actors, like the secessionist entities.[2]

During the pleadings in the advisory proceedings *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo*, a number of countries supported that the principle of territorial integrity prohibits secession, also in relation to other international actors. For example, Argentina argued that "*respect for the principle of territorial integrity is an obligation that applies not only to States and international organizations, but also to other international actors".*[3] Also, in the words of Bogdan Aurescu, representing Romania, "*It has been argued that secession is not prohibited by international law and that the principle of territorial integrity applies only between States and does not protect States from secessionist movements and that non-State actors are not bound by this principle. Accepting this statement would lead to extremely severe consequences for the international legal order. It would mean that any province, district, county, or even the smallest hamlet from any corner of any State, is allowed by international law to declare independence and to obtain secession".*[4]

As John Dugard mentions, "the International Court of Justice has failed to provide guidance on the law governing State secession in its Advisory Opinion" on the declaration of independence concerning Kosovo.[5] The Court regarded the question put by the General Assembly as very narrow: "It does not ask about the legal consequences of that declaration. In particular, it does not ask whether or not Kosovo has achieved statehood. Nor does it ask about the validity or legal effects of the recognition of Kosovo by those States which have recognized it as an independent State".[6] However, the Court made a small, but important, step in favour of Theory A

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[1] A/RES/25/2625, 24 October 1970.
[2] Verbatim Record, 25/2009, p. 44, para. 29 (authors of the declaration of independence).
[3] Written Statement of Argentina, 17 April 2009, p. 30, para. 75; John Dugard, *The Secession of States and their Recognition,* op. cit., p. 139.
[4] Verbatim Record, 32/2009, p. 20, para. 10.
[5] John Dugard, *The Secession of States and their Recognition,* op. cit., p. 139.
[6] ICJ Reports, 2010, p. 423, para. 51.

– it accepted that the principle of territorial integrity applies only between States: "Thus, the scope of the principle of territorial integrity is confined to the sphere of relations between States".[1] Although this finding was criticized for lack of thorough examination of the issue, it remains an authoritative statement.[2] Therefore, the way forward for Theory B relies on the proposition that the territorial integrity would not prohibit non-state actors, namely secessionist movements, to attempt secession, but would prohibit States from recognizing such allegedly new States. However, this argument shifts towards recognition, which is a much more complex issue.

1.2. Supplementary remarks – self-determination and recognition

1.2.1. *"Theoretic point C" – Self-determination*

A different argument than theories "A" and "B" above relates to the right to self-determination. The first element that might be important to be outlined is the relation between the right to self-determination and the two theories. They are, somehow, in a "triangular" relation: theory A and theory B are opposed; self-determination, in those cases where it allows "external" self-determination may be regarded as an "exception" from theory B;[3] nevertheless, the relation between theory A and the right to self-determination is somehow more complex: theory A argues that secession is not prohibited and "what is not prohibited is permitted" – therefore, there is no need to argue that a people is entitled to "the right to [external] self-determination", since there is no prohibition against secession. However, the "self-determination" may be regarded as a supplementary argument, in relation to theory A: if there is no right to self-determination, the success of the secession will remain subject to the faculty of the international community to accept the new entity, while in the case of a "positive right of self-determination", the international community may be called upon to accept the new state.

Some general elements related to the right to self-determination may be useful. First, it has to be pointed out that the right to self-determination is confined to "peoples". As the Venice Commission points out, "the right to self-determination does not appertain to minorities or other groups within a

[1] *Ibid,* p. 437, para. 80.
[2] John Dugard points out that „it is surely iresponsible of the Court to pronounce on such controversial matter without a full examination of the subject" *The Secession of States and their Recognition,* op. cit., p. 245; T. Christakis, *The ICJ Advisory Opinion: Has International Law Something to Say about Secession?* (2011) Leiden Journal of International Law, vol. 24, p. 73, 85.
[3] Reference re Secession of Quebec, [1998] 2 S.C.R. 217, para. 112.

state".[1] Rosalyn Higgins answered firmly in the negative the question which may have raised in the context of the dissolution of Yugoslavia and Soviet Union: "*Is it right, as it is commonly asserted by different nationalist factions, that minorities are entitled to self-determination, and that self-determination entails secession?*".[2]

Second, it has to be pointed out that even if an entity qualifies as a people, the right to self-determination does not necessarily entitle that people to secession (the "external aspect" of the self-determination). As the Supreme Court of Canada recalled in the *Secession of Quebec* case, "*In summary, the international law right to self-determination only generates, at best, a right to external self-determination in situations of former colonies; where a people is oppressed, as for example under foreign military occupation; or where a definable group is denied meaningful access to government to pursue their political, economic, social and cultural development. In all three situations, the people in question are entitled to a right to external self-determination because they have been denied the ability to exert internally their right to self-determination*".[3] The Venice Commission recalles that „*But even if a group qualifies as a "people", in the international law sense, the principle of self-determination of peoples does not automatically entail their right to secession. [...] In any case, even a secession would only be an option of last resort in a situation where a people's right to internal self-determination has been persistently and massively violated and all other means have failed*".[4] Interesting guidance on this issue has also been provided by the International Fact-Finding Mission in Georgia (2009): „*outside the colonial context, self-determination is basically limited to internal self-determination. A right to external self-determination in form of a secession is not accepted in state practice. A limited, conditional extraordinary allowance to secede as a last resort in extreme cases is debated in international legal scholarship. However, most*

[1] European Commission for Democracy through Law (Venice Commission), Opinion no. 763/2014, 21 March 2014, CDL-AD (2014)004, para. 25; the Venice Commission is also quoting the International Court of Justice in the *Western Sahara* Advisory Opinion, ICJ Reports, 1975, par. 59; however, the Venice Commission points out that „it may, however, in specific cases be difficult in practice to categorise a given group of persons as a "people" or ("only") as a "minority" in the sense of international law" (para. 25).

[2] Rosalyn Higgin, *Problems and Process: International Law and How We Use It*, Oxford University Press, p. 121-122.

[3] Reference re Secession of Quebec, [1998] 2 S.C.R. 217, para. 138.

[4] European Commission for Democracy through Law (Venice Commission), Opinion no. 763/2014, 21 March 2014, CDL-AD(2014)004, para. 26.

authors opine that such a remedial "right" or allowance does not form part of international law as it stands." [1]

As it can be summarized from the above sources, the right to self-determination is supposed to be achieved within its „internal aspect". It provides for secession in the case of colonies or opressed people. Outside the colonial context, the theory of „remedial secession" (in case when the right to internal self-determination of a people is manifestly violated) is subject to debate,[2] but, nevertheless, its application in cases where the state is notorious to ensure representative government might be „manifestly" excluded.[3]

1.2.2. Relevance of recognition

Since the International Court of Justice expressly accepted, in the *Kosovo Advisory Opinion*, that "the scope of the principle of territorial integrity is confined to the sphere of relations between States",[4] it appears that theory B would mainly rely on the argument that, by recognizing the secessionist attempt, any State would violate the territorial integrity of the State from which secession is desired.

Thus, theory A may argue that the decision of a State to recognize is entirely discretionary. In this sense, the words of Sir Hersch Lauterpacht may be quoted: "*according to what is still the predominant view in the international law literature, recognition of States is not a matter governed by law, but a question of policy*".[5] The discretionary character of recognition of States is, indeed, widely recognized.

On the other side, theory B may argue that there exists an obligation not to recognize an attempted secession that would violate the territorial integrity of a State and would not be justified by the right to "external" self-determination. In support of such statement, the wording of principle 5 of the 1989 Vienna Document of the CSCE meeting could be invoked: "They confirm their commitment strictly and effectively to observe the principle of the territorial integrity of States. They will refrain from any violation of this principle and thus from any action aimed by direct or indirect means, in contravention of the purposes and principles of the Charter of the United

[1] Independent International Fact-Finding Mission in Georgia, vol. II, September 2009, p. 141.
[2] John Dugard, *The Secession of States and their Recognition,* op. cit., p. 276-277; Mark Weller, Modesty Can Be a Virtue: Judicial Economy in the ICJ Kosovo Opinion?, Leiden Journal of International Law, vol. 24, Issue 1, March 2011, p. 137.
[3] Reference re Secession of Quebec, [1998] 2 S.C.R. 217, para. 138.
[4] *Ibid.*, p. 437, para. 80.
[5] Hersch Lauterpacht, *Recognition in International Law,* Cambridge University Press, p. 1.

Nations, other obligations under international law or the provisions of the [Helsinki] Final Act, at violating the territorial integrity, political independence or the unity of a State. No actions or situations in contravention of this principle will be recognized as legal by the participating States".[1]

It is not the purpose of this study to examine the possible limitations to the discretionary character of the recognition. Nevertheless, as John Dugard pointed out, as there is no mechanism, no international court of procedure enabled to scrutinize the legality of attempted secessions, the "credentials of the aspiring state", it is left to the existing States, to the international community to decide whether a new entity would be admitted to the "Club of Nations".[2]

One of the questions addressed by the members of the Committee on Recognition and Non-Recognition of the International Law Association, was formulated as follows: "Please give any examples of your State not recognizing another entity as a State. Is this indicative of a legal obligation of non-recognition?".[3] The Report notes the various state practice related to non-recognition and acknowledges the opposing views regarding the existence of an obligation of non-recognition. These opposing views balance between: a) the view that rejects any obligation of non-recognition, even in the case when a territory was acquired by the use of force[4], and b) the view that "[t]hird States... may be prevented from according recognition as long

[1] Concluding Document of the Vienna Meeting 1986 of Representatives of Paricipating States of the Conference on Security and Co-operation in Europe, Held on the Basis of the Provisions of the Final Act Relating to the Follow-up to the Conference, principle 5; quoted also by Referrence re Secession of Quebec, op. cit., para. 129.

[2] John Dugard, *The Secession of States and their Recognition,* op. cit., p. 35.

[3] International Law Association, Washington Conference (2014), Committee on Recognition/Non-Recognition in International Law, Second (Interim) Report, March 2014, p. 1.

[4] For example: "*in 1986, the Australian government stated that it did not acknowledge a legal obligation of non-recognition when territory was acquired by the use of force. Australia recognised Indonesian sovereignty over East Timor, and in discussing the relevance of the 1970 UNGA Friendly Relations Declaration (Res 2625 (XXV)) to Australia's negotiations with Indonesia over natural resources in the Timor Gap, the Minister for Resources and Energy stated that: "Senator GARETH EVANS: ... It is our understanding that there is no binding international legal obligation not to recognise the acquisition of territory that was acquired by force*" - International Law Association, Washington Conference (2014), Committee on Recognition/Non-Recognition in International Law, Second (Interim) Report, March 2014, p. 4.

as the injured state does not waive its rights since such a unilateral action would infringe the rights of the latter State".[1]

Practice of States is evolving with each case on the international scene. This is why it would be useful to analyse briefly the international reactions to the declaration of independence of Catalonia, in order to observe whether they may contain any legal position or whether they may favour one or the other of the theories exposed above. As in any matter of international law, the balance between two opposing theories may swift over time.

2. Reactions to Catalonia and their possible consequences

2.1. The positions of States

No State has recognized Catalonia as an independent State.[2] Nevertheless, it would be useful to point out some positions, in order to try to identify any legal elements that may be contained by the statements of States.

First, certain States limited their statements to the fact that they will not recognize Catalonia, without providing any legal elements. Certain states in this group may have called for a solution based on dialogue, or simply referred to the issue as an "internal matter": Portugal,[3] Hungary,[4] Mexico,[5]

[1] Karl Doehring, "Effectiveness," in 2 Encyclopedia of Public International Law 43, 47 (R. Bernhardt, ed. 1995), quoted by International Law Association, Washington Conference (2014), Committee on Recognition/Non-Recognition in International Law, Second (Interim) Report, March 2014, p. 4; in the same sense, the Report notes that in the case of Kosovo, the reaction of Spain was that "The Spanish government will not recognize the unilateral act proclaimed yesterday by the Kosovar assembly, and it will not recognize it because we do not believe it respects international legality".

[2] It may not be taken seriously that "Abkhazia" and "South Ossetia" declared that they may recognize Catalonia, if asked by the Catalan government.

[3] The position of Portugal was expressed by the President, who communicated that "Portugal does not recognized the unilateral declaration of independence of Catalonia and defends the respect for the unity of Spain", TSF, 28 October 2017, https://www.tsf.pt/politica/interior/catalunha-marcelo-transmitiu-a-felipe-vi-que-portugal-nao-reconhece-declaracao-de-independencia-8879291.html (accessed 20 December 2017).

[4] The Hungarian minister of foreign affairs declared to media that „"The Hungarian Government views the declaration of Catalonian independence as a matter of Spanish internal affairs" - Press information of the Ministry of Foreign Affairs and Trade, The declaration of Catalonian independence is a matter of Spanish internal affairs, 28 October 2017, http://www.kormany.hu/en/ministry-of-foreign-affairs-and-trade/news/the-declaration-of-catalonian-independence-is-a-matter-of-spanish-internal-affairs (accessed 19 October 2017).

[5] The President of Mexico declared on twitter that „Mexico will not recognize the unilateral independence of Catalonia. We hope for a peaceful and political solution", Excelsior, México no reconocerá la independencia de Cataluña: Peña, 27 October 2017 http://www.excelsior.com.mx/nacional/2017/10/27/1197636, (accessed 20 December 2017).

Russia (but made a general reference to future developments being in conformity with the constitution and the laws),[1] Unite States (declared that Catalonia is an integral part of Spain).[2]

Second, it is remarkable that a large group of States referred to the need to respect the Spanish constitution or generally the domestic law: Argentina,[3] Belgium (although Belgium just called in general terms for respecting domestic and international order),[4] Brazil,[5] Bulgaria,[1] Canada,[2] Croatia,[3]

[1] The position of the Russian Federation was expressed by the spokesperson of the Ministry of Foreign Affairs: „We regard the situation in Catalonia as an internal affair of Spain. We proceed from the assumption that further developments in this Spanish region will conform to that country's Constitution and laws, in compliance with the democratic norms and human rights. We hope that the early parliamentary elections in Catalonia scheduled for December 21 will become a crucial stage in efforts to overcome the crisis and will stabilise the operation of state and municipal authorities", Briefing by Foreign Ministry Spokesperson Maria Zakharova, Moscow, November 2, 2017, http://www.mid.ru/en/web/guest/foreign_policy/news/-/asset_publisher/cKNonkJE02Bw/content/id/2932032 (accessed 20 December 2017).

[2] The Department of State of the United States issued a press statement in the following terms: „The United States enjoys a great friendship and an enduring partnership with our NATO Ally Spain. Our two countries cooperate closely to advance our shared security and economic priorities. Catalonia is an integral part of Spain, and the United States supports the Spanish government's constitutional measures to keep Spain strong and united", Press Statement, 27 October 2017, https://www.state.gov/r/pa/prs/ps/2017/10/275136.htm (accessed 20 December 2017).

[3] Argentina declared that "The Argentine Government does not recognize and thus rejects the declaration of independence passed by the Parliament of Catalonia. Argentina hopes that legality is restored through the constitutional mechanisms, in a context of peace among the Spanish people, guaranteeing the unity and territorial integrity of Spain", Ministry of Foreign Affairs and Worship of Argentina, Press release No. 484/17, 27 October 2017, https://www.mrecic.gov.ar/en/argentina-and-situation-catalonia-ii (accessed 19 December 2017).

[4] The Belgian Prime-minister declared (on his twitter account) that „a political crisis can only be solved through dialogue. We plead for a peaceful solution that would respect domestic and international order", Le Monde, 27 October 2017, http://www.lemonde.fr/europe/article/2017/10/27/catalogne-la-declaration-d-independance-suscite-des-reactions-internationales_5207023_3214.html (accessed 19 December 2017).

[5] The position of Brasil was that: „The Government of Brazil government closely monitors the developments concerning Catalonia, rejects the unilateral declaration of independence and reiterates its call for dialogue based on full respect for constitutional legality and the preservation of the unity of the Kingdom of Spain.", Ministry of Foreign Affairrs of Brasil, Press release no. 358, 28 October 2017, http://www.itamaraty.gov.br/en/press-releases/17726-developments-in-catalonia (accessed 19 December 2017).

China,[4] Estonia,[5] India,[1] Ireland,[2] Italy,[3] Peru,[4] Turkey,[5] United Kingdom.[6]

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[1]The Ministry of Foreign Affairs of Bulgaria issued a press release, by which it expressed the following position: "Bulgaria respects the constitutional order of the Kingdom of Spain, the rule of law and the principles of the legal State as fundamental values of the European Union and all its Member States. We support the preservation of the territorial integrity and the state sovereignty of Spain, which is our strategic partner and ally. The unilateral declaration of independence of Catalonia does not meet the conditions for legitimacy and breaches the principles of the legal State, as evident from the decisions of the Constitutional Court of the Kingdom of Spain" - Press release, Ministry of Foreign Affairs Position: Bulgaria respects Spain's territorial integrity, 27 October 2017, http://www.mfa.bg/en/events/6/1/2069/index.html (accessed 19 December 2017).

[2] The Prime-minister of Canada declared that „"Canada recognizes one united Spain […] We understand there are significant internal discussions that they are going through right now and we simply call for those discussions to be done according to the rule of law, according to the Spanish constitution, according to the principles of international law", Canada recognizes one united Spain amid Catalonia dispute, Trudeau says, The Star News, 27 October 2017, https://www.thestar.com/news/canada/2017/10/27/canada-recognizes-one-united-spain-amid-catalonia-dispute-trudeau-says.html (accessed 19 December 2017).

[3] The position of Croatia was along the lines of a press release of the Ministry of Foreign Affairs: "The Republic of Croatia considers the developments in Catalonia Spain's internal issue and advocates democratic and peaceful solutions in keeping with the European values. The Republic of Croatia believes that Catalonia's declaration independence is not in line with the Spanish constitution and that the best solution is one based on dialogue, with full respect for the rule of law and protection of rights of all citizens living in Catalonia" - Press release, Catalonia's declaration of independence not in line with Spanish constitution, 28 October 2017, http://www.mvep.hr/en/info-servis/press-releases/,29319.html (accessed 19 December 2017).

[4] The position of China was expressed by the spokesperson of the Ministry of Foreign Affairs: „China's position on this issue has been consistent and unequivocal. We think it falls within Spain's internal affairs. We understand and support the Spanish government's effort to uphold national unity, ethnic solidarity and territorial integrity, oppose the act of splitting the country and undermining the rule of law, and believe Spain is capable of upholding the social order and safeguarding the rights and interests of its citizens. China and Spain are friendly countries. We will continue to develop friendly cooperation in various fields with Spain following the principle of mutual respect for each other's sovereignty and territorial integrity and mutual non-interference in each other's internal affairs", Regular Press Conference of 30 October 2017, http://www.fmprc.gov.cn/mfa_eng/xwfw_665399/s2510_665401/2511_665403/t1505871.shtml (accessed 20 December 2017).

[5] The Estonian Prime-minister declared publicly that the question of Catalonia is „an internal matter of Spain". Moreover, the Ministry of Foreign Affairs of Estonia stated that "We are convinced that all internal matters will be solved in accordance with the laws of Spain. The bilateral relations of Estonia and Spain are strong—Spain is a close ally of Estonia in NATO, and an important partner in the European Union." - Estonian government: Events in Catalonia Spain's internal matter, https://news.err.ee/633455/estonian-government-events-in-catalonia-spain-s-internal-matter (accessed 19 December 2017).

[1] The spokesperson of the Indian Ministry of Foreign Affairs declared: „As a country that values and fosters unity in diversity, India would urge that issues of identity and culture are best addressed within the constitutional framework and with respect for national integrity." - The Times of India, 30 October 2017, https://timesofindia.indiatimes.com/india/neither-europe-nor-world-would-benefit-from-instability-india-on-catalonia-crisis/articleshow/61347963.cms (accessed 19 December 2017).

[2] The position of Ireland was that „We are all concerned about the crisis in Catalonia. Ireland respects the constitutional and territorial integrity of Spain and we do not accept or recognise the Catalan Unilateral Declaration of Independence. The resolution of the current crisis needs to be within Spain's constitutional framework and through Spain's democratic institutions. Ireland supports efforts to resolve this crisis through lawful and peaceful means." - Statement on Catalonia, 28 October 2017, https://www.dfa.ie/news-and-media/press-releases/press-release-archive/2017/october/statement-on-catalonia/ (accessed 19 December 2017).

[3]The Minister of Foreign Affaris of Italy declared publicly that „Italy does not recognise, and will not recognise, the unilateral declaration of independence proclaimed today by the Catalonia regional parliament […] Indeed, it is an extremely serious gesture outside the framework of the law. For this reason we express firm condemnation and, at the same time, the hope that dialogue can be restored, with respect of the Spanish Constitution, to save the population an escalation of tension, far from a united country with a strong European stamp like Spain" - Italy does not recognise Catalan independence – Alfano, ANSA news, 27 October 2017, http://www.ansa.it/english/news/2017/10/27/italy-does-not-recognise-catalan-independence-alfano-2_ef09bf9e-9e6a-4763-9e48-889a71359271.html (accessed December 2017).

[4] The Government of Peru declared that it rejects the unilateral declaration of independence, „because it is an action contary to the constituton and the laws of Spain", El Commercio, Perú rechaza declaración unilateral de independencia de Cataluña, 27 October 2017, https://elcomercio.pe/politica/peru-rechaza-declaracion-unilateral-independencia-cataluna-noticia-469388 (accessed 20 December 2017).

[5] The Ministry of Foreign Affairs of Turkey issued a press release in the following terms: „Respect for the territorial integrity and the Constitution of Spain as well as the will of Spanish people are fundamental. The unilateral decision of the Parliament does not comply with the Constitution and the laws of Spain and does not reflect the will of Spain as well as the people of this region. We hope that the Regional Government of Catalonia will not insist on this unilateral decision, which has no constitutional legitimacy and could lead to tension and escalation. We believe that this issue will be resolved based on democracy and the rule of law", Press release no. 333, 27 October 2017, http://www.mfa.gov.tr/no_-333_-ispanyada-katalunya-ozerk-bolgesiyle-ilgili-gelismeler-hk_en.en.mfa (accessed 20 December 2017).

[6] In the United Kingdom, the Downing Street Spokesperson said: "The UK does not and will not recognise the Unilateral Declaration of Independence made by the Catalan regional parliament. It is based on a vote that was declared illegal by the Spanish courts. We continue to want to see the rule of law upheld, the Spanish Constitution respected, and Spanish unity preserved", Press Release Statement on the Unilateral Declaration of Independence made by the Catalan regional parliament, 27 October 2017, https://www.gov.uk/government/news/statement-on-udi-made-by-catalan-regional-parliament-27-october-2017 (accessed 20 December 2017).

Third, another important number of countries stated that they respect the „territorial integrity", „sovereignty" or „unity" of Spain: Argentina, Brazil, Bulgaria, China, Germany,[1] Greece,[2] India, Ireland, Lithuania,[3] Morocco,[4] Poland,[5] Romania.[6]

[1] The position of Germany was expressed by the spokesperson of the Federal Government, declaring that it was "concerned about the renewed escalation of the situation in Catalonia, triggered by another breach of the constitution on the part of the Catalonian regional parliament […] The sovereignty and territorial integrity of Spain are inviolable and will remain so […] The unilateral declaration of independence breaches these protected principles. The German government will not recognise any declaration of independence of this sort" - Press release, The German government will not recognise the unilateral declaration of independence issued by the Catalonian regional parliament, 28 October 2017, https://www.bundesregierung.de/Content/EN/Artikel/2017/10_en/2017-10-27-katalonien-unabhaengigkeit_en.html?nn=709674 (accessed 28 October 2017).

[2] The position of Greece was expressed by the Ministry of Foreign Affairs: "Greece supports Spain's territorial integrity and rejects unilateral actions that undermine the country's unity and the immutability of borders.", Press Release, Ministry of Foreign Affairs announcement regarding the situation in Catalonia, 29 October 2017, http://www.mfa.gr/en/current-affairs/statements-speeches/ministry-of-foreign-affairs-announcement-regarding-the-situation-in-catalonia.html (accessed 10 December 2017).

[3] The Minister of Foreign Affairs of Lithuania declared that "We support the territorial integrity and sovereignty of Spain and, at the same time, we call for solving this crisis through dialog, not by force or violence", Delphi, The Lithuanian Tribune, 27 October 2017, https://en.delfi.lt/eu/lithuania-calls-for-dialog-in-solving-catalan-crisis.d?id=76188889 (accessed 20 December 2017).

[4] The position of Morocco was expressed by the Ministry of Foreign Affairs: „Morocco, faithful as it has always been to respect for the principles of international law, rejects the unilateral process of the independence of Catalonia, and expresses its attachment to the sovereignty, national unity and the territorial integrity of Spain.", Press Release, 10.11.2017, https://www.diplomatie.ma/en/Politiqueétrangère/Europe/tabid/2798/vw/1/ItemID/15082/language/en-US/Default.aspx (accessed 10 December 2017).

[5] The Ministry of Foreign Affairs of Poland expressed the following statement: "Poland fully respects the principles of sovereignty, territorial integrity, and unity of the Kingdom of Spain. We believe that solving the dispute between the government of the Kingdom of Spain and Catalonia, just like any disputes between the Kingdom of Spain and its autonomous regions, including separatist tendencies, are an internal affair of the Kingdom of Spain. We hope that the situation in Catalonia will stabilise quickly in observance of the constitution of the Kingdom of Spain", MFA statement on developments in Catalonia, 27 October 2017, http://mfa.gov.pl/en/news/mfa_statement_on_developments_in_catalonia_1 (accessed 20 December 2017).

[6] The position of Romania was expressed in a press release of the Ministry of Foreign Affairs: "We firmly and irrevocably deny the 'unilateral declaration of independence' of Catalonia. We reaffirm Romania's strong support for the sovereignty and territorial integrity of Spain. Spain is a major ally and strategic partner of our country – relationship reflected both at bilateral level and at EU and international level. We underline that the legitimacy of any process or any action pertaining to the internal order of a State resides in its full

Fourth, a number of countries referred to the „rule of law" generally, or the fact that the declaration of independence is not in conformity with the rule of law: Bulgaria, Canada, Croatia, China, France,[1] Finland,[2] Romania, Turkey, United Kingdom, as well as the European Parliament.[3]

However, only a limited number of countries expressly referred to arguments of international law. The statement of Romania may be noted, as it mentioned that "We reiterate Romania's consistent position in favour of the international law, which does not allow territorial changes to occur without the consent of the state concerned".[4] Morocco, also, rejected the declaration of independence, while „Morocco, faithful as it has always been to respect for the principles of international law".[5] Canada very generally

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compliance with the fundamental law, the rule of law in that State. We reiterate Romania's consistent position in favour of the international law, which does not allow territorial changes to occur without the consent of the state concerned. The situation generated in Catalonia pertains to Spain's internal order and we hope that it will return as soon as possible to the parameters of the constitutional order of that State", Press Release, Romania reaffirms its strong support for the sovereignty and territorial integrity of Spain, 28 October 2017, http://www.mae.ro/en/node/43854 (accessed 20 December 2017).

[1] In France, the President Emmanuel Macron declared publicly that „There is only one interlocutor in Spain, Prime minister Rajoy [...] There is a rule of law in Spain, with constitutional rules. He wants them respected and he has my full support" - Catalogne : Emmanuel Macron apporte son "plein soutien" à Mariano Rajoy, Europe 1, 27 Octomber 2017, http://www.europe1.fr/international/catalogne-macron-apporte-son-plein-soutien-a-rajoy-3476636 (accessed 19 December 2017).

[2] The minister of foreign affairs of Finland declared that "The declaration took place without the members of the opposition parties in attendance. This does not meet the criteria of democratic process or the rule of law", Yle Uutiset, 28 October 2017, https://yle.fi/uutiset/osasto/news/foreign_minister_rejects_rumour_of_finnish_recognition_for_catalan_independence_spanish_government_has_our_full_support/9906032 (accessed 20 December 2017).

[3] Antonio Tajani, the president of the European Parliament, declared: "No one will ever recognize Catalonia as an independent country. The referendum was illegal ... The rule of law should be restored." He said that the election will allow Catalans to "decide what kind of government they want to have. All should happen according to the Spanish Constitution." Statement of Antonio Tajani, president of the European Parliament, 27 October 2017, AP News, https://apnews.com/919885dc53724eadb4476350f75ac9da (accessed 19 December 2017).

[4] Press Release, Romania reaffirms its strong support for the sovereignty and territorial integrity of Spain, 28 October 2017, http://www.mae.ro/en/node/43854 (accessed 20 December 2017.)

[5] Press Release, 10.11.2017, https://www.diplomatie.ma/en/Politiqueétrangère/Europe/tabid/2798/vw/1/ItemID/15082/language/en-US/Default.aspx (accessed 10 December 2017).

referred to the discussions being in accordance with „principles of international law".[1]

2.2. Brief assessment of the international reaction

On one side, the fact that many countries referred in their statements of non-recognition to the need to respect the Constitution and the laws of Spain may be regarded as an argument in favour of theory B stated above. Thus, such statements may be related to the *dictum* in the *Secession of Quebec* case, according to which „*Where, as here, unilateral secession would be incompatible with the domestic Constitution, international law is likely to accept that conclusion*".[2] On the other hand, it may be argued that the states that invoked the non-conformity of the process with the constitutional framework of Spain may have done that only as a „legal justification for a political decision", while exercing their discretion whether to recognize or not to recognize an entity. In this sense, it has to be said that the difference between asuming a legal obligation not to recognize (which may be in favour of theory B) and asuming that the political „discretionary" decision not to recognize may be accompagnied by a legal argument (which would correspond to theory A) is very thin.

The same is valid for the support for the support for territorial integrity. On one side it may be argued that the principle of territorial integrity is an international rule that obliges States not to recognize a situation contrary to this principle (as the German statement mentioned, „The sovereignty and territorial integrity of Spain are inviolable and will remain so […] The unilateral declaration of independence breaches these protected principles").[3] On the other side, the territorial integrity might also be a justification for a political decision not to recognize.

In any case, the large number of references to "territorial integrity", "sovereignty" and to the respect for the Spanish Constitution and laws, could be regarded at least as a minor swift in balance in favour of theory B. Indeed, it is not clear whether States did not recognize Catalonia out of the sense of a legal obligation or because they decided so within the margin of

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[1] The Star News, 27 October 2017, https://www.thestar.com/news/canada/2017/10/27/canada-recognizes-one-united-spain-amid-catalonia-dispute-trudeau-says.html (accessed 19 December 2017).

[2] Reference re Secession of Quebec, [1998] 2 S.C.R. 217, para. 112.

[3] Press release, The German government will not recognise the unilateral declaration of independence issued by the Catalonian regional parliament, 28 October 2017, https://www.bundesregierung.de/Content/EN/Artikel/2017/10_en/2017-10-27-katalonien-unabhaengigkeit_en.html?nn=709674 (accessed 28 October 2017); However, it is interesting to remark that in the case of Kosovo, Germany supported theory A.

discretion conferred by recognition. Nevertheless, as States are rational international agents, they may exercise the power to decide whether to recognize or not by taking into account legal criteria, among which conformity with domestic law of an attempted secession. In this sense, it has to be underlined that "conformity with domestic law" may represent an essential component of the principle of territorial integrity: if a secession would not be in accordance with domestic law, then the principle of territorial integrity would operate. This might, at least, be taken into consideration when States make their decisions related to recognition or non-recognition.

The element that is a novelty within the reaction of States is, nevertheless, the refference to the rule of law. First, it could be argued that rule of law is becoming to cristalize as a rule of customary international law, on the background of the important number of resolutions adopted by the United Nations adopted since 2000.[1] Second, if rule of law imposes, in good faith, that all processes be governed by the constitution and the laws, which are subject to institutional checks and ballances, it may be correctly argued that an attempted secession that would break the constitution of a State would breach the rule of law. Of course, in this perspective, the rule of law should not be regarded as „strict conformity with the letter of the laws". Rule of law is a state of mind and overpasses the requirements of formal legality. In the words of the CSCE Copenhagen Document of 1990, „rule of law does not mean merely a formal legality which assures regularity and consistency in the achievement and enforcement of democratic order, but justice based on the recognition and full acceptance of the supreme value of the human personality and guaranteed by institutions providing a framework for its fullest expression".[2]

Thus, rule of law may appear as an emerging argument in favour of theory B, provided that the state from which secession is attempted offers itself sufficient guarantees of rule of law and complies with the "safeguard clause".[3]

Conclusion

International reaction to the attempted declaration of independence of Catalonia provided many referencces to formulas like „territorial integrity",

[1] For example, A/RES/55/2, 2000, A/RES/61/39, 2006; A/ /RES/62/70, 2008; A/ RES/63/128, 2009; A/ /RES/64/116, 2010; A/ /RES/65/32, 2011; A./ /RES/66/102, 2012; A/ /RES/67/97, 2013; A/ /RES/68/116, 2013; A/ /RES/69/123, 2014.
[2] Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, 29 June 1990.
[3] A/RES/25/2625, 24 October 1970.

„sovereignty", „accordance with Constitution and the laws". Nevertheless, it is difficult to interpret these statements. On one side, they may reflect a consciesness of a duty not to recognize a situation breaching the territorial integrity, but on the other side they may reflect a legal argument that accompanies, as a justification, a political decision based on the discretionary power of States to recognize or not an entity as a State.

However, the reactions on Catalonia come against the background of long-standing diverging views in the international community with respect to the international law applicable to secession attempts. International law proves to represent a system of arguments that come in pairs. Thus, „theory A", which supports the idea that international law is neutral to secession, is opposed to „theory B", which argues that secession is prohibited by international law, if the domestic law so of the State so provides, subject to the application of the right to self- determination. It is not a firm affirmation that reactinons to Catalonia may shift the ballance towards theory B, but it cannot be denied that the words employed by the statements of States („territorial integrity", „sovereignty", „accordance with Constitution and the laws") are elements of this „theory B".

Moreover, it has to be emphasized that the rule of law was a new element contained in an important number of statements. It may have an impact on the future developments of international law. It is the first time when „rule of law" is invoked in relation to „secession". Thus, it may be useful to explore, in the future, the legal relation between the two notions.

Last but not least, notwithstanding whether an obligation not to recognize exists or whether the legal argument is only a justification for a political decision, it has to be pointed out that States should act responsibly and should exercise their margin of appreciation („discretion") within the criteria framed by the rule of law. Therefore, it might be argued that the rule of law creates an obligation for States to ensure „greater rationality and transparency in the decision making process in respect of recognition", having in mind "the heavy responsibility [these decisions] bear in the creation of States".[1]

[1] John Dugard, *The Secession of States and their Recognition,* op. cit., p. 283.