

CHAPTER ONE

INTRODUCTION

A. Background

The secession's phenomenon has been growing since the 1960s and become a crucial issue under international law. The essential of this matter is determining the legality by virtue of which parts of sovereign state territory could be defined as newly independent state. From the beginning of its appearance, secession movements are generally marked by the pro-independence movements coming from the EU member states. Catalonia's case is one of many cases of secession happens and still be the hot matter in the global question. The rising of Catalonia has been started since the 1970s and blowing up as time bomb in 2017. Even though similar issue has been settled as the issuance of International Court of Justice (ex: Kosovo Advisory Opinion) as one of international law references, Catalonian case attempts to seek the legal justification for being a newly independent state through unilateral secession process.

Under international law, the validity of secession can be legally accepted under the decolonization context and the right to self-determination as conducted by the people,¹ aside from fulfilling the classical criteria for declaring a new state pursuant to the Montevideo Convention 1933 on the Rights and Duties of State. This case however will include the assessment of Spain, EU and International law.

¹Ved P. Nanda. (1981). Self-Determination under International Law: Validity of Claims to Secede. Retrieved from https://scholarlycommons.law.case.edu/iil/vol113/iss2/1_13 Case W. Res. Journal of International Law. 257 (1981)

By having a referendum and independence declaration, Catalonia is still far away from their effort to be transformed as the new state.

There will be several values would be their prerequisite point to be completed. As the secession is not a new thing within the international community, the case of Catalonia also can be easily compared with the previous ones. If we look at the two main international law principles as interconnected with secession attempt: The principle of territorial integrity² and the principle of self-determination³.

As regulated under strict legal assessment of international law, the secession movement conducted by Catalan is not counted/fall the right term. There is no such condition indicated as a valid according to international law. Even Catalonia can reach the classical requirements⁴ to be defined as a newly independent state, which can be seen clearly, yet embracing the new state should be counted by the international recognition as well. Meaning to say, the steps of creation of new state is the pre-legal phenomenon.⁵ Questioning the international law on the legality of secession would encounter the absence of answer, due to the fact that there is no neither authorization of forbidden for conducting the declaration of independence which resulting secession.

Consequently, it merely acknowledges, when applicable, the international effects and legal consequences that might arise from specific, existent and effective

² Shirmammadov, Khazar. (2016). How Does the International Community Reconcile the Principles of Territorial Integrity and Self-Determination? The Case of Crimea. *Russian Law Journal*. 4. 61-97.

³ Neil MacFarlane, Natalie Sabanadze. (2013). Sovereignty and self-determination: Where are we?. *International Journal: Canada's Journal of Global Policy Analysis*. Vol 68, Issue 4, pp. 609-627.

⁴ Catalonia can easily meet the classical criteria pursuant to the Montevideo Convention 1933

⁵ Xavier Pons Rafels. *Secession in international law*. Instituto de Derecho Publico

political realities. If we were talking about agreed process of secession, international law would regulate the consequences of the creation of this new State, and the rest of the States would then recognize it or not. If the process is not agreed upon, the other principles of international law are applicable, such as the principle of non-intervention in other States' internal affairs, the prohibition of the threat or use of force or the respect for human rights.

Additionally, international practice as seen during the processes of decolonization and the creation of new independent States of Central and East Europe acknowledges the preexisting territorial borders, reaffirms the States' territorial integrity and denies the viability of recurrent secession processes. In this respect, some voices claim that the International Court of Justice Advisory Opinion on Kosovo's unilateral declaration of independence underpins the international legal nature of a hypothetical unilateral declaration of independence. In this research, this is a completely misguided approach. It seems that the opinion of the International Court of Justice has been overused in a simple and decontextualized manner and its content has not been thoroughly examined. Likewise, the extensive and interesting legal grounds pointed out by the Canadian Supreme Court as regards the secession of Quebec have not been given due attention. In any case, there are different groups for whom the right to secede from the State cannot be proscribed. Talking about territorial communities whose ethnic, religious, linguistic or cultural identity is repeatedly persecuted by the national institutions and their territorial offices, or whose members are subject to serious and systematic discrimination in the exercise of their civil and political rights leading to widespread violations of

both the individuals' and the peoples' basic human rights. In this sense, only on an exceptional basis could international law acknowledge and support a unilateral secession if justified as a last resort, that is, secession as a solution, given a situation of severe violations of human rights and of the principle of self-determination in its internal dimension, as clearly shown by the Kosovo case.

In addition, also exceptionally, international law refuses unilateral declarations of independence not on the grounds of their unilateral nature but rather on the grounds of their link to the infringement of basic norms and principles of international law, as happened in the case of Crimea. In a democratic context, all political aspirations should be channeled ensuring respect for the rule of law on which fair and equal societies are built. Despite the fragile international consensus on the precise meaning of the term "rule of law", there is no doubt that in the last few years' international law is witnessing its emergence as a principle or value of universal nature. Although it might be true that it does not constitute a legal obligation under international law, it does from the point of view of the European Union. Also, the last steps taken by international law clearly show the inseparable nature of democracy, human rights and the rule of law. Consequently, any unilateral pro-independence action is inconsistent with a democratic context under international law, as proved by the cases of Quebec and Scotland.

B. Research Problem

Regarding the discussion above, the researcher formulates the research problem which is how is the validity of Catalonia's self-determination under international law?

C. Objective of Research

The objectives of the research are:

1. To get more understanding on the practice of the Catalonia's right to self-determination.
2. To bring the evidence to discuss the consequences of Catalan secession which referring to International Law.
3. To propose suggestion on what Spain Government and Catalonia should really do to deal with the issue by referring the international law resources, domestic law (EU and Spanish Law) and negotiation.

D. Benefit of Research

Regarding to the research problem and objective research, the benefits of research are expected as follows:

1. Theoretically This research can be used as study materials towards development relating to secession and self-determination issues.
2. Practically This research can be a reference material in the practice of the conduct of secession and self-determination of a state. In addition, it also

expected to provide information, moreover advises to law students, academicians, practitioners, and related parties.

E. Overview of the Chapters

This research consists of five chapters, specifically:

Chapter I Introduction, Chapter II Literature Review, Chapter III Research Methods, Chapter IV Discussion, Chapter V Conclusion and Suggestion. The research aims to find the right to secede of Catalonia and its validity, since there is no consent integrated by Spain's Government after freely having expressed their will to do so.

Chapter 1: The researcher will provide an Introduction which elaborate with general matter, such as Background, Research Question, Research Objective, Research Benefits, and Overview of the Chapter. The Background contains the latest issue of Catalonia in terms of their attempt to exercise the right to self-determination from the parent state, Spain Government. The researcher also delivers the research problem which will be discussed in the next chapter.

Chapter II: Literature Review, this chapter is discussing related to library reviews regarding Literature Review of Self-Determination, Secession and International Law.

Chapter III: This Chapter elaborated the research method which used in this research. The discussion is started from type of research, legal materials, method of collecting data, and method of data analysis. While the type of this research is normative legal research. The research applies statutes and case approaches. The

data were collected some literature consists of primary legal material, secondary legal material, and tertiary legal material. Moreover, the data were taken through library research, and analyzed systematically by using qualitative and descriptive method.

Chapter IV: Research and Analysis, this chapter is the elaboration between the case and normative legal research, with case approach. The focus of this research is on the validity of the right to self-determination by Catalonia under international law.

Chapter V: Conclusion and Recommendation, in this chapter, the author findings and makes conclusion on the validity of the right to self-determination by Catalonia under international law. While, suggestions are given to find the best negotiation between Catalonia and Spain Government and implement the source of international law and domestic law (European Union Law) to determine the validity of the Catalonia's self-determination.

