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Possibility of an independent Catalonia: The scope of the principle of self-determination under public international law

BACHELOR THESIS

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DECLARATION OF HONOUR:

I declare that this thesis is my own work, and that all references to, or quotations from, the work of others are fully and correctly cited.

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SUMMARY

Currently, in Europe and beyond, there is a considerable amount of secessionist movements. One of such cases is the pro-independence movement in Catalonia, an autonomous community in north-east Spain. This movement has endured for decades, however, it reached its peak in the end of 2017, when Catalonia, as a result of a controversial referendum, passed a unilateral independence declaration. This act prompted a debate about the legality of unilateral secessions in the post-colonial era. The core of the debate is the relationship between two fundamental principles of public international law, namely the principle of territorial integrity and that of self-determination.

The roots of the principle of self-determination can be found in the ideas of the American and French Revolutions in the late 18th century as they were the first to exhibit the phenomenon of society refusing to accept the exertion of power over them by an authority, which they do not recognize as legitimate and binding to them. Since then, the principle has evolved and become an accepted international norm, however, there have been many interpretations as to its scope and applicability

The right to self-determination is codified in the UN treaty instruments, such as the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), which state that all peoples are entitled to freely determine their political status and freely pursue their economic, social and cultural development. To better understand the contents of this right, it could be divided into two main types- internal and external self-determination. Internal self-determination is the right of the people of a state to govern themselves without outside interference, while external self-determination is the right of peoples to determine their own political status and to be free of “alien domination”, including the right to secession. The international law on the issue of secession can be classified into three categories: firstly, it prohibits secession, when it is exercised by breach of jus cogens, secondly, there are cases when the law is neutral, and, lastly, there are cases when international law grants a right to secession under external self-determination.

The right to secession in the post-colonial era can be found in the customary international law. The origin of this right could be considered Article 5 of the “Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations”, which grants the protection of territorial integrity to states, which comply with the principle of equal rights and self-determination and whose governments inclusive and representative. The declaration in a way interconnects the right to internal and external self-determination as neglect of the former right justifies the invocation of the latter right, which may be exercised by [unilateral non-colonial] secession. However, as the right to secession is an exceptional right, it is granted only in a limited number of cases. Essentially, there are four criteria that need to be satisfied to claim the right to unilateral non-colonial secession. These criteria are established by the studied case law and confirmed by international law scholars. These criteria are, firstly, the existence of “peoples”, secondly, denial of internal self-determination and human rights breaches committed by the “mother state” against the independence-seeking entity, thirdly, non-existence of other remedies under either domestic or international law and, lastly, no explicit prohibition to exercise external self-determination under international law.

However, it is entirely possible for unilateral non-colonial secession not to be in violation of international law without constituting the exercise of an explicit right conferred by it. If a political entity attempts to effect unilateral secession, there are two main law theories of statehood, which aim at explaining the moment, when this entity gains personality under international law and can be called a “state”. First is the constitutive theory, which deems recognition to be a necessary precondition for the entity to enjoy international personality, and the second is the declaratory theory, which argues that entity gains statehood once the criteria for statehood has been satisfied and considers the act of recognition as merely declaratory.

To understand if Catalonia has the right to unilateral secession and whether its claim for independent statehood is compatible with public international law, it is necessary to analyze Catalonia in the light of the criteria that give the right to secession and those, which determine if a political entity could achieve statehood.

While it is impossible to conclude whether Catalans are “people” under international law as there is no international law definition as to what constitutes “people”, it is argued that Catalans are a separate ethnic group with separate language, unique traditions and culture, strong historic ties and a common sense of identity. However, in the context of unilateral secession, the term “peoples” is used to describe those people, who are either oppressed, discriminated or denied participatory rights in their respective states, therefore, there is a need to analyze these factors to conclude if there is a right to unilateral secession. When examining if Catalans are denied the right to internal self-determination and whether there are human rights breaches committed by the Spanish government against Catalonia, the paper concluded that, till the 2017 independence referendum, there was nothing to suggest that Catalans are denied internal self-determination and that their human rights are violated. However, it is too early to consider whether this conclusion is still valid in the aftermath of the independence referendum. On the question, if there are no other possible remedies, except unilateral secession, under either domestic or international law, it was concluded that there might be a solution that does not amount to secession and which would effectively and peacefully solve the issue at hand. Lastly, when examining whether there is no explicit prohibition under international law for Catalonia to secede, it was concluded that there is nothing to suggest that Catalonia has breached fundamental principles of law in its attempts to achieve independence, therefore, there is no explicit prohibition under international law for Catalonia to secede from the Kingdom of Spain.

Furthermore, Catalonia was examined in the light of two international law theories - the constitutive theory of statehood and the declaratory theory of statehood. Under the constitutive theory, according to which state’s legal existence purely depends on the recognition of other states, in the absence of a change in the official position of the majority of states, Catalonia has no likelihood to achieve statehood. Under the declaratory theory, which argues that entity gains statehood once the criteria for statehood has been satisfied and considers the act of recognition as merely declaratory, the conclusions are somewhat more positive to those arguing for independence. The traditional criteria, enumerated in the Montevideo Convention, are the existence of permanent population, defined borders, government, and the capacity to enter into relations with other states. After analyzing the case of Catalonia, in the light of these criteria, it was concluded that Catalonia has a permanent population, defined borders and a government that resembles those of independent states. However, when it comes to the last criterion or the

capacity to enter into relations with other states, currently the regional government is not authorized to independently politically and legally represent Catalonia abroad or enter it into legally binding relationships with other subjects of international law. Nevertheless, it could still exercise this competence despite not being authorized under the Constitution. The success of such action would depend on the local population and on the international community as a whole.

While under the public international law there exists a right to unilateral non-colonial secession, Catalonia most likely does not satisfy the required benchmark to claim it. It is one of the cases, where international law is neutral and does not, both, give the right of secession or forbids it. This is so because an express recognition of the right to secede could lead to undermining of the existing system of states and the principle of sovereignty. However, Catalonia could become independent despite not having an explicit right to do so. The success of such attempt would largely depend on the international community and on local citizenry.

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INTRODUCTION

On 1st of October, 2017, Catalonia, an autonomous community in Spain, held an independence referendum. The referendum had previously been proclaimed unconstitutional by the Constitutional Court of Spain¹ and vigorously opposed by the central government, therefore, it resulted in violence and clashes between the voters and the police. There are variations as to the number of votes and the results of the referendum, but according to the major news outlets, around 2,25 million votes (approximately 42% of the Catalan citizens eligible to vote) were counted with a 90% of the votes being in favor of the independence.² Catalan regional president Puigdemont responded both to the violence and the result by announcing that, “On this day of hope and suffering, Catalonia’s citizens have earned the right to have an independent state in the form of a republic.”³ The Spanish Prime Minister Mariano Rajoy countered Puigdemont’s claim by arguing that there has not been self-determination referendum in Catalonia and that the rule of law remains in force with all its strength.⁴

Following the independence referendum, on October 27, the regional parliament of Catalonia voted to proclaim independence from the Kingdom of Spain. This declaration, which was later officially annulled by the Spanish Constitutional Court⁵, called for transfer of legislative powers from Spain to the independent nation of Catalonia.⁶ The federal government responded by asking the Senate to authorize application of Section 155 of the Spanish Constitution, which resulted in the empowerment of the central government to seize the control of Catalonia’s finances, police and public media channels as well as it gave the government the power to prosecute those

¹ STC 114/2017 of October 17 (on the Law of the Catalanian Parliament 19/2017), available on: <https://www.tribunalconstitucional.es/ResolucionesTraducidas/Ley%20referendum%20ENGLISH.pdf>. Accessed on March 15, 2018

² Graham Russell, Nicola Slawson Patrick Greenfield, “Catalonia referendum: 90% voted for independence, say officials – as it happened”, October 2, 2017, accessed May 1, 2018
<https://www.theguardian.com/world/live/2017/oct/01/catalan-independence-referendum-spain-catalonia-vote-live> ; Angela Dewan, Vasco Cotovio, Hilary Clarke, “Catalonia independence referendum: What just happened?”, October 2, 2017, accessed May 1, 2018

<https://edition.cnn.com/2017/10/02/europe/catalonia-independence-referendum-explainer/index.html>;
BBC, “Catalan referendum: Catalonia has ‘won right to statehood’”, October 2, 2017, accessed May 1, 2018
<http://www.bbc.com/news/world-europe-41463719>

³ Vicente Rodriguez, “Catalonia”, last updated April 19, 2018, accessed April 28, 2018
<https://www.britannica.com/place/Catalonia>

⁴ The Guardian, “Violence against Catalan voters: what we know so far”, October 1, 2017, accessed April 28, 2018
<https://www.theguardian.com/world/2017/oct/01/violence-against-catalan-voters-what-we-know-so-far>

⁵ STC 124/2017 of November 8 (on the Law of the Catalanian Parliament 20/2017), available on: <https://www.tribunalconstitucional.es/ResolucionesTraducidas/Ley%20transitoriedad%20ENGLISH.pdf>. Accessed on March 15, 2018

⁶ BBC, “Catalans declare independence as Madrid imposes direct rule”, October 27, 2017, accessed April 27, 2018
<http://www.bbc.com/news/world-europe-41780116>;

The Independent, “Spanish court annuls Catalonia’s declaration of independence: Ruling comes amid pro-secession protests and strikes across region”, November 8, 2017, accessed April 27, 2018
<https://www.independent.co.uk/news/world/europe/catalonia-independence-declaration-spanish-constitutional-court-catalan-spain-madrid-a8043851.html>

politicians who had voted in favor of secession.⁷ Currently, Catalonia's statehood is unrecognized by the international community, which deems it to be an integral part of the Kingdom of Spain.

Since the unilateral declaration of independence of Catalonia, there have been arguments made by both sides. Those who oppose the declaration claim that it is unconstitutional and that Spain is a sovereign nation and, therefore, have the right to territorial integrity under public international law. On the contrast, those who support the independence, stress the principle of self-determination, which gives the people of Catalonia the right to decide on their own future. They argue that if a majority of Catalans would choose to secede from Spain, it would not matter that the constitution does not allow for it, because the right to self-determination is a cornerstone principle of the public international law and prevails over national legislation.

In order to carry out an analysis as to whether Catalonia has the right to unilateral secession and whether its claim for statehood is compatible with public international law, there is a need to determine the current state of public international law regarding the principle of self-determination, the issue of secession and the law of statehood, which underpins the state creation. The paper aims to examine the scope and applicability of the right to self-determination and its relationship with the principle of territorial integrity to conclude as to whether there exists a right to unilateral non-colonial secession and in what circumstances it can be exercised. Moreover, an absence of the explicit right to unilateral secession does not preclude the act itself, therefore, the paper will also examine the question of statehood and the issue of recognition, particularly important in the case of Catalonia. Lastly, the paper aims to scrutinize the case of Catalonia on the basis of the relevant criteria that needs to be present in order to claim the right to unilateral non-colonial secession as well as the conditions on which a political entity constitutes a state.

Methodology

Research question: Can Catalonia claim independence under public international law?

Sub-questions:

1. What is the current status of the public international law regarding the principle of self-determination, the issue of secession and the law of statehood?
2. Is there a right to unilateral non-colonial secession and in what circumstances?
3. Does Catalonia have the right to unilateral non-colonial secession?
4. Can Catalonia claim statehood?

In order to answer the main research question and the corresponding sub-questions, the paper is divided into three main chapters. The first chapter analyses the principle of self-determination by looking at the existing codified international law granting the right to self-determination, examining the development of the said principle throughout the history as well as determining its scope and applicability. Furthermore, the chapter tries to identify the stance of public international law on the issue of unilateral secession and the relationship between secession and territorial integrity in order to understand the rationale for limiting the right to self-determination. Additionally, the last section of the first chapter deals with the question of statehood by examining two theories of law, namely, the declaratory and constitutive theory of statehood,

⁷ Vicente Rodriguez, "Catalonia", last updated April 19, 2018, accessed April 28, 2018
<https://www.britannica.com/place/Catalonia>

which aim at determining the moment when a political entity acquires the status of statehood and becomes a full subject of the public international law. The sources used in the chapter will be codified international law, such as the treaty instruments adopted by the United Nations, and secondary sources, namely, articles and books written by prominent scholars such as A. Cassese, Malcom N. Shaw, D.Raic, H. Hannum, M. Weller and others.

The second chapter contains two case studies - the case of Kosovo and the case of Quebec. These two cases are chosen because they are the only cases of unilateral non-colonial secessions on which courts have delivered references and have proven to be the most cited in regards to the question of unilateral secession. This chapter aims at determining the existence and interpretation of the right to unilateral non-colonial secession and the circumstances in which it can be exercised. The sources used in this chapter are the International Court's of Justice Advisory Opinion on the legality of the unilateral declaration of independence in respect to Kosovo (2010), the Supreme Court's of Canada reference on the unilateral secession of Quebec (1998), as well as scholarly articles.

The last chapter will, firstly, scrutinize the case of Catalonia on the basis of the relevant criteria that need to be present in order to claim the right to unilateral non-colonial secession. The four criteria used for examination are based on the theoretical analysis and case studies carried out in the first and second chapter, and they are: 1) the existence of "peoples", 2) denial of internal self-determination and human rights breaches, 3) non-existence of other remedies under either domestic or international law and 4) no explicit prohibition to exercise external self-determination under international law. Secondly, the third chapter will consider the case of Catalonia in the light of the two theories of statehood outlined in the first chapter, namely, the declaratory and constitutive theory of statehood. This will be done in order to consider the possibility of Catalonia achieving statehood.

Finally, conclusions will be drawn, summarizing the analysis and answering the research questions.

Scope

The analysis is limited to the general public international law and it does not evaluate the compatibility of Catalonia's independence claim with the legal framework of the Kingdom of Spain. This is because the Catalan law on the "Juridical Transition and founding of the Republic" (the independence declaration) does not claim for itself a presumption of constitutionality which generally accompanies any democratic legislative task.⁸ Instead, it claims to be based on the results of the self-determination referendum, where the majority of the voting population of the allegedly sovereign self-governing community of Catalonia voted for independence. The principle of self-determination, which was used by the Catalan authorities to justify the referendum, is part of the general public international law, therefore, the paper will examine the public international law in order to evaluate the legality of Catalonia's claim for independence.

⁸ STC 124/2017 of November 8 (on the Law of the Catalanian Parliament 20/2017), p.6. Available on: <https://www.tribunalconstitucional.es/ResolucionesTraducidas/Ley%20transitoriedad%20ENGLISH.pdf>. Accessed on March 15, 2018

1. PRINCIPLE OF SELF-DETERMINATION AND THEORIES OF STATEHOOD

1.1 International law granting the right to self-determination. The development of principle of self-determination.

The International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) signed in 1996, both, in the common Article 1, state:

All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.⁹

This Article, although rather concise, has caused a lot of disagreements as to its scope and applicability. In the absence of a clearly defined scope of the principle of self-determination, it is necessary to understand the rationale for its creation and the basis for its subsequent application. Therefore, the paper will shortly outline the establishment and development of the said principle in order to understand its philosophical basis and the circumstances in which it was exercised.

To find the roots of the principle of self-determination, one has to look back to the American and French revolutions as they were the first to exhibit the phenomenon of society refusing to accept the exertion of power over them by an authority, which they do not recognize as legitimate and binding to them. This phenomenon came as a result of “gradual development of group consciousness and political awareness”¹⁰ as people rejected the right of outside forces to determine “their fate, their destiny, and their political, cultural, social and economic status”.¹¹ However, these revolutionary ideas were based on the understanding of the value of an individual and recognition of individual rights as opposed to collective rights, on which the principle of self-determination is based on. Nevertheless, there is an undeniable link between the ideas developed during the Enlightenment and the principle of self-determination as both emphasize the rejection of the right of an illegitimate outside power to determine the faith of people.¹²

The resulting document of the American Revolution – The unanimous Declaration of the thirteen united States of America (1776) - states:

Governments are instituted among Men, deriving their just powers from the consent of the governed, — That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government

⁹ International Covenant on Economic, Social and Cultural Rights (January 3, 1976). Available on: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/ICESCR.aspx> . Accessed on March 15, 2018; International Covenant on Civil and Political Rights (March 23, 1976). Available on:

<http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx> . Accessed on March 15, 2018

¹⁰ David Raic, “The American and French Revolutions: democratic political theory” in *Statehood and the Law of Self-Determination* (Leiden, Boston:Martinus Nijhoff Publishers, 2002), available on EBSCOhost, p.173

¹¹Ibid, p.173

¹² Ibid, p.173

laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness.¹³

The Declaration gives a right to the people to change their government if it is governing without their consent and not in their interest, however, this right, as it is visible later in the Declaration, is not absolute. The Declaration continues by stating that: “Prudence, indeed, will dictate that Governments long established should not be changed for light and transient causes”, which essentially means that the right is limited to the cases, where there are continuous and grave human rights breaches constituted by the government.¹⁴

This understanding is mirrored in the French Revolution, which endorsed the idea that government should find its basis in the will of people and not in the desires of the King. As a result, the existing establishments were exchanged for a more direct representation of the citizens.¹⁵ The French revolution was largely impacted by J. Locke’s idea of *contrat social* (social contract), where the formation of a political society comes into being when individual men come together and consent to give up part of their executive powers and hand it over to the government, that way submitting themselves to the will of majority. This act marks the “birth” of a political entity as well as ensures consensual and non-arbitrary governance.¹⁶ It is exactly because of arbitrary and discriminatory governance by the state, that the communities are seeking greater internal autonomy or even external independence. Therefore, the idea of social contract can be regarded as the beginning of the development of the modern principle of self-determination.

The next point in time, when the principle of self-determination again becomes widely debated matter is with the emergence of Leninism in the early 20th century. The famous political theorist’s view on the concept of self-determination (here the term self-determination is used interchangeably with the term secession) can be effectively summarized in three interlinked points

[First], self-determination can be used by nationalist groups to freely determine their political destiny, which, by necessity, includes a right to unilateral non-colonial secession, [second], self-determination could be invoked in the aftermath of military conflicts between sovereign states to allow the citizens of conquered territories to determine by whom they would like to be ruled, [third] self-determination could be anti-colonial, intended to expedite the freedom and political independence of colonial peoples.¹⁷

The second point of the three was already established following the before-mentioned American and French Revolutions, however, Lenin was the first to grant the right of external self-determination to nationalistic groups (including the right to unilateral non-colonial secession) as

¹³ Declaration of independence, The unanimous Declaration of the thirteen united States of America (July 4, 1776). Available on: <http://americainclass.org/sources/makingrevolution/rebellion/text8/decindep.pdf>. Accessed on March 15, 2018

¹⁴ Ibid

¹⁵ David Raic, “The American and French Revolutions: democratic political theory” in *Statehood and the Law of Self-Determination* (Leiden, Boston: Martinus Nijhoff Publishers, 2002) available on EBSCOhost, p.174

¹⁶ Celeste Friend, “Social Contract Theory”, *Internet Encyclopedia of Philosophy*, accessed on March 10, 2018 <https://www.iep.utm.edu/soc-cont/#SH2b>

¹⁷ Glen Anderson, "A Post-Millennial Inquiry into the United Nations Law of Self-Determination: A Right to Unilateral Non-Colonial Secession?", *Vanderbilt Journal Of Transnational Law* 49, no. 5: 1183-1254, (2016), available on: EBSCOhost, p.1197

well as to illegalize colonialism. Despite the recognition of the right of external self-determination of nationalistic groups, Lenin did not support ethnic and nationalistic division of the world, but rather embraced the idea of federal states, which explains the creation of the Soviet Union comprised of many different ethnic and national communities. However, the main accomplishment that can be attributed to the Soviet theorist was the outlawing of colonialism, which liberated many communities in the world.¹⁸

During the same time period, yet, on the other side of the world, U.S. President Woodrow Wilson also offered his support to the concept of self-determination. His interpretation, however, was slightly different as the central element of it seemed to be the right for nations to enjoy independent statehood. According to Mr. Wilson, national aspirations have to be respected and the government can only function on the basis of the will of the people. "Self-determination' [for him was not a] mere phrase. It [was] an imperative principle of action, which statesman will henceforth ignore at their peril"¹⁹

Granting of this right was considered risky as desires of many nations to form a nationality based states could lead to bloody civil wars, abuse of minority rights (even as far as the possibility of genocide) and global instability in general.

Wilson thus understood that the idea could not be applied in an unqualified way that considerations of national self-determination might in specific instances have to yield to compelling questions of security, diplomacy, and economics.²⁰

During the interwar period, a few independence movements based on the principle of self-determination proved to be successful (albeit for a rather short period), such as the proclamation of independence of the Baltic States, Finland, Poland, Hungary, and Czechoslovakia. "These independent nations all tried democracy, hailed as the best system by which to introduce the principle of national self-determination to a fledgling nation."²¹ Subsequently after the Second World war and creation of the UN Charter as well as signing of the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the Universal Declaration of Human Rights, the principle has acquired status of international law, specifically that of *jus cogens* -peremptory norm, which allows for no derogation. However, even with the inclusion of principle self-determination in the Charter, scholars claim that the aim of the drafters was never to allow for unilateral independence claims of colonial or non-colonial peoples.²² Instead, it was to ensure the "right of the peoples of one State to be protected from interference by other States or governments". According to Julie Dahlitz, "it was equal rights of

¹⁸ Glen Anderson, "A Post-Millennial Inquiry into the United Nations Law of Self-Determination: A Right to Unilateral Non-Colonial Secession?", *Vanderbilt Journal Of Transnational Law* 49, no. 5: 1183-1254, (2016), available on:, EBSCOhost, p.1198

¹⁹ Hurst Hannum, "Rethinking Self-Determination," *Virginia Journal of International Law* 34, no. 1 (Fall 1993): 1-70, p. 4

²⁰ Allen Lynch, "Woodrow Wilson and the Principle of 'National Self-Determination': A Reconsideration." *Review of International Studies* 28, no. 2 (2002): 419-436, p. 434

²¹ Spark notes, Eastern Europe During the Inter-War Years (1919-1938), accessed on April 15, 2018 <http://www.sparknotes.com/history/european/interwaryears/section5/>

²² Julie Dahlitz and Consortium on International Dispute Resolution, "Secession and International Law : Conflict Avoidance: Regional Appraisals.", (New York: United Nations Publications, 2003), available on EBSOhost, p. 22-23

States that was being provided for, not of individuals”.²³ Nevertheless, despite the intentions of the drafters of the Charter and other legal instruments, the principle of self-determination is mostly known for constituting a legal basis for de-colonial struggles and have subsequently become interpreted in those terms.

To conclude, starting from the late 18th century till the end of the Second World War and after, the principle of self-determination has developed and become an accepted international norm, however, there have been many interpretations as to its scope and applicability. Yet, after analysing the roots and subsequent development of the principle of self-determination, couple of conclusions can be drawn, such as that the right of self-determination is applicable to the peoples not to the government, the right is not absolute, and the right certainly applies to the colonial claims, however, its applicability to the non-colonial claims is not as clear-cut.

As the focus of this paper is the applicability of the right to self-determination to non-colonial claims and the limits of this applicability, there is a need to analyze the scope of the principle of self-determination in order to understand if it includes the right to unilateral non-colonial secession and under what circumstances this right becomes applicable.

1.2 The scope of self-determination.

Self-determination can be divided into two main types- internal self-determination and external self-determination. “Internal self-determination is the right of the people of a state to govern themselves without outside interference.”²⁴ This right is derived from the principle of sovereignty as it grants the entity the right of sovereign decision making over its territory without interference by other states. “External self-determination is the right of peoples to determine their own political status and to be free of alien domination.”²⁵ External self-determination, as it can be understood, does not equal secession. This type of self-determination also refers to a form of self-governance within a country, for example, the division of competences between municipal governments and that of state. It can also be understood in terms of having autonomy within a state, where the local government holds a large part of competences and the state is mainly responsible for conducting foreign policy and maintaining an army. The division of competences varies as to the type and amount that can be exercised on the local level, but the common factor is that the various political entities within a state possess part of the competencies that they can exercise without the interference of the central government, but the state retains the rest.

However, while independence is not the only outcome of exercising the right of external self-determination, it does include the right of secession. “Secession as a legal concept lies at the far end of the spectrum known as self-determination.”²⁶ According to M. Milanovic, it is beneficial

²³ Julie Dahlitz and Consortium on International Dispute Resolution, “Secession and International Law : Conflict Avoidance: Regional Appraisals.”, (New York: United Nations Publications, 2003), available on EBSCOhost, p. 23

²⁴ Hurst Hannum, “Legal Aspects of Self-Determination”, *The Princeton Encyclopedia of self-determination*, Available on: <https://pesd.princeton.edu/?q=node/254>. Accessed April 16, 2018

²⁵ Ibid

²⁶ Valerie Epps, “Secession, Stagnation and the State-centered version of International law”, *ILSA Journal of International & Comparative Law*, Volume 21: Issue 2, Article 3, available on: Academic search Complete, EBSCOhost, accessed on March 10, 2018 p.308-310

to classify international law's regulation on secession in three parts. Firstly, the international law expressly forbids secession in cases, when it is exercised by breach of fundamental principles of international law, for example, use of force. "Crucially, as the [International Court of Justice] has confirmed in the Kosovo Advisory Opinion, among these norms is NOT the principle of territorial integrity"²⁷. Secondly, there are cases when the international law is neutral and does not, both, give the right of secession or forbids it. Lastly, there are cases when "international law creates a right to secession under external self-determination, or perhaps remedial secession"²⁸.

One can also look at the issue of secession from a different point of view- essentially in order to create a new state; there is a need to counter the claim of territorial integrity. Therefore, the situation can be two-fold- either the "mother state" waves its claim to territorial integrity (such as the UK with Scotland) or it does not, leading to an attempt of unilateral secession.²⁹ If the state does wave this claim, then the main issues are related to the technical process of effectively creating de facto separate state as no legal problems seem to arise. However, if the "mother state" refuses to wave the claim and recognize the struggles for independence, it leads to an attempt of unilateral secession, where the seceding entity needs to justify the breach of territorial integrity of the "mother state".

The legal basis for a right to unilateral non-colonial secession can be found in the customary international law. According to Ilya Berlin:

No basis for [unilateral non-colonial] secession can be found within international treaty instruments, such as the United Nations Charter, International Covenant on Economic, Social and Cultural Rights (ICESCR) or International Covenant on Civil and Political Rights (ICCPR).³⁰

The origin of this right could be considered Principle 5: "The principle of equal rights and self-determination of peoples", paragraph 7 of the "Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations". This paragraph states that

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 possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or colour.³¹

²⁷Marko Milanovic, "A Footnote on Secession", published on October 26, 2017, accessed on March 22, 2018 <https://www.ejiltalk.org/a-footnote-on-secession/>

²⁸ Ibid

²⁹ Jure Vidmar, "Catalonia: The Way Forward is Comparative Constitutional Rather than International Legal Argument", published on October 24, 2017, accessed on March 22, 2018 <https://www.ejiltalk.org/catalonia-the-way-forward-is-comparative-constitutional-rather-than-international-legal-argument/#more-15633>

³⁰ Ilya Berlin, "Unilateral Non-Colonial Secessions: An Affirmation of the Right to Self-Determination and a Legal Exception to the Use of Force in International Law", Electronic Thesis and Dissertation Repository (2017), p.65 <https://ir.lib.uwo.ca/etd/4777>

³¹ The United Nations General Assembly Resolution 2625 "The Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations (24 October 1970). Available on: <http://www.un-documents.net/a25r2625.htm> . Accessed on March 23, 2018

This means that the protection of territorial integrity is granted to states, which have representative governments, allow for internal self-determination and do not discriminate against any of their people. Declaration in a way interconnects internal and external self-determination: “the neglect of the former provides justification for the invoking of the latter, which may be exercised by [unilateral non-colonial] secession”³²

According to A. Cassese, “although secession is implicitly authorized by the Declaration, it must however be strictly construed, as with all exceptions.”³³ For him, there are three conditions that might authorize secession- State continuously denies participatory rights to a group of people, grossly breach their fundamental human rights and exclude the “the possibility of reaching a peaceful settlement within the framework of the State structure”.³⁴ Moreover, according to I. Berlin, there are two types of human rights abuses – *in moderato* and *in extremis*- when there might be a qualified right to unilateral non-colonial secession.

Human rights abuses such as systematic political oppression, which can be considered as human rights abuses deemed as *in moderato*, differs from the systematic denial of human rights coupled with their abuses that can include forced exile and migration, genocide and ethnic cleansing, that can be deemed as *in extremis*.³⁵

The author, after doing case studies (Bangladesh, Croatia, East Timor, Eritrea and Kosovo), however, concludes that in reality, the right to unilateral non-colonial secession is only recognized in the latter case, when the breach is *in extremis*, therefore, “right to unilateral non-colonial secession exists in international law only as an *ultimum remedium*”³⁶

In another instance, namely U.N. World Conference on Human Rights in 1993, it was argued that secession is granted if a state fails in its obligation to establish a government that represents the whole people. Secession was viewed as the last remedy that can be exercised if a state fails to fulfill its obligations “not to discriminate and to establish a fully representative government.”³⁷

The conditions as to when the people can claim independence will be further examined in the next chapter, which will contain case studies of two fundamental cases where courts analyze the legality of unilateral claims of non-colonial secessions. However, in order to understand why international law imposes limitations on the right to self-determination, the next section of the present chapter will deal with the conflict between the right to self-determination, especially, secession and the principle of territorial integrity.

³² Ilya Berlin, "Unilateral Non-Colonial Secessions: An Affirmation of the Right to Self-Determination and a Legal Exception to the Use of Force in International Law", Electronic Thesis and Dissertation Repository (2017), p.63 <https://ir.lib.uwo.ca/etd/4777>

³³ Antonio Cassese, “Self-Determination of Peoples: A Legal Reappraisal”, (Cambridge University Press, 2008), p.119

³⁴ Ibid, p. 119

³⁵ Ilya Berlin, "Unilateral Non-Colonial Secessions: An Affirmation of the Right to Self-Determination and a Legal Exception to the Use of Force in International Law", Electronic Thesis and Dissertation Repository (2017), p.70 <https://ir.lib.uwo.ca/etd/4777>

³⁶ Ibid, p.71

³⁷ Valerie Epps, “Secession, Stagnation and the State-centered version of International law”, ILSA Journal of International & Comparative Law, Volume 21: Issue 2, Article 3, available on: EBSCOhost, accessed on March 10, 2018, p.310-312

1.3 Self- determination versus territorial integrity.

As already concluded, the right to external self-determination and secession is not unqualified, thus, in order to understand the reasoning behind the limitations imposed on this right, there is need to discern the balance and relationship between the right to territorial integrity and the right to secession. This is so, because new states can be “born” only at the expense of the territorial integrity of the existing ones.

Article 2(1) of the UN Charter states: “The Organization is based on the principle of the sovereign equality of all its Members”.³⁸ Sovereignty, the principle on which the system of states is built upon, consists of two elements- territorial integrity and political independence. According to Samuel Blay, “Territorial integrity refers to the territorial ‘oneness’ or ‘wholeness’ of the State.”³⁹ This principle is upheld by the international law as it is significant for maintaining peace and security in the world. International peace and security is the main aim of the international law as such (Article 1, Chapter 1, The UN Charter)⁴⁰, therefore, derogation from the principle of state sovereignty and territorial integrity is permitted only in a very restricted number of cases.

According to the international law critics, embracing secession could potentially endanger the existing state system and “lead to global chaos caused by incessant redrawing of boundaries”⁴¹ This argument, however, falls short of claiming that once the remaining colonies will become independent, there will be no border changes. The reality of the world, however, does provide a rationale for independence movements, for example, the opinion that currently recognized borders are “artificial, arbitrary and accidental” and that they justify “the combining of different peoples arbitrarily, and often against their will, within the same territory”⁴²

Moreover, despite the fact that democracy and majority rule is paramount in order to ensure peace and justice, it is a fact that there exist communities that

feel very special ties of language, culture or religion, and will want to make sure that the aspirations of the majority within the nation State do not prevent the coexistence of these special values.⁴³

After investigating the philosophical foundations, development and scope of the principle of self-determination as well as its relationship with the principle of territorial integrity, it is possible to

³⁸ Article 2, Chapter 1, Charter of the United Nations (October 24, 1945). Available on:

<http://www.un.org/en/sections/un-charter/chapter-i/index.html> . Accessed on March 20, 2018

³⁹ Samuel K N Blay, “Territorial Integrity and Political Independence”, *Max Planck Encyclopedia of Public International Law* , March 2010, accessed on March 15, 2018

<http://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e1116>

⁴⁰ Article 1, Chapter 1, Charter of the United Nations (October 24, 1945). Available on:

<http://www.un.org/en/sections/un-charter/chapter-i/index.html> . Accessed on March 20, 2018

⁴¹ Milena Sterio, "Self-Determination and Secession Under International Law: The New Framework", *ILSA Journal of International and Comparative Law* Volume 21, Issue 2, 2015, p.299-303. Available on:

http://engagedscholarship.csuohio.edu/fac_articles/847. Accessed on March 2, 2018

⁴² Patricia Carley, “Self-determination: Sovereignty, Territorial Integrity, and the Right to Secession”, *Report from a roundtable held in conjunction with the U.S. Department of State’s Policy Planning staff*, (United States Institute of Peace, Peaceworks No. 7. ,March 1996), p. 3. Available on: <https://www.usip.org/sites/default/files/pwks7.pdf>.

Accessed on March 21, 2018

⁴³ Julie Dahlitz and Consortium on International Dispute Resolution, “Secession and International Law : Conflict Avoidance: Regional Appraisals.”, (New York: United Nations Publications, 2003), available on EBSCOhost, p.22

conclude that when it comes to unilateral non-colonial secession, which does not amount to “remedial secession” and which is not effected through breach of fundamental norms of international law, the international law is rather grey and neutral as an express recognition of the right to secede could lead to undermining of the existing system of states and the principle of sovereignty, which underpins the existing state system.

However, the recent developments in the field of human rights have led to raising awareness of the need to have a people-centered approach to international law, instead of a state-centered one. As Bartram S. Brown states in his article:

An important step beyond state-centrism is implicit in the idea of an international law of human rights, since the rights concerned are those of individuals, or groups of individuals rather than those of states. [...]The traditional concept of international law is inherently inadequate to the task of protecting the human rights and fundamental freedoms which the UN system is pledged to promote.⁴⁴

These developments have prompted many communities, who feel their rights being violated by their state, to seek independence. Therefore, the next section of the present chapter will aim to identify the moment, when the seceding entity acquires the status of an independent state under international law. To this end, two theories of law will be examined, namely, the declaratory and constitutive theory of statehood.

1.4 Law of Statehood.

Before looking at the theories, it is important to shortly outline why statehood is important in the first place. According to J.D. van der Vyver, statehood is a prerequisite for a territorially defined political entity

to enter into treaties, to be eligible for membership of organizations that possess international law status, to exercise standing before international tribunals, and in general, to be bearer of powers, rights and obligations international law relations.⁴⁵

To be concise, statehood is necessary in order to become a subject and founder of international law, to independently exercise rights under it as well as be bound by obligations arising from international law.

There are two theories aiming to explain the moment when an entity gains personality under international law and can be called a “state”. First is the constitutive theory, which deems recognition to be a necessary precondition for the entity to enjoy international personality. Nevertheless, the opinions divide as to what constitutes recognition and how many states have to recognize this political entity for it to be called a “state”. The second is the declaratory theory,

⁴⁴ Bartram S. Brown, “From State-Centric Int'l Law Towards a Positive Int'l Law of Human Rights”, in *The Protection of Human Rights in Disintegrating States: A New Challenge* (68 CHI-KENT L. REV. 203, 1992), p. 1. Available on:

<http://www.kentlaw.edu/faculty/bbrown/classes/HumanRightsSP10/CourseDocs/2FromStateCentric.pdf> . Accessed on March 25, 2018

⁴⁵ J. D. van der Vyver, "Statehood in International Law," *Emory International Law Review* 5, no. 1 (Spring 1991): 9-102, available in HEINONLINE, p.11

which argues that entity gains statehood once the criteria for statehood has been satisfied and considers the act of recognition as merely declaratory.⁴⁶

Under the constitutive theory, recognition is not automatic, but it is left to the discretion of other states, meaning that the state's legal existence purely depends on the recognition of others not on its actual capacity to act as a state. However, this would mean that other states are allowed to disregard the factual situation and act as a "gate keepers to the international plane"⁴⁷ W.T. Worster in his article argues that law needs to be based on facts and that any other situation would result "in the assignment of recognition to the purely political process rather than a justiciable rights based process."⁴⁸ Moreover, there is a question of how much states have to recognize the entity before it becomes a "state", because the state practice in this regard can greatly differ. Additionally, the meaning of recognition is also not clear-cut as there is a dispute whether any kind of recognition is enough or it has to be a diplomatic recognition. Lastly, the entity in question might still be able to exercise state authority over the people within its territory despite the inexistence of international recognition.

In the light of these deficiencies, the second theory or the declaratory theory was developed in the twentieth century. This theory argues that the existence of statehood depends on certain criteria and if they are fulfilled then the entity has gained an international personality and that recognition of this entity as a state should be automatic. According to this theory, "[t]he status of statehood is based on fact, not on individual state discretion".⁴⁹

The main idea was effectively summarized by Alan James: "Recognition presupposes a state's existence, it does not create it."⁵⁰ However, this theory also is not without shortcomings, for example, there is uncertainty regarding interpretation of the criteria and the authority who decides if they are fulfilled or not, as there is no supranational body which could act in this capacity.

The most cited legal document in this regard is the inter-American Montevideo Convention, which, despite the limited number of parties, has gained the status of customary international law as it is accepted by a consistent state practice and *opinion juris*. The convention's description of the state could be considered as "the starting point for any discussion about the State as a subject of international law possessing legal personality"⁵¹.

⁴⁶ LawTeacher, "Declaratory and constitutive theories of state", published on November 2013, accessed on March 29 2018 <https://www.lawteacher.net/free-law-essays/constitutional-law/declaratory-and-constitutive-theories-of-state.php>

⁴⁷ William Thomas Worster, "Law, politics, and the conception of the state in state recognition theory", *Boston University International Law Journal*, Vol. 27:115, (2009), p. 120. Available on: <http://www.bu.edu/law/journals-archive/international/volume27n1/documents/worster.pdf> . Accessed on March 25, 2018

⁴⁸ Ibid, p. 120

⁴⁹ William Worster, "Sovereignty: two Competing Theories of State Recognition", published on February 2010, accessed on March 15, 2018 http://www.exploringgeopolitics.org/publication_worster_william_sovereignty_constitutive_declaratory_statehood_recognition_legal_view_international_law_court_justice_montevideo_genocide_convention/

⁵⁰ J. D. van der Vyver, "Statehood in International Law," *Emory International Law Review* 5, no. 1 (Spring 1991): 9-102, available in HEINONLINE, p.13

⁵¹ Ali Zounuzy Zadeh, "International Law and the Criteria for Statehood: The Sustainability of the Declaratory and Constitutive Theories as the Method for Assessing the Creation and Continued Existence of State", *Tilburg University Faculty of Law Department of International and European Law, LL.M Thesis Public International Law*, p.18. Available on: <http://arno.uvt.nl/show.cgi?fid=121942>. Accessed on April 5, 2018

The Article 1 of the Montevideo convention states

The State as a person of international law should possess the following qualifications: (a) a permanent population; (b) a defined territory; (c) a government; and (d) capacity to enter into relations with the other States.⁵²

Since the Montevideo convention, prominent scholars such as M. N. Shaw have tried to explain the purpose of these criteria. For example, for him, the requirement for a permanent population is a natural one, but the issue with this criterion is that there is no minimum requirement and this is particularly important in the light of the principle of self-determination as it does not apply to minority groups. The necessity for a defined territory comes from the need “for a particular territorial base upon which to operate.” The scholar adds, however, that there is no need for settled borders because a state can be recognized as possessing legal personality despite it being involved in a conflict with another state as to the exact border between them. When it comes to the existence of government, Shaw argues that there is no need for a “sophisticated apparatus of executive and legislative organs” but rather that there needs to be an “indication of some sort of coherent political structure and society”. The last requisite or the capacity to enter into relations with other states is one, which relates to the recognition and ultimately gives the state personality under international law. This legal capacity has to do with independence from other states and the ability to exercise sovereign decision making on equal footing with other sovereign nations.⁵³

Nevertheless, there is no binding interpretation of these criteria and no authority to decide as to their fulfillment. Moreover, some scholars suggest that the “Montevideo criteria” might be insufficient for a political entity to qualify as a state as they are “rather minimal in scope”⁵⁴. To this end, various additional requirements have been proposed, such as that the new state has to be:

self-determining; democratic; established through peaceful means, legally, and by a negotiated settlement; independent; an observer of minority rights; be willing and able to observe international law; and "effective" with respect to the governance of the populations it contains.⁵⁵

Nevertheless, no international agreement has been reached as to what the list of the additional requirements should include, therefore, the paper will examine only the criteria enlisted in the Montevideo convention.

After laying out the rationale, and examining the scope and limitations of the principle of self-determination, as well as analyzing two international law theories of statehood, there is a need to examine what role this theoretical basis plays in real cases. This is necessary in order to draw conclusions as to the applicability of the right to unilateral non-colonial secession, and the circumstances under which this right can be exercised.

⁵² Article 1, Montevideo Convention on the Rights and Duties of States (December 26, 1934). Available on: <https://www.ilsa.org/jessup/jessup15/Montevideo%20Convention.pdf> . Accessed on April 2, 2018

⁵³ Malcom N. Shaw, “Self Determination and criteria for statehood” in *International Law* 6th edition (Cambridge University Press, 2008), p.157-164

⁵⁴ LawTeacher, “Declaratory and constitutive theories of state”, published on November 2013, accessed on March 29 2018 <https://www.lawteacher.net/free-law-essays/constitutional-law/declaratory-and-constitutive-theories-of-state.php>

⁵⁵ Ibid

2. CASE STUDIES

2.1 Kosovo

The first case to be examined is the case of the unilateral declaration of independence of Kosovo. This case is used for analysis because it is the only case of unilateral non-colonial secession on whose legality there is an advisory opinion by an international tribunal.

On February 17, 2008, Kosovo's parliament declared Kosovo's independence from Serbia. Following the declaration, the United States as well as several European states, such as France, the UK, Germany, and other EU member states, officially recognized the independence of Kosovo. This case is regarded as a “though case”, because while it shows how international law of self-determination, secession, and statehood can be used to justify a unilateral declaration of independence, it also demonstrates “the ways in which political interests of states affect how the international law is given effect”.⁵⁶

Milena Sterio in her article describes the relationship between Serbia and Kosovo as a peculiar one. This is so because Kosovo has played a big role in the Serbian development, most notably it was “the cradle of the great Serbian medieval empire”, therefore, of great historical importance to the state. However, she also continues by stating that nowadays it “can only hold symbolic value for Serbia”, because the region is populated mostly by ethnic Albanians, except for Northern Kosovo, the region is poor and underdeveloped as well as, according to author: “only a small number of Serbs—mostly those left without other viable options—are interested in living in Kosovo”.⁵⁷

In order to understand the legality of Kosovar unilateral declaration of independence, the author looks at two aspects, examined in the previous chapter, the right to external self-determination, in this case, secession, and the existence of statehood. When examining the first factor of the right to secession, namely, the existence of “peoples” she notes that:

it is certainly true that Kosovar Albanians are a “people”; they share a common ethnicity, culture, language, religion and social values that distinguish them clearly from the Serbs.
⁵⁸

Moreover, she also recognizes that under the existing regime (Milosevic regime), their rights to internal self-determination were not upheld and their human rights were not respected, which could mean that they have the right to secede from Serbia. Secondly, the author looks at the existence of statehood, more specifically, the fulfillment of “Montevideo criteria” outlined above. Her conclusion is that, firstly, the territorial borders are still hotly disputed both with Serbia and Albania, secondly, the “permanent population” criterion is not met “because of the heavy flows of both Serbian and Albanian refugees that have moved in and out of Kosovo”. Thirdly, the

⁵⁶ Christopher J. Borgen, “Kosovo's Declaration of Independence: Self-Determination, Secession and Recognition”, *American Society of International Law*, Volume:12, Issue:2, February 29, 2008, accessed on March 10, 2018 <https://www.asil.org/insights/volume/12/issue/2/kosovos-declaration-independence-self-determination-secession-and>

⁵⁷ Milena Sterio, “The Case of Kosovo: Self-Determination, Secession, and Statehood Under International Law”, *American Society of International Law*, Vol. 104, *International Law in a Time of Change* (2010), pp. 361-365, available on: JSTOR, p.361

⁵⁸ Ibid, p. 363

fulfillment of “government” criterion is arguable as Kosovo’s stability heavily depends on the international community’s involvement (used to be UN, now EU). Lastly, Kosovo’s ability to enter into international relations also depends on the international community, because, in the absence of its involvement, the state would be subjected to Serbian intrusion and risk being blocked from effective exercise of statehood by Serbian forces.⁵⁹

Another article written by C. J. Borgen, argues that

any attempt to claim legal secession “that is, where secession trumps territorial integrity” must at least show that: a) the secessionists are a “people” (in the ethnographic sense); b) the state from which they are seceding seriously violates their human rights; and c) there are no other effective remedies under either domestic law or international law.⁶⁰

When applying these three criteria to the case of Kosovo, the author makes following conclusions:

a) The existence of peoples: Despite the fact that Kosovar Albanians are perceived more as Albanian ethnic enclave, not a separate nation themselves, the big support from the international community might mean that the term “people” now also includes “homogenous ethnic enclave within another nation”⁶¹.

b) Human rights violations: The international community is divided as to the gravity of the human rights breaches, but according to the author, the fact that international community is continuously present in Kosovo could itself be legally relevant as evidence that “the situation in Kosovo was and is highly volatile and that it cannot be solved completely via domestic political structures.”⁶²

c) Secession as the only solution: The two sides, Kosovo and Serbia, could not resolve the issues and all of the negotiations failed, therefore, nothing, short of military force, could have kept Kosovo within Serbia. Secession seems to have been the only viable option in the case at hand.⁶³

To fully understand the legality of Kosovo’s claim for independence under the public international law, the paper will proceed to examine the International Court’s of Justice Advisory opinion of 22 July 2010.

The International Court of Justice (ICJ) is the main judicial agent of the UN, which was created in 1945 and started its work in April 1946. ICJ’s task is to settle disputes submitted to it by the states as well as to deliver “advisory opinions on legal questions referred to it by authorized United Nations organs and specialized agencies”⁶⁴, such as the one analyzed in the paper. The judgments given by the Court are binding to the parties and on UN in general, however, the

⁵⁹ Milena Sterio, “The Case of Kosovo: Self-Determination, Secession, and Statehood Under International Law”, *American Society of International Law*, Vol. 104, International Law in a Time of Change (2010), pp. 361-365, available on: JSTOR, p. 364

⁶⁰ Christopher J. Borgen, “Kosovo's Declaration of Independence: Self-Determination, Secession and Recognition”, *American Society of International Law*, Volume:12, Issue:2, February 29, 2008. Available on: <https://www.asil.org/insights/volume/12/issue/2/kosovos-declaration-independence-self-determination-secession-and>. Accessed on March 10, 2018

⁶¹ Ibid

⁶² Ibid

⁶³ Ibid

⁶⁴ “How the Court Works”, accessed on April 20, 2018, available on <http://www.icj-cij.org/en/how-the-court-works>

advisory opinions are not binding, therefore, “the requesting organ, agency or organization remains free to give effect to the opinion as it sees fit, or not to do so at all.”⁶⁵ When it comes to the self-determination, the ICJ has, with the exception of Kosovo, exclusively ruled on colonial cases, where it has embraced the principle self-determination. The court, while certainly authoritative in interpreting the international law, has not settled the question of the non-colonial secession. According to G. Zyberi:

coining a set of criteria generally applicable to self-determination through secession is not the duty of the Court, since the latter does not deal with questions in abstracto, but with specific cases.⁶⁶

The ICJ’s advisory opinion, while widely criticized for its limited explanatory value, does provide the basis of the contemporary state of international law on the issue of external self-determination, notably, secession.

United Nations General Assembly’s question as regards to the case of Kosovo to the International Court of Justice was as follows: Is Kosovo’s unilateral declaration of independence in accordance with international law? In paragraph 51, Court explicitly notes that the question

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.⁶⁷

The opinion starts off by outlining the factual background of the case, especially the role of UN and the resolutions adopted by the Security Council as it later evaluates the legality of the independence claim based on these resolutions, which form a part of international law and are binding on Kosovo. However, as this paper is examining the general public international law, it will not touch upon the particulars of the resolutions and their implications in the case of Kosovo.

When addressing the legality of the declaration of independence of 17 February 2008, the court concludes that it does not violate the general international law. While the court shortly touches upon the interplay between secession and principle of territorial integrity as well as the right to self-determination and “remedial secession”, it denies the need to

consider whether outside the context of non-self-governing territories and peoples subject to alien subjugation, domination and exploitation, the international law of self-determination confers upon part of the population of an existing State a right to separate from that State.⁶⁸

as well as to consider “whether international law provides for a right of “remedial secession” and, if so, in what circumstances.”⁶⁹

⁶⁵ “How the Court Works”, accessed on April 20, 2018, available on <http://www.icj-cij.org/en/how-the-court-works>

⁶⁶ Gentian Zyberi, 2009. "Self-determination through the lens of the International Court of Justice", *Netherlands International Law Review (Cambridge University Press, 2009)* 56, no. 3: 429-453, p. 449, available on: EBSCOhost, accessed on April 19, 2018

⁶⁷ ICJ, Advisory Opinion of July 22, 2010 (Accordance with International law of the unilateral Declaration of Independence in respect of Kosovo), paragraph 51. Available on: <http://www.icj-cij.org/files/case-related/141/141-20100722-ADV-01-00-EN.pdf>. Accessed on April 20, 2018

⁶⁸ Ibid, paragraph 79

⁶⁹ Ibid, paragraph 84

In paragraph 56, the court explicitly states that

it is entirely possible for a particular act — such as a unilateral declaration of independence — not to be in violation of international law without necessarily constituting the exercise of a right conferred by it.⁷⁰

Therefore, this opinion does not consider the circumstances that need to be present to claim the right to unilateral non-colonial secession in the case of Kosovo or generally, it simply states that there is no prohibition under international law to pass a unilateral declaration of independence, except, as noted before, in the case it is effected through breach of international law (except breach of the principle of territorial integrity), for example through the use of force.

2.2 Quebec

Another, yet substantially different, case has become one of the most cited precedents when it comes to the modern law on self-determination and secession. This is the ruling of the Supreme Courts of Canada on the right of unilateral secession of Quebec. This case precedes the above analyzed ICJ's advisory opinion on the legality of the unilateral declaration of independence of Kosovo as well as it offers more throughout examination of the right to self-determination of peoples.

It has been questioned whether national court have the right to rule on this question as

the state [of which court is a part of] is inherently interested in the outcome of the decision, the involvement of the international community would give more credence to the decision, and that for a new state to be formed the international community must recognize it and it would be easier for all if the community got involved at the front end⁷¹

Moreover, as the state could be regarded as “interested party”, a decision by any governmental institution has a high risk of being dismissed and not given much credibility by the group seeking to secede from the state.⁷² Nevertheless, the ruling is the most referenced source in the question of unilateral non-colonial secession as it both evaluates the independence claim from the internal perspective (compatibility with the constitution) and from the external perspective (compatibility with the public international law).

Quebec is the second-most populous province of Canada. It is the only one to have a predominantly French-speaking population, with French as the sole provincial official language. The debates on independence and possible secession have been on the province's political agenda for quite some time, although less so since 2000. The pro-secession party *Parti Quebecois* led the governments held referendums on the question of sovereignty in 1980 and 1995, during both of which the majority voted against the secession. However, the latter one was defeated only by a

⁷⁰ ICJ, Advisory Opinion of July 22, 2010 (Accordance with International law of the unilateral Declaration of Independence in respect of Kosovo), paragraph 56. Available on: <http://www.icj-cij.org/files/case-related/141/141-20100722-ADV-01-00-EN.pdf>. Accessed on April 20, 2018

⁷¹ Roya M. Hanna, “Right to Self-Determination in In Re Secession of Quebec”, *Maryland Journal of International Law*, Volume 23, Issue 1(1999), p.242-245. Available on <http://digitalcommons.law.umaryland.edu/mjil/vol23/iss1/9>. Accessed on April 20, 2018

⁷² Ibid, p. 242-245

very small margin. As a response to the secessionist claims, the federal government asked for an advisory opinion from the Supreme Court of Canada, which handed down its ruling on this reference on 20 August 1998.⁷³

In the judgment, the court was faced with two main questions, first of them asking

Under the Constitution of Canada, can the National Assembly, legislature or government of Quebec effect the secession of Quebec from Canada unilaterally?⁷⁴

and the second one

Does international law give the National Assembly, legislature or government of Quebec the right to effect the secession of Quebec from Canada unilaterally? In this regard, is there a right to self-determination under international law that would give the National Assembly, legislature or government of Quebec the right to effect the secession of Quebec from Canada unilaterally?⁷⁵

This reference, as opposed to the Kosovo one, does explicitly ask not only if the secession is legal but also aims at determining if there is a right to self-determination under international law, which would give the right to Quebecers to unilateral secession.

When it comes to legality of the unilateral secession under the domestic law, the court is quite throughout in its examination, stating that secession cannot be effected unilaterally, it has to be done through the existing constitutional framework, meaning that any changes in the constitution are to be decided by all participants of the Confederation. The main conclusion is that while

a clear majority vote in Quebec on a clear question in favour of secession would confer democratic legitimacy on the secession initiative which all of the other participants in Confederation would have to recognize⁷⁶

Quebec also cannot, despite clear referendum result,

purport to invoke a right of self-determination to dictate the terms of a proposed secession to the other parties to the federation⁷⁷

The referendum itself would not have legal effect on its own; however, it would create an obligation on the other parties of the confederation to negotiate with the seceding party and reach an amicable solution to the situation.

The other provinces and the federal government would have no basis to deny the right of the government of Quebec to pursue secession should a clear majority of the people of Quebec choose that goal, so long as in doing so, Quebec respects the rights of others.⁷⁸

The second referred question, which relates to the focus of this paper, is the right of unilateral non-colonial secession under the public international law. As opposed to Kosovo opinion, here the referring party, the State of Canada, underlined that the question is not only whether the

⁷³ Michael B. Stein, "Separatism in Canada", last edited on August 12, 2016, accessed on April 9, 2018 <http://www.thecanadianencyclopedia.ca/en/article/separatism/>

⁷⁴ Reference re Secession of Quebec, [1998] 2 S.C.R. 217, In the matter of Section 53 of the Supreme Court Act, R.S.C., 1985, c. S-26 (1998: February 16, 17, 18, 19; 1998: August 20), paragraph 32. Available on: <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1643/index.do>. Accessed on April 10, 2018

⁷⁵ Ibid, paragraph 109

⁷⁶ Ibid, paragraph 150

⁷⁷ Ibid, paragraph 91

⁷⁸ Ibid, paragraph 151

unilateral declaration of independence is legal as such, but asked specifically if there exists a right or entitlement for Quebec to exercise the right to self-determination and secede unilaterally.

When examining the right to self-determination of peoples, the court, in its judgement stated that

a right to secession only arises under the principle of self-determination of people at international law where "a people" is governed as part of a colonial empire; where "a people" is subject to alien subjugation, domination or exploitation; and possibly where "a people" is denied any meaningful exercise of its right to self-determination within the state of which it forms a part⁷⁹

It concluded that Quebecers do not have the right of unilateral secession under the public international law as they cannot be classified in any of the above-mentioned categories.

Quebec does not meet the threshold of a colonial people or an oppressed people, nor can it be suggested that Quebecers have been denied meaningful access to government to pursue their political, economic, cultural and social development⁸⁰

The Supreme Court further declared that in the circumstances when the case falls outside those categories, the right of secession depends on the domestic law, stating that “[i]n other circumstances, peoples are expected to achieve self-determination within the framework of their existing state”⁸¹. According to the Supreme Court of Canada, in a case of non-colonial secession, which does fulfill the above-mentioned criteria, the principle of state sovereignty and territorial integrity prevails and there is no entitlement or right of unilateral secession under international law. Canada ”is entitled to maintain its territorial integrity under international law and to have that territorial integrity recognized by other states.”⁸²

Nevertheless, despite the non-existence of a right to unilaterally secede both under the international law or the national law, “the possibility of an unconstitutional declaration of secession leading to a de facto secession is not ruled out.”⁸³ The success of such action, according to the Court, depends on the recognition by other states, which are

likely to consider the legality and legitimacy of secession having regard to, amongst other facts, the conduct of Quebec and Canada, in determining whether to grant or withhold recognition⁸⁴

However, the court also notes that even if such secession is recognized, it would not “provide any retroactive justification for the act of secession”⁸⁵ neither under international law or under the national jurisdiction.

To conclude, according to the Supreme Court of Canada, there is no right of unilateral secession under international law, except in cases when the seceding entity is part of a colonial empire, when they are exposed to “alien subjugation, domination or exploitation” and perhaps in cases when the seceding entity cannot exercise its right to self-determination within the framework of

⁷⁹ Reference re Secession of Quebec, [1998] 2 S.C.R. 217, In the matter of Section 53 of the [Supreme Court Act, R.S.C., 1985, c. S-26](#) (1998: February 16, 17, 18, 19; 1998: August 20), paragraph 154. Available on: <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1643/index.do>. Accessed on April 10, 2018

⁸⁰ Ibid, paragraph 154

⁸¹ Ibid, paragraph 154

⁸² Ibid, paragraph 154

⁸³ Ibid, paragraph 106

⁸⁴ Ibid, paragraph 155

⁸⁵ Ibid, paragraph 155

the state it is part of. However, even if there is no such right, there is still a possibility of an unconstitutional declaration of independence, where the success of such declaration depends on the recognition by the international community. In this regard, the court seems to uphold the constitutive theory of statehood as it deems recognition to be of utmost importance for the seceding entity to become a state.

After examination of the case of Kosovo and the case of Quebec, the paper, on the basis of the first and second chapter, will proceed to analyze the case of Catalonia. The analysis will be two-fold, firstly, it will be examined whether Catalonia has the right to unilateral non-colonial secession and, secondly, whether Catalonia could achieve statehood even without the existence of an explicit right to secession. The chapter will begin with a brief history of the Catalan independence movement that led to the declaration of independence as it necessary to understand the cause of the claim to unilateral secession to later proceed and evaluate the claim's compatibility with public international law.

3. THE CASE OF CATALONIA

3.1 Brief history of the independence movement and the declaration of independence

The region first became prominent in the 11th century, because of the greatness of County of Barcelona, and in the 12th century it was “brought under the same royal rule as the neighboring kingdom of Aragon, going on to become a major medieval sea power”. With the marriage of Queen Isabella of Castile and King Ferdinand of Aragon in the 15th century, Catalonia became a self-governing part of Spain.⁸⁶ The roots of modern-day Spain can be dated back to 1715 when the War of Spanish Succession ended and Valencia, Catalonia and rest of islands suffered a defeat. From then on till 1931, the kings of Spain attempted to impose Spanish laws, culture, and language on the Catalan region. In 1931 they conceded and restored the national Catalan government *Generalitat*. However, soon after, already in 1938 General Francisco Franco, military dictator of Spain, took control of the region and embarked on destroying Catalan separatism.⁸⁷ “Under Franco's ultra-conservative rule, autonomy was revoked, Catalan nationalism repressed, and use of the Catalan language restricted.”⁸⁸

With Spain becoming democratic in 1977, the region was given back its autonomy once again. The region now had its own legislator - the parliament and executive with a high degree of autonomy.

Calls for complete independence grew steadily until July 2010, when the Constitutional Court in Madrid overruled part of the 2006 autonomy statute, stating that there is no legal basis for recognizing Catalonia as a nation within Spain.⁸⁹

This ruling, which according to Catalonia’s president at that time J. Montilla “attacked the dignity of Catalans”, together with the economic struggles within Spain greatly increased the Catalan sentiment for independence. The first referendum, albeit non-binding, was held in 2014 with 80% of the voters voting “yes”. Subsequently, the regional government “called another set of elections in 2015 to reinforce its mandate” and announced another referendum to be held in October 2017.⁹⁰ Despite the fact that the Supreme Court of Spain declared the referendum to be illegal, regional authorities still held the vote on the 1st of October, which led to “violence inside and around polling stations as Spanish security forces seized ballot boxes and attempted to close down the vote.”⁹¹ There are variations as to the number of votes and the results of the

⁸⁶ BBC, “Catalonia region profile”, published on January 4, 2018, accessed on March 25, 2018 <http://www.bbc.com/news/world-europe-20345071>

⁸⁷ Harriet Alexander, James Badcock, “Why does Catalonia want independence from Spain?”, published on October 10, 2017, accessed on March 25, 2018 <https://www.telegraph.co.uk/news/0/does-catalonia-want-independence-spain/>

⁸⁸ BBC, “Catalonia region profile”, published on January 4, 2018, accessed on March 25, 2018 <http://www.bbc.com/news/world-europe-20345071>

⁸⁹ Harriet Alexander, James Badcock, “Why does Catalonia want independence from Spain?”, published on October 10, 2017, accessed on March 25, 2018 <https://www.telegraph.co.uk/news/0/does-catalonia-want-independence-spain/>

⁹⁰ BBC, “Catalonia region profile”, published on January 4, 2018, accessed on March 25, 2018 <http://www.bbc.com/news/world-europe-20345071>

⁹¹ Harriet Alexander, James Badcock, “Why does Catalonia want independence from Spain?”, published on October 10, 2017, accessed on March 25, 2018 <https://www.telegraph.co.uk/news/0/does-catalonia-want-independence-spain/>

referendum, but according to the major news outlets, around 2,25 million votes (approximately 42% of the Catalan citizens eligible to vote) were counted with a 90% of the votes being in favor of the independence.⁹²

Catalan president Charles Puigdemont addressed both the violence and the result by saying, ‘On this day of hope and suffering, Catalonia’s citizens have earned the right to have an independent state in the form of a republic’⁹³

Spanish Prime Minister Mariano Rajoy countered Puigdemonts claim by arguing that there has not been self-determination referendum in Catalonia and that the rule of law remains in force with all its strength.⁹⁴

Following the disputed independence referendum, the regional parliament voted to declare independence from the Kingdom of Spain, arguing that there is no alternative as the Spanish government is unwilling to negotiate. The federal government responded by asking the Senate to authorize enforcing the Section 155 of the Spanish Constitution, which states:

If a Self-governing Community does not fulfil the obligations imposed upon it by the Constitution or other laws, or acts in a way that is seriously prejudicial to the general interest of Spain, the Government, after having lodged a complaint with the President of the Self-governing Community and failed to receive satisfaction therefore, may, following approval granted by the overall majority of the Senate, take all measures necessary to compel the Community to meet said obligations, or to protect the abovementioned general interest.⁹⁵

The application of this article resulted in the empowerment of the federal government to seize the control of Catalonia’s finances, police and public media channels as well as it gave the government the power to prosecute those politicians who had voted in favor of secession.⁹⁶

After looking at the historical development of the secessionist movement that led to the controversial independence referendum and ultimately to the unilateral declaration of independence of Catalonia from the Kingdom of Spain, the paper, on the basis of the first and second chapter, will proceed to analyze whether Catalonia has the right to unilateral non-colonial secession.

⁹² Graham Russell, Nicola Slawson Patrick Greenfield, “Catalonia referendum: 90% voted for independence, say officials – as it happened”, published on October 2, 2017

<https://www.theguardian.com/world/live/2017/oct/01/catalan-independence-referendum-spain-catalonia-vote-live> ; Angela Dewan, Vasco Cotovio, Hilary Clarke, “Catalonia independence referendum: What just happened?”, published on October 2, 2017 <https://edition.cnn.com/2017/10/02/europe/catalonia-independence-referendum-explainer/index.html>; BBC, “Catalan referendum: Catalonia has 'won right to statehood””, published on October 2, 2017 <http://www.bbc.com/news/world-europe-41463719>, accessed on April 29, 2018

⁹³ Vicente Rodriguez, “Catalonia”, last updated April 19, 2018, accessed April 28, 2018 <https://www.britannica.com/place/Catalonia>

⁹⁴ The Guardian, “Violence against Catalan voters: what we know so far”, published on October 1, 2017, accessed on April 29, 2018 <https://www.theguardian.com/world/2017/oct/01/violence-against-catalan-voters-what-we-know-so-far>

⁹⁵ Article 155 C.E. (October 31, 1978). Available on: <https://www.boe.es/legislacion/documentos/ConstitucionINGLES.pdf>. Accessed on April 28, 2018

⁹⁶ Vicente Rodriguez, “Catalonia”, last updated April 19, 2018, accessed April 28, 2018 <https://www.britannica.com/place/Catalonia>

3.2 Does Catalonia have the right to unilateral secession under PIL?

The regional parliament of Catalonia, with 70 votes in favor, 10 against and two abstentions, voted to proclaim independence from the Kingdom of Spain on October 27, 2018. This declaration, which was later officially annulled by the Spanish Constitutional Court⁹⁷, called for a transfer of legislative powers from Spain to the independent nation of Catalonia.⁹⁸

This declaration of independence can be classified as a declaration of unilateral non-colonial secession. Unilateral, because it was decided one-sidedly by Catalonia despite the resistance from the central government, and non-colonial⁹⁹, because since 15th century Catalonia has formed part of Spain instead of being a colonial territory of Spain.

There are few instances of successful unilateral non-colonial secessions, such as Bangladesh (from Pakistan), and South Sudan (from Sudan), Kosovo (from Serbia). In the case of Bangladesh, the violence committed by the “Pakistan military regime made reunification unthinkable, and in effect legitimized the creation of the new state.”¹⁰⁰ In the case of South Sudan, there was a lengthy civil war before the settlement was reached. Even in the above-analysed case of Kosovo, no express recognition of a right to external self-determination or secession was found to exist by the International Court of Justice.

In other cases, which could be classified as unilateral secessions (such as Senegal, Singapore, the Baltic States and Eritrea), “the consent of the relevant parties was given before independence was externally recognised as accomplished, and the process was accordingly not unilateral.”¹⁰¹ In the case of the breakup of Yugoslavia and subsequent emergence of independent successor states, there was no central authority “which represented the population of Yugoslavia as a whole” with the power to oppose the secession and prevent the breakaway.¹⁰² The case was essentially dissolution of a state, rather than a case of unilateral secession. Neither of these arguably successful secessions was legally based on the common Article 1 of the International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social and Cultural Rights (ICESCR) or on any other international treaty instruments. In other words, none of these secessions were legally based on the expressed right of self-determination.

⁹⁷ STC 124/2017 of November 8 (on the Law of the Catalanian Parliament 20/2017)

<https://www.tribunalconstitucional.es/ResolucionesTraducidas/Ley%20transitoriedad%20ENGLISH.pdf>

⁹⁸ BBC, “Catalans declare independence as Madrid imposes direct rule”, published on: October 27, 2017, accessed on April 20, 2018 <http://www.bbc.com/news/world-europe-41780116>; The Independent, “Spanish court annuls Catalonia’s declaration of independence”, published on: November 8, 2017, accessed on April 20, 2018

<https://www.independent.co.uk/news/world/europe/catalonia-independence-declaration-spanish-constitutional-court-catalan-spain-madrid-a8043851.html>

⁹⁹ “Colonial territory” is a generic term used to refer to geographically separate territories which are dependent upon and subordinate to a metropolitan state. The United Nations Charter refers to two classes of such territories, non-self-governing territories and trust territories, dealt with respectively in Chapters XI and XII of the Charter (J. Crawford, February 19, 1997)

¹⁰⁰ James Crawford, “State Practice and International law in relation to Unilateral Secession”(University of Cambridge, February 19, 1997), p. 18. Available on:

https://is.muni.cz/el/1422/jaro2006/MP803Z/um/1393966/INTERNATIONAL_LAW_AND_UNILATERAL_SECESSION.pdf . Accessed on April 21, 2018

¹⁰¹ Ibid, p.18

¹⁰² Ibid, p. 11

Therefore, as already stated in the first chapter, the legal basis for a right to unilateral non-colonial secession can be found in the customary international law. The origin of this right can be found in the “Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations” (principle 5, paragraph 7), which grants the right to territorial integrity to states, which

[conduct] themselves in compliance with the principle of equal rights and self-determination of peoples as described above and thus [possesses] a government representing the whole people belonging to the territory without distinction as to race, creed or colour.¹⁰³

The declaration, thus, connects internal and external self-determination as it can be interpreted as saying that if a state disallows for internal self-determination, then the people who are denied this right can exercise external self-determination. This type of understanding is supported by the state practice as well as by numerous international law scholars referred to in the first and second chapter of this paper.

As a result of the analysis conducted in the first and second chapter, the author has identified four criteria that need to be satisfied in order to gain the right to unilateral non-colonial secession. These criteria are established by the examined case law and confirmed by international law scholars. These criteria are, firstly, the existence of “peoples”, secondly, denial of internal self-determination to Catalans and human rights breaches committed by the central government against Catalonia, thirdly, non-existence of other remedies under either domestic or international law and, lastly, no explicit prohibition to exercise external self-determination under international law (international law expressly forbids secession in cases, when it is exercised by breach of fundamental principles of international law, for example, use of force). Therefore, in order to determine whether Catalonia has the right to unilateral non-colonial secession, the case of Catalonia will be assessed in the light of these four criteria.

3.2.1 Are Catalans “a people”?

As already established, the right to self-determination is applicable to the peoples and not to the government. This has been stated expressly in the UN legal documents, upheld by the case law, including the examined Kosovo and Quebec cases, as well as confirmed by the scholarly writings.¹⁰⁴ C. J. Borgen, argues that in order for unilateral secession to succeed, there is a need

¹⁰³ The United Nations General Assembly Resolution 2625 “ The Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, Resolution adopted by the General Assembly (24 October 1970). Available on: <http://www.un-documents.net/a25r2625.htm> . Accessed on April 15, 2018

¹⁰⁴ It is stated in the common article 1 of the International Covenant on Civil and Political Rights (CCPR) and the International Covenant on Economic, Social and Cultural Rights (CESCR) and repeatedly in other UN documents. It also appears in the separate opinion of the judge Cancado Trindade in the Kosovo case. Moreover, the question of “peoples” are examined in the Quebec case, where the court acknowledge that the right of self-determination applies to peoples, however, it concludes that it is “not necessary to decide the “people” issue because, whatever may be the correct determination of this issue in the context of Quebec, a right to secession only arises under the principle of self-determination of people at international law where “a people” is governed as part of a colonial empire; where “a people” is subject to alien subjugation, domination or exploitation; and possibly where “a people” is denied any meaningful exercise of its right to self-determination within the state of which it forms a part.”

to show that the secessionists are a "people". This is further reaffirmed by Milena Sterio in her article examined above as well as by Antonio Cassese, who grants the right to unilateral secession to a group of "people", whose participatory rights have been denied by the state.

Currently, in international law, there is no recognized legal definition of "peoples". However, in the context of unilateral secession, the term "peoples" is used to describe those people, who are either oppressed, discriminated or denied participatory rights in their respective states.

According to the Judge of International Court of Justice, Cancado Trindade

There is in fact no terminological precision as to what constitutes a "people" in international law, despite the large experience on the matter. What is clear to me is that, for its configuration, there is a conjugation of factors, of an objective as well as a subjective character, such as traditions and culture, ethnicity, historical ties and heritage, language, religion, sense of identity or kinship, the will to constitute a people; these are all factual, not legal, elements, which usually overlap each other¹⁰⁵

If we examine these factual elements, the conclusion is that Catalans are a separate ethnic group with separate language, unique traditions and culture, strong historic ties and a common sense of identity. This is also stressed by the Catalans themselves, which see themselves as a distinct nation from Spain.¹⁰⁶

In the absence of a definition as to what constitutes "people" under international law, it is impossible to conclude whether Catalans would satisfy this criteria, however, as already stated – in the context of unilateral secession, the term "peoples" is used to describe those people, who are either oppressed, discriminated or denied participatory rights in their respective states. Therefore, the next section of this chapter will look whether Catalans are denied internal self-determination and whether there exist human rights breaches committed by the central government against the people of Catalonia.

3.2.2 Denial of internal self-determination and human rights breaches

The second criterion that is going to be examined consists of two parts – denial of internal self-determination to Catalans and existence of human rights breaches committed against Catalans by the central government of Spain. This sort of division is made by scholars, such as I. Berlin, A. Cassese as well as the Supreme Court of Canada. For example, for A. Cassese, two of three conditions that might authorize secession are continuous denial of participatory rights to a group of people and gross breach of their fundamental human rights. Similarly, I. Berlin argues that there are two types of human rights abuses – *in moderato* and *in extremis*, which might warrant unilateral non-colonial secession. Human rights breaches *in moderato* are for example systematic

¹⁰⁵ Separate Opinion of Judge A.A. Cançado Trindade in the Advisory Opinion on the Declaration of Independence of Kosovo (of 22.07.2010), paragraph : 228. Available on: <http://www.icj-cij.org/files/case-related/141/141-20100722-ADV-01-08-EN.pdf>. Accessed on April 20, 2018

¹⁰⁶ Times of India, "Why Catalonia wants independence from Spain," published on: October 2, 2017, accessed on April 25, 2018 <https://timesofindia.indiatimes.com/world/europe/why-catalonia-wants-independence-from-spain/articleshow/60908650.cms>

political oppression, but human rights breaches *in extremis* are systematic denial of human rights coupled with their abuses.¹⁰⁷

Moreover, in the case of Quebec, the Supreme Court ruled that

a right to secession only arises under the principle of self-determination of people at international law [...] where "a people" is subject to alien subjugation, domination or exploitation; and **possibly** (emphasis added) where "a people" is denied any meaningful exercise of its right to self-determination within the state of which it forms a part¹⁰⁸

This judgment confirms the understanding held by I. Berlin and A. Cassese¹⁰⁹, that only gross human right breaches will authorize the unilateral secession, while denial of internal self-determination (for clarity, this includes also political oppression and denial of participatory rights) only possibly will constitute a basis for the exercise of unilateral secession.

Based on this division, the paper will, firstly, examine if Catalans are denied the right to internal self-determination and, secondly, look at the human rights breaches committed by the Spanish government against Catalonia.

Is Catalonia denied the right of internal self-determination?

Despite the fact that denial of internal self-determination could be classified as human rights abuses deemed *in moderato* (I. Berlin) and, therefore, might not lead to the right to unilateral secession, it is one of the circumstances under which political entity, such as Catalonia, could invoke the right to secession. The aforementioned common article 1 of the ICCPR and ICESCR states that all people have the right to freely determine their political status and freely pursue their economic, social and cultural development. Therefore, in order to determine if Catalans are denied internal self-determination, the paper will analyze whether Catalans are refused the right to freely determine their political status and pursue economic, social and cultural development within the existing legal framework of the Kingdom of Spain.

In 1979, after the end of the Franco's rule, the Statute of Autonomy of Catalonia, a document which is the basic law for the functioning of the local governance, was enacted. Article 1 of this statute stated that "Catalonia, as a nationality and in order to achieve self-government, is constituted as an Autonomous Community".¹¹⁰ The Statute itself granted partial autonomous decision-making powers to the regional government and affirmed the understanding of Catalonia as a separate nationality within Spain. Under this Statute, "the Catalan Parliament is elected with a proportional electoral system, which guarantees the representation of each segment of the

¹⁰⁷ Ilya Berlin, "Unilateral Non-Colonial Secessions: An Affirmation of the Right to Self-Determination and a Legal Exception to the Use of Force in International Law", Electronic Thesis and Dissertation Repository (2017), p.70. Available on: <https://ir.lib.uwo.ca/etd/4777>. Accessed on March 20, 2018

¹⁰⁸ Reference re Secession of Quebec, [1998] 2 S.C.R. 217, In the matter of Section 53 of the [Supreme Court Act, R.S.C., 1985, c. S-26](#) (1998: February 16, 17, 18, 19; 1998: August 20), paragraph 154. Available on: <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1643/index.do>. Accessed on April 10, 2018

¹⁰⁹ References to these authors can be found in the first and second chapter of this paper

¹¹⁰ Article 1, Statute of autonomy of Catalonia (1979). Available on: https://web.gencat.cat/en/generalitat/estatut/estatut1979/titol_preliminar/. Accessed on April 10, 2018

society.”¹¹¹ Moreover, according to the Article 9 of the 1979 statute of autonomy, the Catalan government was in charge of the language, culture, research, town and country planning, health, tourism, road infrastructure within Catalonia, fishing in inland waters, social care, young people, sports and leisure, Chambers of Property, Chambers of Commerce, Industry and Shipping, without prejudice to the provisions of point 10 of part 1 of article 149 of the Constitution, environment and others.¹¹² Nevertheless, the regional government did not have a full fiscal autonomy, meaning, “the power of collective taxes”, and it “mainly [relied] on financial transfers from the central state”¹¹³

In 2003, following elections, many political parties promised to amend the 1979 Statute of Autonomy, which is Catalonia's main law after the Constitution.

The proposal was defining Catalonia as "a nation", in line with Article 2 of the 1978 Constitution, which says that Spain is formed of "nationalities and regions"¹¹⁴

Moreover, the proposal wanted to increase Catalonia's judicial powers, better protect Catalan language and establish a bilateral (not subordinate) relationship between Catalan and Spanish authorities. The new statute was approved in 2006 and granted Catalonian authorities wide exclusive powers, for example, in trade, prosecution, transport, part of immigration matters, Catalonia's own language and others.¹¹⁵ Moreover, the new statute enhanced the capacity of the regional government in various areas such as finance, justice system, education as well as “further reinforced the preferential use of Catalan in public administration, public media, and the education system”.¹¹⁶ Nevertheless, under the new 2006 Statute of Autonomy, the regional government still has shared powers when it comes to the organisation of economic activity in Catalonia, energy sector, environment, social security.¹¹⁷

This Statute of Autonomy was widely opposed by a right-wing political party *Partido Popular*, whose members appealed it to the Constitutional Court of Spain. The court's ruling took four

¹¹¹ Andrea Carla, "Institutions, Ethno-nationalism, and Sense of Belonging: Comparing Separatist Tendencies in Catalonia and South Tyrol," *European Yearbook of Minority Issues* 11 (2012): 91-122, available on HEINONLINE, p. 101

¹¹² Article 9-28, Statute of autonomy of Catalonia (1979). Available on: https://web.gencat.cat/en/generalitat/estatut/estatut1979/titol_preliminar/. Accessed on April 10, 2018

¹¹³ Andrea Carla, "Institutions, Ethno-nationalism, and Sense of Belonging: Comparing Separatist Tendencies in Catalonia and South Tyrol," *European Yearbook of Minority Issues* 11 (2012): 91-122, available on HEINONLINE, p. 101

¹¹⁴ Catalan News, “Milestones in Catalonia's self-determination before 2012 massive pro-independence demonstration”, accessed on April 10, 2018

<http://www.catalannews.com/politics/item/milestones-in-catalonia-s-self-determination-before-2012-massive-pro-independence-demonstration>

¹¹⁵ agriculture, livestock farming and forestry, water and hydraulic works, associations and foundations, hunting, fishing, maritime activities and organisation of maritime sector, saving banks, trade and trade fairs, popular consultation, consumer affairs, cooperatives and social economy, public law corporations and certified professions, culture, civil law, prosecution law, education, emergencies and civil protection, sport and leisure, statistics, housing, part of immigration matters, industry, craftsmanship, metrology, control and evaluation of metals, transport and communications infrastructures, gaming and shows, youth affairs, Catalonia's own language, part of the media policies, organisation of the administration of the Generalitat and others

¹¹⁶ Andrea Carla, "Institutions, Ethno-nationalism, and Sense of Belonging: Comparing Separatist Tendencies in Catalonia and South Tyrol," *European Yearbook of Minority Issues* 11 (2012): 91-122, available on HEINONLINE, p. 104

¹¹⁷ Statute of autonomy of Catalonia, (2006). Available on:

https://web.gencat.cat/en/generalitat/estatut/estatut2006/titol_4/. Accessed on April 20, 2018

years, and its 2010 decision deleted 14 of the statute's 223 articles and gave a binding interpretation to another 27.

Among other things, the ruling struck down attempts to place the distinctive Catalan language above Spanish in the region [...] and stated that: 'The interpretation of the references to 'Catalonia as a nation' and to 'the national reality of Catalonia' in the preamble of the Statute of Autonomy of Catalonia have no legal effect'¹¹⁸

Moreover, the court stated that the provision, which aims to ballance the state's investment in Catalonia with the percentage of Catalan GDP in relation to the overall Spanish GDP is constitutional, but the central government is under no legal obligation to fulfill the provision. The court also dismissed the "statute's efforts to create a Catalan Court of Justice" by arguing that autonomous communities do not possess powers to create courts. (Tribunal Constitucional de España 19-20).¹¹⁹ Even though the constitutional court supported most of the specific provisions of the 2006 statute, it did embrace the symbolism supported by the *Partido Popular* by referring to the "indissoluble unity of Spain" eight times.¹²⁰ This judgment is widely criticised by Catalans and became one of the main reasons behind the rising struggles for independence. According to Catalonia's ex-president, Jose Montilla, the ruling is of importance not because of its "practical effects" on the powers of the regional government, but because of the symbolic value of the 2006 statute. "Therefore, Montilla believes that the court's decision 'debilitates Spanish unit' and damages Catalan 'dignity'"¹²¹

The regional government of Catalonia does possess a wide variety of exclusive powers, including the right to elect their own political representatives, and exercise economic, social and cultural rights under the 2006 Statute of Autonomy. Even though they do share part of the competences with the central government as well as some competences fall exclusively within the power of the central government- nothing suggests that Catalans are denied from exercising their rights through their representatives in the federal parliament. The Spanish parliament has two houses, the Congress and the Senate. The congress is elected in universal, equal, direct, proportional elections and represents the interests of the people of constituencies, whereas the Senate is the House of territorial representation, where each territory, according to its population, has a certain number of Senators.¹²² Therefore, Catalans have the right to both elect members of local as well as federal parliament through which they can exercise the right of self-determination.

Additionally, an indicator of whether a state respects the right to internal self-determination is the level of democracy it has. The Kingdom of Spain ranks 19th in the Democracy index published by The Economist with high scores in Electoral process and pluralism as well as Civil liberties indicators (Table 1).

¹¹⁸ Krishnadev Calamur, "The Spanish Court Decision That Sparked the Modern Catalan Independence Movement", published on October 1, 2017, accessed on April 25

<https://www.theatlantic.com/international/archive/2017/10/catalonia-referendum/541611/>

¹¹⁹ Mermel, Kevin, "The End of the State of Autonomies? An Analysis of the Controversy Surrounding the 2010 Spanish Constitutional Court Ruling on Catalonia's 2006 Statute of Autonomy" (2016), p.25-27. Available on: https://scholar.colorado.edu/cgi/viewcontent.cgi?article=2312&context=honr_theses. Accessed on April 29, 2018

¹²⁰ Ibid, p. 25-27

¹²¹ Ibid, p. 49-50

¹²² Article 68&69 C.E. (December 27, 1978). Available on:

<https://www.boe.es/legislacion/documentos/ConstitucionINGLES.pdf>. Accessed on April 29, 2018

Table 1

Rank	Overall score	Electoral process and pluralism	Functioning of government	Political participation	Political culture	Civil liberties
19	8.08	9.17	7.14	7.78	7.50	8.82

However, according to the Democracy index, last year Spain was among the countries with the largest declines in the score as compared to the year before.

At 8.08, Spain's score remains just above the threshold of 8 for full democracies, having fallen significantly as a result of the national government's attempt to stop by force Catalonia's illegal referendum on independence on October 1st.¹²³

Nevertheless, Spain still stands at the top of the list, when it comes to democratic governance as well as there, until the controversial referendum, was nothing to suggest that Catalans are discriminated against by the national authorities. The unfortunate response of the central government to the referendum and inability to have constructive talks with Catalan authorities aimed at resolving situation following the independence referendum might give more weight to the Catalan claim for independence, however, there is little to suggest that Catalans are denied the right to internal self-determination within the existing state structure.

Human rights breaches

The second point assessed under the present section are the human rights breaches committed by the central government against the people of Catalonia.

In order to conclude whether there have been violation of human rights committed against Catalonia, the paper will analyze reports made by Amnesty International as well as Human Rights Watch in the time period between the year 2015 and year 2018. Both of the international non-governmental organizations offer independent reports on the human rights situation across the world. The reports are based on cases brought before different international courts (such as the ECtHR) as well as organs in the UN, EU and other international organizations (for example, the UN Committee on the Elimination of Discrimination against Women, European Committee for the Prevention of Torture, UN Human Rights Committee, UN Committee on Economic, Social and Cultural Rights and others).

Amnesty International divides their reports into nine parts, namely, freedoms of expression and assembly, torture and other ill-treatment, refugees and migrants' rights, counter-terror and security, discrimination, violence against women, impunity, sexual and reproductive rights and housing rights. The 2015/16 report, while identifying potential breaches by Spain of rights to freedom of expression and assembly as well breaches of refugee and migrants rights¹²⁴, did not

¹²³ The Economist, "Democracy Index 2017: Free speech under attack"(2018), p.22. Available on:http://pages.eiu.com/rs/753-RIQ-438/images/Democracy_Index_2017.pdf. Accessed on May 1, 2018

¹²⁴ For example, forcibly returning Moroccans and legalizing automatic and collective expulsion of migrants and refugees

identify any human rights breaches committed against the citizens of Catalonia.¹²⁵ The 2016/17 report found new breaches of the freedom of speech and assembly as well systematic breaches of the rights of immigrants, however, similarly as the previous report, it did not show any violations against Catalan people.¹²⁶ The last examined Amnesty International report was the 2017/18 report. This report starts off by stating that

The rights to freedom of expression and peaceful assembly of Catalan independence supporters were disproportionately restricted. [...] Law enforcement officials used excessive force against demonstrators peacefully resisting the enforcement of the High Court of Justice of Catalonia's ruling stopping the Catalan independence referendum.¹²⁷

When analyzing the breaches of freedom of expression and assembly, the report indicates various offenses, for example,

Courts in Madrid and Vitoria in the Basque country prohibited two public assemblies aimed at supporting the referendum. The municipality of Castelldefels in Catalonia adopted a blanket ban on the use of public spaces for assemblies aimed at supporting or protesting against the referendum.¹²⁸

Moreover, a high court judge authorized pre-trial detention of two pro Catalan- independence organizations' presidents. As a result, they were detained and charged with sedition in relation with protests they organized in Barcelona, which according to the judge - opposed a lawful police operation.¹²⁹

Similarly, to the Amnesty International, the 2015 and 2016 reports by Human Rights Watch, does not show any human rights breaches committed against people of Catalonia.¹³⁰ The 2017 report, however, deem the force used by the Spanish Civil Guard and national police against the voters in the Catalan independence referendum as too excessive and, therefore, potentially unlawful.

To conclude, till the controversial independence referendum, there is no indication of human rights breaches committed against Catalans. According to European Council on Foreign Relations:

¹²⁵ Amnesty International Ltd, "Amnesty International report 2015/16: The State of the world's human rights" (Peter Benenson House, 1, Easton Street, London WC1X 0DW United Kingdom, 2016) p.336-338. Available on:

<https://www.amnesty.org/download/Documents/POL1025522016ENGLISH.PDF>. Accessed on May 1, 2018

¹²⁶ Amnesty International Ltd, "Amnesty International report 2016/17: The State of the world's human rights" (Peter Benenson House, 1, Easton Street, London WC1X 0DW United Kingdom, 2017) p.336-339. Available on:

<https://www.amnesty.org/download/Documents/POL1048002017ENGLISH.PDF>. Accessed on May 1, 2018

¹²⁷ Amnesty International Ltd, "Amnesty International report 2017/18: The State of the world's human rights" (Peter Benenson House, 1, Easton Street, London WC1X 0DW United Kingdom, 2018) p. 339-342. Available on:

<https://www.amnesty.org/download/Documents/POL1067002018ENGLISH.PDF>. Accessed on May 1, 2018

¹²⁸ Ibid, p. 339-342

¹²⁹ Ibid, p. 339-342

¹³⁰ Human Rights Watch, "World report: events of 2015", (Printed in the United States of America, 2016), p. 263-264, Available on: https://www.hrw.org/sites/default/files/world_report_download/wr2016_web.pdf, Accessed on May 2, 2018; Human Rights Watch, "World report: events of 2016", (Printed in the United States of America, 2017), p. 278, Available on: https://www.hrw.org/sites/default/files/world_report_download/wr2017-web.pdf, Accessed on May 2, 2018

There has been no violent campaign of ethnic cleansing, no systematic discrimination leading to mass outflows of refugees, and not one previous international condemnation of Spain's treatment of its Catalans.¹³¹

The same conclusion can be reached after examining the reports produced by the two human rights organizations – till the end of 2017, there was nothing to suggest human rights breaches committed by Kingdom of Spain against the people of Catalonia. However, if Spanish authorities continue to unlawfully oppress the pro-Catalan-independence movement, different conclusions might be drawn in the future.

3.2.3 No other remedies under either the domestic or international law

According to the scholars¹³², the third criterion that needs to present to claim the right to unilateral non-colonial secession is the absence of other remedies under the domestic or international law. It should be noted, however, that these “other remedies” have to be effective¹³³ and have to cure the underlying reason for the desire to secede. A. Cassese explains this criterion slightly different, arguing that secession might be authorized if the “mother state” excludes “the possibility of reaching a peaceful settlement within the framework of the State structure”¹³⁴, therefore denying the access to other remedies besides secession.

In order to determine whether there exists a non-secessionist solution to the Catalan crisis, it is necessary to outline the reasoning behind the claim for independence. According to F.Demaria, the independence movement is based on three main elements related to culture, economy, and politics. Firstly, Catalans feel culturally different from Spaniards and they still remember the civil war (1936-1939) and Franco's fascist dictatorship (1939-1975), where Catalans were oppressed and prohibited to use their own language. Secondly, it is the controversial economic issue as the people of Catalonia feel that they give more to Spain than they receive back. This claim became even more prominent with the start of the economic crisis in 2008, when the Catalan government was the first to apply austerity measures that it justified by claiming that there is a lack of funding from Spain. Lastly, it is the political issue that prompts the calls for independence:

The Catalans do not feel identified with the Spanish government, now dominated by the right-wing [...] *Partido Popular* of Mariano Rajoy. There is also the hypothesis that if the government was at a lower geographical level, it would be more democratic.¹³⁵

These underlying reasons could be summarized in one main belief: Catalans assume that they could live better by being independent from Spain, as they would be richer, more democratic and would have their own nation.

¹³¹Francisco de Borja Lasheras, “Spain faces its worst constitutional crisis since the failed 1981 coup d'état, driven by Brexit-style populism”, published on September 22, 2017, accessed on May 3, 2018

http://www.ecfr.eu/article/commentary_three_myths_about_catalonias_independence_movement

¹³² Such as Christopher J. Borgen and A. Cassese

¹³³ Christopher J. Borgen, “Kosovo's Declaration of Independence: Self-Determination, Secession and Recognition”, American Society of International Law, Volume:12, Issue:2, February 29, 2008, accessed on March 10, 2018

<https://www.asil.org/insights/volume/12/issue/2/kosovos-declaration-independence-self-determination-secession-and>

¹³⁴ Antonio Cassese, “Self-Determination of Peoples: A Legal Reappraisal”, (Cambridge University Press, 2008), p.119

¹³⁵ Federico Demaria, “Why Catalans Want Independence From Spain”, published on October 4, 2017, accessed on May 3, 2018 <https://www.counterpunch.org/2017/10/04/why-catalans-want-independence-from-spain/>

The aspirations of the Catalan people are high, however, even the pro-independence leader ex-president Puigdemont has stated last year that “he might consider a solution to Spain’s political crisis that did not involve the region’s secession”¹³⁶ Moreover, the Spanish Prime Minister Mariano Rajoy has stated that

he was open to talks with Catalan leaders on resolving Spain’s worst political crisis [...], but only within a legal framework and after the independence drive was dropped as a condition¹³⁷

The position of both leaders might indicate that there is a solution that does not amount to secession and which would effectively and peacefully solve the issue at hand. The only solution that would avoid more confrontation and possible violence are bilateral negotiations within the legal framework of Spain between the Spanish and Catalan authorities, albeit only if both parties enter into them without strong preconditions.

3.2.4 No explicit prohibition under the international law

As identified by the scholars and approved by the ICJ in the Kosovo case, the international law expressly forbids secession in cases, when it is exercised by breach of fundamental principles of international law. It must be noted that, as expressly stated by the ICJ, among these peremptory norms is not the principle of territorial integrity. Therefore, in order, to conclude whether Catalonia could potentially secede from the Kingdom of Spain, there is a need to analyze whether Catalonia, when declaring independence, had breached peremptory norms of international law.

The peremptory norms or *jus cogens* are paramount principles of international law, from which no derogation is permitted. While there is no exhaustive list of these norms, the ones generally accepted, include: prohibition of the use of force, prohibition of genocide, apartheid, slavery, torture and maritime piracy, principle of racial non-discrimination, prohibitions on waging an aggressive war, crimes against humanity, and the rules prohibiting trade in slaves or human trafficking.¹³⁸

With a goal of achieving independence, Catalonian authorities have conducted two referendums and passed legally disputable independence declaration, however, there is nothing to suggest that Catalonia, in its independence struggle, has violated any of the peremptory norms of international law. The pro-independence protests have been peaceful and, according to The Wire, the feature that has made the Catalonian movement fascinating is that “[t]here are no bombs going off on the street, no pellet guns and no disappearances”¹³⁹.

¹³⁶ Reuters staff, “Non-secessionist solution to Catalan crisis possible, says ex-leader”, published on November 13, 2017, accessed on May 7, 2018 <https://www.reuters.com/article/us-spain-politics-catalonia/non-secessionist-solution-to-catalan-crisis-possible-says-ex-leader-idUSKBN1DD1DE>

¹³⁷ Ibid

¹³⁸ Cornell Law School, “Jus cogens”, accessed on May 7, 2018 https://www.law.cornell.edu/wex/jus_cogens; Anne Lagerwall, “Jus Cogens”, last modified on: May 29, 2015, accessed on May 7, 2018 <http://www.oxfordbibliographies.com/view/document/obo-9780199796953/obo-9780199796953-0124.xml>

¹³⁹ Devirupa Mitra, “A Peaceful, Mature Fight for and Against Independence in Catalonia”, published on December 31, 2017, accessed on May 7, 2018 <https://thewire.in/external-affairs/peaceful-mature-fight-independence-catalonia>

To conclude, there is nothing to suggest that Catalonia has breached fundamental principles of international law in its attempts to achieve independence, therefore, there is no explicit prohibition under international law for Catalonia to secede from the Kingdom of Spain.

After analyzing the four criteria that might give Catalonia the right to unilateral non-colonial secession, the following conclusions have been drawn. Firstly, while it is impossible to conclude whether Catalans are “people” under international law as there is no international law definition as to what constitutes “people”, it is argued that Catalans are a separate ethnic group with separate language, unique traditions and culture, strong historic ties and a common sense of identity. Moreover, in the context of unilateral secession, the term “peoples” is used to describe those people, who are either oppressed, discriminated or denied participatory rights in their respective states, therefore, there is a need to analyze these factors to conclude if there is a right to unilateral secession. Secondly, when examining if Catalans are denied the right to internal self-determination and whether there are human rights breaches committed by the Spanish government against Catalonia, the paper concluded that, till the 2017 independence referendum, there was nothing to suggest that Catalans are denied internal self-determination and that their human rights are violated. However, it is too early to consider whether this conclusion is still valid in the aftermath of the independence referendum. Thirdly, the paper examined if there are no other possible remedies, except unilateral secession, under either domestic or international law and concluded that there might be a solution that does not amount to secession and which would effectively and peacefully solve the issue at hand. This solution could be bilateral negotiations within the legal framework of Spain between the Spanish and Catalan authorities. Lastly, when examining whether there is no explicit prohibition under international law for Catalonia to secede, the author concluded that there is nothing to suggest that Catalonia has breached fundamental principles of law in its attempts to achieve independence, therefore, there is no explicit prohibition under international law for Catalonia to secede from the Kingdom of Spain.

Nevertheless, despite the non-existence of a right to unilaterally secede both under the international law and the national law, according to the Supreme Court of Canada “the possibility of an unconstitutional declaration of secession leading to a de facto secession is not ruled out.” The same conclusion is upheld by the ICJ in the case of Kosovo, where the court states that

it is entirely possible for a particular act — such as a unilateral declaration of independence — not to be in violation of international law without necessarily constituting the exercise of a right conferred by it¹⁴⁰

Therefore, even though Catalonia might not have the right to unilateral secession under the international and national law¹⁴¹ and its declaration of independence is deemed unconstitutional by the Spanish Constitutional court¹⁴², Catalonia’s declaration of independence is not in violation of the general international law (ICJ in Kosovo case). Hence, the paper will proceed to analyze if Catalonia could achieve statehood despite not having the right to secede unilaterally. In order to

¹⁴⁰ ICJ, Advisory Opinion of July 22, 2010 (Accordance with International law of the unilateral Declaration of Independence in respect of Kosovo), paragraph 56. Available on: <http://www.icj-cij.org/files/case-related/141/141-20100722-ADV-01-00-EN.pdf>. Accessed on April 20, 2018

¹⁴¹ Constitution of Spain does not recognize the right to external self-determination

¹⁴² STC 124/2017 of November 8 (on the Law of the Catalanian Parliament 20/2017). Available on: <https://www.tribunalconstitucional.es/ResolucionesTraducidas/Ley%20transitoriedad%20ENGLISH.pdf>. Accessed on May 3, 2018

answer this question, the paper will analyse Catalonia in light of two law theories, examined in the first chapter of this paper, namely, the constitutive theory of statehood and the declaratory theory of statehood.

3.3 Could Catalonia achieve independent statehood despite not having the right to unilateral secession under PIL?

First theory to be examined is the constitutive theory of statehood, which deems recognition to be a necessary precondition for the entity to enjoy international personality. If we analyze the case of Catalonia in the light of this theory, currently Catalonia does not have statehood as no state belonging to the UN has recognized its independence. There are several regional authorities, such as the President of Corsican Assembly¹⁴³ or mayors from the Sardinia region¹⁴⁴, which have recognized the independence of Catalonia, as well as non-UN-member states and UN observer states, such as Abkhazia¹⁴⁵ and South Ossetia¹⁴⁶, which have expressed willingness to support the independence of Catalonia if requested by the Catalan government. However, the vast majority of states as well as international organizations, such as the EU and the UN, have expressed support for Spanish unity and have stated that Catalonia's issue is a matter of Spanish internal affairs. Thus, if the official positions of most of the states do not change, based on the constitutive theory, Catalonia has no likelihood to achieve statehood.

The second theory or the declaratory theory argues that the existence of statehood depends on certain criteria and if they are fulfilled then the entity has gained an international personality and that recognition of this entity as a state should be automatic. These criteria are enumerated in the article 1 of the Montevideo Convention, which states that

The State as a person of international law should possess the following qualifications: (a) a permanent population; (b) a defined territory; (c) a government; and (d) capacity to enter into relations with the other States.¹⁴⁷

In order to draw conclusions about the potential statehood of Catalonia, the paper, in turn, will examine the existence of these four criteria.

¹⁴³ Radio France, "Le président de l'Assemblée de Corse reconnaît l'indépendance de la Catalogne", published on October 27, 2017, accessed on May 5, 2018 https://www.francetvinfo.fr/france/corse/corse/le-president-de-l-assemblee-de-corse-reconnait-l-independance-de-la-catalogne_2440411.html

¹⁴⁴ Ansa News, "Catalogna: amministratori sardi riconoscono indipendenza", published on October 31, 2017, accessed on May 5, 2018 <http://www.cagliaripad.it/265635/catalogna-amministratori-sardi-riconoscono-indipendenza>

¹⁴⁵ Russian Reality, "Abkhazia is ready to consider recognizing the independence of Catalonia", published on October, 27, 2017, accessed on May 5, 2018 <https://rusreality.com/2017/10/27/abkhazia-is-ready-to-consider-recognizing-the-independence-of-catalonia/>

¹⁴⁶ Sputnik International, "South Ossetia ready to consider recognition of Catalonia's independence", published on October 28, 2017, accessed on May 5, 2018 <https://sputniknews.com/europe/201710281058616071-south-ossetia-catalonia-independence/>

¹⁴⁷ Article 1, Montevideo Convention on the Rights and Duties of States (December 26, 1934). Available on: <https://www.ilsa.org/jessup/jessup15/Montevideo%20Convention.pdf> . Accessed on April 2, 2018

3.3.1 Permanent population

Catalonia has around 7.5 million citizens, which exceeds the population of many states in Europe and beyond. If we look at the stability and growth of the population of Catalonia (Table 2), it can be seen that in the last 20 years, the population has grown from being a little over 6 million to almost 7, 5 million.¹⁴⁸

Table 2

1997	1998	1999	2000	2001	2002	2003	2004	2005	2006
6,110,0	6,125,3	6,147,7	6,174,5	6,253,3	6,398,2	6,558,7	6,693,3	6,846,7	6,994,9

2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
7,146,7	7,298,3	7,416,6	7,462,0	7,501,8	7,515,4	7,479,0	7,433,9	7,424,7	7,448,3

Therefore, it can be concluded that Catalonia satisfies the criterion of permanent population.

3.3.2 Defined territory

Catalonia is region in north-east Spain in a shape of triangle, which is separated from the south of France by the Pyrenean Mountains. It consists of four provinces: Barcelona, Girona, Lleida, and Tarragona¹⁴⁹. Its territory is 32,108 km².¹⁵⁰ As autonomy within Spain, its territory is clearly defined and there is no issues regarding its borders. To conclude, Catalonia satisfies the second criterion of statehood as it possesses defined territory.

3.3.3 Government

The third criterion, which is necessary in order to acquire statehood, is the existence of a government. In this regard, as mentioned before, a prominent international law scholar M. N. Shaw has argued that there is no need for a “sophisticated apparatus of executive and legislative organs” but rather that there needs to be an “indication of some sort of coherent political structure and society”. If we analyse the self-governance of Catalonia, it can be observed that under the 2006 Statute of Autonomy, the *Generalitat* consists of Parliament, the Presidency of the *Generalitat*, Government and other institutions, such as the Council for statutory guarantees, the Ombudsman, the Audit Office, local police and Catalan Broadcasting Authority.¹⁵¹ The regional parliament is a directly elected body that represents the people of Catalonia and possesses legislative powers. It is the basis for the system of governance from which all other institutions

¹⁴⁸ Statistical Institute of Catalonia, Population on 1 January, 1900-2018. Available on: <https://www.idescat.cat/pub/?id=aec&n=245&lang=en> . Accessed on May 3, 2018

¹⁴⁹ Wikipedia, “Catalonia”, last edited May 10, 2018, accessed on May 11, 2018 <https://en.wikipedia.org/wiki/Catalonia>

¹⁵⁰ Statistical Institute of Catalonia, Population density. 2017. Available on: <https://www.idescat.cat/pub/?id=aec&n=249&lang=en> . Accessed on May 3, 2018

¹⁵¹ Articles 55-94, Statute of autonomy of Catalonia, (2006) . Available on: https://web.gencat.cat/en/generalitat/estatut/estatut2006/titol_4/ . Accessed on April 20, 2018

are derived from. The executive power is in the hands of a government, which consists of thirteen ministers¹⁵² and is headed by the president of Catalonia. Self-governance is further divided into local and municipal governments, which are subordinated to *Generalitat*.¹⁵³

Based on the existence of these state-like institutions, it can be concluded that the self-governing system of Catalonia does indicate a coherent and rather mature political structure that in a way resembles those of independent states.

3.3.4 Capacity to enter into relations with the other States

The last criterion for statehood is the capacity to enter into relations with other states. According to D. Raic, an entity claiming statehood, must possess

an organizational machinery which is capable and authorized to legally bind, and both politically and legally represent the State in its relations with other subjects of international law¹⁵⁴

This “organizational machinery” needs to be able to at least technically establish relations with other states according to its wishes and needs. It means that the entity has to have a full competence in foreign relations to execute any policy it sees as fit. Quoting the author: “The essence of such a capacity is independence.”¹⁵⁵ If we evaluate Catalonia in the light of these considerations, it can be concluded that Catalonia does not have an exclusive power in the foreign policy as this competence is retained by the central government of Spain. Catalan government is not authorized to independently politically and legally represent Catalonia abroad or enter it into legally binding relationships with other subjects of international law. Nevertheless, it is possible that the regional government could exercise this competence despite not being authorized under the constitution. To exercise this competence, it would need a mandate from its population as well as effective “organizational machinery” which is capable to politically and legally represent Catalonia. However, even if Catalonia would be in possession of this “machinery”, a lot depends on the recognition by other states, which essentially would have to decide if they are to cooperate with his newly established state. In the current situation, it is too early to make any predictions in this matter.

After examining the case of Catalonia in the light of the two theories of statehood, following conclusions can be made. Under the constitutive theory, according to which state’s legal existence purely depends on the recognition of other states, in the absence of a change in the official position of the majority of states, Catalonia has no likelihood to achieve statehood. Under the declaratory theory, which argues that entity gains statehood once the criteria for statehood has been satisfied and considers the act of recognition as merely declaratory, the conclusions are somewhat more positive to those arguing for independence. The traditional criteria, enumerated

¹⁵² Ministers of Economy and treasury, presidency, foreign affairs, public administrations, education, health, home affairs, territory and sustainability, culture, justice, labour and social affairs, business and knowledge, and agriculture.

¹⁵³ Statute of autonomy of Catalonia, (2006) . Available on: https://web.gencat.cat/en/generalitat/estatut/estatut2006/titol_4/ . Accessed on April 20, 2018

¹⁵⁴ David Raic, “Statehood and the Law of Self-Determination “ (Leiden, Boston:Martinus Nijhoff Publishers, 2002), available on EBSCOhost, p.72-74

¹⁵⁵ Ibid. P. 72-74

in the Montevideo Convention, are the existence of permanent population, defined borders, government, and the capacity to enter into relations with other states. After analyzing the case of Catalonia, in the light of these criteria, it can be concluded that Catalonia has a permanent population, defined borders and a government that resembles those of independent states. However, when it comes to the last criterion or the capacity to enter into relations with other states, currently the regional government is not authorized to independently politically and legally represent Catalonia abroad or enter it into legally binding relationships with other subjects of international law. Nevertheless, it could still exercise this competence despite not being authorized under the Constitution. The success of such action would depend on the local population and on the international community as a whole.

CONCLUSIONS

In order to determine if Catalonia can claim independence under public international law, four questions were examined. The first question tried to identify the current position of public international law regarding the principle of self-determination, the issue of secession and the law of statehood. Based on the analysis of the development of the principle of self-determination, whose roots can be found in the ideas of American and French revolutions, it was concluded that the right of self-determination is applicable to the “peoples”, the right is not absolute, and the right certainly applies to de-colonial claims, however, its applicability to non-colonial claims is not as clear-cut. Moreover, self-determination can be divided into two main types- internal self-determination and external self-determination. Internal self-determination is the right of the people of a state to govern themselves without outside interference, while external self-determination is the right of peoples to determine their own political status and to be free of “alien domination”, including the right to secession. The international law on the issue of secession can be classified into three parts: Firstly, the international law expressly forbids secession in cases, when it is exercised by breach of fundamental principles of international law; secondly, there are cases when the international law is neutral and does not, both, give the right of secession or forbids it; and lastly, there are cases when international law creates a right to secession under external self-determination. Nevertheless, an absence of the explicit right to unilateral secession does not preclude the act itself; therefore the paper outlined two theories that explain the moment when an entity gains personality under international law. First is the constitutive theory, which deems recognition to be a necessary precondition for the entity to enjoy international personality, and the second is the declaratory theory, which argues that an entity gains statehood once the criteria for statehood have been satisfied and considers the act of recognition as merely declaratory.

On the second question aiming to establish whether there exists a right to unilateral non-colonial secession and in what circumstances it can be exercised, it was concluded that the legal basis for the right lies in customary international law. The origin of this right can be found in the “Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations”. The paper identified four criteria that need to be satisfied in order to claim the right to unilateral non-colonial secession. These criteria are established by the studied case law and confirmed by international law scholars. These criteria are, firstly, the existence of “peoples”, secondly, denial of internal self-determination and human rights breaches committed by the “mother state” against the independence-seeking entity, thirdly, non-existence of other remedies under either domestic or international law and, lastly, no explicit prohibition to exercise external self-determination under international law.

The third question sought to determine whether Catalonia has the right to unilateral non-colonial secession. After analyzing the four criteria that might give Catalonia the right to unilateral non-colonial secession, the following conclusions were drawn. Firstly, while it is impossible to conclude whether Catalans are “people” under international law as there is no international law definition as to what constitutes “people”, it is argued that Catalans are a separate ethnic group with separate language, unique traditions and culture, strong historic ties and a common sense of

identity. Moreover, in the context of unilateral secession, the term “peoples” is used to describe those people, who are either oppressed, discriminated or denied participatory rights in their respective states, therefore, there is a need to analyze these factors to conclude if there is a right to unilateral secession. Secondly, when examining if Catalans are denied the right to internal self-determination and whether there are human rights breaches committed by the Spanish government against Catalonia, the paper concluded that, till the 2017 independence referendum, there was nothing to suggest that Catalans are denied internal self-determination and that their human rights are violated. However, it is too early to consider whether this conclusion is still valid in the aftermath of the independence referendum. Thirdly, on the question, if there are no other possible remedies, except unilateral secession, under either domestic or international law, it was concluded that there might be a solution that does not amount to secession and which would effectively and peacefully solve the issue at hand. This solution could be bilateral negotiations within the legal framework of Spain between the Spanish and Catalan authorities. Lastly, when examining whether there is no explicit prohibition under international law for Catalonia to secede, the author concluded that there is nothing to suggest that Catalonia has breached fundamental principles of law in its attempts to achieve independence, therefore, there is no explicit prohibition under international law for Catalonia to secede from the Kingdom of Spain.

However, as stated by the International Court of Justice, it is entirely possible for a unilateral declaration of independence not to be in violation of international law without constituting the exercise of an explicit right conferred by it, therefore, the last question tried to ascertain if Catalonia could achieve independent statehood despite not having the right to secede unilaterally. To this end, Catalonia was examined in the light of two international law theories - the constitutive theory of statehood and the declaratory theory of statehood. Under the constitutive theory, according to which state’s legal existence purely depends on the recognition of other states, in the absence of a change in the official position of the majority of states, Catalonia has no likelihood to achieve statehood. Under the declaratory theory, which argues that an entity gains statehood once the criteria for statehood has been satisfied and considers the act of recognition as merely declaratory, the conclusions are somewhat more positive to those arguing for independence. The traditional criteria, enumerated in the Montevideo Convention, are the existence of permanent population, defined borders, government, and the capacity to enter into relations with other states. After analyzing the case of Catalonia, in the light of these criteria, it can be concluded that Catalonia has a permanent population, defined borders and a government that resembles those of independent states. However, when it comes to the last criterion or the capacity to enter into relations with other states, currently the regional government is not authorized to independently politically and legally represent Catalonia abroad or enter it into legally binding relationships with other subjects of international law. Nevertheless, it could still exercise this competence despite not being authorized under the Constitution. The success of such action would depend on the local population and on the international community as a whole.

To conclude, while under public international law there exists a right to unilateral non-colonial secession, Catalonia most likely does not satisfy the required benchmark to claim it. It is one of the cases, where international law is neutral and does neither give the right of secession nor forbids it. This is so because an express recognition of the right to secede could lead to undermining of the existing system of states and the principle of sovereignty. However, Catalonia could become independent despite not having an explicit right to do so. The success of such

attempt would largely depend on the international community and on local citizenry. Nevertheless, perhaps in the case of Catalonia, secession is not the only option as an amicable solution can be found through a political dialogue between the authorities of Spain and their Catalan counterparts. Despite the historical grievances that are still well-remembered by many Catalans, the allegedly flawed political scene, and the economic imbalance between Spain and Catalonia, the solution should be found through the existing legal framework of the Spanish state. The principle of self-determination has a democratic foundation and it does not authorize a breach of the rule of law, the limiting of power via constitution and other institutions that operate on behalf of the people, therefore, it should be applied mindfully. Secession should not be seen as a "quick fix" when problems arise, however, it should be granted when a part of society is unrepresented and their rights are oppressed in their existing state framework.

BIBLIOGRAPHY

Law and Case Law:

1. C.E. (October 31, 1978). Available on: <https://www.boe.es/legislacion/documentos/ConstitucionINGLES.pdf>
2. Declaration of independence, The unanimous Declaration of the thirteen united States of America (July 4, 1776). Available on: <http://americainclass.org/sources/makingrevolution/rebellion/text8/decindep.pdf>
3. ICJ, Advisory Opinion of July 22, 2010. Available on: <http://www.icj-cij.org/files/case-related/141/141-20100722-ADV-01-00-EN.pdf>.
4. Montevideo Convention on the Rights and Duties of States (December 26, 1934)
5. Reference re Secession of Quebec, [1998] 2 S.C.R. 217, In the matter of Section 53 of the Supreme Court Act, R.S.C., 1985, c. S-26. Available on: <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1643/index.do>.
6. Separate Opinion of Judge A.A. Cançado Trindade in the Advisory Opinion on the Declaration of Independence of Kosovo (of 22.07.2010). Available on: <http://www.icj-cij.org/files/case-related/141/141-20100722-ADV-01-08-EN.pdf>
7. Statute of autonomy of Catalonia (1979). Available on: https://web.gencat.cat/en/generalitat/estatut/estatut1979/titol_preliminar/
8. Statute of autonomy of Catalonia, (2006). Available on: https://web.gencat.cat/en/generalitat/estatut/estatut2006/titol_4/
9. STC 114/2017 of October 17. Available on: <https://www.tribunalconstitucional.es/ResolucionesTraducidas/Ley%20referendum%20ENGLISH.pdf>
10. STC 124/2017 of November 8. Available on: <https://www.tribunalconstitucional.es/ResolucionesTraducidas/Ley%20transitoriedad%20ENGLISH.pdf>.
11. The United Nations General Assembly Resolution 2625. *The Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations* (24 October 1970). Available on: <http://www.un-documents.net/a25r2625.htm>
12. UN General Assembly, *International Covenant on Civil and Political Rights* (March 23, 1976). Available on: <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>
13. UN General Assembly, *International Covenant on Economic, Social and Cultural Rights* (January 3, 1976). Available on: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>
14. United Nations, *Charter of the United Nations* (October 24, 1945). Available on: <http://www.un.org/en/sections/un-charter/chapter-i/index.html>

Statistics and Reports:

1. Amnesty International Ltd, "Amnesty International report 2015/16: The State of the world's human rights" (Peter Benenson House, 1, Easton Street, London WC1X 0DW United Kingdom, 2016). Available on: <https://www.amnesty.org/download/Documents/POL1025522016ENGLISH.PDF>
2. Amnesty International Ltd, "Amnesty International report 2016/17: The State of the world's human rights" (Peter Benenson House, 1, Easton Street, London WC1X 0DW United Kingdom, 2017). Available on: <https://www.amnesty.org/download/Documents/POL1048002017ENGLISH.PDF>
3. Amnesty International Ltd, "Amnesty International report 2017/18: The State of the world's human rights" (Peter Benenson House, 1, Easton Street, London WC1X 0DW United Kingdom, 2018). Available on: <https://www.amnesty.org/download/Documents/POL1067002018ENGLISH.PDF>
4. Human Rights Watch, "World report: events of 2015", (Printed in the United States of America, 2016). Available on: https://www.hrw.org/sites/default/files/world_report_download/wr2016_web.pdf
5. Human Rights Watch, "World report: events of 2016", (Printed in the United States of America, 2017). Available on: https://www.hrw.org/sites/default/files/world_report_download/wr2017-web.pdf
6. Statistical Institute of Catalonia, Population density. 2017. Available on: <https://www.idescat.cat/pub/?id=aec&n=249&lang=en>
7. Statistical Institute of Catalonia, Population on 1 January, 1900-2018. Available on: <https://www.idescat.cat/pub/?id=aec&n=245&lang=en>
8. The Economist, "Democracy Index 2017: Free speech under attack"(2018). Available on: http://pages.eiu.com/rs/753-RIQ-438/images/Democracy_Index_2017.pdf

Scholarly sources – books and articles:

1. Anderson, G. "A Post-Millennial Inquiry into the United Nations Law of Self-Determination: A Right to Unilateral Non-Colonial Secession?". *Vanderbilt Journal Of Transnational Law* 49, no. 5: 1183-1254. 2016. Available on: EBSCOhost
2. Berlin, I. "Unilateral Non-Colonial Secessions: An Affirmation of the Right to Self-Determination and a Legal Exception to the Use of Force in International Law". *Electronic Thesis and Dissertation Repository*. 2017. Available on: <https://ir.lib.uwo.ca/etd/4777>
3. Borgen, C. J. "Kosovo's Declaration of Independence: Self-Determination, Secession and Recognition". *American Society of International Law*, Volume: 12, Issue: 2. 2008. Available on: <https://www.asil.org/insights/volume/12/issue/2/kosovos-declaration-independence-self-determination-secession-and>

4. Brown, S. B. "From State-Centric Int'l Law Towards a Positive Int'l Law of Human Rights" in *The Protection of Human Rights in Disintegrating States: A New Challenge*. CHI-KENT L. REV. 203, 1992. Available on: <http://www.kentlaw.edu/faculty/bbrown/classes/HumanRightsSP10/CourseDocs/2FromStateCentric.pdf>
5. Carla, A. "Institutions, Ethno-nationalism, and Sense of Belonging: Comparing Separatist Tendencies in Catalonia and South Tyrol," *European Yearbook of Minority Issues* 11. 2012: 91-122. Available on HEINONLINE
6. Carley, P. "Self-determination: Sovereignty, Territorial Integrity, and the Right to Secession", Report from a roundtable held in conjunction with the U.S. Department of State's Policy Planning staff. United States Institute of Peace, Peaceworks No. 7. 1996. Available on: <https://www.usip.org/sites/default/files/pwks7.pdf>
7. Cassese A. *Self-Determination of Peoples: A Legal Reappraisal*. Cambridge University Press. 2008
8. Crawford, J. "State Practice and International law in relation to Unilateral Secession". University of Cambridge, February 19, 1997. Available on: https://is.muni.cz/el/1422/jaro2006/MP803Z/um/1393966/INTERNATIONAL_LAW_AND_UNILATERAL_SECESSION.pdf
9. Dahlitz, J. and Consortium on International Dispute Resolution, "Secession and International Law : Conflict Avoidance: Regional Appraisals.". New York: United Nations Publications, 2003. Available on EBSOhost
10. Epps, V. "Secession, Stagnation and the State-centered version of International law". *ILSA Journal of International & Comparative Law*, Volume 21: Issue 2, Article 3. Available on: EBSCOhost
11. Friend, C. "Social Contract Theory". *Internet Encyclopedia of Philosophy*. Available on: <https://www.iep.utm.edu/soc-cont/#SH2b>
12. Hannum, H. "Rethinking Self-Determination". *Virginia Journal of International Law* 34, no. 1. Fall 1993: 1-70
13. Hannum, H. "Legal Aspects of Self-Determination", *The Princeton Encyclopedia of self-determination*, Available on: <https://pesd.princeton.edu/?q=node/254>
14. Lynch, A. "Woodrow Wilson and the Principle of 'National Self-Determination': A Reconsideration." *Review of International Studies* 28, no. 2. 2002: 419-436
15. Mermel, K. "The End of the State of Autonomies? An Analysis of the Controversy Surrounding the 2010 Spanish Constitutional Court Ruling on Catalonia's 2006 Statute of Autonomy". 2016. Available on: https://scholar.colorado.edu/cgi/viewcontent.cgi?article=2312&context=honr_theses
16. Milanovic, M. "A Footnote on Secession". 2017. Available on: <https://www.ejiltalk.org/a-footnote-on-secession/>

17. Raic, D. *Statehood and the Law of Self-Determination*. Leiden, Boston: Martinus Nijhoff Publishers. 2002. Available on: EBSCOhost
18. Roya M. H. "Right to Self-Determination in In Re Secession of Quebec". *Maryland Journal of International Law*, Volume 23, Issue 1. 1999. Available on: <http://digitalcommons.law.umaryland.edu/mjil/vol23/iss1/9>
19. Samuel K N Blay, "Territorial Integrity and Political Independence". *Max Planck Encyclopedia of Public International Law*. 2010. Available on: <http://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e1116>
20. Shaw, M. N. "Self Determination and criteria for statehood" in *International Law* 6th edition. Cambridge University Press. 2008
21. Sterio, M. "Self-Determination and Secession Under International Law: The New Framework". *ILSA Journal of International and Comparative Law* Volume 21, Issue 2, 2015. Available on: http://engagedscholarship.csuohio.edu/fac_articles/847
22. Sterio, M. "The Case of Kosovo: Self-Determination, Secession, and Statehood Under International Law". *American Society of International Law*, Vol. 104, *International Law in a Time of Change*. 2010. Available on: JSTOR
23. Van der Vyver, J.D. "Statehood in International Law". *Emory International Law Review* 5, no. 1991: 9- 102. Available on: HEINONLINE
24. Vidmar, J. "Catalonia: The Way Forward is Comparative Constitutional Rather than International Legal Argument". 2017. Available on: <https://www.ejiltalk.org/catalonia-the-way-forward-is-comparative-constitutional-rather-than-international-legal-argument/#more-15633>
25. Worster, W. T. "Law, politics, and the conception of the state in state recognition theory". *Boston University International Law Journal*, Vol. 27:115, 2009. Available on: <http://www.bu.edu/law/journals-archive/international/volume27n1/documents/worster.pdf>
26. Worster, W. T. "Sovereignty: two Competing Theories of State Recognition". 2010. Available on: http://www.exploringgeopolitics.org/publication_worster_william_sovereignty_constitutive_declaratory_statehood_recognition_legal_view_international_law_court_justice_montevideo_genocide_convention/
27. Zadeh, A. Z. "International Law and the Criteria for Statehood: The Sustainability of the Declaratory and Constitutive Theories as the Method for Assessing the Creation and Continued Existence of State". *Tilburg University Faculty of Law Department of International and European Law*. Available on: <http://arno.uvt.nl/show.cgi?fid=121942>
28. Zyberi, G. "Self-determination through the lens of the International Court of Justice". *Netherlands International Law Review* 56, no. 3: 429-453. Cambridge University Press. 2009. Available on: EBSCOhost

Websites and media articles:

1. *Ansa News*, “Catalogna: amministratori sardi riconoscono indipendenza”, October 31, 2017. Last accessed on May 5, 2018 <http://www.cagliaripad.it/265635/catalogna-amministratori-sardi-riconoscono-indipendenza>
2. *BBC*. “Catalans declare independence as Madrid imposes direct rule”, October 27, 2017. Last accessed April 27, 2018 <http://www.bbc.com/news/world-europe-41780116>
3. *BBC*. “Catalonia region profile”, January 4, 2018. Last accessed on March 25, 2018 <http://www.bbc.com/news/world-europe-20345071>
4. *BBC*. ”Catalan referendum: Catalonia has 'won right to statehood””, October 2, 2017. Last accessed May 1, 2018 <http://www.bbc.com/news/world-europe-41463719>
5. Calamur, K. “The Spanish Court Decision That Sparked the Modern Catalan Independence Movement”, October 1, 2017. Last accessed on April 25 <https://www.theatlantic.com/international/archive/2017/10/catalonia-referendum/541611/>
6. *Catalan News*, “Milestones in Catalonia's self-determination before 2012 massive pro-independence demonstration”. Last accessed on April 10, 2018 <http://www.catalannews.com/politics/item/milestones-in-catalonia-s-self-determination-before-2012-massive-pro-independence-demonstration>
7. *Cornell Law School*, “Jus cogens”. Last accessed on May 7, 2018 https://www.law.cornell.edu/wex/jus_cogens
8. Demaria, F. “Why Catalans Want Independence From Spain”, October 4, 2017. Last accessed on May 3, 2018 <https://www.counterpunch.org/2017/10/04/why-catalans-want-independence-from-spain/>
9. Devirupa, M. “A Peaceful, Mature Fight for and Against Independence in Catalonia”, December 31, 2017. Last accessed on May 7, 2018 <https://thewire.in/external-affairs/peaceful-mature-fight-independence-catalonia>
10. Dewan, A., Cotovio, V., Clarke, H. “Catalonia independence referendum: What just happened?”, October 2, 2017. Last accessed May 1, 2018 <https://edition.cnn.com/2017/10/02/europe/catalonia-independence-referendum-explainer/index.html>;
11. Harriet Alexander, James Badcock, “Why does Catalonia want independence from Spain?”, published on October 10, 2017, accessed on March 25, 2018 <https://www.telegraph.co.uk/news/0/does-catalonia-want-independence-spain/>
12. *International Court of Justice*. “How the Court Works”. Last accessed on April 20, 2018 <http://www.icj-cij.org/en/how-the-court-works>
13. Lagerwall, A. “Jus Cogens”, May 29, 2015. Last accessed on May 7, 2018 <http://www.oxfordbibliographies.com/view/document/obo-9780199796953/obo-9780199796953-0124.xml>
14. Lasheras, de Borja F. “Spain faces its worst constitutional crisis since the failed 1981 coup d’état, driven by Brexit-style populism”, September 22, 2017. Last accessed on

http://www.ecfr.eu/article/commentary_three_myths_about_catalonias_independence_movement

15. *LawTeacher*, “Declaratory and constitutive theories of state”, November 2013. Last accessed on March 29 2018 <https://www.lawteacher.net/free-law-essays/constitutional-law/declaratory-and-constitutive-theories-of-state.php>
16. *Radio France*, “Le président de l'Assemblée de Corse reconnaît l'indépendance de la Catalogne”, October 27, 2017. Last accessed on May 5, 2018 https://www.francetvinfo.fr/france/corse/corse/le-president-de-l-assemblee-de-corse-reconnait-l-independance-de-la-catalogne_2440411.html
17. *Reuters*, “Non-secessionist solution to Catalan crisis possible, says ex-leader”, November 13, 2017. Last accessed on May 7, 2018 <https://www.reuters.com/article/us-spain-politics-catalonia/non-secessionist-solution-to-catalan-crisis-possible-says-ex-leader-idUSKBN1DDIDE>
18. Rodriguez, V. “Catalonia”, April 19, 2018. Last accessed April 28, 2018 <https://www.britannica.com/place/Catalonia>
19. Russell, G., Greenfield, P. “Catalonia referendum: 90% voted for independence, say officials – as it happened”, October 2, 2017. Last accessed May 1, 2018 <https://www.theguardian.com/world/live/2017/oct/01/catalan-independence-referendum-spain-catalonia-vote-live>
20. *Russian Reality*, “Abkhazia is ready to consider recognizing the independence of Catalonia”, October, 27, 2017. Last accessed on May 5, 2018 <https://rusreality.com/2017/10/27/abkhazia-is-ready-to-consider-recognizing-the-independence-of-catalonia/>
21. *Spark notes*. “Eastern Europe During the Inter-War Years (1919-1938)”. Last accessed on April 15, 2018 <http://www.sparknotes.com/history/european/interwaryears/section5/>
22. *Sputnik International*, “South Ossetia ready to consider recognition of Catalonia’s independence”, October 28, 2017. Last accessed on May 5, 2018 <https://sputniknews.com/europe/201710281058616071-south-ossetia-catalonia-independence/>
23. Stein, M. B. “Separatism in Canada”, August 12, 2016. Last accessed on April 9, 2018 <http://www.thecanadianencyclopedia.ca/en/article/separatism/>
24. *The Guardian*. “Violence against Catalan voters: what we know so far”, October 1, 2017. Last accessed April 28, 2018 <https://www.theguardian.com/world/2017/oct/01/violence-against-catalan-voters-what-we-know-so-far>
25. *The Independent*. “Spanish court annuls Catalonia's declaration of independence: Ruling comes amid pro-secession protests and strikes across region”, November 8, 2017. Last accessed April 27, 2018 <https://www.independent.co.uk/news/world/europe/catalonia-independence-declaration-spanish-constitutional-court-catalan-spain-madrid-a8043851.html>

26. *Times of India*. “Why Catalonia wants independence from Spain”, October 2, 2017. Last accessed on April 25, 2018 <https://timesofindia.indiatimes.com/world/europe/why-catalonia-wants-independence-from-spain/articleshow/60908650.cms>