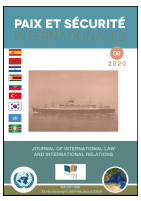
Notas

Reflections on the 'Statement on the Lack of Foundation on International Law of the Independence Referendum that Has Been Convened in Catalonia' on the occasion of its third anniversary



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Abstract: : Three years ago, more than 400 members of the Spanish Association of International Law and International Relations Professors (AEPDIRI from the Spanish) signed the 'Statement on the Lack of Foundation on International Law of the Independence Referendum that Has Been Convened in Catalonia', dated 19 September 2017. With the perspective afforded by hindsight, this article will explore why it was a timely and necessary statement, reflecting the intellectuals' civic responsibility to society, and why the statement's concise content perfectly reflects the truth of contemporary international law.

Keywords: Principle of self-determination of colonial and occupied peoples, principle of sove- reign equality, principle of territorial integrity, separation of territories, remedial secession, inde- pendence referendum, principle of self-organization, rule of law, European Union.

Resumen: . Hace tres años, más de 400 miembros de la Asociación Española de Profesores de Derecho internacional y relaciones internacionales (AEPDIRI) firmaron la "Declaración sobre la falta de fundamentación en el Derecho Internacional del referéndum de independencia que se pretende celebrar en Cataluña", con fecha 19 de septiembre de 2017. Con la perspectiva que regala el paso del tiempo, las líneas siguientes reflexionan por qué fue una declaración oportuna y necesaria, reflejo del compromiso cívico de los intelectuales con la sociedad y por qué su contenido refleja de forma concisa la verdad del derecho internacional contemporáneo.

Palabras clave: Principio de libre determinación de los pueblos coloniales y ocupados, principio de igualdad soberana; principio de integridad territorial; separación de territorios, secesión como remedio, referéndum de independencia, principio de auto organización, Estado de Derecho, Unión Europea.

I. INTRODUCTION

Three years ago, more than 400 members of the Spanish Association of International Law and International Relations Professors (AEPDIRI from the Spanish)2 signed the 'Statement on the Lack of Foundation on International

Law of the Independence Referendum that Has Been Convened in Catalonia', dated 19 September 2017. The text was drafted by a group of renowned professors from the Spanish academy with the aim of underscoring the error of invoking international law to provide a legal basis for Catalan Law 19/2017, on the self-determination referendum. With the perspective afforded by hindsight, I will now offer a few thoughts on what the statement represented, in terms of both the impetus driving the professors who sponsored and signed it (1) and its content (2).

II. A TIMELY AND NECESSARY STATEMENT: INTELLECTUALS' CIVIC RESPONSIBILITY TO SOCIETY

When the statement was drafted, the Catalan Parliament had already passed the laws of 6 and 8 September on the holding of a referendum on self-determination and on the legal and foundational transition to a republic, respectively.3 They had not yet been overturned by the Spanish Constitutional Court,4 although they had been suspended. Based on the facts alone, the Catalan

independence process (known simply as the Procés), launched in 2012, seemed to have reached the final stages of execution of this soft revolution.5 Whether or not these laws (Catalan laws 19/2017 and 20/2017) and the subsequent events promoted by the secessionist leaders – the demonstration of 20 September, the illegal referendum of 1 October, the unilateral declaration of independence of 27 October – were a mere bluff would later be the subject of much debate. Indeed, it was one of the arguments made by the defendants in the trial for the Procés before the Spanish Supreme Court, which ended in conviction on 14 October 2019.6 However, for those who respect the institutions with which our political community was endowed through the adoption of the Spanish Constitution of 1978 and the Catalan Statute of Autonomy of 1979, along with its subsequent reforms, the Catalan laws passed by the parliament of a self-governing region, or 'autonomous community' as they are called in Spain, must be taken at face value. How else? The exercise of power is not a game of poker. In an adult political community, our representatives are defined by the political facts, not the hidden intentions behind them. The entire Procés was politically based on the international norm proclaiming the right of colonial and occupied peoples to self-determination. What would it have meant had Spanish experts in public international law and international relations remained silent in such circumstances? That they were busy navel-gazing? Blind? Unconcerned with civic engagement? Yes, yes and yes. But that is not what happened.

A prominent group of academics of renowned scientific authority decided

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to break the silence, understanding that the role of the university community is also to transfer knowledge to further the common good. That is the meaning of the words 'the undersigning members of the (...) AEPDIRI (...), consider [it] their civic obligation to issue the following statement' (emphasis added) at

the start of the statement. What would be the point of having an academy without the correlative civic duty? In the social sciences, we seem to have trouble understanding this role, which is much clearer in other disciplines closer to the natural sciences, as can be seen in the current research and development of a Covid-19 vaccine, for example. It is certainly pointless to lock oneself away from the world in pursuit of academic publications that serve solely to further one's ego. Anyone wishing to live in an ivory tower, far removed from reality and its indissociable problems, should by all means do so, but they will have grasped nothing about the mission of academics and intellectual life in society. University professors fulfil a public function

that spans several areas (teaching, research, management and knowledge transfer), all of which are linked to a responsibility to the society we live in.

Because we are jurists, words and concepts are essential elements of our work. Just as doctors use a scalpel to open a body and cure it, we use concepts to provide clarity and order, whether in a lawsuit, parliamentary decision- taking, or communication to society at large. Concepts provide clarity, bring us closer to reality. Society has a right to know the truth. That is also the responsibility of the academy, especially jurists.7 That was the purpose of the statement: to highlight the error of basing the referendum sought and ultimately held in Catalonia on international law. Had it not been issued in such critical circumstances as those, the most serious constitutional crisis in the history of Spain's rule-of-law-based democracy, academics would have lost moral power. The initiative of that group of professors does honour to the Spanish academy, setting an example for those of us who come after to follow. By acting as a channel, the AEPDIRI proved up to the task. It was not the first time it had done so. On at least one other occasion, in 2003, a large meeting of international lawyers held at the Autonomous University of Madrid concluded with a statement against the war of aggression in Iraq. The AEPDIRI facilitated the logistics of the signing as well; that time, too, the statement was issued by the signatories, not the association.

The direct purpose of the statement was thus to safeguard scientific truth and, indirectly, help defend the democratic rule of law, the last redoubt to preserve our fundamental rights and freedoms. In that context, other statements were also issued. We were not the first to exercise this civic duty. We were preceded by more than 200 professors of constitutional law, who issued a statement in defence of the Spanish Constitution and the rule of law.8 That statement was followed by another issued by more than 500 professors in defence of the constitutional democracy, signed at the top by the professor and philosopher Fernando Savater.9 Our statement came third. We were followed, finally, by more than 70 professors of philosophy of law, who issued the statement 'No todo Estado es Estado de Derecho' (Not All States Are Governed by the Rule of Law).10 All these statements were subsequently cited in the Supreme Court judgment of 14 October 2019, in the general trial for the Procés.11 They were cited as examples of scholarly literature, which the Court considered to be as valuable as the statement submitted by the defences of two of the accused by some 200 criminal law professors, who saw neither rebellion nor sedition in the events on trial.12

A close reading and comparison of the various statements suggests that

the one considered here was the most politically cautious, albeit concise and scientifically true. In my view, the other statements were more politically incisive, as they directly denounced the attack on the rule of law and the Spanish Constitution that the referendum and separation laws entailed. Our statement sought only to convey knowledge about a scientific truth from our discipline.

Its adoption and signing were undoubtedly very necessary, as witnessed by the reference to it in the Supreme Court judgment of 14 October 2019. Small actions influence social changes. History will bear witness to the signatories' civic commitment to liberal democracy as a political system, that is, the system that brings together the indissoluble triad of the rule of law, respect for human rights and representative democracy, as defined in the treaties on which the Europe we live in is based (the Statute of the Council of Europe, the European Convention on Human Rights, and the Treaty on European Union).

III. CONCISE CONTENT REFLECTING THE TRUTH OF CONTEMPORARY INTERNATIONAL LAW

The statement uses balanced language. From the outset, it refers to the 'errors' of basing the referendum on international law. Errors, falsehoods, lies, failure to reflect reality... all are synonyms in the broadest sense. The statement takes a very cautious and polite tone. By using the term 'errors', it leaves open two possibilities: surreptitious errors – when, despite knowing the truth, one conscientiously seeks to deceive others, that is, one lies – or innocent errors – made out of simple ignorance. It could just as easily have spoken of 'lies'

or 'falsehoods'. Calling the secessionist politicians ignorant (for merely committing an 'error') would be an offence. The authors most likely chose the milder term 'error' out of prudence; not only is it more polite, it is also more inclusive, facilitating endorsement by a larger number of signatories.

In this regard, it is striking that today we speak in terms of truth and errors/lies. But we have to adapt to the times we live in, and today it seems necessary to reintroduce these terms into the academic and political debate. Personally, I find it distasteful, as it means accepting that we no longer live in a social environment in which it can be assumed that there is a minimum consensus on the legal and political presuppositions of our co-existence. But that is because we now live in a context in which postmodernism has already had devastating consequences. According to this philosophical school, everything is subjective and relative, including in the scientific sphere, which is what we are talking about here. Thus, the truth is now what one wants it to be.13 Needless to say, this was the position of the MPs who voted in favour of Catalan Law 19/2017 (hereinafter, the 'Catalan referendum law').

What falsehoods, what 'errors' did the Catalan referendum law contain? To begin with, it stated that the 1966 Human Rights Covenants and the Charter of the United Nations recognize a right to (external) self-determination for any people; that international case law upholds this view; and that this international rule is included in Spanish law through the Spanish Constitution, suggesting that the international law is hierarchically superior to constitutional law.14 All are lies. All are errors. In just six brief points, the statement establishes the essential content of international law on this matter, offering a defence of the assertion made in its title. And it does so with remarkable synthesis and concision. Let us now briefly review its content and the extent to which these statements are true or not.

1.- The principle of self-determination of peoples, recognized by general international law, establishes a right to restore sovereignty for colonial and occupied peoples (Point 1)

This point lays out the current status of general international law concerning the fundamental principle of public international law and a jus cogens or peremptory norm: it refers only to 'the right to independence of those peoples under colonial rule or subject to foreign subjugation, domination or exploitation', as recognized by international case law and the practice and literature of the United Nations. This point refers to the so-called right of external self- determination, which grants access to sovereignty and independence, amongst other permitted forms.

Like all fundamental principles of public international law, the right of self- determination of peoples is a customary norm, adopted by states by consensus and manifested in state practice and the opinio juris, that is, the belief that this practice is required by law. This opinio juris is on display mainly in two famous resolutions from 1960, the Declaration on the Granting of Independence to Colonial Countries and Peoples (General Assembly Resolution 1514 (XV) of 14 December 1960), and 1970, the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations (General Assembly Resolution 2625 (XXV) of 24 October 1970), and in common Article 1 of the two human rights covenants adopted in 1966 by the General Assembly (the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights). Although the texts of these resolutions and treaties offer some information about the norm (the opinio juris cogentis), they do not provide an exhaustive description. To identify the content of a customary norm, it is also necessary to look at state practice.

The positive rule, as established by states, words the attribution of the right to accede to independence (external self-determination) clearly. The subjects of this right are: 'peoples [subject] to alien subjugation, domination and exploitation' (paragraph 1, Resolution 1514 (XV)); 'dependent peoples [...] in order to enable them to exercise peacefully and freely their right to complete independence' (paragraph 4, Resolution

1514 (XV)); 'Trust and Non-Self-Governing Territories or all other territories which have not yet attained independence' (paragraph 5, Resolution 1514 (XV)); and 'Non-Self- Governing and Trust Territories [to] promote the realization of the right to self-determination' (paragraph 3, common Article 1, Covenants). The aim is 'to bring a speedy end to colonialism [...] bearing in mind that subjection of peoples to alien subjugation, domination and exploitation constitutes a violation of the principle, as well as a denial of fundamental human rights' (paragraph 2 of the principle, Resolution 2625 (XXV)).

When the ICJ has had to interpret the jus cogens customary norm of self- determination, it has referred to the aforementioned resolutions and, in one case, to common Article 1 of the Covenants. It has unequivocally concluded that the jus cogens content of the norm was a right to accede to sovereignty and

independence, where applicable, attributed to colonial and occupied peoples and no one else.16

To what extent can we include minorities or a fraction of a state's people in the meaning of a 'people' in the sense of the right to external self-determination? Hardly or not at all. Minorities were excluded from the holders of the right. States expressly granted the right to the peoples of colonial territories and not to minorities in those colonies. The territories were expressly considered as a whole delimited by the colonial borders (uti possidetis juris), not by the colour, race or religion of their people. The people were treated as an accessory of the colonial territory; they were a people because they were living in such-and-such a territory, not due to their race, religion or de facto nationality.17 This was clearly a unanimous interpretation. The colonial territory had a separate legal status and its people as a whole had the right to self-determination because they lived there. Minorities did not have a right to self-determination, or, for instance, today there would be more than 400 African states, rather than just over fifty. The norm established by the states was clear in this regard.

Strictly speaking, what is established is a right to restore the virtual sovereignty lost due to the odious crime of foreign domination and occupation by the metropolis;18 the population of the colonial territory has a right to its territorial integrity, not to separate from the metropolis, of which it is not a part.

To prevent future confusion, going forwards this fundamental principle should be spelt out in full in all texts and manuals and should never be elided.

2. General international law and the supposed right of remedial separation/secession (Point 2)

The second point refers to the oft-discussed right of remedial separation or secession. Although the statement carefully avoids using this expression, the wording clearly suggests that this is what it is referring to. Its wording is very interesting: it states that its existence 'cannot be excluded' based on 'international practice'. At the same time, it meticulously establishes the demanding circumstances that would give rise to this right: 'repeated persecution, or systematic and severe discrimination so as to produce general violations of fundamental human rights'. Based on how the paragraph is worded, it is my understanding that the statement is saying that it would be 'international practice' that would recognize this right of remedial separation or secession. (Were the authors perhaps thinking of general international law? It would seem so, but I cannot tell for sure).

I do not share this position. In my view, there is no legal basis whatsoever to state that the existence of such a right 'cannot be excluded' based on practice. On the contrary, I believe that the possible existence of a right of remedial separation should be ruled out based on the current state of general international law.22 In this regard, I agree with what some amongst us have found, namely: 'General international law has not yet completed the path to recognizing a right of remedial secession for peoples subjected to massive and systematic violations of human rights and IHL, including the internal aspect of self-determination.'23 It thus seems to adopt the same position as the ICJ, suggesting that we are dealing with a case that is not clear enough.24 The Supreme Court of Canada reached the same conclusion in 1998.25

3. Nor do international treaties attribute a human right to sovereignty and independence to infra-state entities (Point 3)

The statement's third point focuses on particular international law on human rights. This was necessary due to the aforementioned references included in the Catalan referendum law to Article 1 of the International

Covenant on Civil and Political Rights and Article 1.2 of the Charter of the United Nations as the basis for holding an independence referendum against the Span

Covenant on Civil and Political Rights and Article 1.2 of the Charter of the United Nations as the basis for holding an independence referendum against the Spanish Constitution. This point of the statement also refers to international case law, most likely due to another assertion made in the Catalan referendum law, namely, that '[i]n recent opinions', the International Court of Justice has defended the evolution of the 'right to decide'.26 The Catalan Law 19/2017 continues, 'The Court notes that the right of peoples to decide has evolved, and that, to counter this evolution, no new rule or custom has arisen at an international level to prohibit these new practices.' This is entirely untrue. In any case, it was one recent advisory opinion, not several: the advisory opinion on Kosovo, which the ICJ delivered in 2010.

Nowhere in that opinion is any mention made of a 'human right of peoples to decide'. On the contrary, the ICJ states exactly the opposite: that it will not examine whether the scope of the right of self-determination has evolved.27 An innocent mistake? I believe it denotes a very low level of knowledge and ethics for a political institution such as the Parliament of Catalonia to make such patently false assertions. However, the statement, ever cautious and polite, does not address these points. It wisely limits itself to stating the concrete truth of contemporary international law on the matter, which can be summarized as follows.

Although the statement does not expressly say so, it must be recalled that there is no hierarchy of sources in international law, but rather a hierarchy of norms. Even if a treaty includes a fundamental principle of international law in one of its articles, it could never change the jus cogens content of that customary norm. That is, the treaty can construct the jus cogens norm in a more or less concrete way, but it cannot contradict its essential content. Therefore, if common Article 1 of the Covenants refers to the right of self-determination of peoples, it can never be understood to do so in a manner contrary to the jus cogens norm of general international law, already clearly delimited in Point 1 of the statement.

Both the resolutions and common Article 1 do include a paragraph providing that '...all people have the right freely to determine, without external interference, their political status and to pursue their economic, social and cultural development, and every State has the duty to respect this right in accordance with the provisions of the Charter' (paragraph 1 of the principle, Resolution 2625 (XXV); paragraph 2, Resolution 1514 (XV); and paragraph 1, common Article 1, 1966 Covenants). However, this paragraph concerns the right to internal self-determination. It was included in all these texts at the initiative of the USSR. The USSR's purpose was to insist that, without a right to emancipation from oppressive capitalist government, no human right could be protected or respected. The initiative was not well received by the capitalist bloc. The two political poles ultimately reached a consensus through the inclusion of a wording that could also be interpreted as a right to democracy, in addition to a right to political independence and territorial integrity. The subjects of this right to internal self-determination were the people of the state as a whole. The interpretation rules leave little room for other interpretations on this point.

It is a mistake to conflate the rule of internal self-determination with the

rule of external self-determination. However, I will not dwell on this point here. For the purposes of this article, it should simply be underscored that neither international human rights treaty law nor any other norm of general international law establishes a human right to decide on self-determination.

4. The principle of self-organization and the right of states to internally transfer sovereignty to infra-state entities (Point 4)

This fourth point refers to the position of general international law on internal constitutional recognition of a right of separation for a state's own territorial communities.

It is a mistake to think that the internal right of separation that some states may grant to a part of their population is based on an international norm that supersedes the principles of territorial unity and integrity. If the UK or Canada – with their flexible constitutions – are able and willing to allow a vote on separation for a part of their population (Scotland or Quebec, respectively), that is up to them. International law respects their right to do it. But it is not a universal model that international law imposes. Likewise, no state can impose its internal notion of the link between democracy and the internal

right of separation on any other state. The management of internal territory is a discretionary competence, protected by the sovereignty and independence principle, a fundamental norm of international law.

Therefore, should a state, such as Canada or the UK, wish to grant a right to secede or separate politically or constitutionally, it is a matter of internal concern. International law respects the sovereignty of all states; how each one is territorially organized is at the discretion of the state itself. The principle of territorial integrity is an inherent right of the state, not a duty.

There is no international duty to allow a vote on separation for part of a state's population. Only in the case of colonial peoples does general international law impose the allowance of a democratic decision on independence or other forms of political sovereignty; in practical terms, this means that self- determination is a jus cogens norm.

In short, the principle of self-organization recognizes the discretionary scope of certain sovereign powers of the state. Territorial organization is one of them. Only the principle of human dignity would limit this territorial organization; this is a very important point, although we will not pursue it further here. Moreover, it should be recalled that the vast majority of states proclaim unity and territorial integrity to be basic principles of their constitutional orders, as noted in the aforementioned case law of both the Spanish Constitutional and Supreme Courts.28

5. The European Union, guarantor of the rule of law and respect for the national and territorial identity of its Member States as established in their constitutions (Point 5)

This second-to-last point, prior to the conclusion, is crucial. The Catalan referendum law made reference to the incorporation of international law into Spanish law, based on Articles 96 and 10.2 of the Spanish Constitution. Not only does international law deny the existence of this right to independence, as we have seen, but European Union law respects the Constitutions of each Member State. The Catalan referendum law moreover makes the mistake, in citing the Spanish Constitution, of failing to refer to Article 95, which establishes a clear hierarchy of the Spanish Constitution above any international treaty. In fact, any international norm incorporated into Spanish law is hierarchically below the Constitution and above a law. The statement does not tiptoe around

this mistake, but rather addresses it clearly and forcefully, referring to the EU law to which all Member States are subject. This is a law that respects the national identity and constitutional and self-governing structures (understood to include territorial integrity) of the Member States.29

Another, equally important aspect of this point is that EU law requires Member States to respect and enforce the rule of law. The measures taken by the central authorities to address the unlawful acts of the Parliament of Catalonia, as well as of the Catalan Government, are not only lawful in accordance with Spanish constitutional, international and European law, but are an obligation imposed by EU law. Note

that the obligation to enforce the rule of law does not refer only to respect for the rule of law in one's own jurisdiction; it also means that no Member State must allow actions in its jurisdiction that undermine the rule of law in another Member State. Belgium, for instance, is clearly in breach of this obligation, and Spain has failed to demand compliance, but that is another matter.

IV. CONCLUSION: POINT 6. THE RIGHT OF SELF-DETERMINATION OF PEOPLES IS NOT APPLICABLE TO CATALONIA NOR DOES IT PROVIDE A LEGAL BASIS FOR THE REFERENDUM AND SECESSIONIST PROCESS

The statement's final point is a clear and powerful conclusion to the preceding ones. It is not true that contemporary positive international law (lex lata) attributes a right to separation to part of the population of a state due to the principle of self-determination of peoples.

The statement's content is concise and perfectly reflects the truth of contemporary international law. The authors and signatories have proved up to the occasion in promoting and adopting it. In the most serious constitutional crisis in the history of Spain's rule-of-law-based democracy, they acted with exemplary civic responsibility in defence of the essential values of the country's liberal democracy, values that are the foundations of a peaceful and just co- existence.

Today, three years after the events of 6 and 8 September 2017, Catalan society remains split in two, with a deep inability for mutual understanding separating the two sides. The clearest sign of this attitude is the refusal of the

pro-secessionists to acknowledge the other side's existence. The disaffection felt by these nationalist citizens towards the Spanish Constitution and the liberal democracy system that governs the European Union runs so deep that it translates to support for a populist ideology that denies the positive rights of all Spanish people, including non-secessionist Catalans, based on the secessionists' mere desires. The upcoming Catalan elections, scheduled for 14 February 2021, will show whether this ideology has lost force or continues along its unpredictable path.

BIBIOGRAPHICAL REFERENCES

AAVV, 'State secession and self-determination in contemporary international law',

Spanish Yearbook of International Law, Nº 22, 2018.

ABELLÁN HONRUBIA, V., 'Sobre el método y los conceptos en Derecho Internacional Público', in Rodríguez Carrión, A.J., and Pérez Vera, E. (eds.), Soberanía del Estado y Derecho internacional – Homenaje al profesor Juan Antonio Carrillo Salcedo, Vol. I, Universidad de Córdoba – Universidad de Sevilla – Universidad de Málaga, Seville, 2005).

ANDRÉS SÁENZ DE SANTA MARÍA, P., 'La libre determinación de los pueblos en la nueva sociedad internacional', Cursos Euromediterráneos Bancaja de Derecho Internacional, Vol. I (1997).

CARRILLO SALCEDO, J.A., 'Sobre el pretendido "derecho a decidir" en Derecho internacional contemporáneo', El Cronista del Estado Social y Democrático de Derecho, No 33, 2013, at 20.

CASSESE, A., Self-determination of peoples: A legal reappraisal Cambridge University Press, Cambridge, 1995.

GARCÍA DEL MURO SOLANS, J., Good Bye, Verdad. Una aproximación a la posverdad,

Milenio, 2019.

MANGAS MARTIN, A., 'La secesión de territorios en un Estado miembro: efectos en el derecho de la Unión Europea',Revista de Derecho de la Unión Europea, No 25, 2013.

MANGAS MARTIN, A., 'Cataluña: ¿no habrá independencia?', El Cronista del Estado

Social y Democrático de Derecho, No 42, 2014, at 55-65.

MARIÑO MENÉNDEZ, F., 'Naciones Unidas y el Derecho de Autodeterminación', in Mariño Menéndez, F. (ed.), Balance y perspectivas de Naciones Unidas en el Cincuentenario de su creacio#n, Universidad Carlos III de Madrid, BOE, Madrid, 1996.

ORIHUELA CALATAYUD, E., 'Does a Right of Remedial Secession Exist under International Law?', Spanish Yearbook of International Law, No 22, 2018.

PONS RÀFOLS, X., Cataluña: Derecho a decidir y Derecho internacional, Reus, Madrid, 2015.

REMIRO BROTÓNS, A., 'Soberanía del Estado, libre determinación de los pueblos y principio democrático', in Mariño Menéndez, F. M. (Ed.), El Derecho Internacional en los albores del siglo XXI. Homenaje al Profesor Juan Manuel Castro-Rial Canosa, Editorial Trotta, Madrid, 2002.

REMIRO BROTÓNS, A., Derecho internacional pu#blico 1. Principios fundamentales, Tecnos, 1982).

REMIRO BROTÓNS, A., et al., Derecho Internacional, Tirant lo Blanch, 2010. REMIRO BROTÓNS, A., 'La independencia como un hecho revolucionario', 34

Revista Electrónica de Estudios Internacionales, 2017.

SOROETA LICERAS, J.F., 'La Opinión consultiva de la Corte Internacional de Justicia sobre Kosovo de 22 de julio de 2010: una interpretación judicial sui generis para un caso que no lo es. Aplicabilidad de la cláusula de salvaguardia de la Resolución 2625 (XXV) o de la "secesión como remedio"', Revista Electrónica de Estudios Internacionales, 2013.

TORROJA MATEU, H., 'Libre determinación de los pueblos versus secesión', Cursos de derecho internacional y relaciones internacionales de Vitoria-Gasteiz 2018, Thomson Reuters Aranzadi, 2019).

ANNEXES STATEMENT ON THE LACK OF FOUNDATION ON INTERNATIONAL LAW OF THE INDEPENDENCE REFERENDUM THAT HAS BEEN CONVENED IN CATALONIA

In light of the errors in invoking International Law to provide a legal foundation for the self-determination referendum (of Catalonia), the undersigning members of the Spanish Association of Professors in International Law and International Relations (AEDPDIRI, in Spanish) consider their civic obligation to issue the following statement:

1. According to the United Nations doctrine as well as international jurisprudence, the International Law related to the self-determination of peoples only allows the right to independence to those peoples under colonial rule or subject to foreign subjugation, domination or exploitation.

2. In view of the international practice, the right to separation from a State by its territorial communities whose ethnic, religious, linguistic or cultural identity is repeatedly persecuted by the National institutions and their peripheral agents or whose members are subject to systematic and severe discrimination in the exercise of their civil and political rights so as to produce general violations of the fundamental human rights of individuals and peoples can not be excluded.

3. Nothing in the 1966 International Covenant on Civil and Political Rights (ICCPR) or in any other treaty on human rights, nor in international jurisprudence, points to the recognition of a right of sub-national territorial communities to pronounce themselves on its Independence and separation from the State.

4. The general norms of International Law do not prohibit that sovereign states, in accordance with the principles of self-organisation, from having in their own legal framework principles and procedures for the separation of their territorial communities. Far from doing so, the vast majority (of the states) proclaim their unity and territorial integrity as the basic principles of their constitutional order.

5. The European Union respects and protects the national identity, and constitutional and self-ruling structures of its States. In addition, EU law demands from them to respect and enforce the rule of law, so that all public authorities are subject to the Constitution, the law and its implementation by the courts.

6. Since Catalonia is not an entity entitled to the right of separation from the State, the right to self-determination cannot constitute the legal basis for consulting its citizens on its independence, as envisaged on the referendum included in the Catalan Parliament 19/2017 law currently suspended by the Spanish Constitutional Court.

DECLARACIÓN SOBRE LA FALTA DE FUNDAMENTACIÓN EN EL DERECHO INTERNACIONAL DEL REFERÉNDUM DE INDEPENDENCIA QUE SE PRETENDE CELEBRAR EN CATALUÑA

Ante los errores en la invocación del Derecho Internacional para dotar de funda- mento jurídico a la ley del referéndum de autodeterminación, los miembros de la Aso- ciación Española de Profesores de Derecho Internacional y Relaciones Internacionales (AEPDIRI) abajo firmantes consideran que es su obligación cívica formular la siguiente declaración:

1. Según la doctrina de las Naciones Unidas y la jurisprudencia internacional, las normas del Derecho Internacional General relativas al derecho de autodeterminación de los pueblos sólo contemplan un derecho a la independencia en el caso de los pueblos de los territorios coloniales o sometidos a subyugación, dominación o explotación extranjeras.

2. A la luz de la práctica internacional, no puede excluirse un derecho de separación del Estado a comunidades territoriales cuya identidad étnica, religiosa, lingüística o cultural es perseguida reiteradamente por las instituciones centrales y sus agentes periféricos, o cuyos miembros son objeto de discriminación grave y sistemática en el ejercicio de sus derechos civiles y políticos, de forma que se produzcan violaciones generalizadas de los derechos humanos fundamentales de los individuos y de los pueblos.

3. Nada en los Pactos Internacionales de 1966, en ningún otro tratado sobre derechos humanos, ni en la jurisprudencia internacional apunta a la consagración de un derecho de las comunidades territoriales infraestatales a pronunciarse sobre la independencia y separación del Estado.

4. Las normas generales del Derecho Internacional no prohíben que los Estados soberanos, atendiendo al principio de autoorganización, dispongan en sus propios ordenamientos jurídicos supuestos y procedimientos de separación de sus comunidades territoriales. La inmensa mayoría, lejos de hacerlo, proclaman la unidad e integridad territorial como principios básicos de su orden constitucional.

5. La Unión Europea respeta y protege la identidad nacional y la estructura constitucional y de autogobierno de sus Estados. Además, el Derecho de la Unión exige de éstos que respeten y hagan respetar el Estado de Derecho, de modo que todos los po- deres públicos se sometan a la Constitución, a las leyes y a su aplicación por los tribunales.

6. Como Cataluña no es una entidad que disfrute de un derecho de separación del Estado reconocido por el Derecho internacional, el derecho de libre determinación no puede constituir el fundamento jurídico para consultar a los ciudadanos sobre su inde- pendencia, como pretende el referéndum previsto en la Ley 19/2017 del Parlament, actualmente suspendida por el Tribunal Constitucional.

References

the statement was drafted by a group of seven full professors of recognized scientific authority: Professors Paz Andrés Sáenz de Santa María (University of Oviedo), Gregorio Garzón Clariana (Autonomous University of Barcelona), Araceli Mangas Martín (Complutense University of Madrid), Xavier Pons Rafols (University of Barcelona),

Ley del Parlamento de Cataluña 19/2017, of 6 September, «del referéndum de autodeterminacio#n» (Official Gazette of the Catalan Government (DOGC) No. 7449A, of 6 September 2017), and Ley del Parlamento de Cataluña 20/2017, of 8 September, denominada «de transitoriedad jurídica y fundacional de la Repu#blica»

References

When deciding to draft the statement, at the 27th AEPDIRI Conference held in Bilbao, on 21 and 22 September 2017, these professors also decided to organize a research seminar on the topic 'State secession and self-determination in contemporary international law', which took place in Alcalá de Henares on 12 and 13 April 2018

he first paragraph of the Explanatory Memorandum of the Law on the Self- Determination Referendum. 'The International Covenants on Civil and Political Rights, and on Economic, Social and Cultural Rights, approved by the United Nations General Assembly on 19 December 1966, ratified and in force in the Kingdom of Spain since 1977—published in Spain's Official Gazette, the BOE, on 30 April 1977—recognise the right of all peoples to self-determination as the first human right. The Spanish Constitution of 1978 establishes, in Article 96, that international treaties ratified by Spain form part of its domestic legislation and, in Article 10.2, establishes that the rules on fundamental rights and public freedoms shall be interpreted in accordance with applicable international treaties on the matter.'

Legal consequences for states of the continued presence of South Africa in Namibia (South-West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion of 21 June 1971, at 31, par. 52; ICJ, Western Sahara, Advisory Opinion of 16 October 1975, at 31-33, par. 54-59, and at 68, par. 162; or ICJ, Advisory Opinion, Kosovo, 2010, doc. cit., at 436, par. 79.

La libre determinación de los pueblos en la nueva sociedad internacional'

Derecho internacional pu#blico 1. Principios fundamentales

'Sobre el método y los conceptos en Derecho Internacional Público

Note that the internal dimension of this principle overlaps with the principle of non-intervention or, at most, for some authors, is in addition to a right to democracy. Consequently, these other concepts and rules can be used to refer to internal self- determination.

Balance y perspectivas de Naciones Unidas en el Cincuentenario de su creación, Ed. Universidad Carlos III de Madrid, BOE, Madrid, 1996, at 85; POnS RÀfOlS, X., Cataluña: Derecho a decidir y Derecho internacional (Reus, Madrid, 2015) at 152-153. Likewise, Professor Juan Soroeta defends the applicability of this exception to the case in SOROetA liCeRAS, J.F., 'La Opinión consultiva de la Corte Internacional de Justicia sobre Kosovo de 22 de julio de 2010: una interpretación judicial sui generis para un caso que no lo es. Aplicabilidad de la cláusula de salvaguardia de la Resolución 2625 (XXV) o de la "secesión como remedio"', REEI (2013), especially at 28.

By Professor Esperanza Orihuela Calatayud, who has studied this question deeply, even analysing states' positions concerning the ICJ's Kosovo opinion (ORiHuelA CAlAtAyuD, E., 'Does a Right of Remedial Secession Exist under International Law?

the ICJ decided not to answer the question of whether the right to self-determination allows a part of a state's population to separate (paragraph 83). See: ICJ, Advisory Opinion, Kosovo, 2010, doc. cit.