

Secession of States and Self-determination in contemporary International Law

An Introduction

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The Seminar ‘Secession of States and self-determination in contemporary International Law’, addressing current issues in Public International Law and organized by the *Asociación Española de Profesores de Derecho Internacional y Relaciones Internacionales* (AEPDIRI) [Spanish Association of Professors of International Law and International Relations], was held at the University of Alcalá on 12 and 13 April 2018. It was directed by professors Carlos Jiménez Piernas and Xavier Pons Rafols, with collaboration by professors Enrique Martínez Pérez and Francisco Pascual Vives on the Organising Committee.

The idea was proposed by the AEPDIRI’s Board of Directors themselves, and the Seminar was announced at the Association’s conference in Bilbao in September 2017, in a political context complicated by the secessionist tensions in Catalonia and the resulting political and territorial crisis of that turbulent autumn. From this perspective, the Seminar largely concentrated on the legal and scientific framework of the ‘Statement on the Lack of Foundation in International Law of the Independence Referendum in Catalonia’, issued by members of AEPDIRI in September 2017 and signed by over three hundred members of the Association.¹

However, rather than embarking on political disquisitions, the Seminar promoters and organizers simply wished to offer a rigorous academic meeting with in-depth debate, meaningful consideration, and analysis of State secession and the principle of self-determination of peoples from the current perspective of Public International Law and Spanish juridical international doctrine. Although the case of Catalonia may have been in the back of our minds, we aimed (and, we think, managed) to distance ourselves from it, to direct the

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¹ See *Revista Española de Derecho Internacional*, Vol. 70, no. 1 (2018), pp. 295-298 [DOI: <http://dx.doi.org/10.17103/redi.70.1.2018.3.03>]; and *Revista Electrónica de Estudios Internacionales*, no. 34 (2017).

presentations, papers and debates towards a strictly legal dialogue that could be of interest outside Spain. This is why the final texts of the proceedings and papers have been presented in English in this special *Ágora* of the *Spanish Yearbook of International Law* [SYbIL].

The Seminar and its various round table discussion groups were designed to articulate these factors and consider in depth many of the problems and international legal aspects involved in State secession and the principle of self-determination of peoples in contemporary International Law. As indicated in the call for papers, we started with the idea that the phenomenon of State secession, in which parts of the territory of an existing State become new independent States, is not new. It has had its moments in history, and secessionist tensions are even building in democratic Member States of the European Union, beyond the processes that came about with the end of the Cold War in the 1990s. Scotland and Catalonia are two obvious examples, but they are not the only ones, and other European Union Members could find themselves engulfed by these tensions according to how these two processes develop. In 2010, the International Court of Justice also issued an advisory opinion on the accordance with International Law of a unilateral declaration of independence, and more recently, in Eastern Europe, secessionist tensions have been revived in Georgia, Crimea and eastern Ukraine in the last few years.

On a related topic, we also considered that the principle of self-determination of peoples in its external dimension has given rise to new statehoods that are not exactly cases of secession, as a territory under colonial domination is considered by International Law to have a legal status that is different from the colonizing State. In any event, as the case of New Caledonia highlights, this principle is still exercised in colonial situations, including in colonies of European Union Member States, but the internal dimension of self-determination is certainly increasingly relevant with respect to its links to human rights and democracy. Many international organizations, such as the United Nations, the Council of Europe and the Organization for Security and Cooperation in Europe, have adopted political approaches, legal instruments and operational activities in all of these dimensions.

The desire to tackle these questions from the Public International Law perspective, in a purely academic, university-level intellectual exercise, led us to design a Seminar with five round table discussion groups that should have a certain internal logic, as we understood it. Therefore, the first-round table was called ‘Content and exercise of self-determination of peoples in the twenty-first century’, and it attempted to update this principle. This first group was moderated by Santiago Torres Bernárdez, former *Greffier* at the International Court of Justice, with speakers Juan Soroeta Licerias (University of the Basque Country), who set out the scope of the principle of self-determination in its external dimension, and Paz Andrés Sáenz de Santamaría (University of Oviedo), who considered the internal dimension of self-

determination. The second-round table, called 'Secession processes in the framework of democratic States', was moderated by Araceli Mangas Martín (*Universidad Complutense de Madrid*). Javier Roldán Barbero (University of Granada) discussed democracy and International Law, and Xavier Pons Rafols (University of Barcelona) examined the scope of the right to political participation in International Law and good international practice on referendums. The third round table discussed the 'Scope of secession as a remedy in International Law' and was moderated by Antonio Remiro Brotons (Autonomous University of Madrid), with participation by Carlos Jiménez Piernas (University of Alcalá) and Esperanza Orihuela Calatayud (University of Murcia), who offered their perspectives on this alleged right to secession-remedy in light of the Kosovo case and the advisory opinion of the International Court of Justice. The fourth round table tackled 'Problems in International Law arising from situations of State secession' and was moderated by Oriol Casanovas y la Rosa (*Universidad Pompeu Fabra*). In this group, Antoni Blanc Altemir (University of Lérida) referred to the circumstances of secession and State secession in the post-Soviet space, and Concepción Escobar Hernández (*Universidad Nacional de Educación a Distancia*) tackled some selected problems related to State secession, such as nationality, membership of international organizations and international responsibility. Finally, the fifth and last round table focused on 'The European Union: secession processes and self-determination of peoples'. This group was moderated by Gregorio Garzón Clariana (Autonomous University of Barcelona), with presentations by José Manuel Sobrino Heredia (University of La Coruña), who examined the legal regime applicable to territories with special status in the European Union and cases pending decolonization, and Luis Pérez-Prat Durbán (*Universidad Pablo de Olavide*), who analyzed the role of the European Union international missions in territories that have experienced secessionist tensions.

This extensive and, in our opinion, comprehensive and coherent programme, was complemented by the various papers accepted by the Scientific Committee for oral presentation in the Seminar. The Scientific Committee comprised Oriol Casanovas y La Rosa (retired professor of Public International Law at the *Universidad Pompeu Fabra*), Gregorio Garzón Clariana (emeritus professor of Public International Law at the Autonomous University of Barcelona), Araceli Mangas Martín (professor of Public International Law at the *Universidad Complutense de Madrid*), Antonio Remiro Brotons (emeritus professor of Public International Law at the Autonomous University of Madrid) and Santiago Torres Bernárdez (former *Greffier* at the International Court of Justice). The Scientific Committee also reviewed the papers in their definitive versions before submitting them for publication.

Diverse circumstances have dictated that not all the discussions and papers presented at the Seminar have finally been published in this special SYbIL *Ágora*, but we would like to thank

all the speakers and contributors once again for their interest, availability, generosity and scrupulous respect for the deadlines established. We would also like to sincerely thank the members of the Scientific Committee, who also kindly agreed to moderate the various Seminar round tables, for their invaluable contribution. We would also like to note our gratitude to the SYbIL's Editorial Board and his Editor-in-Chief, Professor Mariano Aznar, for opening the doors of this yearbook to the written submissions, and to Ms. Hanan Laghrich, assistant to the Editor-in-Chief. The Seminar has also been partially funded by the R+D Project "La Unión Europea ante los Estados fracasados de su vecindario: retos y respuestas desde el Derecho Internacional (II)" (DER2015-63498-C2-2-P). Finally, we would like to express our gratitude for the trust placed in us by AEPDIRI's Board of Directors when they commissioned us to lead and organize the Seminar.

However, we could not end this presentation of the written texts of the discussions and submissions to the Seminar without referring to the intense scientific debate that took place during those two days, which enriched all of the participants. This debate was based on the fact that there are no absolute truths in law, and it is the responsibility of jurists to justify their positions with legal arguments. We understand that the Seminar was not only an intense intellectual exercise, but also an exercise demonstrating the commitment and responsibility of our universities and their academic staff. The AEPDIRI umbrella covers both of these concepts, and the Association has never strayed far from them. It seems exceedingly obvious to us that the university and academia in general should provide knowledge and orientate the society served by the academic institution and its teaching staff, especially when that society finds itself, as it does now, in a situation of crisis, or a confluence of multiple crises, of confusion and great uncertainty. In recent years, other social and political sectors in Spain may not have risen to the significant challenges that we face as a society, but we in universities and wider academia have at least tried to fulfil our responsibilities.