

**Helena TORROJA MATEU**, *La libre Determinación de los Pueblos: ¿un derecho a la independencia para cualquier pueblo?*, Thomson Reuters Aranzadi, Pamplona 2022, 200 pp.

The book *La libre Determinación de los Pueblos: ¿un derecho a la independencia para cualquier pueblo?* [Self-determination of Peoples: A Right to Independence for Any People?] by Dr Helena Torroja Mateu is of great interest.

The importance of this issue in our time, its manifest topicality, is obvious. The author delves into an often passionate and politically charged debate, in which there has been no shortage of academics who, carried away by phobias or phobias, have sustained as what, at best, would be opinions *de lege ferenda*, namely, that the self-determination of peoples, as a principle or peremptory norm of international law, would, under certain circumstances, grant a right to secede to part of a state's population.

The author herself does not start from any preconception in this regard, which would render her work a pamphlet. Instead, she comes to establish the falseness of such assertions by applying a strictly legal method of interpretation to the material that is the subject of her research.

To ensure the clarity, precision, rigour and objectivity of her work and support her conclusions, the author first presents the tools she will use and establishes the concepts underlying each term. This latter point is essential, as the misuse of terminology by different institutions and authors often gives rise to confusion. This confusion is further fuelled by the ambiguity of poorly written texts, which are used exclusively for political purposes.

At the core of the book lies an examination of two rules – the rule of external self-determination and the rule of internal self-determination – which are expressions of the norm or principle of self-determination of peoples. It is thus critical to establish both the content of these rules and the subjects of the rights emanating from them. This the author does by applying a method that is not only legal but, she says, specific to international law. It consists of: 1) considering the sources of the customary rules, mainly, treaties and UN General Assembly resolutions; 2) establishing their content; and 3) examining whether or not this content has been subsequently modified. This final step requires identifying the consent of the states.

To this end, the author examines the elements of international custom, the possible expression of *opinio juris* in new resolutions and the relevant state practice, namely, the response of the parent state and third states at the initial moment of secession as a process, rather than at the final moment of secession as a result.

The conclusion she reaches – quite convincingly – is that, apart from the population of the already constituted state (entitled to the rights arising from both rules), the right to sovereignty and independence, expressive of the rule of external self-determination, extends only to the peoples of colonial territories, the peoples of militarily occupied territories, and the majorities oppressed by segregation or apartheid regimes in Africa. Furthermore, this right must be exercised through a democratic procedure, whilst protecting the right of

resistance, including armed resistance, when the administering or occupying powers of the territory – or the minorities monopolizing power – seek to thwart its enjoyment.

On the other hand, neither of the rules of the principle of self-determination of peoples would protect the claim of a part of the population of a state, constituting a majority in a given territorial area, to secede from it. This holds true even in cases fluidly described as *secession as a remedy* for situations of persistent discrimination or massive and systematic violation of the human rights of that part of the population.

This latter doctrine has often been based on a literal interpretation of the final subparagraph of paragraph 7 of UN General Assembly Resolution 2625 (XXV), isolated from its context, object and purpose, and with no regard at all to the preparatory work involved in its drafting. Hence, the author speaks of a doctrinal *leap into the void*, a sort of invented *lex ad hoc*.

In short, although there can be a right to secede from a state when that state provides for it in its constitutional order, in the international order, the principle of unity and territorial integrity prevails over the alleged right of a part of that state's population, constituting a majority in a part of its territory, to secede, which would require ignoring the fact that the holder of the right to self-determination, both external and internal, is the population of the state *as a whole*.

Secession and law are a *contradictio in terminis*. Secession may be a fact, one that can be analysed through the prism of effectiveness with a view to its recognition, but it would be incompatible with any of the rules of the norm or principle of self-determination. Secession is an act *contra legem* in the constitutional order of a state, which the state can repress, if necessary, through the proportionate use of force and the guarantees of the rule of law. International law, by virtue of the principle of non-intervention in domestic affairs, which is intimately linked to the principle of self-determination of peoples, prohibits third parties – be they states or international organizations – from providing assistance to secessionist processes.

Even in terms of *lege ferenda*, the moral basis for a policy that favours dispossessing the entire population of a state, the people of that state, of their right to self-determination must be rejected.

Professor Torroja's book, which is quite solid, is abundantly annotated and contains a wealth of bibliographical references. It is thus an original work, with a novel approach, that thoroughly covers its subject, reaching interesting conclusions on an issue often tainted by political interests that have turned some scholars into mere activists. It is clarifying and objective, which is not to say that the author refuses to position herself; quite the contrary, as the preceding paragraphs make clear. Its target audience should not be limited to specialists; it is an excellent working tool, stimulating intellectual exchange on an issue too often surrendered to the emotional hemisphere of the human brain.

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Antonio REMIRO BROTONS

Professor Emeritus of Public International Law  
and International Relations,  
Autonomous University of Madrid

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