

**CATALONIA BACKGROUND INFORMATION**  
**[SERIES E / 2017 / 2.1 / EN]**  
**20/04/2017**

## **DOES CATALONIA HAVE THE RIGHT OF SELF-DETERMINATION?**

**Josep Costa**

In 2014, the Spanish Foreign Affairs Ministry drew up a report with the specific aim of denying that Catalonia has the right of self-determination, a right which could legitimize an eventual declaration of independence.<sup>1</sup> This report is based on the premise that only colonial territories have this right. This theory is not new but it contains significant errors and misrepresentations of the facts which we shall look at now.

In international law self-determination is the right of “all peoples” to “freely determine their political status and freely pursue their economic, social, and cultural development”.<sup>2</sup> This definition seems very clear but it has not prevented long debates about who exactly the subjects of this right are, what its scope is, and how it is exercised.

### **The theory of the colonies**

---

The easiest way to avoid recognizing this right to self-determination or limiting its scope has typically been that of refusing to accept that those citizens claiming this right are in fact a “people”. The position of the Spanish government in their report is that, outside of a colonial context, “people” means the people or citizens residing in a territory within an existing state. The aim of this argument is to say that the right of self-determination is a right linked to the sovereignty of a state.

---

<sup>1</sup>Report “Sobre la eventual declaración unilateral de independencia de Cataluña y el Derecho Internacional” [Regarding a declaration of independence by Catalonia and international law]. [Consulted in March 2017]

([http://www.exteriores.gob.es/Portal/es/SalaDePrensa/Actualidad/Paginas/Articulos/20140517\\_ACTUALIDAD\\_1.aspx](http://www.exteriores.gob.es/Portal/es/SalaDePrensa/Actualidad/Paginas/Articulos/20140517_ACTUALIDAD_1.aspx)). A year later, the Instituto Elcano published a paper by the Head of Legal Advice of the Ministry, José Martín y Pérez de Nanclares, which reproduced parts of this report. [Consulted in March 2017]. ([http://www.realinstitutoelcano.org/wps/wcm/connect/bb469e0049f77f9298de9e207bacc4c/MartinPerezDeNanclares\\_reflexiones\\_juridicas\\_independencia\\_Catalunya.pdf?MOD=AJPERES&CACHEID=bb469e0049f77f9298de9e207bacc4c](http://www.realinstitutoelcano.org/wps/wcm/connect/bb469e0049f77f9298de9e207bacc4c/MartinPerezDeNanclares_reflexiones_juridicas_independencia_Catalunya.pdf?MOD=AJPERES&CACHEID=bb469e0049f77f9298de9e207bacc4c)).

<sup>2</sup>“International Covenant on Civil and Political Rights” [Consulted in March 2017] (<http://www.ohchr.org/SP/ProfessionalInterest/Pages/CCPR.aspx>)

To support this thesis, the authors of the text quote the famous United Nations (UN) resolution 2625 (regarding general principles of international law)<sup>3</sup> and, specifically, the paragraph referring to the safeguard of the political unity and territorial integrity of existing states. Based on this clause, and other declarations and resolutions, it is argued that the principle of territorial integrity always prevails over the right to self-determination, except in the cases of colonies and non-self-governing territories.

However, the fact is that these arguments are unfounded. In fact, the International Court of Justice stated in its well-known ruling on the independence of Kosovo that the principle of territorial integrity only applies to relationships between states.<sup>4</sup> Hence, there would be no conflict between the two principles of self-determination and territorial integrity if it were a state-less people who claimed the right to self-determination.

Furthermore, resolution 2625 conditions political unity and territorial integrity of states to their respect for the right of self-determination and the principle of equal rights, a part of the resolution which, curiously, the Spanish government ignored when they drew up their report. This means that the unity of all existing states is not protected with this decision, rather only the unity of those which have “a government representing the whole people belonging to the territory” without distinction of any kind.<sup>5</sup>

## The theory of internal self-determination

---

We can see, therefore, that international law does not say that only colonial territories have the right to self—determination. It is clear that it is a right held by all peoples, although the definition of a ‘people’ is unclear. What makes colonial territories different is that they have the direct right of secession which is not the same as the right to self-determination. Other peoples are not denied the right to self-determination - international law merely states that preferably this should be internal. That is to say, it should be exercised preferably within the framework of a state representing all its population.

In other words, the political unity and territorial integrity of all states is not protected as the Spanish government’s report implies, but only the unity and integrity of those states which respect the right to self-determination and have a representative and fair government. Obviously, a colonial territory is neither free nor exercises self-determination and, for this reason, its right of secession is not open to doubt. In other cases, though, it can be interpreted that a people do not have the right of secession if the state to which they belong respects their right to self-determination under the

---

<sup>3</sup> “Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations”. [Consulted March 2017] ([http://www.un.org/es/comun/docs/?symbol=A/RES/2625\(XXV\)&Lang=S&Area=RESOLUTION](http://www.un.org/es/comun/docs/?symbol=A/RES/2625(XXV)&Lang=S&Area=RESOLUTION)).

<sup>4</sup> Accordance with international law of the unilateral declaration of independence in respect of Kosovo (Request for Advisory Opinion). [Consulted March 2017] (<http://www.icj-cij.org/docket/index.php?p1=3&p2=4&case=141&p3=4>)

<sup>5</sup> Resolution 2625 originally referred to reasons of “race, creed or colour”. However, this principle was updated to “without distinction of any kind” with resolution 50/6 approved during the 50<sup>th</sup> anniversary of the UN. [Consulted March 2017] (<http://www.un.org/es/comun/docs/?symbol=A/RES/50/6&Lang=S>).

understanding that exercising this right does not affect any territorial boundaries. For this case to apply, we must have a democratic government which represents the wishes of all the state's population, of all its peoples. This is what is known as internal self-determination.

## **The relationship between self-determination and secession**

---

The right to self-determination is not always linked to secession. Secession is merely one more way of exercising this right – but not even the main way. In comparison to what is known as internal self-determination, secession is external self-determination. The right of secession is neither prohibited in general, nor restricted to colonial territories. In fact, the International Court of Justice – in the aforementioned ruling – states that in accordance with custom (one of the principal bases of international law), secession is not forbidden. This consolidates the theory that secession is admissible when internal self-determination is not possible or has failed.

Some consider that if a state is a formal democracy, this is sufficient reason to deny the right of secession of any part of its territory. However, this interpretation is too strict. Self-determination requires that a people be free in the sense of being able to decide about their political status and to pursue their economic, social and cultural development. They are not free to do this, though, if they are victims of discrimination or if they represent a permanent minority which cannot govern themselves nor become what they want to be.

To sum up, the legitimacy of a people's secession depends on whether this people has the right to self-determination within their actual state. This is the interpretation of international law defended by the well-known ruling by the Supreme Court of Canada regarding the secession of Quebec.<sup>6</sup> This ruling does not deny the condition of Quebecers being “a people” nor their right to self-determination. On the contrary, it concludes that the Canadian constitutional system allows for the exercising of this right and therefore Quebec cannot invoke the right to self-determination to secede unilaterally.

## **Does Catalonia have the right to self-determination?**

---

Despite the great efforts by the Spanish establishment and, in particular, the Constitutional Court, to refuse to accept that Catalonia is a nation or has any sovereignty characteristics, the fact is that “the people of Catalonia” is recognized as a distinct political collective. The Spanish Constitution itself refers to the aim of protecting all “the peoples of Spain” in the exercising of their human rights, cultures and traditions, languages and institutions. In a similar way, the Catalan Statute of Autonomy defines Catalonia as a “nationality” and states that the powers of the Catalan public institutions emanate directly from the Catalan people.

---

<sup>6</sup>“Reference re Secession of Quebec”. [Consulted March 2017] (<https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1643/index.do>)

It is also important to mention the different resolutions approved by the Catalan Parliament which solemnly reclaim the Catalan people's right to self-determination – for example, the resolutions passed in 1989, 1998, 2010, and 2011. These decisions have never been impugned and, according to the most recent doctrines of the Spanish Constitutional Court, are susceptible of having political and legal effects.

Seen from this perspective, the question is not whether Catalonia is a people, but rather what it means to be one. It is not a case of whether Catalonia has the right to self-determination either, but rather how can they exercise this right. In this sense, it is worth remembering that the Spanish Constitution states that the State is indivisible and links the guarantee to self-government of nationalities such as Catalonia to this, within the same provision. It does not take much to see a parallelism with resolution 2625, in the sense of connecting unity with respect for the internal self-determination of the peoples of Spain. For this reason, we can say that it is the Spanish state which must prove that it respects and guarantees how to fit the wishes of the Catalan people within the current constitutional framework.

### The reasons behind the failure of the internal self-determination of Catalonia within Spain

---

Does Spain possess a fully representative government which treats Catalan citizens with equal consideration and respect? Does the Spanish institutional framework substantially reflect the wishes of the majority of Catalans? The fact that the territorial fabric of the state has been a bone of contention in all modern constituent processes and a permanent source of political dissatisfaction in both democratic and non-democratic periods, offers a clue regarding the answers to these questions.

It seems like Spain is not, nor does it want to be, a state which represents, governs, and protects equally all the peoples which make it up as promised in 1978's Constitution. The rigidity of the Constitution and an arbitrary and restrictive reading of it, taken together with a structural marginalization of Catalonia's aims, impede the Catalan people from exercising their right to internal self-determination. This argument can be divided into three parts: self-government, representation and inclusivity, and the possibilities for expression.

Regarding questions of self-government, the political pact which enabled the Spanish Constitution to be approved in 1978, with the active participation of political 'catalanism', lasted little beyond two years. The territorial model which emerged from that constituent process was redirected after the failed coup d'état in Spain in 1981. Ever since then it has been shaped by the Spanish establishment and state institutions. Catalonia's dissatisfaction with this situation eventually led to the drawing up of a new Statute of Autonomy in 2006. This was approved in the Catalan Parliament and then in the Spanish Parliament too after some changes and cuts to its powers. It was then passed by referendum in Catalonia. However, the Spanish Constitutional Court rewrote or overturned many of its articles in 2010, which basically curtailed the Statute, thus cutting short this precarious reconstitution of the Constitutional pact. In fact, 2010's ruling left Catalonia with less real and effective

power (i.e. with fewer guarantees of self-government), than before the Statute had been reformed.

The representation of Catalans within state bodies does not correspond to the demographics of Catalonia or to its social and political dynamism. The Supreme Court of Canada gave the example of Quebecers heading different federal institutions to show their representative character. This would not be possible in Spain. None of the main powers and institutions in Spain has been headed by Catalans for almost 150 years. At lower levels, this under-representation is not only seen clearly but the list of reasons why Catalans feel excluded, discriminated, mistreated, or even persecuted by Spanish institutions would be endless.

More recently, and especially since the Constitutional Court ruling on the Statute – a ruling rejected by a 86% of the Catalan Parliament – there have been initiatives trying to find a solution for the demands for self-determination in Catalonia. So far the Spanish institutions and establishment have refused to study any of these proposals. Quite the opposite, they have actually persecuted judicially the basic expression of political will by Catalans; a will expressed either through their elected representatives or through tools of direct democracy such as a referendum.

### **Conclusion: Does Catalonia have the right of secession?**

---

Given all the above-mentioned, we can conclude that Catalonia could legitimately appeal to the right to self-determination to declare independence – justifying this argument by the fact that its political status is an imposed one and that it cannot develop itself freely within Spain.

The debate regarding the Catalan issue has been based on these arguments for some time, although it is not usually expressed as a question of internal self-determination vs. secession.

Having said that, it is difficult to imagine a situation with more arguments in favour of external self-determination in any present-day western democracy.

#### **Josep Costa**

Lawyer and associate professor of Political Theory at the UPF University in Barcelona.