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CATALAN INDEPENDENCE IN THE PERSPECTIVE OF INTERNATIONAL LAW

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ABSTRACT

In the modern international system, state recognition is given much importance due to the issues relating to statehood. The recognition of states is a legal issue associated with international law. According to the international law, there are traditional and modern criteria to be considered when giving recognition to states. An entity has to be considered as a State in the international system if those criteria are satisfied. The objective of this study is to find out whether Catalonia can be identified as a state in the international system applying the statehood criteria in to the case of Catalonia. This research is a qualitative research based on secondary data. The data analysis procedure is done through the case study method. The case that is used in this study is Catalonia which unilaterally declared independence recently despite the objections of Spain and the international community. In analyzing the case, the statehood criteria are applied and assessed to confirm whether Catalonia fulfills those criteria in order to be successfully declaring the independence. While getting in to this conclusion it is evident that Catalonia did not fully satisfy the international law provisions and statehood criteria regarding statehood, while Spain strongly disagreed the self-declared independence stating that it is an illegal declaration of independence. According to the findings, it is evident that Catalonia does not fulfill the criteria mentioned in the Montevideo Convention to be identified as an independent state.

KEYWORDS- Recognition of States, International Law, Catalonia, Statehood, Independence

INTRODUCTION

The concept of statehood is very subjective. Different people hold different ideas about as to what is a state. While some states give recognition to states, other states are reluctant to give recognition due to many political reasons. International recognition is immensely important to survive in the world.

Therefore, states strive to achieve recognition among the international community since states find that it's best to interact with others in the international system than being isolated. State recognition is broadly perceived to be a political issue with legal consequences. Though giving recognition to states should be made solely based on international law and legal perspective, in the contemporary international system it has become more political and policy based. In order for a state to be functional there should be at least some kind of recognition from other states in the

world. Thus states give practice to customs, interstate negotiations and produce treaties.

Recognition of states can be done expressly or impliedly. By now recognition of states has become a very debatable topic in the international law. This is because giving recognition to states does not solely depend on international law. It is always connected with the foreign policy objectives of other states in the world. This means even though a state is given de jure recognition or recognition by law, some states in the international arena will not be willing to carry on relations with that state. This includes not having political, economic and most importantly diplomatic relations with that particular state. This emphasizes that the way states handle their foreign policies can influence another state's recognition in the international system. Thus, this can be identified as de facto recognition which means recognizing a state factually. Therefore it is important for a state to

achieve both de facto and de jure recognition in the international arena. In addition to that the most important two theories in giving recognition to states are the constitutive and declaratory theories which play a major role in granting international recognition.

“State is a complete association of free men, joined together for the enjoyment of rights and for their common interest”

-Hugo Grotius-

The states in the international community have two interests. One is national interests and the other is international interests. Every state in its full potential tries to protect its national interests. Therefore it is necessary to identify the traditional and other additional criteria which make an entity, a state in the international arena. “The State is an association of a considerable number of men living within a definite territory, constituted in fact as a political society and subject to the supreme authority of a sovereign, who has the power, ability and means to maintain the political organization of the association, with the assistance of the law, and to regulate and protect the rights of the members, to conduct relations with other states and to assume responsibility for its acts.”

In October 10, 2017, Carles Puigdemont, the President of Catalonia gave a speech following the referendum on October 1, 2017 where the result showed that more than 90% of the voters chose to leave Spain. According to his speech, after the referendum, Catalonia has earned the right to be an independent state where the people have determined that Catalonia should become an independent state in the form of a republic.” According to Article 4(4) of Catalonia’s Law on the Self-determination Referendum, gives the Catalan parliament the right to declare independence. This unclear statement has spurred reactions from the Spanish government demanding clarification and threatening to invoke Article 155 of the Constitution which gives the government broad powers to deal with a Self-governing Community upon approval of an overall majority of the Senate. While the tension between the region of Catalonia and Spain has increased tremendously, the situation also raises the question of whether secession through a unilateral declaration of independence is legitimate under international law.

OBJECTIVES

The main objective of this study is to find out whether Catalonia can be granted statehood as an independent state from Spain. This objective is to be achieved through applying the statehood criteria in to the case of Catalonia. While achieving the main objective, other objectives such as determining the factors which hinder the Catalonian independence and what steps can be taken to make Catalonia to be identified as an independence state too will be discussed.

CONCEPTUAL FRAMEWORK

A. De Jure recognition

De jure recognition is when an entity is legally fully considered as a state fulfilling all the necessary legal criteria. This recognition leads to extensive relations in many ways. De jure recognition include,

- 1) The establishment of diplomatic relations with the recognized state.
- 2) The participation of the recognized state in international conferences.
- 3) The right to be a part of international conventions and agreements.
- 4) Respect and recognition for the judicial and administrative organizations of the recognized state by the existing states.

B. De Facto recognition

De facto is the current position of a state and it is imperfect. This recognition does not include exchange of diplomats and establishing diplomatic missions. Rather the states are eager to get their recognition fulfilled getting the de jure recognition at this stage. According to scholars, this period of recognition involves uncertainty. As an instance, Soviet Russia was considered as a de facto state in 1921 and it was only in 1942 Soviet Russia was regarded as a state with regard to de jure recognition.

METHODOLOGY

The study is based on qualitative research which is aimed at gathering in-depth understanding towards the discussed phenomenon. A number of secondary sources such as books, journals, articles and news reports were used. The data analysis procedure is done in the case study method. Case studies are analyses of persons, events, decisions, periods, projects, policies and institutions which are studied holistically by one or many methods. The case study method used in this study is the descriptive case study method which is used to get an in depth analysis of the particular case.

DATA PRESENTATION AND ANALYSIS

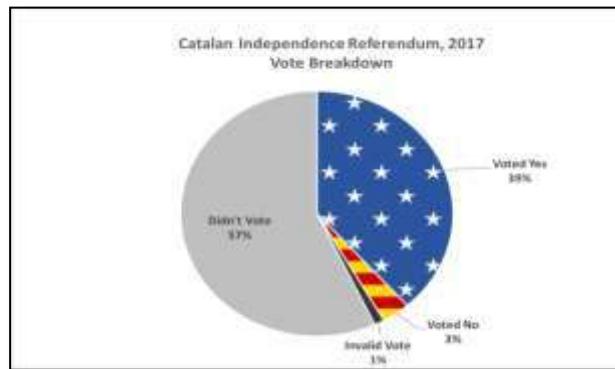
Catalonia is a part of Spain where there is a regional government given the power through the Spanish constitution. The Catalonian regional president, Carles Puigdemont, mentions his determination to declare independence from Spain after a unilateral referendum voted for Catalonia to become a separate state. The Spanish government is adamant that he cannot and the country's constitutional court ordered the referendum to be suspended last month. Puigdemont argues his government has been left with no choice but to proceed unilaterally as repeated attempts to discuss the matter with the Madrid government have been ignored. He also says the referendum results give him a clear mandate. Yet this is totally against the Spanish constitution. The constitution is based on the indissoluble unity of the Spanish nation, the common and indivisible homeland of all Spaniards; it recognizes and guarantees the right to self-

government of the nationalities and regions of which it is composed and the solidarity among them all.

In order to find out whether Catalonia has the ability to be declared as an independent state, the

statehood criteria should be applied to the case study of Catalonia as mentioned in the Montevideo Convention.

Figure: 01



Source: Instituto Nacional de Estadística

Statehood criteria

The word “statehood” is heard the Montevideo Convention on rights and Duties of States come in to mind of any international relations scholar. Montevideo Convention puts down the basic criteria for statehood.

“The state as a person of international law should possess the following qualifications:

- A. A permanent population
 - B. A defined territory
 - C. A government
 - D. Capacity to enter into relations with other states”
- Article 1 Montevideo Convention 1933-

A. Permanent Population

This criterion is very important in determining the statehood. Permanent population can be identified as the collection of individuals of both sexes who live together as a community despite the fact that they

may differ in race, religion and in color. There is no specific number of people to be acknowledged for a state to be considered as a state. Yet the absence of population for a certain period takes away the status of a state. According to 2017 statistics Catalonia comprises of 7,496,276 populations out of the 46,528,024 population of Spain which amounts to 16.1% of the total Spanish population. Catalonia consists of four provinces namely Barcelona, 5,533,459 populations, Girona, 742,728 populations, Lleida, 427,833 populations and Tarragona 792,256 population. This population has a distinct language and culture from that of the Spanish. At present, a little over 60% of Catalans were born in Catalonia, 20% were born in other communities in the State and approximately 15% are of foreign origin. One out of three Catalans is between 20 and 39 years of age, the largest population group.

Figure: 02

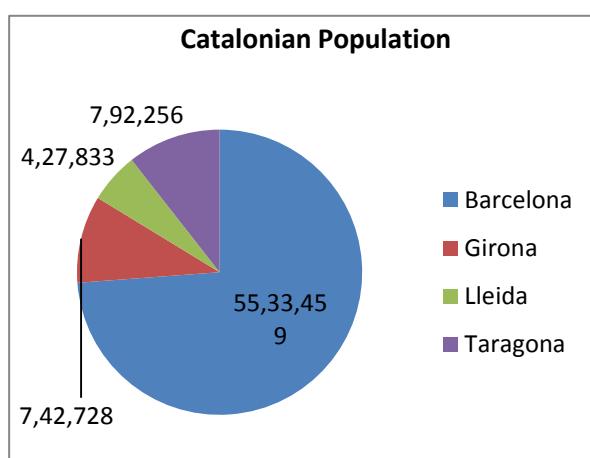
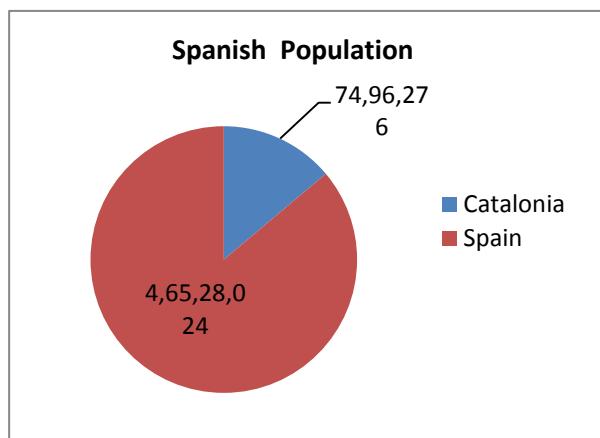


Figure: 03

Therefore it can be identified as Catalonia having a permanent population fulfilling one of the main criteria of the Montevideo Convention.

B. Defined Territory

State is a territorial entity. State territory is under the exclusive and complete authority of one single state. The authority exercised by one state over its territory is known as the territorial supremacy. This is a vital part of state formation and state sovereignty. As in population, there is no minimum area of territory that requires to be fulfilled to be considered as a state. Also claims over territories cannot affect the existence of a state. Yet there has to be a reasonably stable political community. For example, Israel was considered as a state despite the issues over her borders. A state owns its own air, naval and land space. In addition to that the mobile objects such as ships and air crafts too fall under the category of state territory or state jurisdiction.

Catalonia is a self-ruling community in Spain on the northeastern extremity of the Iberian Peninsula with a surface area of 32,107 square kilometers Catalonia consists of four provinces namely Barcelona, Girona, Lleida, and Tarragona. The capital and largest city is Barcelona and it is the second most populated city in Spain and has a huge impact on Spanish economy. It is bordered by France and Andorra to the north, the Mediterranean Sea to the east, and the Spanish autonomous communities of Aragon to the west and Valencia to the south. The official languages are Catalan, Spanish, and the Aranese dialect of Occitan. Likewise it can be argued that since Catalonia has a defined territory if it completes the other criteria. Yet Catalonia does not have their own air space or naval space as suggested by the international law. Therefore the issue regarding defined territory is quite unpredictable.

C. Government

A government of a state consists of executive, legislature and judiciary. This is the best example for a stable political community. Unless all these three components are completed, it won't be considered as a state. A government should have effective control over the citizens of the state. Otherwise the state

fails, riots may take place tarnishing the image of that particular state in the international arena. For instance Libya can be shown.

This can be identified as the most crucial part of this Catalonian issue. Catalonia does have a regional government which already enjoys considerable freedom, running its own police and exercising much control over health and education. Still, taxes, foreign affairs, defense, ports, airports and trains are in the hands of Spain's government in Madrid. Therefore it cannot be identified as a separate state which can rule alone, because the separate regional government powers are given to Catalonia by the Spanish government statute making Catalonia more binding under the statute of Spain.

D. Competence to assume in to relations with other states

Ability to enter in to relations with other states can be identified as independence. This is the decisive criteria for statehood. Foreign relations with other actors in the international system are a criterion for state formulation. A state cannot exist in the international system without its relations with other countries. In contrary in the contemporary world it is visible that states enter in to relations even when they do not have a defined territory or a population. Therefore it can be said that state foreign relations is a prerequisite of state formulation rather than a criterion for state formulation as in the case of Somalia. Most importantly this allows the states to enter in to relations by their free will in to international organizations such as the United Nations and World Health Organization.

Catalonia accounts for nearly a fifth of Spain's economy, and leads all regions in producing 25% of the country's exports. It can be identified as the power house of Spain. It contributes much more in taxes (21% of the country's total) than it gets back from the government. Independence supporters have seized on the inequity, arguing that stopping transfers to Madrid would turn Catalonia's budget deficit into a surplus. Catalonia has a proven record of attracting investment, with nearly a third of all foreign companies in Spain choosing the regional capital of

Barcelona as their base. Volkswagen (VLKAY) and Nissan (NSANF), for example, both have plants near Barcelona.

But there are issues regarding the European Union membership if Catalonia considers itself as an independent state. If Catalonia was forced to independently apply for EU membership, it would have to convince all of the bloc's current members to agree, including Spain. They believe that getting EU membership will be difficult to Catalonia. Dropping out of bloc would likely raise the cost of exporting goods produced in Catalonia to EU members and other nations.

In addition to the traditional statehood criteria as mentioned in the Montevideo convention, the additional statehood criteria too needs to be satisfied.

E. Independence

Without freedom or independence a state cannot enter in to relations with the world. Crawford describes freedom as the main criteria for statehood. Independence of a state should prove that it can enter in to relations with the world independently emphasizing on the fact that it can exist as a separate entity in the world. An independent state consists of two basic characteristics.

- 1) Not being subject to the authority of any other state.
- 2) Separate existence of an entity within reasonably

Crawford further states that the independence of a state is of two folds. They are formal independence and actual independence.

In applying this to the case of Catalonia it can be identified that Catalonia is not actually independent as it is a part of Spain under the Spanish constitution given the power as a regional government for the convenience of ruling. It is indicated in the Article 155 of the 1978 Constitution of Spain, that if a regional government "doesn't comply with the obligations of the Constitution or other laws it imposes, or acts in a way that seriously undermines the interests of Spain", the national government can ask the Senate to vote on the use of the measure. The Constitution states that an absolute majority must approve the article's use. If this happens, the national government may adopt the "necessary methods" to force a regional government to comply in order to protect "said interests". Article 155 allows the national government to take over a regional government, including its finances and police. Therefore Catalonia is not an independent state.

F. Sovereignty

The most important criterion for statehood is sovereignty. According to Crawford a state cannot exist without sovereignty. State sovereignty can be defined as the evolving relationship between the state and civil society or the political authority and community. The relationship with these two factors is essential to maintain sovereignty and to be considered as a state in the international system. Catalonia can be identified as an entity which has

sovereignty as it has a good relationship between its citizens and each of its ruling entities, the parliament and the police. Catalonia also has its own power to collect taxation. Therefore Catalonia can be identified as an entity which has sovereignty, yet it is not sufficient to be identified as a state in the international system.

G. Violation of international law

A new state in the international system should not violate the international law in order to get the title as a "State." If a situation is connected with unlawful force and coercion then even if the existence of that state is very important in the international arena, the other states will not accept that entity as a state. Some believe that this should be the only and most important criteria for statehood. Actually Catalonia declared independence from a referendum which was held in October 2017. Spanish government and the European Commission argue that the vote is simply illegal, as Catalonia is part of Spain given regional power through the Constitution of Spain. Therefore they considered the unanimous declaration of independence as a violation of law. Likewise it can be argued that since Catalonia declared independence violating the law, it cannot be accepted as an independent state.

H. Self-determination

Equal rights and self-determination of people are protected by the UN preamble. The right to determination made lots of colonies to claim and gain their statehood. This actually made status to get the statehood title even without fulfilling the statehood criteria. Spain's refusal to accept the possibility of Catalan independence manifestly negates the very idea of self-determination. This position essentially denies self-determination is an inherent right by surrendering all power to the host state. If applied globally, this principle would sanction the immutability of borders, and sentence millions of people across the world to remain permanently trapped under the jurisdiction of governments that they do not recognize. Thus the Catalans right to self-determination is barred by the Spanish constitution itself. This is a much argued scenario as a state has to have the consent of the host state in order to be identified as an independent state. Spain being the host state of Catalonia doesn't give the consent to secede from Spain as it is against the constitution. Yet it is arguable because, when a state needs to be independent it is outrageous to get the consent of the host state, because as long as the state fulfills the international law and the criteria of the Montevideo convention, then that entity has to be given the title of a state.

CONCLUSION

After analyzing all the facts regarding the Catalonian statehood, it can be entered in to the conclusion that Catalonia does not have the ability to be declared as an individual estate in the international system as it does not fully fill all the 4 criteria of statehood as mentioned in the Montevideo

Convention. Catalonia doesn't have a specific territory as it is a part of Spain and also Catalonia does not have a ruling separate independent government as the government which is already there is instituted by the Spanish government, making Catalonia more binding under the Spanish constitution. Also with regard to the additional statehood criteria, Catalonia does not have independence and the right to self-determination while there are violations of law as they unanimously declared independence through a referendum without the consent of the host state. Due to these reasons it can be identified that Catalonia is not an independent state, but a region under the Spanish constitution.

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