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# Legal and political aspects of European secession movements - What are the lawful mechanisms for secession and creating a new state?

BACHELOR THESIS

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I declare that this thesis is my own work, and that all references to, or quotations from, the work of others are fully and correctly cited.

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RIGA, 2023

## **ABSTRACT**

Since the fall of Communism in Europe in the 1990's, no new state in Europe has emerged. While the 2008 Kosovo Declaration of Independence, would suggest otherwise, the statehood of Kosovo is a still debated topic, as the state of Kosovo lacks the full support of International recognition from the International community. International Law, among other things, has as its main goal, to protect the interests of states. Sovereignty and territorial integrity, are some of these examples. This thesis aims to examine how the world, where International Law seeks to protect the interests of the state, lacks legal mechanisms for pro-independence movements. This thesis examines International Law and the secession movements in the British Isles and the Iberian Peninsula. With further analysis of the actions taken by the United Kingdom and Spain in regards to Scottish and Catalan independence movements, and the legal mechanisms for Scotland and Catalonia to seek their independence. While the legitimacy of the secession movement is important, due to the political nature of International recognition and International law protecting the interests of states, the state-building process is a difficult task, where even a legitimate secession with the consent of the parent state, can still be not enough to become a member of the International community.

**KEY WORDS:** Secession, Independence, State, Nation, Scotland, Catalonia, International recognition, Self-determination.

## SUMMARY

This thesis sets out to test the hypothesis that, while international law provides the right to self-determination, first and foremost, international law protects the interests of an already independent state. And to answer the question: “What are the legal mechanisms for Scotland and Catalonia to secede from the UK and Spain?”.

The thesis starts by examining what exactly is a state and nation. While dictionary definitions and other academic fields are examined, from a strictly legal point of view, the state is defined in the Montevideo Convention Article 1 as a checklist of conditions needed for statehood. These conditions are defined as territory, permanent populations, government, and the capacity to enter into relations with other states. Further in Chapter One, are examined other words and phrases used in this research. Such as the right to self-determination, sovereignty, nationalism, and independence. Chapter One aims to make clearer for the reader and the author, the language that is used through this thesis. While writing this thesis, the author has also come across other words and phrases, which initially author did not know and could not predict before writing the thesis. These words and phrases that the author have come across during the writing of this thesis are also explained in further chapters.

Following Chapter One, the author examines the process of secession. The process of secession is examined in three parts. Part one examines the “Before secession” aspects. In other words, what are the conditions for a nation and/or breakaway region to fulfill, in order to proceed towards secession? The main legal tool used is the aforementioned Montevideo Convention. As determined, the Montevideo Convention provides four necessary conditions for statehood. Due to the vague nature of these pre-conditions, this subchapter examines what each condition could mean. The reason why only Montevideo Convention is used is simply down to the fact, there are no other hard legal tools that try to define what is a state. When all the preconditions are examined, the author looks at the mechanisms for secession and independence. While a referendum looks like the most popular legal mechanism used for legitimate secession, the referendum issue is that it still needs to be approved by the parent state. A simple decision to hold a referendum by the secession movement without the consent of the parent state lacks the necessary legitimacy. For example, the 2017 Catalan independence referendum is examined. The third part looks at the challenges after secession. As Kosovo's example shows, the post-declaration of independence period has its unique challenges. Most notably the International recognition aspect. While the importance and the theory of International recognition is a discussed and debated topic, the main takeaway is that International recognition is unconditional and irrevocable, and the main goal of recognition is to establish an International legal personality. Chapter Two is concluded with a fictional secession case, to explain how secession should work in theory.

Chapter Three looks at the secession movements of the British Isles and the Iberian Peninsula, and what actions and inactions United Kingdom and Spain have taken regarding their breakaway regions. The main difference between Spain and the UK is in their respective Constitutions. The Spanish Constitution is written and codified in a single document, which sets out the “indivisible” nature of Spain. Hence, Catalan independence referendums are Constitutionally impossible. On the other hand, the UK Constitution, per se, does not have a single written and codified constitution, but a collection of bills, acts, and other legal documents, of which, some exist from the 18th century. Also, the United Kingdom exists as a union of kingdoms. While the Iberian Peninsula has also consisted of multiple kingdoms and states in the past, modern-day Spain is based on the 1978 Spanish constitution. So, while the Spanish Constitution’s “indivisible” nature of Spain forbids Catalonia to leave Spain, Scotland can use the right of Constitutional Self-determination.

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## INTRODUCTION

Throughout time, new states have been formed and many old states have ceased to exist. These changes usually occur after world changing events. Even if we examine the events from the past century, the map of the world, and Europe has changed. The conclusion of the First World War brought up political and social changes in Europe which resulted in many new states emerging from the ruins of once great empires. The Second World War had the same effect. However, following the immense devastation brought by the Second World War, a new outlook towards the world had begun. The creation of the United Nations and the establishment of a worldwide legal order, with the main goal to prevent the horrors of war in the world. While it has not ended wars, and neither it will, mankind's tendency to wage war is at all-time low. While the world was recovering from the devastation brought by the Second World War, a new form of war in the world had begun. The Cold War, brought the two superpowers at the time against each other, not in a direct confrontation, but in proxy wars, all around the world. However, Europe at this time had its revolts and scares, Europe did not experience the cold war, as did Vietnam, Afghanistan or Korea. While life on both sides of the "iron curtain" continued, the end of the 20th century saw other world changing events taking place. The end of the communist grip on Eastern Europe was weakening. The fall of the Berlin Wall, the dissolution of the Soviet Union, and the bloodiest war in Europe since the Second World War, the Yugoslavian wars, again resulted in the creation of new states and the rebirth of existing states. While all the mentioned changes in Europe occurred during world changing events, due to the richness of European culture, there are still regions and nations who still seek independence today. While Russia is the only state in Europe that still uses their out of date Imperialistic view of divide and conquer, in the 21st century there are independence movements that look for legal and non-violent means to secede from their parent state.

The 21st century independence movement started in Kosovo in 2008. Unlike the previously mentioned world changing event, in the Kosovo case, the proclamation of independent Kosovo did happen in the shadow of a war, it was a regional conflict, and perhaps it explains why the recognition of independent Kosovo is still an issue. However, what about Scotland and Catalonia? Both nations in 2014 and 2017 respectively have conducted a referendum to leave their parent states. While the results of these referendums are left for interpretation, these independent movements still prevail. Just last year, the Scottish government took to the UK supreme court to allow to conduct a new independence referendum. While the UK Supreme Court ruled that it is not up to the Scottish Parliament to legislate for a new independence referendum, the UK Supreme Court did not put obstacles or denied the Scottish people to seek independence. The author also does not consider Scotland and Catalonia to be nations that are occupied by another state, nations that are under dictatorship and lack the right to self-governance. Considering the historic aspects of causes and how state building in Europe has happened, together with the author's personal affection towards Scotland, the author considers it necessary to explain, why and how regions/nations which are part of democratic, free, and non-oppressive states, would want to leave their respective parent states. While Brexit and the European economic crisis have been a catalyst for independence movements in UK and Spain, neither the UK nor Spain is at the crossroads of great political and social changes as ones that took place in the 20th century. While it is clear that Russia uses illegal means to fund and annex the so-called secession movements of the "people republics" in both Georgia in 2008 and Ukraine in 2014 and 2022, Scotland and Catalonia are looking for legal means and mechanisms for secession and independence.

The thesis looks at, what are the legal preconditions of a state and what could be the legal process set out in International law for secession, and how independence can be achieved legally. It is also important to note that while the UN charter does set out the right to self-determination, it is important to remember that territorial integrity is one the highest virtues in international law, the research sets out to explain how a region or a nation can lawfully seek its

independence in a world where the international law is meant to protect the interests of already existing states. The research also looks at the process of international recognition. The process of International recognition is a political decision; therefore, it is interesting to examine if the legality of secession has any correlation with likelihood of international recognition.

The methods used in legal research are qualitative doctrinal research analysis and qualitative comparative analysis, together with grammatical, historic, and teleological, interpretation methods. These types of analysis and methods are used in order to first to better understand the written law and the terms used in them, and then understand the historic and legal context of the legal norms in question. Afterwards, the qualitative comparative analysis is used to compare different legal approaches regarding secession.

These methods are used to answer this research question. “What are the legal mechanisms for Scotland and Catalonia to secede from the UK and Spain”? The author has also put forward a hypothesis: “While international law provides the right to self-determination, first and foremost, international law protects the interests of an already independent state”. As there are no other legal mechanisms provided in International law for secession, it is up to the parent state to give its consent for secession. The aim and objective of this thesis are to use the provided research question “What are the legal mechanisms for Scotland and Catalonia to secede from the UK and Spain?” to understand state building and statehood from a legal point of view, and then apply the acquired theoretical knowledge in the case of Scotland and Catalonia. This thesis also looks at and examines the limitations of International Law regarding secession and international recognition.

This research is conducted in three chapters. Chapter One is divided into two sub-chapters, which examine what are a state, nation, and statehood. This is done to better explain the definition of words, phrases, and terminology used further in the thesis. For example, the aforementioned state, nation, and statehood are explained, also, terms such as sovereignty, the right of self-determination, constitutional self-determination and others are explained in legal and political contexts. Chapter two is divided into four sub-chapters, which examine and look at the legal means and mechanisms, of how a region can secede legally and afterwards either unify with another state or claim independence, and if the latter, what are the legal norms that need to be achieved and obeyed. Chapter three is divided into four sub-chapters, which examine the secession movements in the British Isles and the Iberian Peninsula. These two regions were chosen due to the fact that two of the loudest and publicly most well-recognised secession movements in recent history, Scotland and Catalonia are located in these regions. This chapter analyses the reasons and causes for secession and how UK and Spain have acted in legal and political fields regarding this issue. This chapter is concluded with an analysis of international recognition, and how the two different approaches might affect international recognition.

## CHAPTER I: LEGAL, POLITICAL AND HISTORIC ASPECTS OF A STATE, NATION AND STATE BUILDING

Chapter one is dedicated to a better understanding of questions such as what is a state, nation, and statehood. Additionally, chapter one expands and explains the definition of words, phrases, and terminology used further in the thesis. For example, the aforementioned state, nation, and statehood are explained, also, terms such as sovereignty, the right of self-determination and others are explained in legal and political contexts. Part one of chapter one examines the history of statehood, what is the idea of a state, nation, and statehood and where does it come from, and what is the modern understanding of a state, nation, and statehood in both legal and political contexts. The second part of the chapter explains what are sovereignty, the right of self-determination, and independence.

### 1.1. WHAT IS A STATE, NATION, AND STATEHOOD?

State, nation, and statehood and with their multiple permutations of combinations are words that for many seem to identify as identical, almost like a group of synonyms which all mean the same thing. Due to the interchangeable nature of these words, they are often used incorrectly. Different academic fields define, examine and study state, statehood and nation differently. From a legal point of view, a state is described, as a legal entity. From a social theory point of view, Karl Marx in his book *Das Kapital*<sup>1</sup> describes a state as means for the ruling class to protect its interests and maintain its power over the working class. While Max Weber believed that the state is an essential institution for modern society. That state is a “legitimate form of political authority that has the monopoly on the legitimate use of force within a given territory”<sup>2</sup>. When examining multiple definitions from different academic fields of the word state, the author understands state as a symbiotic relationship between society and government. Where humans with association to each other in a territory which has permanent frontiers, has an established governmental authority and institutions, that are sovereign and establish their own laws. While in the field of International relations state is somewhat ambiguous meaning, within the scope of international law, the Montevideo Convention (1933)<sup>3</sup> article one:

defines state as a person of international law, that should possess the following qualifications: a permanent population, a defined territory, government, and the capacity to enter into relations with the other states.<sup>4</sup>

However, the Montevideo Convention (1933)<sup>5</sup> only describes “factual” definition of a state, but it lacks any definition of the role of the state. Hence social philosophers such as Karl Marx, Max Weber, Durkheim, and many others have discussed the role of the state. Montevideo Convention is also criticized for being “too old”, and some of the modern notions of a state are

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<sup>1</sup> Karl Marx, *Capital a Critique of Political Economy* (Progress Publishers, Moscow, USSR) Available on: <https://www.marxists.org/archive/marx/works/download/pdf/Capital-Volume-I.pdf> Accessed on: March 06, 2023.

<sup>2</sup> Simeon Mitropolitki, “Weber’s Definition of the State as an Ethnographic Tool for Understanding the Contemporary Political Science State of the Discipline” *Canadian Political Science Association*, (May 2011) Available on: [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1823401#:~:text=Max%20Weber%20definition%20of%20the,a%20more%20frequently%20used%20quotation](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1823401#:~:text=Max%20Weber%20definition%20of%20the,a%20more%20frequently%20used%20quotation). Accessed on: March 06, 2023.

<sup>3</sup>Montevideo Convention on the Rights and Duties of States Article 1 (Montevideo 1933) Available on: <https://www.ilsa.org/Jessup/Jessup15/Montevideo%20Convention.pdf> Accessed on: January 07, 2023.

<sup>4</sup> *Ibid*

<sup>5</sup> René Grotenhuis, “*Nation and State.*” In *Nation-Building as Necessary Effort in Fragile States*, (Amsterdam University Press, 2016 25–44.) p. 25. Available on: <https://doi.org/10.2307/j.ctt1gr7d8r.5>. Accessed on: March 06, 2023.

not explained. For example, the “capacity to enter into relations with the other states” does not include any information regarding entering into relations with governmental and non-governmental institutions. Also, the qualification of “a defined territory” is somewhat ambiguous. For example, Israel is a UN member, however, it has territorial disputes, at the same time Kosovo has a defined territory, but is not a UN member and lacks international recognition from all UN member states.

The idea of state and statehood can be traced back to ancient civilizations. When examining the aforementioned understanding of the state as a concept, it can be observed that these ancient civilizations are in fact states. These ancient civilizations have defined borders, usually natural borders like a river, river valley, or an island. These ancient civilizations had a centralized government, where usually at the head of the government was a single person who is attributed with almost God like characteristics. They also have laws and, in some cases, even written law, they had the means to administrate and collect taxes, and make early diplomatic missions. State and statehood have been theorized and acknowledged as early as ancient Greece, where Plato and Aristotle wrote about polis, aka the city-state.<sup>6</sup> While in his work Aristotle mostly concentrated on the idea of the unity of common culture and language, it was Roman *res publica* which is much similar to modern day version of the state. The idea of a state was further developed in the middle ages and in the Enlightenment period. However, The Peace of Westphalia in 1648<sup>7</sup> is attributed as the begging of the concept of state and statehood. Principles and concepts such as sovereignty and nation-state were established. Following the Peace of Westphalia over the centuries many new states, nations and nation states were established, lost and recreated. However, it is important not to confuse this definition of a state, with the US states, which are completely different entities.

Similar to state, nation is somewhat of an ambiguous term. While the concept of state describes the relationship between society and government, the idea of a nation is a theoretical idea of a group of people who share common culture, language, and history in a common geographical location. It is important to note, that this does not mean that they necessarily have their own state. An example that illustrates the idea of a nation is Kurdistan. While the Kurdish people have their own common culture, language, ethnicity, and inhabited territory, and even the Kurdish lands in North Iraq have a Regional Government<sup>8</sup>, Kurdistan is not a state, but a nation, since it is not an independent or autonomous region and it lacks any serious international recognition, and there is no aforementioned relationship between Kurdish society and non-existing Kurdish government.

There is also the concept of a nation-state. Nation-states have all the characteristics of a state, however, the majority of people who inhabit the state in question, have also all the characteristics of a nation. For example, the author would not consider Belgium as a nation-state, as Belgium consist of two parts: The Germanic, Dutch speaking Flanders and Gallo-Romance, French speaking Walloons. While both of these groups are to be considered as Belgians, ethnically and culturally they are different. Unlike Iceland, which is a nation-state, where 93% of its population identifies as Icelandic<sup>9</sup>.

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<sup>6</sup>Fred Miller, "*Aristotle's Political Theory*", (The Stanford Encyclopedia of Philosophy, Fall 2022 Edition), Edward N. Zalta & Uri Nodelman (eds.), Available on: <https://plato.stanford.edu/entries/aristotle-politics/> Accessed on: January 07, 2023.

<sup>7</sup> Britannica, T. Editors of Encyclopaedia. "Peace of Westphalia." *Encyclopedia Britannica*, January 23, 2023. Available on: <https://www.britannica.com/event/Peace-of-Westphalia>. Accessed on: January 07, 2023.

<sup>8</sup> GOV.KRD. Kurdistan Regional Government. Available on: <https://gov.krd/english/> Accessed on: March 09, 2023.

<sup>9</sup>World Population Review. Iceland Population 2023. Available on: <https://worldpopulationreview.com/countries/iceland-population> Accessed on: March 09, 2023.



## 1.2. NATIONALISM, INDEPENDENCE, SOVEREIGNTY, SECESSION, AND THE RIGHT OF SELF-DETERMINATION.

In the previous subchapter, the author examined the difference between a state and a nation, in this subchapter the author examines concepts such as nationalism, independence, sovereignty, secession and the right to self-determination. The goal is to examine these terms and concepts, so that later in this thesis when issues such as the right of self-determination and constitutional self-determination are examined, it would be clear to the reader what these concepts mean.

As examined in the chapter above, a nation is a theoretical idea of a group of people who share common culture, language, and history in a common geographical location. While this proposed definition by the author seems somewhat self-explanatory and shows a clear difference between a state and a nation, another way to word the question “what is a nation?” can be: “nation is a construct, built and altered by people to define the identity of a political community in ever-changing circumstances”<sup>10</sup> Both definitions emphasize human relation toward each other via shared circumstance. It is an undeniable fact, that both definitions of the idea of a nation go closely with the concept of nationalism and national identity. The author would describe national identity as a sense of belonging to a group with common values, like history, values, culture, language, etc. The possession of national identity leads to nationalism. The Stanford Encyclopaedia describes Nationalism as:

the attitude that the members of a nation have when they care about their national identity, and the actions that the members of a nation take when seeking to achieve (or sustain) self-determination.<sup>11</sup>

According to this definition of nationalism, the concept of nationalism can be interpreted as a value of the people and a tool for the people to achieve self-determination.

Self-determination first and foremost is a process. The process of self-determination, like any other process, has an end goal. So, what exactly are the process and the goal of self-determination? From a legal point of view, self-determination is a right. The UN Charter article 1 (2) “...is to develop friendly international relations based on respect for the “principle of equal rights and self-determination of peoples”<sup>12</sup> The law clearly states that self-determination is a right of the people. The goal of self-determination is to gain rights not of a state, but the people. It is the right of the people to decide their own government. Additionally, the International Covenant on Civil and Political Rights (ICCPR) Article 1 expands further upon the somewhat vague UN Charter wording of the right of self-determination. The ICCPR adds that the right of self-determination by its virtue the people are free to “determine their political status and freely pursue their economic, social and cultural development.”<sup>13</sup> With the following paragraphs of article 1 expand on the aforementioned quotation. As the author has determined that self-determination is a right of the people, and usually if there is a right, then someone has an obligation to grant this right, so a question arises, who has the obligation to grant the right of self-determination? If self-determination is the right of the people, then the obligation of these right fall on state actors. UN Charter and the ICCPR are international treaties, made by the UN, which is an International organization, that consists of 193 members and it is these members who have signed and ratified this International agreement, and therefore bear the responsibility of complying with the legal norms set out in these treaties. However, does self-determination

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<sup>10</sup> Grotenhuis, *See supra* note 5, p.26.

<sup>11</sup>Nenad, Miscevic and Edward N. Zalta (ed.) "*Nationalism*", (The Stanford Encyclopedia of Philosophy, Fall 2020 Edition), Available on: <https://plato.stanford.edu/entries/nationalism/> Accessed on: March 09, 2023.

<sup>12</sup> U.N. CHARTER, art.1. para.2. Available on: <https://www.un.org/en/about-us/un-charter> Accessed on: March 09, 2023.

<sup>13</sup>International Covenant on Civil and Political Rights. Article 1(1). Available on: <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights> Accessed on: March 21, 2023.

has an internal or external effect? In other words, does self-determination provides the right of people to govern without outside influence, or is it the right of the people to determine their own social and political status in spite of being under alien authority? It is both, the right to self-determination has both internal and external characteristics. Does the right of self-determination mean independence? Not really, self-determination can lead to that effect, however, self-determination can also lead to some kind of autonomy such as devolution of power. While the UN's idea of self-determination where self-determination is part of international law, is mostly associated with colonial self-determination, there can also be domestic-level law, that might grant the right of secession. It is known as Constitutional self-determination. Constitutional self-determination is an existing constitutional agreement, where the territorial part of a state has its own special legal personality established in the constitution. An example of Constitutional self-determination could be the “Good Friday” agreement, where the UK in the Belfast agreement “acknowledged the island of Ireland as a unique self-determination entity”<sup>14</sup>. And agrees that if both North and South with the consent of the majority of the people decided in a vote to reunify the Irish Island, the UK government shall allow it.<sup>15</sup>

As determined, the goal of self-determination is to achieve some kind of autonomy, sovereignty, or independence for the people, via secession or devolution, or any other possible means. But what exactly do these goals mean? From a legal context, independence is the ability of a state to govern itself and be free from any outside influences and control. Independence also means that any state is free to enter into a relationship with other states, international organizations, and governmental and non-governmental organizations. On the other hand, sovereignty is the supreme authority of a nation or a state, that governs itself within a defined geographical territory, but never outside of it. In international law, sovereignty is both a power and a right. However, it is important to understand that sovereignty is not some kind of absolute right, where the sovereign authority can do whatever they want, there are many international norms and treaties that are above a state or nation's sovereignty. For example, jus cogens norms like the prohibition of genocide, human trafficking, and other war crimes.

While independence and sovereignty seem somewhat interchangeable principles, it is important to understand that independence is more of a political status of a nation and a state, while sovereignty defines the legal status of a nation and a state. A state or a nation can be both sovereign and independent, but it can also be considered an independent entity but at the same time not a fully sovereign entity. This happens if a state or nation in question is bound by some external effects, for example, international obligations arising from treaties and international court judgments. The opposite can also exist, a nation or a state can be sovereign, but not independent, as it can be a part of a larger political entity, such as a federation, union, or confederation. An example of this would be Scotland, it has its own Scottish Parliament that has some legislative powers given by Westminster via the 1998 Scotland Act<sup>16</sup>, however, Scotland still remains part of the United Kingdom and still Westminster holds the right to legislate in some exclusive competences.

While so far in this thesis, the author has looked at and examined secession movements as a means to achieve independence, however, secession can also be used as a tool for leaving one state, to become part of another state. Throughout history, states have become a part of a different state after military conflicts, where usually a peace treaty is signed, with agreed

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<sup>14</sup> Marc Weller, “The UK Supreme Court Reference on a Referendum for Scotland and the Right to Constitutional Self-determination: Part II” *EJIL:Talk! Blog of the European Journal of International Law* December 13, 2022. Available on: <https://www.ejiltalk.org/the-uk-supreme-court-reference-on-a-referendum-for-scotland-and-the-right-to-constitutional-self-determination-part-ii/#:~:text=The%20UK%20Supreme%20Court%20has,self%2Ddetermination%20applies%20to%20Scotland>. Accessed on: March 21, 2023.

Accessed on: March 21, 2023.

<sup>15</sup>United Kingdom. Northern Ireland Act 1998. Available on: <https://www.legislation.gov.uk/ukpga/1998/47/contents> Accessed on: March 21, 2023.

<sup>16</sup> United Kingdom. Scotland Act 1998. Available on: <https://www.legislation.gov.uk/ukpga/1998/46/contents> Accessed on: March 23, 2023.

conditions, where a state or a part of the state becomes part of the winning state. Or in the case of the Baltic states were forcefully joined to USSR by less than legitimate and fabricated claims made by the USSR. While for the rest of the world, or at least the Western world, the inclusion of the Baltics in the USSR is viewed as an illegal occupation, Russia still argues that the Baltic countries became part of the USSR in a legitimate process. The process, where a state proclaims its sovereignty over another state is called Annexation<sup>17</sup>. Unlike cession, annexation is a unilateral act<sup>18</sup>. However, secession is not to be confused with cession. “Secession is a bottom up process, a right granted to parts of the state to secede from the larger entity... “<sup>19</sup>. While, “Cession, on the other hand, is an act by the state to give part of its territory away”<sup>20</sup>. In other words, the etymology suggests that: secession means “apart, to go”, cession to “go away”, “giving up”, while annexation mean to “to bind to”, “join(ing)”<sup>21</sup>.

## CHAPTER II LEGAL MECHANISMS FOR SECESSION AND INDEPENDENCE

When secession and independence movements are discussed, often the first thought that comes to mind are all historic examples of military conflicts, which were caused by secession or secession as the result of a war. However, there are also legal means that provide legislative ways to secede and claim independence. Chapter two looks at the legal means and mechanisms, of how a region can secede legally and afterwards either unify with another state or claim independence, and if the latter, what are the legal norms that need to be achieved and obeyed. Part one of this chapter used the knowledge from chapter one, in order to understand the pre-conditions for secession. Part two examines the legal means and mechanisms of secession, and finally, part three looks at the aftermath of secession, the legal and political aspects. All three parts are summed up in part four, where a fictional case is analyzed. This is done in order to better illustrate the knowledge acquired in the first three parts.

### 2.1. BEFORE SECESSION

After the second world war, there were a handful of attempts to codify the meaning of state, Vienna Convention on the Law of Treaties, and the Declaration on the Rights and Duties of States have tried to define a state as a legal concept.<sup>22</sup> Which makes lots of sense as states are the main actors in international law. However, due to the political nature of the task at hand,

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<sup>17</sup>International Committee of the Red Cross. Annexation (prohibition of), Available on: [https://casebook.icrc.org/a\\_to\\_z/glossary/annexation-prohibition](https://casebook.icrc.org/a_to_z/glossary/annexation-prohibition) Accessed on: April 30, 2023

<sup>18</sup> Britannica, T. Editors of Encyclopaedia. "annexation." *Encyclopedia Britannica*, March 2, 2022. Available on: <https://www.britannica.com/topic/annexation>. Accessed on: March 30, 2023.

<sup>19</sup> ConstitutionMaking.org Option Reports. Accession and Secession Territory (February 2, 2009) Available on: [http://comparativeconstitutionsproject.org/files/cm\\_archives/accesion\\_and\\_secession.pdf?6c8912](http://comparativeconstitutionsproject.org/files/cm_archives/accesion_and_secession.pdf?6c8912) Accessed on: May 09, 2023

<sup>20</sup> *Ibid*

<sup>21</sup> Glen Anderson. “Secession in International Law and Relations: What Are We Talking About?,” *Loyola of Los Angeles International and Comparative Law Review* Volume 35 Number 3 Summer 2013 Available on: <https://digitalcommons.lmu.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1694&context=ilr> Accessed on: May 1, 2023.

<sup>22</sup> Ali Zounuzy Zadeh, 2011. “*International Law and the Criteria for Statehood : The Sustainability of the Declaratory and Constitutive Theories As the Method for Assessing the Creation and Continued Existence of States.*” Dissertation, Tilburg University. Europees en Internationaal Publiekrecht. Available on: <https://tilburguniversity.on.worldcat.org/search/detail/1362461207?queryString=International%20Law%20and%20the%20Criteria%20for%20Statehood&clusterResults=false&groupVariantRecords=true> Accessed on 06, 2023.

none of these efforts were successful. While there is no clear definition, there have been some legal principles and legal norms that have been used in the context of a state. One of such legal norms that is most commonly used is the Montevideo Convention (1933)<sup>23</sup>. The definition of a state is described in the 1933, Montevideo Convention<sup>24</sup>, as deduced in chapter 1.1., according to the Montevideo Convention (1933), state is defined as:

... a person of international law, that should possess the following qualifications: a permanent population, a defined territory, government, and the capacity to enter into relations with the other states<sup>25</sup>

Because of the lack of international legal norms defining state, Montevideo Convention (1933) is used as the basis for this chapter.

“Permanent population.” As determined in Chapter 1.1. the state is a relationship between a government and society. Society cannot exist without people. The permanent population is a group or groups of individuals that live in a defined territory. The law does not give any conditions, what is exactly a permanent population, how long someone needs to inhabit an area to be considered as part of the permanent population and the law does not provide how large the permanent population needs to be. A permanent population also does not mean, that the society needs to share a common ethnic and cultural background.

“Defined territory.” Possessing a defined territory seems a pretty straightforward and simple condition for a state. States need a territory over which state can exercise their sovereignty via effective control. And, for the people inhabiting the territory, the territory symbolizes an attachment to it, as their home and the home of their ancestors. In other words, the “defined territory” serves both as symbolic meaning to the people inhabiting it and also as an administrative, political exercise of power over the territory by the appropriate governing bodies. However, unless the territory of a state, is a small isolated island in the middle of the ocean, a state must have neighbouring states. This of course raises a question, if there is a territorial dispute between two entities, in the scope of the Montevideo Convention, the disputed land could be an issue for the complacency of “defined territory”. While the convention does not specify it, examples show, that disputed territory is not an obstacle in state building. In the South Sudan case, the state of South Sudan successfully seceded from Sudan and later became the 193rd member of the UN.<sup>26</sup> However, South Sudan has border disputes with Sudan, Kenya, and Ethiopia. A similar case is examined in Ali Zounuzy Zadeh dissertation, regarding Israel.<sup>27</sup> In his dissertation he notes and uses J. Crawford’s 1977 *The Criteria for Statehood in International Law*<sup>28</sup>, where Crawford writes about Israel’s ascension to the UN, and that Israel became a member of the UN, although, despite its disputed territories, he references Jessup’s argument that

One does not find in the general classic treatment of this subject any insistence that the territory of a state have begun their existence with their frontiers unsettled ... history demonstrates that the concept of territory does not necessarily include precise delimitation of the boundaries of that territory...<sup>29</sup>

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<sup>23</sup> Montevideo Convention on the Rights and Duties of States Article 1 (Montevideo 1933) See supra note 3.

<sup>24</sup> *Ibid*

<sup>25</sup> Montevideo Convention on the Rights and Duties of States Article 1 (Montevideo 1933) See supra note 3

<sup>26</sup>United Nations. UN welcomes South Sudan as 193rd Member State. Available on: <https://news.un.org/en/story/2011/07/381552> Accessed on: March 07, 2023

<sup>27</sup> Zadeh, See supra note 22.

<sup>28</sup> J. Crawford, „*The Criteria for Statehood in International Law*“, (British Yearbook of International Law, (Vol. 48) 1977, p. 93-182.) Available on: <http://self-realisation.com/wp-content/uploads/2013/06/British-Yearbook-of-International-Law-1977-Crawford-93-182.pdf> Accessed on: March 07, 2023.

<sup>29</sup> Security Council, Official Records, 383rd Meeting, 2 December 1948, p. 41. Available on: <https://digitallibrary.un.org/record/637527?ln=en> Accessed on: March 07, 2023.

However, it is also important to note that territorial integrity at the same time is one of the most important rights of state. UN article 2(4) provides that

...States shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State...<sup>30</sup>

However, ICJ in the Kosovo Advisory Opinion provided that according to international law the “Scope of the principle of territorial integrity is confined to the sphere of relations between States”<sup>31</sup>, “general international law contains no applicable prohibition of declarations of independence”<sup>32</sup>.

“Government.” Since there is a permanent population and defined territory, there needs to be someone who governs over it. And again, the Montevideo Convention is quite vague about it. The convention does not specify if the government needs to be established before secession, during the process of secession, or afterwards. The convention also fails to indicate whether the government needs to be a self-proclaimed authority or appointed by other authorities via constitutional means. The convention also fails to address the type of government, meaning, should it be democratic, authoritarian, or even totalitarian government. Although, one could argue that in the case of this convention, it meant democratic government as an undemocratic government has a historic tendency to ignore international law. Furthermore, the UN clearly indicates in its charter article 4 that: “...United Nations is open to all other *peace-loving states* which *accept the obligations contained in the present Charter*...”<sup>33</sup>

“Capacity to enter into relations with other states.” The Montevideo Convention has been in existence since 1933. Many things have changed in the past 90 years. Today states do not enter into relations with not just other states, but also with international governmental and non-governmental institutions. Is also somewhat hard to determine what is “entering into relations with other states”, does it mean a trade deal or any other legal and political cooperation, or perhaps playing football, basketball, or a hockey match against each other? This issue pre-condition is further examined in chapter 2.3. The question here is, can a state can only exist if other states acknowledge its existence. Is the capacity to enter into relations with other states a precondition to being a state, or only possible if you are already a state?

## 2.2. LEGAL MECHANISMS FOR SECESSION AND INDEPENDENCE

In the chapter above, the author explained that before any proclamations and declaration of secession and Independence, the region in question needs to possess a defined territory, and people who permanently live in it. Before or during the secession an established government and once secession has ended, states need capabilities to enter into relations with other states. In this chapter, the author examines the legal mechanisms, how to achieve secession and independence with legal means.

First and foremost, any secession movement needs the will of the people. Historically it would mean people's willing to bear arms to defend the newly proclaimed independence, in some kind of revolt, or in an independence war. However, in modern society, for the most part, the will of the people is shown via referendum. A referendum is an example of direct democracy, where instead of elected representatives voting on a law, proposal, or political law,

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<sup>30</sup> U.N. CHARTER, art 2(4) Available on: <https://www.un.org/en/about-us/un-charter> Accessed on: March 09, 2023.

<sup>31</sup> ICJ, Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Advisory Opinion, I.C.J. Reports 2010, p. 403. Available on: <https://www.icj-cij.org/public/files/case-related/141/141-20100722-ADV-01-00-EN.pdf> Accessed on: March 07, 2023. See supra note 15

<sup>32</sup> *Ibid*

<sup>33</sup> U.N. CHARTER, art.4. Available on: <https://www.un.org/en/about-us/un-charter> Accessed on: March 09, 2023.

the electorate is the one voting. Usually, in a referendum, the issue at hand is proposed as a question, and an electorate needs to answer simply yes, no, or for it, against it. Although, the conduct of a referendum can lead to a military conflict, for example, the 1991 Croatian independence referendum<sup>34</sup>, or in the case of the referendum by Russian Federation in Ukraine, manufacture, falsification, and the use of coercion, a referendum has somewhat of a legal basis for it. However, in the case of Catalonia and the second Scottish independence referendum, both of the respective breakaway region parent states, ruled in their respective constitutional courts that either the government of Scotland has no legal grounds to conduct the second referendum without the permission of Westminster, or in Catalan case, the Spanish constitution forbids it. However, what could be the possible international and domestic legal norms, that would allow independence or some kind of self-determination referendum to take place.

As determined in Chapter 1.2. UN Charter article 1 (2)<sup>35</sup> and ICCPR gives the right to self-determination, however, the term self-determination is somewhat misunderstood principle. Historically, the UN notion of self-determination was made with the age of colonization in mind and would grant the right for colonies to realize themselves. This has further been discussed in the UK Supreme Court judgment of November 23, 2022,<sup>36</sup> where the UK Supreme Court had ruled unanimously that the Scottish parliament lacks the authority to legislate for an independence referendum and the Scottish argument for the right of self-determination does not apply to Scotland. “Scotland is not a classical colony.”<sup>37</sup> However, Scotland does possess the right of constitutional self-determination. This decision was made by referencing the Quebec case in the Canadian supreme court and the UK submission to the ICJ in the Kosovo Advisory Opinion.<sup>38</sup> The court also argued that the territorial integrity of the state in international law is above everything and that Scotland is neither a colony, oppressed nation, nor has no representation in the UK. Hence, Scotland cannot evoke the right of self-determination and secede.<sup>39</sup>

Are there other legal options, besides for referendum? After the UK Supreme Court judgment of November 23, 2022<sup>40</sup>, now ex leader of the Scottish National Party (SNP) Nicola Sturgeon has proposed that the upcoming general election in 2024, can serve as a “de facto” referendum, and if her party, the SNP wins the majority of votes, more than 50% then Westminster should invite Holyrood to discuss Scottish secession from the Union. This of course is based on the principle of constitutional self-determination.

### **2.3. INTERNATIONAL RECOGNITION AND OTHER LEGAL AND POLITICAL ASPECTS AFTER SECESSION.**

For any newly proclaimed independent state, the most important thing is to gain “de facto” and “de iure” recognition. De facto, means acknowledgement of the factual situation, while De iure, or by right of law, is a principle, where the newly formed state has legal recognition by other states. However, international recognition is not as simple as states just announcing their

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<sup>34</sup>European Committee of the Regions. Croatia. Available on: <https://portal.cor.europa.eu/divisionpowers/Pages/Croatia.aspx> Accessed on: March 08, 2023.

<sup>35</sup> U.N. Charter, *See supra* note 12.

<sup>36</sup> UK Parliament House of Commons Library. Supreme Court judgment on Scottish independence referendum. (Lord Advocate v. Her Majesty’s Advocate General for Scotland [2022]) Available on: <https://commonslibrary.parliament.uk/supreme-court-judgment-on-scottish-independence-referendum/> Accessed on: March 08, 2023.

<sup>37</sup> Weller, *See supra* note 14.

<sup>38</sup> *Ibid*

<sup>39</sup> Weller, *See supra* note 14.

<sup>40</sup> *See supra* note 36.

recognition. Before the author dives deeper into all the nuances of international recognition, it is important to understand what is recognized in terms of law and politics. Recognition is a unilateral act, where a state acknowledges the existence of another state as an actor in the international theater. In other words, an existing state voluntarily makes a political decision to accept bilateral “duties, responsibilities, and privileges embraced in the treaty obligations codified in the Vienna Convention on Diplomatic Relations (1961)”<sup>41</sup> However, this proposes a question, does the acknowledging state recognizes the state or the government, or perhaps both? In the case of state recognition, there are already existing conditions for statehood mentioned in the Montevideo Convention, one of the being “government”. As the government is one of the preconditions of a state, for a newly created state, recognition of a state means also the recognition of the government. However, can a state be recognized and a government not? Yes, it can be possible. However, in this case, the state needs to be already recognized, and existing, and go through regime change, which is not constitutional, legal, or a result of a coup d'etat. An example of it can be Belarus. In 2020 Belarus Presidential election, which is widely believed to be rigged and falsified by the Belarussian dictator Alexander Lukashenko, resulted in mass protests and government sanction violence against the people of Belarus. Following that some, mostly Western countries did not recognize the Lukashenko government. As it can be seen, in this case, the integrity of Belarus as a state is not argued, but the integrity of the government is doubted.

While recognition is for the most part a political action, what does the law have to say about recognition. If examined the Montevideo convention, article 3:

The political existence of the state is *independent of recognition by the other states. Even before recognition the state has the right to defend its integrity and independence...*<sup>42</sup>

According to the article 3 the state is a political entity, that has the right to defend its integrity and independence and furthermore, article 6:

The recognition of a state *merely signifies that the state which recognizes it accepts the personality of the other with all the rights and duties determined by international law. Recognition is unconditional and irrevocable.*<sup>43</sup>

Shows that act of recognition is unconditional and irrevocable, and that recognition is a tool for states to give legal personality to other states so that the states have an opportunity to collaborate in international law as an equal partner. This could be a trade deal, military alliance, or any other bilateral or multilateral relationship. The recognition also allows a state to join international treaties and all the rights and obligations that they impose. It is also important to note, that due to the political nature of recognition, UN Charter does not mention or reference state recognition.

While the legal text is somewhat limiting, there are some forms, doctrines, and theories of recognition. The two main theories of recognition are constitutive theory and declaratory theory. The constitutive theory is somewhat based on the 1815 Peace Congress of Vienna, where the congress at that time only recognized 39 sovereign states in Europe, this also made precedent where a future state can only be recognized by already prior existing states.<sup>44</sup>

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<sup>41</sup> Francis M. Carroll, *Diplomatic Recognition*. (The Encyclopedia of Diplomacy (pp.1-8) 2008). Available on: <https://onlinelibrary.wiley.com/doi/10.1002/9781118885154.dipl0412> Accessed on: March 09, 2023.

<sup>42</sup> Montevideo Convention on the Rights and Duties of States Article 3 (Montevideo 1933) Available on: <https://www.ilsa.org/Jessup/Jessup15/Montevideo%20Convention.pdf> Accessed on: January 07, 2023.

<sup>43</sup> Montevideo Convention on the Rights and Duties of States Article 6 (Montevideo 1933) Available on: <https://www.ilsa.org/Jessup/Jessup15/Montevideo%20Convention.pdf> Accessed on: January 07, 2023.

<sup>44</sup> Varun Modasia, “Creation of Statehood and Its Legal Existence under International Law” *International Journal of Law Management and Humanities*, Volume 4, Issue 2 (2021), p. 2190 – 2202, Available on: <http://doi.org/10.1732/IJLMH.26480> Accessed on: March 12, 2023.

According to this theory, a state gains its legal international personality only if it is recognized “as sovereign by other states”<sup>45</sup> This theory is further considered in the L.F. Oppenheim’s book *International Law. A Treatise*, where he writes that: “International Law does not say that a State is not in existence as long as it is not recognized...”<sup>46</sup> however, “Through recognition only and exclusively a State becomes an International Person and a subject of International Law”<sup>47</sup>. In its essence constitutive theory does not deny the fact that a state exists, however, it is only through recognition of other states, that the state in question gains the personality in International Law, which makes a state legitimate. While the constitutive theory theorizes that a state exists when it becomes recognized by existing states, through which a state gains its legal personality, declaratory theory theorizes that if an entity fulfils all the preconditions of a state, recognition is just a formal acknowledgement. Contrary to the 19th century thinking of constitutive theory, the declaratory theory emphasizes the factual existence that a state exists rather than it is the matter of law, that the state exists. The recognition “merely establishes, confirms or provides evidence of the objective legal situation, that is, the existence of a State.”<sup>48</sup> The legal principle provided in the Montevideo convention article 1 (d) “capacity to enter into relations with the other states”<sup>49</sup> is the form of recognition in the declaratory theory, where the willingness of entering into relations is the recognition. In other words, a state becomes a state, once it fulfils the criteria of statehood, for example, the ones given in the Montevideo convention, and that recognition by other states is merely a gesture for enabling relations.

De facto and De iure are the two forms of recognition, de facto recognition means recognition of a fact that an entity has an existing government, while De iure recognition, recognizes the legitimacy of a government. De iure recognition is permanent and irrevocable, but de facto recognition is not permanent, however, it is an important first step toward recognition.

The issue of recognition is also mentioned in a few doctrines. *Betancourt Doctrine*, named after the president of Venezuela Rómulo Betancourt, has promoted the idea that governments that are not democratically elected and do not represent the will of the people, should not be recognized. He believed that governments established by military means are not to be recognized.<sup>50</sup> The *Estrada Doctrine*, is a foreign policy principle introduced by the Mexican diplomat Genaro Estrada. The doctrine states that “recognition of a government should be based on its de facto existence, rather than on its legitimacy”.<sup>51</sup> *Tobar Doctrine*, introduced by Carlos Tobar, Foreign Relations Minister of Ecuador, argued that recognition of government should only be given if the government in question has come to power by legitimate and democratic means.<sup>52</sup> Finally, *Stimson Doctrine* which was made following the Japanese

<sup>45</sup> Modasia, *See supra* note 44.

<sup>46</sup> Lassa Francis Oppenheim, “International Law, A Treatise” (The Project Gutenberg eBook Volume I 2012) pp 117. Available on: [https://www.gutenberg.org/files/41046/41046-h/41046-h.htm#Page\\_116](https://www.gutenberg.org/files/41046/41046-h/41046-h.htm#Page_116) Accessed on March 12, 2023.

<sup>47</sup> *Ibid*

<sup>48</sup> Stefan A. G. Talmon, “The constitutive Versus the Declaratory Theory of Recognition: Tertium Non Datur?” *British Yearbook of International Law* 75 (2005): 101-181. Available on: <https://www.semanticscholar.org/paper/The-constitutive-Versus-the-Declaratory-Theory-of-Talmon/7b3e50f1bb265586a5575bd297cd5222acf843a3> Accessed on: March 12, 2023.

<sup>49</sup> Weller, *See supra* note 14.

<sup>50</sup> Acosta, Franklin, "An analysis of Venezuela's foreign policy during the period of the Betancourt doctrine and Caldera's ideological pluralism" (1987). *FIU Electronic Theses and Dissertations*. 1102. : p34. Available on: [https://digitalcommons.fiu.edu/etd/1102/?utm\\_source=digitalcommons.fiu.edu%2Fetd%2F1102&utm\\_medium=PDF&utm\\_campaign=PDFCoverPages](https://digitalcommons.fiu.edu/etd/1102/?utm_source=digitalcommons.fiu.edu%2Fetd%2F1102&utm_medium=PDF&utm_campaign=PDFCoverPages) Accessed on: March 09, 2023

<sup>51</sup> Oxford Reference. Estrada Doctrine, Available on: <https://www.oxfordreference.com/display/10.1093/oi/authority.20110803095758788?rskey=53dYRf&result=1> Accessed on: March 09, 2023.

<sup>52</sup> Roth, Brad R., “Legal Legitimacy and Recognition of Governments: A Doctrinal Guide,” in *Governmental Illegitimacy in International Law* (Oxford, 2000; online edn, Oxford Academic, 22 Mar. 2012), Available on: <https://doi.org/10.1093/acprof:oso/9780199243013.003.0005> , Accessed 10 Apr. 2023.



manufactured cases belie and aggression in Manchuria in 1931, where the US Secretary of State Henry L. Stimson declared that the “U.S. Government would not recognize any territorial or administrative changes the Japanese might impose upon China.”<sup>53</sup> The Stimson doctrine, in general, means non-recognition of territorial changes that occur due to aggression. The doctrine is based on the principle of *ex iniuria ius non oritur* or an illegal act cannot create law.

## 2.4. SUMMARY OF CHAPTER II: ANALYSIS OF FICTIONAL CASE

The purpose of this subchapter is to illustrate a fictional secession movement case, by using the mechanisms described in Chapter II. The idea of this chapter is to use the acquired knowledge in Chapter II to provide a theoretical example, of how these mechanisms could work. This fictional case is somewhat simplified, and simply looks at would could and would happen in a similar scenario.

Nations of T, R, and D have a long history of multilateral relations, they have been allies and enemies, and they have fought shoulder to shoulder against a common enemy, but also each other. After one such long and brutal war between the three of them, all three regions came together and in a peace deal, decided to unify all three regions into a single state, hoping that this would deter further conflict between each other. The newly declared state of the U started its existence. During the negotiations and formation of U, it was agreed that a centralized government will be established in the region of R, as it was the initiator and the biggest of the three. While the three regions coexisted together in peace, over the decade nations of T and D argued for bigger autonomy, and the right to govern themselves in at least some fields of governing, over long and difficult negotiations, nations of T and D, were granted some right of governing and implied the right to self-determine. However, three decades later, the government of nation T decided that they would like to leave the union, due to the disagreement on how domestic and foreign affairs are conducted. It is important to note, that all three regions have a historic territory, where the majority of the population are local native inhabitants.

In this case, the nation of T has a defined territory, from a historic perspective and in a political sense, as the government of T has a clearly defined territory, where they have the authority to govern and administrate. The population that lives in these territories, is ethically and culturally related themselves to T nation. As they have also their government, according to the Montevideo convention they have all pre-conditions of a state. The government of T has also over the years established unofficial bilateral relations with other states. While the U government is hesitant to agree to the secession of T, however, based on the constitutional agreements, they allow the nation of T to conduct a referendum on independence. In this fictional situation, nation T relied on constitutional rights and the principle of constitutional self-determination. If such a right would have not been given by the constitution, the nation T could in theory still conduct a referendum and in case of a successful referendum proclaim their independence. However, the state of U would quickly rule such referendum constitutionally illegal, and either this would lead to a war, as for example in the Balkans during the 90s, or to a stalemate situation as it is currently in Kosovo, where depending who you ask, Kosovo is or is not an independent state. However, we return to nation T, in which people have successfully voted to leave the union U. In the case of a legal secession, meaning the referendum was not sanctioned by the parent state, the next step would be formal negotiations with the parent state and seeking intentional recognition. While strictly from a legal standpoint, in this case, where the referendum was held with the consent of the parent state, and the majority of people voted for independence, there should not be any legal obstacles or doubt about the existence of nation

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<sup>53</sup> U.S. Department of State Archive. Stimson Doctrine, 1932. Available on: <https://2001-2009.state.gov/r/pa/ho/time/id/16326.htm#:~:text=Since%20calls%20for%20a%20cessation,Japanese%20might%20impose%20upon%20China>. Accessed on: March 10, 2023.

T, and recognition should come easily. However, due to the political nature of recognition, its legality of it can be overlooked. For example, states that have their own secession movements would be hesitant to acknowledge, however, with enough international pressure, it can be possible to convince states to recognize. While declaratory theory proposes that a state is a state as long it fulfils the criteria of statehood, and that recognition by other states is merely a formality, the practice shows, that states need to gain full international recognition to become active participants in international theatre, for example, a UN membership.

### **CHAPTER III SECESSION MOVEMENTS IN EUROPE, COMPARATIVE ANALYSIS OF BRITISH ISLES AND IBERIAN PENINSULA AND CHALLENGES OF RECOGNITION.**

Chapter III examines the secession movements in the British Isles and in the Iberian Peninsula. These two regions were chosen due to the fact that two of the loudest and most publicly known secession movements in recent history, Scotland and Catalonia are located in these regions. It is interesting to examine the different approaches of the United Kingdom and Spain, regarding their secession movements. This chapter analyses the reasons and causes for secession and how UK and Spain have acted in legal and political fields regarding this issue.

#### **3.1. SECESSION MOVEMENTS IN EUROPE**

Europe in general and the EU is a somewhat highly developed region, with a strong economy, influential states, rich history and culture, and for the most part, consists of democratic states which respect human rights, the rule of law and other principles of international law. While Europe has its weaknesses and threats, especially those brought up by the unprovoked Russian war in Ukraine and external ones such as climate change, Europe is a stable region. However, this raises the question “if for the most part, today’s Europe is this highly developed region with a strong economy, and with states who are democratic and respect the principles of international law and human rights, and talks of much more united Europe float around, how come secession movements are a thing in today’s Europe?”. And it is a valid question, as separation movements and secession movements are often associated from a historic point of view with states that lack the aforementioned criteria, which describes most parts of today’s Europe. It is important to note that Europe is rich in culture and history, this is of course due to Europe being home to many different smaller and bigger nationalities and cultures, in a relatively small area. The richness of European cultural diversity can be seen in European history. The history of Europe is full of conflicts between different European cultures. Many once famous states and nations no longer exist, and have been absorbed by other states or have faced extension. In 2017 The Guardian article published an article “Beyond Catalonia: pro-independence movements in Europe”<sup>54</sup> where they highlight pro-independence movements in Europe which stretch from a small Danish island in the Baltic Sea all the way to the Mediterranean Sea. While, for the most part, regions mentioned in the article have a somewhat small following of pro-independence movements, there are some regions, where secession is a highly talked about and discussed topic, with some of them even gaining wider international attention.

But what causes, secession movements in Europe? Could it just be nationalism and/or internal identity struggle by the regional entity and the constant reminder of historic grievances that exist between a region or a nation and its parent state? Perhaps modern globalization and

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<sup>54</sup>The Guardian. Beyond Catalonia: pro-independence movements in Europe. Available on: <https://www.theguardian.com/world/ng-interactive/2017/oct/27/beyond-catalonia-pro-independence-movements-in-europe-map> Accessed on: March 25, 2023.

economic issues, are at the root of pro-independence movements. Also, who are the people who promote secession and pro-independence movements? Is it a top-to-bottom process, where separatist elitists nationals stir up the people to rise against the parent state, or could it be a bottom-up process, where the people themselves who have a nationalistic point of view, create an environment for pro-independence political parties to thrive in? Each pro-independence movement has its causes and reasons for secession movements. For this research, the author in the following chapter examines the causes of secession movements in the British Isles and the Iberian Peninsula.

### 3.2. SECESSION MOVEMENTS IN THE BRITISH ISLES

The British Isles are defined as a group of islands in the northwest of continental Europe, which consists of Great Britain, Ireland, and many other smaller islands. This essay examines the United Kingdom part of the British Isles, most notably Scotland, Wales, and Northern Ireland. The goal of this chapter is to analyse and compare the level of possible secession from the United Kingdom by the aforementioned nations from the union. England is excluded as it is the territorially largest, with the largest economy, with the largest population, and is considered as the centre of the Union, as the UK parliament is located in it. The author will start with the loudest voice in recent times, which advocates for secession from the Union - Scotland.

*Scotland* is located in the north of the Great Britain. Scotland is famous for its natural beauty, whiskey, education, and its unique culture. Without recounting all of Scottish history, until the 1707 Act of Union<sup>55</sup> Scotland was an independent kingdom. During the Enlightenment and industrialization periods Scotland prospered, however, in the 20th century, Scotland experienced massive change. Deindustrialization together with a struggling economy lead to Scotland becoming infamous for widespread substance abuse and knife crime in Scotland.<sup>56</sup> For illustrative purposes, movies like the 1996 “Trainspotting” shows perfectly the environment that existed in Scotland after the de-industrialization. It is also important to note that for a long time, a stigma existed, where if someone from Scotland did something grand and noteworthy that person would usually be called British and not Scottish. Also, the Scottish image abroad was not very flattering, for example, the “Groundskeeper Willie” character in the Simpsons, is portrayed as a stereotypical angry Scotsman. Taking all of this in mind the Scottish image both at home and abroad was not flattering. While of course, pop culture events do not directly affect the events which happened in the second half of the 1990’s regarding the right of self-governance of Scotland, they do illustrate what was the stereotypical image of Scots. The events in the second half of the 1990’s led to devolution in Scotland with the Scotland Act of 1998,<sup>57</sup> which followed the 1997 Scottish devolution referendum.<sup>58</sup> Devolution<sup>59</sup> is the constitutional arrangement between nations in the UK. In the Scottish case, this gave Scotland the power to legislate and govern itself via the Scottish Parliament (Pàrlamaid na h-Alba), which was re-established later in 1999.<sup>60</sup> However, it is important to note that federalism is not as same as

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<sup>55</sup>Scotland. History. Available on: <https://www.scotland.org/about-scotland/history-timeline> Accessed on: February 21, 2023.

<sup>56</sup>BBC. How Scotland stemmed the tide of knife crime. Available on: <https://www.bbc.com/news/uk-scotland-45572691> Accessed on February 21,2023.

<sup>57</sup> See supra note 16.

<sup>58</sup> David Torrance, “Scottish independence referendum: legal issues,” *UK Parliament House of Commons Library* (2022): p. 19, Available on: <https://commonslibrary.parliament.uk/research-briefings/cbp-9104/> Accessed on: May 06, 2023.

<sup>59</sup> Danny Mackinnin. “Devolution, State Restructuring and Policy Divergence in the UK.” *The Geographical Journal* 181, no. 1 (2015): 47–56. Available on: <http://www.jstor.org/stable/43868626>. Accessed on: May 06, 2023.

<sup>60</sup>The Scottish Parliament. History of the Scottish Parliament. Available on: <https://www.parliament.scot/about/history-of-the-scottish-parliament/the-scottish-parliament-reestablished#topOfNav> Accessed on: February 21, 2023.

devolution<sup>61</sup> and that Westminster still holds the power over reserved matters<sup>62</sup>. With the creation of the Scottish Parliament, a new wave of Scottish nationalism took over Scotland, which culminated in the 2014 Scottish independence referendum.<sup>63</sup> While the referendum ended with 45% voting “Yes” to leave the Union and 55% voting to remain in the Union,<sup>64</sup> political and legal changes such as Brexit has changed many Scottish people's opinion about independence, as initially before the 2014 referendum the UK government promised that they will not leave the EU. However, the 2016 Brexit referendum<sup>65</sup> painted a completely different scene. It is important to note that the majority of Scots voted to remain in the EU.<sup>66</sup> Another, disagreement that exists between the UK and Scotland is that Scots are mostly left-leaning voters, while the UK government tends to be much more conservative, so Scottish people have never received the government they have voted for. While the most recent polls show the same picture as the 2014 referendum that the issue is split in half,<sup>67</sup> the Scottish National Party, the SNP is currently battling for a new independence referendum. While the UK Supreme Court denied the Scottish Parliament the right and authority to legislate for a new referendum,<sup>68</sup> and that Scotland's claim to the right of self-determination in the classical sense does not apply towards Scotland, Scotland has the right to Constitutional self-determination.<sup>69</sup> The current strategy from the SNP's now ex-leader Nicola Sturgeon, is to make the next general election as “de facto” independence referendum, where if SNP would receive more than 50% of votes, it would create a precedent for the Scottish government and Westminster to negotiate for independence or at least for a new referendum, as it would be the wish of the Scottish people. This type of election is called a “Plebiscitary election”<sup>70</sup>. Plebiscitary election:

...is a route to independence where a normal scheduled democratic event, such as a UK General Election or a Scottish General Election is utilised to seek a democratic mandate to declare independence or to negotiate independence.<sup>71</sup>

While so far, the author has looked from a Scottish point of view, it is also important to look at the UK point of view, why the UK wants for Scotland to remain in the Union. Scotland is surrounded by offshore oil fields, which beyond any doubt the UK is interested in. Scotland also houses the British nuclear submarine fleet. Also, Scottish independence raises the questions of what currency will the Scotland use, accession to the EU, and perhaps NATO, and also the problematic issue of recognition, which could lead to a precedent being set, and to a possible domino effect not just in Europe but also rest of the world.

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<sup>61</sup> Joanna George, “Devolution vs Federalism: What are the differences?” *Centre for Public Law, University of Cambridge* (2022) Available on: <https://constitutionallawmatters.org/2022/04/devolution-vs-federalism-what-are-the-differences/> Accessed on: May 06, 2023.

<sup>62</sup> Charlie Jeffery, and Daniel Wincott. “Devolution in the United Kingdom: Statehood and Citizenship in Transition.” *Publius* 36, no. 1 (2006): 3–18. Available on: <http://www.jstor.org/stable/20184939>. Accessed on: May 06, 2023.

<sup>63</sup> Torrance, See supra note 54. p. 58

<sup>64</sup> BBC. Scotland Decides. Available on: <https://www.bbc.co.uk/news/events/scotland-decides/results> Accessed on: February 21, 2023.

<sup>65</sup> BBC. EU referendum: The result in maps and charts. Available on: <https://www.bbc.com/news/uk-politics-36616028> Accessed on: February 21, 2023.

<sup>66</sup> *Ibid*

<sup>67</sup> Ballot Box Scotland. Independence Polling. Available on: <https://ballotbox.scot/independence> Accessed on: February 21, 2023.

<sup>68</sup> See supra note 36.

<sup>69</sup> Weller, See supra note 14.

<sup>70</sup> Torrance, See supra note 58. p. 75

<sup>71</sup> Scottish Sovereignty Research Group. Plebiscitary Election. Available on: <https://ssrg.s3.eu-west-1.amazonaws.com/Plebiscitory+Election.pdf> Accessed on: May 06, 2023.

### *Wales:*

Unlike Scotland, which is famous for its great education, Scotch whiskey, and its people, Wales is a somewhat lesser-known entity to the rest of the world. For the rest of the British population, Wales with its rugged and beautiful landscape, which is populated by sheep and some people, is a somewhat remote and peculiar place in the British Isles. Historically famous for its peculiar Welsh language and huge mining history, today Wales is mostly famous for its national football team, nature, and history. Similar to Scotland, Wales has gone through hardships and has established its own Welsh Parliament (Senedd Cymru).<sup>72</sup> However, still the “Prince of Wales” is not actually Welsh. However, a census suggests that more people in Wales identify themselves as being both Welsh and British rather than just only Welsh. However, the majority of the population still acknowledges the self as somewhat Welsh rather just only British. In 2011 around 57.5% of people in Wales identified as Welsh, however, the 2021 number decreased to 55.2%.<sup>73</sup> Also, 18.5% of people identify as British only, which is an increase from 2011 when 16.9 % of the population considered themselves British only<sup>74</sup>. Also, according to Welsh Government, the frequency of the use of the Welsh language has grown compared with the data from the early 2000’s.<sup>75</sup> One of the most recent developments to popularize the Welsh language, the Welsh Football Association considers changing the name of its national football team from Wales to Cymru.<sup>76</sup> Cymru is the Welsh word for Wales, the national league of Wales is also called the Cymru Premier. Similarly to Scotland, Wales have nationalist movements. The idea of independent Cymru has not reached the level of a referendum, however, demonstrations in support of independence do happen. However, polling shows that 52% of respondents would vote against Wales independence.<sup>77</sup> While the support for Welsh independence hovers around 20-32%.<sup>78</sup> However, the Welsh closely monitor the situation in Scotland. If Scotland would successfully secede from the UK and there would be a possibility for Wales to join back to EU, the numbers in favour to leave the UK would grow significantly.

### *Scotland and Wales:*

If there is anything that Scots and Welsh have in common in regard to this topic, is their dislike of the English. While both nations have nationalist movements, Welsh nationalism is not as popular as its counterparts in Scotland. Historically the support of free Scotland is from low 40% to in some polls up to 60%, also the popularity of the SNP is high. Compared to the numbers mentioned in the paragraph above the Welsh people are not as eager. However, what is also common is that Brexit acted as a catalyst for support towards independence both in Scotland and Wales. When the UK was part of the EU, the EU had some competencies, that only the EU can legislate exclusively, however, as the UK is no longer a part of the Union, who would take over these EU-exclusive competences? While Westminster would be more than happy to take them, both Scotland and Wales feel cheated due to the devolution. It is fair to assume that Scotland, Wales, and Northern Ireland would like to have their own saying in these matters. Already, Boris Johnsons 2020 UK Internal market bill made huge resonance in the

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<sup>72</sup> Senedd Cymru/Welsh Parliament. Available on: <https://senedd.wales/> Accessed on: February 25, 2023.

<sup>73</sup> Nation Cymru. Fall in Welsh-only and rise in British identity in Wales, census suggests. Available on: <https://nation.cymru/news/fall-in-welsh-only-and-rise-in-british-identity-in-wales-census-suggests/> Accessed on: February 25, 2023.

<sup>74</sup> *Ibid*

<sup>75</sup> Llwodraeth Cymru/Welsh Government. Welsh language data from the Annual Population Survey: July 2021 to June 2022. Available on: <https://www.gov.wales/welsh-language-data-annual-population-survey-july-2021-june-2022> Accessed on: February 25, 2023.

<sup>76</sup> The Athletic. Wales football team exploring name change to Cymru after 2022 World Cup. Available on: <https://theathletic.com/3748328/2022/10/31/wales-cymru-name-change/> Accessed on: February 25, 2023.

<sup>77</sup> BBC. Welsh independence: Does new research support the idea? Available on: <https://www.bbc.com/news/uk-wales-politics-63082210> Accessed on: February 25, 2023.

<sup>78</sup> *Ibid*

nations. The law would allow for devolved nations to “remain free to legislate in areas of devolved competence in accordance with their respective policy preferences.”<sup>79</sup> However, these nations in “their ability (prospectively) to impose those preferences on goods and services entering their respective markets from elsewhere in the UK.”<sup>80</sup> While the issue was somewhat resolved, in its initial stage, the Westminster went over the heads of devolved nations and violated the Sevel Convention.

#### *Northern Ireland:*

While Scotland and Wales would secede to create their own states, the Northern Ireland case is different. If Northern Ireland decided to secede from the UK it would not be a question of the creation of the Northern Irish state but rather unifying with the Republic of Ireland. Northern Ireland geographically is located on the isle of Ireland and shares the only UK land border with the EU.

First of all, why are there two Irelands? Without explaining all of the complexities of Irish history, the Republic of Ireland is a catholic state, while the historic Irish province of Ulster was colonized by the British protestants. The province of Ulster is what later became the state of Northern Ireland. While in the days when people practicing “witchcraft” were hunted and executed, the relatively small religious difference would have been enough to start a war. However, the Irish people have continued to fight with each other, over religious and political beliefs, with the “Troubles” being the most recent violent conflict. The conflict was between multiple paramilitary organizations, most notably the Irish Republican Army (IRA) against the Loyalists and Unionist organizations in Northern Ireland. While most of Northern Ireland is Protestant, still a significant part of the population is Catholic. The goal of the IRA was to unify all of Ireland, while the Loyalists and Unionists supported remaining in the UK. The violence ended with the 1998 Good Friday Agreement.<sup>81</sup> The Good Friday Agreement among other things gives a constitutional right for Northern Ireland to leave the UK and join the Republic of Ireland if the majority of the population of both Irelands agrees to this. Article 3.1:

a united Ireland shall be brought about only by peaceful means with the consent of a majority of the people, democratically expressed, in both jurisdictions in the island.<sup>82</sup> As there is a legal mechanism for the secession and unification, the question is, are both parties interested?

September 2022 census suggests that Catholics for the first time outnumber Protestants in the Northern Ireland.<sup>83</sup> In the 2022 Northern Ireland Assembly Election the nationalist party of *Sinn Féin* became the largest party to be represented in Northern Ireland.<sup>84</sup> Could this lead to the Irish reunification? When it comes to pooling for possible unification, the South clearly is in favor of reunification with the North. However, the information about pools in Northern Ireland varies drastically. However, the most recent polls suggest that the people of Northern Ireland would like to remain in the union with the UK. This is strange, considering both the demographic changes and election results, but pooling is never 100% accurate. Another, reason

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<sup>79</sup> The authoritative source for independent research on UK-EU relations. Reshaping devolution: the United Kingdom Internal Market Act 2020. Available on: <https://ukandeu.ac.uk/reshaping-devolution-the-united-kingdom-internal-market-act-2020/> Accessed on: February 27, 2023.

<sup>80</sup> *Ibid*

<sup>81</sup> Britannica, T. Editors of Encyclopaedia. "Good Friday Agreement." *Encyclopedia Britannica*, February 9, 2023. Available on: <https://www.britannica.com/topic/Good-Friday-Agreement>. Accessed on: February 28, 2023.

<sup>82</sup> United Kingdom and Ireland. The Northern Ireland Peace Agreement (10 April 1998). Available on: [https://peacemaker.un.org/sites/peacemaker.un.org/files/IE%20GB\\_980410\\_Northern%20Ireland%20Agreement.pdf](https://peacemaker.un.org/sites/peacemaker.un.org/files/IE%20GB_980410_Northern%20Ireland%20Agreement.pdf) Accessed on: February 28, 2023.

<sup>83</sup> The New York Times. Catholics Outnumber Protestants in Northern Ireland for the First Time. Available on: <https://www.nytimes.com/2022/09/22/world/europe/northern-ireland-census-catholics-protestants.html#:~:text=According%20to%20the%20census%20numbers,raised%20in%20another%20Christian%20religion>. Accessed on: February 28, 2023.

<sup>84</sup> BBC. Northern Ireland Assembly Election Results 2022. Available on: <https://www.bbc.com/news/election/2022/northern-ireland/results> Accessed on: February 28, 2023.

for possible unification, could be the Brexit vote. Same as Scotland, 56% of Northern Irish voted to remain in the EU.<sup>85</sup>

On February 27, 2023 both the UK PM Rishi Sunak and President of the European Commission, Ursula von der Leyen met to complete an agreement that should resolve disputes regarding the trade in the region. The effect that the “Windsor Framework”<sup>86</sup> will have, regarding the unification is yet to be seen.

When it comes to the future of the United Kingdom, the author would consider it unlikely that the Union might dissolve in near future. However, the author is sure that the next five to ten years can change the landscape of the UK. The “high” of nationalism that followed after the Brexit vote, is slowly disappearing. Right after the Brexit vote, the support for independence in Scotland, Wales, and Northern Ireland reached record-breaking numbers, however, now the numbers slowly decline. However, the author still considers Scotland as the front-runner in the Union, which could be the first that leaves the Union. Unlike Wales and Northern Ireland, historically Scotland has the highest support towards independence. However, the leading Scottish nationalist party the SNP is currently experiencing its own leadership issues. Another obstacle that both Scotland and Wales can experience is once they secede from the UK, they would need to receive international recognition. And if these states decide to join the EU, even if they fit the Copenhagen criteria, it is highly unlikely that they will receive unanimous support from the member states. For example, Spain which has its own secession movements will probably be hesitant to support Scottish or Welsh independence and accession to the EU. While the Republic of Ireland would welcome Northern Ireland, Northern Ireland is the poorest member of the UK, and it would take a lot of money to be invested by the Irish state. While in the long-term the unification can be successful, the first five to ten years will be critical, if the north and south would unify.

### 3.3. SECESSION MOVEMENTS IN IBERIAN PENINSULA

*Iberian Peninsula* is a region in the south-west of Europe. Today it is the home of 57 million people<sup>87</sup>. Today the Iberian Peninsula consists of the landlocked microstate of Andorra, Gibraltar, Spain, and Portugal. Of course, over the history of the Iberian Peninsula, many smaller and bigger kingdoms have existed, each with its own unique traditions, culture, language, and people. Even today in Spain, there are five official languages and two non-official languages, which are recognized by Article 3 of the Spanish Constitution<sup>88</sup>. While Portugal, Andorra, and Gibraltar have no separatist movements, at least in continental Europe, Spain has more than one.

*Catalonia:*

Som una nació. Nosaltres decidim. – We are a nation. We decide: as translated from the original Catalanian. Catalonia is a 32.0091 square km<sup>89</sup> large territory, where 7.5 million people<sup>90</sup> live in. During Francisco Franco's rule, Catalonia and other regions of Spain experienced the oppression of local autonomy, culture, traditions, and language, in order to

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<sup>85</sup> See supra note 65

<sup>86</sup> European Commission. The Windsor Framework: a new way forward for the Protocol on Ireland/Northern Ireland. Available on: [https://ec.europa.eu/commission/presscorner/detail/en/fs\\_23\\_1272](https://ec.europa.eu/commission/presscorner/detail/en/fs_23_1272) Accessed on: February 27, 2023.

<sup>87</sup>World Population Review. Iberian Peninsula Countries 2023. Available on: <https://worldpopulationreview.com/country-rankings/iberian-peninsula-countries> Accessed on: March 27, 2023.

<sup>88</sup>Spanish Constitution (Constitución Española), Art 3(2) C.E. Available on: [https://www.lamoncloa.gob.es/documents/constitucion\\_inglescorregido.pdf](https://www.lamoncloa.gob.es/documents/constitucion_inglescorregido.pdf) Accessed on: April 18, 2023.

<sup>89</sup>Vincente Rodriguez. "Catalonia." Encyclopedia Britannica, March 26, 2023. Available on: <https://www.britannica.com/place/Catalonia>. Accessed on: March 27, 2023.

<sup>90</sup> *Ibid*

create Franco's vision of a single Spanish identity. After the death of Franco, Spain transitioned to a democratic state with the 1978 Spain constitution<sup>91</sup> being the first steps of democracy in Spain. The new Spanish constitution, acknowledges in article 2 the existence and guarantees the right of self-governing of nationalities in Spain. However, the same article also sets out that the indissoluble nature of Spanish Nation.

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.<sup>92</sup>

Also, chapter 3 and article 143 of the Spanish constitution<sup>93</sup>, further elaborates on the self-governing communities.

Before examining the Catalonian independence movement, it is important to look at the statehood checklist provided by the Montevideo convention, can Catalonia full fill these requirements? The first on the list is permanent population, Catalonia has a permanent population, where the majority of people call themselves Catalans. In terms of Defined territory, Catalonia is an administrative region of Spain, with clear borders. Also, Catalonia has historical borders, while most of them are located in Spain, a small part of historic Catalonia is located in France, however, this should not be an issue, for Catalonia to establish its own state within Spanish borders. Government, as indicated in the paragraph above, the Spanish constitution allows the right of self-governance, and Catalonia has its own regional government. However, while Catalonia has its own regional government, they are a part of the centralized Spanish government and the Catalan government only has the right to legislate with limited competencies. Capacity to enter into relations with other states, one of the competencies of the Catalan government does not possess, are official mechanisms to enter into relations with foreign states.<sup>94</sup> However, as discussed in Chapter 2.1. and 2.3. the "capacity to enter into relations with other states" is not necessarily needed to claim independence. It is important to note that, that the Spanish constitution describes Catalonia and other regions as nationalities, not necessarily as nations. However, the word nationalities can be interpreted as a nation.

Why would some Catalans would like to leave Spain? The simple answer could be national identity; however, economic reasons are the main factors. While Catalonia only takes up 6-7% of the total territory of Spain, Catalonia has a higher GDP per capita than Spain, and Catalonia accounts for one-fifth of Spain's total GDP<sup>95</sup>. But for most Catalans, the issue lies in taxes. They believe that they pay way more than they receive back from the Spanish government. With Europe experiencing the European debt crisis, this acted as a catalyst and only accelerated the Catalan government to approve independence referendum. However, even prior to the independence referendum took place, the Spanish Constitutional Court quickly ruled that the decision and legal actions taken by the Parliament of Catalonia, on the 6<sup>th</sup> September 2017, "violated the supremacy of the Spanish constitution, national sovereignty, and

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<sup>91</sup>La Moncloa. Constitution. Available on: <https://www.lamoncloa.gob.es/lang/en/espana/Paginas/constitution.aspx#:~:text=The%20Spanish%20Constituti on%20of%201978,organisation%20of%20the%20Spanish%20State.> Accessed on: March 27, 2023.

<sup>92</sup>Spanish Constitution (Constitución Española), Art 2 C.E. Available on: [https://www.lamoncloa.gob.es/documents/constitucion\\_inglescorregido.pdf](https://www.lamoncloa.gob.es/documents/constitucion_inglescorregido.pdf) Accessed on: April 18, 2023.

<sup>93</sup>Spanish Constitution (Constitución Española), Art 143 C.E. Available on: [https://www.lamoncloa.gob.es/documents/constitucion\\_inglescorregido.pdf](https://www.lamoncloa.gob.es/documents/constitucion_inglescorregido.pdf) Accessed on: April 18, 2023.

<sup>94</sup> Government of Catalonia. Section One: Powers of the Government of Catalonia (Articles 9-28) Available on: [https://web.gencat.cat/en/generalitat/estatut/estatut1979/titol\\_primer/](https://web.gencat.cat/en/generalitat/estatut/estatut1979/titol_primer/) Accessed on: April 18, 2023.

<sup>95</sup> Statista. Gross domestic product (GDP) in Catalonia and the whole of Spain between 2003 and 2021 Available on: <https://www.statista.com/statistics/327063/gross-domestic-product-in-catalonia-and-spain/> Accessed on: March 27, 2023.



the indissoluble unity of the nation”<sup>96</sup>. However, Parliament of Catalonia still conducted the independence referendum. Which prompted the Spanish government to deploy police forces to crack down on the aforementioned referendum. Following that, many leaders of the Catalan independence movement were arrested and judged by the Spanish government, and then imprisoned. Spain quickly introduced “direct rule” in Catalonia. While the Spanish government with the help of brute force, managed to crack down on the referendum, according to the Catalan government, 90% of people who managed to vote, voted to leave Spain, however, there was only a 43% voter turnout.<sup>97</sup>

Another region in the Iberian Peninsula that could seek secession from Spain is the Basque Country. Basque Country is a small autonomous community in the north of Spain and South West of France. Same as in Catalonia, the local population identify themselves not as Spanish, but as members of these autonomous communities. The Basque nationalist movement for most of the 20th century is associated and closely linked with the “Euskadi Ta Askatasuna” or “ETA”. ETA is what IRA was to Ireland: “an armed Basque separatist organization calling for the region’s independence”<sup>98</sup>. However, in 2011, ETA has “announced the definitive end to its armed activity”<sup>99</sup>. However, Basque pro-independence movements still prevail. Various polls conducted in the past 20 years, suggested fluctuating results of the majority of people supporting or being against Basque independence. However, future events in Catalonia can change the opinion of the Basque population.

### 3.4. COMPARATIVE ANALYSIS

This sub-chapter looks at and compares the UK and Spanish attempts, decisions, and different approaches taken by the respective governments, regarding their respective secession movements.

*Spain and Catalonia.* Regarding Catalan independence, Spain has made it extremely clear, that a lawful Catalan secession is not possible. The actions taken by the Spanish government during and after the 2017 referendum, clearly show that the Spanish government is not willing to let Catalonia go. The reasons why Spain would not want Catalonia to leave can be explained simply by putting oneself into Spanish shoes, and imagining how embarrassing it could feel, when a region which is part of your country, wants so desperately to leave you. Catalonia leaving would also question the integrity of the Spanish constitution, as the Spanish constitution sets out the “indivisible”<sup>100</sup> nature of Spain. However, in the author's opinion, the main reason why Spain does not want an independent Catalonia is its economy. As mentioned in the chapter above, Catalonia contributes a significant amount to the Spanish economy, and while any social and political consequences can be addressed, at that time the struggling Spanish economy, could not take a such loss, and even in times when Spanish economy is blooming, the loss of Catalonia would be catastrophic for the Spanish economy. Catalonia leaving would also create a precedent not only in Spain but in Europe also. Spain, which has other nationalist movements within its borders, would obviously want at least the right to hold a referendum if Catalonia secedes.

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<sup>96</sup> Josh Satre, Lahbib Basma, Mara Kiesle, Ciara Aucoin, Adam Miller, Ajla Henic, Nicola Manfredi Audibert, et al. “Spain: Basque and Catalan Separatism.” Edited by Elliott Bynum, Laura Fluegel-Carew, Sam Jones, Roudabeh Kishi, and Clionadh Raleigh. *POLITICAL DISORDER IN EUROPE: 10 CASES FROM ACLED’S NEW EXPANSION. Armed Conflict Location & Event Data Project*, 2021. Available on: <http://www.jstor.org/stable/resrep28647.8>. Accessed on: May 08, 2023.

<sup>97</sup> BBC. Catalonia’s bid for independence from Spain explained. Available on: <https://www.bbc.com/news/world-europe-29478415> Accessed on: April 19, 2023.

<sup>98</sup> See supra note 96

<sup>99</sup> See supra note 96

<sup>100</sup> See supra note 92

Following the 2017 referendum and 2019 arrests of leaders of Catalan civil society, the people of Catalonia have actively continued to march and protest for independent Catalonia. Although, some recent polls suggest that support for Catalonia's independence is declining among the local population<sup>101</sup>. However, negotiations between the Catalan government and the central Spanish government continue. The Catalan government has proposed to conduct a “Montenegro model” referendum. Where, to quote: “...that would grant independence with 50% participation and 55% in favour of Catalonia’s independence.”<sup>102</sup> However, members of the Spanish government have voiced that: “With a government of PM Pedro Sánchez there will never be a referendum of this type, neither legal nor unlawful”<sup>103</sup>.

*The UK.* Same as Spain, the UK has experienced one of its nations conducting an independence referendum. However, unlike the Catalonian independence referendum 2017, the Scottish independence referendum 2014, had the consent of the parent state to allow the people of Scotland to choose their destiny. The consent by the British government was expressed in the “agreement between the United Kingdom Government and the Scottish Government on a referendum on independence for Scotland”<sup>104</sup> aka the Edinburgh Agreement 2012. The Edinburgh Agreement provides that both parties (Scottish and UK governments) agree that the referendum should “have a clear legal base”<sup>105</sup>, “legislated for by the Scottish Parliament”<sup>106</sup>, “conducted so as to command the confidence of parliaments, governments and people” and “deliver a fair test and a decisive expression of the views of people in Scotland and a result that everyone will respect”<sup>107</sup>. Of course, the impartiality of the referendum was also agreed upon. What is interesting, is that while the Edinburgh Agreement 2012 is an agreement, however, is it a legal or political agreement? In 2012, Professor Christine Bell of Constitutional Law at the University of Edinburgh, in her opinion and academic analysis, challenges the legally binding nature of the Edinburgh Agreement 2012.<sup>108</sup> In 2013, the Edinburgh Agreement 2012 and the Order in Council was approved by making modifications in The Scotland Act of 1998<sup>109</sup>, which in return granted the constitutional legitimacy of the Edinburgh Agreement 2012.

As we know, the 2014 Scottish independence referendum resulted in Scotland remaining in the union. However, due to other political developments in the UK, most notably Brexit, the Scottish Parliament advocates for a new independence referendum. While the UK Supreme Court decision is examined in Chapter 3.1. where it denied the Scottish Parliament the right to legislate for a new independence referendum, the UK Supreme Court never denied Scotland the right to leave the union. Following this judgment, the future of Scottish independence rest on the next general election in 2024.

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<sup>101</sup>VOA News. Polls Show Support for Catalonia Independence Declining. Available on: <https://www.voanews.com/a/polls-show-support-for-catalonia-independence-declining/6749031.html> Accessed on: April 19, 2023.

<sup>102</sup> Euractiv. Spanish government dashes hopes of ‘Montenegro-style’ referendum for Catalonia. Available on: <https://www.euractiv.com/section/politics/news/spanish-government-dashes-hopes-of-montenegro-style-referendum-for-catalonia/> Accessed on: April 19, 2023.

<sup>103</sup> *Ibid*

<sup>104</sup> United Kingdom. Agreement between the United Kingdom Government and the Scottish Government on a referendum on independence for Scotland (2012) Available on: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/313612/scottish\\_referendum\\_agreement.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/313612/scottish_referendum_agreement.pdf) Accessed on: April 20, 2023.

<sup>105</sup> *Ibid*

<sup>106</sup> *See supra* note 104

<sup>107</sup> *See supra* note 104

<sup>108</sup> Scottish Constitutional Futures Forum. Christine Bell: The Legal Status of the 'Edinburgh Agreement'. Available on: <https://www.scottishconstitutional futures.org/OpinionandAnalysis/ViewBlogPost/tabid/1767/articleType/ArticleView/articleId/431/Christine-Bell-The-Legal-Status-of-the-Edinburgh-Agreement.aspx> Accessed on: April 20, 2023.

<sup>109</sup> United Kingdom. The Scotland Act 1998 (Modification of Schedule 5) Order 2013. Available on: [https://www.legislation.gov.uk/uksi/2013/242/pdfs/uksi\\_20130242\\_en.pdf](https://www.legislation.gov.uk/uksi/2013/242/pdfs/uksi_20130242_en.pdf) Accessed on: April 20, 2023.

*Spain and UK.* When comparing how the UK and Spain have acted regarding their breakaway regions, shows a clear difference in different constitutional systems. While it is obvious that neither country wants its subjects to leave the union, the UK's approach is much more lenient. Perhaps the answer to the question of why the UK approach is much more lenient than its Spanish counterpart, can be seen in the name of the state. United Kingdom: a union of kingdoms. While the Iberian Peninsula has also consisted of multiple kingdoms and states, modern-day Spain, is based on the 1978 Spanish constitution, while the UK per se, does not have a single written and codified constitution, but a collection of bills, acts, and other legal documents, of which, some exist from the 18th century. For example, the 1707 Act of Union. While the Spanish constitutions describe Spain as one single entity, with multiple nationalities existing within it, the uncodified nature of the UK constitution, defines Scotland as part of it, when she became part of the UK in the 1707 Act of Union. The UK Supreme Court decision and the 2017 Catalan Independence Referendum show that it is not possible "... to hold a sub-state independence referendum without the agreement of the host state"<sup>110</sup>. Additionally,

...refusal to negotiate with substate authorities and the blocking of the referendum via the courts (and by force) will not resolve the issue"<sup>111</sup>.

Neither the Spanish government or the UK government efforts, can stop the will of the people to seek independence.

While both Catalonia and Scotland are still part of their respective parent states, it is not possible to analyze how the two different approaches can affect international recognition. Furthermore, academic research of this kind, should not look at "what if" scenarios. While on the surface, the Scottish case seems to have the law on its side, at the end of the day, international recognition is a political decision, and the legality of secession is secondary to the willingness of other states to recognize an entity as an independent state and part of the international legal community.

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<sup>110</sup>Adam, Casanas. E 2021, "Alternative pathways to an independence referendum – some reflections based on the experience of Catalonia", *Edinburgh Law Review*, vol. 25, no. 1, pp. 125-130. Available on : <https://doi.org/10.3366/elr.2021.0680> Accessed on: May 10, 2023.

<sup>111</sup> *Ibid*

## CONCLUSION

This thesis set out to answer the question “What are the legal mechanisms for Scotland and Catalonia to secede from the UK and Spain?” The author has also put forward a hypothesis: While international law provides the right to self-determination, first and foremost, international law protects the interests of an already independent state.

However, before the author sets out to answer the proposed research question and hypothesis, the author set out the goal in Chapter One, to learn and understand the terminology used regarding state, statehood, independence, etc. The author found out that, the state is a symbiotic relationship between society and government. Where humans with association to each other in a territory which has permanent frontiers, has an established governmental authority and institutions, that are sovereign and establish its own laws. While a nation is a theoretical idea of a group of people who share common culture, language, and history in a common geographical location. Not all states are nations and not all nations are states. The author further learned what is Nationalism, Independence, Sovereignty, Secession, and The Right of Self-determination. Nationalism is a catalyst, for the process of self-determination, which has the end result of achieving some form of sovereignty or independence.

In Chapter Two, the author examined the process of secession. What are the preconditions, the legal mechanisms for secession and independence, and what is international recognition and the challenges of international recognition? The chapter is concluded with an examination of a fictional case study. This was done to better illustrate how, at least in theory the process of secession and building of statehood, could happen. There have been many attempts in International law, to give a legal definition of what exactly is a state. However, due to the political nature of the issue at hand, the Montevideo Convention, with its checklist of preconditions is the only document which attempts to define a state legally. When examining legal mechanisms for secession, it is clear that, while the right to self-determination does exist, the main objective of International law is to protect existing states. Even if a region or a nation successfully secedes from their parent state, the last hurdle of international recognition is still an obstacle too big to get over. This is due to the political nature of international recognition, regardless of the legality of secession, a state can simply not recognize a state, and use this as a political negotiation tool, or just out of pure spite. While there are theories, approaches, and doctrines, regarding international recognition, it is still a political decision made by the state.

The knowledge gained in Chapters One and Two was used in Chapter Three to examine the secession movements in Europe, and the reasons, causes, and current state of affairs in the Iberian Peninsula and the British Isles, regarding their secession movements. While this chapter looked at different approaches of Spain and the UK, the main emphasis was put on Catalanian and Scotland, as they are the loudest recent examples of independence movements. In the case of Catalonia, Spanish Constitution forbids Catalan independence. For Scotland, the tale is different. While a recent UK Supreme Court decision does not allow the Holyrood to legislate for a new independence referendum, however, Scotland does possess the right of Constitutional Self-determination.

The main takeaway of this thesis is that the main objective of international law, among other things is to protect state sovereignty and territorial integrity. And in the case of Catalonia and Scotland, the matter of independence is a domestic issue. To answer the question: “What are the legal mechanisms for Scotland and Catalonia to secede from the UK and Spain?”, both Catalonia and Scotland, need consent from their parent states. Where Scotland is ahead of Catalonia, Scotland has the right to Constitutional Self-determination, unlike in the Catalan case, where the Spanish Constitution stands for the indivisible nature of Spain. This also confirms the proposed hypothesis, “While International law does provide the right to self-determine, first and foremost, international law seeks to protect the interests of an already independent state, as there are no other legal mechanisms provided in International law for secession, it is up to the parent state to give its consent for secession.” And it is highly unlikely

that any state, out of its free will, would want part of its territory to leave it. However, the efforts taken by the Spanish and UK government, can not change the will of the people to seek independence.

The subject research and analysis in this thesis have tremendous potential to be greatly expanded upon, researched and analyzed in the future. At the moment of writing this thesis, neither Catalonia nor Scotland, have seceded from their respective parent states. As long as these independence movements exist, new events regarding Catalan and Scottish independence will undoubtedly happen. Just next year, UK general elections will take place, which Scottish National Party (SNP) wants to use as the “de facto” independence referendum. Where if the majority of the Scottish voters elect the SNP in the Scottish Parliament, it should be a clear indicator for Westminster to start negotiations with Holyrood. If SNP is successful in the upcoming election in 2024, the events following that, and the reaction from Westminster, will definitely be an interesting topic for legal and political analysis. And if the negotiations between Westminster and Holyrood are successful for Scotland, the process and aftermath of Scotland’s recognition and integration into international politics and law can also be an interesting topic for research and analysis. As far as the future of both states, it will remain to be seen.

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