

CATALAN INDEPENDENCE FROM THE PERSPECTIVE OF INTERNATIONAL LAW

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

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

I. INTRODUCTION

The concept of statehood is very subjective. Different people hold different ideas about the concept of state.

While some states are giving recognition to states, other states are reluctant to give recognition due to many political reasons. International recognition is immensely important to survive in the world. Therefore, states strive to achieve recognition among the international community since it is essential to conduct relations with others. State recognition is broadly perceived to be a political issue with legal consequences. Therefore state recognition should be based on international law and legal perspective. In this regard, there should be a kind of recognition from other states in the world. Within this context, customs, interstate negotiations and treaties are essential requirements.

Recognition of states can be done expressly or impliedly. The recognition to states does not solely depend on international law. It is always connected with the foreign policy objectives of other states in the world. This means even though a state is given de jure recognition or recognition by law, some states in the international arena are not willing to carry out with relations that state. This includes absence of political, economic and most importantly diplomatic relations with that particular state. This emphasizes the way of handling relations with other states, which influences another state's recognition in the international system. Thus, this can be identified as de facto recognition, which means recognizing a state factually. Therefore, it is important for a state to achieve both de facto and de jure recognition in the international arena. In addition to that, the most important two theories in granting recognition for states are the constitutive and declaratory theories.

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

-Hugo Grotius-

The states in the international community have two interests. One is national interests and the other is international interests. Every state try to protect its national interests. Therefore it is necessary to identify the traditional and other additional criteria which make state as an entity in the international arena. “The State is an association of a considerable number of men living within a definite territory, constituted in fact as a political society and subject to the supreme authority of a sovereign, who has the power, ability and means to maintain the political organization of the association, with the assistance of the law and to regulate and protect the rights of the members, to conduct relations with other states and to assume responsibility for its acts.” In October 10, 2017, Carles Puigdemont, the President of Catalonia gave a speech following the referendum on October 1, 2017 where the result showed that more than 90% of the voters chose to leave Spain. According to his speech, after the referendum, Catalonia has earned the right to be an independent state where the people have determined that Catalonia should become an independent state in the form of a republic.” The Article 4(4) of Catalonia’s Law on the Self-determination Referendum, has mentioned that the Catalan parliament has a right to declare independence. This unclear statement has spurred reactions from the Spanish government demanding clarification and threatening to invoke Article 155 of the Constitution which gives powers to the government to deal with a Self-governing Community. With the tension between the region of Catalonia and Spain, the situation has raised the question about the legality of unilateral declaration of independence.

II. LITERATURE REVIEW

A. Statehood

Legal writers have suggested many definitions of statehood throughout the history. The States system was began with the collection of negotiated treaties such as Westphalian Peace treaty in 1648. The principles inherited from Westphalia Treaty which includes such as the domestic authority and non-interference that have become a major components of the modern States system. Westphalia is

also important as European scholars derived their implicit models of state from the treaty.

Fiore (1874) who has stressed on power politics and law has mentioned that the state is an association of a considerable number of men living within a definite territory which is made as a political entity. That entity is the subject to the supreme authority of a sovereign, who has the power, ability and means to maintain the political organization of that entity with the assistance of the law. That sovereign has the power to control and protect the rights of the members of that political entity, conduct relations with other states and to assume responsibility for its acts. If these criteria are satisfied, then that entity is regarded as a state by Fiore.

Baty (1930) called a state as an organized people or an assemblage of human beings among whom the destiny of an ascertainable number usually prevails. This emphasizes on sovereignty as well. The existence of an organized political power over a territory and people is meant as sovereignty. Baty believed that the internal character of the states depends on the culture and traditions of the land people live in. He also proposed a criterion for statehood. It is a characteristic of self-containment which contains the existence among the people, or the bulk of the people.

Being different from other writers, Hans Kelsen attempted to define statehood in terms of law. He believes that the state is not the individuals who live in it, but the assemblage of individuals and this assemblage is the function of the order that regulates their mutual behavior. One of the unique results of the pure theory of law which constitutes the political community that is called a state.

B. State Sovereignty

“At the beginning, the idea of sovereignty was the idea that there is a final and absolute political authority in the political community and no final and absolute authority exists elsewhere”

- F.H. Hinsley -

In the present world sovereignty can be defined as the independence of a state which allows states to act independently at its own discretion take decisions with regard to its internal and external affairs without violating another state’s rights. In the contemporary world it is necessary to identify differences between “internal” and

“external” sovereignty. Internal sovereignty is the structure or constitution of a state. External sovereignty relates to the relations with other states. Internal sovereignty deals with the state’s authority over its subjects, while the second notion refers to the independence or autonomy of states. These two are interdependent. Further, If a state or its people are sovereign over their monarchy, then outsiders are constrained from interfering. Internal sovereignty gives states or people certain autonomy or liberty in their international relations.

This reflects the general acceptance is the basic rule of international law. There are two main aspects on State sovereignty. First is that there are number of attempts in the international community to restrain State sovereignty in favor of international co-operation. The second aspect is the conventional tendency among some states that leads to retain their sovereignty in the face of unfavorable circumstances in the world.

III. CONCEPTUAL FRAMEWORK

A. De Jure Recognition

De jure recognition interlinks with the fulfillment of necessary legal criteria of states. This recognition leads to make extensive relations in many ways. De jure recognition include,

- i. The establishment of diplomatic relations with the recognized state.
- ii. The participation of the recognized state in international conferences.
- iii. The right to be a part of international conventions and agreements.
- iv. Respect and recognition for the judicial and administrative organizations of the recognized state by the existing states.

B. De Facto Recognition

De facto is the imperfect position of states. This recognition does not include the exchange of diplomats

and establishing of diplomatic missions. At this stage, states are eager to get their recognition by fulfilling de jure recognition. According to scholars, this period of recognition involves uncertainty. For an instance, Soviet Russia was considered as a de facto state in 1921 and in 1942 Soviet Russia was considered as a de jure state.

C. Methodology

The study is a qualitative research which is aimed at gathering in-depth understanding on the discussed phenomenon. A number of secondary sources such as books, journals, articles and news reports were used in this study. The data analysis procedure was done through the case study method. Case studies includes analyses of persons, events, decisions, periods, projects, policies and institutions. The case study method used in this in a descriptive manner to get an in depth analysis of the particular case.

D. Data Presentation and Analysis

Catalonia is a part of Spain where there is a regional government that has received the power through the Spanish constitution. The Catalanian regional president, Carles Puigdemont, has mentioned his determination to declare independence for Spain after a unilateral referendum. The country’s constitutional court ordered the referendum to be suspended last month. Puigdemont argues his government has been left with no choice but to proceed unilaterally to discuss the matter with the Madrid government. He also said that the referendum results gave him a clear mandate. But this is totally against the Spanish constitution. The constitution is based on the indissoluble unity of the Spanish nation, the common and indivisible homeland of all Spaniards. It recognizes and guarantees the right to self-government of the nationalities and regions. In order to find out whether Catalonia has the ability to be declared as an independent state, the statehood criteria should be applied to the case study of Catalonia as mentioned in the Montevideo Convention.

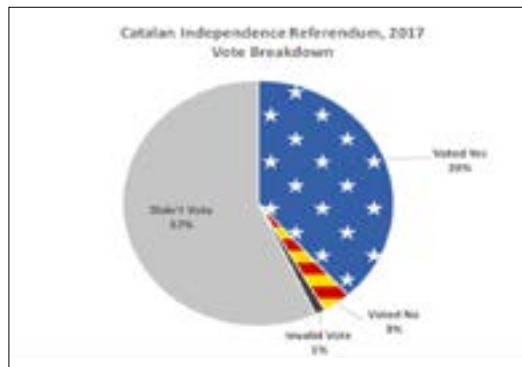


Figure 1.
Source: Instituto Nacional de Estadística

IV. CRITERIA OF STATEHOOD

The word “statehood” has mentioned in the Montevideo Convention on rights and Duties of States introduces basic criteria for statehood.

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

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

A. Permanent Population

This criterion is very important in determining the statehood. Permanent population can be identified as the collection of individuals of both sexes who live together as a community despite the fact that they may differ in race, religion and in color. There is no specific number of people to be acknowledged for a state to be considered as a state.

According to 2017 statistics, Catalonia comprises of 7,496,276 populations out of the 46,528,024 population of Spain which amounts to 16.1% of the total Spanish population. Catalonia consists of four provinces namely Barcelona, 5,533,459 populations, Girona, 742,728 populations, Lleida, 427,833 populations and

Tarragona 792,256 population. This population has a distinct language and cultures. At present, over 60% of Catalans were born in Catalonia, 20% were born in other communities in the State and approximately 15% are having foreign origins. One out of three Catalans is between 20 and 39 years of age.

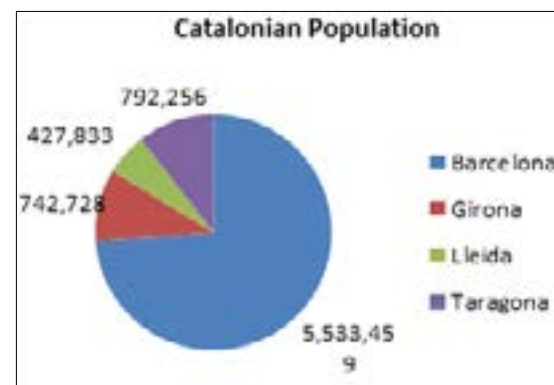


Figure 2.

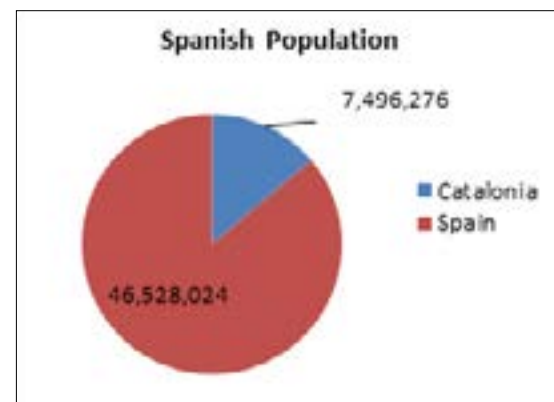


Figure 3.

As shown in the above figures, it can be identified that Catalonia is having a permanent population which fulfills one of the main criteria of the Montevideo Convention.

B. Defined Territory

State is a territorial entity and it is under the exclusive and complete authority of one single state. The authority exercised by one state over its territory is known as the territorial supremacy. This is a vital part of state formation and state sovereignty. As in population, there

is no minimum area of territory that requires to be fulfilled to be considered as a state. Also there has to be a reasonably stable political community. For example, Israel was considered as a state despite the issues of territorial borders. State own its own air, naval and land space. In addition to that the mobile objects such as ships and air crafts too fall under the category of state territory or state jurisdiction.

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

C. Government

A government of a state consists of executive, legislature and judiciary. This is the best example for a stable political community. Unless all these three components are completed, it won't be considered as a state. A government should have effective control over the citizens of the state. Otherwise the state fails and riots may take place by tarnishing the image of that particular state within the international arena. For instance Libya can be mentioned. This can be identified as the most crucial part of the Catalonian issue. Catalonia does have a regional government which already enjoys considerable freedom, and runs its own police and exercises much control over health and education. Still, taxes, foreign affairs, defense, ports, airports and trains are in the hands of Spain's government in Madrid. Therefore it cannot be identified as a separate state which can rule alone. Because the separate governmental powers has given to Catalonia by the Spanish government statute by binding Catalonia under the statute of Spain.

D. Competence to build relations with other states

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

Catalonia accounts for nearly a fifth of Spain's economy, and leads all regions in producing 25% of the country's exports. It can be identified as the power house of Spain. It contributes much more taxes (21% of the country's total) than receive from the government. Independence supporters have seized on the inequity, arguing that stopping of transfers to Madrid would turn Catalonia's budget deficit into a surplus. As an example Barcelona is the regional capital that attracts investments and Volkswagen (VILKAY) and Nissan (NSANF) have plants near Barcelona.

If Catalonia considers itself as an independent state, there will be issues regarding on the membership European Union. Catalonia was forced to apply for EU membership independently. But all of the current members have to agree for that including Spain. They believe that getting EU membership will be difficult to Catalonia. Moreover the exclusion from the block will raise the cost of exports produced in Catalonia.

E. Independence

Without the freedom or independence of a state, they cannot enter in to relations with the world. Crawford describes freedom as one of the main criteria for statehood. Independence of a state should prove the ability to enter in to relations with the world independently. It

emphasized the fact that state can exist as a separate entity in the world. An independent state consists of two basic characteristics.

- i. Not being subject to the authority of any other state.
- ii. Separate existence of an entity

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

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

F. Sovereignty

The most important criterion for statehood is sovereignty. According to Crawford, a state cannot exist without sovereignty. State sovereignty can be defined as the evolving relationship between the state and civil society or the political authority and community. The relationship with these two factors is essential to maintain sovereignty and to be considered as a state in the international system. Catalonia can be identified as an entity which has sovereignty as it has a good relationship between its citizens and each of its ruling entities, the parliament and the police. Catalonia also has its own power to collect taxation. Therefore Catalonia can be identified as an entity which has sovereignty. But it is not sufficient to be identified as a state in the international system.

G. Violation of international law

New states in the international system should not violate the international law in order to get the title as a "State." If a situation is connected with unlawful force and

coercion then the other states will not accept that entity as a state. Some believe that this should be the only and most important criteria for statehood. Actually Catalonia declared independence from a referendum which was held in October 2017. Spanish government and the European Commission argued that the vote is simply illegal, as Catalonia is part of Spain which gave regional power through the Constitution of Spain. Therefore they considered this as a unanimous declaration of independence as it is a violation of law. Likewise it can be argued that since Catalonia declared independence by violating the law, it cannot be accepted as an independent state.

H. Self-determination

Equal rights and self-determination of people are protected by the UN preamble. The right to determination made lots of colonies to claim and gain their statehood. This actually made status to get the statehood title even without fulfilling the statehood criteria. Spain's refusal to accept the possibility of Catalan independence manifestly neglects the idea of self-determination. This position essentially denies self-determination which is an inherent right of states. There are arguments whether those states has to have the consent of the host state in order to declare their independence. In this regard, Catalonia doesn't give the consent declare Spain as an independent state as it is against the constitution. Yet this becomes arguable when a state fulfills the international law and the criteria of the Montevideo convention.

V. CONCLUSION

After analyzing all above mentioned facts regarding the Catalonian statehood, it can be made a conclusion that Catalonia does not have the ability to be declare as an individual state in the international system as it does not fulfill all the 4 criteria of statehood as stated in the Montevideo Convention. Catalonia doesn't have a specific territory as it is a part of Spain and also Catalonia does not have a separate independent government as the government which is already there is instituted by the Spanish government. Also with regard to the additional statehood criteria, Catalonia does not have independence and the right to declare self-determination without the consent of host state as it is violation of law. Due to these reasons it can be identified that Catalonia is not

an independent state, but is a region governs under the Spanish constitution.

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