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The Demand for Unilateral Secession in Catalonia: While the Cause is Compelling, Secession Would Not Be Legal Under International Law

Logan Hayes

Introduction

Tensions between Catalonia and Spain have finally boiled over, leading to Catalonia's decision to unilaterally secede from Spain. On October 1, 2017, an overwhelming 90% of voters chose to leave Spain in a referendum held by the Catalanian parliament.¹ On October 10, 2017, Carles Puigdemont, President of Catalonia, gave a speech claiming that "with the results of the referendum on October first, Catalonia has earned the right to be an independent state."² The issue has now become whether Catalonia has the right, under international law, to maintain their unilateral secession from Spain in order to form their own independent nation. This confrontation between Spain and Catalonia will force another international discussion on which situations may allow one part of a larger state to secede and become a new state.

The Supreme Court of Canada addressed the issue of unilateral secession in 1998 when Quebec attempted, but failed, to secede from Canada.³ The International Court of Justice (hereinafter "ICJ") also addressed this topic in 1999 when it was determined that Kosovo had

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1. Sam Jones, Stephen Burgen and agencies, *Catalan referendum: preliminary results show 90% in favour of independence*, THE GUARDIAN (Oct. 1, 2017), <https://www.theguardian.com/world/2017/oct/01/dozens-injured-as-riot-police-storm-catalan-ref-polling-stations> (noting that it was during this vote that at more than 800 people as well as 33 police officers were hurt due to violent aids led by Spanish police).
 2. Official statement by the President, Carles Puigdemont, on the political situation in Catalonia (Oct. 10, 2017) (on file with the Generalitat de Catalunya), http://premsa.gencat.cat/pres_fsvp/AppJava/notapremsavw/303582/ca/official-statement-by-the-president-political-situation-in-catalonia.do (Puigdemont hoped that "the conflict between Catalonia and the Spanish state can be resolved in a manner that is serene and with accord, respecting the will of the people.").
 3. Judicial and Similar Proceedings Supreme Court of Canada: Reference Re Secession of Quebec, Nov. 1998, 37 I.L.M. 1340 (1998) [Hereinafter Reference Re Secession of Quebec].

the right to declare independence through unilateral secession from Serbia.⁴ The analyses of these two major court decisions can highlight which principles typically govern the court on matters of unilateral secession. It is important, however, to note that these examples would merely be persuasive in determining the legality of Catalonia's decision to unilaterally secede from Spain.

This comment explores whether Catalonia's unilateral secession would be deemed legal in the realm of international law. Both the Canadian Supreme Court and the ICJ focused their analyses on two concepts: (1) the right to self-determination; and (2) territorial integrity. The Canadian Supreme Court, in addressing the right to self-determination, found that it is only applicable in instances where people were "denied meaningful access to government to pursue their political, economic, cultural and social development" through oppression.⁵ The Canadian Supreme Court also found that the concept of territorial integrity prohibits a unilateral declaration of independence unless it is authorized by that state's constitution.⁶ Quebec was denied the right to a unilateral declaration of independence as they did not meet the aforementioned criteria. The ICJ, in addressing the declaration of independence by Kosovo, found that not only did Kosovo not violate international law,⁷ but that the principle of territorial integrity did not prohibit unilateral declarations of independence.⁸ In applying the analyses and conclusions regarding both Quebec and Kosovo, it is clear that Catalonia cannot legally secede from Spain through a unilateral declaration of independence. The rulings made in Quebec and Kosovo are not binding, but can offer insight into how the international arena has addressed this issue in the past. Until there

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4. United Nations Mission in Kosovo, *On a Constitutional Framework for Provisional Self-Government in Kosovo*, UNMIK/REG/2001/9 (May 15, 2001).
 5. Reference Re Secession of Quebec, *supra* note 3 (A unilateral declaration of independence is the first step to achieving unilateral secession).
 6. Reference Re Secession of Quebec, *supra* note 3 (Each nation attempting to secede must follow different steps that are dependent upon the requirements within the constitution).
 7. *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo*, Advisory Opinion, 2010 I.C.J. Rep. 403 (July 22), <https://www.icj-cij.org/files/case-related/141/141-20100722-ADV-01-00-EN.pdf> [hereinafter *Accordance*].
 8. *Accordance*, *supra* note 7.

is a true legal evaluation, the Catalans will continue to spread unrest throughout Spain and the issue will go unresolved.

Background Facts and Legal Doctrine

The Catalanian Crisis

A Formerly Oppressed Country Seeks Independence

The Spanish Constitution of 1978 established a framework for “a process of devolution of power;” authorizing Spain to be divided into seventeen self-governing *Comunidades Autónomas*.⁹ Each community runs its own regional parliament and government; granting them a substantial amount of political power.¹⁰ Of these regions, Catalonia proved to have the strongest nationalist sentiment and greatest desire for autonomy throughout Spain’s history.¹¹ In 1979, Catalonia achieved self-governance by passing a Statute of Autonomy, later updated in

2005.¹² This new Statute inspired Catalans to believe that they had the “right to decide.”¹³ Catalans view the “right to decide” as “the right to actually choose by themselves, in a unilateral manner, whether they want Catalonia to remain in Spain.”¹⁴ Catalans hoped negotiating with Spanish authorities would facilitate a smoother transition if they decided they wanted independence.¹⁵

According to Catalan secessionists, Spanish authorities violated the political agreement contained within the Spanish Constitution of

9. Víctor Ferreres Comella, *The Spanish Constitutional Court Confronts Catalonia’s ‘Right to Decide’* (Comment on the Judgment 42/2014), 10 EUR. CONST. L. REV. 571–590 (2014).

10. *Id.*

11. *Id.*

12. Comella, *supra* note 9, at 572 (Changes were made with the intent to reduce tensions between the Spanish Constitution and the 1979 Statute of Autonomy).

13. *Id.* (The “right to decide” being the right to self-determination through a unilateral secession from Spain).

14. *Id.*

15. *Id.* (“The space for negotiation with the Spanish authorities would be larger, of course, if the referendum were understood to be a mere expression of opinion, and not the exercise of a political power to decide an issue unilaterally. If the referendum were simply an instrument to test the political waters in Catalonia with regard to the status of this region in Spain, secession would not be the only way out of the problem, even if most people voted in favour of it. A new institutional arrangement that changed the form and amount of self-government in Catalonia would also be part of the menu, as a political answer to the dissatisfaction expressed by citizens.”).

1978.¹⁶ They often say the Constitution is “politically dead” because the Spanish government has not adhered to the “spirit of the document.”¹⁷ This Catalan secessionist opinion is deeply rooted in the Spanish Constitutional Court’s 2010 decision, which invalidated the 2006 Statute of Autonomy because it failed to explicitly define Catalonia as a “nation.”¹⁸ The original Preamble of the 2006 Statute of Autonomy claimed that Catalonia was a nation, even going so far as to acknowledge Catalonia as a “nationality.”¹⁹ As a result, in 2010, the Spanish Constitutional Court weakened the final version of the text that the Spanish legislative assembly produced, which was not so explicit.²⁰ This is important because under Article 2 of the Spanish Constitution, the term ‘nationality’ “grants self-government to the ‘nationalities and regions’ that exist in Spain.”²¹ The Court explained that it “didn’t mean to” deny Catalonia’s legitimacy as an independent nation.²² However, the Spanish Constitutional Court determined that, both legally and constitutionally speaking, only Spain is a na-

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16. Comella, *supra* note 9, at 573 (The political parties in Catalonia have created a narrative on “this process of ‘national transition,’” which has greatly impacted Catalan public opinions).
 17. *Id.* (The Court’s 2010 decision was almost unanimous to the extent that the provisions were found to be defective under the Spanish Constitution. This decision was reached both by the majority opinion judges and the dissenting judges. Essentially, the dissenters agreed with the majority, but would have invalidated more proposed provisions. Thus, in addressing the validity of the articles that were ultimately declared unconstitutional, the court essentially agreed).
 18. *Id.* (In the original draft prepared by the Catalan Parliament, they explicitly defined themselves as a nation. However, through editing and rewriting the statute, that straightforward language was lost. Under Spain’s constitution a region like Catalonia would be considered an autonomous community, SPANISH CONST. Dec. 27, 1978, art. 147).
 19. *Id.* (“The Preamble [of the 2006 Statute of Autonomy] was therefore to be read in light of the Constitution, so that any suggestion that Catalonia is a nation had to be excluded. The Court explained that its analysis was exclusively legal: it did not mean to deny the legitimacy of viewing Catalonia as a nation from historical, linguistic, cultural, sociological or other perspectives. Still, the Court was probably too strict when it insisted on the legal impossibility of defining Catalonia as a nation.”).
 20. *Id.* (This appeal to Spanish Constitutional Court because a political party, called the Partido Popular, wanted to challenge the legitimacy of the 2006 Statute of Autonomy).
 21. Comella, *supra* note 9 at 574 (The Court found that the expression “Spain, a nation of nations,” as seen in the Spanish Constitution, should be interpreted to show the “cultural pluralism that characterizes Spain.” The Court ultimately determined that “the Constitution only knows of the existence of the Spanish nation,” with no indication that its autonomous communities could be considered nations).
 22. *Id.*

tion.²³ Catalan secessionists believed that the 2006 Statute of Autonomy was going to be a “new constitutional pact ‘between Catalonia and Spain,’ which the Court ought to have respected.”²⁴ This ruling prompted Catalans protests and declarations that: “We are a nation. We decide.”²⁵

The Invalidation of Sovereignty Leads to the Unofficial Referendum of 2014

On January 23, 2013, the Catalanian parliament passed a Declaration of Sovereignty, which the Constitutional Court proceeded to partially invalidate.²⁶ In response to the Constitutional Court’s partial invalidation, the Catalanian parliament held an unofficial referendum on November 9, 2014 to determine the “true will” of the people.²⁷ This referendum posed two questions to Catalans: (1) Do you want Catalonia to be a state? (2) Do you want that state to be independent?²⁸ The people’s answer was a clear “yes” to both of those ques-

23. *Id.*

24. *Id.* (“According to this understanding, if Catalans voted for independence, negotiations with the Spanish authorities would ensue, in order to work out the details of the process of secession. But secession as such would be for Catalans to decide.”).

25. *Id.* (The “secessionist movement has been able to mobilize a large section of the citizenry in Catalonia. Its goal is for this territory to break its ties with Spain, and thus become a new independent state. A powerful association (the Assemblea Nacional Catalana) has organized several demonstrations in the streets. The most spectacular ones have taken place in the context of the festivity of the Catalan Diada Nacional, which is celebrated on 11 September every year. In 2012, the association gathered many people in Barcelona under the banner, ‘Catalonia, the next European state’. The following year, it organized a human chain in favour of independence, which ran from the north of Catalonia to the south. These events showed that the movement had strong popular support.”).

26. Comella, *supra* note 9, at 577-8 (The Declaration of Sovereignty, also known as Resolution 5/X of the Catalanian Parliament, approved the declaration of sovereign entity and agreed “to initiate the process to exercise the right to decide so that the citizens of Catalonia may decide their collective political future in accordance with the following principles: sovereignty, democratic legitimacy, transparency, dialogue, social cohesion, Europeanism, legality, role of Catalan Parliament and participation.”).

27. *Catalonia vote: 80% back independence - officials*, BBC NEWS (Nov. 10, 2014), <http://www.bbc.com/news/world-europe-29982960> (noting that this vote was non-binding, more than two million people out of a possible 5.4 million eligible voters participated).

28. *Id.*

tions.²⁹ Of the 2.2 million people that participated, an overwhelming 80% wanted Catalonia to declare independence from Spain.³⁰

On March 25, 2014, the Spanish Constitutional Court announced its ruling on the Catalan Declaration of Sovereignty.³¹ The Constitutional Court invalidated the “principle of sovereignty” within the Declaration, but upheld “the right to decide.”³² In invalidating the “principle of sovereignty,” parliament did not indicate that constitutional reforms would have to be adopted to extend that right beyond Spain to the nations within.³³ The Spanish Constitutional Court determined that sovereignty was not an option for Catalonia, as the Declaration clearly affirmed that the Catalan people are already sovereign.³⁴ It is for those reasons, that the Court determined it had no option but to invalidate the “principle of sovereignty,” which would have granted Catalans the authority to create and sustain its own government by the consent of its own people.³⁵

In the affirming of the “right to decide,” the Spanish Constitutional Court stated that if the Catalan right to decide was exercised in accordance with the existing legal framework, then they had no con-

29. *Id.*

30. *Id.* (“Opinion polls suggest[ed] that as many as 80% of Catalans want[ed] an official referendum on the issue of Catalonia’s status, with about 50% in favour of full independence”).

31. *Id.* (after it had been provisionally suspended on May 8, 2013).

32. Comella, *supra* note 9, at 577 (“The procedure the Spanish government used is regulated in Art. 161.2 of the Constitution, as well as in Arts. 76 and 77 of the Ley Orgánica del Tribunal Constitucional. When the government resorts to this procedure, in order to attack norms or acts adopted by the Autonomous Communities, the Constitutional Court must suspend the effects of the challenged norm or act. The Court can afterwards decide to lift the suspension.”).

33. *Id.* (“Under Art. 150.2 of the Spanish Constitution, it is possible for the Spanish parliament, by means of an organic statute, to delegate or transfer certain state competences to the Autonomous Communities. Such a statute can fix the forms of control that the state is to retain. There is a limit, however, to the use of this mechanism: the competence involved ‘must be of a nature that makes it susceptible to being transferred or delegated’. There is interpretive controversy as to the scope of this abstract constraint.”).

34. *Id.* (The Court pointed out that Article 1 of the Spanish Constitution states that national sovereignty is given to the Spanish people. The Spanish people exercise constituent power, which runs all state structures. Article 2 asserts that the Spanish Constitution rests on the indissoluble unity of Spain. The Court highlighted that the Catalan people, legally speaking, could not be sovereign. This is because their sovereignty would cause the denial of the sovereignty of the Spanish people. The Court concluded that two sovereignties could not legally coexist).

35. *Id.*

stitutional objection.³⁶ The Court determined that Spain was not a “militant democracy: all political programs can be defended in the public sphere.”³⁷ The implementation of those political programs merely need to observe existing laws of legal change.³⁸ The Court found that the “right to decide” was a “political ‘aspiration,’” which can only be realized in following all applicable legal and Constitutional procedures.³⁹ From this decision the Catalans struggled to determine how the “right to decide” can be maintained if the “principle of sovereignty” is invalidated.⁴⁰

The 2017 Spanish Constitutional Crisis

Just three years later, on October 1, 2017, the Catalanian parliament held an official referendum readdressing whether Catalans still wanted to secede from Spain through a unilateral declaration of independence.⁴¹ This vote heavily supported separation from Spain, leading the Catalanian government to declare independence from Spain.⁴² Spain responded by imposing direct rule over Catalonia using Article 155 of Spain’s Constitution.⁴³ Article 155 gives Spain the right to impose direct rule in “a crisis on any of the country’s semi autonomous regions.”⁴⁴ Spanish law also states that elections must be held within six months of Article 155 being invoked.⁴⁵ Spanish Prime Minister, Mariano Rajoy, stated that those elections needed to be “held much

36. Comella, *supra* note 9, at 578 (“The rules on amendment specify that there must first be a supermajority in parliament that agrees to introduce a particular change. Only then is a referendum possible (or required). If a referendum were added at the initial stage, before there was any supermajority agreement in parliament, it would be hard to preserve the spirit of *consenso*.”).

37. *Id.*

38. *Id.*

39. *Id.* (“The Constitution, in particular, can be revised in many different directions, and there is no substantive limit

to the changes that may be brought about through constitutional means.”).

40. *Id.*

41. *Catalonia profile - Timeline*, BBC NEWS (Dec. 25, 2017), <http://www.bbc.com/news/world-europe-20345073> (this followed the court barring the former Catalonia President, Artur Mas, from public office for two years following the unofficial referendum that took place in 2014).

42. *Id.*

43. *Catalonia independence: Spain pushes to remove leaders*, BBC NEWS (Oct. 21, 2017), <http://www.bbc.com/news/world-europe-41704759>.

44. *Id.*

45. *Id.*

sooner.”⁴⁶ The elections were held on December 21, 2017 and resulted in an increasingly large amount of support for secessionist politicians, giving them a slim majority of parliament.⁴⁷ Now, more than ever, Catalonia and Spain need to discuss the legality of Catalonia’s decision to unilaterally secede from Spain and can look to other international court decisions for guidance.

The Canadian Supreme Court Ruling on Quebec

In 1998, the Supreme Court of Canada made a decision regarding Quebec’s attempt at secession, known as the *Reference Re Secession of Quebec*.⁴⁸ During this discussion, the court was required to answer three questions:

- (1) Does Quebec have the right to secede unilaterally from Canada under Canada’s constitution?
- (2) Does Quebec have the right to secede unilaterally from Canada under international law?
- (3) If Canadian law and international law conflict, which law takes precedence in this case?⁴⁹

The reference questions were not calling upon the Canadian Supreme Court to “usurp any democratic decision that the people of Quebec may be called upon to make.”⁵⁰ The court emphasized that these questions “are strictly limited to aspects of the legal framework in which that democratic decision is to be taken.”⁵¹ In answering these questions, the Canadian Supreme Court looked to two guiding principles: (1) the right to self determination; and (2) territorial integ-

46. *Id.* (Catalan secessionists claim that Spain has “suspended democracy.” Barcelona Mayor Ada Colau called the Spanish government’s decision a “serious attack on the rights and freedoms of all, both here and elsewhere” while calling for demonstrations).

47. Reuters Staff, *Former Catalan leader urges Spain to accept secessionist election win*, REUTERS (Dec. 30, 2017), <https://www.reuters.com/article/us-spain-politics-catalonia/former-catalan-leader-urges-spain-to-accept-secessionist-election-win-idUSKBN1E00K6> (Spanish Prime Minister Mariano Rajoy called for the Catalan parliament to be formed on January 17, 2018. Although this was expected to be a long, drawn-out process of forming a government, no such government has materialized).

48. *Reference Re Secession of Quebec*, *supra* note 3, at 1342.

49. *Id.*

50. *Id.* at 1346.

51. *Id.* (“Since the reference questions may clearly be interpreted as directed to legal issues, the Court is in a position to answer them . . . The questions raise issues of fundamental public importance and they are not too imprecise or ambiguous so as not to permit a proper legal answer.”).

rity.⁵² Without these two concepts, the Canadian Supreme Court would not have determined the cornerstones in the evaluation of unilateral declarations of independence.⁵³

The court ruled that “Quebec could not, despite a clear referendum result, purport to invoke a right of self-determination to dictate the terms of a proposed secession to the other parties to the federation.”⁵⁴ The Canadian Constitution provides that a democratic vote cannot supersede the rule of law and principles of federalism, as well as rights of minorities and individuals, or democracy in Canada.⁵⁵ This means that a mere vote by the people, official or not, would have no bearing on whether there is a right to secession under self-determination. However, a clear will of the people would place an obligation on both other provinces and the federal government to enter into a negotiation with “underlying constitutional principles” to resolve issues such as secession.⁵⁶ The Canadian Supreme Court viewed the Constitution as more than a written text.⁵⁷ The court determined that “the principles of federalism, democracy, constitutionalism and the rule of law, and respect for minorities” must be taken into consideration.⁵⁸ The identification of these underlying issues would be more likely to lead to a mutually beneficial resolution.

The Canadian Supreme Court went so far as to address the negotiation process between Quebec and Canada.⁵⁹ The Canadian Su-

52. *Id.* at 1342.

53. *Id.*

54. *Id.* at 1344.

55. Reference Re Secession of Quebec, *supra* note 3, at 1343 (“Democratic rights under the Constitution cannot be divorced from constitutional obligations. Nor, however, can the reverse proposition be accepted: the continued existence and operation of the Canadian constitutional order could not be indifferent to a clear expression of a clear majority of Quebecers that they no longer wish to remain in Canada.”).

56. *Id.* (“The other provinces and the federal government would have no basis to deny the right of the government of Quebec to pursue secession should a clear majority of the people of Quebec choose that goal, so long as in doing so, Quebec respects the rights of others.”).

57. *Id.* (The Canadian Supreme Court explained that the Constitution “embraces the entire global system of rules and principles which govern the exercise of constitutional authority.” Interpreting the Constitution in a superficial manner would likely be misleading).

58. *Id.* (“Those principles must inform our overall appreciation of the constitutional rights and obligations that would come into play in the event that a clear majority of Quebecers votes on a clear question in favour of secession.”).

59. *Id.* at 1343.

preme Court found that “[t]he Court has no supervisory role over the political aspects of constitutional negotiations.”⁶⁰ The Court did not step into such matters as they did not wish to “usurp the prerogatives of the political forces that operate” within the constitutional framework.⁶¹ Clearly, the Canadian Supreme Court will only step in as a last resort to these types of problems.⁶² In outlining negotiations that would follow a vote in favor of secession, the Court emphasized that the law would not lead to predetermined conclusions on any issue.⁶³ The court noted, “Negotiations would need to address the interests of the other provinces, the federal government, Quebec and indeed the rights of all Canadians both within and outside Quebec, and specifically the rights of minorities to ensure fair treatment during the implementation of a secession.”⁶⁴

When it examined international law, the Canadian Court found that secession may arise under the principle of self-determination in three circumstances:

- (1) When ‘a people’ is governed as a part of a colonial empire;
- (2) Where ‘a people’ is subject to alien subjugation, domination or exploitation;
- (3) Where ‘a people’ is denied any meaningful exercise of its right to self-determination within the state of which it forms a part.⁶⁵

It is important to note that “a people” was not concretely defined within the scope of international law.⁶⁶ However, the Canadian Supreme Court determined that whatever the correct definition of “a people” would be in this scenario, “their right of self-determination cannot in the present circumstances be said to ground a right to unilateral secession.”⁶⁷ The Canadian Supreme Court found no existence of human rights violations, mistreatment by the Canadian government, or a situation that would have kept people in Quebec from their

60. *Id.*

61. *Id.* at 1344.

62. *See Id.* at 1366 (“The reconciliation of the various legitimate constitutional interests is necessarily committed to the political rather than the judicial realm precisely because that reconciliation can only be achieved through the give and take of political negotiations.”).

63. Reference Re Secession of Quebec, *supra* note 3, at 1344.

64. *Id.*

65. *Id.*

66. *Id.* at 1370.

67. *Id.*

fundamental rights, especially to that of self-determination.⁶⁸ The Canadian Supreme Court ultimately concluded that there was no existing conflict between Canadian and international law that needed to be addressed.⁶⁹

On the other hand, the Canadian Supreme Court found that it is possible there are other circumstances that constitute secession, even when the provinces are not considered to be oppressed, subjugated, or exploited.⁷⁰ This means self-determination is possible within the framework of an existing state.⁷¹ The court explained that:

“A state whose government represents the whole of the people or peoples resident within its territory, on a basis of equality and without discrimination, and respects the principles of self-determination in its internal arrangements, is entitled to maintain its territorial integrity under international law and to have that territorial integrity recognized by other states.”⁷²

Where the right to self-determination is possible, it must be exercised “consistently with the territorial integrity of states.”⁷³ The Supreme Court of Canada essentially determined that self-determination and territorial integrity cannot exist without one another.⁷⁴ The court found that Quebec did not meet the criteria for being considered either a colonial people or an oppressed people.⁷⁵ They were also not

68. *Id.* at 1344. (In reaching this conclusion, the Canadian Supreme Court looked to the three situations under which self-determination would be allowed).

69. Reference Re Secession of Quebec, *supra* note 3, at 1368 (“International law contains neither a right of unilateral secession nor the explicit denial of such a right, although such a denial is, to some extent, implicit in the exceptional circumstances required for secession to be permitted under the right of a people to self-determination.”)

70. *Id.* at 1369.

71. *Id.* (Self-determination is now such a widely known concept in the international community that “international law expects that the right to self-determination will be exercised by peoples within the framework of existing sovereign states and consistently with the maintenance of the territorial integrity of those states.” Where operating within the framework of an existing sovereign state is not possible, as seen in the situations discussed above, a right of secession could arise).

72. *Id.*

73. *Id.* (In international law, the principle of self-determination has grown over time within a framework that respects the territorial integrity of existing states. Typically, international documents that support a right to self-determination also support that exercising such a right must be limited. This is done to prevent threats to the territorial integrity of an existing state or to maintain stable relations between states that are already sovereign).

74. *Id.*

75. *Id.*

denied meaningful access by the government to pursue economic, cultural, political, and social development.⁷⁶ This conclusion led to the ruling that Quebec did not have the right under international law to unilaterally secede from Canada.⁷⁷

The International Court of Justice Ruling on Kosovo

On July 22, 2010 the International Court of Justice ruled that Kosovo's declaration of independence from Serbia in February 2008 was legal under international law.⁷⁸ Judge Hisashi Owada, president of the ICJ, stated that, "The court considers that general international law contains no applicable prohibition of declaration of independence."⁷⁹ In addressing the unilateral declaration of independence of Kosovo from Serbia, both the ICJ and North Atlantic Treaty Organization (hereinafter "NATO") analyzed existing international law regarding the right to self-determination and the concept of territorial integrity by utilizing several international legal sources to support their conclusions.⁸⁰

76. *Id.* (The court found that "such exceptional circumstances are manifestly inapplicable to Quebec under existing conditions. Accordingly, neither the population of the province of Quebec, even if characterized in terms of "people" or "peoples", nor its representative institutions, the National Assembly, the legislature or government of Quebec, possess a right, under international law, to secede unilaterally from Canada.")

77. Reference Re Secession of Quebec, *supra* note 3, at 1370 ("Although there is no right, under the Constitution or at international law, to unilateral secession, the possibility of an unconstitutional declaration of secession leading to a de facto secession is not ruled out. The ultimate success of such a secession would be dependent on recognition by the international community, which is likely to consider the legality and legitimacy of secession having regard to, amongst other facts, the conduct of Quebec and Canada, in determining whether to grant or withhold recognition. Even if granted, such recognition would not, however, provide any retroactive justification for the act of secession, either under the Constitution of Canada or at international law.")

78. Reed Stevenson & Adam Tanner, *Kosovo independence declaration deemed legal*, REUTERS (July 21, 2010), <https://www.reuters.com/article/us-serbia-kosovo/kosovo-independence-declaration-deemed-legal-idUSTRE66L01720100722> (much to the chagrin of Serbian President Boris Tadic, who insisted that Serbia would never recognize Kosovo's unilateral declaration of independence).

79. *Id.*

80. *Accordance*, *supra* note 7 at ¶ 80 (quoting Article 1, Paragraph 4 of the United Nations Charter: "All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the Purposes of the United Nations.").

The legal decision in Kosovo was heavily rooted within the United Nations charter, more specifically, Article 1(2).⁸¹ The principle of self-determination is first explicitly discussed in Article 1(2), which explains that one of the primary purposes of the United Nations (hereinafter “UN”) is “to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples.”⁸² Without the respect of those rights and principles there is no way to move forward in situations involving the unilateral secession. The UN’s discussion of self-determination was made in the “context of friendly relations among nations and in conjunction with ‘equal rights’ of peoples.”⁸³ NATO also stated that the UN Charter should be read with the knowledge that it is impossible to achieve universal peace without self-determination.⁸⁴

This NATO report takes the opportunity to define self-determination as it applies to issues of unilateral secession. The NATO report defines self-determination as:

An essential condition for the effective guarantee and observance of individual human rights and for the promotion and strengthening of those rights. Furthermore, self-determination is defined as an inalienable right of all peoples and imposes corresponding obligations, and the rights and . . . obligations concerning its implementation are interrelated with other provisions and rules of international law.⁸⁵

This means that the right to self-determination comes into play in situations where individuals’ rights are not being observed and main-

81. North Atlantic Treaty Org. [NATO], *The Kosovo Crisis in an International Law Perspective: Self-Determination, Territorial Integrity and the NATO Intervention*, Final Report, at 8, 9 (June 16, 2001), <https://www.nato.int/acad/fellow/99-01/kumbaro.pdf> [Hereinafter *The Kosovo Crisis*].

82. *The Kosovo Crisis*, *supra* note 82, at 10 (the report also discusses Article 55 as it is applicable to Kosovo:” Article 55 instructs the UN to promote higher standards of living, solutions to health and cultural problems, and universal respect for human rights “with a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self determination of peoples.”).

83. *Id.* at 11 (it is important to note that the UN Charter, as a whole, is not comprehensive in addressing either external or internal self-determination. The UN Charter refers to it only as a “principle” rather than a “right”).

84. *Id.*

85. *Id.* at 13; *See* General Comment UN DOC. CCPR/C/21/Add.3. 24 at para. 2 (the right of self-determination seen here is considered by the UN as a universal right).

tained.⁸⁶ Additionally, NATO found that such a right is absolute and imposing that right comes with certain obligations. It is within the aforementioned context and definitional analysis that a court must determine if a province or region has the right to unilaterally declare independence and secede.⁸⁷

The ICJ recognized that the right of self-determination is for “the peoples of non-self-governing territories and peoples subject to alien subjugation, domination, and exploitation.”⁸⁸ However, the ICJ clarified that those types of rights are typically only relevant in instances of either colonialism or the independence of once-colonial territories.⁸⁹ It is important to note that the ICJ explicitly states that in States where those situations do not exist, that it “does not point to the emergence in international law of a new rule prohibiting the making of a declaration of independence in such cases.”⁹⁰ Even though the UN Security Council has issued resolutions denouncing situations involving unilateral declarations of independence, those resolutions were only made in situations involving unlawful use of force or other international law violations.⁹¹ In the case of Kosovo, the court determined that Serbia had been exerting an unlawful use of force on the people of Kosovo in a way that violated their rights.⁹² After analyzing these violations, the ICJ ruled that Kosovo’s unilateral declaration of

86. *Id.* (“All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development. “ INT’L COVENANT ON CIVIL AND POLITICAL RIGHTS, UNGA, Dec. 19, 1966, art. 1).

87. *Id.* (The report determines that “every people or nation is free to establish its own political institutions, to develop its own economic resources, and to direct its own social and cultural evolution, without the interference of other peoples or nations.”).

88. *Accordance, supra* note 7, at 436 (Meaning self-determination is for people that are under the control of non-citizens or foreigners in a way that violates their basic human rights).

89. *Id.*

90. *Id.* (It is of equal importance to note that “a great many new States have come into existence as a result of the exercise of this right. There were, however, also instances of declarations of independence outside this context.”).

91. *Id.* at 437.

92. *Id.* (For violations of human rights in Kosovo, *See generally*, U.S. Dept. of State, Bureau of Democracy, Human Rights and Labor, *Kosovo 2016 Human Rights Report* (2016), <https://www.state.gov/documents/organization/265648.pdf>).

independence from Serbia was not a violation of general international law.⁹³

The ICJ also addressed the argument that the principle of territorial integrity creates a prohibition of unilateral declarations of independence.⁹⁴ The ICJ pointed to Article 2 Paragraph 4 of the UN Charter, which states: “All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the Purposes of the United Nations.”⁹⁵ The international community has found the scope of the principle of territorial integrity to be “confined to the sphere of relations between States.”⁹⁶

The analysis of territorial integrity continued with the examination of *Security Council Resolution 1244*⁹⁷ and *The United Nations Interim Administration Mission in Kosovo* (hereinafter “UNMIK”), which provided the constitutional framework for Kosovo in this situation.⁹⁸ The UN Security Council Resolution granted the UNMIK power to set up the constitutional framework for Kosovo.⁹⁹ The Constitutional framework in the UNMIK was made to function “as part of a specific legal order . . . which is applicable only in Kosovo and the purpose of which is to regulate, during the interim phase . . . matters which would ordinarily be the subject of internal, rather than in-

93. *Id.* (“the illegality attached to the [previously addressed] declarations of independence [by the ICJ] thus stemmed not from the unilateral character of these declarations as such, but from the fact that they were, or would have been, connected with the unlawful use of force or other egregious violations of norms of general international law, in particular those of a peremptory character (jus cogens). In the context of Kosovo, the Security Council has never taken this position.”).

94. *Accordance, supra* note 7, at 437.

95. *Id.*; U.N. Charter art. 1, ¶ 2 (Territorial integrity exists in situations involving unilateral declarations of independence in instances where a nation has acted inconsistently with the purposes of the United Nations).

96. *Id.*

97. *Id.* at 440-4.

98. *Id.* at 439-42 (The UNMIK created a constitutional framework for Kosovo that “took effect as part of the body of law adopted for the administration of Kosovo during the interim phase. The institutions which it created were empowered by the Constitutional Framework to take decisions which took effect within that body of law. In particular, the Assembly of Kosovo was empowered to adopt legislation which would have the force of law within that legal order, subject always to the overriding authority of the Special Representative of the Secretary-General”).

99. *Id.* (The ICJ was brought in to address “the question whether the authors of the declaration of independence acted in violation of Security Council resolution 1244 (1999)”).

ternational, law.”¹⁰⁰ The ICJ concluded that neither document prohibited the unilateral declaration of independence from Kosovo, meaning there was no violation of international law.¹⁰¹

THE POWER OF PERSUASION (IN TERMS OF OTHER COURT RULINGS)

The Canadian Supreme Court’s Ruling and its Ramifications on Catalonia

In applying the Canadian Supreme Court’s ruling on Quebec to the current situation in Catalonia look at the findings made about the right to self-determination and the principle of territorial integrity. The Canadian Supreme Court held that clear referendum results do not automatically mean that a province has the right to self-determination.¹⁰² It is evident that the Catalonian referendum was largely in favor of unilateral secession from Spain,¹⁰³ but if the court looks to the Canadian precedent, that vote does not guarantee self-determination for those voters. The vote is merely an expression of the will of the people, which it is not mandatory for Spain to honor. According to *Reference re Secession of Quebec*, there are three possible for situational criteria which could justify a declaration of self-determination.¹⁰⁴ Although Catalonia has a history of fighting for independence from Spain, the region itself was never oppressed or colonized.¹⁰⁵ This means that Catalonia has already failed to meet two-

100. *Id.* at 440.

101. *Accordance, supra* note 7, at 452-3 (“The Court has concluded above that the adoption of the declaration of independence of 17 February 2008 did not violate general international law, Security Council resolution 1244 (1999) or the Constitutional Framework. Consequently, the adoption of that declaration did not violate any applicable rule of international law.”).

102. *Reference Re Secession of Quebec, supra* note 3, at 1344.

103. *Catalan referendum: preliminary results show 90% in favour of independence, supra* note 1.

104. *Reference Re Secession of Quebec, supra* note 3, at 1344.

105. *Catalan Crisis: Why does Catalonia want independence? Do the majority really support it?*, INDEPENDENT, Oct. 29, 2017, <http://www.independent.co.uk/news/world/europe/catalan-crisis-why-does-catalonia-want-independence-do-people-really-support-it-spain-latest-a8025836.html> (“For decades the Catalans suffered under [Francisco Franco’s] harsh rule as political opposition was violently suppressed as well as their autonomy, language and culture. Their regional government was only restored in 1979, four years after his death.” So the Catalans are not currently facing any sort of subjugation or oppression like they have previously).

out-of-three possible criteria identified by the Canadian Supreme Court that would allow for a unilateral secession and declaration of independence from Spain.

In *Reference re Secession of Quebec*, the Canadian Supreme Court reached the conclusion that territorial integrity could not exist without being exercised alongside self-determination.¹⁰⁶ This means that Catalonia could potentially meet the required standard for self-determination within the framework of their already-existing state.¹⁰⁷ If the Spanish government denied the Catalonians the right to pursue political, economic, social or cultural development, that could provide a basis for a unilateral secession by Catalonia.¹⁰⁸ However, there is no evidence that Catalans are being denied any such rights.¹⁰⁹ Catalonians are allowed their own government, economy, and language, which separates them from Spain.¹¹⁰ It also helps to maintain the growth of their own society and culture.¹¹¹ The Spanish government is merely trying to keep Catalonia from seceding on the grounds that such a secession would violate international law and be detrimental, not only to Catalonia, but to other regions in Spain.¹¹²

The Canadian Supreme Court also determined that territorial integrity prohibits any unilateral secession unless the circumstances meet the criteria that could trigger the right of self-determination.¹¹³ “International law places great importance on the territorial integrity of nation states and, by and large, leaves the creation of a new state to be determined by the domestic law of the existing state of which the seceding entity presently forms a part.”¹¹⁴ Catalonia would essentially

106. Reference Re Secession of Quebec, *supra* note 3, at 1369.

107. *Id.* (“A state whose government represents the whole of the people or peoples resident within its territory, on a basis of equality and without discrimination, and respects the principles of self-determination in its own internal arrangements, is entitled to the protection under international law of its territorial integrity.”).

108. *Id.*

109. *Catalan Crisis*, *supra* note 106.

110. *Id.*

111. *Id.* (“Catalonia has always seen itself as separate from the rest of Spain as it has historically had its own regional government.”).

112. *Id.* (“Catalonia is the richest region in Spain and if it successfully seceded Madrid could lose 20 per cent of its GDP.”).

113. Reference Re Secession of Quebec, *supra* note 3, at 1344.

114. *Id.* at 1372 (In regards to Quebec, “unilateral secession would be incompatible with the domestic Constitution, international law is likely to accept that conclusion subject to the right of peoples to self-determination”).

have to look at the rules governing the entirety of Spain to influence their own domestic legal choices. The emphasis would be placed on Catalonia's ability to take the Spanish Constitution and apply it to their own situation in a manner that works out in their favor. However, given that Catalonia has not managed to apply the law in an effective way, it is likely that they would not succeed if they were to seek unilateral secession in the same manner. Catalonia does not meet any of the requirements needed to invoke self-determination under territorial integrity, which would also likely would prohibit Catalonia from making a unilateral declaration of independence.

As seen in *Reference re Secession of Quebec*, Catalonia's only hope to invoke the right of self-determination would be with Spain's authorization of that right. Unfortunately, this path is not an option as Spain has already ruled multiple times that Catalonia does not have a right to either declare independence or an ability to unilaterally secede.¹¹⁵ Catalonia does not meet the criteria needed to invoke the right of self-determination or territorial integrity. In analyzing and applying the court ruling in *Reference re Secession of Quebec*, it is clear that under international law, Catalonia does not have a right to unilaterally secede from Spain. Catalonia would also likely not be successful and in making a unilateral declaration of independence.

The International Court of Justice's Ruling and its Ramifications on Catalonia

In order to address the situation in Kosovo, the ICJ asked itself the following question: "Is the unilateral declaration of independence by the Provisional Institutions of Self-Government of Kosovo in accordance with international law?"¹¹⁶ To both answer that question and apply the ruling on Kosovo's unilateral secession from Serbia and the current situation in Catalonia, emphasis must be placed upon the

115. Comella, *supra* note 9, at 572 ("The Spanish Court, in contrast [to the Canadian Supreme Court], derived two consequences from the idea that the Spanish people is sovereign: Catalonia cannot secede unilaterally, and it cannot hold a referendum on independence unilaterally.").

116. *Accordance*, *supra* note 7, at 423 (It is important to not the following: "the question is narrow and specific; it asks for the Court's opinion on whether or not the declaration of independence is in accordance with international law. It does not ask about the legal consequences of that declaration. In particular, it does not ask whether or not Kosovo has achieved statehood. Nor does it ask about the validity or legal effects of the recognition of Kosovo by those States which have recognized it as an independent State.").

ICJ's analysis of self-determination and the principle of territorial integrity. In regards to Kosovo, the ICJ found that the right to self-determination was present in situations where people had been exploited, subjugated and dominated.¹¹⁷ Although they have spent many years fighting for their independence, Catalans have not been treated with colonialism by the Spanish government, nor have they been oppressed since their regional government was restored in 1979.¹¹⁸ They have been allowed to thrive economically and contribute greatly to the overall welfare of Spain while running their own government.¹¹⁹ Catalans are simply attempting to secede because they believe that they are not receiving the amount of freedom or independence from Spain that they feel they deserve.¹²⁰

The ICJ has also explained that, in terms of United Nations' sanctions, the right to self-determination was only prohibited in instances where other violations of international law or an abusive use of force were present.¹²¹ Spain has, until recently, increased their police presence and threatened to take control of Catalonia using Article 155.¹²² However, Spain is allowed to exert control over a province in the event of a crisis:

(1) "If a Self-governing Community does not fulfil the obligations imposed upon it by the Constitution or other laws, or acts in a way that is seriously prejudicial to the general interest of Spain, the Government, after having lodged a complaint with the President of the Self-governing Community and failed to receive satisfaction therefore, may, following approval granted by the overall majority of the Senate, take all measures necessary to compel the Community to

117. *Accordance, supra* note 7, at 436.

118. *Catalan Crisis, supra* note 106.

119. *Id.* ((However, their contribution to the overall welfare of Spain means that "many Catalans feel they are paying high taxes and suffering under austerity to shore up the profligacy of a country they have little in common with. A large proportion believe they will be wealthier and more successful if they go it alone in future.")).

120. *The Spanish Constitutional Court Confronts Catalonia's 'Right to Decide', supra* note 9, at 573.

121. *Accordance, supra* note 7, at 436 ("The illegality attached to the declarations of independence thus stemmed not from the unilateral character of these declarations as such, but from the fact that they were, or would have been, connected with the unlawful use of force or other egregious violations of norms of general international law, in particular those of a peremptory character.").

122. *Catalonia independence: Spain pushes to remove leaders, supra* note 43.

meet said obligations, or to protect the abovementioned general interest.

(2) To execute the measures foreseen in the previous section, the government may give instructions to all of the authorities in the autonomous communities.”¹²³

The fact that Article 155 is written into the Spanish Constitution grants them power to impose direct control over a region that is going through a crisis, much like Catalonia is now. The article directly highlights that there is no abuse of force here, but rather, an invocation of the right to control. The ongoing public demonstrations, boycotting, and marches held within Catalonia reveal that the province is facing a crisis of political unrest that does not appear to be going away any time soon.¹²⁴ Under Article 155, the Spanish government should be allowed to rule over Catalonia until either some of the violence can be quelled or there are successful negotiations between the pro-unity and secessionist parties.

In addressing the issue of territorial integrity, the ICJ differs from the Canadian Supreme Court’s ruling.¹²⁵ Here, the ICJ held that territorial integrity does not automatically prohibit unilateral declarations of independence.¹²⁶ However, under the ICJ’s advisory opinion, it is not likely that Catalonia will have as strong an argument as Kosovo did in terms of the constitutionality of their claim to independence.¹²⁷ Kosovo’s constitutional framework was set up by the UNMIK and did not prohibit a declaration of independence.¹²⁸ The framework itself was set up as a way to start Kosovo with a “clean slate” and to address the issues they faced while still a part of Ser-

123. SPANISH CONST. Dec. 27, 1978, art. 155.

124. *Catalan Crisis*, *supra* note 106 (Also, there does not seem to be an immediate risk of military forces being deployed into the street. However, given that political leaders of the secessionist movement have been arrested or are in asylum, if negotiations do not take place, it is likely that the military will eventually have to get involved).

125. *Accordance*, *supra* note 7, at 437 (“The question put to the Supreme Court of Canada inquired whether there was a right to “effect secession”, and whether there was a rule of international law which conferred a positive entitlement on any of the organs named. By contrast, the General Assembly [in addressing Kosovo] has asked whether the declaration of independence was “in accordance with” international law.”).

126. *Id.*

127. *See generally Accordance*, *supra* note 7 (as previously stated, there was no human rights violations or subjugation of the Catalans by the Spanish government, which was the case with Serbia and Kosovo).

128. *Id.*

bia.¹²⁹ In regards to Catalonia, the Spanish Constitution deemed the October 1 referendum, which would have legitimized a declaration of independence from Spain, to be unconstitutional.¹³⁰ This further complicates matters for Catalonia because they are unable to make a unilateral declaration through such an explicit and simple declaration as was the case in Kosovo.¹³¹ At this point there is no simple way for Catalonia to make a declaration of independence from Spain, as neither a referendum nor an explicit declaration is allowed under the rulings of the Spanish Constitutional Court.¹³²

It is not possible to achieve peace without self-determination under the United Nations Charter.¹³³ For Catalonia, this means that there will likely be no peace between the Catalans and the Spanish government until they negotiate a path for self-determination for Catalonia.¹³⁴ Additionally, NATO's report on Kosovo held that self-determination is a right of all peoples and must be mindful in terms of international law, which is at issue today in Catalonia.¹³⁵ Although, self-determination is a right, it is not guaranteed to go into effect unless the proper criteria are satisfied.¹³⁶ This criterion can be constitutional, procedural or even regulatory and must be examined on a case-by-case basis. In the case of Catalonia, certain constitutional requirements and provisions would need to be met in order for Spain to allow them to secede.¹³⁷ Any court could consciously decide to use

129. *Id.* at 426.

130. *Catalonia independence: Spain pushes to remove leaders*, *supra* note 43.

131. *Accordance*, *supra* note 7, at 426.

132. Reference Re Secession of Quebec, *supra* note 3, at 1344.

133. *The Kosovo Crisis in an International Law Perspective: Self-Determination, Territorial Integrity and the NATO Intervention*, *supra* note 82, at 11.

134. *See generally Accordance*, *supra* note 7.

135. *See generally The Spanish Constitutional Court Confronts Catalonia's 'Right to Decide'*, *supra* note 9 ("There are no constitutional principles that are immune against modification through the applicable procedures of revision. Even the principles that establish the unity of Spain and the sovereignty of the Spanish people can be altered in the future through the pertinent amendment. Indeed, if the Spanish people, legally speaking, only exists as a creature of the Constitution, there is no limit to the kinds of transformations that the Spanish people can undergo in the future, including its partial fragmentation. Secession is therefore not excluded as a legal possibility.").

136. *See generally Accordance*, *supra* note 7.

137. *The Spanish Constitutional Court Confronts Catalonia's 'Right to Decide'*, *supra* note 9, at 573 ("So if the 'right to decide' means the future status of Catalonia is to be exercised according to the existing constitutional framework, including the rules on constitutional amendment, there is nothing legally wrong with it. It is merely a politi-

the rationale implemented in the case of Kosovo to explore the legality of unilateral secession in another country.

In applying the ICJ's advisory opinion on Kosovo to the case of Catalonia, they cannot simply declare their independence nor do they qualify to invoke the right to self-determination, with or without territorial integrity.¹³⁸ Catalonia's attempt to hold both unofficial and official referendums to achieve secession would not succeed based upon the ICJ opinion on Kosovo.¹³⁹ It is under that opinion that Catalonia would also not qualify to invoke the right to self-determination as their current status/relationship with Spain does not meet any of the criterion.¹⁴⁰ This means that Catalonia does not have the right to either declare independence or unilaterally secede from Spain under international law.¹⁴¹

What These Ramifications Mean for Catalonia

The responsibility has fallen upon Spain to handle this issue internally as other international bodies have declined to get involved with the situation. This problem is of the utmost importance to Spain because of the growing levels of violence and unrest currently displayed taking place on the international stage.¹⁴² The amount of media attention, not to mention the political attention, can lead to either both or one of the parties to be internationally humiliated or can even create tension in the international political realm. The Spanish Constitutional Court chose to take an almost contradictory stance on the

cal 'aspiration', the Court wrote, that can only be realized through the applicable constitutional procedures.”).

138. See generally *Accordance*, *supra* note 7.

139. *Id.* (In Kosovo, the unilateral action to declare independence could not be reconciled with the UN Security Council resolution 1244. In Catalonia, the same unilateral action also fails as it constitutes a violation of UN Security Council resolution 1244).

140. *Id.* (in applying the criterion previously discussed, Catalonia is not enacting a “remedial secession,” which was the situation in Kosovo).

141. *Id.* (Keeping in mind that this is the application of two recent international holdings on this issue, it is possible that Catalonia could declare international independence or unilaterally secede from Spain under Spanish law. This is depending upon whether the Spanish Constitution/government would allow this to happen).

142. *Catalan Crisis*, *supra* note 106 (without a resolution to this situation, it is possible that other states or nations around the world could decide to rise up and make a unilateral declaration of independence for secession on their own. Internally, without a resolution, Spain runs the risk of other autonomous communities attempted to unilaterally secede as well. The political unrest in Catalonia alone is hard to keep at bay, but if more states get involved Spain will have an even bigger problem on their hands).

issue as an attempt to appease both Spain and Catalonia.¹⁴³ This means that the Spanish Constitutional Court needs to reach a more concrete verdict, which can only be done by slowly and meticulously looking over both the proposed manner of secession and the relative articles within the Spanish Constitution.

If the Spanish Constitutional Court would not be willing to pass a more concrete judgment, then Spain and Catalonia would have to look to another court to resolve their issues, possibly involving the United Nations in their attempt at resolution. Whichever court takes on this case will also need to look to international examples such as the aforementioned secession decisions regarding both Quebec and Kosovo. Again, these opinions are not binding on the situation in Catalonia, but can offer the court insight into how decisions regarding these matters are made. The cases of Kosovo and Quebec can offer the court key criteria to consider while evaluating the legality of Catalonia's unilateral secession of Spain. It is important to note that, in order to be thorough and fair, whichever court addresses this issue should look at the situation through both the lens of international law and the lens of what is allowed under the Spanish Constitution. Through the above analysis it is clear that Catalonia does not have the legal right to unilaterally secede from Spain.

Conclusion

If it is found that Catalonia does have the international legal right to unilaterally secede from Spain, it will set a precedent that could allow other Spanish provinces to pursue the same course of action. Not only that, but this secession, if allowed, would clearly affect the economic, social, and cultural makeup of Spain as a country. If this sort of change were to be allowed in Spain, it could potentially indicate to other nations within states throughout the world that they too can secede. From the analysis of Quebec, Kosovo, and Catalonia a bigger picture will be revealed regarding the circumstances under which a nation can unilaterally secede from the state it is a part of.

143. *The Spanish Constitutional Court Confronts Catalonia's 'Right to Decide'*, *supra* note 9 ("In order to reach unanimity, some intermediate solution had to be worked out. Basically, the Court invalidated one part of the challenged Declaration, while it upheld the other (provided, however, that the latter was read in a constitutionally proper manner)").

In analyzing the legal situation between Catalonia and Spain, it is important to look at other similar situations for persuasive precedent. Through further analysis of the Canadian Supreme Court's ruling on Quebec and the ICJ's Advisory Opinion on Kosovo it is clear that two prongs must be examined: (1) the right to self-determination; and (2) territorial integrity.¹⁴⁴ By looking at *Reference re Secession of Quebec*, it is clear that in order to invoke the right of self-determination one must have been experiencing colonialism, subject to domination, exploitation or subjugation or denied exercise of the right to self determination.¹⁴⁵ These criteria for invoking the right to self-determination were also utilized in the ICJ Advisory Opinion on Kosovo.¹⁴⁶ It is clear that Catalonia cannot claim unilateral secession under the principle of self-determination.

However, the courts addressing Quebec and Kosovo differ over the application of the principle of territorial integrity. The Canadian Supreme Court held that territorial integrity prohibits unilateral declarations of independence in situations where the right to self-determination does not exist.¹⁴⁷ On the other hand, the ICJ found that territorial integrity did not prohibit unilateral declarations of independence.¹⁴⁸ In applying the ruling on Quebec it is clear that Catalonia cannot qualify for territorial integrity. Based upon the ICJ's Advisory Opinion, Catalonia cannot simply declare their independence nor do they qualify to invoke the right to self-determination, with or without territorial integrity. This means that, in using either the Canadian Supreme Court or ICJ's decision persuasively, Catalonia cannot make a unilateral declaration of independence and secession from Spain under international law.

144. *See generally Accordance*, *supra* note 7.

145. *Reference Re Secession of Quebec*, *supra* note 3, at 1344.

146. *Accordance*, *supra* note 7, at 436.

147. *Reference Re Secession of Quebec*, *supra* note 3, at 1369.

148. *Accordance*, *supra* note 7, at 437; U.N. Charter art. 1, ¶ 2.