

COMMENTS

CONTESTED SOVEREIGNTY AND CONFLICT: BETWEEN SPAIN AND CATALONIA

YINKA OLOMOJOBİ,

Babcock University (Ilishan-Remo, Nigeria)

OMOIGERALE OMONYE,

Babcock University (Ilishan-Remo, Nigeria)

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This paper examines the Catalonia-Spain trajectory. Quite recently, the region of Catalonia became known for its sovereignty demand, which has strained relations with Spain its host state. Economic grievances, nationalism, and political disillusionment are some of the explanations given for the growing secessionist moves in the region. Apart from this, other reasons identified include strained historical ties, class struggle, the erosion of its autonomous region by General Francisco Franco and the subsequent demand for self-determination by separatists. An issue that runs through this work is the refusal of the Spanish government to concede to this separatist's demand which has deteriorated any negotiations for dialogue. However, the Spanish government has announced that it is open to negotiate anything except a referendum. Furthermore, based on the reaction of the Spanish government, the 2014 referendum held by the Catalans seems to be non-conclusive. This study, therefore seeks to examine the contentious issues of "contested sovereignty" with relations to the Catalonia-Spain quagmire and its seemingly subsisting impact in the pro-independence agitations in Europe and Africa.

Keywords: contested sovereignty; conflict; greed; grievance; Catalonia-Spain.

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Introduction

Catalonia is a region in north-eastern Spain with a distinct history dating roughly 1,000 years. The wealthy region has about 7.5 million people, and it provides one-fifth of Spain's GDP and about 20 percent of its economic output. With a well-defined history dating back to the early Middle Ages, most Catalonians see themselves as anything but similar to Spain. A roughly triangular region, Catalonia is separated by the Pyrenean Mountains from southern France, with which it has close historical and cultural ties. Most of the region's population lives in Barcelona, its lively political and economic hub and well-liked European travel destination. The Mediterranean beaches of the Costa Brava and Costa Daurada/Dorada, and the Pyrenees are popular with holiday makers, making tourism an important part of Catalonia's economy.¹ Traditionally, Catalonians manufacture textiles although more recently overtaken significantly by the chemical industry, food-processing, and metalworking that makes the region Spain's economic powerhouse, along with a growing service sector.

More autonomy has been an objective of the Catalans since the 15th century and has also played an important role in the democratization processes after the dictatorship of General Francisco Franco. However, although the Spanish Constitution recognizes the "right to autonomy of the nationalities and regions of which Spain as a collective subject is claimed to be composed,"² Spanish constitutional Courts have refused to acknowledge Catalonia's self-recognition as a nation in the legal sense, emphasizing the "indissoluble unity of the Spanish nation."³ This has led to a pervading separatist Catalan sentiment of a rejection of Spanish offered autonomy and a movement for the independence of Catalonia.

On 11 September 2012, there was massive demonstration by the citizens of Catalonia and subsequent elections on 25 November of the same year aimed at deciding what political framework is to be used to organize its society and economy. This recurrent issue culminated in a 2017 referendum which the Spanish government dismissed as illegal. It ultimately climaxed in a declaration of independence on 10 October 2017 by President of the Generalitat of Catalonia, Carles Puigdemont, a move dismissed as unconstitutional by the Spanish Prime Minister.⁴ This confrontation is only the latest expression of an issue between Madrid and Barcelona that is approximately a millennium old; the Catalonians desire to rule themselves. Catalonia has a culture,

¹ EU/Spain: Catalonia Well and Truly Emerging on the EU Stage, European Report, 27 July 2006 (Dec. 10, 2018), available at www.highbeam.com/doc/1G1-148676449.html?refid=easy_hf.

² Spain's Constitution of 1978 with Amendments through 2011 (Jan. 30, 2019), available at https://www.constituteproject.org/constitution/Spain_2011?lang=en.

³ Catalan independence movement, Wikipedia (Jan. 30, 2019), available at https://en.wikipedia.org/wiki/Catalan_independence_movement.

⁴ *Id.*

language and history that is unique and all its own. It has continued to preserve this identity in spite of losing several wars in its liberation movement.

1. Spain's Historical Ties with Catalonia

Historically, Catalonia remained an independent territory until the marriage between King Ferdinand and Queen Isabella in 1469 when it became annexed to Spain.⁵ The union united multiple regions including Catalonia into the state now known as Spain. With this union, Catalonia ceased to be an independent territory and became part of the kingdom of Aragon.⁶ Until the 18th century it existed largely as a self-governing state with a common language and well developed political, legal and economic structures. However, the role she played in the war of Spanish succession led to a subsequent large-scale repression of Catalonia's individual and collective cultural rights, such as the prohibition of the use of the Catalan language, the public denial of the Catalan identity and the punishment of cultural expression.⁷

Notwithstanding, according to Paul Freeman⁸ the kingdom's center of financial and cultural activities lies in Barcelona. This set a trend that would continue till the present day.⁹ Historically, Catalonia has been wealthier than Spain that controls it. Freeman attributes this to a strong textile industry and early industrialization, as well as Barcelona's prominence as a port City.¹⁰ Retaining its own institutions, the region was ever more tightly integrated into the Spanish state, until the 19th century heralded a renewed sense of Catalan identity, which ushered in its wake myriad of campaigns for political autonomy and even separatism. The period also saw an effort to restore Catalan as a language of literature.

In 1931 when Spain became a republic, Catalonia was given broad autonomy, albeit short-lived. During the Spanish Civil War, Catalonia was a key Republican stronghold, and the fall of Barcelona to General Francisco Franco's right-wing forces in 1939 marked the beginning of the end of republican resistance. Under Franco's ultra-conservative rule, autonomy was revoked, Catalan nationalism repressed, and use of the Catalan language restricted. Catalonia gained its current status as an autonomous community after his death in the 1970s.¹¹

⁵ Lode Wils, *Introduction: A Brief History of the Flemish Movement in The Flemish Movement: A Documentary History 1780–1990* 1 (T. Hermans (ed.), London; New York: Bloomsbury, 2015).

⁶ Becky Little, *The Catalan Fight for Independence Has Medieval Roots*, History.com, 30 October 2017 (Jan. 30, 2019), available at www.history.com/news/the-catalonian-fight-for-independence-has-medieval-roots.

⁷ *Id.*

⁸ Catalonia, Wikipedia (Jan. 30, 2019), available at <https://en.wikipedia.org/wiki/Catalonia>.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

The tense political polity in Catalonia is due to the extent of the economic and political marginalization present, the crippling cultural gap between Catalonia and the rest of Spain and the response of the Spanish government to the agitation. For example, Catalonia possesses distinct cultural practices and speaks a different language than the rest of Spain and provides about 20 percent of the total Spanish GDP, one-third of the total industrial production and exports, about 25 percent of Spain's total taxes, but public investment in Catalonia is not proportionate to either its population or contribution to GDP.¹² Thus, the Catalans argue that Spanish political system does not guarantee their political and legal rights as the Spanish government guarantees only superficial administrative autonomy with no real powers.

2. Sovereignty in Theory and Practice

One cannot discuss statehood without first determining the meaning of sovereignty. International relations theorists and constitutional lawyers are seemingly provided with a choice between two options. They may furnish explanations from within the "tradition of realism" which takes individual sovereign states as its point of departure. Alternatively, they may give their accounts from within the "tradition of idealism" which takes a community of sovereign states as its point of departure.¹³ Whatever the option, sovereignty remains a central component of their discussions. Sovereignty describes states either individually or in a community.¹⁴

The constitutive intercourse between the state and sovereignty attracted international discourse on the nature of the international system. From a realist perspective, the state is an independent actor in exchange, competition and conflict, with other states. States emerged as an organized power that demand recognition and are constrained only by web of the voluntary compacts.¹⁵ From this perspective, theorizing sovereignty might be deceptive when it directs attention away from the relations of power and interest that generate behavior toward a realm of understanding and behavior.¹⁶

International legal theory parallels the opposition on whether international recognition is declaratory or constitutive of statehood.¹⁷ A declaratory theory asserts

¹² Julius W. Friend, *The Stateless Nations and the European Union in Stateless Nations: Western European Regional Nationalisms and the Old Nations* 162 (London: Palgrave Macmillan, 2012).

¹³ Cynthia Weber, *Simulating Sovereignty: Intervention, the State, and Symbolic Exchange* (Cambridge: Cambridge University Press, 1995).

¹⁴ *Id.*

¹⁵ David Strang, *Contested Sovereignty: The Social Construction of Colonial Imperialism* (Cambridge: Cambridge University Press, 1996).

¹⁶ *Id.*

¹⁷ *A Declaration of Principles. Resolutions Adopted at the Nashville Convention*, 5(1) Religious Education 52 (1910).

that states exist independent of recognition and the recognition indicates that other states have become aware of a new state, on the other side of the divide, constitutive theory holds that states have no standing in the absence of recognition. It becomes quite illuminating that recognition is, borrowing the word of Strang “a self-referential act” in which states decides what states are. According to Hall,

...though no state has the right to withhold recognition when it is earned, states must be allowed to judge for themselves whether a community claimed to be recognized possessed all the necessary marks and especially whether it is likely to live. Thus although the right to be treated as a state is independent of recognition, recognition is the necessary evidence that the right has been acquired.¹⁸

For Hall, recognition as the end of the day is merely evidential and that the right to be treated as a state is independent of such, recognition. Thus:

Recognition is both declaratory and constitutive; states exist prior to recognition but commence on recognition; recognition is a duty but also a privilege.¹⁹

In spite of this theoretical declaration of the existence of a state, sovereignty also has a practical dimension that is placing the existence of a state within a social context and thus recognition marks the commencement of a state for practical purposes.²⁰⁻²¹ According to Weber,

...While the word sovereignty denotes a state of being – an ontological status – sovereignty in fact expresses a characteristic way in which being or sovereign statehood may be inferred from doing or practice. It is not possible to talk about the state as an ontological being – as a political identity – without engaging in the political practice of constituting a state.²²

¹⁸ William E. Hall, *A Treatise on International Law* (A. Pearce Higgins (ed.), 7th ed., Oxford: Clarendon Press, 1917).

¹⁹ *Id.* at 238.

²⁰ *Id.*

²¹ *Protocol Amending the TRIPS Agreement in International Law & World Order: Weston's & Carlson's Basic Documents* (B.H. Weston & J.C. Carlson (eds.), Leiden: Brill, 2012).

²² Weber 1995, at 3.

3. Catalan Sovereignty Demand

It is important to note that it was the Republican Left of Catalonia (ERC) that initiated the quest for independence.²³ The ERC identified with the separate identity of the Catalonians. The ERC gradually gained popularity amongst the Catalonians due to its nationalistic interests. From its nationalistic stance, the party gradually assimilated the nationalistic sentiments of the people.

3.1. Historical Arguments

Historically, Catalonia has been an independent country, where Catalonia “exhibited characteristics associated with modern statehood, such as a common language and well-developed political, legal and economic structures.” A couple of centuries later, the prosperous region was conquered on 11 September 1714 by the Spanish King Philip IV who was in desperate need for increasing the fiscal revenues of his empire in order to pay for its expansion, started a war against the Catalonia. This meant the end of autonomous self-government of Catalonia. To this day, this date is still very present in Catalonia as it has become the date of the annual national holiday and more recently, the date of massive demonstrations in favor of regaining independence. Besides requiring loyalty to the Spanish crown, the invasion of Catalonia by Philip IV also entailed institutional and cultural repression, in particular the Catalan language.

Catalonians view their nation with primordial sentiments and believe that their nation was subsumed under the banner of the Spanish nation. The link between Catalan's historical trajectories of nationhood is an important variable in the quest for self-determination. The main challenge in the quest for Catalonia's autonomy is whether it can be considered as a nation or whether Catalonia has been a sub-nation under Spain.

3.2. Economic Grievances

Beyond the quest for autonomy it seems that the main cause of search for a Catalanian nation is due to economic grievance. According to Desquens,²⁴ Catalonia suffers from taxation deficits. The amount of taxes paid is higher than the amount of national investments that flow back into the region. However, some scholars have argued that it not a novel phenomenon in any state, because not every region can perform the same economically. Then again, in contradiction to other cases, the deficit in Catalonia is fairly high. However, the Spanish government is of the opinion that Catalanian region is always desirous of taking a larger portion of

²³ Fernando Guirao, *An Independent Catalonia as a Member State of the European Union?* in *Catalonia: A New Independent State in Europe?* 189 (X. Cuadras Morató (ed.), London: Routledge, 2016).

²⁴ Josep Desquens, *The Case for Catalonia's Secession from Spain*, Indymedia Barcelona, 16 December 2003 (Jan. 30, 2019), available at <http://barcelona.indymedia.org/newswire/display/63332/index.php>.

economic largesse than other regions. This has created a feeling of mutual suspicion between Madrid and Barcelona.

3.3. Political Disillusionment and Tactics

This problem of economics first became highly visible in the beginning of the 21st century. From the time the Catalans regained partial autonomy in 1979, Jordi Pujol and his Convergence and Union (CiU) party have won all regional elections. On the national level, Pujol gave support to the Partido Popular (PP) in order to obtain a stronger majority in the Spanish parliament. Reciprocally, the Catalan government received a variety of privileges on the regional level. Nevertheless, in 2000, the PP obtained a large majority in the Spanish parliament, which meant that they no longer had to rely on Pujol's backing. In consequence, some of the rights that were obtained during the alliance were reversed, which led to discontent among the Catalans. Demands for further autonomy and recognition were replaced by hostility embedded in a neo-centralist, conservative and neo-liberal political discourse.

Except for the PP, all Catalan parties in the regional parliament demanded a renewed Statute of Autonomy, in 2003. This new Statute of Autonomy included, amongst other things, the recognition of Catalonia as a nation and a new system of financing the region. At that time an independent state was not broadly supported at all. After being sanctioned by the Catalan parliament, the Spanish Congress and Senate and by the people of Catalonia in a referendum the new Statute of Autonomy was challenged in front of the Spanish Constitutional Court of Justice by the PP and various other autonomous regions, because they deemed it un-constitutional. The court, declared *inter alia* that Catalonia was a nation,²⁵ but that this was "purely a subjective declaration with no force" and therefore could not be included in the renewed statute. This caused immense resentment among the Catalan population and, therefore, led to criticism on Spanish institutions.

A part of the discontent is the emergence of the "right-to-decide" movement. The transition from dictatorship to democracy in Spain has led to the fact that people express their political aspirations with less fear of oppression. Particularly, the new generations which were raised within the new democratic Spain are ever more persuaded of the legitimacy of their claims. One of such claims is the right to decide upon their political future by means of a referendum, similar to other European countries like Scotland. The Catalans tend to engage in grass-root mobilization to express their discontent with the status quo. For that reason this right to decide is an important component of demonstrations within and outside Barcelona and led to numerous unofficial referendums in different Catalan villages and cities between 2009 and 2011. The struggle over this new statute of autonomy represented the comeback

²⁵ Steven L. Burg, *Identity, Grievances, and Popular Mobilization for Independence in Catalonia*, 21(3) *Nationalism and Ethnic Politics* 289 (2015).

of a historical conflict between the state and tangential nationalisms in Spain. For some Spanish nationalists, this is a threat to the territorial integrity of the state.

The 2010 elections that followed as a necessary concomitant of the refusal of the renewed Statute of Autonomy were at the heart of the independence debate. Consequently, on January 2013 a Declaration of Sovereignty was adopted by the Catalan parliament. This declaration declares Catalonia's right to decide its own political future in a referendum held in 2014. On 9 November 2014, this referendum took place and 8 percent voted in support of Catalonia being independent outside of Spain. However, this percentage produces a misleading image, since only 37 percent of the electorate voted.

This is a clear indication that the concept of self-determination collides with the concept of territorial integrity in the Catalonia-Spain saga. The comity of nations has solved this rather intriguing puzzle by "effectively eliminating the circumstances in which the right to self-determination equates with a right to secession and independence." More precisely, the international community has declared that nations without a state, like Catalonia, do not possess a right to statehood. International law and the Spanish constitutional court also defends this proclamation. Similarly, Artur Mas and some other government officials were sued, since the 2014 referendum allegedly "endangered Spain's territorial integrity."

Notwithstanding, the right to decide has been a popular mantra and has become synonymous with independence by politicians, civil society and citizens alike. The right to self-determination has been legitimized in a remedial sense, by making allusion to the times that the Catalan language and culture were repressed. Furthermore, supporters of an independent Catalonia frequently mention that the Catalans as a people or a nation share the same norms, values, culture and language.

4. The Nebulous Right to Self-Determination

There exists no universally accepted definition of the concept of self-determination as it is open to several distinct and varying socio-cultural economic and political interpretations and connotations rendering it easier to define within the constraints of a certain and specific context. Regardless some subsisting definitions of the concept are worthy of note due to its notoriety of its use and relevance to this work. From a historical perspective, with a focus on classical colonialism some scholars have opined that the doctrine of the right to self-determination has evolved to mean that:

No people must be forced to live under foreign domination or under a constitutional system which it does not agree to. Every person has the right to live within its own territory in external freedom and internal liberty.²⁶

²⁶ M.K. Nawaz, *The Meaning and Range of the Principle of Self-Determination*, 1965(1) Duke Law Journal 82 (1965).

Furthermore, adopting a socio-ethnographical perspective while attempting to define the right to self-determination, Ross, in his work *Constitution of the United Nations* wrote that self-determination:

In a territorial respect means a right for a people or a group (in a socio-ethnographical sense) to determine the national dependency of the territory inhabited. On the positive side this would mean a right to claim territorial changes in accordance with the wishes of the population; on the negative side it would mean that no territory could be cede unless confirmed by a plebiscite.²⁷

The United Nations similarly defines self-determination as the right of peoples to:

Freely determine their political status and freely pursue their economic, social and cultural development.²⁸

Consequently, according to the Venezuelan representative in a U.N. General Assembly session, the principles of self-determination include:

The right of every people to choose its own form of government, to enjoy its spiritual and material patrimony without restriction to live freely in accordance with its most cherished traditions, and to be exempt from any form of subjection to any other more powerful nation or people.²⁹

The International Court of Justice has been quite influential in developing the principle of the right to self-determination albeit have not been quite forthcoming in the debate on the authority of regional liberation movements to use force in attaining self-determination. In its *Advisory Opinion on the Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*³⁰ while considering a variety of treaties and resolutions of the United Nations, in conjunction with state practices in relation to the issue of self-determination, with particular reference to colonialism, the Court avers that

²⁷ Alf Ross, *Constitution of the United Nations: Analysis of Structure and Function* (Clark, N.J.: The Lawbook Exchange Ltd., 2008).

²⁸ *Resolution 1514 (XV) Declaration on the Granting of Independence to Colonial Countries and Peoples in International Law Documents* (3rd ed., London: Blackstone Press Ltd., 1996).

²⁹ *United Nations General Assembly Resolution 46/36 on General and Complete Disarmament (6 December 1991)* in *International Law & World Order*, *supra* note 21, at 1–15.

³⁰ Noelle Higgins, *Regulating the Use of Force in Wars of National Liberation: The Need for a New Regime 157–191* (Leiden; Boston: Martinus Nijhoff Publishers, 2010).

the subsequent development of international law in regard to non-self-governing territories, as enshrined in the Charter of the United Nations, made the principle of self-determination applicable to all of them.

The judgment does not concentrate on the issue of use of force at considerable length, but then again Judge Ammoun in his Separate Opinion averred:

Indeed one is bound to recognize that the right of peoples to self-determination, before being written into charters that were not granted but won in bitter struggle, had first been written painfully, with the blood of the peoples, in the finally awakened conscience of humanity.³¹

The debate on the legality of the use of force by regional liberation movements could have been laid to rest in the case of *Nicaragua* when the court considered the issue of the prohibition of intervention. The Court by design refuses to lay to rest the lingering debate on the issue albeit stating that:

The Court is not here concerned with the process of decolonization; this question is not in issue in the present case.³²

Remarkably, Judge Schwebel in an obiter dictum implied that the Court had permitted a special exception for wars of regional liberation. He opined:

...it is lawful for a foreign State or movement to give to a people struggling for self-determination moral, political and humanitarian assistance; but it is not lawful for a foreign State or movement to intervene in that struggle with force or to provide arms, supplies and other logistical support in the prosecution of armed rebellion.³³

However, as this is a dissenting opinion, it cannot be taken as a generally accepted interpretation of the law. The status of self-determination became quite evident in the 1990s. In the case of *Portugal v. Australia* the Court came to the decision that the

³¹ *Case Concerning Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*, Separate Opinion of Vice-President Ammoun, para. 5 (Jan. 30, 2019), available at <https://www.icj-cij.org/files/case-related/53/053-19710621-ADV-01-02-EN.pdf>.

³² *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, para. 206 (Jan. 30, 2019), available at <https://www.icj-cij.org/files/case-related/70/070-19860627-JUD-01-00-EN.pdf>.

³³ *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Dissenting Opinion of Judge Schwebel, para. 180 (Jan. 30, 2019), available at <https://www.icj-cij.org/files/case-related/70/070-19860627-JUD-01-09-EN.pdf>.

right of peoples to self-determination as an *erga omnes* obligation is irreproachable, and “the principle of self-determination of peoples has been recognized by the United Nations Charter and in the jurisprudence of the Court; it is one of the essential principles of contemporary international law”³⁴ albeit did not explore further the issue of the legality of the use of force in liberation movements.

There exist some apparent deficiencies with the above definitions and conceptions of the right of self-determination. Some of these inadequacies include a failure to state how the decision is to be made, the limitation or range of this right but rather leaves it unqualified, what the outcome should be (i.e. full or partial independence, creation of a federation, protection of some form of autonomy, full assimilation etcetera), and what may constitute a people (i.e. a unanimous legal criterion for determining which groups may legitimately claim the right to self-determination).

However, upon examination of the most prevalent interpretations of the concept of self-determination, it can be summarily asserted that the right to self-determination is a right possessed by all persons without discrimination, as a substantive principle of international law empowering all persons or groups of people, with the authority to create, decide or influence their political positions with regards to their sovereignty and international political positions with regards to their sovereignty and international political status in any society with no interference.

5. Self-Determination in Practice: Who Are the Beneficiaries?

The immortal words of Sir Ivor Jennings, are quite apt in this regard. He stated in 1956 thus:

Nearly forty years ago, a Professor of Political Science, who was also President of the United States, President Wilson, enunciated a doctrine which was ridiculous, but which was widely accepted as a sensible proposition, the doctrine of self-determination. On the surface, it seemed reasonable; let the people decide. It was in fact ridiculous, because the people cannot decide until someone decides who are the people.³⁵

This is quite important in the discussion of self-determination. Some sort of clarification is needed to remove this rather seemingly vague question from its nebulous realm and speak to specifics. The question then is what constitutes a “people” and upon whom this right to self-determination resides. The Commentary on the 1977 Protocols to the Geneva Conventions addresses the issue of what constitutes a “people” in relation to the right to self-determination. It asserts:

³⁴ *East Timor (Portugal v. Australia)*, Judgment, para. 29 (Jan. 30, 2019), available at www.icj-cij.org/en/case/84.

³⁵ Ivor Jennings, *The Approach to Self-Government* 55–56 (Cambridge: Cambridge University Press, 2011).

The only unanimously agreed certainly is that those who are entitled to this right are “all peoples,” but what is uncertain is the definition of the term “people.” For some, the term is defined in the Charter and the International Covenants on Human Rights; for others it is an elastic concept.³⁶

The protocol listed some standards which can be taken into consideration when defining a people:

In international law there is no definition of what constitutes a people; there are only instruments listing the rights it is recognized all peoples hold. Nor is there an objective or infallible criterion which makes it possible to recognize a group as a people: apart from a defined territory, other criteria could be taken into account such as that of a common language, common culture or ethnic ties. The territory may not be a single unit geographically or politically, and a people can comprise various linguistic, cultural or ethnic groups.³⁷

Coupled with these criteria the protocol also state the sentiment that tie a people together as a constituent which can aid in distinguishing them from others.

The essential factor is a common sentiment of forming a people, and a political will to live together as such. Such a sentiment and will are the result of one or more of the criteria indicated, and are generally highlighted and reinforced by a common history. This means simultaneously that there is a bond between the persons belonging to this people and something that separates them from other peoples: there is a common element and a distinctive element.³⁸

Espiell³⁹ and Criteau⁴⁰ in their reports to the U.N. on the issue of self-determination expand on the characteristics of a people entitled to the right of self-determination. These have been surmised as “a history of independence or self-rule in an identifiable territory, a distinct culture and a will and capability to regain self-governance.”⁴¹ Furthermore, some features are considered as important identifiers of a people

³⁶ Higgins 2010, at 157–192.

³⁷ *Id.*

³⁸ *Id.*

³⁹ *UN Sub-Commission on the Prevention of Discrimination and the Protection of Minorities in Encyclopedia of Transitional Justice* 471 (L. Stan & N. Nedelsky (eds.), Cambridge: Cambridge University Press, 2013).

⁴⁰ John P. Humphrey, *The United Nations Sub-Commission on the Prevention of Discrimination and the Protection of Minorities*, 62(4) *The American Journal of International Law* 869 (1968).

⁴¹ Higgins 2010, at 86.

like ethnic, cultural, religious and linguistic connections, with a feeling of solidarity, aimed at safeguarding their culture, traditions, religion or language.⁴² Michael Walzer also adds a stimulating, if not perhaps a universally accepted standard to be met by a people entitled to self-determination. He asserts:

The problem with a succession movement is that one cannot be sure that it in fact represents a distinct community until it has rallied its own people and made some headway in the “arduous struggle” for freedom. The mere appeal to the principle of self-determination isn’t enough; evidence must be provided that a community actually exist whose members are committed to independence and ready and able to determine the conditions of their own existence. Hence the need for political or military struggle sustained overtime.⁴³

As a matter of fact, legal theorists and other connoisseurs of fine lines have argued that the use of force is one of the necessary concomitants for a people entitled to self-determination. Walzer, as quoted by Higgins, argues that “communities which do not fight are not entitled to self-determination, or, actually, they are not genuine communities at all.”⁴⁴ Now while this argument might be persuasive and in many instances a reflection of the recognition of a *de facto* situation, nevertheless it’s not contemplated in International legal principles. The use of force in furtherance of sovereignty demands in most cases illustrates that these “peoples” can come together and organize themselves “militarily and maybe physically.”⁴⁵

6. Catalonia Liberation Movement (Non-Violent Secession)

It remains within the realm of rhetoric whether Catalonia’s sovereignty demand can well be categorized as a conflict. Some scholars refer to it as the “Catalan problem” while for others, the “Catalan question.” Conflicts are often directly associated with war, killing and hurting people. However, conflict and violence are not one and the same. According to Cramer, a conflict appears when there is a friction between structures, behaviors and attitudes. Therefore, violence is not necessary in order to legitimize or stigmatize a certain situation as a conflict. As Muro, aptly captures it “given the scarcity of resources and irreconcilable preferences, the potential for conflict around the world is great, both in authoritarian and democratic states.” Most research over the years has focused largely on the violent cases of conflict, like civil

⁴² Humphrey 1968.

⁴³ Michael Walzer, *Just and Unjust Wars: A Moral Argument with Historical Illustrations* 93–94 (New York: Basic Books, 1977).

⁴⁴ Higgins 2010, at 87.

⁴⁵ *Id.*

wars. Nonetheless, in recent times, a small group of scholars have been focused on developing a theoretical structure for analyzing non-violent forms of conflict.

A dataset was introduced by Chenoweth and Lewis,⁴⁶ which contains annual data on Nonviolent and Violent Campaigns and Outcomes (NAVCO). Comparing this data with other famous databases of (ethnic) war, demonstrates that nonviolent campaigns might have different motivating factors when compared to violent campaigns, “and implies the need for improved theory and empirics on non-violent resistance.” These non-violent campaigns are more than just adding up their events. “They involve planning, recruiting, training, intelligence, and other operations as well as their most obvious disruptive activities.”

According to Chenoweth & Cunningham,⁴⁷ many cases of non-violent conflict are self-determination disputes. The demands of secessionist movements vary from identity protection to cultural, economic and political autonomy, to independence or reunion with another state. According to Hechter⁴⁸ secessionism is an outcome of four separate processes: (1) collective agreement about the existence and boundaries of a territorial sub-unit of the existing host state, (2) regional collective action, (3) social basis of secessionist support and (4) host state’s costs of maintaining territorial integrity. The latter points an interesting duality within secessionism, that between self-determination and territorial integrity. According to international law, existing territorial boundaries cannot be redrawn, but on the contrary, secessionist movements point to the right of self-determination in order to change those borders. To aptly examine secessionism, it is pertinent to focus on three elements, that is: justification of self-determination, the outcomes of secessionism, and strategies of secessionist groups. However, this element will not be discussed in this study.

Conclusion

Most recently, there was a 2017 referendum which the Spanish government dismissed as illegal and a declaration of independence on 10 October 2017 by President of the Generalitat of Catalonia, Carles Puigdemont, which was dismissed as unconstitutional by the Spanish prime minister. The preferred outcome of an exercise of the right to self-determination varies greatly. To some groups, the only satisfactory outcome is full political independence which is particularly adopted by occupied or colonized nations. In colonial situations self-determination confers on the people of a colonially defined territory the right in law to decide freely their political status

⁴⁶ Erica Chenoweth & Orion A. Lewis, *Unpacking Nonviolent Campaigns*, 50(3) *Journal of Peace Research* 415 (2013).

⁴⁷ Erica Chenoweth & Kathleen G. Cunningham, *Understanding Nonviolent Resistance: An Introduction*, 50(3) *Journal of Peace Research* 271 (2013).

⁴⁸ Michael Hechter, *The Dynamics of Secession*, 35(4) *Acta Sociologica* 267, 269 (1992).

which can result in total independence, integration with a neighbouring state, free association with another state or any other status decided upon by such people.⁴⁹ To others groups, the end product of their own claim to right of self-determination entails a degree of political, cultural and economic autonomy, sometimes in the form of a federal relationship. This entails internal aspects of self-determination which consists of the right to live on and manage a people's traditional lands free of external interference and incursion as the essential aim of a struggle for self-determination. The best method is to view the right to self-determination in its broad sense, as a process that provides a wide range of possible outcomes that depends on the situations, needs, interests and conditions of the concerned parties.

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⁴⁹ International Court of Justice Advisory Opinion on Western Sahara, Wikipedia (Jan. 30, 2019), available at https://en.wikipedia.org/wiki/International_Court_of_Justice_Advisory_Opinion_on_Western_Sahara.

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Information about the author

Yinka Olomajobi (Ilishan-Remo, Nigeria) – Associate Professor, Jurisprudence & Public Law, Babcock University (PMB 4003, Ilishan-Remo, Ogun State, Nigeria; e-mail: olomajobi@babcock.edu.ng; yinkaolomajobi@gmail.com).

Omoigerale Omonyee (Ilishan-Remo, Nigeria) – PhD Candidate, Department of Political Science, Babcock University (PMB 4003, Ilishan-Remo, Ogun State, Nigeria; e-mail: omonyee_moore@yahoo.com).