

International Law Pays No Homage to Catalonia's Declaration of Independence

by Julian Ku

International law is famously mushy and subject to a variety of interpretations. But there are some issues upon which there is more consensus under international law, such as the illegality of Russia's annexation of Crimea. But is there any reasonable argument favoring the legality of the Catalan Parliament's recent declaration of independence from Spain? I don't think so.

At the outset, it is worth reminding ourselves, as Chris does in this [post](#) on Crimea, that there is no *right* to secede under international law. Chris argues that secession is a factual question: it has either occurred or it has not occurred. But he says that legality of secession remains contested by international lawyers.

I agree with Chris that there is no right to secede under international law (see my [post](#) on Calexit here), but I would add that secession is generally only legal under international law when the parent state gives consent to secession. Such consent might occur after a civil war or rebellion, but it seems a necessary formality to legalize a secession. On the flip side, as is the case in both Spain or the United States, the domestic law of a parent country usually prohibits secession absent such consent. Section 2 of the Spanish Constitution of 1978 begins by declaring that is based on "on the indissoluble unity of the Spanish Nation, the common and indivisible homeland of all Spaniards." Similarly, the U.S. Supreme Court decided in the [1869 Texas v. White](#) decision that "[w]hen Texas became one of the United States, she entered into an indissoluble relation,"

Thus, there is no international legal right to secede, and it is usually (and appears clearly) illegal for Catalonia to do so under Spanish constitutional law. It is for this reason that I do not think there is any reasonable argument that the Catalan declaration of independence is lawful or protected by international law.

The Catalans might (and do) fall back on invocations of the international right of self-determination. Such a right does indeed exist under international law, but it is highly doubtful that such a right justifies secession in the case of Catalan. The right of self-determination does not guarantee the right of secession. Moreover, as the Supreme Court of Canada rightly held in the case of Quebec:

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.

Unlike Serbia under Milosevic with respect to Kosovars, Spain is a state which has granted Catalonians representation on the basis of equality and without discrimination. It is also not a situation of decolonization, as Professor Sterio explained on OJ [here](#). I just don't see a credible argument here that the situation of the Catalonians triggers some kind of "external" right of self-determination.

Does this matter? At the margins, the lack of legality for the Catalans' declaration of independence probably bolsters the unwillingness of any foreign state to recognize Catalonia as an independent state. I am doubtful legality is decisive here, but it certainly weakens what is already a pretty weak Catalan case for independence.

October 29th, 2017 - 12:31 PM EDT | [Trackback Link](#) |

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