Knowledge transfer to society report

Secession and Democracy:

An International and European Legal Perspective on the Catalan Secession Process (2012–2017)

Barcelona, 24 March 2024

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Foreword

This report provides an executive summary of the main conclusions of our research for the project 'Secesión, democracia y derechos humanos: la función del Derecho internacional y europeo ante el proceso catalán - SEDEDH' (Spanish Ministry of Science and Innovation; reference: PID2019-106956RB-I00, 2019–2024; PI: Helena Torroja Mateu).

The SEDEDH project falls within the 'Research Challenges' category. It thus aims to create scientific and technical knowledge oriented towards 'solving social problems arising from social changes', such as the Catalan secession process (2012–2017). To this end, it seeks to help promote 'inclusive, innovative and reflective societies' interested in exploring 'shared values and their contribution to our joint future' (Horizon 2020 Framework Programme for Research and Innovation guidelines).

The research team consists of lawyers and researchers specialized in the disciplines of public international law and international relations (including European law and international human rights law), private international law and constitutional law.

This report is mainly intended for the broader public. However, it is also addressed to public representatives of Spanish society and other social institutions; representatives of other states; officials, experts and parliamentarians, where applicable, of the various international and European organizations under study; and other international stakeholders.

Aim, rationale and purpose

The aim is to identify and analyse the international and European law applicable to the Catalan secession process (2012–2017) – or '*procés*' – and the related practice of international organizations to which it gives rise.

The legal analysis is twofold. First, it reviews the principles and rules governing state sovereignty, territorial integrity, and the principle of self-determination. It then analyses the principles and rules applicable in processes of accessing independence in violation of a constitution in the context of a democratic state governed by the rule of law, i.e. in cases of unilateral secession or secession *stricto sensu* such as the one under study here, which is unique in the European Union. Unlike consensual secession processes (devolution), these latter processes inevitably violate democratic principles and values (rule of law, human rights, etc.), respect for and protection of which are regulated at the international and European levels.

In terms of practice, the report identifies and analyses the series of positionings, actions and decisions of various organs of the European Union,

the Council of Europe and the United Nations specifically concerning the Catalan secession process (2012–2017).

Certain characteristics of this independence process justified its study from an international and European perspective. The first was the widespread policy of using terms specific or related to international and European legal norms. In most cases, this was done by endowing them with content – a concept – other than that which has been internationally agreed.

The second was the direct anchoring of the secessionist policy in 'the international' arena, beyond the supreme domestic law of any democratic society, i.e. its Constitution. In the case at hand, this was done in contravention of the 1978 Spanish Constitution (CE), under which the Spanish nation expressly undertakes to ensure 'democratic co-existence' in order to establish 'justice, liberty and security and to promote the well-being of all its members' (Preamble CE).

The third is the filing of lawsuits, allegations and other documents with human rights and other bodies of various international organizations by direct actors in the secession process, beginning in 2017.

The fourth is the deep social polarization not only in Catalonia, but also in Spanish society as a whole, arising from these events, endangering sustainable peace in Spanish and European society. Since 1945, both international and European law have sought to prevent the internal causes at the root of conflicts (originally referred to as *peaceful change,* today more commonly known as the *culture of peace*).

Finally, the fifth is that the secession process itself involved international and European norms on issues such as: access to statehood, the legal notions of sovereignty and independence; the effectiveness and recognition of states; and the legal rules on accession to and exit from international organizations in the event of displacements of sovereignty, especially in the case of the EU (and all the attendant consequences, such as the loss of European nationality). If any two scientific disciplines have the necessary authority to rigorously weigh in on this field from a legal perspective, it is public international law and European Union law.

In the face of the disproportionate surge in emotion and sentiments during the secession process (no rarity in today's politics), the logic and rationality of law – in this case, international and European – can help to restore universal concepts, which are essential to enabling a return to dialogue and social harmony. Its rules provide us with a common vocabulary, rooted in a reality that surrounds us all, whether we like it or not: the international and European context. To bring conceptual clarity to society regarding the real content of the shared values of peace and justice based on freedom and rights, democracy, pluralism, protection of minorities, the rule of law and other democratic values is our main purpose.

Method and structure

Except in Section 1, we have followed the legal method of public international law, where applicable, taking into account the particularities of the European Union's legal system. Crucially, this method is not the same as that of domestic legal systems. The *interpretation and application* of international legal rules must be done by means of the *secondary rules* concerning the recognition and change of the primary international rules themselves; these are specific and different from those of domestic systems.

The structure reflects the following logic. First, an overview of the facts is provided in the context of Spanish constitutional democracy. This is followed by an examination of general international law, the universal sphere applicable to all states. From there, the report shifts to the more specific sphere, namely, European Union law, considering, first, the narrower legal framework, that of integration, analysing the European Union, and, second, the broader sphere, namely, that of cooperation, in the form of the Council of Europe. It then proceeds to review United Nations human rights practice. Finally, it presents a specific aspect of practice: the direct or indirect positioning by EU, Council of Europe and UN organs with regard to the policies of a substate entity, specifically, the set of institutions that make up the *Generalitat* of Catalonia.

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The report's content is endorsed by all authors by consensus.

Barcelona, 24 May 2024

1. Spain's constitutional democracy and the Catalan secession process

In 1978, Spain was constituted as a constitutional democracy, with full respect for fundamental rights, pluralism, and the balance of powers. Since then, Spain has performed well in the main international rankings measuring countries' democratic quality.

The 1978 Spanish Constitution (CE) also established the basis for a politically decentralized country. The 'comunidades autónomas' (literally, self-governing or autonomous communities, the first-level administrative division into which the country is divided) formula is halfway between a unitary and a federal state. It hinges on the affirmation of a 'nation', the Spanish one, as the holder of sovereignty, and a series of 'nationalities and regions' with a recognized capacity for limited self-government, including the capacity to endow themselves with their own parliament and government.

In 2012, Catalonia embarked on the road to independence. Since then, the Catalan regional parliament has declared its sovereignty and Catalonia's right to secede. The alleged origin of that process was the Constitutional Court's decision finding some articles of the 2006 Catalan Statute of Autonomy unconstitutional. From the point of view of the Catalan nationalist parties, it was not right to verify that Statute's constitutionality; doing so rendered the Constitutional Court illegitimate and the Catalan regional institutions were thus no longer obliged to respect the constitutional order in Spain.

This process ended with the passage, by the Catalan regional parliament, of two laws in early September 2017 that entailed the derogation in Catalonia of the CE. An illegal secession referendum was held on 1 October 2017, despite having been suspended by the Constitutional Court. On 27 October 2017, the regional parliament adopted a unilateral declaration of independence, and the Spanish central authorities responded with the tools of the rule of law, respecting the rights and freedoms of Catalan citizens, who are not subject to any type of oppression or political discrimination

Specifically, that same day, 27 October 2017, the Spanish government triggered the mechanism provided for under Article 155 CE. As a consequence of the application of that article, central government authorities assumed the competences of the regional government, the regional parliament was dissolved and a new regional election was called for December. In Judgments 89 and 90/2019, the Constitutional Court unanimously upheld this first application of the extraordinary procedure for the defence of the Spanish Constitution.

In the 21 December 2017 elections, the various pro-independence candidacies managed once again jointly to win an absolute majority of seats in the Catalan Parliament (albeit without a majority of the popular vote). With the swearing in of President Torra in May 2018, the central government's intervention in the autonomous community was ended. In this 'post-traumatic' period, the pro-independence movement maintained its strategy of political confrontation but avoided engaging in conducts of blatant disobedience.

In the special proceedings conducted for the alleged crimes committed by the main leaders of the *procés*, the 2nd Chamber of the Supreme Court issued, in October 2019, a judgment sentencing nine of them to terms of imprisonment and disqualification from holding public office. The Court stressed that freedom of thought protects the claim of independence, such that political advocacy of any political project is not a criminal offence. However, 'leading citizens in a public and tumultuous uprising, which, moreover, prevents the application of the law and obstructs compliance with court decisions, is a criminal offence, specifically, sedition. Because there is no democracy outside the rule of law.' The leaders were convicted on counts of sedition and embezzlement. The judgment came after a four-month trial, conducted with all the guarantees by a judicial body made up of independent senior judges, according to the Constitutional Court.

The nine pro-independence leaders sentenced to prison were subsequently partially pardoned by the Spanish government in June 2021. They immediately regained their freedom. The following year, the Spanish Criminal Code was reformed to abolish the criminal offence of sedition, the one carrying the most serious penalty for the nationalist leaders judged in 2019.

Today, the Spanish Parliament is debating an amnesty bill that would benefit those offenders who committed criminal or administrative offences in their defence of the secession of Catalonia. This amnesty includes cases of terrorism, corruption, and high treason.

2. International law and the Catalan secession process

The essential principles of general international law apply to *all* states and are incorporated into specific international law, including European Union law. Those of a peremptory (*jus cogens*) rank – because they protect essential interests of the international community as a whole – can only be modified or derogated from by other norms of the same rank. Three issues stand out.

2.1. *State sovereignty and the principle of self-determination of peoples*

The principles of sovereignty and sovereign equality are the cornerstone of the international legal system. It is international law that confers on states the set of rights and duties that make up the core of their sovereignty, which includes the principle of self-organization and the duty for third states to respect their territorial integrity and political independence, with all of their corollaries.

Under the principle of self-organization, a sovereign state's constitution may provide for the power of substate entities to separate. It is a right of the state, not a duty imposed by international legal principles, and it is exceedingly rare in practice. Outside a state's constitutional order, there is no right of separation for substate entities backed by international legal norms, despite what the principle of self-determination of peoples might seem to establish.

That principle – the principle of the self-determination of peoples – comprises two different norms due to their scope: *external* and *internal*. Both are peremptory (*jus cogens*). The holders of the *right to external self-determination* are colonial peoples and those under military occupation by a third party. Its free exercise by the legitimate population of the colonial territory through democratic and non-discriminatory procedures leads to the creation of a sovereign and independent state or to forms of association or integration with another state. The colonial or militarily occupied territory is considered legally separate and distinct from the territory of the metropolitan or occupying state. The exercise of this right is thus an international matter.

In contrast, the holder of the *right to internal self-determination* is the people of the territory of an already constituted state. Through its democratic exercise, the political, economic, social or cultural system, including the territorial organization, is freely decided, without foreign interference. It is *the whole people of the state* who decide on the territory, and a right of separation may be established in domestic law. The opposite case (secession *stricto sensu*) is tacitly limited by international law. Internal self-determination expresses the democratic principle and is in harmony – not conflict – with the principle of self-organization of the state.

Remedial secession (in case of systematic violation of fundamental human rights of populations located in one part of a state) is a scholarly construct, which can be upheld *de lege ferenda* for application to non-democratic countries, but not European Union Member States.

The Catalan pro-independence strategy has abused a long list of terms, many with international connotations, in a way not seen in any other process of accessing independence in a democratic country: *political prisoners, right to decide, remedial secession, democracy is voting, self-determination is not a*

crime, *democratic tsunami*, etc. Our research has subjected this manipulation of language – conscious or otherwise and typical of populist policies – to the scrutiny of international law (*ignorantia juris non excusat* or *ignorantia legis neminem excusat*).

Regardless, no matter how often a substate entity might invoke 'international' considerations and norms, under Spain's system of reception and hierarchy of international law (which ranks below the Constitution, but above laws and regulations), they cannot override the Spanish Constitution.

Lacking any basis whatsoever in international law, the events of the *procés* can thus only be classified, under public international law, as a *revolutionary act,* i.e. an act against the constitutional order and central power authorities. Whether or not force was used is irrelevant. What matters is the intention to effect a constitutional change through facts on the ground, rather than through constitutional channels. Like all secessionist (*stricto sensu*) processes, the Catalan one had undertones that were far from peaceful. The contemporary *culture of peace* is clear in this regard.

In the face of an internal revolutionary act, a sovereign state's international rights and obligations remain intact. This does not mean that the response in defence of the Constitution by those who embody the state institutions cannot be coloured by debatable considerations of political expediency and opportunism.

General international law also governs how statehood is acquired under international law. For international law, the fact that a unilateral declaration of independence has been made in violation of a state's constitution is likewise initially irrelevant. International law will pay attention to the declaration's *effectiveness* – i.e. the effective assumption of territorial and personal powers by the issuers of that declaration of independence and the recognition of this fact by other sovereign subjects.

Recognition is a unilateral act declarative – not constitutive – of the international subjectivity of the self-proclaimed sovereign party. Nevertheless, there is no denying its extraordinary importance. Without recognition, there is no way to exercise the rights predicated on the state as a subject of international law. If that recognition is based on virtual rather than effective grounds, it can be premature and, thus, illegal (contrary to the principle of non-intervention in other states' affairs), as it can also be in situations induced by interference or even the use of force by a foreign power. In any case, in 2017, there was ultimately no recognition by any state at all.

Table: ***Terms and concepts in international law regarding forms of accessing independence***

Access to independence	*International legal term*	*International legal concept of the legal term*
… as a domestic affair (because at the origin there is the single territory of the parent state)	*Separation/ devolution*	It is the grant of independence accorded by the domestic legal system or central power (regardless of the terminology used: 'right to separation', 'right to secession', 'right to self-determination', etc.). It is a rare practice. It is a manifestation of the right to internal self-determination.
	Secession/forcible seizure of independence *(secession stricto sensu,* unilateral secession…)	It is the independence process undertaken in violation of domestic law (revolution). It goes against the internal self-determination right of the whole population of the state, which tacitly limits secession.
… as an international affair (because at the origin there are two legally different territories: the administering/ occupant state's territory and the colonial/occupied territory)	Right to external self-determination	It is a restoration of sovereignty and territorial integrity accorded directly in accordance with an international right held by colonial and occupied peoples (Palestine, Sahara), a jus cogens right with erga omnes effects. The administering or occupant state has an international duty to allow it, as does the international community as a whole.

2.2. *The principle of non-intervention in the affairs of other states*

The principle prohibiting states from interfering in the affairs of other states is another essential principle of general international law that should be highlighted here. A process of accessing independence, whether through the transfer of sovereignty (separation or devolution) or revolution (secession *stricto sensu),* is a *domestic affair* of the parent state. It remains so unless the independence becomes *effective* and *recognition* by other states is then considered. In the Catalan secession process, foreign states generally respected this principle. However, certain behaviour by the Russian Federation stands out.

Specifically, actions that may be attributable to the Russian Federation sought to directly or indirectly *influence* the Catalan secession process. These actions have been the subject of investigation and debate in the European Parliament, along with other similar cases. In a Resolution adopted by an overwhelming majority in 2024, the MEPs refer to Moscow's support for separatist movements in Europe, including in Catalonia, expressing their 'extrem[e] concer[n] about the alleged relations between Catalan secessionists and the Russian administration' in 2017. These relations are currently being investigated in a Barcelona court.

2.3. *State sovereignty and Catalan delegations abroad*

The mass opening of delegations abroad goes beyond the defence of interests linked to Catalonia's competences. Their purpose is the wilfully disobedient goal of independence, which is detrimental to the legitimate interests of the state, its national unity and territorial integrity, and the political stability of Spain and the EU.

The use of all means available to the regional authorities for the so-called internationalization of the *procés* is clearly detrimental to the state's foreign policy – the direction of which is a competence of the central government pursuant to Article 97 CE – and to the normal development of international relations – also an exclusive state competence, under Article 149.1.3 CE.

The *Generalitat*'s delegations abroad are a key tool for promoting secessionist theses, while tarnishing Spain's international image and damaging the general interests of the state.

3. European Union law and the catalan secession process

With regard to European Union law, this report will first analyse the legal framework for integration in the European Union. It will then pull back to examine the broader field of cooperation within the Council of Europe.

3.1. *The European Union: responses based on respect for national identity and the rule of law*

Article 4.2 of the Treaty on European Union enshrines the EU's respect for the exclusive right of the Member States to ensure their territorial integrity and, therefore, to take the legal actions needed to protect their unity in accordance with their constitutional and legal order.

No EU Member State allows referendums for part of the population to decide on the national territory. There are no precedents for the separation of part of an EU Member State, whether agreed or unconstitutional (the case of Algeria was not secession but self-determination vis-à-vis the colonial power, France, while the Saar was transferred between two states that were already members).

Of the 200 states that make up the current international community, only five allow such referendums in their domestic law, and they are irrelevant and highly circumstantial exceptions, as shown in the research.

The European Commission and the European Council have recognized that the effect of the secession (even an agreed separation) of a part of a Member State is its exclusion from the EU. Furthermore, the citizens of the newly independent region lose their status as Member State nationals (in the case at hand, they cease to be Spanish) and, thus, automatically lose their EU citizenship and the attendant rights.

Should the newly independent region wish to become part of the EU, it must initiate the procedure to apply for membership. This application must be unanimously approved by the Member States. If it manages to secure this approval and, thus, overcome the first hurdle, the ensuing negotiations involve hundreds more unanimous votes and years of waiting. It is not enough simply to meet the conditions.

The maintenance of citizenship depends solely on domestic law, as citizenship is an automatic complement to the nationality of a Member State. The treaty's clear and precise wording, as well as the established practice and case law of the Court of Justice of the European Union on EU citizenship, show that it is citizenship of a Member State that confers European citizenship and the attached rights, and that this latter citizenship inextricably coexists with national citizenship. Accordingly, loss of the status of Member State national automatically entails the loss of EU citizenship and the attached rights.

The position of the Commission and European Council was one of support for the constitutional instrument for intervention authorized by the Spanish Senate (Art. 155 CE) in the face of the illegal referendum and declaration of independence by the Catalan authorities. For the EU institutions, nationalism undermines the integration process by weakening the cohesion of states and the equality of their citizens.

The EU embodies the recognition by states of their inability to solve economic and social problems and to overcome the risks that nationalism had posed for Europe since the second half of the 19th century and, in particular, in the tragic 20th century. The individual shortcomings of the states were compensated for by common institutions and policies. In the face of the supremacism,

xenophobia and identitarianism represented by populism, the integration process advocates for common values and shared institutions and policies.

3.2. *The European Union: democracy, rule of law and international judicial cooperation*

Under EU law, the rule of law must be respected not only by the EU institutions but also in the Member States. First, Article 2 of the Treaty on European Union (TEU) states that:

'The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.'

These are the essential democratic values, inseparable from the notion of constitutional democracy, that the Member States must respect, protect and fulfil.

Second, Article 10.1 TEU, adds that the 'functioning of the Union shall be founded on representative democracy'. However, that implies that not only EU institutions, but also Member States must assume this principle, as some of the Union's institutions are made up of representatives of the Member States' governments (Council). Of course, there is also direct representation of European citizens through the European Parliament, but the Union's hybrid nature demands that the form of state of the Member States also be in accordance with the principles of democracy enshrined in Article 2 TEU.

The rule of law is, along with the democratic principle and human rights, one of the three main indissociable principles of constitutional democracy proclaimed by the EU. Notwithstanding the challenges of characterizing the content of the rule of law, the Court of Justice of the European Union has ruled on how infringements of the rule of law within the Member States affect the EU's legal order. This case law not only reflects the EU's commitment to the rule of law, but is also an essential tool for defining the rule of law and its relationship with the democratic principle. The basis of that definition is the work of the Council of Europe since the end of World War II. Its essence is that there is no democracy outside the law and the guarantee of fundamental rights or without independent courts (see section 3.3 below).

In any case, due to the complex nature of the EU, the Court of Justice of the European Union, and the national courts all have competence in disputes concerning the implementation of the rule of law in the Member States. Without a significant level of mutual trust, this situation could cause conflicts between national and EU authorities.

The free movement of persons within the Union, without border control for persons crossing the internal borders between Member States, requires a reinforced cooperation between these states to prevent this lack of controls from being used by offenders fleeing from the police or courts of a Member State.

This cooperation was reinforced through the mechanism of the European arrest warrant (Council Framework Decision of 13 June 2002), intended to secure the arrest and surrender of those persons requested by a Member State. Although there is no exclusion for political offences, the failure to execute the European arrest warrants issued by the Spanish courts for individuals involved in the attempt to repeal the Spanish Constitution in Catalonia in 2017 has shown that political crimes are still a problem for criminal cooperation within the European Union. The Court of Justice of the European Union has stressed the need to enforce the instrument in all the cases it covers, albeit noting that a review of the system would be useful. The European Parliament has already proposed the inclusion in the instrument of offences against the constitutional order of a Member State involving the use of violence.

3.3. *The Council of Europe: responses based on the promotion and protection of democracy*

The Council of Europe (CoE) – established through the Treaty of London in 1949, to which Spain is a party – includes as part of the common European heritage the safeguarding of the 'principles which form the basis of all *genuine* democracy', namely: 'individual freedom, political liberty and the rule of law' (para. 3, Preamble). Respect for them is linked to the maintenance of peace and justice in Europe and every Member State must accept them (Art. 3). These have remained the pillars of the CoE ever since, as shown in the research.

History points to the reason for this unprecedented qualitative leap by a treaty. The founders of the CoE were keenly aware of the consequences of Hitler's and Mussolini's election-based rise to power. A democracy such as Weimar's did not prevent authoritarianism and subsequent totalitarianism, supported by like-minded populations. They were equally mindful of the totalitarian drift in the east. These drivers of the internationalization of the legal concept of democracy in Europe, linked to the constitutional protection of three inseparable principles – the rule of law, human rights and the democratic principle – should not be forgotten.

Consequently, democracy is not (just) voting; nor is there an unlimited right to decide – the essence of autocracy – as the leaders of the Catalan secession process would have it. They invoke a democratic principle detached from

respect for the rule of law and human rights and, therefore, radical or identity-based. The democratic principle cannot be isolated from respect for the rule of law (rules-based democracy) and respect for the principle of equality. The right to decide without limits or prior rules is not a legal construct accepted by democratic states governed by constitutional and international norms. The right to decide is an ideology whereby the decisions of the majority of Parliament are unlimited and inviolable. The executive powers of Poland (until December 2023) and Hungary follow similar practices, cloaked in the misleading term – to be avoided – of 'illiberal democracy'. European history and law clearly show that these are all authoritarian practices that pose a danger to peace and justice.

The leaders and other players in the Catalan secessionist process have indirectly introduced this radical democratic principle in Council of Europe institutions. In 2017, the then Catalan president, following the mandate of the Catalan Parliament, wrote to the president of the Venice Commission, requesting the body's collaboration and claiming to be at its disposal, only to immediately thereafter dramatically disregard its position on the matter, as publicly expressed in its president's response: a clear defence of the three indissociable principles embodied in Spain's constitutional democracy.

Similarly, direct actors in the secession process have lodged applications with the European Court of Human Rights (ECtHR) in which leaders of and participants in the process alleged violations of human rights and fundamental freedoms in situations involving no exercise of any right at all, but rather egregious failures to comply with the Spanish Constitution and the Spanish Constitutional Court's orders. So far, the ECtHR has positioned itself in defence of Spain's constitutional democracy, that is, of the European democratic public order, in two inadmissibility decisions, from 2018 and 2019. The lawsuits filed by the nine secessionist leaders convicted by the Supreme Court have been joined and are pending resolution.

Finally, the Parliamentary Assembly of the Council of Europe (PACE) is the only body that, due to the nature of its parliamentary composition, buoyed by a weak majority, provided an avenue for the defence of Catalan radical democracy in 2021, albeit a short-lived one (it has adopted no further resolutions in this sense). Two years later, however, it, too, would defend constitutional democracy as the 'genuine democracy' to which the 1949 Treaty of London refers, although again by a slim majority. While the PACE decisions are just recommendations, they are not without political relevance.

4. *The United Nations and the Catalan secession process*

In the framework of the UN, in response to claims by secessionist leaders and other sources of alleged human rights violations by Spain, various experts have issued individual or joint opinions on some of the actions taken by Spain, which is a party to the main universal human rights treaties.

It is important to note that these experts serve in their personal capacity: they are not UN staff (they receive no financial remuneration, aside from per diems), nor are they representatives of states, nor do they speak on behalf of the UN. They are selected by the states on the basis of their professional competence (they need not be jurists) and their moral integrity, independence and impartiality. These moral attributes are legally required, although there is an ongoing debate as to whether all experts observe them in practice.

4.1. *The Special Procedures of the Human Rights Council*

The Special Procedures (SPs) of the Human Rights Council (HRC) are required to take measures to monitor and, also, respond quickly to allegations of human rights violations on behalf of the international community (the HRC is a subsidiary body of the UN General Assembly, made up of representatives of the states). Neither state consent (except when it is necessary to enter the territory) nor the exhaustion of domestic remedies is a pre-requisite for these SPs to act. These procedures are not of a judicial nature: they do not attribute international responsibility to the state.

In order to respond to specific allegations, SPs need to act quickly to protect actual and potential victims. To this end, they address written communications to the government to obtain clarification and information about the matter and, if necessary, make (non-binding) recommendations. Communications do not imply any kind of value judgment; they have to be based on objective assessments of the situation.

To respond to the numerous allegations of human rights violations as a result of measures taken by the Spanish central authorities in relation to the Catalan secession process, the SPs sent five written communications to the Spanish government between September 2017 and February 2023, either by individual mandate or jointly by several mandates. Additionally, the Working Group on Arbitrary Detention (WGAD) issued two Opinions in 2019, in accordance with its own working methodology.

Given the interdependence of democracy, the rule of law and human rights, a review of these written communications and of the Spanish government's

responses suggests that the SPs have disregarded the arguments presented by the government highlighting the unconstitutional nature of the referendum and maintain that the actions in question were carried out in accordance with the Spanish Constitution and the law.

This idea is particularly clear in the case of the WGAD's Opinions, which reflect its deliberations and the decisions adopted taking into account the information provided both by the allegation's source and in the government's responses; this is not the case with the communications from the other SPs.

In this context, it would seem advisable and useful for the mandate-holders to address the specific arguments contained in governments' responses. In this case, the failure to address the breakdown in Spain's internal constitutional order, which was the basis for the actions taken by its government to restore the rule of law, is of particular importance. The mandate-holders should have addressed the arguments contained in the government's responses. This would be one way to deepen the understanding of the alleged situations, taking into consideration all the elements at stake and giving unequivocal signs of the independence and impartiality that govern the SPs' mandates. This becomes even more relevant when there are ongoing judicial proceedings in a state governed by the rule of law.

As seen in the research, the legal status of the SP mandate-holders (who are independent experts) depends on their integrity, independence and impartiality, an essential and enforceable factor both to be eligible and throughout the fulfilment of their mandate. All the guidelines concerning their conduct and methods of work refer to independence and impartiality as a central element.

For the sake of transparency – in cases where the communications are public – it is necessary to know how the SP Coordination Committee treats the questions raised, by a state or any other stakeholder, about an SP's independence.

4.2. *The Human Rights Committee*

Article 25 of the International Covenant on Civil and Political Rights (ICCPR) protects *political rights* (the right of every citizen to participate in the conduct of public affairs, the right to vote and to be elected, and the right to have access to public office), prohibiting "undue restrictions" of these rights, without specifying the meaning of this expression. The Human Rights Committee (HRC), the body that monitors compliance with the Covenant, considers that permitted restrictions are only those that are contemplated on "*grounds which are established by laws that are objective and reasonable, and that incorporate fair procedures*".

In relation to the Catalan secession process, the HRC has adopted two views concerning the Catalan secession process in the context of its individual communications procedure that can be used by individuals against a State party to the Covenant that has accepted it: the Junqueras *et al* case*,* 2022 and the Puigdemont case, 2023. This procedure is essentially written; while contradictory, it is not a judicial proceeding since the HRC can only make recommendations (not issue judgments) on the measures that a State party should take in the event of violations of the Covenant. The ongoing debate in Spain on the legally binding nature of these decisions and of other UN treaty bodies in this area is detailed in the research.

The views concern two communications filed in 2018, in which the authors allege violations of their political rights caused by the suspension of the exercise of their public offices under the Law of Criminal Procedure (LEC) at the beginning of criminal proceedings against the 14 members of the Catalan government who were prosecuted for rebellion following the 2017 declaration of independence.

The authors of the communications, who were remanded in custody until the Supreme Court's ruling in 2019 (except for Mr. Puigdemont), allege that the suspension from the exercise of their public offices in application of the LEC amounted to an undue restriction. Mr. Puigdemont also allege that the requirement of his presence at the parliamentary investiture session to be appointed president of the Catalan government following the regional elections on December 21, 2017, a requirement that was imposed by the Constitutional Court in January 2018, also constituted an undue restriction.

While this second allegation was rejected, the first, common to both communications, was considered an undue restriction by the Committee, concluding that there was a violation of political rights in both cases. The arguments can be summed up in two. First, for the HRC, since the events that took place in the autumn of 2017 lacked the constitutive elements of rebellion, the application of the LEC did not meet the requirement of foreseeability. Second, the suspension of elected officials had been automatic and collective, for "alleged offences amounting to peaceful public actions prior to a conviction," thus preventing "an individualised analysis of the proportionality of the measure" and therefore not complying with "the requirements of reasonableness and objectivity."

The HRC found that the applicants had met the admissibility requirements, including the prior exhaustion of domestic remedies, up to the highest instance. However, two of the HRC's 15 experts issued separate opinions, holding that the communications were premature since the domestic remedies "were therefore not futile, but effective and not unreasonably prolonged". They

also criticized the HRC for acting as a "fourth instance" in re-examining the initial qualification of the facts as rebellion, despite not being competent to reassess the facts or the application of the law in a domestic proceeding.

5. EU, Council of Europe and UN positions on *Generalitat* policies

The *Generalitat*'s actions were largely contrary to the Spanish Constitution and other laws, included blatant disobedience of judicial decisions, and entailed a partisan appropriation of institutions, far removed from the neutrality required of them in a constitutional democracy. In this regard, the use of the public school system – which, in Catalonia, depends on the *Generalitat*, not the Spanish government – is particularly striking. However, these actions remain under domestic jurisdiction. Their status as an *internal affair* has dampened any direct international response to those of the *Generalitat*'s actions that might be contrary to respect for constitutional democracy or entail a breach of the rule of law. As the research has shown, certain actions of the regional government in Catalonia infringe its citizens' fundamental rights and freedoms, as well as the essence of democratic values.

Nevertheless, respect for these norms is an international obligation under European law. In this regard, some international bodies have directly or indirectly expressed positions on these actions by the *Generalitat*.

In the case of the European Union, these positions have been critical. The report by the mission sent to Catalonia by the European Parliament (Committee on Petitions) to assess the language immersion model in Catalonia (March 2024) is especially relevant. According to its findings, the regional government does not respect students' linguistic rights (including those of pupils with special educational needs) and does not implement judicial decisions; there are also cases of social exclusion, intimidation, and bullying of children and parents. Nevertheless, the European Commission has not considered these issues in its annual reports on the rule of law in the European Union. The report of the Committee of Petitions of the European Parliament includes recommendations for the European Commission, the Catalan regional authorities, and the Spanish national authorities.

In the case of the Council of Europe, the Venice Commission also implicitly considered the nationalist challenge in Catalonia in an opinion issued on 13 March 2017, in which it recalled that the judgments of the Constitutional Court are final and binding. It further added that when a public official refuses to implement a Constitutional Court judgment, he or she violates the Constitution and the principles of the rule of law, separation of powers and loyal cooperation of state organs.

Other CoE bodies have taken a more understanding approach to the infringements by the Catalan regional government. The PACE implicitly supported the illegal actions of the *Generalitat* in 2017 in a resolution adopted on 21 June 2021. In contrast, in the framework of its reports about the fulfilment in Spain of the European Charter for Regional or Minority Languages, the Committee of Experts of the European Charter for Regional or Minority Languages has neither endorsed nor criticized the imposition of Catalan as the teaching language for all students in Catalonia.

In the case of the United Nations, the most important international support for the *Generalitat*'s actions came from the Special Rapporteur on Minority Issues of the Human Rights Council. According to his report from 2020, all measures adopted to introduce some teaching in Spanish in Catalan schools should be rejected. Consequently, the rights of those people not classified as minorities (e.g. people in Catalonia who desire a bilingual education in Catalan and Spanish) must yield to policies intended to promote the expansion of the rights of minorities.

6. Conclusions and recommendations

Contemporary international and European law play a number of roles in the context of the Catalan secession process and the subsequent serious Spanish constitutional crisis in which the country is still immersed. Generally speaking, they are linked to the promotion and realization of the values of peace and justice. The following four sections list these roles, distinguishing between conclusions, on the one hand, and the correlative recommendations, on the other.

A. On the role of international law: respect for the territorial sovereignty of the state

1. The principle of self-determination of peoples (a peremptory – *jus cogens* – norm for all states) includes the right to internal self-determination of the people of a state as a whole. The value that the norm protects is the common decision regarding their political destiny, including how the territory is organized; therefore, the norm excludes the possibility that this decision be made by only a part of the population. The principle also comprises a right to external self-determination, conferred only on colonial peoples and peoples subject to military occupation by a third party.

2. It follows from the above that the Catalan independence process was a revolutionary act, a secession in the strict sense of the term, as it sought to accede to statehood in violation of the constitutional order without any basis whatsoever in international law. It moreover violated the right of the

population as a whole to internal self-determination, a right expressed by the democratic principle in general international law.

3. The Catalan and Spanish populations are largely ignorant of these matters, which facilitates the abuse of terms and slogans such as 'right to self-determination', 'self-determination is not a crime', etc. by Catalan secessionist leaders. However, no such abuse of public trust could change the reality of the international norm or the duties of other states to respect Spain's sovereignty and independence and of non-intervention. The sole result has been to generate discord and social polarization and to push the country, as a democratic society, into a dangerous authoritarian drift that continues to this day.

4. During the Catalan secession process, the principle of non-intervention by third parties was generally respected. However, extremely worrying attempts to exert political influence by the Russian Federation have been identified, in particular, the conversations between its envoys and the then Catalan president.

5. The *Generalitat's* delegations abroad are a key tool for promoting secessionist theses, while tarnishing Spain's international image and damaging the general interests of the state.

➔ Recommendations

A1. General education should be promoted for citizens on the rules of international law that directly affect them.

A2. The requirement for leaders and public officials to respect ethical principles should be reinforced, as such respect is linked to the effective implementation of the rule of law: misleading the public by distorting the content of norms and concepts smacks of abuse of power.

A3. The contacts between emissaries of the Russian Federation and envoys of the then president of the *Generalitat* should continue to be investigated in court. They should not be included in any amnesty or similar act, as they are a matter of European interest, under investigation in the European Parliament.

A4. The Spanish Foreign Service and Action Act (LASEE) should be reformed to require a non-binding report from the International Legal Office of the Ministry of Foreign Affairs and binding authorization from the Council of Ministers or the Senate for autonomous regions to open delegations abroad; autonomous regions should be required annually to report to the Ministry of Foreign Affairs on the delegations' subsequent

actions (ex post control). The law should also provide for the revocation or closure of offices that fail to comply with Articles 11 or 12 LASEE by the Council of Ministers or by the Senate, subject to a mandatory report by the Ministry of Foreign Affairs Legal Office, with the possibility of recourse to judicial review proceedings. The aforementioned reports and authorizations should be guided by the principles of unity of action abroad, efficient management of public resources, and adaptation to the order of powers in accordance with the Spanish Constitution and the LASEE.

B. On the role of European Union law and institutions

1. European Union law requires respect for the exclusive right of Member States to ensure their territorial integrity and, therefore, take the necessary actions to protect their national unity in accordance with their constitutional and legal systems. No EU Member State allows referendums for part of the population to decide on the national territory.

2. Rule of law and democratic values are cornerstones of the European Union. They should be respected and guaranteed at all levels. Their infringement at any level (EU institutions, Member States or subnational entities within Member States) damages the Union as a whole. Respect for these principles is not only relevant to the EU due to their significance as core values of European societies, but also because they are essential for cooperation between the Member States, including judicial cooperation.

3. The European public order protected by the Council of Europe includes the defence of constitutional democracy based on respect for three inseparable principles: the rule of law, human rights and the democratic principle. The protection and realization of these principles is inseparable from the maintenance of peace and justice.

There is no room for the exercise of radical or identity-based democracy in this notion. The ideology of the Catalan radical democratic principle does not change the reality of the norm. On the contrary, it hearkens back to authoritarian nationalist practices, a far cry from sustainable peace. The Catalan secession problem was – and is – not only a territorial problem, but also one of the violation of democracy.

➔ Recommendations

B1. In the EU, judicial cooperation should be reinforced on the basis that any infringement of the constitutional order of a Member State is an infringement of the essential values of the EU.

B2. The EU and the Council of Europe should improve their monitoring practices so as also to focus on the authoritarian policies of subnational entities when the central government of the Member State in question is unable or unwilling to confront such practices. Both institutions should assume that any infringement of the rule of law or any other democratic principle, at any level, damages the Union as a whole, the Council of Europe, and their respective Member States.

B3. The EU and the Council of Europe should implement and reinforce their programmes and actions to promote civic education on genuine democracy (i.e. that linked to the constitutional protection of the three inseparable principles of the rule of law, human rights and the democratic principle) and its relationship with peace and justice.

C. On the role of the United Nations in protecting human rights

1. The written communications of the UN Human Rights Council Special Procedures and the two Working Group on Arbitrary Detentions Opinions addressed to Spain concerning the measures taken in the Catalan secession process did not consider the breakdown in Spain's internal constitutional order. The mandate-holders' failure to consider Spain's international duty to restore the rule of law could call into question their objectivity, impartiality and independence and, consequently, their credibility.

2. In the two HRC decisions on the Catalan secession process, whether the applicants had exhausted their domestic remedies or might qualify for an exception to this requirement is a controversial question. Whether the HRC exceeded its competence in re-examining the facts and applicable law in ongoing proceedings in a constitutional democratic state is likewise controversial.

3. Significantly, the HRC does not question the initiation of criminal proceedings in response to unconstitutional actions by substate entities during a secession process. Nor does it rule out the suspension of political rights as a sanction once criminal proceedings conducted in accordance with the Covenant have been concluded. Suspension from public office prior to a final conviction is not considered an undue restriction provided the measure is foreseeable in law and entails individualized proceedings that take into account the individual situation and proportionality of the measure in each case.

➔ Recommendations

C1. The SPs must take special care to ensure that their actions and statements are compatible with the mandate and with the independence and impartiality required. A deep and serious debate on this issue is timely and necessary, as the SPs' chances of having an impact depend on their prestige, credibility, independence, impartiality and integrity. To this end, the SP Coordination Committee should produce reports to enable reflection on issues formally submitted to it on this matter. This would be useful material for discussion at the SPs' annual meeting.

C2. The expert members of the HRC should ensure respect for the organ's role, endeavouring not to act as a court of fourth instance and respecting in all cases the requirements for admissibility of individual complaints, including the prior exhaustion of domestic remedies (unless they are futile, ineffective, and unreasonably prolonged), so as to protect the integrity and effectiveness of the individual communications procedure.

D. On the role of the analysed International Organizations in relation to the practice of substate entities

1. The actions of the regional government in Catalonia against the rights of citizens, the rule of law, and other democratic values have not received an adequate response from European and international institutions. The only exceptions are the European Parliament and, indirectly, the Venice Commission. The indifference (Committee of Experts of the European Charter for Regional or Minority Languages), implicit support (Parliamentary Assembly of the Council of Europe), and even strong support (UN Special Rapporteur on Minority Issues of the Human Rights Council) of other organs threaten the rights of those Catalan citizens who do not support the actions of the regional institutions.

➔Recomanacions

D1. A deep review of the functioning of international institutions to ensure respect for the rule of law, the fundamental rights of all persons (including the rights of those people who cannot be included in the category of 'minority'), and other democratic values is a real priority for these institutions.

Annex I. Decisions and other elements of the practice of international organizations related to the Catalan secession process

I. European Union

A. European Parliament

a) Parliamentary questions, answers from the Commission and other remarks

Parliamentary question P-0524/2004; answer given by Mr Prodi on behalf of the Commission, 1 March 2004, https://www.europarl.europa.eu/doceo/document/P-5-2004-0524-ASW_EN.pdf

Parliamentary question E-007453/2012; answer given by Mr Barroso on behalf of the Commission, 28 August 2012, https://www.europarl.europa.eu/doceo/document/E-7-2012-007453-ASW_EN.html

Parliamentary questions P-009756/2012 and P-009862/2012; joint answer given by Mr Barroso on behalf of the Commission, 3 December 2012, https://www.europarl.europa.eu/doceo/document/P-7-2012-009756-ASW_EN.html#def1

Answer given by President Barroso on behalf of the European Commission on 20 November 2013 to the question from Ramón Tremosa (E-011023/13) (Official Journal (OJ) C 208 de 03.07.2014, p. 218 (English version), p. 2017 (Spanish version)). Similar answers had previously been given to other parliamentary questions (for example, E-008133/2012, answer in OJ C 308 E, 23 October 2013; P-009756/12, P-009862/12, answer in OJ C 310 E, 25 October 2013).

Parliamentary question E-011776/2015; answer given by President Juncker on behalf of the Commission, 15 April 2016, https://www.europarl.europa.eu/doceo/document/E-8-2015-011776-ASW_ES.html

Speech by Vice-President of the European Commission Frans Timmermans in the European Parliament, 4 October 2017, https://multimedia.europarl.europa.eu/en/video/01-ep-plenary-session-constitution-rule-of-law-and-fundamental-rights-in-spain-in-the-light-of-the-events-of-catalonia-opening-statement-by-by-frans-timmermans-first-vice-president-of-the-ec-1506-1514_I144556_01. A summary of his post-debate remarks can be found at https://www.youtube.com/watch?v=fi39iGc34xo.

b) Resolutions

European Parliament resolution of 9 March 2022 on foreign interference in all democratic processes in the European Union, including disinformation (2020/2268(INI)). P9_TA (2022)0064

European Parliament resolution of 8 February 2024 on Russiagate: allegations of Russian interference in the democratic processes of the European Union (2024/2548(RSP))
https://www.europarl.europa.eu/doceo/document/TA-9-2024-0079_EN.html

c) Special Committee on foreign interference in all democratic processes in the European Union, including disinformation (ING2)

Report on foreign interference in all democratic processes in the European Union, including disinformation (2022/2075(INI)), A9-0187/2023, 15 May 2023 https://www.europarl.europa.eu/doceo/document/A-9-2023-0187_EN.pdf

d) Committee on Petitions

Mission Report following the fact-finding visit to Catalonia (Spain) from 18 to 20 December 2023 with the aim of assessing in situ the language immersion model in Catalonia, its impact on families moving to and residing in the region as well as on multilingualism and non-discrimination and the principle of the Rule of Law, based on petitions n°0858/2017, 0650/2022 and 0826/2022 (19 March 2024, PE758.186v03-00), https://www.europarl.europa.eu/doceo/document/PETI-CR-758186_EN.pdf.

B. European Council

Remarks by President of the European Council Herman Van Rompuy, on Catalonia, 12 December 2013, EUCO 267/13, PRESSE 576, PR PCE 241, https://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/140072.pdf

C. European Commision

Response of the Secretary General of the Commission recalling that only nationals of a Member State are citizens of the European Union. SG-Greffe (2012) D/8977, C (2012) 3689 final, https://www.vozbcn.com/extras/pdf/20120602iniciativa-ue.pdf

Statement by the European Commission the day after the illegal referendum of 1 October, 2 October 2017, https://ec.europa.eu/commission/presscorner/api/files/document/print/en/statement_17_3626/STATEMENT_17_3626_EN.pdf

II. Council of Europe

A. European Court of Human Rights

Application nº 3009/21, Jordi Turull i Negre v. Spain and eight other applications, communicated on 19 September 2023, Statement of Facts

Judgment, D. and Others v. Spain (Application no. 36584/17), 28 June 2022 https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-218034%22]}.

Decision declaring inadmissible application No. 70219/17, lodged by Ms Aumatell i Arnau against Spain, of 11 September 2018 http://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-186990%22]}.

Decision declaring inadmissible application no. 75147/17, lodged by María Carmen Forcadell i Lluis and others against Spain, of 7 May 2019 https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-216853%22]}.

B. Parliamentary Assembly

a) Plenary

Resolution 2381 (2021), "Should politicians be prosecuted for statements made in the exercise of their mandate?", 21 June 2021 https://pace.coe.int/en/files/29344#trace-5.

b) Motions for a resolution, reports and others

Motion for a resolution, "Should politicians be prosecuted for statements made in the exercise of their mandate?", 22 January 2019, Doc. 14802 https://pace.coe.int/en/files/29344#trace-5.

Report, "Should politicians be prosecuted for statements made in the exercise of their mandate?", 7 June 2021, Doc. 15307 https://pace.coe.int/en/files/29344#trace-5.

Compendium of written amendments (Final version), "Should politicians be prosecuted for statements made in the exercise of their mandate?", 21 June 2021, Doc. 15307 https://pace.coe.int/en/files/29344#trace-5.

Follow-up report on the implementation of Resolution 2381 (2021). Rapporteur: Mr Boriss Cilevičs, Latvia (Socialists, Democrats and Greens Group), Declassified, 24 June 2022, AS/Jur (2022) 15 https://assembly.coe.int/LifeRay/JUR/Pdf/DocsAndDecs/2022/AS-JUR-2022-15-EN.pdf.

c) Committee on Legal Affairs and Human Rights

Introductory memorandum, "Should politicians be prosecuted for statements made in the exercise of their mandate?". Rapporteur: Mr Boriss Cilevičs. Declassified, 1 October 2019, AS/Jur (2019) 35
https://assembly.coe.int/LifeRay/JUR/Pdf/DocsAndDecs/2019/AS-JUR-2019-35-EN.pdf.

Report, "Should politicians be prosecuted for statements made in the exercise of their mandate?". Mr Boriss Cilevičs. Provisional version, 3 June 2021, AS/JUR (2021) 07
http://assembly.coe.int/LifeRay/JUR/Pdf/TextesProvisoires/2021/20210603-ProsecutionPoliticians-EN.pdf.

Report, "Should politicians be prosecuted for statements made in the exercise of their mandate? Follow-up of Resolution 2381 (2021)", Follow-up report on the implementation of Resolution 2381 (2021). Mr Boriss Cilevičs, Declassified, 24 June 2022, AS/Jur/(2022) 15
https://assembly.coe.int/LifeRay/JUR/Pdf/DocsAndDecs/2022/AS-JUR-2022-15-EN.pdf.

C. Venice Commission

Opinion 827/2015, Opinion on the Law of 16 October 2015 amending the Organic Law No. 2/1979 on the Constitutional Court of Spain, 13 March 2017, Doc. CDL-AD(2017)003
https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2017)003-e.

Letter from President of the Venice Commission Gianni Buquicchio to President Carles Puigdemont, Strasbourg, 2 June 2017, J.Dem.307 – GB/ew
https://www.venice.coe.int/files/Letter%20to%20the%20President%20of%20the%20Government%20of%20Catalonia.pdf

Letter from President Carles Puigdemont to the President of the Venice Commission, 29 May 2017
https://www.venice.coe.int/files/Letter%20to%20Buquicchio%20Catalonia.pdf

III. United Nations

A. Human Rights Council: Special Procedures

Ref.: UA ESP 2/2017. Mandatos del Relator Especial sobre la promoción y protección del derecho a la libertad de opinión y de expresión; del Experto independiente sobre la promoción de un orden internacional democrático y equitativo y de la Relatora Especial sobre los derechos a la libertad de reunión pacífica y de asociación (22 September 2017).
https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=23346

Spain's response:
https://spcommreports.ohchr.org/TMResultsBase/DownLoadFile?gId=33724

Ref.: AL ESP 1/2018. Mandato del Relator Especial sobre la promoción y protección del derecho a la libertad de opinión y de expresión (4 April 2018).
https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=23698

Spain's response:
https://spcommreports.ohchr.org/TMResultsBase/DownLoadFile?gId=34072

Ref.: AL ESP 5/2018. Mandatos del Grupo de Trabajo sobre la Detención Arbitraria; del Relator Especial sobre la promoción y protección del derecho a la libertad de opinión y de expresión; del Relator Especial sobre los derechos a la libertad de reunión pacífica y de asociación; y del Relator Especial sobre la situación de los defensores de derechos humanos (28 January 2019).
https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=24271
Spain's responses:
https://spcommreports.ohchr.org/TMResultsBase/DownLoadFile?gId=34548;
https://spcommreports.ohchr.org/TMResultsBase/DownLoadFile?gId=34664

A/HRC/WGAD/2019/6. Working Group on Arbitrary Detention. Opinion No. 6/2019 concerning Jordi Cuixart I Navarro, Jordi Sánchez I Picanyol and Oriol Junqueras I Vies (Spain) (13 June 2019).
https://documents.un.org/doc/undoc/gen/g19/158/75/pdf/g1915875.pdf?token=pjl3YG8muOJ8qAU47H&fe=true

A/HRC/WGAD/2019/12. Working Group on Arbitrary Detention. Opinion No. 12/2019 concerning Joaquín Forn I Chiariello, Josep Rull I Andreu, Raúl Romeva I Rueda and Dolores Bassa I Coll (Spain) (10 July 2019).
https://documents.un.org/doc/undoc/gen/g19/212/78/pdf/g1921278.pdf?token=0bsnXf0cgVflYz7EUP&fe=true

A/HRC/43/47/Add.1: Visit to Spain – Report of the Special Rapporteur on minority issues (9 March de 2020, https://www.ohchr.org/es/documents/reports/visit-spain-report-special-rapporteur-minority-issues. Comments by Spain: https://daccess-ods.un.org/access.nsf/Get?OpenAgent&DS=A/HRC/43/47/Add.2&Lang=S

Ref.: AL ESP 8/2022. Mandatos del Relator Especial sobre cuestiones de las minorías; de la Relatora Especial sobre la promoción y protección del derecho a la libertad de opinión y de expresión; y del Relator Especial sobre los derechos a la libertad de reunión pacífica y de asociación (24 October 2022).
https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=27548

Spain's response:
https://spcommreports.ohchr.org/TMResultsBase/DownLoadFile?gId=37296

Ref.: AL ESP 11/2022. Mandatos del Relator Especial sobre los derechos a la libertad de reunión pacífica y de asociación; del Grupo de Trabajo sobre la Detención Arbitraria; de la Relatora Especial sobre la promoción y protección del derecho a la libertad de opinión y de expresión; de la Relatora Especial sobre la independencia de los magistrados y abogados y de la Relatora Especial sobre la promoción y la protección de los derechos humanos y las libertades fundamentales en la lucha contra el terrorismo (8 February 2023).
https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=27719

Spain's response(s):
https://spcommreports.ohchr.org/TMResultsBase/DownLoadFile?gId=37444
https://spcommreports.ohchr.org/TMResultsBase/DownLoadFile?gId=37487

B. Human Rights Committee

Junqueras et al v. Spain, communication No. 3297/2019. Views adopted by the UN Human Rights Committee on 12 July 2022. CCPR/C/135/D/3297/2019.
https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2F135%2FD%2F3297%2F2019&Lang=en

Puigdemont v. Spain, communication No. 3165/2018. Opinion adopted by the UN Human Rights Committee on 14 March 2023. CCPR/C137/D/3165/2018.
https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2F137%2FD%2F3165%2F2018&Lang=en

Annex II. Selected publications by the authors that support the Report

I. Special issue of *The Hague Journal on the Rule of Law*, Vol. 16, number 1, 2024

https://link.springer.com/journal/40803/volumes-and-issues/16-1

Special issue: "The Catalan Secessionist Process and the Rule of Law, Democracy, and Human Rights through the Lens of International and European Law"
Guest Editor: H. Torroja

Foreword

Torroja, H. International and European Law and the Catalan Secession Process: Rule of Law, Human Rights and Democracy at Stake? Hague J Rule Law (2024). https://doi.org/10.1007/s40803-024-00214-7
Articles

Bilbao Ubillos, J.M. Spain as a Democratic State Governed by the Rule of Law and the Catalan Secessionist Process. Hague J Rule Law (2024). https://doi.org/10.1007/s40803-024-00207-6

Remiro Brotóns, A., Torroja, H. Public International Law and the Catalan Secession Process. Hague J Rule Law (2024). https://doi.org/10.1007/s40803-024-00203-w

Mangas, A. The European Union's Response to the Catalan Secessionist Process. Hague J Rule Law (2024). https://doi.org/10.1007/s40803-024-00202-x

Torroja, H. The Council of Europe and the Catalan Secessionist Process: The Authoritarian Drift of the Radical Democratic Principle. Hague J Rule Law (2024). https://doi.org/10.1007/s40803-024-00213-8

Almqvist, J. Reclaiming Political Rights During a Rule of Law Crisis: The Role of the UN Human Rights Committee. Hague J Rule Law (2024). https://doi.org/10.1007/s40803-024-00204-9

Patricia Arias B., The Special Procedures of the UN Human Rights Council and the Catalan Secession Process, Hague J Rule of Law (2024) https://doi.org/10.1007/s40803-024-00215-6

Arenas García, R. International and European Institutions and Catalan Nationalism. Hague J Rule Law (2024). https://doi.org/10.1007/s40803-024-00206-7

Foreword by the Guest Editor: Torroja, H. International and European Law and the Catalan Secession Process: Rule of Law, Human Rights and Democracy at Stake? Hague J Rule Law (2024). https://doi.org/10.1007/s40803-024-00214-7

II. Other selected publications

A. Monographs

Arenas García, R., *Orden europea de detención y entrega y defensa del orden constitucional de los Estados miembros de la UE,* Tirant lo Blanch, 2024 (forthcoming)

Torroja Mateu, H., *La libre determinación de los pueblos, ¿un derecho a la independencia para cualquier pueblo*?, Thomson-Reuters-Aranzadi, 2022.

B. Journal articles, book chapters and others

Arenas García, R., "El Estado de Derecho en la UE: Significado, desafíos y perspectivas de futuro", Araucaria. Revista Iberoamericana de Filosofía, Política, Humanidades y Relaciones Internacionales, 2020, vol. 22, No. 45, pp. 51-79. https://dx.doi.org/10.12795/araucaria.2020.i45.03

Arenas García, R., (with Ripol Carulla, S), "Issues related to European human rights law: the European Court of Human Rights". In: Torroja Mateu, H. and Ripol Carulla, S. (eds), Agora: The Catalonia independence process before the Spanish Supreme Court. Spanish Yearbook of International Law, 2020, vol. 24, pp. 286-292. http://www.sybil.es/vol-24-2020/

Arenas García, R., "Orden europea de detención y entrega y defensa del orden constitucional de los Estados miembros de la UE", Araucaria. Revista Iberoamericana de Filosofía, Política, Humanidades y Relaciones Internacionales, 2023, vol. 25, No. 53, pp. 359-381. https://doi.org/10.12795/araucaria.2023.i53.14

Arenas García, R. "El castellano como lengua vehicular en la escuela catalana tras la sentencia del TSJC de 16 de diciembre de 2020". In: V. de la Quintana (coord.), La diversidad lingüística en Europa, Brussels, Grupo del PPE en el Parlamento Europeo, 2023, pp. 173-233.

Mangas Martín, A., "Las delegaciones de Cataluña en el extranjero". In: Un mundo en continua mutación: desafíos desde el Derecho Internacional y el Derecho de la UE, Liber amicorum Lucía Millán Moro, Aranzadi, Madrid, 2022, pp. 353-374.

Mangas Martín, A., "A Decent Supreme Court Judgment". In: Torroja Mateu, H. and Ripol Carulla, S. (eds), Agora: The Catalonia independence process before the Spanish Supreme Court, Spanish Yearbook of International Law, 2020, vol. 24, pp. 272-276.

Mangas Martín, A., "Caso Junqueras, empate técnico entre Tribunales: surrealismo europeo y quijotismo leal", Comentario a la Sentencia de 19 de diciembre de 2019 (Gran Sala), C-502/19, Oriol Junqueras Vies, Revista Jurídica de Catalunya, 2020-2, pp. 540-545.

Mangas Martín, A., "Defensa del Estado de Derecho por la Unión Europea: la rebeldía de Polonia a la independencia judicial", Anales de la Real Academia de Ciencias Morales y Políticas, Agencia Estatal del BOE, 2021-2022, pp. 527-547.

Mangas Martín, A., “Seis proyectos en busca de Europa”. In: Cursos de Derecho Internacional y Relaciones Internacionales de Vitoria-Gasteiz 2021, Tirant lo Blanch, Valencia, 2022, pp. 101-170.

Torroja Mateu, H., “The ‘right to decide’ in International Law as grounds for exclusion of unlawfulness”. In: Torroja Mateu, H. and Ripol Carulla, S. (eds), Agora: The Catalonia independence process before the Spanish Supreme Court. Spanish Yearbook of International Law, 2020, vol. 24, pp. 281-285. http://www.sybil.es/vol-24-2020/

Torroja Mateu, H., “Reflections on the ‘Statement on the Lack of Foundation on International Law of the Independence Referendum that has been convened in Catalonia’ on the occasion of its third anniversary”, Paix et Sécurité Internationales, 2020, No. 8, pp. 403-421. https://revistas.uca.es/index.php/paetsei/article/view/6820/6910

Torroja Mateu, H., “Aproximación general al mecanismo de condicionalidad —al respeto del Estado de Derecho en los Estados Miembros— para la protección del presupuesto de la Unión Reglamento del Parlamento Europeo y del Consejo 2020/2092”. In: LA LEY Unión Europea nº 90, March 2021, pp. 1-12. https://diariolaley.laleynext.es/dll/2021/03/31/hoy-en-nuestra-portada-el-especial-diario-la-ley-union-europea-num-90-marzo-2021

Torroja Mateu, H. “Consecuencias jurídicas internacionales de la intervención de terceros Estados en procesos secesionistas. El caso del Procés”, Araucaria, 2023, vol. 25, no. 53. https://doi.org/10.12795/araucaria.2023.i53.15

Torroja Mateu, H. “Self-determination and Access to Independence under Current International Law: From Language to Concept”, Spanish Yearbook of International Law, 2024, vol. 27, 29-72. https://doi.org/10.36151/SYBIL.2024.002

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