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# THE INTERNATIONAL SYSTEM AND THE EUROPEAN UNION

- STRATEGIES OF SECESSION AND COUNTER-SECESSION

*Diego Muro*

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**Diego Muro**

*Lecturer in International Relations, University of St Andrews  
Associate Senior Researcher, CIDOB*

Whether seen as state-making or state-breaking, the obvious ingredient of secession is politics. Only those holding positions of governance are able to redraw maps and make choices that affect state boundaries and human communities. Political theorists have attempted to produce coherent models of secession which identify when and where secession is permissible and justifiable (e.g., Allen Buchanan's distinction between "primary right theories" and "just cause theories") but the truth is that the theory and the practice of secession do not go hand in hand. The practical implication of this disconnect between abstract thinking and realpolitik is that constitutionalism, international public law, and political theory provide a piecemeal assessment of the decisions of those with power. Instead, comparative politics and international relations can be more useful in illuminating the multiple arenas where movements of secession and counter-secession compete for power, legitimacy and advantage

A large number of unwritten rules exist, but there is no clear guidance for those wanting to secede and form an independent country. The main problem is, of course, that there is no legal right, under international or domestic law, to secession. The cases of decolonisation or foreign subjugation are often seen as exceptions, and not downsizing models that can be applied in a variety of contexts (either autocratic or democratic). Examples of non-colonial nations that have successfully seceded are scarce and include South Sudan, Eritrea, East Timor, and Montenegro (Seymour, 2017: 823). In the absence of a *Secessionist's Handbook*, *Secession for Dummies* or a *Manual of Secessionists*, those in favour of political independence either learn by doing or emulate the examples of other movements for independence.

This chapter on strategies examines who gets what, when, and how in a secessionist crisis over territory. Unfolding in three parts, it examines the arguments that secessionists and counter-secessionists use to mobilise their support base, distinguishes between negotiated and unilateral cases of secession and, finally, emphasises the need of international recognition for effective statehood.

## The arguments of secession and counter-secession

In the absence of clear rules, secessionist movements put together the best story possible in order to mobilise their supporters, convince the host state and persuade the international community of the *validity* of their goals. Besides having compelling arguments about norms, instruments and principles, secessionists ultimately desire external legitimacy in the form of international recognition. The objective of providing an effective narrative is to defend the reasonableness of secession according to a particular logic or justification whereas the long-term goal is to gain legitimacy, which is the normative belief held by an actor that a claim ought to be accepted. And how do secessionist movements gain legitimacy?

Secessionists often portray their cause as a just one, combatting some form of national injustice. The alleged grievance does not affect individuals or specific strata within society but a whole ethnic or national group. This collective grievance can take the form of a violation of human rights, annexation of territories, systematic violations of charters of autonomy or economic inequality (Sambanis & Milanovic, 2011). The key point here is that the perpetrator and the victim are clearly identified along national lines in an attempt to reinforce a distinct sense of identity and increase the likelihood that the discontented minority will seek independent statehood in the future. Thus, a problem of injustice is encrusted in a problem of representation in order to justify a secessionist response, which is designed to fix a “national problem” with a “national solution”. The force of these cries for justice lies in the fact that it justifies collective mobilisation in accordance with ethno-national distinctiveness and pushes for secession by appealing to both individual reasons and collective identity.

The second key argument of those in favour of political independence is to present the movement for self-determination as a democratic movement, especially amongst the Western cases this book focuses on. In the absence of clear guidelines in international law about how to proceed, separatists invoke general liberal principles and emphasise how the social movements they lead abide by the “correct” or “right” procedures of democratic systems. Secessionists showcase their democratic credentials and invoke legal norms, elections, and referenda to portray their cause as a collective struggle for democracy and human rights first, and not only for national self-determination. Democratic tools can also be used hypocritically, as in the case of the controversial referendum on the status of Crimea in 2014, where 95% of voters decided to join the Russian Federation shortly after a Russian military takeover of the peninsula.

By contrast, counter-secessionists put forward arguments about “legality” and “stability”. States, for example, argue that existing constitutional and international norms allow the legal status quo to provide peace and prosperity. In their eyes, the secessionist challenges only cause unnecessary constitutional stress, domestic destabilisation and intra-group division. The collapse of the legal order, they argue, can only lead to further state fragmentation and a more anarchical society, and that is why the right to self-determination needs to be

restricted to truly exceptional cases. In international terms, the principle of non-interference conditions external conduct among sovereign states, requiring that they not meddle in the domestic affairs of their peers. In the EU context, an additional legal requirement is contained in article 4 of the Treaty of the European Union (TEU), which obliges the EU to respect the territorial integrity of member states and their constitutional systems.

Counter-secessionists also refer to stability and the need to preserve the domestic and international order. The overwhelming majority of the world's states are heterogeneous, multi-ethnic or multi-national and the indiscriminate application of the principle of self-determination could result in an anarchical international system where state break-up becomes the norm. Defenders of the status quo might be right to worry about destabilisation because, as Kathleen Cunningham has demonstrated, there is a spatial diffusion of self-determination. She claims that "the onset of claims over self-determination in a state's neighbourhood in the previous years increases the chance of claims beginning in a country in any given year. Self-determination appears to be contagious" (Cunningham 2017: 17). In ordinary terms, a secession crisis arises when a section of the polity purports to reject the established constitutional order and to establish itself as sole political and legal authority over defined territory. States argue that the principle of "territorial integrity" prevents other nation-states from supporting secessionist movements or promoting border changes in other nation-states. Last but not least, counter-secessionists also tend to highlight the dangers of potential violence, transaction costs, forthcoming poverty, or the inefficiency of being a small state as additional causes of regional destabilisation.

Actors locked in a secessionist standoff use arguments that range from scare tactics to promising a prosperous future in order to gain supporters and mobilise their support base (Hechter, 1992). But regardless of the arguments floated around, a secession crisis is quintessentially a situation of national and international disorder which can only be resolved unilaterally or by negotiation.

## **Secession: Negotiated or unilateral**

Secession can be consensual or contested. Consensual secession requires an agreement with the host state and is a process that is characterised by little or no violence. Often cited examples include the dissolution of Czechoslovakia in 1993, also known as the "velvet divorce" because of its bloodless split, or the case of Canada, which authorised Quebec to hold two referendums on independence but also regulated the means by which secession would be negotiated (Clarity Act of 2000). Consensual secession is largely seen as a matter of law and requires acknowledging the constitutionality of secession. For instance, an agreement between the Scottish government and the United Kingdom government made possible the 2014 referendum on whether Scotland would become independent from the rest of the country. If the host state finally agrees to a negotiated secession, the international community will also recognise the new state, mainly because the aspiring state is more likely to be both sovereign and viable.

A “unilateral declaration of independence” (“UDI”) is the alternative to a negotiated secession. Unilateral secessions are often associated with remedial right theories which invoke the rights of nations for unilateral secession in cases of serious violations of human rights, unjust annexation of territories, and systematic violations of agreements on self-government. Examples of UDIs abound, including the American Declaration of Independence, the Confederate States of America, the 1965 Rhodesian de facto UDI from the United Kingdom, the 1970 secession of East Pakistan (Bangladesh), and the abortive secessionist movements in the Congolese Katanga region and in the Nigerian Biafra UDI (Haljan, 2014: 9–10). On the whole, UDIs such as the Catalan declaration of independence of October 2017 are unsuccessful because they are perceived as dangerous precedents for secessionist movements worldwide which can imperil the international order.

Secession by UDI is a form of revolution and it is often preceded by disorder, characterised by political tension and social conflict. The political act of separating polities, or taking steps to initiate separation, carries with it significant collateral social and economic upset, adding to and spurring the very real risk of substantial violent and nonviolent civil disobedience. It stands to reason that any attempt to divide a state without absolute or substantial consensus among all political interests will surely invite every possible objection and destruction – even military responses – as a means of subduing the threat to the state’s continued existence as whole. See the examples to date of the supposed UDIs in Nigeria, East Pakistan, Ethiopia and Yugoslavia (Haljan, 2014).

Ultimately, a secession crisis originates in an imbalance between the rule of law and popular sovereignty. That is, a minority group asserts the supremacy or priority of their specific common will and interests over the wider interests of society, as embodied in the laws and politics of that state. The latter (or so the group argues) dilute or hinder the realisation of the legitimate aspirations of the ethnic or national group. The imbalance or disjunction between popular sovereignty and the rule of law opposes the legitimacy of the group’s will and interest to the validity of the existing legal order. By virtue of this normative superiority the group may ignore, reject or supplant existing constitutional norms otherwise binding and effective. They simply assume the higher value of their secessionist aspirations and decide that existing laws do not apply to them any longer. Thus, we come to a secession crisis.

Regardless of whether secession is consensual or not, the new polity can only join the international community if other states recognise it as a sovereign state. External recognition constitutes the ticket to membership of the international system, where new entities can enjoy the status and material advantages reserved exclusively for states. Without that external recognition and legitimacy, an actor is not a state (Coggins, 2014: 215).

## **International recognition**

Whether secession is negotiated or unilateral, sovereignty is inevitably constituted through collective recognition. Great powers and regional powers are often central to acknowledging the supreme authority of a state over a political body. Given the need for external legitimacy,

secessionists need to convince both domestic and international audiences of the need for a new state by resorting to normative and practical appeals. The support of very powerful states is crucial when it comes to formal diplomatic recognition and statehood will not happen unless others are willing to support them. For example, East Timor (invaded by Indonesia) received very little international support but, over time, the human right abuses pushed great powers to change their minds. Convincing the outside world that Indonesia was authoritarian and repressive was a key step towards getting that cascade of recognition. The key strategy had been to define a national problem that could only be practically resolved with independent statehood.

And when are aspiring states internationally recognised? The truth is that *realpolitik*, not ideals, determine the success of pro-independence movements. The arguments that allow the secessionist movement to grow its support base (e.g., national grievances and democratic character of secession) do not guarantee international support from other states that inevitably pursue their own national interests (Krasner, 1999). Great powers and regional states put greater emphasis on a re-evaluation of their own parochial interests when assessing claims to self-determination. In sum, the power politics of international recognition essentially boils down to having friends in high places, especially the UN Security Council (see the chapters by Coggins and Qvortrup in this volume).

The role of the European Union (EU) in conditioning strategies of secession and counter-secession deserves special attention (Closa, 2016). At first sight the idea of seceding from an EU member state seems to run contrary to the idea of blurring boundaries in an “ever closer Union”. The founding fathers of the European communities hoped that the creation of a free trade area would inoculate Europeans against warmongering and the ills of nationalism. On the contrary, the political stability and peace in most of Europe has meant that small nations do not fear being invaded by more powerful states. The creation of an integrated European economy with a single market and currency that guarantees the free movement of goods, capital, services, and people has reduced many of the negative economic externalities of being a small sovereign state (Alesina & Spolaore, 2003). Due to these incentives, a substantial majority of western Europe’s secessionist parties have developed arguments that seek to harmonise national sovereignty with transferring powers to Brussels.

As a democratic area of peace and stability, the EU can stimulate support for a secessionist challenge, but its accession rules also act as a substantial stumbling block for the act of secession. The political and economic incentives mentioned above apply only if the newly independent entity is an EU member state, but the legal status suggests the need for new states to reapply for membership of the Union. The so-called “Prodi doctrine”, named after a former Commission president, states that any region that breaks away from an EU member will automatically leave the European club and have to reapply under the usual rules – a lengthy accession process. In sum, being part of the EU system provides economic and political incentives for self-rule, but the issue of international recognition in the form of EU membership acts as a clear disincentive to regions that want to have boundaries of their own without the consent of the host state (Muro & Vlaskamp, 2016).

## Conclusion

National self-determination is generally defined as the right of people to form their own state. Regrettably, this principle is often difficult to apply because there are no clear guidelines for sorting out which discontented nations deserve statehood and which do not. In addition, the most common state response from the community of states is to resist fragmentation in the domestic sphere and withstand a potential cascade of secessions at the international level.

The principle that US President Woodrow Wilson put on the international agenda in 1918 does not clarify “who” are the people and “when” they are entitled to become a sovereign state. Having a peaceful vote helps, but it does not solve all the domestic problems of “who” counts and “when” people should vote. It is unclear what constitutes a majority and whether the rump state should be allowed a say on issues of thresholds or minimum turnout. Unfortunately, there is no single set of international standards that can effectively guide state birth. The Venice Commission of the Council of Europe has issued some basic principles for those seeking self-rule but their application varies considerably from case to case. The picture is further complicated when we add the opinion of the host state’s population, who may not be willing to surrender authority over a portion of its territory.

There is also the issue of international recognition when applying the principle of self-determination. Whereas domestic support for independence is a prerequisite, statehood cannot be gained without international acceptance. In most successful cases of secession, there has been some level of support from great powers sitting in the Security Council, the international community, or organisations such as NATO. For instance, Kosovo exists, but it is recognised only by half of UN members and, more crucially, not by all EU member states, who prioritise state interests and avoid establishing precedents. Spain, for example, has a specific interest in not establishing a model that may be followed by its own internal secessionist movements in the Basque Country or Catalonia.

To conclude, both secessionists and counter-secessionists know that self-determination is an ambiguous moral principle which requires both internal and external legitimacy. The autonomy to decide one’s future helps to make a moral case for self-determination but the dismemberment in whole or in part of an extant state does not necessarily attract worldwide sympathy. Most states have their own secessionist regions and no-one wants to give the impression that getting your own country is easy.

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