

**A COMPARATIVE INQUIRY INTO THE LEGAL STATUS OF THREE
PEOPLES: CATALANS, QUÉBÉCOIS, AND THE IRISH UNDER
INTERNATIONAL LAW**

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For my family and my friends

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I hereby declare that all information in this document has been obtained and presented in accordance with academic rules and ethical conduct. This thesis contains no material which has been accepted for any award or any other degree or diploma in any university or other institution.

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ABSTRACT

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From forming of the first states to the World Wars, there was customary law although there was no written law in international realm. States generally acted according to customary laws to solve problems among each other during war and peace periods. With the modern states and developing human history, a written law period was introduced in international law. And an international law has evolved in today's context. Absolutely this period did not suddenly arise, but improved step by step. Firstly League of Nations and then the United Nations were established and with these developments states have made their own domestic law according to the international law. The main principle of international law is to provide peace in the world and to protect it. In this context it exerts prohibition of slavery, struggles with starvation, and seeks to bring about the development of democracy. Besides of all these, another problematic is the self-determination right of people in international law. Even this principle was taken into the international law agenda for the liberation of colonies from colonial states, its meaning in the course of time varied and it has been used for peoples that today's existing world states include. Today all world states, numbers of which have reached to approximately two hundred, experience this problem in their own affairs without exception. And this problem sometimes grades into bloody civil wars and terrorist movements. I, in this thesis, will study legal status of three peoples which is commonly known by the world public opinion. These are Catalans in Spain, Québécois in Canada and the Irish in the United Kingdom. These three peoples also demanded their claims from states in which they lived during the history. Their struggle was sometimes converted into bloody terrorist movements like in the U.K. and Spain, and sometimes it was tried to be solved through politics like in Canada.

Key Words:

Self-determination right, secession, international law

KISA ÖZET

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İlk devletlerin ortaya çıkışından dünya savaşlarına kadar yazılı olmasa da teamüli bir uluslararası hukuk vardı. Devletler savaşlarda ve barışlarda aralarındaki sorunların çözümünde genellikle teamül kurallarına göre hareket etmişlerdir. İnsanlık tarihinin gelişmesi ve modern devletlerle birlikte bugünkü anlamıyla bir uluslararası hukuk sistemi doğmuştur. Süreç elbetteki birdenbire olmamış, peyderpey ilerlemiştir. Önce Milletler Cemiyeti ardından da Birleşmiş Milletler'in oluşturulmasıyla, devletler oluşan bu yeni uluslararası normları gözeterek kendi iç yasal düzenlemelerini yapmışlardır. Uluslararası hukukun temel prensibi dünyada kalıcı barışın sağlanması ve bunun korunmasıdır. Bunun yanında en önemli değer yargısı da insan haklarıdır. Bu bağlamda uluslararası hukuk köleliğin kaldırılması, açıklıkla mücadele ve demokrasinin gelişmesi için çaba sarfetmektedir. Bütün bunların yanında uluslararası hukukta önemli bir sorunsal da halkların kendi kaderini tayin hakkıdır. Bu ilke sömürgeci devletlerin kolonilerinin özgürleştirilmesi için uluslararası hukukun gündemine alınmış olsa da, zamanla anlamı genişlemiş ve bugün mevcut dünya devletlerinin içinde barındırdıkları halkların haklarının korunması için kullanılmıştır. Bugün sayısı 200'e yaklaşan dünya devletlerinin çoğunda bu sorun irili ufaklı yaşanmaktadır. Ve bu sorun çoğu zaman kanlı iç savaşlara ya da terör eylemlerine dönüşmektedir. Ben bu çalışmada dünya kamuoyunda en çok bilinen halklardan olan üçünün yasal statülerini araştıracağım. Bunlar, İspanya'daki Katalanlar, Kanada'daki Kebekliler ve Birleşik Krallık'taki İrlandalılarıdır. Bu üç halk ta tarih boyunca buldukları devletlere taleplerini farklı şekillerde dile getirmişlerdir. Bu kimi zaman Birleşik Krallık ve İspanya'da olduğu gibi terörist eylemlere dönüşmüş, kimi zaman da Kanada'daki gibi siyasetin içinde çözülmeye çalışılmıştır.

Anahtar Kelimeler:

Kendi kaderini tayin hakkı, siyasal ayrılık, uluslararası hukuk

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LIST OF ABBREVIATIONS

BNA	British North America Act
BNG	Bloque Nacionalista Galego (Galician Nationalist Bloc)
CIU	Convergència i Unió (Convergence and Union)
DHR	the Universal Declaration of Human Rights
EAJ-PNV	Euzko Alderdi Jeltzalea-Partido Nacionalista Vasco (Basque Nationalist Party)
ECJ	European Court of Justice
ETA	Euskadi Ta Askatasuna (Basque Homeland and Freedom)
FCPNM	Framework Convention for the Protection of National Minorities, 1995
GAV	Gross Added Value
GDP	Gross Domestic Product
IRA	Irish Republican Army
ICESCR	International Covenant on Economic, Social, and Cultural Rights, 1966
ICCPR	International Covenant on Civil and Political Rights, 1966
R-IRA	Real Irish Republican Army
The UN	the United Nations
The EU	the European Union
The WWI	the World War I
The WWII	the World War II
UNICEF	the United Nations Children's Fund

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INTRODUCTION

After large colonial endeavors by Western nations, the world went through two major wars called World War I and World War II. The essential reasons of these wars were to share the markets and rich resources of poor and undeveloped countries. In the meantime, these two terrible wars caused great disasters and massacres. Following the great devastation of these wars, new international organizations and bodies were formed and the political system of the world reformed. Most important and functional of all these bodies and institutions formed in this new international system is the United Nations, which replaced the League of Nations. The United Nations Organization is more inclusive than the League of Nations by the numbers of both the forming nations and the nations joining later. The formation of the United Nations coincides with the post-colonial era, and during this time, many colonies have gained their independence one by one and started to be recognized as independent nations. These new independent nations are generally located in Africa, South America, South Asia and Southeast Asia.

The self-determination right of peoples is not only a decolonization idea. This principle has many properties and aims. The right of peoples to determine their own destinies is a principle related to peoples living in a specific location, speaking the same language and having a shared cultural heritage in their own historical past. These peoples are also demanding their political, economic and cultural rights from their own central governments. Looking out from this point of view, this is the problem of nation-states that have a population consisting of many diverse ethnic minorities. As is known, most nation-states have a majority population and a number of minority populations. It should be well considered that this demographic structure brings lots of problems alongside it for these countries. Governments have ideologies, ideas and world views. Governments embody most of the attributes of

majority as the basic organ of the social structure. Important point of this fact is that they give the same social, cultural, economic and political rights to their minority populations too. Indeed, it is understood more and more clearly in today's world that withholding these rights from those minorities, causes more problems for that government. Alongside with these problems, the more important thing is that these rights are human rights. After it has been founded, the United Nations has introduced a multitude of new principles for international law. These principles have become an upper law in time and influenced the internal laws of countries. The article below sums up the United Nations Charter wholly:

All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the United Nations.¹

In the article above, the United Nations seriously cares about the territorial integrity of states. According to the United Nations, this territorial integrity is not only meant to be protected in situations that can rise out of times of war, but also at times of secession. According to the United Nations, peoples should be able to determine their own futures and political statuses. It encourages every democratic and humanitarian development over this subject. However, the United Nations is against the separation of states, it supports self-determination right of peoples in states' internal affairs and demands that this self-determination right problem should be resolved by domestic law, without resorting to violence and separatism.

In today's world, some major separatist movements can be observed. Of course, most of them are occupying the world agenda. Most famous of these are the Catalans and Basques

¹Article 2/4 of the Charter of the United Nations, 1945, <http://www.un.org/en/documents/charter/chapter1.shtml>

in Spain, Chechens in Russia, Irish in the United Kingdom, Québécois in Canada. I will work on only three of the peoples mentioned above. These will be Catalans, Québécois and the Irish. The common attribute of those three peoples is that they all belong to the Western civilization and these three countries are rich, prosperous and respectful of human rights and democracy. In light of all these explanations, I will examine these three peoples both from an international law standpoint and an internal law standpoint.

Spain, Canada and the United Kingdom are rich, democratic and multi-cultural states. But why the peoples who live in those countries want to be separated from those countries? What is the main reason behind this? It is very difficult to explain this in today's conditions. As in everything, these separationist movements are also ruled by cause and effect. But there are a multitude of variables. Eventhough separatism has many reason, two of them are main issue of this thesis. One is sociological and the other is political. It is a natural fact that all people are different from each other. These differences multiply with the socialization of the human being. As a social being, humans see themselves as part of a group. This group starts with the family and extends to an ethnicity. The result is an increase in differences from private to general and as an ethnic group, these differences reach their maximum. Diverse groups forming a state try to obtain the sovereignty of the state. The group or people holding the power of state starts using all the mechanisms of state to strengthen their positions and consequently, the rights of other groups or peoples stay limited. These rights include the freedom of expression in one's mother tongue and the recognition of different identities living in their own cultural colors. As a result, minorities start demanding their basic rights from governments. Of course, these rights are not given easily by the central authority. Because of this, sometimes minorities try different methods to gain their rights, and separatist ideas start to sprout. Unfortunately this separatism usually becomes bloody. This may result in civil wars between peoples or terrorist acts which weaken the authority.

Another reason why peoples want separation is political. The political reason for separatism is that separatist movements receive help from outside sources: because separation needs financial power to support its political ideology. Both in history and in today's world, there are many examples. For example, in the 18th century, the American Colonies had the help of France to break off from the United Kingdom. As a result of this, 13 colonies were separated from the United Kingdom and founded the United States of America, and the first state to recognize the USA was France.

The same situation is going on just the same in our day and separatist movements are getting the help of foreign governments and civilian associations. This is a political fact because, in essence, governments are competing parties and they want to maximize their political gains against other governments. From this standpoint, if a state is economically weak, this state may probably face separatist movements. But this is not always a correct evaluation. Today, from the prospering states of Europe to the poorest nations of Africa, every state in the world is facing this kind of movement. Separation is not however a solution. Based on the desire to have their own state, some minorities want to get separated from their ruling governments. In these cases, a multitude of new states pop up and those new states probably face the same separatist problems within themselves.

The main goal of this thesis is to find out why the peoples on earth are demanding a right to self-determination. There are many reasons that forces this right to be demanded. These are economic imbalances, inadequate education provided by the state, weak democracy, political reasons, etc... But the main hypothesis of this thesis is that, however you may improve the wealth level of the public, however good an education you give them, the right to self-determination may still be demanded. I will try to show this by studying three states, that respect human rights and democracy, and that have high wealth levels. Canada, Spain and the United Kingdom are all developed nations in this respect; yet still, some

peoples living in these countries keep on demanding the self-determination right. The methods I will follow to find out are as follows: I will examine the types of rights given by states to peoples living under their rules. I will examine whether their political demands are actually fulfilled by investigating their political statuses in the states they live in. In addition, by briefly glancing at the economic and democratic levels of these countries, I will try to point out that the demands are not based on economic or democratic causes as it is in the rest of the world. And I will have better explained why I have written this thesis.

For reaching this thesis result, some sources will be taken as reference. Although a number of disciplines will be utilized for writing the thesis, the reference point will generally be international law and theoretical sources. In the first part of this thesis, I will mainly make use of international agreements such as the United Nations Charter, International Covenant on Economic, Social, and Cultural Rights, and International Covenant on Civil and Political Rights as reference. In addition, in order to theoretically examine the self-determination concept better, I will benefit from the theoretical books such as *Multicultural Citizenship: A Liberal Theory of Minority Rights* by Will Kymlicka, *Imagined Communities: Reflections on the Origins and Spread of Nationalism* by Benedict Anderson and also books such as *Ulus-Devletin Başağrısı Ayrımcılık: Kanada Québec Örneği* (Discrimination; the Headache of National State: Canada Québec Sample) by Huseyin Kalayci. In addition to these materials, I will make reference to the constitution and laws of the countries under investigation in the context of self-determination.

In the first chapter of this thesis, the self-determination right of peoples will be analyzed in detail as a concept of international law with its own historical background. What is the self-determination right of peoples from an international law standpoint? After a couple of explanations about this, I will ask the question “Who are ‘people’ as a right owner?”, and I will define ‘people’. This right will be examined based on new norms and ethical values

appearing in the international system shaped under UN framework for decades. Besides all this, secession types will be tried to explain in the context of the self-determination right of peoples (Autonomy, separation, independence, self-determination, partition, devolution, decentralization, sovereignty, self-governance, and decolonization). Another subject that will be examined in this chapter is the definition of rights in the context of the self-determination right of peoples. Answers will be sought to questions such as ‘What rights does the United Nations ask the governments to bestow on their minorities?’, ‘What should governments do in today’s conjuncture?’ Another topic in this chapter is whether international law is an obstacle in the way of separatism. If international law is an obstacle in the way of separatism, what are the reasons? To sum it up, there will be a good foundation in this chapter to be able to examine the self-determination right of three peoples in this dissertation.

In the second chapter, the self-determination right of Catalans in Spain is going to be studied, which is one of the three main problematics. Are the Catalans there a people or not, according to international law? To examine this, a historical perspective will be adopted regarding the Catalan people and the roots of the Catalan movement. The Spanish democracy of today and yesterday will be also examined based on international norms. This chapter seeks to find out if Spain has fulfilled the demands of the peoples living under its authority democratically. Another research of this thesis is about whether or not an environment where the peoples can demand their rights to self-determination has occurred from an international law standpoint. To understand this, I will examine the internal law of states and will use applications of international law such as the United Nations Charter, Resolutions, Universal Declaration of Human Rights, European Union decisions and other contracts in this chapter, as well as in other chapters. Moreover, in a part of this chapter, political status of Catalans in Spain will be examined. The aim here is to compare the rights of peoples living in other countries to the rights of Catalans and to gain a better understanding of the concept of self-

determination. As the rights and privileges given to minorities differ in every country, we have to avoid looking at this from a single viewpoint. In another small chapter, this work will seek to find out if the Catalans are discriminated against.

In the third chapter, there will be an examination about the Francophone region of Québec that is one of thirteen states of Canada. Canada, just like United States of America, is a multi-cultural country of immigrants. Hundreds of thousands of people immigrate every year to this country to have a better standard of life, and an important part of these immigrants gets a citizenship from the country. But Canada, as is the case with most of the other countries, contains the Québec problem. In this chapter, I will highlight the democracy of Canada and the development of human rights from both an internal law and an international law standpoint. In addition to all of this, another issue is the privileges given by the Canadian Constitution to the francophone people living in Canada. There will be a discussion how the Québécois have demanded their rights to self-determination without resorting to terrorism. In the other part of this chapter, I will try to understand if the Québécois are a people from an international law standpoint and whether the Canadian Constitution is an obstacle to the introduction of essential rights and freedoms that would make Québécois want separation.

In the fourth chapter, there is going to be a study about the right of self-determination of an old people demanding their right of self determination, the Irish in the United Kingdom. As you all know, United Kingdom, which has ruled and colonized almost every corner of the earth for centuries, in addition to being an island state, is an empire. After the end of 20th century, this giant empire that has given a plethora of colonies their self-determination right faces the self-determination right problem of the Irish in their homeland. In this chapter of my thesis, after a general overview of the Irish as a people, I will examine the rights given by the United Kingdom to the peoples living under its rule and highlight the reasons why these rights are not enough for the Irish who are a people living in Britain and why they want to get

separated. Besides all of this, I will lay out the status of Northern Ireland in the United Kingdom. Under the light of all these, are the Northern Irelanders discriminated against? Is what's being done enough? I will look into these questions.

In the final chapter of this work, I will make a general conclusion about this thesis. After discussing the right to self-determination of peoples from an international law standpoint in this context, there will hopefully be a clear understanding of the right of self-determination because of the unique attributes of these three peoples. Indeed, the principle of the self-determination right of peoples is an international norm, and the comparative analysis of different states' problems is very important to get an easier understanding of this norm. After the short summaries in each chapter, the summary I will make in the last chapter will be like the summary of the idea of this thesis. I base the self-determination right of peoples to sociological and political reasons instead of economic or educational reasons. Of course, unknown quantities of variables may lead to people demanding their right of self-determination. But the most important factors are sociological and political. Moreover, the request to use this right by minorities can lead to an endless division in the international system.

CHAPTER I

SELF-DETERMINATION RIGHT UNDER INTERNATIONAL LAW

1.1. What is Self-Determination?

As we all are coming from an international system based on Western ideas, the basis for the concepts or facts are again, the West. People who have thought about the self-determination right of people, have always made different interpretations to maximize their profits. Today, even though the meaning this concept leaves in the peoples of the world's minds is right of self-determination, actually the historical process begins with the sect wars in Europe². The Peace of Augsburg, dated 1555, demanded from the German people to either accept the sect of the region they live in, or migrate to the region where their sect was residing. In the following decades, new movements and trends turned the religion-based self-determination to a nation-based thought system, and this became more and more evident after the French Revolution. The self-determination principle, as I will elaborate later, is a very complicated international law term which has lots of different applications. One of these applications is plebiscite. The word is derived from the Latin origin 'Plebiscita' meaning 'Declaration of the Public' and is basically used synonymously with referendum. Plebiscite was used especially in territories that changed hands between states, to determine which state the peoples want as a ruler, and sometimes, just like in 1555 sect self-determination, people have been allowed to migrate to lands of their own choosing after the territories they live upon have changed hands. Plebiscite is not always a fair solution or method since powerful states could pressure the public and turn the public ballot to their advantage. Sometimes states have conducted plebiscites in contested territories to avoid going to war. Applications of

² İlyas Doğan, "Siyasal Bir İlke Olarak Halkların Kendi Geleceğini Belirleme İlkesine Devletler Hukuku Açısından Bakış", *Kamu Hukuku Arşivi*, Vol.1, p.1, 2006. [A Look to the Self-Determination Principle as a Political Principle from a State Law Perspective]

plebiscite have been seen more often after the World War I and the principles of President Wilson of the United States³. In 1920, the province of Schleswig was split between Germany and Denmark. Again in 1921, Silesia, which was a problem between Poland and Germany, chose to join Germany as a result of a plebiscite. The Saar province which had to determine whether to join Germany or France as a consequence of the Treaty of Versailles also chose to join Germany. These are important examples of plebiscite.

In the examples above, we tried to explain the concept of plebiscite using the changing of hands of a specific territory as a result of a plebiscite. In addition to all these examples, another example can be given. As most people know, Australia is a monarchical state. This country is subject to the Royal Family of the United Kingdom. But in 1998, Australia started discussing “Royalty”. Australia is ruled by the governor general who is a representative of the Queen of the United Kingdom. However, a significant population in Australia wanted to choose their own ruler just like other republican regimes. In fact, this is a hidden colonialism. And in 1999, a plebiscite was conducted to let Australians choose whether they wanted to be ruled by a monarchy or a republic. As a result of this plebiscite, 54.87% of the Australians voted for monarchy and chose to stay subjects to the King or Queen⁴. As you can see, this is another example of plebiscite. This shows us that if a state is giving its people adequate democratic freedoms and, moreover, if the economic level of their own peoples is on the rise, monarchy or republican regimes do not make an actual difference for the people living in that country. As it can be seen in the Australian example, even though monarchists won with 54.87% of the votes, there still is 45.13% Australians in favor of republican regime.

³ *Ibid*, p.2.

⁴ The Senate Proof Plebiscite for an Australian Republic Bill 2008 Second Reading Speech by Authority of the Senate, Tuesday, 11 November 2008, p.32.

Norms of international law can easily be interpreted in different ways by different states. In the meantime, these concepts can also be interpreted differently by separatists. Thus, there is diversity between separatist movements around the world. In principle, these separatist ideas are all the same, but the demands of peoples and the rights they gain have enriched separatist ideas. These enriched separatist movements are; autonomy, separation/independence, self-determination, partition, devolution, decentralization, sovereignty, self-governance, and decolonization. But, not to stray too far from our topic, I will not examine these topics in detail. The word 'secession' is derived from the Latin word 'secessio' meaning leaving an organization, a union or especially a political entity. Generally, economic and political factors are critically important in creating a separatist movement because it is very important to have an ideological basis that will feed the idea of separation. Indeed, if you are planning on leading a mass of people, but these people don't have a political value that will be believed, they will not stand behind these actions. The second is the economic factor which is at least as important as the political factor. Not obtaining the necessary resources causes an organizational failure and leaves the necessary propaganda work in a weak state.

In addition to all of this, separatist movements that can be seen in a country have many types. We can sum these up like this: religious separatism (sectarian separatism can be included in this), ethnic separatism, racial separatism and gender separatism. But in my thesis, I will only examine ethnic separatism. The United Kingdom, Canada and Spain are nation-states and their problems with self-determination are based on ethnic minorities living in their respective countries. In the meantime, both United Kingdom and Canada contain a little bit of religious separatism too. The Irish, as a separatist people in the United Kingdom, are

Catholics as opposed to the majority of United Kingdom's population who are Protestants⁵. This religious difference creates another form of separatism in addition to ethnic separatism. Another study shows that Canada has two basic parties within itself. The Anglophone population is usually devoted to the Protestant Church as opposed to the Francophone population who are usually devoted to the Catholic Church.

In addition to self-determination being a political principle, most of the time it has been used as an opportunity to maximize the profit of states by its proponents⁶. After World War I, one of the bloodiest experiences in the history of humanity, the principle of self-determination was used first by a multitude of statesmen including Woodrow Wilson and Lenin⁷. Of course, thinking that the proponents of this principle are looking out for the interests of people who demand the right of self-determination, is against the nature of political science. In fact, the proponents of this principle defended this principle to serve their own political gains in the conjuncture of that period. Lenin, one of the major actors of the era, used this principle to achieve his own socialist revolution, because a powerful Czarist Russia was a major obstacle to the socialist revolution he intended to realize. With this principle, the Czarist Russia would be weakened and Lenin would be able to carry out his socialist revolution. Another important character of the period, President Woodrow Wilson of the United States, presented his famous 14 principles in a convention of American Congress on January 8th, 1918 and announced this principle to the whole world with the hope of reshaping the world after World War I. The first five principles of his speech were picturing a general framework for peace. The fifth principle was actually a direct reference for the right of self-determination. He was asking colonial governments to work with their colonies for the benefit of those colonies. The 5th principle called for

⁵ <https://www.cia.gov/library/publications/the-world-factbook/geos/uk.html>.

⁶ Doğan, *op.cit.*, p. 2.

⁷ *Ibid.*, p.2.

a free, open-minded, and absolutely impartial adjustment of all colonial claims, based upon a strict observance of the principle that in determining all such questions of sovereignty the interests of the populations concerned must have equal weight with the equitable claims of the government whose title is to be determined.⁸

As it can be seen, this principle was addressing itself to the colonized peoples. But Wilson's aim there was not the liberation of colonies; it was to cause the empires who were on the losing side of World War I like the Ottoman and Austria-Hungary Empires to fall apart. He wanted to use the weaknesses of these two empires thanks to the right to self-determination, to the gains of the United States, as the division of these empires would sprout new states in respective territories, and he would use the political void that would be created. But Wilson could not pass this resolution from his own congress because this principle was dangerous for every country, including the United States.

The predecessor of the United Nations, the largest organization in terms of number of member countries, the League of Nations gives us no clue about the self-determination right of peoples. Only in the 22nd article of the Code of the League of Nations, the desire for the status of peoples living in mandated territories to be non-permanent is mentioned⁹. In the meantime, the 10th article of the Code of the League of Nations says:

The Members of the League undertake to respect and preserve as against external aggression the territorial integrity and existing political independence of all Members of the League. In case of any such aggression or in case of any threat or danger of such aggression

⁸ The Fourteen Points, http://www.woodrowwilson.org/topics/topics_show.htm?doc_id=398817

⁹ Article 22 of the Covenant of the League of Nations, 28 June 1919 in Paris Peace Conference, http://avalon.law.yale.edu/20th_century/leagcov.asp.

the Executive Council shall advise upon the means by which the obligation shall be fulfilled.¹⁰

As this article implies, the League of Nations warranted the territorial integrity of states and it declared itself the warrantor. As I mentioned before, there were no international law concerning the right to self-determination before 20th century or the early 20th century. However, after World War II, the concept started to take a shape with the foundation of the United Nations organization. In the Atlantic Pact¹¹, declared on August 14th, 1941, it was announced that a changing of sovereignty of a territory can not be against the consent of local people, that all peoples will be respected in forming their own rulerships and that people who have been deprived of their sovereignty will have their sovereignties back. The right to self-determination as implied in this pact is not very innocent. The defended benefits here are not those of peoples but the United States'. It was clear that this declaration was meant to provoke the people living in invaded territories against the Germans¹².

The Charter of the United Nations¹³ was written to basically provide a peaceful environment for the international system. In a lot of its articles, it mentions the continuation of friendly relations between states and the preservation of the territorial integrity of these states. Besides all this, even though the United Nations seems to support the self-determination right of peoples, more important to the United Nations is the territorial integrity of states. In fact, the United Nations thinks that there is no end to the divisibility of a state, that there are about 200 states as opposed to thousands of peoples, and that if every people uses this right to a

¹⁰ Article 10 of the Covenant of the League of Nations, 28 June 1919 in Paris Peace Conference, http://avalon.law.yale.edu/20th_century/leagcov.asp.

¹¹ Atlantic Charter, August 14, 1941, <http://avalon.law.yale.edu/wwii/atlantic.asp>

¹² Peter J. Otiz, *Das Selbstbestimmungsrecht der Völker*, Fink Verlag, München, 2002, p.82.

¹³ Article 1-2/1 of the Charter of the United Nations, 1945, <http://www.un.org/en/documents/charter/chapter1.shtml>

separatist end, the international system will be in a dead end; so it acts to preserve the *status quo*¹⁴.

The 51st article of the Charter of the United Nations is as follows:

Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in exercise of this right of self-defense shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.¹⁵

With this article of the Charter of the United Nations, the right of states to defend themselves when they encounter attacks is granted. Another important article about this issue is article 55 of the Charter of the United Nations. In the article 55, the United Nations undertakes a facilitating role to protect and further the right of peoples to self-determination in a general sense.

The 55th article of the Charter of the United Nations is:

With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations

¹⁴ Status quo, a commonly used form of the original Latin "statu quo" - literally "the state in which" - is a Latin term meaning the current or existing state of affairs.

¹⁵ Article 51 of the Charter of the United Nations, 1945, <http://www.un.org/en/documents/charter/chapter7.shtml>

based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote:

1. higher standards of living, full employment, and conditions of economic and social progress and development;
2. solutions of international economic, social, health, and related problems; and international cultural and educational cooperation; and
3. universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.¹⁶

In 1946, the General Assembly of the United Nations published a list of territories that lack the right to self-determination. According to this list, the number of territories lacking the right to self-determination was 74. Afterwards, this number fell to 64 in 1964. It is also important that around 10 territories gained their freedoms and became states in such a short time. United Nations, leading the movement for colonies to obtain their rights to self-determination, did not however show the same leadership for the peoples who were not living in colonies.¹⁷

The only source about the right to self-determination is not the Charter of the United Nations. Another important source of international law is the International Covenant on Civil and Political Rights, dated 1966. This agreement, just like the Charter of the United Nations, supports the self-determination right of peoples as a human right. According to the 27th article of the International Covenant on Civil and Political Rights:

¹⁶ Article 55 of the Charter of the United Nations, 1945, <http://www.un.org/en/documents/charter/chapter9.shtml>

¹⁷ İlyas DOĞAN, “Siyasal Bir İlke Olarak Halkların Kend Geleceğini Belirleme İlkesine Devletler Hukuku Açısından Bakış”, *Kamu Hukuku Arşivi*, Issue:1, March 2006, p.7.

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion or to use their own language.¹⁸

This article is very important for states to recognize and further the right to self-determination for minorities living under their rules. States are obliged to protect the rights of their own minorities just like an individual's democratic rights, and states should bestow all cultural, socio-economic and political rights as if they were the majority.

1.2. Who is “People”?

Even though the self-determination right of peoples is not a clear principle of international law, the concept of ‘people’ is reasonably clear. “People” is an ethnic or religious community outside the ethnicity and religion of the majority. There are a couple of requisites to be a “people”. These requisites can be summarized thus: First of all, to have a historical and cultural heritage is an important condition of being a people. For example, as most of us know, there are a number of peoples in Spain and one of them is Basques. Basque people, living in Spain (almost 2%)¹⁹, has a common cultural repertoire and richness in this country. History of Basque people is based in ancient times. “In ancient times, today’s Euskal Herria (the Basque Country²⁰) and adjacent areas were inhabited by ancestors of Basques.”²¹ The second condition of being a people is language. Groups or communities must have a

¹⁸ Article 27 of the International Covenant on Civil and Political Rights, 1966, <http://www2.ohchr.org/english/law/ccpr.htm>.

¹⁹ Ethnic Groups Living in Spain, <https://www.cia.gov/library/publications/the-world-factbook/geos/sp.html>.

²⁰ The Basque Country is a European cultural region home to the Basque people in the western Pyrenees that spans the border between France and Spain on the Atlantic coast.

²¹ Ramón ZALLO, Mikel AYUSO, “The Basque Country Insight into Its Culture, History, Society and Institutions”, San Sebastián: Published by Eusko Jurlaitzaren Argitalpen Zerbitzu Nagusia Servicio Central de Publicaciones del Gobierno Vasco Donostia, 2009, p. 10.

common language that they can use to communicate with each other. According to this condition, persons living as a people can not have different mother tongues. An adequate population that concentrates in a particular region of a country is also seen as a requirement to be a people. This means that not all social groups qualify as a people. For example, Basques can be counted as a separate people in that country because Basques living in the northern part of Spain have an adequate population that concentrates in a particular region of Spain and differs from the majority.

Hence I have briefly tried to explain the concept of ‘people’ using Basque people living in Spain. The Catalans, Québécois and Irish, as the social groups studied in this thesis, will be examined in more detail in the coming chapters.

1.3. What Rights does Self-Determination Include?

The principle of self-determination includes various rights. These rights can be examined under these titles: Political rights, economic rights and cultural rights. All these rights have been mentioned in the International Covenant on Civil and Political Rights:

All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social, and cultural development.²²

To begin with, political rights include the representation of peoples in the government structure. Can the peoples be represented in the government where they live? Can they choose their own representatives? These are important points for basic rights and freedoms. There should be no obstacles for the peoples to determine their own destinies. Second, economic rights include economic balances. Can the peoples living in a country get their fair share from the incomes and investments of the country? The appearance of economic imbalances brings a

²² Article 1/1 of the International Covenant on Civil and Political Rights, 1966, <http://www2.ohchr.org/english/law/ccpr.htm>

multitude of problems with it and causes unrest in that country. The third is the cultural rights and it contains a variety of problems. These problems include, but are not limited to, being recognized as an identity, education in native language, ethnic holidays, etc. Most important of these problems is the problematic of mother tongue. Some state that has a self-determination rights issue has the language problem of minorities, as language is the most important symbol of ethnic identity. The main problem is this: There are always some founding peoples of a country. This majority shapes the state in its own image when establishing it. An important indicator of this is the official language of the state. Today, only a few countries have more than one official language, such as Switzerland and Canada. The point here is not that the minority's language should be the official language of the country, but states should respect and protect the languages of minorities and be pragmatically in the usage of these languages. If states are not liberally democratic according to today's modern criteria, the unrest of minorities they contain will inevitably surface in time and these unrests will become irreparable troubles.

1.4. Is International Law an Obstacle to “secession”?

Today, in most places in the world, minority rights are granted on the basis of modern international law. But this does not mean that separatists can demand their rights to self-determination from their own central authorities. The self-determination right of peoples in international law means that, conventionally, the peoples living in a country should be able to choose their own rulers in a free election atmosphere, live up to their own religious and cultural values freely, and benefit from their own economic richness. In that sense, Christian Tomuschat has stated that “it may still appear doubtful whether it (the understanding of self-

determination as internal self-determination) can be considered generally accepted”.²³ With such self-determination, peoples should be able to realize their own demands in the state they live in. As another right to self-determination, the external self-determination right is to have the right to interact with other states and means partial freedom here; so the external self-determination right is not a recognizable demand by international law. In the literature, the usage of the external self-determination right is based on some conditions; but there can be no doubt that these conditions have been set by international law for the peoples living under a colonial state’s sovereignty²⁴. In fact, if every minority living in a state demands the self-determination right, thousands of minorities will have their own states all around the world and a multitude of countries small and large, just like Europe of centuries ago, earldoms and princedoms will appear. This is not acceptable for the United Nations. Why would it not want the establishment of smaller and more manageable countries? It is a truth that the United Nations is not a body that can act on its own. The decision-making mechanisms of this body are formed by nation-states. And it is inconceivable for nation-states to be a proponent of a division that can be a threat to themselves. Because of this, the United Nations is an obstacle in the way of separatism.

As a conclusion, international law has started to show its influence as a power that states can not disregard. It is pressuring states about the right to self-determination and trying to make the world more peaceful and habitable for everyone. This right, used for the European sects at the beginning, has been used for colonized peoples in the 20th century. Today, this principle is being used for every people on earth to determine their own destinies. Thousands of peoples on earth are demanding their rights to self-determination using different methods. But it must be considered that oppressed and pressured peoples of the world can

²³ Christian TOMUSCHAT, “Democratic Pluralism: The Right to Political Opposition” *The Strength of Diversity Human Rights and Pluralist Democracy*, Martinus Nijhoff Publishers, Dordrecht 1992, p.39.

²⁴ Hüseyin PAZARCI, *Uluslararası Hukuk*, 3, baskı, Turhan Kitapevi, Ankara 2005, p.142.

organize and let their voices be heard over the world thanks to the progresses in tools of communication and transportation.

CHAPTER II

THE SEARCH FOR SELF-DETERMINATION DEMANDED BY THE PEOPLE OF CATALAN

Spain is an old and deep historical country in Europe. This deep history of course brings some cultural richness with it. Surely, every country has a rich historical and cultural heritage. But the important point is being able to see this rich heritage. Spain, especially after its membership to the European Union, has tried to become more respectful of human rights and more democratic than before. These democratic rights are being protected by the Spanish Constitution. The article about the status of Spain as a state of law and democracy states:

The Spanish Constitution, Preliminary Part, Section I states that:

Spain is hereby established as a social and democratic State, subject to the rule of law, which advocates as the highest values of its legal order, liberty, justice, equality, and political pluralism as highest values of its legal system.²⁵

This article of the constitution is very clear. The references such as freedom, justice, equality that the constitutional article is based on are universal principles, and modern states have to have these characteristics. Also in this constitutional article, the idea of political pluralism and references to autonomous regions like Catalonia and Basque are mentioned. Another article of the Spanish Constitution might be a bit more explanatory:

The Spanish Constitution, Preliminary Part, Section II holds that:

²⁵ Section 1 of Preliminary Part of the Spanish Constitution, http://www.congreso.es/portal/page/portal/Congreso/Congreso/Informacion/Normas/const_espa_texto_ingles_0.pdf.

The Constitution is based on the indissoluble unity of the Spanish nation, the common and indivisible country of all Spaniards; it recognizes and guarantees the right to autonomy of the nationalities and regions of which it is composed, and the solidarity among them all.²⁶

With this constitutional article, some privileges have been bestowed upon minorities and peoples living in Spain to let them live peacefully within Spain. These privileges let the peoples living in Spain speak their native languages, rule themselves and have their own flags. Even though Spain contains several ethnic minorities, most recognized of them all by the international public are the people of Basque and Catalans. These two peoples are a little different from all others living in Spain because these two peoples have supported secessionism in every way.

2.1. Catalans as a Distinct Community.

Before we talk about the Catalan people's request for the right to self-determination, it will be useful to talk about the historical background of the Catalan independence movement. Catalunya (spelled Cataluña in Castellano, often Catalonia in English, Catalonha in Aranese), with its almost 7 million population and 32,114km² surface area, is an autonomous region situated in northeast Spain. The official languages of Catalonia are Catalan, Spanish and Aranese and its capital is Barcelona. It is divided into forty-one "comarques" which are the US equivalent of "county." These are in turn split into four provinces: Barcelona, Tarragona, Lleida, and Girona.

The 'invasion', for Catalans, began on 11th September 1714. On that day, Barcelona came under the rule of Borbons. From that date forward, Catalans have made several attempts

²⁶ Section 2 of Preliminary Part of the Spanish Constitution.

at independence. But both because of insufficient resources and the lack of necessary support from various sections of the society, this process has taken a long time. In the beginning of the twentieth century, the Catalan clergy started a new movement to speed up the secession from Spain. Even though they have failed, they gave a new hope to several Catalans who thought that this war was lost. In 1931, when the Spanish Republic was officially founded, most were thinking that independence was inevitable. In 1936, by the beginning of the civil war, the thought of independence halted and all the efforts were directed to war. With the defeat of Republicans in 1939, all prior efforts were destroyed by Franco. Until 1975, the year of death of Franco, most were still thinking that independence was possible. In the 20th century, Catalonia acquired and lost its own autonomy a few times. The first autonomy status was acquired in the second Spanish Republic era in 1931. But the republic was defeated in the Spanish Civil War. The Civil War brought General Francisco Franco, who oppressed the idea of Catalan Nationality, including the public use of Catalan language. After Franco's death in 1975, Catalonia reacquired its 1932 status of political and cultural autonomy.²⁷

In the year 1979, as a result of the Statute of Autonomy of Catalonia, Catalonia became an autonomous region. This is one of the provisions of 1978 Spanish Constitution that warrants the self-government right of regions and peoples constituting Spain. In the 1979 Statute of Autonomy, there is a provision just like the one passed in the current law, passed in 2006:

Catalonia, as a nationality, exercises its self-government constituted as
an autonomous community in accordance with the Constitution and

²⁷ Local Self-Government, Territorial Integrity and Protection of Minorities, Lausanne, 25-27 April 1996, Venice Commission, Council of Europe, <http://www.venice.coe.int/docs/1996/CDL-STD%281996%29016-e.asp>

with the Statute of Autonomy of Catalonia, which is its basic institutional law.²⁸

The problem here is, in the preamble of the 2006 Statute of Autonomy of Catalonia, the Catalan Parliament defines Catalonia as a nation, but the Spanish Constitution still defines Catalonia as ‘nationality’. As Catalonia is an autonomous society, this preamble does not have any legal value under international law.

2.2. Are Catalans a “minority”?

Minorities are important parts of a state, along with majorities. Spain has a rich diversity of minorities in this sense. The minorities constituting this cultural richness in Spain are the Andalusian People, Basque People, Catalan people, Aragonese People, Galician People, Asturian People, Canarian People. These minorities have their own autonomous regions in only a few countries in the world. Also, as an important group, the Catalans have a significant population in Spain. 17% of the Spanish Population is Catalans.²⁹ Catalans are the second largest population in Spain after the Spanish. But this large population ratio does not change the fact that the Catalans are a minority because only one of the groups constituting a state is the majority. The rest are minorities constituting the state. Catalans, in this context, are an important minority in Spain.

2.3. Are Catalans a “people”?

According to international law, only speaking in a different language is not an adequate characteristic to be defined as a people. There are important criteria for being a people. These are, as I have mentioned before, living on a specific piece of land, having a

²⁸ The 1979 Statute of Autonomy of Catalonia, approved in 2006,
http://www.gencat.cat/generalitat/eng/estatut/titol_preliminar.htm

²⁹ <https://www.cia.gov/library/publications/the-world-factbook/geos/sp.html>

common language, having a significant population density and sharing a common historical and cultural past. Catalans have all the characteristics mentioned above. Catalans have both a common language and a rich cultural heritage and historical past; moreover Catalans are living on a specific piece of land in Spain. Also, Spain recognizes Catalans as a people and has given them a degree of autonomy. Based on these facts, yes, the Catalans are a people.

2.4. Status of Catalans

The government body of Catalonia, the Generalitat (La Generalitat)³⁰, has gained several autonomous powers in subjects including culture, environment, communications, transportation, trade, public security and local government. Furthermore, they are still sharing the power on education, health and justice with the Spanish government.

The Spanish Constitution, adopted in December 1978, states that: “Spain is hereby established as a social and democratic state, subject to the rule of law, which advocates freedom, justice, equality, and political pluralism as a highest values of its legal system.”³¹ Indeed political pluralism is an important part of Spain as manifested in the Constitution, which guarantees “the right to self-government of the nationalities and regions of which Spain is composed”, while maintaining “the indissoluble unity of the Spanish Nation.”³² Section 56 of the constitution declares that: “The King is the Head of State, the symbol of its unity and permanence.”³³ Even though in 1981 a coup attempt was diverted by the Guardia Civil (military police), just like many European Monarchies, the King Juan Carlos I in essence has symbolic powers and has very limited powers. The Cortes Generales (the House of Parliament of Spain) consists of Congress and the Senate. Presidente del Gobierno (the President of the

³⁰ La Generalitat is the political system under which the government of Catalonia is organized. It consists of the Parliament, the President, and the Executive Council.

³¹ Section 1/1 of the Constitution of Spain, 1978.

³² Section 2 of the Constitution of Spain, 1978.

³³ Section 56 of the Constitution of Spain, 1978.

Government) is nominated by the King and must be approved by the Congress. The President is very similar to the Prime Minister in the English terminology but the word is used as *Presidente* in Spanish. Senators and congress members are elected by Provinces. But the senate has chairs appointed by the Autonomous Community.

In Section 137 of the Constitution, it is stated that: “The state is organized territorially into municipalities, provinces and Autonomous Communities (*Comunidades Autónomas*) that may be constituted. All these bodies shall enjoy self-government for the management of their respective interests.”³⁴ 17 *Comunidades Autónomas* of Spain are these: Andalucía, Aragón, Asturias, Islas Baleares, País Vasco, Islas Canarias, Cantabria, Castilla-La Mancha, Castilla y León, Cataluña, Extremadura, Galicia, La Rioja, Madrid, Murcia, Navarra, Valencia. In addition there are two Autonomous Cities (*Ciudades Autónomas*). These are Ceuta and Melilla geographically situated in Moroccan border in Africa. Both Ceuta and Melilla are demanded by Morocco and have a sizeable Arab population too. Also this constitutional article is a warranty for the autonomous structure in Spain.

After the death of Franco, who will be remembered by his iron fist oppression on cultural, economic and linguistic identities, the 1978 Constitution was enacted. The following democratic constitution was an attempt at protecting the large portion of regional autonomies to resist this oppression. This is why Spain is the largest non-central state in Europe. Some Autonomous Communities have more autonomy privileges than others and some Autonomous Cities have less autonomy. País Vasco and Catalunya are largely Autonomous Communities because of their political autonomies, and both have their own regional police force. The Mossos d’Equadra is the police force of Catalonia and it is one of the oldest police forces in Europe. It is founded in 18th century. This institution is under the Government of

³⁴ Section 137 of the Constitution of Spain, 1978.

Catalonia (Generalitat de Catalunya) that has regional autonomy since 1980. This institution has replaced the Policia Nacional and Guardia Civil in Catalonia. However, some Policia Nacional and Guardia Civil agents are still working in Catalonia on subjects like immigration, terrorism and identity documents.³⁵

Because of the widespread regional autonomy, regional politics play a big part in the country and are presented and promoted like national policies. Every autonomous society has its own parliament and government. For example, the Basque country has its own Basque Government (Eusko Jaurlaritza) and a Basque Parliament (Eusko Legebiltzarra). It also has its own semi-autonomous judicial system, akin to state judicial systems in the United States of America. Catalonia also has a similar political structure. The political structure of Catalonia and other autonomous communities are smaller versions of the Spanish political structure. Catalonia's government is called the Generalitat de Catalunya. The Generalitat consists of the Parliament, the President, and the Government.

The existing form of regional nationalism has appeared as a result of the oppressions of the Franco era. Both Basques and Catalans were discriminated against in an attempt to “crush intra-state differences”; the state assimilated the differences of Spain within a Castilian Speaking society. An observer asserts that “the most dangerous legacy of Francoism is the aggravation of the national minorities’ question, an issue that had been accentuated by the centralism of the regime.”³⁶ This is because various minorities were all been discriminated against by a central power and a uniform state. Their fight against the Franco regime as a common enemy has turned into cooperation in democratic arenas. For example the BNG (Bloque Nacionalista Galego), EAJ-PNV (Euzko Alderdi Jeltzalea-Partido Nacionalista Vasco) and CIU (Convergència i Unió) signed the Barcelona Declaration (Declaració de

³⁵ http://polis.osce.org/countries/details?item_id=36

³⁶ Montserrat Guibernau, “Spain: Catalonia and Basque Country”, *Parliamentary Affairs*, 2000, p.53.

Barcelona) which demands more recognition of internal diversity from the federal government.

For being a *de jure*³⁷ state in international system, there are a number of applications and conditions. Some of these conditions were determined in the Montevideo Convention on the Rights and Duties of States which was a treaty signed at Montevideo, Uruguay, on December 26, 1933. The most well-known article of this convention for international law specialists is Article 1, laying out four criteria to become a state.

The state as a person of international law should possess the following qualifications:

- a) A permanent population;
- b) A defined territory;
- c) Government; and
- d) Capacity to enter into relations with the other states.³⁸

As you can see, based on this international convention, Catalonia cannot actually be recognized as a state because even though Catalonia fulfills three of these criteria, it fails to meet the final one. But this is a very important point: a state may still be considered as such even in the absence of some of these conditions.

Article 3 of the same convention holds:

The political existence of the state is independent of recognition by the other states. Even before recognition the state has the right to defend its integrity and independence, to provide for its conservation

³⁷ *De jure* (in Classical Latin 'de iure') is an expression that means 'concerning law', as contrasted with *de facto*.

³⁸ Article 1 of the Montevideo Convention on the Rights and Duties of States, 1933, http://avalon.law.yale.edu/20th_century/intam03.asp

and prosperity, and consequently to organize itself as it sees fit, to legislate upon its interests, administer its services, and to define the jurisdiction and competence of its courts.

The exercise of these rights has no other limitation than the exercise of the rights of other states according to international law.³⁹

In terms of this article, Catalonia meets requirements for being an independent state except recognition by other states; however it should be noted that Autonomous Region of Catalonia did not demand or declare independence.

In all the previous paragraphs, political status of Catalonia has been studied. Another point to those political and legal examinations is economic data. In 2002, Catalonia generated around 19% of Spain's total GDP (Gross Domestic Product), 25% of its industrial GAV (Gross Added Value), 30% of all Spanish exports, 28% of all Spanish imports, and received 13% of all foreign investment in Spain, making it the driving force of the country's economy.⁴⁰ In light of all this information, Catalonia has a positive economic image and its expected GDP progress is above the average for the European Union. Seen from this perspective, the Catalonian region of Spain is not actually an underdeveloped autonomous region. For this reason, one point of the principle of people's right to self-determination is not applicable to Catalonia. The thought that economic inadequacies trigger self-determination is not valid for Catalonia.

Just like in all other regions where the people are demanding their right to self-determination, the Catalonian people have developed symbols to better explain themselves. The most important of these shows itself in the football arena. As everyone knows Barcelona

³⁹ Article 3 of the Montevideo Convention on the Rights and Duties of States, 1933, http://avalon.law.yale.edu/20th_century/intam03.asp

⁴⁰ http://www.eurocities.org/_INDEX.php

is an important football club of the football world. Apart from other football clubs, important aspect of this club is that Barcelona does not sell advertisements on their outfits. This important financial resource providing millions of dollars to football clubs is rejected by Barcelona because Barcelona is considering itself the National Team of Catalonia, as National Teams do not sell advertisements and lack this critical resource. But since three years, Barcelona is advertising UNICEF (the United Nations Children's Fund), which is a child care program of the United Nations. This advertisement is not commercial; it is purely one of social responsibility. This example makes the reality about Catalan self-determination clearer. These symbols give the world the message that Catalans are a people, a nation and a state.

2.5. Is there discrimination against them?

It is quite hard to say that there is any kind of discrimination against Catalonians in Spain. Different people would reply differently to this question because according to some people or groups, the law is adequate for human rights, and it is not for some others. But it is obvious that the Spanish Constitution, its laws and regulations can bestow the necessary political rights for peoples living in Spain. The ethnic minorities are able to speak their native languages in their own regions officially. And they have sovereignty flags for their regional governments because flag is the symbol for independence. Spanish rights on this matter are bestowed by this constitutional article:

The Spanish Constitution, Preliminary Part, Section III:

- The other Spanish languages shall also be official in the respective Autonomous Communities in accordance with their Statutes.

- The wealth of the different language modalities of Spain is a cultural heritage which shall be the object of special respect and protection.⁴¹

The Spanish Constitution, Preliminary Part, Section IV:

The Statutes may recognize flags and ensigns of the Autonomous Communities. These shall be used together with the flag of Spain on their public buildings and in their official ceremonies.⁴²

In the sections above, some rights were given to languages apart from Spanish. At the same time, these languages are seen as a part of Spanish culture. This is an important step in respect of mother language liberty that is one of the fundamental rights of minorities. In addition, another important subject is flag matter. Regarding this matter, Spain allowed the minorities that live within its scope to use their own flags together with Spanish flag in their autonomous regions. This is also an important indication. However as a result of these things, it is quite difficult to say whether any discrimination was made in Spain or not.

⁴¹ Section 3 of the Constitution of Spain, 1978.

⁴² Section 4 of the Constitution of Spain, 1978.

CHAPTER III

THE SEARCH FOR SELF-DETERMINATION DEMANDED BY THE PEOPLE OF QUÉBÉCOIS

3.1. Québécois as a distinct community

Before we start examining the demand for the right to self-determination by the People of Québec, it will be useful to shortly mention Canada and its history. As we all know, Canada is a cold country situated in the continent of North America, one of the New World Continents. Its neighbors are United States of America at the south and Russia at the northwest. Just like other states of the American Continent, the history of Canada does not extend far back in antiquity.

Of course just like other American states, natives living in Canada have had civilizations in ancient times. Those peoples have been destroyed by genocide. For this reason, the people I'm mentioning are the people living in Canada in our day. Canada is a country of immigration and it is managing these immigration movements with very successful policies. Canada is subject to the Queen of the United Kingdom, Elisabeth II. The country is a member of the Commonwealth of Nations. Its surface area of 10 million square kilometers makes it the second largest country in the world.

Contrary to the size of its territory, the population of Canada is not too much: just about 30 million. Canada has not closed its doors to foreign immigration movements, due to its desire of boosting the efficacy of the country. Canada has allowed quality workforce to live within its borders and offers citizenship to those people in time. However, Canada faces an internal problem that the whole world is aware of. The Québec district, one of thirteen

districts forming Canada and a district where the francophone part of the public is residing, wants the right to self-determination.

First settlement of French Canadian people to Canada started in 1534. The first settlement places of French Canadian people are New France (Nouvelle France) and St. Laurent River Valley that passes through the middle of today's Québec. In XVII century, French people started to colonize these regions and made the region French through French settlers who came from Europe. As a result of the war made with British in 1759, Britain took the sovereignty of New French. With Treaty of Paris signed in 1763, French Canadian people are bound to Britain Royal Family. As of that date, Britain has been applying assimilation policy to French Canadian people. French Canadian people show a significant resistance to these assimilation policies. British-dominated rulers of Canada quit the assimilation policy with Québec Act in 1774 after political and cultural pressure of 11 years and gave some privileges to French Canadian people for their dependence to the Kingdom of Great Britain. Some rights for French Canadian people were guaranteed for not giving support to the American people in their independence struggle. Since French Canadian people thought that they could protect their freedom better by staying within the Britain Empire rather than being involved in American people, they did not lean towards the American Revolution of 1776.⁴³

Due to internal dynamics and conjuncture changing in the following years, Québec Act lost its effect and Constitution Act was signed in 1791. This Constitution divided Canada in two parts namely Upper Canada and Lower Canada. From then on, both parties had their own parliament and autonomous structure. In this way, Lower Canada became the beginning of political history for French Canadian people. Although the Constitutional Act divided

⁴³ Louis Balthazar, "Québec and the Ideal of Federalism", *Annals of the American of Political and Social Sciences*, Vol.538, March, 1995, p.41.

Canada regionally in two parts, namely Lower Canada and Upper Canada, everybody is aware that this division is cultural not regional.⁴⁴

Today even though French Canadian people had some privileges, they felt themselves as minority in Canada and the continent of Northern America in general due to their small population.⁴⁵ Therefore, demands went on incessantly. However, the pressure of British merchants for union of Canada makes French Canadian People angry. As a result of all these things, Louis-Joseph Papineau Rebellion started in 1837. This rebellion was made against Britain by French Canadian People. The rebellion lasting two years did not become successful. Britain appointed Lord Durham in order to investigate the rebellion. The Lord prepared a report in 1839 which stated that the only way to prevent the conflict between French and British people was the assimilation of the French population in Canada. As a result of the Lord Durham's report, two parts of Canada was brought together in 1840 with the Act of Union. As a result of this union, the name of the new state became United Canadas.

Britain then began to rule all colonies from the centre. However, since it thought that if each colony had its own administrative mechanism, it would be more useful for the Kingdom, it divided its lands among colonies. Then, Northern America colonies decided to form a federal structure among them for protecting themselves from the threat of the United States of America and also due to other reasons. Therefore, Act of Union was cancelled in 1867 and the British North America Act was approved by the British Parliament. The federation consisting of four states at the beginning (Québec, Ontario, New Brunswick and Nova Scotia) grew with the attendance of six states and three territories. With BNA Law,

⁴⁴ Kenneth McRoberts, *Misconceiving Canada: The Struggle for National Unity*, Toronto: Oxford University Press, 1997, p. 5.

⁴⁵ Hüseyin Kalaycı, *Ulus-Devletin Başağrısı Ayrılkılık Kanada Québec Örneği*, Ankara: Liberte Yayınları, 2010, p. 153.

many rights were given to Québec people. These rights can be seen in the forthcoming sections in detail.

After First World War, while British colonies began declaring independence one by one, Canada won its independence in 1931. However, this independence was not an exact independence because the mutual dependence between Canada and Britain gradually lessened until 1982.

How is it that a people living in one of prospering states of the world, Canada, want to split up? When compared to other claims of right to self-determination, this stands out as a very interesting case. Canada, along with countries like Sweden, Norway, Iceland, is always in the top five countries in the Human Development Index published every year by the United Nations and reflects the value governments place upon their citizens, and sometimes gets the first place. In Human Development Report 2009, Canada was the fourth country after Norway, Australia, and Iceland.⁴⁶ This index measures the standards of life for the people of above mentioned countries: From average life expectancy to every kind of economic data. The Canadian government recognizes every kind of basic rights and freedoms to the citizens living under their rule, aiming to keep their prosperity level within the leading countries around the world. To better understand and offer a better perspective from an international law standpoint, it would be apt to analyze the multi-cultural structure and democracy of Canada. Canada, in addition to being a multi-cultural state of prosperity, most of its population is Anglophones. But this majority comes with a significant other, the Québécois who are Francophones. Let's examine the language issues first, to evaluate these two people living in Canada. Canada is, constitutionally, a bi-lingual country. "English and French are the official languages of Canada and have equality of status and equal rights and privileges as to

⁴⁶ Human Development Reports, 2009, <http://hdr.undp.org/eng/statistics/>

their use in all institutions of the Parliament and government of Canada.”⁴⁷ As we can deduce from this article of the Constitution, neither English nor French are dominant on Canadian soil. The domination is only in practice. For example, if you are in a location where the Anglophone population is residing, to keep the life simpler, official affairs are conducted in English. Or if you are living in a location where the francophone population is more concentrated, such as Montreal, French is more prevalent than English and it is the primary language in the daily life and official affairs. To get a clearer understanding of this, another example is that the road signs in Québec, as a francophone region, have the French language on top of the English one. Thus we understand better the equality of these languages.

Neither the British nor the Canucks (French living in Canada) who live in Canada today are natives of this young country. After the ‘discovery’ of this new continent, those two peoples came from the lands in Europe and settled around here via colonization movements. They later pacified the local population and founded the ‘modern’ state with today’s description. The native population dwindled over time and has become totally assimilated by the people of the west. As a consequence, it is very hard to talk about the rights of the native population to self-determination. One of the main requirements of the right to self-determination is to have a significant population living over a specific piece of land. But the native Canadians have lost this attribute over time. But we can say that there is a Francophone population density and a civilization bearing the traces of the Francophone culture in Québec.

3.2. Are Québécois a “minority”?

A state consists of diverse ethnic groups, but only one of them is the majority. Every other ethnic group within that country is a minority. This is a fairly simplified, non-complex definition of the concept of minority. Of course the minority issue can not be simplified like

⁴⁷ Section 16/1 of the Constitution Act, 1982, http://www.solon.org/Constitutions/Canada/English/ca_1982.html

this. There are many definitions of minority. The famous study of the special reporter Francesco Capotorti, written in 1977, proposed a definition that has been ever since referred to: a minority is “a group numerically inferior to the rest of the population, in a non-dominant position, consisting of nationals of the state, possessing distinct ethnic, religious or linguistic characteristics and showing a sense of solidarity aimed at preserving those characteristics.”⁴⁸ But I want to add another perspective to this definition: Every state in the world has its own minorities. These minorities differ in population. As everybody knows, the United States is an immigrant country. There are dozens of ethnic and religious minorities in the US. These are white 79.96%, Hispanic 15.1%, black 12.85%, Asian 4.43%, Amerindian and Alaska native 0.97%, native Hawaiian and other Pacific islander 0.18%, two or more races 1.61% (July 2007 estimate).⁴⁹ According to these numbers, Hispanics and Blacks are major-minorities. If anything could be said about Québécois, it is that they are also a major-minority; in fact Québécois are the Francophone population and that is the second largest after the Anglophone population of Canada.

3.3. Are Québécois a “people”?

The concept of ‘people’ is generally defined in international law as: A group of individual human beings who enjoy some or all of the following common features: (a) a common historical tradition; (b) racial or ethnic identity; (c) cultural homogeneity; (d) linguistic unity; (e) religious or ideological affinity; (f) territorial connection; (g) common economic life.⁵⁰ Communities who have these specialities are called ‘people’. Apart from these, to be a people requires a population density. This definition is accepted by most

⁴⁸ Francesco Capotorti, *Study on the Rights of Persons Belonging to Ethnic, Religious and Linguistic Minorities*, Doc. E/CN.4/Sub.2/384/Rev.1, Sales No. E.78XIV.1, New York: United Nations, 1979.

⁴⁹The World Fact Book, Ethnic Groups of the United States of America, <https://www.cia.gov/library/publications/the-world-factbook/geos/us.html>

⁵⁰ International Meeting of Experts on Further Study of the Concept of the Rights of Peoples, Paris, 27-30 November 1989, <http://unesdoc.unesco.org/images/0008/000851/085152eo.pdf>

international law specialists. From this viewpoint, the Québécois are a people living on the same specific piece of land (Québec), having their own common language (English [official] 58.8%, French[official] 21.6%, other 19.6% [2006 Census])⁵¹, sharing a common historical and cultural past and having an adequate population density (British Isles origin 28%, French origin 23%, other European 15%, Amerindian 2%, other, mostly Asian, African, Arab 6%, mixed background 26%)⁵². As we all know, Canada, being a new state founded on the new world continents, it doesn't have a particularly old history. But the roots of the people it contains, especially the Anglophones and the Francophones, have their roots in Europe. As a consequence, the Québécois are sharing a common history and cultural past based in Europe. Consequently, they fulfill the criterion of having a common historical and cultural past to be recognized as a people. Furthermore, the state of Canada recognizes the Québécois as a people and respects every aspect of this identity in every part of life.

3.4. Status of Québécois

In various eras in history, authorities ruling Canada have clearly stated that Québec “is not a province like the others”⁵³ and provided them with special constitutional protection. The special characteristics of Québec have been mentioned in several articles of the Constitution Act of 1867. It was at Québec's insistence that federalism was adopted, thus enabling French Canadians to control fully the government of a province for the first time. The federal system took care of most of the fears that the Francophone and Anglophone minorities might have had; Francophone were worried about the minority position which they were to occupy in the federal government, while the Anglophone minority was anxious about the prospect of living

⁵¹The World Fact Book, Languages of Canada, <https://www.cia.gov/library/publications/the-world-factbook/geos/ca.html>

⁵²The World Fact Book, Ethnic Groups of Canada, <https://www.cia.gov/library/publications/the-world-factbook/geos/ca.html>

⁵³Peter W. Hogg, “The Difficulty of Amending the Constitution of Canada”, *Osgoode Hall Law Journal*, Vol. 31, No.1, pp. 41, 45 (1993).

in a province which would be dominated politically by French Canadians. While it is clear that what predominates in the Constitution Act is the equality of status granted to all of the provinces, as they would all live under a similar constitutional regime and would all exercise roughly the same juridical powers, the equality did not mean that fundamental differences were not recognized. In this respect, Québec obviously stood out and several articles demonstrated their special position.

The Constitution Act granted equality of representation between regions in the Senate of Canada. Each region was to have 24 Senators who had to own property or reside in the province for which they were appointed. In the case of Québec, each of the 24 Senators had to be appointed for one of the 24 Electoral Divisions of (Lower Canada)^{54, 55} and had to own property or be resident not only of the province but also of the Electoral Division for which they were appointed.⁵⁶ The purpose of this article was to provide for an adequate representation for both the French-catholic and the Anglo-protestant groups of Québec in the Senate. It would be difficult for the government to appoint a senator that did not share the cultural characteristics of the district for which the appointment was made.

The method of calculation adopted to implement Representation by Population in the House of Commons was rather unorthodox. Québec was to have a fixed number of 65 seats,

The number of members of the House of Commons and the representation of the provinces therein shall, on the coming into the force of this subsection and thereafter on the completion of each

⁵⁴ The Province of Lower Canada was a British colony on the lower Saint Lawrence River and the shores of the Gulf of Saint Lawrence(1791-1841). It covered the southern portion of the modern-day Province of Québec and the Labrador region of the modern-day Province of Newfoundland and Labrador.

⁵⁵ Section 22/3 of the Constitution Act, 1867(the British North America Act, 1867), http://www.solon.org/Constitutions/Canada/English/ca_1867.html

⁵⁶ Section 23/6 of the Constitution Act, 1867(the British North America Act, 1867).

decennial census, be readjusted by such authority, in such manner, and from such time as the Parliament of Canada from time to time provides, subject and according to following rules:

1. There shall assigned to each of the provinces a number of members equal to the number obtained by dividing the total population of the population of the provinces by two hundred and seventy-nine and by dividing the population of each province by the quotient so obtained, counting any remainder in excess of 0.50 as one after the said process of division.

2. If the total numbers of members that would be assigned to a province by the application of rule 1 is less than the total number assigned to that province on the date of coming into force of this subsection, there shall be added to the number of members so assigned such number of members as will result in the province having the same number of members as were assigned on that date.⁵⁷

The representation that the other provinces would receive was to be calculated on the representation by population ratio obtained in Québec.

The Yukon Territory as bounded and described in the schedule to chapter Y-2 of the Revised Statutes of Canada, 1985, shall be entitled to one member, and the Northwest Territories as bounded and described in section 2 of chapter N-27 of the Revised Statutes of Canada, 1985, as amended by section 77 of chapter 28 of the Statutes of Canada, 1993, shall be entitled to one member, and Nunavut as

⁵⁷ Section 51/1 of the Constitution Act, 1867 (the British North America Act, 1867).

bounded and described in section 3 of chapter 28 of the Statutes of Canada, 1993, shall be entitled to one member.⁵⁸

In this way, even if Québec's Population did not keep pace with that of the rest of the country, it would always continue to have a block of 65 seats. Ultimately, if Québec continued to vote as a block, as was fully expected, it would always be assured to play a significant role in federal politics.

In two respects, the provincial constitution of Québec was different from that of the other provinces. The Legislative Council of Québec (non-existent in Ontario) was to have 24 members who were to represent each an Electoral Division and generally have the same qualifications as the Senators coming from Québec.

The Legislative Council of Québec shall be composed of Twenty-four Members, to be appointed by the Lieutenant Governor, in the Queen's Name, by Instrument under the Great Seal of Québec, One being appointed to represent each of the Twenty-four Electoral Divisions of Lower Canada in this Act referred to, and each holding Office for the Term of his life, unless the Legislature of Québec otherwise provides under the Provisions of this Act.

Secondly, it was stated that "The Qualifications of the Legislative Councillors of Québec shall be the same as those of the Senators for Québec."⁵⁹ There was no fixed number of councillors in provinces where a Legislative Council existed. The aims of these articles were to assure an adequate representation for the Anglo-protestant minority on the Council and to make sure that the minority would not be swamped by a rash of appointments in the future.

⁵⁸ Section 51/2 of the Constitution Act, 1867.

⁵⁹ Section 73 of the Constitution Act, 1867.

Québec's right to legislate on education was subjected to restrictions in relation to the denominational school rights that Roman Catholics and Protestants enjoyed by law at the time of the Union. Similar restrictions existed also for Ontario:

In and for each Province the Legislature may exclusively make Laws in relation to Education, subject and according to the following Provisions:

1. Nothing in any such Law shall prejudicially affect any Right or Privilege with respect to Denominational Schools which any Class of Persons have by Law in the Province at the Union:

2. All the Powers, Privileges and Duties at the Union by Law conferred and imposed in Upper Canada⁶⁰ on the Seperate Schools and School Trustees of the Queen's Roman Catholic Subjects shall be and the same are hereby extended to the Dissentient Schools of the Queen's Protestant and Roman Catholic Subjects in Québec.⁶¹

The rights that Catholics enjoyed by law in Ontario, at the time of the Union (1867), were extended to the Catholic and Protestant minorities of the school districts of Québec outside of Montreal and Québec City.

Provisions were made in the Constitution Act for the possibility of unification under federal jurisdiction of property and civil rights laws in Canada. This provision reflected the centralist vision that prevailed in the common law provinces at time of Union. Québec was

⁶⁰ The Province of Upper Canada was a British colony located in what is now the southern portion of Ontario in Canada (1791-1841). Its name reflected its position higher up the river or closer to the headwaters of the St. Lawrence River than that of Lower Canada or present day Québec.

⁶¹ Section 93/1 and 93/2 of the Constitution Act, 1867, http://www.solon.org/Constitutions/Canada/English/ca_1867.html

excluded from this system and was thus guaranteed to control, forever, its French civil law system. This is, by far, the most important special consideration given to Québec.

Notwithstanding anything in this Act, the Parliament of Canada may make Provision for the Uniformity of all or any of the Laws relative to Property and Civil Rights in Ontario, Nova Scotia, and New Brunswick, and of the Procedure of all or any of the Courts in Those Three Provinces, and from and after the passing of any Act in that Behalf the Power of the Parliament of Canada to make Laws in relation to any Matter comprised in any such Act shall, notwithstanding anything in this Act, be unrestricted; but any Act of the Parliament of Canada making Provision for such Uniformity shall not have effect in any Province unless and until it is adopted and enacted as Law by the Legislature thereof.⁶²

Besides, judges from the courts of Québec had to be selected from the Bar of that province.⁶³ Judges from the courts of the other provinces would also be picked from the Bar of their respective provinces until the unification of laws would be achieved.

3.5. Is there discrimination against them?

It is quite hard to say that Québécois are subject to any form of discrimination. All reports and data show that this population enjoys high democratic standards. These high standards have been obtained by the rights given by Canadian law to the peoples living in

⁶² Section 94 of the Constitution Act, 1867.

⁶³ Section 98 of the Constitution Act, 1867.

Canada. Peter Hogg reminds that “Québec, with its French language and culture, its civil law, and its distinctive institutions, is not a province like the others.”⁶⁴

As Peter Hogg points out, we can not talk about discrimination against Québécois in Canada. Of course there are unique, individual discriminations, but no discrimination is being done by the government legally. All of this aside, a referendum was conducted in Québec on 30th October 1995. The results of this referendum would reflect what they felt about discrimination and separatism clearly. The referendum contained the following question:

Do you agree that Québec should become sovereign, after having made a formal offer to Canada for a new economic and political partnership, within the scope of the bill respecting the future of Québec and of the agreement signed on June 12, 1995?⁶⁵

With this referendum, the Québécois reached a verdict. The question was very clear because this was a referendum. According to official results, the secessionists were narrowly defeated with 50.56% voting “No” and 49.44% voting “Yes”.⁶⁶ This result shows that separatist movements are not supported by the whole foundation of the society and do not represent the whole society. A similar outcome is also true for the plebiscite conducted in Australia. The separatists failed to get the necessary votes to represent the whole society in Australia too. Looking at the results, we can see that the Québécois are happy to live within Canada. All these developments and the transparency of the Canadian law and government lead us to think that there is no discrimination against the Québécois.

⁶⁴ Peter W. Hogg, “The Difficulty of Amending the Constitution of Canada”, *Osgoode Hall Law Journal*, Vol. 31, No.1, p. 41, 45 (1993).

⁶⁵ Québec 1995 Referendum, available at <http://www.ccu.cuc.ca/en/library/referendum/1995referendum.html>.

⁶⁶ Québec 1995 Referendum Results.

CHAPTER IV

THE SEARCH FOR SELF-DETERMINATION AMONG THE CATHOLIC IRISH IN NORTHERN IRELAND

4.1. The Irish as a distinct community

The last people under examination in this thesis is the Northern Irelanders (the Irish). In this section, the history of the Irish is briefly going to be mentioned. First of all, the Irish people are an ethnic group that's based on the island of Ireland, in Northwestern Europe. Northern Ireland is one of the four countries forming the United Kingdom. This country is situated at the northeast of the Ireland island and has borders with the Irish Republic to the west and south. Northern Ireland consists of six of the traditional nine counties of the historic Irish province of Ulster. The six counties of the Northern Ireland are Antrim, Armagh, Down, Fermanagh, Londonderry, and Tyrone; and the three counties of Republic of Ireland are Cavan, Donegal, and Monaghan. Many unionist and the British media tend to refer to Northern Ireland as "Ulster", although Northern Ireland includes only six of the nine counties of Ulster. Ulster was part of Catholic Ireland until the reign of Elizabeth I (1558-1603) when, after suppressing three Irish rebellions, the Crown confiscated lands in Ireland and settled the Scots Presbyterians in Ulster. In other rebellion in 1641-1651, brutally crushed by Oliver Cromwell⁶⁷, resulted in the settlement of Anglican Englishmen in Ulster. Subsequent political policy favoring Protestants and disadvantaging Catholics encouraged further Protestant settlement in Northern Ireland.

⁶⁷ Oliver Cromwell (25 April 1599- 3 September 1658) was an English military and political leader best known for his involvement in making England into a republican Commonwealth and his later role as Lord Protector of England, Scotland and Ireland.

Northern Ireland did not separate from the South until William Gladstone⁶⁸ presented, in 1886, his proposal for home rule in Ireland. The Protestants in the North feared domination by the Catholic majority. Industry, moreover, was concentrated in the North and dependent on the British market. When World War I began, civil war threatened between the regions. Northern Ireland, however, did not become a political entity until the six counties accepted the Home Rule of 1920⁶⁹. This set up a semiautonomous parliament in Belfast and a Crown-appointed governor advised by a cabinet of the prime minister and 8 ministers, as well as a 12-member representation in the House of Commons in London.

But the demands of Northern Irelanders were not over. The goal was now freedom. As a people demanding the people's right to self-determination, Northern Irelanders started to try bloody means and founded the world famous IRA. This abbreviation means Irish Republican Army. This organization, defending the liberation of Northern Ireland from the United Kingdom, stood by the idea that freedom can only be won by armed struggle; it thus committed many bloody acts based on this ideology. By the year 2005, the organization declared that they will not be getting into armed conflicts and that they will continue their fight in the political arena. Thus they ceased their bloody acts. But R-IRA (Real-IRA), a spinoff of IRA, has relayed the message that they will continue armed conflict by shooting 2 British soldiers.

For many years, Northern Ireland was the site of a violent and bitter ethno-political conflict which is called The Troubles that was a period of ethno-political conflict in Northern Ireland which spilled over at various times into England, the Republic of Ireland, and mainland Europe. In The Troubles there are two parts. One of them is nationalists who are predominantly Roman Catholic and the other one is unionists who are predominantly

⁶⁸ William Ewart Gladstone was one of the Britain's Prime Ministers

⁶⁹ An Act to provide for the better government of Ireland, more usually the Government of Ireland Act 1920.

Protestant. Unionists that want Northern Ireland to remain part of the United Kingdom, while nationalists wish it to be politically reunited with the rest of Ireland. In general, Unionists consider themselves as British, and Nationalists see themselves as Irish. A 2008 survey found that 57% of Protestants described themselves as British, while 32% identified as Northern Irish, 6% as Ulster and 4% as Irish.⁷⁰ Also in the same survey, 61% of Catholics described themselves as Irish, with 25% identifying as Northern Irish, 8% as British and 1% as Ulster.⁷¹ The overall religious balance is recorded as 43.76% Catholic and 53.13% Protestant and other related Christian denominations.⁷²

4.2. Are the Irish a “minority”?

Northern Irelanders are a minority in the United Kingdom, the state that rules them because minority is an ethnic or religious community outside the ethnicity and religion of the majority. In this sense, Northern Irelanders are a minority because they differ from the majority and their population is smaller. I will support this with the following data: According to the census conducted in 2001, the distribution of ethnicities throughout the United Kingdom is: “white (of which English 83.6%, Scottish 8.6%, Welsh 4.9%, Northern Irish 2.9%) 92.1%, black 2%, Indian 1.8%, Pakistani 1.3%, mixed 1.2%, other 1.6%”⁷³. As it can be seen, the population of Northern Irelanders is 2.9% of the total population. This is an indicator that Northern Irelanders are a minority. But let us not forget that the state structure in the United Kingdom is not very centralist. This means that in Northern Ireland, there is a local government and parliament too. This provides some autonomy to the Northern Irelanders. Northern Irelanders, generally a minority in United Kingdom, are a majority on the

⁷⁰ Northern Ireland Life & Times, Results for People of Different Religions, http://www.ark.ac.uk/nilt/2008/Community_Relations/NINATID.html

⁷¹ *Ibid.*

⁷² Fascination of Religion Head Count, http://news.bbc.co.uk/2/hi/uk_news/northern_ireland/2590023.stm

⁷³ The World Fact Book, Ethnic Groups of the United Kingdom, <https://www.cia.gov/library/publications/the-world-factbook/geos/uk.html>

Northern Ireland region. This causes people to feel less oppressed in this system. So they step out of the minority mentality.

4.3. Are the Irish a “people”?

To be a people requires some characteristics. It is required to have a shared historical past, be the majority in a geography and to have political representation. Northern Irelanders satisfy these criteria. They have a shared historical past, they are a majority in the Northern Ireland region and they have political representation within the United Kingdom. In light of all these, we can call the Northern Irelanders a people.

4.4. Status of the Irish

The Anglo-Irish Treaty was signed on 6 December 1921 and it gave 26 counties of Ireland a generous measure of practical freedom but denied the new state the symbolic apparel that might have made it legitimate in the eyes of most republicans. Its virtue in the eyes of pragmatists was that it allowed internal self-determination.

As a part of the United Kingdom, people of Northern Ireland are British citizens. They are also entitled to Irish citizenship by birth which is covered in the 1998 Belfast Agreement between the British and Irish governments, which provides that both governments:

recognise the birthright of all the people of Northern Ireland to identify themselves and be accepted as Irish or British, or both, as they may so choose, and accordingly (the two governments) confirm that their right to hold both British and Irish citizenship is accepted by both

Governments and would not be affected by any future change in the status of Northern Ireland.⁷⁴

As a result of the Agreement, the Constitution of Ireland was amended so that people born in Northern Ireland are entitled to be Irish citizens on the same basis as people from any other part of the island of Ireland. Neither government, however, extends its citizenship to all persons born in Northern Ireland. Both governments exclude some people born in Northern Ireland such as certain persons born in Northern Ireland neither of whose parents is a United Kingdom and Irish national. The Irish restriction was given effect by the Twenty-seventh amendment to the Constitution in 2004.

1. Notwithstanding any other provision of this Constitution, a person born in the island of Ireland, which includes its islands and seas, who does not have, at the time of the birth of that person, at least one parent who is an Irish citizen or entitled to be an Irish citizen is not entitled to Irish citizenship or nationality, unless provided for by law.

2. This section shall not apply to persons born before the date of the enactment of this section.⁷⁵

4.5. Is there discrimination against them?

It is hard to determine if any discrimination is being made against the group in question. However, we can find out the answer by either looking at the laws or the results of previous studies. In fact, the United Kingdom can pass the test on human rights, democracy,

⁷⁴ Article 1/6 of Constitutional Issues of the 1998 Belfast Agreement, <http://www.nio.gov.uk/agreement.pdf>

⁷⁵ Amendment 27 of the Constitution Act 2004, <http://www.irishstatutebook.ie/2004/en/act/cam/0027/sched1.html#sched1>

economy and political representation, given the status of our day’s world. The United Kingdom is rich in number of minorities. Its multi-cultural characteristic has always been a point of attraction throughout the world. With the respect it has for various ethnic and religious identities and the opportunity to nurture their identities and values that it has given to these various identities, results with the United Kingdom receiving immigrants from all over the world. The meaning of this is clear: if a country attracts other ethnic and religious identities from the outside world and lets them live in and nurture their identities, religious and political ideas, it can be deduced that that country is giving the same opportunities to minorities inside their borders. Moreover, as it is seen in the paragraph above, the political rights given to the Northern Irelanders as a result of mutual agreements are satisfying. Of course, not even laws are enough to say anything concrete about these matters. As this is the case, the results of a poll conducted in 2005 will form a picture in our minds:

Do you think the long-term policy for Northern Ireland should be for it...⁷⁶

	%
to remain part of the United Kingdom	58
or, to reunify with the rest of Ireland	23
(independent state)	7
other answer (please specify)	2
don’t know	11

Table 1: Percentage of Political Attitudes of the Irish in 2005 Questionnaire

Source: Northern Ireland Life & Times Political Attitudes of the Irish Questionnaire, 2005.

⁷⁶ Political Attitudes of the Irish in 2005 Questionnaire, http://www.ark.ac.uk/nilt/2005/Political_Attitudes/NIRELAND.html.

As this table shows us, more than half the Northern Irish are still for remaining part of the United Kingdom. Those who want to reunify with the rest of Ireland are an insignificant 23%. In addition to all this, the ratio of the Northern Irish wanting to become an independent state is a very weak one: 7%. These numbers would be just the opposite were it that there were a secessionist feeling in the public. Of course minor groups of secessionists exist in the Northern Irish community, as in every other community. These are the exceptions, and exceptions do not invalidate the rules.

There is another symbol example like football club of Barcelona example in Catalonia. There are also two parts in the Northern Ireland. These are Nationalists/Republicans and Unionists/Loyalists. These groups use a number of symbols for themselves, but the most remarkable one is also foreign flags. Nationalists use Palestinian flags in some Nationalists' districts and Unionists use Israeli flags in some Unionists' districts. These symbols have been taken from the struggle of Israeli-Palestinian which is the most famous self-determination problem of international politics. Nationalists and Unionists have replaced themselves for Palestinians who claim their self-determination right from Israel, whereas Israelis do not give self-determination right to Palestinians.

CONCLUSION

As a conclusion, the right to self-determination is one of the basic values of the United Nations, founded by the international community to further the common purposes of member states. The United Nations highlights repeatedly in its Charter and several international conventions that, to keep the world at peace indefinitely, it is important that the friendly relationships between states and belief in democracy must continue for lasting peace. These friendly relations and the world peace are based on the democratic representation of peoples living in their respective countries. Neither people nor ethnic or religious groups constituting minorities are better than any other people. Every party has a right to self-determination because the principle of people's right to self-determination is an *ius cogens*⁷⁷ principle just like the prohibition of slavery, torture, genocide and war crimes.

We can find various examples of the rights to self-determination from all around the world. Even though these examples are usually encountered in undeveloped or developing countries, an overwhelming majority of countries has such problems. Aside from the fact that this problem is threat to the internal affairs of a country, it is a threat for the peace and order of international society. As to be seen in this study, both the United Nations and international agreements have been pioneers in this area. Today, modern states wish to see this problem resolved using democratic tools. In the ensuing process, basic rights and freedoms do not satisfy many peoples from a law and human rights perspective; so, secessionist bodies remain as a threat to the state. Sometimes these demands evolve into terrorist activities and sometimes the result is achieved through political means. But to be able to resolve these issues democratically, that state must have a democratic infrastructure. In fact, democracy is a

⁷⁷ A peremptory norm (also called *jus cogens*, Latin for "compelling law") is a fundamental principle of international law which is accepted by the international community of states as a norm from which no derogation is ever permitted.

regime of demands. And for states to be able to answer those demands, they must have high democratic standards. In this respect, the peoples' right to self-determination is mostly seen in old African colonies in the past 50 years. Their undemocratic regimes and Africa being the poorest continent in the World, Africa has run into these problems more often than other continents; and it appears that it will continue to do so.

Today, there are hundreds of academic studies about the peoples' right to self-determination, as this is one of the international community's important issues just like climate change, hunger and unfair sharing of the world's resources. Three countries in this study have been examined under international law and these countries are some of the important samples that can be chosen for this study. Each of them has different characteristics and experiences. What's more, these three countries are free and are parts of the democratic western world.

The conditions of the three peoples that were examined in this thesis are not same. Three of them lived different historical experiences and their demands and expectations vary accordingly. Therefore, three peoples have similarities and differences with each other. Firstly, three of them are rich and a part of democratic western states. Secondly, the said three peoples are bound to Christian Catholic Churches. In addition, a remarkable part of the Northern Ireland people is attached to the Protestant church. Thirdly, both Québec and Catalan people prefer to speak their own mother language in their regions, and the languages of these two peoples became official by means of laws. Even in Canada, the French which Québec people speak is the official language of Canada government together with English. Fourthly, there is Catholic and Protestant competition between Québec and Northern Ireland people and the majority within the states to which they are subjected.

The differences between the said three peoples are as follows in short: the first of these differences is although both Québec and Catalan people are rich in the country where they live in respect of economic welfare, Northern Ireland region has the least economic welfare among England, Wales, Scotland and Northern Ireland regions in the United Kingdom. The second difference is the usage of mother language. Although both Catalan and Québec people use their mother language which is an identity indication with effort both in official and daily use, the people of Northern Ireland do not have such kind of an effort and opinion. English is used more widely among Northern Ireland people compared to Irish. Lastly, although the problem of self-determination right of Catalan and Northern Ireland peoples living in Europe is lived among peoples whose historical roots are based on these lands, the problem of self-determination right of Québec people living in the continent of America is lived between two peoples who migrated to America later and who are not the real owners of these lands.

If an economically weak state fails to raise the standard of living for peoples living under its rule, unrest increases and a pressure to change the order starts to bubble up within the public. These pressures sometimes evolve into movements aiming to change the regime and sometimes they turn into secessionist movements. In addition to these economic indicators, oppression by the hand of a despotic regime may very well turn into a secessionist movement too. In such secessionist cases, the international community may see the secessionist movement as a natural consequence. The right to self-determination in those three states that are parts of the western community may be more different in specifics than in generalities. What are those differences? As it may be deduced, these differences are a strong culture of democracy and economic wealth. The basic difference putting these three states aside from other states is that Canada has an entirely successful democratic system and that the United Kingdom and Spain are parts of the European Union project that is a development project.

In light of all this, why is it that these countries that have so much positive features in many areas, are facing the most advanced phase of separatism: secessionism? It is very easy to base the problem of right to self-determination to economic difficulties and human rights violations. But these three states have very high grades in human rights. Even in the weak economic environment of today's world, these countries have managed to keep the living standards of their public in satisfying conditions. The peoples who are demanding their rights to self-determination have sociologically very different cultures in states they live. Peoples never accept the political, economic and cultural sovereignty of another people. As in individuals, peoples have unique and defining characteristics. As every social scientist knows, individuals try to alienate other individuals to define themselves and so do the peoples. So, different peoples defining themselves as different, demand that their differences are recognized. This causes the idea of secessionism to set in that people's mind. Even though the circumstances and laws are equal for all the peoples forming a country, the right to self-determination will unquestionably continue to be demanded, because absolute equality can never be constituted.

What I want to highlight in this study and the reason I chose these three states is that the principle of peoples' right to self-determination is always deeply analyzed over two causes. These are economic weakness and violations of human rights and democracy. This is valid for examples all over the world. Today, there are around 200 states and quasi-states and we can study more rights to self-determination problems than the number of these states. In the mean time, in states, the government is held by the majority, the economic injustices may trigger the minorities in that country to demand their right to self-determination.

Imagine, what would happen if the states experiencing these problems share the power with the peoples living within and have a good record of human rights protection and remove the educational and economic inequalities between the different sections of public? This is

exactly the subject I wanted to underline in this thesis and my main aim when choosing these three peoples was this. It must always be considered that all rights to self-determination will go on whatever may be, as we have seen in these three examples. Today the Catalonia region in Spain is more developed economically than the capital, Madrid; additionally, the educational level of the population living in Catalonia is higher than the population in and near Madrid. This removes reasons like economic inequalities and insufficient democracy as a cause for demanding rights to self-determination. In addition to Catalonia, the Québec region in Canada is also developed in every area. Québec has a greater wealth level in comparison to other Canadian counties. Only the Ottawa country where the Anglophone culture is the common culture is better than Québec economically.

As these examples show, economic inequalities and weak democracy may be causes for the demand of rights to self-determination. But even if the economic inequalities, human rights violations and similar problems are eliminated, the right to self-determination will continue to be demanded. The leaders of these peoples and communities that have historically defended this idea of secessionism do not die and keep on living until these ideas come true. Based on this thought, the secessionist movements will continue to get support from peoples. Demands will continue until these thoughts disappear. In that respect the important thing is furthering the causes of human rights and democracy, and giving the basic rights and freedoms to their owners at any cost.

Aside from all legal documents that defend and support the peoples' right to self-determination, the United Nations is against secessionism. One of the main reasons the United Nations is against secessionism is that most of the countries that are founded as a consequence of secessionism is ripe for other secessionist movements. As a result of secessionism, the last phase of the peoples' right to self-determination, either a state is divided in two or more parts or a part is separated from this state. But in both cases, a new state is born. This new state

contains its own ethnic, religious and cultural identities. A good example for this is Catalonia that wants to get separated from Spain for decades. The Catalonians have fought both politically and bloodily in every piece of their lands against Spain. This fight goes on in the political arena, even if not in bloody terrorist activities. Aside from this, Catalonia faces a problem. Catalonia is itself struggling with the demand of its own peoples' right to self-determination. The Val d'Aran region in Catalonia is subject to sub-autonomous status under the Catalonia autonomous region. As it can be seen, there are no limits to secessionism and every state separated from another state is facing secessionist movements. Another example about this is the Irish issue. As I have mentioned before, Northern Ireland contains two different ethnicities. One of them are the Irish, the other are the Ulsters.

Northern Ireland consists of six of the traditional nine counties of the historic Irish province of Ulster. In such a structure, if Northern Ireland separates from the United Kingdom, it is a probability that Ulsters may claim the right of self-determination from the Irish in Northern Ireland.

When talking about international law, the first thing that comes to mind is the United Nations Charter. But this Charter is not the only basis of international law in and of itself. Apart from the United Nations Charter, there are other documents, organizations and rules that have bearing on self-determination: customary law, Universal Declaration of Human Rights, European Union, regional agreements, bilateral and multilateral agreements. They may be considered rules of international law, and some conventions may be seen as the common values of humanity. We can use these agreements and conventions as a basis for every study to be conducted about international law. I have tried to present this thesis by referring to these international conventions.

In conclusion, today, the right to self-determination is a hard issue in the world's agenda. There has been many bloody wars in history, many disagreements. But most states have faced and will face this international phenomenon both in times of war and in times of peace. For some states, this face-off is an old issue, and recent for some others.

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