1. Introduction

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Never before has the call for self-determination or for more autonomy originating from many places in Europe reached such a strength as is the case these days. States representing the archetype of a national state, such as Great Britain or Spain which, only a few years ago, seemed strong and settled, risk going adrift. Even in countries like Italy, where national unity is not directly questioned, regions are showing ever-growing self-consciousness. At the same time, two further trends can be noted: On the one hand, minority protection is continuously gaining more importance and, on the other hand, there is a growing awareness of the fact that territorial autonomy may be an ideal instrument for the implementation of such a protection. Therefore, in many countries governments oppositely introduce autonomy rules in order to make minority protection more effective. In this, however, a difficult balancing act between the introduction of meaningful protection provisions and the avoidance of furtherance of secession has to be accomplished. All this has to happen in a legal framework that is no longer characterized only by the traditional dichotomy between states and international law. It is rather the case that further international actors, like the European Union (EU), have entered the scene. Furthermore, the individual, alone or in groups, is also more and more present on the international scene behaving under many aspects like an international subject. Thereby, the situation gains in dynamics but also in complexity. The aim of this book is to give an overview of the status quo of the legal discussion on self-determination and autonomy and at the same time to identify the most important elements that could direct future legal developments in this field.

In Chapter 2 on ‘Self-determination and autonomy: between secession and internal self-determination’, the development of the concept of self-determination in international law is portrayed in detail. Emphasis is given to the fact that minorities have no right to self-determination (secession) but a right to internal self-determination, that is, a right to

effective participation and respect for their specific needs. Although it is not possible to derive a right to autonomy from international law there can be no doubt that autonomy rules have proven to be an extremely valuable instrument for putting into effect internal self-determination.

On the other hand, this contribution evidences also that the growing quest for independence, brought forward by an ever-increasing number of people in various regions of Europe (but also elsewhere), may meet with success in the long term even if for the time being no legal basis for such demands can be found in international law. It is suggested that the belief in utopia may be a powerful force that eventually can also change factual situations that before seemed consolidated and irrevocable.

Since Wilsonian times the discussion about self-determination has been closely related to that about democracy. In Chapter 3 on 'The relevance of democratic principles to the self-determination norm', Brad R. Roth explores the implications of democratic principles for controversies over the political rights of intrastate communities and over the political status of majority-minority intrastate regions. Traditionally, democracy and self-determination are thought to refer to separate questions: democracy pertains to the mode of governance within political communities (reflecting 'the will of the people' through institutions according equal concern and respect to the whole of the citizenry), whereas self-determination speaks to relationships among distinct political communities ('peoples' not legitimately subject to alien subjugation). Roth contends, however, that the distinctness of political communities within state boundaries is a matter, not of a group's intrinsic ethnic, cultural, linguistic, or religious characteristics, but of the territorial state's success or failure in manifesting the self-determination of the entirety of the permanent territorial population. Where impositions arbitrarily place regional majorities 'in a position or status of subordination', Roth argues, fulfilment of the self-determination norm may require the establishment of special regional decision-making processes that allow the subordinated populations to pursue their economic, social and cultural development on an equal basis.

In his chapter entitled 'Self-determination and secession: similarities and differences', Rein Müllerson, after briefly dealing with some general questions of self-determination, undertakes a comparison between secessionist claims and reactions of central authorities and the so-called world community and those in states that belong to the category of post-modernist states (e.g., the United Kingdom vis-à-vis Scotland, Canada vis-à-vis Québec) and modern or pre-modern states (e.g., Ukraine vis-à-vis Eastern Ukraine or the Crimea). For Müllerson, the more reasons a minority may have to break away, the more difficult it usually

is, both for internal and external reasons (e.g., the Kurds in some Middle Eastern countries). And on the contrary, the lesser the need, the easier it may be (the Québécois in Canada). One could also say that only the most complicated cases have ‘survived’ over the years. They have proved to be unsolvable exactly because they are so complicated and they have withstood the test of time because they are of such an extraordinary dimension.

In the past self-determination issues have often been examined either from an international point of view or from a constitutionalist one and no real dialogue has taken place between these disciplines. Recently this has changed and it has become clear that both disciplines can profit enormously from an exchange of ideas in this field.

Markku Suksi examines the use of the referendum in the context of autonomy against the background of national and international jurisprudence concerning self-determination referendums and the categories of self-determination established in the 1970 Friendly Relations Declaration. According to him, the permissibility of the referendum in such contexts is not to be doubted, but constraints are still placed for situations where such a referendum would threaten the sovereignty and territorial integrity of the state to which the territory belongs. Most referendums are held within the category of ‘any other political status’, that is, about the issue of whether or not to continue as an autonomous entity within the state, while outright independence referendums are in a clear minority (although their high profile nature tends to overshadow other self-determination referendums). Although most states engaging in self-determination referendums concerning autonomous entities offer independence as an option, this option often receives little support, and even in many actual independence referendums, such as those of Québec and Scotland, the vote did not result in independence, but in continued sub-state existence. According to Suksi, it seems that secessionists have hijacked the self-determination issue and succeeded in sidelining all other facets of the issue.

In her contribution entitled ‘Secession as a new constitutional problem: the question of independence in autonomy systems’, Ulrike Haider-Quercia examines the concept of ‘negotiated independence’, referring to constitutional provisions and procedures which envisage the establishment of a referendum on independence. She points out that such political arrangements within the existing constitutional framework have so far contributed to mitigate previously virulent secession struggles, especially if they are coupled with the expansion of regional autonomous rights.

In their contribution entitled “‘Free at last’? Scotland, independence and EU membership’, Hannes Hofmeister and Belen Olmos Giupponi

analyse the various legal aspects involved in Scotland's independence claims where they focus also on the legal implications for other European regions. Essentially the results of this analysis might also provide useful guidance for other regions in Europe contemplating independence, such as Catalonia or Flanders. In order to offer an overview of the questions that may arise, membership of international organizations and succession of states are taken into account. In the second part of the chapter the authors turn to the EU law aspects of Scottish independence. There they address in particular the question of how Scotland's independence would affect its status vis-à-vis the EU. Brexit has added further complexity but also further topicality to this issue.

Antonello Tancredi contributed a chapter to this book on 'Italian approaches to self-determination: theory and practice'. Therein the author demonstrates that the affirmation of the principle of nationality in Italian legal scholarship is contemporary with the inauguration of the first chair of international law ever created in Italy at the University of Turin in 1851. However, Tancredi highlights also that the same holder of that chair, Pasquale Stanislao Mancini, once appointed Minister of Foreign Affairs of the Italian unitary state between 1881 and 1885, launched the Italian colonial expansion policy in Africa. In the post-Second World War period, the Italian government became a strong supporter of the decolonization process, which was an excellent cause around which the international image of the young republic could be reconstructed. On the other hand, according to Tancredi, the doctrine is still divided between a universalistic approach and another more focused on the reconstruction of specific general or conventional norms concerning self-determination.

In his contribution on 'The Kurds between discrimination, autonomy and self-determination', Stefan Oeter points out that the neglect of the Kurdish question after 1918 had led to a long history of oppression and discrimination, with the issue of self-determination of the Kurdish people still remaining an open issue today. He shows that the events of the last years in Iraq, Syria and Turkey have given new momentum to the Kurdish quest for self-determination. Three levels of self-determination discourse are revisited in his chapter – a radical understanding that leads to a quest for full statehood, a more moderate concept of 'internal self-determination' resulting in the search for viable constructs of regional autonomy inside existing states, and a minimalist version embodied in the international obligations concerning minority protection. Since even such minimalist obligations are far from being respected, Oeter dares to predict that the quest for more radical solutions will grow and will shape political events in the region.

Integration of the Basque Country and Catalonia into the Spanish polity is a hotly controverted issue. The chapter by Xabier Arzoz reminds us of the failed attempts of the Basque Country and Catalonia to obtain more autonomy in the last 15 years. The main effect of the failure of those attempts is precisely the recent self-determination process in Catalonia, whose main political and legal milestones are thoroughly commented on in the second part of his chapter. The central government in Madrid strongly opposes these tendencies but, as it seems, to no avail.

At this point, it seems necessary to look what international law has to say about these claims. This analysis is carried out in depth by Eugenia López-Jacoiste, who demonstrates that traditional international law is very clear about such claims: They find no foundation in international law as it stands and as it is set out in traditional legal textbooks. But nonetheless, we cannot deny that there is a striking discrepancy between the legal arguments advanced by Madrid that rule out a right to secession and the force of the self-determination demands in the regions mentioned. The narrative presented in the Basque Country and in Catalonia is a different one. These visions may appear to be utopian, and from a legal point they surely are, but it has to be seen whether this utopia, as described in Chapter 2, could one day transmute into reality.

Without doubt, the case of Québec is one of the most discussed secession topics in international law and politics. Two international lawyers from this region, Daniel Turp and Anthony Beauséjour, are dealing with the subject from a perspective that is clearly in favour of the permissibility of such a secession. They start from the tenet that international law grants all peoples the right to self-determination. For them, self-determination is a continuum, ranging from autonomy – or internal self-determination – to independence – or external self-determination. For more than 50 years, Québec has straddled both options. In this contribution, the authors describe how the principle of autonomy has been enshrined in the Constitution of Canada and show how Québec has attempted to obtain additional autonomy within the Canadian constitutional framework. They also discuss the issue of the right to independence under international law and the right recognized to Québec by the Supreme Court of Canada in its *Reference Re Secession of Québec* to pursue secession under Canadian law. In their conclusion, they suggest that in its quest for self-determination and in order to achieve greater autonomy or national independence, Québec should envisage a new approach and rely on its constituent power to initiate a popular process with the aim of developing its own constitution.

The time has come to ask whether the multi-ethnic nation state still has a future or whether these states are bound to disintegrate. There can be

no doubt that traditional international law has sided with the nation state and the prevailing view in international law doctrine still is that there is no right to secession. In more recent times, voices that asked multi-ethnic states to provide for group accommodation in ethnically diverse states while continuing to defend state cohesion have become stronger. Nonetheless, in the meantime quests are strengthening that argue for the existence of a right to secession and in any case, on the factual level, strong forces can be discerned that militate in this direction, disregarding any consideration whether these claims are corroborated by a right or not. At the same time, myths, often with a historical background, are created that intend to justify the diverse self-determination claims. In a first moment such myths are often derided and the associated claims are qualified as utopian. But then surprising twists can be noticed whereby tales and myths turn into reality and utopian quests transform into fact and law. Like nowhere else in international law even the most seasoned 'realistic' international lawyer is therefore required to listen to today's tales and myths as they can easily become tomorrow's hard legal facts.