English

Integration in the International Community

Generalitat de Catalunya
Government of Catalonia

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Contents

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1. Purpose

The aim of this report is to analyse the challenges and strategies in the process of recognition by and integration in the international community in the eventuality of an independent Catalan state.

This report complements other reports[1] that also address this issue and is also related to reports that deal with specific practical issues.

The objectives it seeks to achieve are as follows:

a) To briefly describe what the international recognition of states involves and how it works, and to take guidance from this for the case of Catalonia.

b) To study the procedural implications deriving from case law and practice which might facilitate international recognition and full insertion, in the shortest possible time, in the international community.

c) To present criteria on how to approach the succession and ratification of international treaties.

d) To recommend a strategy and course of action geared towards progressively facilitating international recognition and integration.

These objectives determine the structure of this text, which is divided into four sections: sovereignty and international recognition; succession and ratification in terms of international treaties; membership and recognition of intergovernmental organizations, and a summary and conclusions.

[1] In this respect, see the CATN reports: "*La consulta sobre el futur polític de Catalunya*"; "*Internacionalització de la consulta i del procés d'autodeterminació de Catalunya*"; and "*Les vies d'integració de Catalunya a la Unió Europea*".

2. Sovereignty and International Recognition

The subject of sovereignty and international recognition at present signifies entering into the field of international law and international relations, a sphere in which discussions, even academic ones, always have a significant contextual and evaluative onus.

It is therefore worth clarifying certain concepts right from the outset. Firstly, everything related to the creation and recognition of a State is the element of international law that is most clearly defined by political and contextual considerations. Secondly, there are no precise, clear and unequivocal general laws. Thirdly, in the specific case of Catalonia – or Scotland – an argument often raised in different versions is that independence almost implies international ostracism, given the difficulty of achieving international recognition, or that it even breaks international law. This is not true: recognition, as it will be argued further on, is a complex matter and requires time; furthermore, independence, when achieved in a peaceful and democratic manner, is not an illegal act. Fourthly, it would be neither realistic nor appropriate to underplay the complexity of this subject: the international and transnational fabric of the life of nations, states and societies today is so vast that the creation of a new State always entails resolving the continuity of many international treaties. In short, the recognition and integration in international society of a new state is a complex and gradual process which can take years, and depends on many political factors as well as legal ones. Ultimately this is a process that calls for a strategy and alliances.

Accordingly, this report is limited to putting forward two basic theses that enshrine all subsequent analysis. Firstly, the creation of new states is a common phenomenon in international society, with some particularly active periods such as the 1950s and 1960s (as a result of decolonization) and, more recently, in the post-Cold War period. In both cases, new states have frequently been created as a result of considerable transformations in existing states and the international relations that prevailed up until that time. In this respect we only have to remember how these two periods marked the fastest increase in the number of members of the United Nations (UN). The creation and extinction of States, which is known as the succession of States, is thus a regular event in international case law and practice.

Secondly, international practice is very varied, full of casuistry and specific cases. This explains why, despite doctrinal attempts aimed at establishing the conditions required from candidates for international recognition and the procedural laws or regulations to do so, and in spite of efforts to codify everything related to the creation and recognition of states, theories and doctrines have turned out to have less real importance than case-by-case solutions. Consequently, in spite of the importance of case law considerations, the key factor – the standard – for resolving each case has been political considerations. All in all, this prevents and rules out sweeping generalizations, either condemning the practice of secession or predicting that recognition will be a simple and straightforward matter.

Having said that, the next sections will deal with the concept of sovereignty, secession, legality and international law, the succession and ratification of treaties, and international recognition, both bilaterally (i.e. other states) and multilaterally, associated with international intergovernmental organizations (IGOs).

2.1. Sovereignty, a polysemous and changing concept

The term “sovereignty” is polysemous, historically changeable, used in many disciplines and yet, at the same time, sensitive to political context. It is used in a philosophical, political, social and legal sense. In functional terms, we can find both descriptive and regulatory applications. For centuries, its importance has stemmed from the fact that it legitimizes the structures of the overriding authority in a political community. In the international arena, it is a concept with various political and legal meanings. Finally, in international practice, it is a fundamental organizational principle in relations between states.

In the field of international relations we can distinguish at least three types of sovereignty, given that the concept, as mentioned earlier, encompasses various factors or components:

- international legal
- Westphalian
- domestic or internal

The first of these, international legal sovereignty, simply implies the recognition of a state as such by other states and, consequently, its acceptance as a member of the international community. In short, it implies the right to have diplomatic representation and to be admitted, following application and acceptance, to international organizations (IGOs). Westphalian sovereignty refers to independence and the principle of territorial integrity, as sanctioned by the Peace of Westphalia treaty (1648), which put an end to religious wars by proclaiming that "the Prince's religion was the official religion of a region or country", which in practice signified the introduction of the concept of non-interference in the internal affairs of other countries. Consequently, Westphalian sovereignty presupposes that the entity acts with full conviction as a state, which clearly demonstrates that it is acting independently and without interference from third parties. In turn, domestic sovereignty refers to the capacity of a state to build and monitor internal power structures that work effectively.

There are several examples of countries that are unable to demonstrate their full capacity in all three components or types of sovereignty. Taiwan enjoys Westphalian sovereignty and domestic sovereignty but it does not have full international recognition; in other words, it does not have full international legal sovereignty. Somalia continues to enjoy international legal sovereignty but for some years now it has not had full domestic sovereignty and probably nor does it have Westphalian sovereignty over its own territory and territorial waters. And if we consider the member states of the EU, it is obvious that they have international legal sovereignty and domestic sovereignty but they do not enjoy full Westphalian sovereignty, given that primary and secondary community laws, the prevalence of Community legislation and the taking of decisions by a qualified majority in European institutions means that in many public policies the Member States do not have full autonomy to decide and act in consequence.

In addition, it is worth mentioning two other phenomena. One the one hand, the influential capacity of transnational actors (economic, political or security) has long since eroded Westphalian and domestic sovereignty, something that the current economic crisis has convincingly demonstrated. Furthermore, at the level of internal sovereignty, there are also many multi-level governance systems where sub-state governmental actors take decisions, or at least have an influence on decision-making, with regard to issues that up until recently many states regarded as belonging exclusively to the central government authority.

To conclude, very few states today can demonstrate that they enjoy all three types of

sovereignty, or the three differentiating factors or attributions of sovereignty, fully and exclusively. In today's world, no country can have complete sovereignty forever and at all times. At best, they can aspire to be a responsible sovereign state, governing efficiently within their borders and respecting the international rules of operation.

In the case in question, a Catalonia constituted as a state would need to focus on two of the components or types of sovereignty: domestic or internal sovereignty, which is a prerequisite for recognition by other states; and international legal sovereignty, accepting that the country's European and international vocation would necessarily imply the need for shared sovereignty (in the Westphalian sense) by voluntary decision.

2.2. Secession, legality and international law

We are now entering the realm of international legal sovereignty, namely the sphere that concerns the creation and extinction of States in the international legal arena. This is a crucial issue, given the dynamic situation and the transformations of every kind that states experience. Here we are referring to various transformations: unifications (such as Yemen and Tanzania); absorptions (the case of Germany in the post-Cold War period); territorial transfers (Alaska, in the past); recently-created states (East Timor); secessions (such as Norway, the birth of new states within a territory where previously only one of them exercised power). All these cases always pose one question: how to regulate the international responsibility of a territory that passes from one state to another? It is a matter of resolving some important and varied issues which, as mentioned earlier, have been addressed in other reports, including: which international treaties and regulations of the original state will continue to apply to the new state or states?; What happens to the heritage, debts and assets of the original state?; What is the nationality or nationalities of the citizens of the resulting state?; And will the resulting state or states be responsible internationally for illegal acts committed by the original state?

Although over the last 50 years there have been two key periods with a large number of state transformations of this kind – decolonization and the post-Cold War period – the general rule is still, even now, that there are no clear, precise and unequivocal laws. It is not that efforts have not been made in this direction, given that international law strives to provide the utmost

stability in international relations, based on the principle of continuity of identity and applicable law in the succession of states. In short, it is assumed that despite the change that a state can experience (which might affect its population, government or territory), it continues to exist. However, the reality can vary greatly, as recent cases in the post-Cold War period remind us: the non-continuity of Czechoslovakia (agreed secession); the continuity of Russia in the wake of the implosion of the Soviet Union; the continuity of the German Federal Republic following the absorption of the Democratic Republic; and the non-continuity of Yugoslavia following its division.

The creation or extinction of states, the succession of states, can occur in various circumstances and in different ways, but the one in which we are interested here is the event of secession; of the creation of a state from another state, known as the parent state, to which it previously belonged. In practice, there are some very different examples of secession, resulting from the processes of decolonization, agreements, internal conflicts or internationalized conflicts, amongst others. There are two main examples of the way these secessions occur: agreed or unilateral.

A categorical assertion should be reiterated here: secession is not prohibited *per se* in international law, nor is it legal *a priori*, as demonstrated in the report entitled "*The Consultation on the Political Future of Catalonia*"[2], in reference to the advisory opinion on Kosovo. In other words, legality is considered on a case-by-case basis and, in doing so, pragmatic considerations are often the starting point; thus what has become normal or consolidated is eventually considered to be legal. In practice, the international community has not generally condemned most cases of secession. More specifically, it has only considered as unlawful those cases in which the secession involved the violation of a peremptory norm or *ius cogens* of international law. Two examples are given below. Firstly, when, during the Japanese occupation of Manchuria before and during World War II, Japan created the fictitious state of Manchukuo, which was expressly condemned by the Society of Nations. Secondly, when the white minority in Rhodesia, a British colony, unilaterally declared independence from the United Kingdom and created a state with a regime similar to that of South Africa's apartheid, the international community never recognized it as a state.

It should also be pointed out that it cannot be asserted, based on international law at least,

[2] See the CATN report: "*La consulta sobre el futur polític de Catalunya*".

that a unilateral declaration of independence is illegal, even though it may clearly contradict the internal laws of the parent state where it takes place, as noted by the International Court of Justice's ruling on Kosovo's unilateral declaration of independence. And it is not illegal because there is no international law that expressly prohibits this conduct.

To sum up, the process of creating a new state, based on secession, will be consolidated, or not, as a practical action. Nothing can be predetermined in advance. Therefore, its legality, outside certain exceptional cases, will depend upon political considerations and gradual acceptance by the international community. Naturally, the way in which the secession process takes place – whether there have been efforts to reach internal agreements or not, whether there are allies interested in recognizing the new state or not, and other pragmatic considerations – will be the keys to the relatively quick and straightforward recognition and integration in the international community. In other words, the fact that secession is not *a priori* either legal nor illegal does not detract any importance whatsoever from the way in which it happens, the reasons that justify it and the work to create a climate of trust and shared interests to ensure that the international community has absolutely no doubt that this new entity fulfils all the requirements and conditions of a state. All in all, this determines and facilitates the fact that it will gradually be recognized as such. The speed of international recognition, which will be examined below, will depend to a large extent on the method, the timing and the preparation put into creating this new state and its relationship with the parent state.

2.3. International Recognition of States

We will now examine the issue in more detail: how, when and why states are recognized by the international community. As stated by Stefan Talmon after the division of the former Federal Social Republic of Yugoslavia, the issue of recognition within international law was semi-dormant until, in February 2008, Kosovo's unilateral declaration of independence revived it, given that in six months it managed to achieve recognition from 51 states (October

2008)[3].

Since then, the issue of international recognition has regained theoretical and practical interest. The term "recognition" already had different meanings in international relations and international law, which have been further complicated by new meanings bestowed on it by theoretical and doctrinal thinking. These meanings have often been expressed by adjectives: "*de facto* recognition", "diplomatic recognition" and "*de jure* recognition", amongst others. In addition, there has been a long-standing debate, lasting for more than a century, between two schools of thought – philosophical and legal – on recognition, known respectively as "constitutive recognition" and "declaratory recognition." The constitutive theory holds that a state is only a state when it is recognized as such, while the declaratory theory claims that a state is a state by virtue of its possession of the legal attributes and criteria to be regarded as such, regardless of recognition from other states. In practice, both cases entail demonstrating that it is really a state (i.e. complies with legal criteria) as a necessary condition, though not sufficient, for full integration in the international community, which demands broad recognition.

The key issue, however, is still the same: that recognition is a unilateral act exercised by the government of State X, which recognizes another state, State Y, as such. And it is a unilateral act because international law does not oblige states to recognise other states. Recognition is a voluntary act whereby one state proclaims and accepts that another specific political entity is also a state. However, this does not mean that it is a strictly political and discretional act which simply expresses an opinion on the legal status of an entity or (in the case of governments) authority. It is a free action, certainly partly discretionary, but it generates a legal effect.

Recognition can be effected in different ways: explicitly, with an official legal ceremony of recognition; or tacitly, establishing diplomatic relations or voting in favour of the accession of a particular state to an intergovernmental organization.

Whatever the case, the key factor is a double one: the favourable exercise of the will of each state (recognition) and compliance with the requirements and customs regarded as essential

[3] Stefan Talmon, "*Recognition of States and Governments in International Law*", in *Azerbaijan in the World (*Azerbaijan Diplomatic Academy Biweekly Newsletter). Vol. 1, no. 19, November 2008, pages 7-10.

for becoming a state. In the case of accession to or membership of an international organization, this means complying with the conditions of its Constitution and associated rules that have been established to accept a new member state, and winning enough votes to be recognized and, if the possibility exists, to avoid veto.

2.3.1. The status of a State

Since the early 20th century, at least, the general theory of what makes a state has referred to three attributes or constituent elements for "statehood": a population, a specific territory, and an effective public authority which manages the population and the territory. Despite frequent conceptual criticisms of a "factual" approach, the truth is that these are still the key elements for defining what makes a state, supplemented by the need for the public authority to be able to guarantee internal and external sovereignty (known as Westphalian sovereignty).

The most important practical manifestations of this notion of "statehood" are the so-called Montevideo doctrines and principles (Montevideo Convention on the Rights and Duties of States, 1933). This establishes that a state must possess:

- a permanent population
- a defined territory
- a government with clear authority over this population and territory
- the capacity to enter into relations with other states

According to the current prevailing doctrine, the first three criteria are those that guarantee statehood (being requirements, in the strictest sense), while the fourth is simply a condition for recognition; in other words, a consequence of being a state and not a precondition. Whatever the case, this is merely a technicality: in practice, the four doctrines or principles established by the Montevideo Convention must be complied with. And this generally involves preliminary contacts and negotiations.

With regard to the EU, in the sphere of its Common Foreign and Security Policy (CFSP), a common position was adopted by Foreign Affairs ministers at the start of the post-Cold War.

On 16 December 1991 it agreed on the requirements for new states to be formally recognized. This position calls for respect for the provisions of the United Nations Charter, the Helsinki Final Act and the Charter of Paris for a New Europe; guaranteeing the rights of minorities and other groups in accordance with the commitments subscribed to in the framework of the Organization for Security and Cooperation in Europe (OSCE); respect for the inviolability of borders, which can only be changed by peaceful means and by mutual agreement; acceptance of the relevant commitments on disarmament, nuclear non-proliferation and regional security and stability; and a commitment to finding a consensual solution to all matters relating to the succession of states and other regional disputes.

For some time, efforts have been made to complement the factual criteria given above with more legally-based criteria such as banning the use of force, apartheid and discrimination, but with little success.

Whatever the case, recognition is exercised in two ways – bilaterally and multilaterally – which implies accession to the international intergovernmental organizations that are regarded as necessary.

2.3.2. Considerations for the case of Catalonia

Given the above considerations, before embarking on a formal process to seek recognition it would be advisable for the new state:

- To be capable of demonstrating that it is a state; in other words, that it complies with the international criteria and standards described above. This entails clearly demonstrating that there is a population; that a majority of this population accepts the new situation; that there is a defined territory and that a legitimate authority is efficiently exercising its competences over this population and territory; although if the process is not fully agreed, certain temporary problems may arise in terms of overlapping authority or territorial control.
- To seek out, before its proclamation of independence, possible support for the process of recognition, with potential supporters and promoters. Proceeding in this way ensures *a priori* a minimum of recognition, both bilateral and multilateral, which will also serve as a practical demonstration of compliance with the fourth

Montevideo principle (having the capacity to establish relations with other members of the international community).

- Establish a clear strategy – progressive, with well thought-out, realistic and very detailed priorities – to gradually achieve bilateral and multilateral recognition, combining conventional diplomatic actions with different offers that imply sharing benefits in the present and future. It is particularly important to draw up a credible summary of the added values and comparative advantages that the new state could offer the international community.
- It must never be forgotten, and the population must be duly informed, that the recognition process is always a gradual one, for both political and technical reasons, and that its culmination requires a certain amount of time.
- Avoid making premature demands, especially in the case of multilateral recognition, and bear in mind "case by case" the possible effects of "group-oriented voting."[4]

3. Succession in terms of international treaties

The succession of states is a sphere that has few completely established and broadly accepted rules, as demonstrated by the fact that the two international treaties which regulate it, the Vienna Convention on Succession of States (1978) and the Vienna Convention on Succession of States in respect of State Property, Archives and Debts (1983) are either not currently in force (the 1983 Convention) or have been ratified by a very small number of states (the 1978 Convention)[5]. Consequently, this issue is not subject to compulsory international regulations for all the states belonging to the international community.

[4] This refers to the joint votes of all or the majority of the members of an international organization on a particular issue by means of an explicit or tactical decision. If the number of members is important, this being the case of the Islamic Conference, for example, it could have a significant impact in certain votes.

[5] It went into force on 6 November 1996. Spain has not ratified it.

It follows that, in the case of Catalonia, and given that we do not know whether the scenario after independence will be one of collaboration or of non-agreement, different courses or procedures for establishing everything in relation to succession will need to be explored and almost certainly implemented. In this section the report first looks at the formal reception clause in international law before addressing the rules for succession and ratification of treaties pursuant to the 1978 Convention and providing some doctrinal comments in this respect. Finally, it analyses the issue of treaties.

The first measure that would need to be adopted by an eventual independent Catalan state would be to establish a formal reception clause in international law in the provisional constitutional law, as already mentioned in this Council's report on the constituent process[6]. The clause would need to state that the principles and general rules of international law, especially in relation to fundamental rights, are considered as an integral part of the law in Catalonia.

With regard to the succession of treaties, there is a need to consider various possibilities, given that the Vienna Convention of 1978 provides relevant rules although it is not a mandatory international regulation for all the states in the international community. Firstly, and as a general rule for states emerging from the decolonization process, it envisages the rule of "tabula rasa": that newly -independent states are not bound to maintain in force, or to become a party to, any treaty by reason only of the fact that at the date of the succession of States the treaty had been in force in respect of the territory to which the succession of States related (article 16). The practice supports the theory whereby a successor state does not automatically take on the rights, obligations and powers of the predecessor state. Secondly, this is presented in the Convention as freedom of choice; a possible option. In other words, as the right of the successor state to participate in and hence to apply multilateral treaties without having acceded to or ratified them again (article 17).

Thirdly, setting aside the cases of decolonization, the general rule in the event of a separation of states is that of the continuity of conventional obligations in order to preserve stability, although there are exceptions and nuances to this. Specifically, in the case of the separation of parts of a State, it envisages that:

[6] See the CATN report: "*El procés constituent".*

- the treaties in force at the time of the succession continue in force in the rest of the territory of the predecessor state, if this continues to exist (article 35)
- the treaties in force at the time of the succession continue in force with respect to each successor state (article 34)

In the cases in which the principle of continuity applies, the notification of the succession is used to expressly confirm the acceptance of this principle, in order to preserve legal certainty and the stability of international relations.

It is worth pointing out, fourthly, that the main exception is that the rules mentioned in the Vienna Convention do not apply if there is no agreement between the parties. The main clause on flexibility is particularly interesting, which establishes that continuity shall not apply when "it appears from the treaty or is otherwise established that the application of the treaty to that territory would be incompatible with the object and purpose of the treaty or would radically change the conditions for its operation" (articles 34 and 35).

In the case of Catalonia, it is also interesting to mention the notes made by the Committee of Legal Advisers on Public International Law (CAHDI) in January 1992 in relation to the matter of the succession of states in Europe[7]. It said, specifically, that there is a tendency in favour of the continuity of treaties in force, but there are different opinions on the question of whether they should continue automatically or be based on the consent of the parties involved. Whatever the case, they believed it was necessary to address the issue from a pragmatic perspective involving dialogue between the parties.

To conclude, the existing practice is varied and even contradictory. Moreover, specific cases show that the solutions do not respond to legal considerations but, above all, to pragmatic and opportunistic considerations, which makes it difficult to extract general rules. This explains why the regulation of succession is an incomplete task, subject to progressive development, and the reason why the Convention cannot be regarded as a generally accepted text by the international community. Nevertheless, for the purposes of this report, one could maintain that certain principles prevail which can be summed up as follows: the succession must lead to an equitable outcome, based on the freedom of the states concerned to establish this equitable outcome by mutual agreement. And finally, it could also

[7] CAHDI, Committee of Legal Advisers on Public International Law, Council of Europe, 92/26.

be said that all the parties involved in the succession must respect the peremptory norms of general international law, especially those relating to the fundamental rights of the individual and the rights of peoples and minorities.

With regard to the recommended approach in the case of succession in terms of treaties for an eventual independent Catalonia, it would be advisable to combine two strategies:

- To initiate negotiations based on a detailed case-by-case analysis to confirm the continuity, or not, of the treaties to which Spain subscribes, broadly distinguishing the different types of treaties. It should be remembered here that we are talking about thousands of international treaties.
- Regardless of the outcome of the above section, to subscribe to a series of treaties of particular interest in terms of: the codification of international law[8]; the international protection of human rights[9]; humanitarian law[10]; economic and tax matters[11]; and private international laws, such as those relating to international adoption, the legalization of documents and intellectual and industrial property rights.
- In accordance with section 4 of the report, to embark, in phases, on the accession process to the various treaties that allow accession to different international intergovernmental organizations.

[8] The Vienna Convention on the Law of Treaties, for example.

[9] The International Covenant on Civil and Political Rights, the Convention on the Prevention and Punishment of the Crime of Genocide, the International Convention on the Elimination of All Forms of Racial Discrimination and the basic documents of the European System for the Protection of Human Rights.

[10] The First Geneva Convention for the Amelioration of the Condition of the Wounded in Armies in the Field; the Second Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, etc.

[11] For example, treaties to regulate double taxation.

4. Membership of international intergovernmental organizations

International intergovernmental organizations (IGOs), though a relatively recent element of international relations, emerged in the early 19th century, initially in areas such as river navigation and postal and telegraphic communications, and have developed a great deal over the last two centuries. Today there are thousands of these organizations which cover every field of international life. They have become so important that some authors claim that they have never played such a key role in international life as they do today[12], as demonstrated by the regulatory importance of the almost 250 "conventional" intergovernmental organizations[13]. In other words, they do much more than simply execute the agreements established by their member states: they take decisions that affect every single corner of the planet and hence the lives of their inhabitants. Finally, many of the competences, functions and activities of these hundreds of "conventional" IGOs concern issues associated with internal or domestic sovereignty; in other words, the competences that up until very recently were regarded as the private remit of national governments. This is why they are so important in the process of a new state's integration in the international community.

For the purposes of this report, it is worth remembering just three things about the definition, type, operation and level of autonomy of IGOs with respect to states, which were the key players in their genesis. Firstly, when it comes to their definition, an IGO must have at least three member states; there should be a legal document associated with its creation; and there must be a headquarters and a minimal structure that distinguishes it from "diplomatic conferences" and "groups of friends."[14]

[12] Michael Barnet/Martha Finnemore, "*Rules for the World. International Organizations in Global Politics*", Cornell University, 2004.

[13] Union of International Associations (ed), "*Yearbook of International Organizations 2011-2012",* Munich, K.G. Saur, 2012.

[14] It is worth remembering that diplomatic conferences, which were very important at the time of the Concert of Europe (Vienna Congress, 1815), were informal groups of states, because they had no founding treaty or institutionalized organization, despite their importance and longevity. In this respect, we could today cite the G-8 or the G-20. With regard to the so-called "groups of friend

Secondly, with regard to their type, a distinction is usually made between potentially universal organizations (i.e. every state can request accession) or those that are geographically or operationally limited (in terms of a defined geographical area or the issues that it deals with). With regard to their competences, a distinction is usually made between specialized IGOs (economic, financial, security, communications, culture, science, technology, etc.) and those with general competences (such as the UN or many regional organizations). It is also worth mentioning that some organizations, even though they have restrictions deriving from their geographical or operational scope, allow the accession of "foreign" members (in the strictest sense) either as full members or as observers.

Finally, with regard to their operation as organizations, it is worth considering, at least, their autonomy, their powers, any possible dysfunctions and the processes of change to which they are subjected. With regard to their autonomy from the states that created them and belong to them, it should be said that even if they have not enjoyed full autonomy up to now, it is often quite considerable due to their initial competences and functions (otherwise they could not be efficient) and, above all, their evolution. This obviously explains why IGOs are arenas of confrontation and cooperation among member states, which struggle to enforce their own foreign policy views and interests and, at the same time, are obliged to witness how negotiations and arrangements between member states always curtail their own room for manoeuvre. With regard to powers, IGOs have two main sources: the first derives from their resources, essentially material and informative; the second, and increasingly important, comes from the way in which they use their authority to guide the actions of other actors and create a social reality, while giving it meaning, creating agendas and, in particular, transforming information into knowledge[15]. The role of some IGOs has been particularly important in shaping the growing consensus on the need to collate agendas, which are increasingly interrelated, on peace, security, development and human rights as collective global assets. The third aspect, and a less positive one, concerns the possible dysfunctions that are generated both by member states, in their attempts to take over the agendas of

countries", these are very common, whether it is to support the initiatives of the UN Secretary General or other IGOs or to drive forward peace processes or also monitor and steer certain issues.

[15] In this respect, IGOs are crucial instruments for creating knowledge and epistemic communities which, as demonstrated by Peter Haas in the 1990s, help to disseminate problems, create agendas and generate consensus on courses of action, public policies and global assets.

certain organizations, and by bureaucracies, as well as the paradigms shared by the knowledge and practice communities regularly found in IGO milieus. The fourth element concerns the dynamics and change processes that any state wishing to join the international community needs to know and understand. The dynamics of change and continuity can derive from the pressure of states and political decision-makers, from bureaucracies and internal organizational apparatus, and from the pressures of context, including those deriving from civil society and various pressure and political advocacy groups.

All in all, given the practical and guiding nature of the political decisions in this report, we can draw a clear conclusion: belonging to IGOs is an essential step towards international recognition and for effective integration in the international community. Moreover, in order to better understand what these IGOs do, which ones to belong to, where to start and what kind of strategy to adopt, it is necessary to study the IGOs and understand them, either individually or by establishing affinities by type. Finally, it is advisable to think about the best time and the best strategy for preparing accession; what added value this organization can offer the new state; and what specific contribution the new state can make in terms of the knowledge and practice community, experience and proven good practices.

In this respect, some criteria are given below for consideration:

- Firstly, we should start by remembering the abovementioned reception in Catalonia's internal legislation, as part of provisional constituent law, of the principles, values and regulations of international law, adding a specific mention of support for and commitment to multilateralism.
- Recognition should start with the IGOs whose member states do not have the option of veto, those with a high symbolic value – such as the Council of Europe – or those which have less complicated accession procedures.
- At the heart of the strategy should be Catalonia's secular vocation for internationalization, fostering peace and international solidarity, and Catalan society's quest for free and responsible commercial and cultural relations, these being understood as added values which form part of the backbone of its foreign policy.

- When it comes to prioritizing, various phases and stages should be established, each combining research on accession to the IGO in terms of political, social, cultural, human rights, economic and public safety aspects.
- A strategy should be arranged and, if possible, a shared road map with the different public and private actors, taking advantage of the tradition and strength of the international presence of Catalan civil society and the numerous practices of public diplomacy in the field of development cooperation, peace, wellbeing, human rights, culture and sport.
- During the transition period, any applications for accession to international organizations that have no political consensus in Catalonia should be adjourned.

4.1. Multilateral recognition: the forms and methods for becoming a member of IGOs

As mentioned earlier, multilateral recognition – in other words, recognition by international organizations – is a crucial aspect which determines the very notion of statehood and, therefore, forms an essential part of its recognition as a full member of the community of nations.

Beyond the general considerations already made, the report will focus on the forms of accession to or the means of acquiring membership status of international intergovernmental organizations (IGOs).

Prior to this, however, it is worth making a general assertion about the direction of the progressive globalization and growing order of the international system, which has taken a gigantic step since the 1970s by allowing the Popular Republic of China to occupy the UN place previously occupied by Taiwan, followed by the proliferation of thousands of IGOs with different scopes and competences. All in all, it seeks to facilitate the task of states, societies and individuals in an increasingly globalized world with the need for international and global mechanisms of order and action. In view of this, accession to the multilateral system, following the established rules, of a new state that formally states its desire to help improve the mechanisms of order and international governance, can only be seen as a positive factor.

Difficulties to accession, including vetoes or the intentional formation of blocking minorities, can in no way be regarded as good for the system as a whole, regardless of the legitimate rights of the states interested in taking this action. This would purely and simply be a political action driven by reasons of self-interest or unlawful persecution contrary to the global interests of international society. This possibility explains why, on analysing the specific procedures for accession to each IGO, we refer to terms such as vetoes or blocking minorities.

In conceptual and academic terms, there are three main ways of becoming a member of an IGO:

- by means of a formal accession process[16]
- by means of a simple unilateral act[17]
- by means of succession in the context of an explicit provision in the treaty that regulates the organization or as the result of specific negotiations[18]

Therefore, apart from the exceptions that will be noted further on, the general rule is that of formal accession which, in turn, is extremely varied in its forms. Despite this heterogeneity, we can distinguish two cases for formal procedures for membership as a new member of an IGO:

- organizations with complicated and restrictive accession procedures
- organizations with relatively open and straightforward procedures

In the first case, these restrictions derive from unanimous decision-making systems which

[16] For instance, the institutions deriving from the Bretton Woods agreements.

[17] At present, accession by means of a single unilateral act, which used to be a regular IGO process, has a significant example in the case of the World Intellectual Property Organization (WIPO, www.wipo.int), a specialized agency that now plays a key role. Other IGOs have changed their mechanisms, adopting formal processes, as in the case of the International Telecommunications Union (ITU www.itu.int).

[18] With regard to this explicit provision**,** the most significant example is that of the Permanent Court of Arbitration (www.pca-cpa.org), which allows membership via succession though this is associated with membership of the UN of the state in question. KG Bühler, "*State Succession and Membership in International Organizations: Legal Theories versus Political Pragmatism",* The Hague, Kluwer Law International, 2001.

allow a veto. A second example is that of systems with weighted or qualified majorities which are so significant that they facilitate various blocking minorities. In this latter case, it is advisable to make an accurate analysis, or even conduct an informal survey of certain members before proceeding to apply for accession. In the case of organizations with relatively open procedures, this refers to decision-making systems that do not allow vetoes or only a small blocking minority, in which case they are regarded as organizations with open procedures, even though in some cases this can be slow or laborious in administrative terms. It is also worth pointing out that some IGOs, as well as a formal process, have their own particular customs and procedures, such as the power to adapt the standard procedure for specific cases. This is the case, for example, with the institutions deriving from the Bretton Woods agreements (International Monetary Fund, IMF, World Bank or, more precisely, the World Bank Group, WBG) which in certain cases has allowed precedents for accession to membership status based on the succession of states.

Therefore, given the difficulty of establishing any general rules, we have chosen to classify the IGOs in several large and relatively discretional categories, making a partial study by group and case.

4.2. Analysis of the provisions for accession to the leading IGOs and recent practice

The main IGOs under analysis have been divided into three large categories for the purposes of this report:

- the United Nations system
- regional pan-European type organizations[19]
- Other organizations[20]

[19] This report will not analyse these organizations, given that they were the subject of a previous CATN report, entitled "*Les vies d'integració de Catalunya a la Unió Europea"*.

[20] The IGOs analysed in previous reports have been excluded from this one, this being the case of security and defence organizations. See CATN report: *"Seguretat interna i internacional".*

4.2.1. Criteria and procedures for accession to the UN system

The United Nations system comprises a wealth of institutions which, for operational reasons, are generally distinguished as the United Nations (UN), the International Court of Justice (ICJ), specialized agencies and international financial institutions.

Membership of the UN and hence a regular presence in its main bodies has become a symbol of full integration in the international community, even though in formal terms the UN does not recognize states. This symbolic nature has two explanations. Firstly: because the UN is the most universal of intergovernmental organizations (due to the number of its members, practically every state in existence[21]) and because of the heterogeneity of its competences, being a member implies international recognition and the benefit of being considered a full member of the international community. The second, for practical reasons, is that being a member of the UN gives access to its main bodies[22] and in many cases it is also possible to access, by means of a unilateral act, many of its specialized agencies; and lastly, many of its specific mechanisms (funds, programmes[23], specialized or regional commissions, research and training institutes, subsidiary organizations, amongst others). It is true that in some cases there is a need to complete administrative formalities or pay fees, but being a member of the UN also almost automatically makes one a member[24] of part or all of its system. Nevertheless, in some cases it is not necessary to be a member of the UN in

[21] There are fewer and fewer exceptions: the Vatican and Palestine, which have the status of observers; and Taiwan and Kosovo, which do not yet have generally-recognized legal international sovereignty.

[22] General Assembly, Secretariat, Economic and Social Council, International Court of Justice, for example.

[23] For example: the United Nations Development Programme (UNDP); the United Nations Environment Programme (UNEP); the United Nations Population Fund (UNPF); the United Nations Conference on Trade and Development (UNCTAD); the United Nations Human Settlements Programme, Habitat, etc.

[24] For example, some of the specialized agencies to which accession is almost automatic, without the need to apply for an accession process and obtain *ad hoc* approval, are: 1) the International Labour Organization (ILO); 2) the International Maritime Organization (IMO); 3) the International Civil Aviation Organization (ICAO); 4) the World Meteorological Organization (WMO); 5) the World Health Organization (WHO); 6) the International Telecommunications Union (ITU); 7) the United Nations Education, Science and Culture Organization (UNESCO); 8) the United Nations Industrial Development Organization (UNIDO); and 9) the Universal Postal Union (UPU).

order to be a member of one of its specialized agencies, given that as they have their own international legal personality, they have their own membership or accession procedures.

With regard to membership of the International Court of Justice, the main judicial body of the United Nations, this is regarded for all intents and purposes as part of belonging to the UN[25].

4.2.1.1. Accession to the UN

The criteria, procedures and method for admission to the UN can be found in the UN Charter (article 4[26]) under the Rules of the General Assembly (chapter XIV, "Admission of new members to the UN"[27], rules 134-138) and of the Security Council (S/96/Rev. 7, "Admission of New Members", rules 58-60[28]).

All this is summarized in a very precise and well defined procedure:

a) The candidate country sends a formal notice to the UN Secretary General, accompanied by declaration made in a formal instrument accepting the obligations set forth in the UN Charter.

b) The Secretary General informs the Security Council.

c) Unless the Security Council decides otherwise, its President refers the matter to the new members Admissions Committee which will examine the request and present their findings to the Council.

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[25] Article 93.1. of the United Nations Charter specifies that all members of the UN automatically become members of the ICJ, made evident by the fact that the Statute of the ICJ is an integral part of the UN Charter. Indeed, Article 93.2. envisages the possibility that a state which is not a member of the UN can be part of the Court's Statute, but this has lost its significance with the accession to the UN of micro-states such as Liechtenstein and San Marino, the previous examples always cited. Whatever the case, the situation of Palestine may renew interest in this clause.

[26] This states that membership is open to all peace-loving states which, in the judgement of the Organization, are able and willing to accept the obligations set forth in the Charter. In respect of the procedure, it depends on a decision of the General Assembly following a recommendation from the Security Council, which implies a double voting process.

[27] See: http://www.un.org/depts/DGACM/Uploaded%20docs/rules%20of%20procedure%20of%20ga.pdf

[28] See http://www.un.org/docs/sc/scrules.htm

d) The Council must decide if it will recommend the admission of the candidate or not or if the request should be deferred. As approval is an important matter, it requires at least nine votes in favour and no votes against from any of the five permanent members of the Council.[29]

e) If the Council decides to recommend admission it should then be debated by the General Assembly. If at least two-thirds of the members vote in favour, the Secretary General advises the applicant country and the admission takes immediate effect.

f) If the Council does not recommend admission or postpones the decision, the General Assembly can study the matter in depth and decide to resubmit the application to the Security Council, along with a full record of the discussion so that the case can be re-examined and a recommendation or report formulated.

Additionally, other considerations should be taken into account such as the doctrine derived from practice. Specifically, the documentation arising from the successive enlargements of the UN, the Advisory Opinions of the International Court of Justice (1948, 1950)[30] or the Document produced by the International Law Commission Secretariat in 1962[31].

In a succinct and practical way, it could be said that there are five conditions to satisfy as compulsory requirements:

a) to be a state

b) to be peace-loving

c) to accept the obligations of the Charter

[29] United States, France, United Kingdom, Russia and China.

[30] *Advisory Opinion* on *"Conditions of Admission of a State to Membership in the United Nations (article 4 of the Charter)"*. See http://www.icj-cij.org/docket/files/3/1823.pdf: *Advisory Opinion* on *"Competence of the General Assembly for the Admission of a State to the United Nations"*. See http://www.icj-cij.org/docket/files/9/1885.pdf.

[31] We refer to the text drawn up by the International Law Commission, A/CN.4/149 and Add. 1, "*The Succession of States in relation to Membership in the United Nations - Memorandum prepared by the Secretariat*", initially published in the Yearbook of the International Law Commission, 1962, vol. II. See: http://legal.un.org/ilc/documentation/english/a_cn4_149_add1.pd.

d) to be able to comply with the aforementioned conditions

e) to be expressly willing to do so.

The five points have been analysed exhaustively on various occasions and in various circumstances[32], which allows us to conclude that the first of them, once again, is absolutely crucial: to demonstrate irrefutably the condition of being a State, an essential prerequisite for the whole recognition and integration process, which is usually judged based on the provisions of the Montevideo Convention. The second, third and fourth conditions in the request for admission, even though they may be self-evident, must be explained through formal and explicit declarations. As we have addressed the requirements for statehood previously, it can be maintained that in the case of Catalonia the essential task does not lie in fulfilling these five requirements but rather in achieving a favourable vote.

Three final considerations on the most opportune moment to request accession.

Practice shows that most of the cases of accession fall within the scope of the restricted meaning of the principle of secession or of agreed secessions, albeit in its final phase[33]. Apart from this supposition, recent practice shows, moreover, that there has been no case of admission without the consent of the parent state to which the new state formerly belonged, apart from that of Bangladesh[34]. However, the previous findings do not constitute a formal ruling or requirement but rather a factual regularity, which can lose its factual basis. In this respect, we cannot underestimate the political and legal debate over the legal or illegal nature of secession, in the limited sense of whether it is covered or not by the suppositions normally envisaged for self-determination. It is also worth remembering that most of the disputes over the recognition of new states in the United Nations have been handled discreetly, without publicity, given that it is customary for the bodies concerned to wait for bilateral issues between the parent state and the new state to be resolved, even though they

[32] For example, for the Admissions Committee for new members in the case of Palestine, see S/2011/705 of 11 November 2011. For the case of Kosovo, see David Efevwerhan, "*Secession and the Lessons from Kosovo: New Dimensions in the Law of Secession"*, Lambert, 2012.

[33] See the detailed analysis by B. Martin, "*Secession and Statehood: The International Legal Status of Kosovo"*, Dunedin, The University of Otago (New Zealand), 2008.

[34] It is worth remembering that in the interim there was an intensive armed conflict between Pakistan and Bangladesh, the veto of China (1972) and finally Pakistan's decision to recognize Bangladesh.

could demand specific legal rulings. To sum up, in practice political considerations have prevailed over legal ones, and bilateral considerations over multilateral ones.

The second comment is of a tactical nature: the need to be very much aware, when establishing a strategy, of the composition of non-permanent members of the Security Council at the time of requesting accession[35].

The third general consideration is that, in view of the abovementioned circumstances and considerations, it would not be advisable to embark on an application to enter the UN quickly or precipitately, despite its purely symbolic nature. Any refusal or postponement of its decision would be more negative than not being a member temporarily. It is necessary to ensure, at the very least, that there are a large number of recognitions, sufficient knowledge of the reasoning and role of the new state in the international community and a scenario of collaborative and settled bilateral relations with Spain.

4.2.1.2. Specialized agencies

The wealth of specialized agencies in the United Nations system derives from the organization's long history, having been created in 1945 and, in particular, from the plurality of functions it is able to accomplish to improve international governance and global cooperation. Furthermore, some of these specialized agencies originate from the first wave of the creation of IGOs during the first half of the 19th century, such as the International Telecommunication Union and the Universal Postal Union. While forming part of the United Nations system, these specialized agencies enjoy a high level of autonomy within the system, as demonstrated by the fact that they tend to hold their own general assemblies.

[35] For example, a country that wishes to seek early accession should be aware that in October 2014 there will be a renewal of: 1 place for Africa; 1 place for Asia-Pacific; 1 place for Latin America and the Caribbean; and 2 places for Western Europe and others. In this last case, Spain, New Zealand and Turkey have submitted applications. Furthermore, in 2015 the mandates of Jordan, Lithuania, Nigeria, Chad and Chile come to an end.

We will start by listing some of these specialized agencies:

- International Monetary Fund, IMF[36]
- World Bank Group[37], WBG
- Food and Agriculture Organization, FAO
- International Civil Aviation Organization, ICAO
- International Labour Organization, ILO
- International Maritime Organization, IMO
- World Meteorological Organization, WMO
- United Nations World Tourism Organization, UNWTO
- World Intellectual Property Organization, WIPO
- World Health Organization, WHO
- United Nations Industrial Development Organization, UNIDO
- United Nations Educational, Scientific and Cultural Organization, UNESCO
- International Telecommunication Union, ITU
- Universal Postal Union, UPU

We will give a brief overview of the entry mechanisms and member categories of these agencies, distinguishing three subcategories in this respect: International financial institutions (International Monetary Fund and World Bank Group); major specialized agencies (FAO, ILO, WHO, ITU and UNESCO); other specialized agencies (WIPO).

[36] This organization will be analysed further on.

[37] Made up of: the International Bank for Reconstruction and Development, IBRD; the International Development Association, IDA; the International Centre for the Settlement of Investment Disputes, ICSID; the International Finance Corporation, IFC; the Multilateral Investment Guarantee Agency, MIGA.

A. International financial institutions

1. International Monetary Fund, IMF

The IMF specialises in international monetary cooperation and financial stability, facilitating international trade, promoting employment and economic growth and reducing poverty worldwide.

It is an extremely important and symbolic organization. With regard to membership, it is worth highlighting two things at the outset. Firstly, it is a relatively open organization[38]. This explains why Kosovo is currently still a member[39], in contrast to most of the other organizations in the UN system. Secondly, being a member of the IMF is a prerequisite for being a member of the World Bank.

The formal membership procedure is summed up below[40]:

- The candidate country sends a formal membership application to the Executive Board (*EB*).
- The EB examines the application in detail.
- The EB submits a report to the Governing Board with its recommendations (a draft of the *Membership Resolution*). This report contains:
    - the membership fee payable
    - the method of payment
    - the terms and conditions of eventual membership
- The Governing Board gives its approval, if applicable, of the above-mentioned Membership Resolution and sets a period for formalizing membership along with

[38] In other words, its voting system (by quotas and specific voting rights) does not allow vetoes or blocking minorities formed by a few countries.

[39] It must be said, however, that this is due to two combined factors: a) the impossibility of vetoing or blocking with a few votes; and b) the patronage of the USA, which provided its active support for accession.

[40] See section 21 of the "*By-Laws of the International Monetary Fund*" and sections D-1 I -2 of the Rules and Regulation of the IMF.

the internal and international legal procedures that allow agreements to be signed and any obligations arising from them to be met.

The main obligation of the new member is to pay the fees decided on by the Board which, in the case of a country like Catalonia, could be high[41]. It is interesting to note the precedents of Montenegro (consensual secession) and Kosovo (unilateral secession) with respect to Serbia. In both cases, the IMF considered that the continuing state for all intents and purposes was Serbia, which therefore retained its status as member, its fees, assets and liabilities[42]. Montenegro and Kosovo therefore entered as new members. It seems likely that in the case of Catalonia it would act in the same way.

The characteristics of the IMF mean that it would probably be one of the first ways into the UN system for a new state seeking integration in the international community.

2. World Bank Group

A distinction needs to be made between the World Bank (WB) and the World Bank Group (WBG). The first only comprises the International Bank for Reconstruction and Development (IBRD) and the International Development Association (IDA) whereas the Group encompasses all five organizations.

The IBRD provides funding by means of loans to low- and mid-income countries with the ability to make repayments. The IDA acts as a "soft window" by providing funding through interest-free loans or donations to impoverished nations. The International Finance Corporation (IFC) grants various types of financing without sovereign guarantees, especially to the private sector. Furthermore, it mobilizes capital in the international financial markets and provides consultancy services to companies and governments. The International Centre for the Settlement of Investment Disputes (ICSID) provides international arbitration and conciliation services to resolve disputes over investments. Finally, the Multilateral Investment Guarantee Agency (MIGA) provides insurance for certain types of risk, essentially political risk and mainly for the private sector.

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[41] This fee would probably be at least 400-500 million dollars.

[42] The case of Czechoslovakia, however, was different, at least in terms of assets and liabilities, given that they were subject to negotiation between the two states.

The admission system to the Group is conditional upon two requirements. Firstly, the applicant has to be a member of the IMF (Constitutional Convention of the WB). Secondly, it needs to join the IBRD, which determines the membership of the other four institutions in the Group.

The procedure can be summed up as follows[43]:

- The IMF member country that aspires to join the WBG submits an application which is prepared jointly with the Bank, containing all the information considered necessary and relevant.
- The Executive Board of the IBRD (comprising 25 people chosen according to the representation criteria) informs the Board of Governors of the application, on which all the member states are represented. If the submission is approved, the Executive Board supports its report with all the documentation considered necessary, including a proposal for the number of capital stock shares that the new member will have to subscribe to. This amount will have been determined at preliminary consultations, as well as any other conditions that may be deemed necessary.
- The Board of Governors takes a decision by a majority vote (votes are determined by the amount of shares subscribed to by each country). Consequently, a veto or blocking minority are fairly irrelevant unless they are imposed by countries with a greater influence on votes due to their number of shares, such as the USA.
- Once the state is a member of the IBRD, accession to the other four institutions is simply an administrative formality which usually entails signing the *Articles of Agreement*, depositing an official instrument of accession with the Corporate Secretariat of the WBG and receiving its acceptance[44].

[43] See IBRD, "*Articles of Agreement, As amended effective, June 27*" (http://go.worldbank.org/0FICOZQLQ0; "*By-Laws of the International Bank of Reconstruction and Development, As amended through September 26*", 1980 (http://go.worldbank.org/3PMBT6T7E0).

[44] At present there are 188 member countries of the IBRD, 184 of the CFI, 172 of the IDA, 149 of the ICSID and 179 of the MIGA.

B. Large specialized agencies

A brief description of these agencies is given below, specifying only the relevant facts concerning their accession procedures. It is worth remembering that probably the simplest route to take at the outset is that of integration in multilateral organizations, as we shall see in each individual case. There are only six of these organizations, but another one that could be considered, amongst many other cases, is the International Civil Aviation Organization (ICAO). The Universal Postal Union and the International Meteorological Organization.

1. FAO

Accession is regulated by article II.2. of the Articles of Association of the organization[45]. Applicants should present their application accompanied by an official instrument of acceptance of the obligations set forth in the Articles of Association and the associated regulations of the organization at the time of submitting the request. The decision is taken by the organization's General Assembly and requires a majority of two-thirds of the votes cast, provided that a majority of the member states are present.

Accession could be requested during the first phase of the international recognition process.

2. ILO

The accession procedure is regulated by articles 1.3. and 1.4 of the Constitution of the ILO[46]. Any member state of the UN can request membership by notifying the Director-General of the ILO of its formal acceptance of the obligations of the Constitution of the International Labour Organization. However, paragraph 1.4. sets forth an alternative mechanism: "The General Conference of the ILO can also admit members to the Organization by a vote concurred in by two-thirds of the delegates attending the session, including two-thirds of the Government delegates present and voting."

In both cases, the application is predicated on the annual General Conference and requires a two-thirds majority of the votes cast, provided that at least two-thirds of the government delegates are present. Membership becomes effective once the Director-General has received the formal instruments of accession.

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[45] *FAO, "Basic Texts"*, 2013 version, 2 vol., http://www.fao.org/docrep/meeting/022/k8024e.pdf

[46] See "*ILO Constitution"*, http://www.ilo.org/public/english/bureau/leg/download/constitution.pdf

We recommend seeking accession during the first phase of the international recognition process.

3. WHO

Membership is regulated by articles 4, 6 and 79 of the organization's Constitution[47]. Any UN member state may become a member of the WHO by applying to the UN Secretary General in his capacity as the depositary of the Constitution, accompanied by the declaration of willingness to accept the Constitution and its associated obligations. Direct access can also be requested and granted if there is a simple majority at the annual Assembly of the World Health Organization.

We recommend seeking accession during the first phase of the international recognition process.

4. ITU

The International Telecommunication Union is a mixed-membership organization: it includes academic and private entities as well as states. The admission procedure is regulated by articles 2 and 53 of the organization's Constitution[48]. Any UN member state can request admission by lodging a single standardized formal instrument of accession to the Constitution and Convention of the ITU before the Secretary General. The Secretary General informs the other member states and sends them a certified copy of the document. There is also a second route which entails submitting the application for membership directly. The decision is taken by the Plenipotentiary Conference, which is held every four years, by a majority of two-thirds of the vote. When the application is presented between two sessions of the Conference, the Secretary General consults with all the member states, who have four months in which to reply; if they fail to do so, they are considered as having abstained. Once the decision has been made, the formal instrument of accession must be lodged and goes into immediate effect.

[47] See "*Constitution of the World Health Organization"*, http://apps.who.int/gb/bd/PDF/bd47/EN/constitution-en.pdf

[48] See "*Constitution and Convention of the International Telecommunication Union as amended by the 2010 Plenipotentiary Conferences*", in "*Basic Texts*", 2011. http://www.itu.int/dms_pub/itu-s/oth/02/09/s02090000115201pdfe.pdf

Even though there may be a qualified majority, the recommendation is to begin the accession process as part of the international recognition process.

5. UNESCO

The admission process is governed by Article II of the organization's Constitution and by regulations 50 and 51 of the Executive Council procedures[49]. Any UN member state can request admission by notifying the *Foreign and Commonwealth Office*, in its capacity as the depositary of the Constitution, stating its formal acceptance of the Constitution.

It is also possible to apply directly: "subject to the terms of the agreement must be established between this Organization and the United Nations, in accordance with the provisions of Article X of this Constitution, the States not members of the United Nations may, upon the recommendation of the Executive Board, be admitted as members of the Organization by a majority of two-thirds of the votes of the General Assembly" (article II.2).

In both cases, the approval procedure has two phases: first, a simple majority of the Executive Board is required, followed by a majority of two-thirds of the General Assembly.

Even with a qualified majority, it is advisable to begin the first phase of the accession process as part of the international recognition process.

6. World Tourism Organization (WTO)

This is the UN agency responsible for the promotion of responsible, sustainable and universally accessible tourism. In practice it is the leading international organization in the field of tourism.

The membership mechanism, according to article 3.5. of its Articles of Association, states that the state has to apply and be approved by a majority of two-thirds of the General Assembly members present and voting (provided that this majority comprises the majority of the voting members of the organization).

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[49] See UNESCO Basic Texts, 2012 version, at htpp://unesdoc.unesco.org/images/0021/002161/216192e.pdf; also "*Rules of Procedure of the Executive Board"*, htpp://unesdoc.unesco.org/images/0021/002176/2176273.pdf

Given the importance of tourism to Catalonia, it is recommended to seek membership in the first stage of the international recognition process.

C. Others (WIPO)

Although there are various other organizations, at this point we will only deal with the World Intellectual Property Organization (WIPO), a long-standing body which, in 1974, became one of the UN's specialized agencies.

Participation and membership, which is regulated by articles 5 and 14 of the organization's Convention[50], are open, by means of a simple formal signature, ratification or instrument of accession lodged with the Director-General of the organization, provided that one of the following three requirements is met:

a) be a member of the Paris Union or the Berne Union

b) be a member of the UN, of one of its specialized agencies, of the International Atomic Energy Organization or the Statute of the International Court of Justice

c) any state that the General Assembly of the WIPO has invited to be a member

Given that to be a member of the Paris and Berne Conventions it is sufficient to formally notify accession, it is obvious that being a member of WIPO simply depends upon the determination to become a member and submission of an official request in this respect. Therefore this should form part of the list of organizations which Catalonia should apply to in the first phase of the international recognition process.

4.2.2. Pan-European regional organizations: Council of Europe

As mentioned earlier, with regard to pan-European regional organizations, this report will only deal with the Council of Europe (COE).

[50] Convention establishing the World Intellectual Property Organization at http://www.wipo.int/treaties/en/convention/

It was established in 1949 before the European Communities. It is currently made up of 47 countries: all of those that can be regarded as European because part of their territory falls geographically within Europe (including Ukraine, Moldova, Turkey and the Russian Federation) and immediate neighbours (Armenia, Azerbaijan and Georgia). The exception is Byelorussia due to its non-compliance with the minimum standards of respect for human rights). There are also six states with observer status (Canada, USA, Israel, Japan, Mexico and the Vatican).

Its essential purpose is to promote and uphold human rights, for which it is the institution associated with the European Court of Human Rights and a guarantor of the European Convention on Human Rights (1950). It also deals with other topics such as democracy, the promotion of European citizenship, youth and interculturalism and promoting the rule of law. It also has a series of partial agreements which include the Development Bank, the European Directorate for the Quality of Medicines, the European Audiovisual Observatory and the Venice Commission (*European Commission for Democracy Through Law*)[51], whose work is given particular mention this Council's report on the Consultation[52]. It also played a key role in approving the documents that were used as a basis for the 'new Europe' that emerged at the end of the Cold War in the early 1990s.

Officially, a distinction should be made between the Committee of Ministers and the Parliamentary Assembly of the Council of Europe (PACE). The COE has great symbolic power, being Pan-European in the broadest sense, because it was formed before the integration of the European Communities and because of the importance and plurality of the issues it deals with.

Given the complexity of becoming a member of the EU *ex novo*, many countries have considered becoming a member of the COE as an initial step, or at least in parallel to the start of negotiations. In addition, given the fact that the observer states are such key players in the international community, such as the USA, Canada, Japan, Israel and Mexico, it is

[51] It is worth mentioning some of its other partial agreements, such as: the European Support Fund *Euroimages* for the joint production and distribution of films; *the European and Mediterranean Major Hazards, EUR-OPA*; the Partial Agreement on Sport; the Modern Languages Centre; the North-South Centre, etc. Some of these partial agreements allow accession without having to be a full member.

[52] See the CATN report: "*La consulta sobre el futur polític de Catalunya"*.

obvious that belonging to the COE also has an entirely global dimension. Consequently, belonging to the COE is an important milestone and should be a relatively early step in the process of international recognition and integration in the international community.

Moreover, membership would allow the full applicability of the European Convention on Human Rights. A recent report by the British government[53] considers that with regard to the European Convention on Human Rights (with everything that this implies jurisdictionally, i.e. the European Court of Human Rights), succession could be semi-automatic. Specifically, on this point Crawford and Boyle maintain that – based on the precedents of Montenegro and Czechoslovakia and on decisions already taken by the European Court of Human Rights – the application of the Convention could be considered as uninterrupted. Naturally, the same could be said of Catalonia's case.

There are two membership levels of the COE: Full membership, or intermediate membership (observer, associate or special guest). With regard to the intermediate status category, that of observer state is only advisable for states that have no intention of ever becoming a full member with full obligations; i.e. states that are happy to conform to partial participation in the institution's life[54]. The category of associate member, with additional requirements[55], allows the state to take part and vote in the Assembly but not the Committee of Ministers[56]. Finally, the category of special guest may seem very attractive at an initial phase for a new state, given that it allows that state to send a delegation to the Assembly, though obviously without voting rights. Moreover, precedent shows that this has been a regular route to full membership for many states[57]. In addition, the membership mechanism is simple: The

[53] With reference to J. Crawford and A. Boyle, Opinion: "*Referendum on the Independence of Scotland - International Laws Aspects*. Annex A" of Scotland Analysis. "*Devolutions and the Implications of Scottish Independence"*, London, The Stationery Office, February 2013.

[54] It allows the state to participate as an observer in the Committee of Ministers, the Assembly or both.

[55] Basically this means adhering to the Charter of Paris and the Helsinki Final Act (1975), the founding document of the Conference for Security and Co-operation in Europe, which later became the OSCE, the Organization for Security and Co-operation in Europe. The problem stems from the fact that the OSCE works by consensus; in other words, a single state can veto the accession of a new member.

[56] This is regarded as a relatively uninteresting category as it is little used and involves a procedural complexity that is very similar to that of a full member.

[57] At least twenty members of the current COE used this route to prepare their membership.

application is made and needs to be approved by an Assembly Committee and then by the Bureau or Secretariat (Procedural Rule 50 of the Council of Europe Assembly).

4.2.2.1. Membership procedure

Officially, a specific invitation is required from the Committee of Ministers, although in practice, recently (e.g. Montenegro) the process has started with a request from the candidate to the Secretary General of the COE. From that point, the process proceeds as follows:

- Request from a member state to include the accession of the candidate on the agenda of the Committee of Ministers.
- Resolution of the Committee of Ministers, formally requesting the views of the Assembly[58] with regard to the eventual accession.
- The Assembly receives the request and puts it forward for consideration to the Committee on Political Affairs and Democracy (AS/Pol), which appoints a speaker who prepares the draft Report, which needs to be approved by a majority of votes cast (with a minimum quorum). It then goes to the Committee on Legal Affairs and Human Rights (AS/Jur), which in turn appoints a speaker and prepares a second report, which also needs to be approved by a majority of votes cast (with a minimum quorum). Both reports must evaluate the state's compliance with a series of requirements relating to democracy, human rights and the rule of law, which should pose no problem at all for states that originally formed part of other member states, this being the case of Scotland and Catalonia.
- This fact, however, could entail a demand for a new ruling, in this case from the so-called Monitoring Committee, a procedure which was used in the case of Montenegro (agreed secession of a territory that had already formed part of the COE).
- The provisional opinions from the two (or three) committees mentioned above is then lodged with the Plenary of the Assembly, which has to approve it by a

[58] The matter can be simply procedural or political: In the case of Bosnia and Herzegovina, the Committee took three years to request the report from the Assembly.

majority of two-thirds of the votes cast, with the minimum participation of one-third of the member states. The decision of the Assembly is not binding, but in practice it would be difficult for the Committee to accept a new member if it were not approved by the Assembly.

- The Committee of Ministers then gives its judgement on the opinion of the Assembly. Membership requires a majority of two-thirds of all the members of the Committee of Ministers. There is one procedural regulation, however, that might present an obstacle: if the meeting is not made up entirely of the ministers of the member states but by delegates or representatives, there has to be a unanimous decision.

All in all, this is a potentially lengthy procedure, given the risk of certain phases being drawn out. It is also a demanding procedure, given that the Assembly and the Committee of Minsters require a majority of two-thirds (32 members in the case of the Committee, made up of 47 states). Practice has shown that both of these can prolong the accession formalities. On the one hand there are the problems deriving from the standards of human rights and rule of law, which explains why the case of Georgia took six years. However, this would not apply in the case of Catalonia. On the other hand, the lack of political will or the obstruction of other member states, or simply insufficient advance preparation and recognition before applying for accession. However, if political will exists, a case such as that of Montenegro could be resolved in less than one year.

In the case of Catalonia, it can be concluded that:

- Belonging to the COE is an essential milestone in the process of recognition, which needs to be prepared and applied for at a very early stage, along with everything else mentioned with regard to bilateral recognition, despite the long formal process.
- The symbolic importance of the COE suggests adapting the route of intermediate status as a special guest while preparing a favourable scenario for the formal request for accession as a full member. It is worth remembering in this respect that it will be necessary to secure the guaranteed votes of between 32 and 40 members.
- Another possibility that should be envisaged is that of requesting fast-track accession to certain partial agreements associated with the COE, arguing mutual interest and the possibility of certain automatism, such as the aforementioned opinion regarding the immediate applicability of the Convention on Human Rights. It has a symbolic and practical value and can facilitate negotiations.

4.2.3. Other organizations for consideration

Finally, we will look at two very different institutions: the International Criminal Court; the Permanent Court of Arbitration: The World Trade Organization; the International Organization for Migration, and the OECD and its subsidiary mechanisms.

A. International Criminal Court (ICC)

Created in 1998, based on the Rome Statute, which has been in force since 2002, this is the permanent international court of criminal justice for crimes of war, genocide and crimes against humanity (and, in the future, also for aggression). Although there are only 122 member states, with some significant absences, it has become a symbol of the fight against impunity and injustice.

The process of joining the ICC is straightforward: It is open to any state that presents a formal instrument of accession to the UN Secretary General in his capacity as depositary of the Rome Statute. Once the Statute has been signed, the state is given the status of

observer at the Assembly of States Parties to the Rome Statute and when the application has been ratified it becomes a full member.

It seems clear that Catalonia should not delay in requesting membership of this body during the first phase of the international recognition process.

B. Permanent Court of Arbitration (PCA)

This is a very long-standing IGO which was founded in 1899 as the result of the Hague Peace Conference, and specializes in providing arbitration services and other forms of dispute resolution between states, state organizations, IGOs and, in some cases, private entities. Although there are evident similarities in terms of principles and functions, it does not actually form part of the UN system.

It is regulated by two Conventions (1899 and 1907), has a membership of 115 countries, and has been enjoying a major resurgence in recent years, probably due to its association with aspects of international mercantile law (through its association with UNCITRAL) and maritime law (in association with UNCLOS, the UN Convention on the Law of the Sea).

This is an obvious choice for a new state such as Catalonia, which has a long-standing tradition of fomenting peace, and accession is a straightforward procedure, although there is the requirement of being a member of the UN before seeking accession. Once the country belongs to the UN, accession is simple. The provisions of the founding Conventions, the decision of the Board of Directors (2 December 1959) and the International Law Commission have established the possibility of membership by succession for new members of the UN which have formed part of one of the two founding conventions by means of a simple declaration of continuity sent to the Dutch government, which is the depositary of the Conventions[59].

The need to be a member of the UN means that this would have to be left for the second or third phase of the process.

[59] In this respect, see the paper by K. Bühler, *op. Cit,* pages 28-30.

C. World Trade Organization (WTO)

This organization was created in 1995 to succeed the General Agreements on Tariffs and Trade (GATT) that govern the trade agreements which regulate and define commercial relations between member states. Its medium- and long-term goal is to reduce or completely eliminate barriers to international trade. It is not part of the United Nations system nor, therefore, of international financial institutions, although there are forms of collaboration and cooperation. In recent years it has undergone a major crisis with the blocking of the Doha Development Round, something that has led the emergence of many multilateral trade agreements, particularly bilateral ones, outside the remit of the WTO. Even so, the Bali meeting (November 2013) facilitated the adoption of certain agreements and the improvement of some of the organization's operating regulations.

The organization currently comprises 159 full members and 25 observers, all of which (apart from the Vatican) are in the process of accession. The procedure requires a majority of two-thirds of the Ministerial Conference. In principle, any customs territory or state with full autonomy with regard to trade policies can join the WTO, in other words its Founding Agreement and the different multilateral trade agreements. The technicalities are also complicated: accession to the Agreements of Annex 4 has to be done separately and is governed by the regulations of each specific agreement. In practice, this means verifying categorically that the legal and trade structures of the candidate adhere to the principles and agreements of the WTO.

In any event, an important argument for a country that has been a member of the EU as part of another State, and is seeking fast-track continuity of this status, should not pose too many difficulties.

The formal process can be summed up as follows:

- The candidate prepares a report describing all the aspects of its trade policies associated with the WTO Agreements. This report or memorandum is examined by a WTO working committee which is open to all its members.
- From the time that the main substantive principles and policies have been examined, bilateral talks start between the candidates and each of the member states. The process is completed multilaterally, given that, in spite of these bilateral

negotiations, the principle of non-discrimination makes it essential to apply the candidate's commitments equally to every country.

- Once the working committee's task has ended (analysis of the trade system of the candidate and bilateral negotiations), it issues a report, a draft of the accession protocol and a timeline of the commitments to be undertaken by the new member if accepted.
- These three documents are submitted to the General Council or the Ministerial Conference which has to approve them by a majority of two-thirds, with no veto option. This is a large majority, but it should be remembered that the main difficulties, if there have been any of a political nature, will have already arisen during the bilateral phase. If approved, once the protocol is signed and eventually ratified, if this is a requirement of national law, the state acquires the status of member.

There are two final considerations, given the importance that belonging to the WTO as an independent state would have for Catalonia.

Firstly, the need to anticipate in the greatest possible detail all the pros and cons of the status of observer which, as we have already mentioned, implies in almost every case a prior condition to full membership, compatible with the relevant negotiations which would have to begin within a period no longer than five years since the start of the state's observer status.

Secondly, it should be remembered that EU Member States have a dual status in the WTO – as individual members and as part of the EU – a fact that often entails them forming opinions and voting as a block, as the EU holds exclusive competence in trade policies.

This is a factor worth considering, as in practice it informally links accession to the WTO with the path to integration of Catalonia in the EU. This means that the integration of Catalonia in the WTO would be immediate when Catalonia becomes a member of the EU, given the huge scope of power attributed to the EU in terms of trade policies.

It is also worth remembering in the context of relations between Catalonia and the WTO, in terms of negotiated functions, the impact of an eventual free trade or customs agreement which could be temporarily concluded between Catalonia and the EU. This agreement could be integrated in the WTO as a preferential trade agreement of the EU or a customs union,

constituting an exception to the clause of 'most favoured nation' in accordance with article XXIV of the GATT and article V of the GATS.

Overall, it is necessary to prepare for and embark on the process of accession in the first phase, making a decision on whether to seek the membership status of observer or not. Whatever the case, the process is always a lengthy one for technical reasons, as evidenced by the public list of ongoing negotiations.

D. Organization for Economic Cooperation and Development, OECD

The OECD was founded in 1961 and inherited the mechanisms of European consensus driven by the USA in the context of the *Marshall Plan* for regional reconstruction following the Second World War. It is made up of 34 countries. Its mission is to promote economic progress and world trade as well as democracy and a market economy. It has a number of subsidiary bodies in the form of committees, working groups, groups of experts, etc. Some of these subsidiary bodies are open to the participation of candidate countries.

Although officially it is just a forum or platform, the fact that its decisions are taken unanimously gives it added importance, particularly the OECD Council, its highest decision-making body.

The process of becoming a member is a potentially long and laborious one, given that it is based on a series of examinations to evaluate the suitability of the candidate and its true capacity to meet the standards of the organization. There are two ways of negotiating membership:

a) ongoing negotiations as per the 2007 decision (Slovenia, Estonia, Russian Federation, Israel and Chile have all submitted their instrument of accession)

b) the process known as *Enhanced Engagement*, aimed at emerging economies or countries

The usual procedure is summed up below:

- Preparation of a road map for membership.
- Reviews, without a predetermined timescale, the results of which must be reported to the Council.
- Unanimous decision of the Council, which implies the power of veto, allowing the candidate to lodge the instrument of accession with the treaty's depositary, France.

The complexity of the process and, above all, the requirement for a unanimous vote mean it would be prudent to wait for a later phase of the process of integration in the international community to start the accession process.

E. International Organization for Migration (IOM)

Founded in 1951, the organization currently has 155 member states and 11 observers and its operations focus on migration, providing services and advice to governments and migrants alike. It is not part of the UN system. It has a flexible structure, with offices and projects in more than a hundred countries, and the accession process is straightforward.

Its Constitution[60] establishes the following conditions and procedures:

- The candidate should demonstrate an interest in and a clear commitment to the principle of free movement of persons.
- The candidate should demonstrate that it is willing and able to make a financial contribution to the organization of at least its administrative requirements, a figure that will be agreed between the candidate and the IOM Council.
- The candidate is accepted by a two-thirds majority vote of the Council.
- The new member is required to formally accept the Constitution of the Organization.

Consequently, this would seem to be an organization which Catalonia, in both its own and

[60] See IOM Constitution, at htpp://www.iom.int/cms/constitution

the system's interests, should try to join at the start of the recognition process.

F. Interpol

Established in 1923, the International Criminal Police Organization[61] currently has 190 members and its work focuses mainly on public safety, terrorism, organized crime, the trafficking of people, arms and drugs, child pornography, money laundering, financial crimes and corruption. It has two main governing bodies, the General Assembly and the Executive Committee, as well as a Secretary General.

Membership is by a favourable vote of two-thirds of the members of the General Assembly. Given the current situation of the fight against certain forms of international terrorism, it seems obvious that it would be in nobody's interest for Catalonia to remain outside this organization. Therefore membership should be sought during the first phase of integration in the international community.

4.2.4. Budgetary implications

It is worth pointing out at the outset that Catalonia's progressive integration in the international community will have a significant monetary cost. In the short term, it would need to consider the expenses deriving from the formalities and contacts, the membership fees (both ordinary and extraordinary) involved in belonging to IGOs and the cost of maintaining representation as a result of establishing a Foreign Office and embassies, as well as the internal impact on the Government Administration. Taking the least speculative aspect into consideration, the fees for belonging to IGOs would amount to a figure of no less than 50 million euros at an advanced state of integration in the international community.

Obviously, membership of international financial institutions, which implies subscribing to capital stock and participating in extraordinary budgets, could significantly increase this figure. To make a proportional analogy with the economic indicators of states that have acceded recently, we could be talking about hundreds of millions of euros, which would need to be accounted for during the early years of the recognition process.

[61] The Constitution refers to the organization as 'criminal police' which is not regular parlance in Latin languages.

5. Summary and conclusions

5.1. Purpose

The purpose of this report is to analyse the challenges and strategies involved in the process of international recognition and integration to the international community in the eventuality of an independent Catalan state. This report is complemented by other reports such as those on the political future of Catalonia, the internationalization of the consultation and the process of self-determination, and the paths to integration in the European Union[62].

The specific objectives that determine the structure of this report are as follows:

- To describe the international recognition of states and how the process works, and extract the relevant guidance for the case of Catalonia.
- To study the procedural implications that might facilitate international recognition by and full insertion into the international community within the shortest possible time.
- To present criteria on how to approach the succession and ratification of international treaties.
- To recommend a strategy and course of action geared towards progressively facilitating international recognition and integration.

5.2. Sovereignty and international recognition

The subject of sovereignty and international recognition signifies, at present, entering into the field of international law and international relations, a field in which discussions, even academic ones, always have a significant contextual and evaluative onus.

[62] In this respect, see the CATN reports: “La consulta sobre el futur polític de Catalunya”, “Internacionalització de la consulta i del procés d’autodeterminació de Catalunya”, and “Les vies d’integració de Catalunya a la Unió Europea”.

We can distinguish three kinds of sovereignty:

- international legal;
- Westphalian, and
- domestic or internal, given that the concept, as mentioned earlier, encompasses various factors or elements.

The first of these, international legal sovereignty, simply implies the recognition of a state as such by other states and, consequently, its acceptance as a member of the international community (the right to have diplomatic representation and to be admitted, following application and acceptance, to international organizations). Westphalian sovereignty refers to independence and the principle of territorial integrity and the concept of non-interference in the internal affairs of other countries. Domestic sovereignty refers to the capacity of a state to govern and control its internal power structures effectively.

There are several examples of countries that are unable to demonstrate their complete capacity in all three components or types of sovereignty. Taiwan has Westphalian sovereignty and domestic sovereignty but it does not have full international recognition; in other words, it does not have full international legal sovereignty. Somalia continues to enjoy international legal sovereignty but for some years now it has not had full domestic sovereignty and probably nor does it have Westphalian sovereignty over its own territory and territorial waters. And if we consider the member states of the EU, it is obvious that they have international legal sovereignty and domestic sovereignty but they do not enjoy full Westphalian sovereignty, given that primary and secondary community laws, the prevalence of Community legislation and the taking of decisions by a qualified majority in European institutions means that in many public policies the Member States do not have full autonomy to decide and act in consequence.

Very few states today can demonstrate that they enjoy all three types of sovereignty, or the three differentiating factors or attributions of sovereignty, fully and exclusively.

5.2.1. Secession, legality and international law

The field of international legal sovereignty, in other words, the sphere that concerns the creation and extinction of states in the international judicial sphere, is a crucial issue, given

the dynamic situation and different transformations that states are constantly experiencing (annexations, secessions, extinctions, amongst others). The decolonization period (in the 1940s and 1950s) and the post-Cold War period throw up numerous examples of the modification of existing states and the creation of new ones.

The creation or extinction of states, the succession of states, can take place in different ways and in different circumstances, but the one in which we are interested here is the case of secession; of the creation of a state from another state, known as the parent state, to which it previously belonged. In practice, there are some very different examples of secession, resulting from the processes of decolonization, agreements, internal conflicts or internationalized conflicts, amongst others. With regard to the way these secessions happen, there are two main examples:

Secession is not prohibited *per se* in international law, nor is it legal *a priori*, as demonstrated in the report drawn up by this Council entitled "*The Consultation on the Political Future of Catalonia*"[63], in reference to the consultative opinion on Kosovo. Legality is considered on a case-by-case basis and, in doing so, pragmatic considerations are often the starting point; thus what has become normal or consolidated is eventually considered to be legal. In practice, the international community has not generally condemned most cases of secession: It has only considered to be unlawful those cases in which the secession involved the violation of a peremptory norm of international law. The reason is that there is no binding international law that explicitly prohibits this conduct.

Nor can it be asserted, based on international law at least, that a unilateral declaration of independence is illegal, even though it may clearly contradict the internal laws of the parent state where it takes place (as ruled upon in the case of the unilateral declaration of independence of Kosovo).

The process of creating a new state, based on secession, will be consolidated, or not, as a practical action. Nothing can be predetermined in advance. Naturally, the way in which the secession process takes place – whether there have been efforts to reach internal agreements or not, whether there are allies interested in recognizing the new state or not, and other pragmatic considerations – will be the keys to the relatively quick and

[63] See the CATN report: "*La consulta sobre el futur polític de Catalunya".*

straightforward recognition and integration in the international community. In other words, the fact that secession is not *a priori* either legal nor illegal does not detract any importance whatsoever from the way in which it happens, the reasons that justify it and the work to create a climate of trust and shared interests to ensure that the international community has absolutely no doubt that this new entity fulfils all the requirements and conditions of a state.

5.2.2. International Recognition of States

There is a long-standing debate between two schools of thought – philosophical and legal – on the subject of recognition, known respectively as "constitutive recognition" and "declaratory recognition." The constitutive theory holds that a state is only a state when it is recognized as such, while the declaratory theory claims that a state is a state by virtue of its possession of the legal attributes and criteria to be regarded as such, regardless of recognition from other states. In practice, both of them are related: they entail demonstrating that it is really a state (i.e. complies with legal criteria) as a necessary condition, though not sufficient, for full integration in the international community, which demands broad recognition.

Recognition is a unilateral, discretional and political action where by state X recognizes state Y, because international law does not oblige states to recognize other states. Even though it is a free action, it generates a legal effect. Recognition can be effected in different ways: explicitly, with an official legal ceremony of recognition; or tacitly, establishing diplomatic relations or voting in favour of the accession of a particular state to an intergovernmental organization. In all cases, recognition implies that whoever does the recognizing appreciates that the other is an "equal", a state, and fulfils the requirements of "statehood."

The practical manifestation of the notion of "statehood" is described in the Montevideo doctrines and principles (1933). These established that a state should have:

- a permanent population
- a defined territory
- a government, with clear authority over this population and territory
- the capacity to enter into relations with other states

Proof of categorical compliance with the first four conditions is the first phase of the recognition process, which is accompanied by negotiations, recognitions, a formal reception clause in international law and initial requests for accession to international organizations.

With regard to the EU, in the sphere of its Common Foreign and Security Policy (CFSP), a common position was adopted by Foreign Affairs ministers at the start of the post-Cold War period (16 December 1991) which agreed on the requirements for new states to be given formal recognition. It specifies that: it must respect the provisions of the United Nations Charter, the Helsinki Final Act and the Charter of Paris for a New Europe; it must guarantee the rights of minorities and other groups in accordance with the undertakings made in the framework of the Organization for Safety and Cooperation in Europe (OSCE); it must respect the inviolability of borders, which can only be changed by peaceful means and mutual agreement; it must accept the commitments made on disarmament, nuclear non-proliferation and regional security and stability; and it must demonstrate a commitment to resolving by means of consensus all issues concerning the succession of states and other regional disputes.

In the specific case of Catalonia, before embarking on a formal process to seek recognition it would be advisable for the new state:

- To be capable of demonstrating that it is a state; in other words, that it complies with the international criteria and standards described above. This entails clearly demonstrating that there is a population; that a majority of this population accepts the new situation; that there is a defined territory and that a legitimate authority is efficiently exercising its competences over this population and territory; although if the process is not fully agreed, certain temporary problems may arise in terms of overlapping authority or territorial control.
- To seek out, before its proclamation of independence, possible support for the process of recognition, with potential supporters and promoters. Proceeding in this way ensures *a priori* a minimum of recognition, both bilateral and multilateral, which will also serve as a practical demonstration of compliance with the fourth Montevideo principle (having the capacity to establish relations with other members of the international community).

- Establish a clear strategy – progressive, with well thought-out, realistic and very detailed priorities – to gradually achieve bilateral and multilateral recognition, combining conventional diplomatic actions with different offers that imply sharing benefits in the present and future. It is particularly important to draw up a credible summary of the added values and comparative advantages that the new state could offer the international community.
- It must never be forgotten, and the population must be duly informed, that the recognition process is always a gradual one, for both political and technical reasons, and that its culmination requires a certain amount of time.
- Avoid making premature demands, especially in the case of multilateral recognition, and bear in mind "case by case" the possible effects of "group-oriented voting."

5.3. Succession in terms of international treaties

This is a sphere that has few completely established and broadly accepted rules, as demonstrated by the fact that two international treaties which regulate it, the Vienna Convention on Succession of States (1978) and the Vienna Convention on Succession of States in respect of State Property, Archives and Debts (1983) are either not currently in force (the 1983 Convention) or have been ratified by a very small number of states (the 1978 Convention). Consequently, this issue is not subject to compulsory international regulations for all the states belonging to the international community.

It follows that, in the case of Catalonia, and given that we do not know whether the scenario after independence will be one of collaboration or of non-agreement, different courses or procedures for establishing everything in relation to succession will need to be explored and almost certainly implemented. In this section the report first looks at the formal reception clause in international law before addressing the rules for succession and ratification of treaties pursuant to the 1978 Convention and providing some doctrinal comments in this respect. Finally, it analyses the issue of the treaties.

The first measure that would need to be adopted by an eventual independent Catalan state would be to establish a formal reception clause in international law in the provisional constitutional law, as already mentioned in this Council's report on the constituent process[64]. The clause would need to state that the principles and general rules of international law, especially in relation to fundamental rights, are considered as an integral part of the law in Catalonia.

With regard to the succession of treaties, there is a need to consider various suppositions, given that the Vienna Convention of 1978 provides relevant rules although it is not a mandatory international regulation for all the states in the international community.

Firstly, and as a general rule for states emerging from the decolonization process, it envisages the rule of "tabula rasa": that newly -independent states are not bound to maintain in force, or to become a party to, any treaty by reason only of the fact that at the date of the succession of States the treaty had been in force in respect of the territory to which the succession of States related (article 16). The practice supports the theory whereby a successor state does not automatically take on the rights, obligations and powers of the predecessor state. Secondly, this is presented in the Convention as a free option, as a possible choice, a right of the successor state to participate and, therefore, to apply multilateral treaties without having adhered to or ratified them again (article 17).

Setting aside the cases of decolonization, the general rule in the event of a separation of states is that of the continuity of conventional obligations in order to preserve stability, although there are exceptions and nuances to this. Specifically, in the case of the separation of parts of a State, it envisages that:

- the treaties in force at the time of the succession continue in force in the rest of the territory of the predecessor state, if this continues to exist (art. 35)
- the treaties in force at the time of the succession continue in force with respect to each successor state (article 34)

In the cases in which the principle of continuity applies, the notification of the succession is used to expressly confirm the acceptance of this principle, in order to preserve legal certainty and the stability of international relations.

[64] See the CATN report: "*El procés constituent*".

It is worth pointing out, fourthly, that the main exception is that the rules mentioned in the Vienna Convention do not apply if there is no agreement between the parties. The main clause on flexibility is particularly interesting, which establishes that continuity shall not apply when "it appears from the treaty or is otherwise established that the application of the treaty to that territory would be incompatible with the object and purpose of the treaty or would radically change the conditions for its operation" (articles 34 and 35).

In the case of Catalonia, it is also interesting to mention the notes made by the Committee of Legal Advisers on Public International Law (CAHDI) in January 1992 in relation to the matter of the succession of states in Europe. It said, specifically, that there is a tendency in favour of the continuity of treaties in force, but there are different opinions on the question of whether they should continue automatically or be based on the consent of the parties involved. Whatever the case, they believed it was necessary to address the issue from a pragmatic perspective involving dialogue between the parties.

To conclude, the existing practice is varied and even contradictory. Moreover, specific cases show that the solutions do not respond to legal considerations but, above all, to pragmatic and opportunistic considerations, which makes it difficult to extract general rules. This is the reason that explains why the regulation of succession is an incomplete task, subject to progressive development. Nevertheless, for the purposes of this report, one could maintain that certain principles prevail which can be summed up as follows: the succession must lead to an equitable outcome, based on the freedom of the states concerned to establish this equitable outcome by mutual agreement. And finally, it could also be said that all the parties involved in the succession must respect the peremptory norms of general international law, especially those relating to the fundamental rights of the individual and the rights of peoples and minorities.

With regard to the recommended approach in the case of succession in terms of treaties for an eventual independent Catalonia, it would be advisable to combine two strategies:

- To initiate negotiations based on a detailed case-by-case analysis to confirm the continuity, or not, of the treaties to which Spain subscribes, broadly distinguishing the different types of treaties. It should be remembered here that we are talking about thousands of international treaties.

- Regardless of the outcome of the above section, to subscribe to a series of treaties of particular interest in terms of: the codification of international law[65]; the international protection of human rights[66]; humanitarian law[67]; economic and tax matters[68]; and private international laws, such as those relating to international adoption, the legalization of documents and intellectual and industrial property rights.

Thus as mentioned in section 4 of the report, embarking on the accession process, in phases, to the various treaties that allow accession to different international intergovernmental organizations.

5.4. Membership of international intergovernmental organizations and the paths to recognition

International intergovernmental organizations (IGOs), though a relatively recent element of international relations, emerged in the early 19th century initially in areas such as river navigation and postal and telegraphic communications, and have developed a great deal in the last two centuries. Today there are thousands of these organizations which cover every field of international life. They have become so important that it could be claimed that some 250 “conventional” IGOs play a key role as regulators of the conduct and relations between states. They do much more than simply execute agreements established by their member states: they take decisions that affect every single corner of the planet and hence the lives of their inhabitants, affecting issues concerning internal or domestic sovereignty, the

[65] The Vienna Convention on the Law of Treaties, for example.

[66] The International Covenant on Civil and Political Rights, the Convention on the Prevention and Punishment of the Crime of Genocide, the International Convention on the Elimination of All Forms of Racial Discrimination and the basic documents of the European System for the Protection of Human Rights.

[67] The First Geneva Convention for the Amelioration of the Condition of the Wounded in Armies in the Field; the Second Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, etc.

[68] For example, treaties to regulate double taxation.

competences that up until very recently were regarded as the private matters of national governments.

In the case of Catalonia, it is clear that belonging to IGOs is an essential route for recognition and for effective integration in the international community. Moreover, in order to better understand what these IGOs do, which ones to belong to, where to start and with what kind of strategy, it is necessary to study the IGOs, understand what they are, one by one, or by establishing affinities by type. This will help in deciding the best time and the best strategy for preparing accession; what added value this organization can offer the new states; and what specific contribution the new state can make in terms of the knowledge and practice community, experience and proven good practices.

In this respect, some criteria are given below for consideration in the case of Catalonia:

- Firstly, we should start by remembering the abovementioned reception in Catalonia's internal legislation, as part of provisional constituent law, of the principles, values and regulations of international law, adding a specific mention of support for and commitment to multilateralism.
- Recognition should start with the IGOs whose member states do not have the option of veto, those with a high symbolic value – such as the Council of Europe – or those which have less complicated accession procedures.
- At the heart of the strategy should be Catalonia's secular vocation for internationalization, fostering peace and international solidarity, and Catalan society's quest for free and responsible commercial and cultural relations, these being understood as added values which form part of the backbone of its foreign policy.
- When it comes to prioritizing, various phases and stages should be established, each combining research on accession to the IGO in terms of political, social, cultural, human rights, economic and public safety aspects.
- A strategy should be arranged and, if possible, a shared road map with the different public and private actors, taking advantage of the tradition and strength of the international presence of Catalan civil society and the numerous practices of

public diplomacy in the field of development cooperation, peace, wellbeing, human rights, culture and sport.

- During the transition period, any applications for accession to international organizations that have no political consensus in Catalonia should be adjourned.

5.4.1. Multilateral recognition

Conceptually, there are three ways of becoming a member of an IGO:

a) by means of a formal accession process

b) by means of a simple unilateral act

c) by means of succession, in the context of an explicit provision in the organization's convention

In practice, however, the basic path is the formal process and the most widely used, examples of unilateral declarations having dropped considerably and there being only one significant case of succession by explicit provision (Permanent Court of Arbitration). Therefore the general rule is the formal accession procedure which, in turn, is hugely varied.

Despite this heterogeneity, we can distinguish two cases of formal procedures for accession as a new member of an IGO:

- organizations with complicated and restrictive accession procedures
- organizations with relatively open and straightforward procedures

In the first case, these restrictions derive from unanimous decision-making systems which allow a veto, or, to a lesser extent, systems with qualified majorities which allow blocking minorities to be established. In these cases, it is advisable to make an accurate analysis before proceeding to apply for accession. The second case concerns organizations which have a decision-making system with open procedures, even though in some cases the administrative formalities can be a long drawn-out process.

It is also worth pointing out that some IGOs, as well as a formal procedure, have their own particular customs and procedures, such as the power to adapt the standard procedure for specific cases. This is the case, for example, of the institutions deriving from the Bretton Woods agreements (International Monetary Fund, IMF, World Bank Group).

Given the difficulty of establishing any general rules, we have chosen to classify the IGOs in several large and relatively discretional categories, making a partial study by group and case.

5.4.2. Analysis of the provisions for accession to the leading IGOs and recent practice

The report divides the leading IGOs under analysis into three large categories (the EU and security organizations have been left out as they are covered in another report):

- the United Nations system
- regional pan-European type organizations
- other organizations

On this point the summary will be very succinct and the relevant section of the report should be referred to for more details.

A. Criteria and procedures for accession to the UN system

Membership of the UN and hence a regular presence in its main bodies has become a symbol of full integration in the international community, even though in formal terms the UN does not recognize states. Being a member of the UN not only means forming part of its main bodies but also often offers the possibility of acceding, by means of a unilateral act, many of its specialized agencies, and lastly many of its specific mechanisms (funds, programmes, specialized or regional commissions, research and training institutes, subsidiary organizations, amongst others). Nevertheless, in some cases it is not necessary to be a member of the UN in order to be a member of one of its specialized agencies, given that as they have their own international legal personality, they have their own membership or accession procedures.

B. Accession to the United Nations

There is a precise and very well-defined procedure:

a) The candidate country sends a formal notice to the Secretary General of the UN accompanied by a formal instrument of acceptance of the obligations set forth in the UN Charter;

b) The Secretary General informs the Security Council;

c) Unless the Security Council decides otherwise, its President refers the matter to the new members Admissions Committee which will examine the request and present their findings to the Council;

d) The Council must decide if it will recommend the admission of the candidate or not or if the request should be deferred. As approval is an important matter, it requires at least nine votes in favour and no votes against from any of the five permanent members of the Council.

e) If the Council decides to recommend admission it should then be debated by the General Assembly. If at least two-thirds of the members vote in favour, the Secretary General advises the applicant country and the admission takes immediate effect.

f) If the Council does not recommend admission or postpones the decision, the General Assembly can study the matter in depth and decide to resubmit the application to the Security Council, along with a full record of the discussion so that the case can be re-examined and a recommendation or report formulated.

There are five conditions that need to be satisfied as an essential condition of accession:

- to be a state
- to be peace-loving
- to accept the obligations of the Charter
- to be able to comply with the aforementioned conditions
- to be expressly willing to do so

The second, third and fourth conditions in the request for admission, even though they may be self-evident, must be explained through formal and explicit declarations.

In the case of Catalonia, the essential task does not lie in fulfilling the five abovementioned requirements but rather in achieving the nine votes in favour and not one vote against from the Security Council firstly, and then two-thirds of the votes in favour from the General Assembly. The report makes some more detailed considerations in this respect.

As a final recommendation, one must reiterate the fact that it would not be advisable to embark on an application to enter the UN quickly or precipitately, despite its purely symbolic nature. It is necessary to ensure, at the very least, that there are a large number of recognitions, sufficient knowledge of the reasoning and role of the new state in the international community and a scenario of collaborative and settled bilateral relations with Spain.

C. Specialized agencies

The report lists some of these agencies in detail, differentiating between:

a) international financial institutions (International Monetary Fund, IMF, and the World Bank Group, WBG)

b) large specialized agencies (the UN Food and Agriculture Organization (FAO); the World Health Organization (WHO); the International Telecommunications Union (ITU) and UNESCO)

c) other organizations (World Intellectual Property Organization, WIPO). In every case it makes an analysis, based on treaties and recent practice, of the provisions for accession, the eventual preliminary requirements and the decision-making process, whether relatively open or complex, or those that require very significant majorities

Suggestions for action are made on a case-by-case basis. It is advisable to embark on the accession process during the first phase of the recognition process in the case of specialized agencies such as the FAO, ILO, WHO, ITU, UNESCO, WTO and WIPO.

D. Regional pan-European organizations: Council of Europe

The Council of Europe, as an institution that preceded the European Communities, is regarded as a priority due to its symbolism, its competences and functions, and its membership procedure. It is recommended to seek full membership status right from the first phase of the international recognition process, but also considering, at the same time, opting for one of the three options for states with intermediate status – that of special guest.

It should be highlighted that there is no particular technical difficulty or challenges in the realm of human rights standards, but even though there is no veto the formalities can be faster or slower depending on the political will of its members. The case of Montenegro, for example, was resolved in less than one year. Hence the interest in having the status of special guest during negotiations.

In addition, it should be noted that a recent report by the British government considers that, with regard to the European Convention on Human Rights, succession could be semi-automatic. Specifically, on this point Crawford and Boyle maintain that – based on the precedents of Montenegro and Czechoslovakia and on decisions already taken by the European Court of Human Rights – the application of the Convention could be considered as uninterrupted. Naturally, the same could be said of Catalonia's case.

E. Other organizations

Six cases have been considered which, like the previous ones, have been studied from the point of view of the procedures for admission and membership. Firstly, the International Criminal Court, to which it is recommended to apply right from the outset. Secondly, the Permanent Court of Arbitration, which is also regarded as important for the first phase. Thirdly, the World Trade Organization (WTO), which would be an important membership for Catalonia. It should be explained that a state can belong to the WTO as part of the European Union, as a specific state (complying with the envisaged procedure, which combines bilateral and multilateral phases) and indirectly, in the possible case of a temporary free trade agreement or customs agreement with the EU, which could later be integrated in the WTO as a preferential EU trade agreement or a customs union (an exception to the 'most favoured nation' clause). It is recommend preparing for the membership process from the first phase, given that the procedure is always a long one, while also evaluating whether or not it might

be advisable to seek the status of observer member. Fourthly, membership of the Organization for Economic Cooperation and Development (OECD) is recommended to be left until a more advanced phase of integration in the international community due to the complexity of the procedure and the requirement for a unanimous decision. Fifthly, the International Organization for Migration (IOM), to which it is recommended that Catalonia seeks membership in the first phase. Finally, the case of Interpol was analysed, to which, given the current cooperation of the whole international community in fighting certain forms of international terrorism, it is recommended applying for membership in the first phase, as this would be beneficial for all concerned, including Catalonia.

F. Budgetary implications

First and foremost, it should be pointed out that the progressive integration of Catalonia into the international community would have a significant financial cost. In the short term, it would need to consider the expenses deriving from the formalities and contacts, the membership fees (both ordinary and extraordinary) involved in belonging to IGOs and the cost of maintaining representation as a result of establishing a Foreign Office and embassies, as well as the internal impact on the Government Administration. Taking the least speculative aspect into consideration, the fees for belonging to IGOs would amount to a figure of no less than 50 million euros at an advanced state of integration in the international community. With regard to the expenses deriving from membership of international financial institutions, particularly subscribing to capital stock, the final cost, to make a proportional analogy with the economic indicators of the most recent countries to join, may entail – by the end of the process, hence in several years – a figure of hundreds of millions of euros.

This report on *Integration in the International Community* has been prepared by the *Consell Assessor per a la Transició Nacional* (Advisory Council on the National Transition), which is composed of the following members:

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