

# The EU's Ambiguous Stance on Separatism: Lessons from Catalonia, Kosovo, and Nagorno-Karabakh

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In October 2017, the Catalanian government held a referendum on Catalan independence which was subsequently declared illegal by Spain on the grounds that it violated the Spanish Constitution. The vote triggered the invocation of Article 155 of the Spanish Constitution, which allowed the central government in Madrid to suspend Catalonia's self-rule. The situation has forced Catalonia into the international spotlight as a potential precursor of other breakaway regions in the EU. Since these separatist movements pose a threat to global and regional stability, their potential spread throughout Europe brings to the fore a pressing challenge that the EU urgently needs to address. The events in Catalonia are the result not only of the complexity of internal Spanish politics, but also reflect a more fundamental issue of how European institutions decide to handle matters of territorial integrity and self-determination in general while continuing to test the adequacy of the EU's response to these issues in the changing context of international politics. Therefore, this new political context represents a good opportunity to assess whether the EU's stance on these issues has been consistent so far and whether the EU has, perhaps unintentionally, enabled separatist movements.

Keywords: EU, separatism, self-determination, Kosovo, Catalonia, Nagorno-Karabakh



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## ***Introduction***

Over the past few years, we have tended to think of the growing European fragmentation in terms of Brexit, a deep economic divide, and nativist populism. However, the Catalan crisis has shown that there is another force of fragmentation in Europe to watch out for, and that is the rising challenge to the nation-state from below. While it is true that devolving more power to regional authorities in line with the EU's subsidiarity principle has had undeniable benefits and helped to address the widespread frustration many voters feel towards the national governments, it also inflamed separatist movements throughout Europe by strengthening the illusion that local populists could deliver better results than central governments. Contemporary separatist movements can epitomize the dangerous logic of national purity and ethnic cleansing that denies any possibility for a more inclusive and tolerant notion of the nation to exist. As such, modern-day separatism can represent some of the ills of ethnic nationalism that post-war Europe wished to contain and thus go diametrically against the very ethos of the European project, which is based on the ideals of inclusive solidarity and social integration.<sup>1</sup>

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In this context, the EU itself bears substantial responsibility for the rising tide of separatism in Europe since its ambiguous position on territorial integrity and self-determination has convinced secessionist groups that the EU's stance on the issue largely depends on how the latter has been framed. That is why separatists believe that they can successfully lobby the Union for the support, regardless of whether the EU officials have warned otherwise. Against this background, this paper examines how the EU's position on these issues affects secessionist movements throughout Europe. It aims to address two issues. Firstly, it will compare and contrast the EU's response to separatism in Catalonia, Kosovo, and Nagorno-Karabakh. Secondly, it will analyze the effect that the EU's reaction in each of those cases has had on separatist politics in Europe as a whole.

The paper proceeds as follows: After a brief introduction to the

<sup>1</sup> For further discussion of this issue, see, for example, Weiler, J. (2017), 'Secessionism and Its Discontents', in Closa, C. (ed.), *Secession from a Member State and Withdrawal from the European Union: Troubled Membership*. Cambridge: Cambridge University Press, pp. 12-31.

argument, in the first part the paper analyzes the EU's reaction to the Catalan crisis. The second part focuses on the radical divergence between the EU's response to Catalonia, on the one hand, and Kosovo, on the other. It also analyzes how the EU's reaction to the Kosovo case affected separatist movements throughout Europe. The third part examines the EU's stance on the Nagorno-Karabakh conflict and how it affects the peace process. The fourth and final part reflects on the similarities and differences of the EU's response in each of these cases and some challenges ahead for the EU considering the inconsistent nature of the EU's policy on this front.

### ***Catalonian Separatism in the Wider European Context***

In October 2017, the Catalanian government held a referendum on Catalan independence which has been declared illegal by Spain on the grounds that it violated the Spanish Constitution. The vote triggered the invocation of Article 155 of the Spanish Constitution, which allowed the central government in Madrid to suspend Catalonia's self-rule.

Under EU law, the legality of secession depends on whether it is contested by the parent state. For instance, unlike the Catalan case, the key factor in the Scottish case was that its 2014 independence referendum took place with the explicit consent of the UK Government, which is somewhat unproblematic. EU law requires the Union to “respect ... essential [Member] State functions, including ensuring the territorial integrity of the State.”<sup>2</sup> At the same time, there is “no counter-balancing reference to self-determination at the sub-national level, and indeed regional government is described as an aspect of existing Member States' national identities.”<sup>3</sup> That is why Madrid's opposition to Catalanian separatism has a solid legal rationale. Catalonia might have substantial grievances over how the central government chose to treat the region in the past or even a legitimate dispute with Madrid over the degree of autonomy,

2 European Union (2010), *Consolidated Version of the Treaty on European Union*. Available at: [https://eur-lex.europa.eu/resource.html?uri=cellar:2bf140bf-a3f8-4ab2-b506-fd71826e6da6.0023.02/DOC\\_1&format=PDF](https://eur-lex.europa.eu/resource.html?uri=cellar:2bf140bf-a3f8-4ab2-b506-fd71826e6da6.0023.02/DOC_1&format=PDF) (Accessed: 29 November 2017).

3 Peers, S. (2015), ‘Homage to Catalonia? EU Law and Independence Movements’, *EU Law Analysis*, 29 September. Available at: <http://eulawanalysis.blogspot.com/2015/09/homage-to-catalonia-eu-law-and.html> (Accessed: 23 January 2018).

especially with regard to control of its finances, but, in the end, Catalonia's grievances, however serious, come nowhere close to the threshold of justifying separatism.

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*Moreover, Spain's opposition to the Catalan independence referendum has a sound democratic rationale as well. The referendum on Catalan independence was not just illegal; it was also fundamentally undemocratic.*

also fundamentally undemocratic.<sup>4</sup> Only 43 percent of eligible Catalans turned out at the polls for the referendum, which compelled even Barcelona's mayor, Ada Colau, an independence supporter, to raise doubts about whether such a poorly organized referendum could serve as a basis for a unilateral declaration of independence.<sup>5</sup> Over the years, opinion polls have invariably demonstrated that, although a vast majority of the Catalan population would like to have a say on the region's political future, there is no clear majority that wants unilaterally to secede.<sup>6</sup> The lack of a well-defined pro-secessionist majority indicates

that Catalonia is deeply divided over the issue of independence and that there might be a "silent majority" that does not want Catalonia to separate from Spain.<sup>7</sup>

However, even if a clear pro-independence majority of Catalans had voted for secession, that would not make any difference at all. In practice, such a referendum is nothing more than an opinion poll. Under international law, a unilateral declaration of independence based on a referendum is no more legitimate than a unilateral secession without a popular vote. As James Crawford argues, "there is no recognition of a unilateral right to secede based merely on a majority vote of the population of a given subdivision or territory. In principle, self-determination for peoples or groups within the state is to be achieved by participation in its

4 Varadarajan, T. (2017), 'Catalonia's "kangaroo referendum" leaves Spain in poisonous gridlock', *Politico*. Available at: <https://www.politico.eu/article/carles-puigdemont-catalonia-referendum-spain-kangaroo-referendum-leaves-spain-in-poisonous-gridlock/> (Accessed: 12 January 2018).

5 Ben-Ami, S. (2017), 'Why Catalonia's Independence Bid is Failing', *Project Syndicate*. Available at: <https://www.project-syndicate.org/commentary/catalonia-puigdemont-speech-independence-failure-by-shlomo-ben-ami-2017-10> (Accessed: 12 January 2018).

6 Mari-Close, P. and Molina, I. (2017), 'Catalans don't want to secede, they want to be heard', *Politico*. Available at: <https://www.politico.eu/article/catalonia-referendum-independence-want-to-vote-not-secede/> (Accessed: 29 January 2018).

7 Tisdall, S. (2017), 'Catalan leader faces dilemma as silent majority finds its voice', *The Guardian*. Available at: <https://www.theguardian.com/world/2017/oct/08/catalan-leader-faces-dilemma-as-silent-majority-finds-its-voice> (Accessed: 29 January 2018).

constitutional system, and on the basis of respect for its territorial integrity.”<sup>8</sup> In essence, it is a free speech issue. Just because someone can say that they are independent does not make it a legally-binding reality. According to Crawford, “In many cases referenda conducted in territories wishing to secede have returned very substantial majorities in favour (in the range of 65-99%). But even in cases where there is a strong and continued call for independence, it is a matter for the government of the State concerned to consider how to respond.”<sup>9</sup>

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Another issue with such a referendum, as Joseph S. Nye puts it, “is how one weighs the interests of those left behind.”<sup>10</sup> Catalonia’s departure would cause massive economic damage to Spain and it stands to reason that the whole population of Spain, not just the Catalans, should have their voice heard on Catalonia’s independence. Just like the Catalans, all citizens of Spain have a right of self-determination, as well, which incorporates, among other things, the right to vote on the future of their country and not to have their country torn apart.

Separatists both within and around Europe always aim at gathering the sympathy of other European states for their cause by attempting to present a moral argument for separatism. The demand for secession is often framed in moral terms, portrayed as a democratic claim, and linked to European values in one way or another. For instance, after the invocation of Article 155, Carles Puigdemont, the sacked Catalan president, ran to Brussels to muster support for his cause by “put[ting] the Catalan problem at the heart of the European Union.” Puigdemont’s strategy to compel the European community to intervene in Spain by trying to convince them that, just like in Kosovo, there is no other viable solution except to secede in the face of the “authoritarian nature” of the Spanish central government has largely failed.<sup>11</sup>

8 Crawford, J. (1997), ‘State Practice and International Law in Relation to Unilateral Secession’, *Report to Government of Canada Concerning Unilateral Secession by Quebec*, para. 67 (a).

9 Crawford, J. (2006), *The Creation of States in International Law*. Oxford: Oxford University Press, p.417.

10 Nye, J. (2017), ‘The Who, Where, and When of Secession’, *Project Syndicate*. Available at: <https://www.project-syndicate.org/commentary/self-determination-problems-catalonia-kurdistan-by-joseph-s--nye-2017-09> (Accessed: 29 January 2018).

11 Encarnacion, O. (2017), ‘Catalonia’s Martyrdom Strategy Doesn’t Have a Prayer’, *Foreign Policy*. Available at: <http://foreignpolicy.com/2017/11/01/catalonias-martyrdom-strategy-doesnt-have-a-prayer/> (Accessed: 29 January 2018).

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Spain managed to muster international support against separatist forces before the vote. Prior to the referendum, the Prime Minister of Spain visited Berlin and Washington, where he received an affirmation that neither the U.S. nor Germany would recognize Catalonia's independence. He was also reassured by Brussels that in case of separation Catalonia would automatically find itself outside the EU.<sup>12</sup>

From the start, the EU maintained an unwavering position on Catalan separatism. It condemned any attempt by Catalonia to secede in the strongest possible terms and repeatedly insisted that the referendum was an internal Spanish matter and that the constitutional order of Spain should be respected.<sup>13</sup> As early as January 2016, Martin

Schulz, at the time the President of the European Parliament, stated that the Catalan question "must be dealt with within the framework of the Constitution, not in a debate in the European Parliament or in Brussels."<sup>14</sup> In March 2017, Antonio Tajani, Schulz's successor, issued an even harsher statement against Catalan separatism, declaring that "those who act against the Spanish Constitution are also acting against the European order."<sup>15</sup> In October 2017, the Commission doubled down on the so-called "Barroso Doctrine" by warning that a region or territory that opts to secede from a member state, even if a referendum were to be state-sanctioned, would automatically find itself outside the EU.<sup>16</sup>

On a continent with more than 250 regions,<sup>17</sup> there is a

12 For a further discussion of Spain's strategy of counter-secession, see, for example Encarnacion, O. (2017), 'The Catalan Independence Movement's Shifting Fortunes: How Rajoy Outmaneuvered a Fragile Coalition', *Foreign Affairs*. Available at: <https://www.foreignaffairs.com/articles/europe/2017-10-16/catalan-independence-movements-shifting-fortunes> (Accessed: 12 March 2018).

13 European Commission (2017), *Statement on the events in Catalonia*. Available at: [http://europa.eu/rapid/press-release\\_STATEMENT-17-3626\\_en.htm](http://europa.eu/rapid/press-release_STATEMENT-17-3626_en.htm) (Accessed: 29 March 2018).

14 Catalonia Votes (2016), 'Juncker urges Spain to form "stable government" amid Catalan independence crisis'. Available at: <http://www.cataloniavotes.eu/en/juncker-urges-spain-to-form-stable-government-amid-catalan-independence-crisis/> (Accessed: 4 March 2018).

15 Palau, S. and Roozenbeek, J. (2017) 'Catalonia and Scotland at core of Europe's geopolitical conundrum', *Euobserver*. Available at: <https://euobserver.com/opinion/137334> (Accessed: 4 December 2018).

16 European Commission, *Statement on the events in Catalonia*.

17 The figure of 250 regions comes from the official website for the Assembly of European Regions. Available at: <https://aer.eu/10-recommendations-for-the-regions-to-overcome-the-crisis/> (Accessed: 12 March 2018).

pragmatic argument for a tougher stance on separatism. The decision-making structure of the European Union is already overwhelmed by twenty-eight Member States. Accepting new members born out of regressive separatist and nationalist sentiment, which is based, for the most part, on some form of atavistic xenophobia, would render the decision-making process in the EU virtually paralyzed. Commenting on the Catalan independence bid, the head of the European Commission, Jean-Claude Juncker, noted: “I wouldn’t like a European Union in 15 years that consists of some 98 states. It’s already relatively difficult with 28 and with 27 not easier, but with 98 it would simply be impossible.”<sup>18</sup>

EU member states also, for the most part, have kept a uniform stance on the Catalan matter, unequivocally condemning any talk of secession. Following the referendum, major European powers such as France, the UK, and Germany reiterated their opposition to the Catalan separatism by turning down Catalonia’s plea for international mediation and declaring that they would not recognize an independent Catalonia.<sup>19</sup> The vocal rejection of support for Catalan secession by EU member states has been based on self-preservation, and understandably so. All major EU powers are facing the challenge of separatism—and none of them wants to trigger a domino effect across the continent by supporting the Catalan separatist drive.

However, all the statements against unilateral secessionism from the EU have not discouraged separatists from framing their cause as extremely feasible within the EU framework. Separatists are convinced that they can secede from their parent state and still stay inside the EU, regardless of whether senior EU officials warn otherwise. According to Angela Bourne, the European Union constitutes “a complex web of opportunities and constraints for pro- and anti-independence

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18 Reuters (2017), ‘Juncker says Catalan split would lead to splintering EU’. Available at: <https://www.reuters.com/article/us-spain-politics-catalonia-juncker/juncker-says-catalan-split-would-lead-to-splintering-eu-idUSKBN1CIHSO> (Accessed: 12 February 2018).

19 Kester, J. (2017), ‘France won’t recognize an independent Catalonia’, *Foreign Policy*. Available at: <http://foreignpolicy.com/2017/10/09/france-wont-recognize-an-independent-catalonia/> (Accessed: 12 February 2018); Reuters (2017), ‘Germany refuses to recognize Catalonia independence move’. Available at: <https://www.reuters.com/article/us-spain-politics-catalonia-germany/germany-refuses-to-recognize-catalonia-independence-move-idUSKBN1CW196> (Accessed: 12 February 2018); BBC (2017), ‘UK ‘won’t recognise’ Catalan independence’. Available at: <http://www.bbc.com/news/uk-politics-41783238> (Accessed: 12 February 2018).



movements.”<sup>20</sup> The EU’s position on separatism and territorial integrity has largely been based on how the issue has been framed. So it is not surprising that secessionist groups within and around the EU are convinced that they can successfully lobby the European institutions for support. Separatist forces have already immensely benefited from the EU by establishing through it transnational networks such as the European Free Alliance (EFA)—a political party in the European Parliament whose aim is to “promote the right of self-determination of peoples.”<sup>21</sup> The fact that separatist forces continue building a narrative around the EU indicates that the Union has not been unsuccessful in downloading its position on unilateral secession to the sub-state level. The reason why the EU has not been successful is because it has demonstrated ambiguous attitudes towards separatism over the years.

### *From Kosovo to Catalonia: Different Standards*

Following the Catalan referendum, Serbian President Aleksandar Vucic accused the EU of hypocrisy, arguing that the EU was applying double standards in recognizing Kosovo’s independence while declaring the Catalan referendum illegal.<sup>22</sup> Echoing Vucic, Serbian Prime Minister Ana Brnabic wondered if there are different legal standards in place for EU members and non-EU countries after European commission spokesperson Margaritis Schinas noted that Serbia and Spain cannot be compared because “Spain is a member state.”<sup>23</sup> Despite the polemical attitude of the Serbian government, they are not entirely wrong. In the Kosovo case, European powers, along with the U.S., have pushed towards extending an exemption to an already established norm of international law when it suited their political interests.

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20 Bourne, A. (2014), ‘Europeanization and Secession: The Cases of Scotland and Catalonia’, *Journal on Ethnopolitics and Minority Issues in Europe*, 13(3), p. 115.

21 EFA, ‘What’s EFA’. Available at: <http://www.e-f-a.org/about-us/whats-efa-and-history/> (Accessed: 12 February 2018).

22 Filipovic, G. and Savic, M. (2017), ‘Serbia Criticizes EU for ‘Hypocrisy’ After Catalan Vote’, *Bloomberg Politics*.

Available at: <https://www.bloombergquint.com/politics/2017/10/02/serbia-criticizes-eu-for-hypocrisy-on-catalan-kosovo-votes#gs.149a6BE> (Accessed: 25 February 2018).

23 Ibid.



Territorial integrity of states against secession is guaranteed under international law and for good reason. If every separatist group, often driven by dangerous forms of nationalism, pursued external self-determination, it would completely destabilize the current nation-state system. Upholding the principle of territorial integrity makes good sense, given that there are already too many failed states in the world that undermine the stability of their surrounding regions and increase the possibility of wars and human suffering. While international law incorporates the concept of self-determination, it does not entail a right to secession.<sup>24</sup> It is generally accepted that the right of self-determination may not be used to disaggregate the territory of a sovereign state outside the decolonization paradigm.<sup>25</sup> Except in those cases of decolonization, international law is in favor of realizing the right to self-determination through internal means, which entails a right to self-rule without complete political separation.<sup>26</sup> At the same time, while there is some support for the right to “remedial secession” under specific circumstances, when, for example, realization of internal self-determination is rendered impossible, this concept still remains without sound legal foundation.<sup>27</sup>

Some states have been more successful in preventing separatism than others. This is partly because of the size and the substantial diplomatic resources of the parent state. But for the most part the success in preventing secession depends on the attitude of the international community towards separatism, which can vary strongly from one case to another. Such a discrepancy in attitude towards self-determination claims is not based on international law, but rather reflects the political interests of states.

That is why what frequently determines the outcome of separatist movements is the response of third countries, especially the support of major powers. Therefore, recognition and secession

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24 Tancredi, A. (2014), ‘Secession and Use of Force’, in Walter, C. *et al.* (eds), *Self-Determination and Secession in International Law*. Oxford: Oxford University Press, pp. 68-94.

25 Cassese, A. (1995), *Self-Determination of Peoples: A Legal Reappraisal*. Cambridge: Cambridge University Press.

26 Sterio, M. (2010), ‘On the Right to Self-Determination: “Selfistans”, Secession and the Great Powers’ Rule’, *Minnesota Journal of International Law*, 19(1), pp.137–176.

27 For a critique of the concept of remedial secession, see Del Mar, K. (2013) ‘The myth of remedial secession’, in French, D. (ed.), *Statehood and Self-Determination*. Cambridge: Cambridge University Press, pp. 79–108.

are deeply intertwined. The former has “provided the imprimatur of statehood to seceding entities for over two hundred years.”<sup>28</sup> Although states, in general, tend to take into consideration norms and principles of international law when deciding to recognize a territory as a state, it is ultimately within their sole discretion. In the end, it is not moral or legal considerations but the self-interest of other states that seals the fate of a separatist entity.

The case that especially stands out in this context is Kosovo. Kosovo has brought to the fore just how indispensable the sponsorship and support of a great power is for separatists to succeed. The fact that Kosovo today is recognized by more than half of the UN members is a direct result of the support Kosovo received from the U.S. and the major European powers, including France, Germany, and the UK. But it goes further than this.

Following Kosovo’s independence bid in 2008, Belgrade made a strategic mistake by asking the International Court of Justice to rule on the legality of Kosovo’s unilateral declaration of independence, rather than asking the ICJ to rule on the legality of Kosovo seceding from Serbia.<sup>29</sup> If the ICJ decided that the act of secession had violated international law, major European powers would have found themselves in an extremely awkward position of having to defend an act that had been unequivocally declared illegal under international law. Alternatively, had the ICJ ruled that Kosovo’s secession had not violated international law, it would have opened the floodgates for numerous other acts of secession. In the end, Serbia’s massive error allowed the Court to avoid addressing the key issue of secession—whether regions have a right to secede—and instead take the narrowest approach possible by stating that, in general, there is no prohibition in international law against declaration of independence as a mere statement, unless it is explicitly banned by the Security Council.<sup>30</sup>

Although the ICJ did not make any comments on the *sui generis* nature of the Kosovo case, major Western powers that supported

28 Dugard, J. and Raič, D. (2006), ‘The role of recognition in the law and practice of secession’, in Kohen, M. (ed.), *Secession: Internal law perspectives*. Cambridge: Cambridge University Press, pp. 94-137, p. 94.

29 Ker-Lindsay, J. (2012), *The Foreign Policy of Counter Secession: Preventing the Recognition of Contested States*. Oxford: Oxford University Press.

30 International Court of Justice (2010), *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo*. Available at: <http://www.icj-cij.org/files/case-related/141/141-20100722-ADV-01-00-EN.pdf> (Accessed: 23 February 2018).

Kosovo's independence bid have invariably insisted that Kosovo was a special case under international law that cannot be used as a precedent for other situations. Claiming that Kosovo was *sui generis*,<sup>31</sup> a unique case in international politics that does not hold any precedential value, in order to limit the detrimental consequences of their decision to recognize Kosovo, has been proven to be a fundamentally ineffective containment strategy in retrospect. By recognizing Kosovo, Western powers inadvertently created a situation that provided other states with the opportunity to do the same and redefine the concept of self-determination whenever it seems opportune for them. Already in 2007, Raju Thomas warned that "to allow Kosovo's independence would demonstrate that violent secessionism works."<sup>32</sup> Echoing the same sentiment, Timothy Garton Ash argued at the time that "Kosovo is unique, and there will be more Kosovos."<sup>33</sup> That is why, from the start, Spain has consistently been against recognizing Kosovo's unilateral declaration of independence and even insisted that Kosovo can become a part of the EU only as a region of Serbia.<sup>34</sup>

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Therefore, the "unique case" argument with regard to Kosovo has always been unsustainable.<sup>35</sup> International laws are forged and altered if there is an agreement between States about them. That is why when a group of states attempted to unilaterally exempt Kosovo from international law by designating it as *sui generis*, it did not have any binding force for those states that refused to see Kosovo as an exemption to international law. As Alexander Orakhelashvili noted, "[i]n political terms, action always provokes reaction and 'sui generis' entities could be

31 See, for example, European Commission (2008), *European Institutions' reactions on Kosovo independence*. Available at: [http://europa.eu/rapid/press-release\\_SPEECH-08-91\\_en.htm](http://europa.eu/rapid/press-release_SPEECH-08-91_en.htm) (Accessed: 23 February 2018).

32 Thomas, R. (2007), 'The Case against Kosovo Independence', *Project Syndicate*. Available at: <https://www.project-syndicate.org/commentary/the-case-against-kosovo-independence> (Accessed: 14 June 2017).

33 Garton Ash, T. (2008), 'This dependent independence is the least worst solution for Kosovo', *The Guardian*. Available at: <https://www.theguardian.com/world/2008/feb/21/kosovo> (Accessed: 14 December 2017).

34 B92 (2018), 'Spain says Kosovo can only join EU as region of Serbia'. Available at: [https://www.b92.net/eng/news/politics.php?yyyy=2018&mm=02&dd=01&nav\\_id=103395](https://www.b92.net/eng/news/politics.php?yyyy=2018&mm=02&dd=01&nav_id=103395) (Accessed: 14 March 2018).

35 For a critique of a "sui generis" argument, see, for example, Ker-Lindsay, J. (2011), 'Not such a "sui generis" case after all: assessing the ICJ opinion on Kosovo', *Nationalities Papers*, 39(1), pp. 1–11.

multiplied,”<sup>36</sup> which was first demonstrated in South Ossetia and Abkhazia in 2008, and then in Crimea in 2014.

Before holding the illegal referendum to join Russia, the parliament of Crimea declared its independence based on “the charter of the United Nations ... and taking into consideration the confirmation of the status of Kosovo by the United Nations International Court of Justice on July, 22, 2010, which says that unilateral declaration of independence by a part of the country doesn’t violate any international norms.”<sup>37</sup>

After the Crimean referendum Putin argued in an address to the public that people in Crimea had exercised their right to self-determination and the Kosovo case constituted the appropriate precedent: “the Crimean authorities referred to the well-known Kosovo precedent – a precedent our western colleagues created with their own hands in a very similar situation, when they agreed that the unilateral separation of Kosovo from Serbia, exactly what Crimea is doing now, was legitimate and did not require any permission from the country’s central authorities.”<sup>38</sup>

Despite the fact that Putin’s claims do not hold up under close scrutiny in legal terms,<sup>39</sup> there is an element of truth to them. The Crimea case has shed light on just how detrimental introducing exemptions to already established norms of international law can be. As Marxsen put it, “Norms of international law are strongest and have the utmost prospect of compliance when they are clear and do not leave much leeway for interpretation. A generous attitude towards exemptions to a norm makes it much easier for all parties to argue that a new constellation falls under such an exemption, even if that strains the scope of existing doctrine and practice.”<sup>40</sup> Therefore, major European powers are partly to blame for the fact that Moscow today is able to further an argument for the Crimean separatism—at least in political terms—even if,

36 Orakhelashvili, A. (2009), ‘The Kosovo UDI between Agreed Law and Subjective Perception: A Response to Hiphold’, *Chinese Journal of International Law*, 8 (2), pp. 285–290, p. 288.

37 RT (2014), ‘Crimea parliament declares independence from Ukraine ahead of referendum’. Available at: <https://www.rt.com/news/crimea-parliament-independence-ukraine-086/> (Accessed: 14 March 2018).

38 Putin, V. (2014), *Address by President of the Russian Federation*. Available at: <http://en.kremlin.ru/events/president/news/20603> (Accessed: 14 January 2018).

39 Marxsen, C. (2014), ‘The Crimea Crisis – An International Law Perspective’, *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht (Heidelberg Journal of International Law)*, 74(2), pp. 367–391.

40 *Ibid.*, pp. 387–388.

legally, those arguments do not hold water.

Although there are no legal similarities, the Kosovo case was also warmly welcomed by the separatist entity in Nagorno-Karabakh, which saw Kosovo's success as a precedent they hoped to emulate. Eduard Sharmazanov, at the time a spokesman for the ruling Republican Party of Armenia, argued that "this is an unprecedented decision that can positively impact international recognition of Karabakh ... Because for the first [time] ever an international court ruled that when it comes to independence, the people's right to self-determination is more important [than the] territorial integrity of states."<sup>41</sup> Although at the time the U.S. State Department reiterated that "Kosovo is not a precedent and should not be seen as a precedent for any other place out there in the world. It certainly isn't a precedent for Nagorno-Karabakh."<sup>42</sup>

### *The EU's Position on the Nagorno-Karabakh Conflict*

Although the EU has never been at the center of the resolution process in the Nagorno-Karabakh conflict, it nevertheless has had indirect influence over the issue, considering the fact that both Armenia and Azerbaijan are part of the EU's European Neighbourhood Policy (ENP). The EU's official stance towards the conflict has been that it supports the OSCE Minsk Group Co-chairs' efforts to find a peaceful resolution to the conflict.<sup>43</sup> In the past, the European Parliament reaffirmed its position that the settlement of the Nagorno-Karabakh conflict should comply with relevant UN Security Council resolutions,<sup>44</sup> acknowledged that the unresolved Nagorno-Karabakh conflict was hampering the stability of the South

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41 RFERL (2010), 'Armenia Hails Court Ruling On Kosovo Independence'. Available at: [https://www.rferl.org/a/Armenia\\_Hails\\_Court\\_Ruling\\_On\\_Kosovo\\_Independence/2109757.html](https://www.rferl.org/a/Armenia_Hails_Court_Ruling_On_Kosovo_Independence/2109757.html) (Accessed: 11 January 2018).

42 Reuters (2008), 'U.S. says Kosovo no precedent for Nagorno-Karabakh'. Available at: <https://www.reuters.com/article/us-armenia-azerbaijan-usa/u-s-says-kosovo-no-precedent-for-nagorno-karabakh-idUSN0561037320080305> (Accessed: 11 January 2018).

43 European Union (2017), *Statement by the European Union at the 1163rd Meeting of the OSCE Permanent Council*. Available at: <https://www.osce.org/permanent-council/356551?download=true> (Accessed: 11 March 2018).

44 European Parliament (2013), *European Parliament resolution of 23 October 2013 on the European Neighbourhood Policy: towards a strengthening of the partnership. Position of the European Parliament on the 2012 reports*. Available at: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2013-0446+0+DOC+XML+V0//EN> (Accessed: 21 January 2018).

Caucasus,<sup>45</sup> reiterated its respect for the principle of territorial integrity,<sup>46</sup> and called for the withdrawal of Armenian troops from occupied Azerbaijani territories surrounding Nagorno-Karabakh.<sup>47</sup> At the same time, the EU has been somewhat unwilling to use decisive rhetoric, both regarding Armenian troop withdrawal and the occupation of Nagorno-Karabakh.

In 2006, both Azerbaijan and Armenia signed ENP Action Plans. While Azerbaijan's Action Plan included "the respect of and support for the territorial integrity,"<sup>48</sup> Armenia's Action Plan incorporated the competing principle of the "self-determination of people"<sup>49</sup> with regard to the conflict. Self-determination is not just a rhetorical instrument in politics, it has an actual legal meaning. And, accepting the claims to self-determination predominantly advanced by the ethnic Armenian community of Nagorno-Karabakh, which cannot alone represent the Nagorno-Karabakh population as a whole, risks legitimizing the ethnic cleansing of the Azerbaijani population of Nagorno-Karabakh.<sup>50</sup> For many Azerbaijanis, resentment at what they see as the legitimization of a separatist entity created from ethnic cleansing and systematic violence runs deep. That is why such use of legal rhetoric out of place does not help to resolve the conflict but only prolongs it.

Moreover, the EU's response has been far less consistent in case of Nagorno-Karabakh than in case of Moscow's actions in Georgia and more recently in Ukraine. While the EU adopted a comparatively firm stance against Russia on the issue of Ukraine's right to its territorial integrity, it avoided doing the

45 European Parliament (2012), *European Parliament resolution of 18 April 2012 containing the European Parliament's recommendations to the Council, the Commission and the European External Action Service on the negotiations of the EU-Azerbaijan Association Agreement*. Available at: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2012-0127+0+DOC+XML+V0//EN&language=EN> (Accessed: 21 January 2018).

46 Ibid.

47 European Parliament (2012), *European Parliament resolution of 18 April 2012 containing the European Parliament's recommendations to the Council, the Commission and the European External Action Service on the negotiations of the EU-Armenia Association Agreement*. Available at: <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P7-TA-2012-128> (Accessed: 21 January 2018).

48 European External Action Service (2006), *EU-Azerbaijan Action Plan*. Available at: [http://eeas.europa.eu/enp/pdf/pdf/action\\_plans/azerbaijan\\_enp\\_ap\\_final\\_en.pdf](http://eeas.europa.eu/enp/pdf/pdf/action_plans/azerbaijan_enp_ap_final_en.pdf) (Accessed: 19 January 2018).

49 European External Action Service (2006), *EU-Armenia Action Plan*. Available at: [http://eeas.europa.eu/enp/pdf/pdf/action\\_plans/armenia\\_enp\\_ap\\_final\\_en.pdf](http://eeas.europa.eu/enp/pdf/pdf/action_plans/armenia_enp_ap_final_en.pdf) (Accessed: 19 January 2018).

50 Popjanevski, J. (2017), 'International Law and the Nagorno-Karabakh Conflict' in Cornell, S. (ed.) *The International Politics of the Armenian-Azerbaijani Conflict*, pp. 23–47.

same with regard to Armenia—and that is despite the fact that Nagorno-Karabakh’s secession was backed up by Armenian and Russian troops in Nagorno-Karabakh and took place against the backdrop of illegal use of force and occupation,<sup>51</sup> which has been unequivocally reaffirmed by the conclusion of the European Court of Human Rights (ECHR) reached in the case of *Chiragov and Others vs. Armenia*.<sup>52</sup> The Court stated, *inter alia*, that Armenia’s military and political support to the separatist authorities amounted to “effective control” of the region,<sup>53</sup> despite Armenia claiming otherwise. The Court noted that “it is hardly conceivable that Nagorno-Karabakh – an entity with a population of less than 150,000 ethnic Armenians – was able, without the substantial military support of Armenia, to set up a defence force in early 1992 that, against the country of Azerbaijan with approximately seven million people, not only established control of the former NKAO but also, before the end of 1993, conquered the whole or major parts of seven surrounding Azerbaijani districts.”<sup>54</sup> The Court’s ultimate conclusion was thus that “the Republic of Armenia, from the early days of the Nagorno-Karabakh conflict, has had a significant and decisive influence over the ‘NKR’, that the two entities are highly integrated in virtually all important matters and that this situation persists to this day. In other words, the ‘NKR’ and its administration survives by virtue of the military, political, financial and other support given to it by Armenia which, consequently, exercises effective control over Nagorno-Karabakh and the surrounding territories, including the district of Lachin.”<sup>55</sup>

*While the EU adopted a comparatively firm stance against Russia on the issue of Ukraine’s right to its territorial integrity, it avoided doing the same with regard to Armenia—and that is despite the fact that Nagorno-Karabakh’s secession was backed up by Armenian and Russian troops in Nagorno-Karabakh and took place against the backdrop of illegal use of force and occupation.*

Under international humanitarian law, the notion of effective control lies at the root of the understanding of occupation.<sup>56</sup> Despite this, over the years, the EU has not only refused to adopt a tougher stance towards Armenia, but its position on the Nagorno-

51 Ibid.

52 European Court of Human Rights (2015, *Case of Chiragov and Others vs. Armenia*. App. no. 13216/05. Available at: <https://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=001-155353&filename=001-155353.pdf>, (Accessed: 19 January 2018).

53 Ibid.

54 Ibid., para. 174.

55 Ibid., para. 186.

56 Ferraro, T. (2012), ‘Determining the beginning and end of an occupation under international humanitarian law’, *International Review of the Red Cross*, 94 (885), pp. 133–163.



*Despite this, over the years, the EU has not only refused to adopt a tougher stance towards Armenia, but its position on the Nagorno-Karabakh conflict has been watered down even further.*

Karabakh conflict has been watered down even further. In fact, the ambiguity in the EU's approach to the territorial integrity of the post-Soviet countries—when the same standard with regard to territorial integrity is applied to Georgia, Ukraine, and Moldova, but not to Azerbaijan—was one of the primary reasons why Baku refused to sign the Association Agreement, the main element of the ENP partnership, back in 2013.<sup>57</sup> Moreover, in the run-up to the 2017 Eastern Partnership summit in Brussels, the European Parliament passed two controversial resolutions with different wording being applied to the conflicts in Ukraine, Georgia, and Moldova, on one hand, and in Azerbaijan, on the other.<sup>58</sup> That is why one of the main objectives of the Azerbaijani side going to the summit in Brussels was to secure an unambiguous stance from the EU on the settlement of the Nagorno-Karabakh conflict based on the four UNSC resolutions.<sup>59</sup> In the end, a compromised version of the Brussels Summit final declaration reaffirmed the EU's commitment to support the territorial integrity and sovereignty of its partners and called for the peaceful resolution of conflicts based on the principles and norms of international law, without identifying any conflict in the Eastern Neighbourhood specifically.<sup>60</sup>

When it comes to the Nagorno-Karabakh conflict, what Azerbaijan expects from the EU is “a single, standard approach to all the conflicts in the post-Soviet area,”<sup>61</sup> with the principle of territorial integrity being applied, without exception, to all the conflicts. However, despite Azerbaijan's expectations that this policy will be uniformly applied by the European Union,<sup>62</sup> that is not the case. In this context, the unequivocal support for Ukraine's

57 Aliyev, I. (2017), ‘Ilham Aliyev Attended Panel Discussion at Munich Security Conference’. Available at: <https://en.president.az/articles/22827> (Accessed: 14 March 2018).

58 European Parliament (2017), *European Parliament recommendation of 15 November 2017 to the Council, the Commission and the EEAS on the Eastern Partnership, in the run-up to the November 2017 Summit*. Available at: [http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P8-TA-2017-0440+0+DOC+XML+V0//EN&language=EN2017/2130\(INI\)](http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P8-TA-2017-0440+0+DOC+XML+V0//EN&language=EN2017/2130(INI)) (Accessed: 19 January 2018).

59 Trend (2017), ‘EU hopes for compromise in adoption of Eastern Partnership Summit's Brussels Declaration’. Available at: <https://en.trend.az/azerbaijan/2813236.html> (Accessed: 12 February 2018).

60 Council of the European Union (2017), *Joint Declaration of the Eastern Partnership Summit*. Available at: <http://www.consilium.europa.eu/media/31758/final-statement-st14821en17.pdf> (Accessed: 19 March 2018).

61 Aliyev, Ilham Aliyev Attended Panel Discussion at Munich Security Conference.

62 APA (2017), ‘Azerbaijan hopes for unified approach to conflicts in Eastern Partnership countries’. Available at: <http://en.apa.az/azerbaijan-politics/foreign-news/azerbaijan-hopes-for-unanimous-approach-to-conflicts-in-eastern-partnership-countries.html> (Accessed: 18 March 2018).

territorial integrity and condemnation of Russia's actions by the EU,<sup>63</sup> along with a regime of economic sanctions and restrictive measures against Russia and separatists,<sup>64</sup> stands in stark contrast to Western rhetoric in relation to the conflict over Nagorno-Karabakh. And that is despite the fact that, at the time, the self-proclaimed Nagorno-Karabakh Republic issued a statement welcoming the results of the Crimean referendum and interpreting it "as yet another manifestation of realization of the right of people to self-determination."<sup>65</sup> Moreover, during the UN voting in March 2014, Armenia voted down the UN General Assembly resolution supporting Ukraine's territorial integrity and declaring the annexation of Crimea illegal.<sup>66</sup> At the time, Garen Nazarian, Armenia's ambassador to the UN, framed Armenia's decision to vote against the resolution as promoting "decolonization and self-determination."<sup>67</sup> Subsequently, in 2015 Armenia refused to sign the Eastern Partnership Riga Declaration over its condemnation of Russia's annexation of Crimea.<sup>68</sup>

Unlike Crimea, no restrictive measures in the form of asset freezes or travel restrictions over actions undermining the territorial integrity and sovereignty of Azerbaijan have ever been applied to Armenia or separatists in Nagorno-Karabakh. While so-called "representatives" of separatist entities in Crimea, Donetsk, Lugansk, Abkhazia, and South Ossetia are explicitly banned from entering the EU, the same restrictions have not been applied to the "officials" from the so-called "Nagorno-Karabakh Republic." Such visits of "officials" from the self-proclaimed NKR have long drawn the ire of the Azerbaijani government,

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63 Council of the European Union (2018), *Declaration by the High Representative Federica Mogherini on behalf of the EU on the Autonomous Republic of Crimea and the city of Sevastopol*. Available at: <https://www.consilium.europa.eu/en/press/press-releases/2018/03/16/declaration-by-the-high-representative-federica-mogherini-on-behalf-of-the-eu-on-the-autonomous-republic-of-crimea-and-the-city-of-sevastopol/> (Accessed: 19 March 2018).

64 Council of the European Union (2018), *Timeline - EU restrictive measures in response to the crisis in Ukraine*. Available at: <http://www.consilium.europa.eu/en/policies/sanctions/ukraine-crisis/history-ukraine-crisis/>, (Accessed: 17 May 2018).

65 Massispost (2014), 'Karabakh: Crimean Referendum Manifestation of People's Right to Self-Determination'. Available at: <https://massispost.com/2014/03/karabakh-crimean-referendum-manifestation-of-peoples-right-to-self-determination/> (Accessed: 28 December 2017).

66 UNGA (2014), *General Assembly Adopts Resolution Calling upon States Not to Recognize Changes in Status of Crimea Region*. Available at: <https://www.un.org/press/en/2014/ga11493.doc.htm> (Accessed: 28 December 2017).

67 Ibid.

68 Azatutyun (2015), 'Armenia to Avoid Anti-Russian Statements at EU Summit'. Available at: <https://www.azatutyun.am/a/27029474.html> (Accessed: 28 December 2017).

which has repeatedly pointed out that the continued practice of engaging representatives of the separatist entities hampers the peace process. This is because recognition is not a binary issue—i.e., a separatist entity is recognized or it is not—but constitutes a broad continuum. The real threat for most states with secessionist regions is not formal recognition but step-by-step acknowledgment by the international community.<sup>69</sup> Separatist regimes usually know that formal recognition is out of the question so they want to maximize their legitimization in the international system, which allows them to strengthen their position vis-à-vis the parent state. Therefore, engaging separatists outside the peace process validates their actions and prolongs the conflict even further. A lack of consistency in EU external policy with regard to the conflicts in the post-Soviet space, particularly when it comes to the Nagorno-Karabakh conflict and the issue of territorial integrity of Azerbaijan, is not only detrimental to the EU's capacity to present a coherent message, but also undermines the security situation in the region. The separatists see an ambiguity in the EU's position towards the conflict as a precursor to eventual international legitimacy. So, they become convinced that the continuation of the status quo only strengthens their position, which emboldens them to refuse to engage in any serious negotiations or make any meaningful concessions. In the end, such an attitude only aggravates the conflict even further. The EU can help in finding a peaceful and lasting solution to the Nagorno-Karabakh conflict. However, this depends on the willingness of the EU to take a more unwavering position towards separatism and make sure that there is no room for ambiguity.

### **Conclusion**

The EU's divergent stance on territorial integrity and external self-determination emboldens separatist movements both within and around Europe. While the EU has taken a firm stance against Catalan separatism, it has supported Kosovo's independence bid. While supporting the territorial integrity of Ukraine, the EU has taken a much more ambiguous position on the territorial integrity of Azerbaijan and the occupation of Nagorno-Karabakh. This

69 Ker-Lindsay, J. (2012), *The Foreign Policy of Counter Secession: Preventing the Recognition of Contested States*. Oxford: Oxford University Press, p. 175.

ambiguity in the EU's position is the reason why the statements by EU officials dismissing the possibility of staying inside the Union after unilateral secession do not discourage European separatist movements from building a narrative around the EU. They are convinced that the EU's stance on secession largely depends on how the issue has been framed in the first place. So, they believe that they can succeed in lobbying their case before the EU institutions. Moreover, the EU's ambiguous stance on the territorial integrity of sovereign states has a negative impact on the resolution of the separatist conflicts as well. Because of the EU's contradictory stance, separatist entities believe that they can ultimately win the support of the EU in getting legitimized and acknowledged, which is vital for their long-term survival. In the end, such a prospect makes them even less willing to compromise with the parent state.

Catalonia serves to reinforce just how dangerous it is to support secession. For separatists, the European Union is a safe haven, and chipping away at this notion of a safe haven would considerably reduce secessionist aspirations. Therefore, the EU should avoid creating the perception that it may have been willing to prop up a secessionist state. Instead, efforts should be made to explain to separatists more widely why their unilateral actions cannot and will not be accepted. The EU should learn to act responsibly and be more aware of the unintended consequences of its actions. Coordination efforts between EU institutions and Member States have to be more streamlined and oriented towards developing a common, unified approach on the issue of separatism. When it comes to the understanding of the right to self-determination, the concept is undoubtedly manifold. Nevertheless, one point needs to be made clear: double standards must be rejected. Consistency is a virtue. Adopting a clear stance on the territorial integrity and separatism would protect the EU from accusations of hypocrisy and prevent would-be separatists from setting up unreasonable expectations. To paraphrase Joseph S. Nye, before taking any actions, regardless whether those actions are internal or external, but especially when they can be perceived as an act of disrespect towards other states' sovereignty and territorial integrity, the EU might want to consider the political version of the ancient motto of medical ethics: *Primum non nocere* (first, do no harm).