

## Why the role of international actors could be key in settling Catalonia's standoff with Madrid over independence

*Catalan President Artur Mas appeared in court on 15 October in relation to the symbolic referendum on independence from Spain held on 9 November 2014. **Zoran Oklopčič** writes that with Mas and his Junts pel Si coalition committed to setting Catalonia on the path toward a declaration of independence following elections in September, the eyes of the international community are on how the Spanish government chooses to respond. He argues that the strategy of the Catalan independence movement now rests on bringing international pressure on to Madrid by highlighting the government's unresponsiveness to peaceful demands for a referendum.*



Until very recently, there was something strange about the way in which Catalan independence had been pursued. While admirable in its peacefulness, to a foreign observer the claims of Catalan sovereigntists nonetheless appeared farcical in their enduring assertions of the ultimate sovereignty of the Catalan people, nonetheless accompanied by their consistent deference to the authority of the constitutional organs of the Spanish state. While the 2013 Declaration of Sovereignty affirms the right of the Catalan people to decide its political future, in autumn 2014, the Catalan Government dutifully submitted to the authority of a Spanish Constitutional Tribunal. Following its judgment, the Catalan authorities relinquished their authorship over the consultative referendum on independence planned for 9 November 2014, allowing it to proceed under a name designed to be less offensive to the Spanish constitutional order: a 'consultation'.

The 'consultation' proceeded informally, without the benefit of the government's role that would have reliably counted votes or prevented voting fraud. By submitting to the authority of the Spanish constitution, the Catalan Government was willing to diminish the perception of the legitimacy of the expression of the sovereign will of the Catalan people. It was also willing to accept the risk that present enthusiasm for independence might diminish – which seems to have happened – following yet another 'false alarm'.

Compare this with the way in which the Slovenian and Croatian governments pursued their independence projects in 1990-91. Even before they organised a popular vote, they made the applicability of the federal constitution conditional on its conformity with their legal orders. In doing so, they explicitly rejected the ultimate legal authority of the federal constitutional court. Once they organised a popular vote on sovereignty, they did it only once. When they did, they didn't call it a 'consultation' or 'plebiscitary election', but a referendum on independence.

Needless to say, the differences between Spain in 2015, and Yugoslavia in 1991 are so vast that they almost prevent any comparison. Nonetheless, they do draw attention to the half-hearted way in which Catalan sovereigntists have pursued their project so far. Did they really expect a different response from the Spanish state every time when they, in simulating Catalan sovereignty, submitted to Spanish constitutional authority?

Is this oxymoron the result of their naïve belief that the repeated simulations of the former, will end up persuading the Spanish politicians to abandon their commitment to the latter? Or is it, on the other hand, the result of their cynical political calculus; that the simulacrum of Catalan sovereignty would have exhausted Catalans' enthusiasm for independence, and save Catalan politicians from a full-blown confrontation with the Spanish state? Even the comparatively more radical political programme of Junts pel Si – which explicitly declared its readiness to unilaterally declare independence – has only committed to that after the end of the 18-month long constituent process.

So why are Catalan parties delaying the process if it cannot be expected that Spain will change its mind? Why set

'constituent' tasks for yourself if they can both build, as well as corrode the enthusiasm for independence in the months ahead? Without a credible account of the debates in the inner circle of sovereigntist strategists we can only speculate. What seems reasonable to assume, however, is that behind the meandering road-map of Catalan independence there appears to be a twin strategy of provocation and validation, aimed not primarily at the Catalans or the Spanish, but rather at the international audience. By repeatedly asserting the diluted version of their sovereignty, by exploiting the loopholes of the Spanish constitutional framework, Catalan sovereigntists seem to have hoped – and perhaps still do – to provoke the Spanish state to de-legitimise itself in the eyes of the international community.

On the other hand, the second prong of this strategy seeks to dignify the secessionist project. The longest human chain, the tallest human tower, popular consultations (2014), plebiscitary elections (2015): these are not simply the manifestations of the 'will of the people', but are rather pieces of political theatre with a specific rhetorical purpose. Against the charges of political manipulation, radicalism, ethnocentric bigotry or economic selfishness, they sought to persuade the relevant audiences within and outside of Spain of the patience, reasonableness, authenticity, resilience and inclusiveness of Catalan aspirations for independence.

Time will tell whether the project of Catalan independence will be successful. What is worth noting is not only its political, but also its wider normative context. While the constitutional documents of Croats and Slovenians in 1991 proudly invoked their international legal right to self-determination, Catalans have been much more self-aware of the nuances in contemporary international jurisprudence. They know that there is no juridical consensus that would enable them to persuasively speak about their right to external self-determination in 2015.



Junts pel Sí launch event on 19 July 2015, with (from left) Raül Romeva, Carme Forcadell, Muriel Casals, Artur Mas, Oriol Junqueras. Credit: DaniCo46 / Wikimedia (CC BY-SA 4.0)

They also know that their best chance to gain support of those who take international law seriously – irrespective of that law's fuzziness – is to either establish effective control over Catalonia without violating peremptory norms of international law, or to demonstrate that they have been oppressed systematically by the Spanish state. In provoking Spain by simulating their sovereignty before they declare independence unilaterally, they hope to achieve one or the other.

Equally, the project of Catalan independence occurs in the era of subtle but profound mutations of the idea of liberal-democratic constitutionalism. Unlike Spain, Canada and the United Kingdom were not only willing to tolerate the secessionist aspirations from one of its constitutional units, but have been responsive towards them in a most striking way.

In Canada, the clearly affirmative result in a referendum would have led to 'good faith' negotiations toward the secession of Quebec. In the United Kingdom, the same result would have guaranteed the independence of Scotland. This comparative constitutional background of Canada and United Kingdom also sheds a fresh light on the so-called 'right to decide'. Rather than being seen as the radical democratic antithesis to modern constitutionalism, it is better seen as a way to uncover the 'scandal' of the Spanish constitution's unresponsiveness.

Without the willingness to escalate their resistance further, the success of the project of Catalan independence will depend on the combined response of the Spanish state and the international community. Catalan strategies of simulated, deferred sovereignty seem to assume that Madrid will prove incapable of maintaining proportionality in its political and legal reactions to the escalating disruptions of the Spanish constitutional order in Catalonia. They also seem to assume that the international community will at some point choose to interpret the Spanish unresponsiveness

to peaceful Catalan demands as a political scandal that requires a solution that satisfies their substance.

It is hard to say whether these assumptions are correct. But if they are not, Catalan sovereigntists will be forced to contemplate the conclusion which they sought to evade all along: that the evidence of the legitimacy of your project, and the guarantee of its success, lies not in the performance of the dignity of your aspiration, or in the simulation of your sovereignty, but in the ultimate sacrifice of yourself, and others.



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