



## **BREXIT : an Act of National Self-Determination ?**

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# BREXIT : AN ACT OF NATIONAL SELF-DETERMINATION ?

## OUTLINE

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### PROLOGUE

#### ACT I

#### **BREXIT, THE UNITED KINGDOM AND NATIONAL SELF-DETERMINATION**

- A- Brexit and the National Self-Determination of the United Kingdom
- B- Brexit and the decision of f the United Kingdom to withdraw from the European Union

#### ACT II

#### **BREXIT, SCOTLAND, NORTHERN IRELAND, GIBRALTAR AND NATIONAL SELF-DETERMINATION**

- A- Brexit and the National Self-Determination of the peoples of Scotland and Northern Ireland
- B- Brexit and National Self-Determination of the people of Gibraltar

### EPILOGUE



# BREXIT : AN ACT OF NATIONAL SELF-DETERMINATION ?

## PROLOGUE

### SCENE 1

#### A first Thesis

**Le droit de sécession en droit international public et son application au cas du Québec**

(*The Right of Secession in International Law and its Application to Québec*)

Master's Thesis, Université de Montréal, 1979, 339 p.

(under the supervision of Jacques Brossard)

Derek Bowett, D.W., "Self-Determination and Political Rights in the Developing Countries"

(1966) 60 *Proceedings of the American Society of international Law* 129-135

### SCENE 2

#### A second Thesis

**Federal States and the Right of Secessionist Self-Determination,**

Diploma of International Law Thesis, University of Cambridge, 1981, 146 p.

(under the supervision of Derek Bowett)

### SCENE 3

30 other articles, notes and legal opinions published together in :

#### A third thesis

**Le droit de choisir- Essais sur le droit du Québec à disposer de lui-même /**

**The Right to Choose- Essays on Québec's Right To Self-Determination**

Montréal, Éditions Thémis, 2001, 996 p.



Derek Bowett

- Self-determination debates have continued to make the headlines since the beginning of the XXI<sup>st</sup> century and « self-determination » elections or referendums have been held in :

- **Gibraltar** (2002 and 2006), **Kosovo** (2008), **Southern Sudan** (2011), **Scotland** (2014), **Catalonia** (2014 and 2017), **Porto Rico** (2017), **Iraki Kurdistan** (2017), **New Caledonia** (2018) and will occur next year in :


**Chuuk (Federated States of Micronesia)** (5 March 2019); **Bougainville (Papua-New Guinea)** (15 June 2019)

# BREXIT : AN ACT OF NATIONAL SELF-DETERMINATION ?

## PROLOGUE (continued)

### SCENE 4

#### THE 23 JUNE 2018 REFRENDUM, THE BREXIT LETTER... AND SELF-DETERMINATION

BREXIT REFERENDUM RESULTS						
23 June 2018						
		LEAVE	%	REMAIN	%	TURNOUT
	UNITED KINGDOM	17 410 742	51,9%	16 11 241	48,1%	72,2%

« March 27, 2016

Dear President Tusk

On 23 June last year, the people of the United Kingdom voted to leave the European Union.

As I have said before, that decision was no rejection of the values we share as fellow Europeans. Nor was it an attempt to do harm to the European Union or any of the remaining member states. On the contrary, the United Kingdom wants the European Union to succeed and prosper. **Instead, the referendum was a vote to restore, as we see it, our national self-determination.** We are leaving the European Union, but we are not leaving Europe - and we want to remain committed partners and allies to our friends across the continent. »



- Is Brexit is an act of national self-determination...and I should now add « under international law ? »

- **A new thesis :** Brexit is not an act of national of self-determination of the United Kingd/om under international law. It is a violation of the right of self-determination of the peoples of Scotland, Northern Ireland and Gibraltar under international law.

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# BREXIT : AN ACT OF NATIONAL SELF-DETERMINATION ?

## ACT I

### BREXIT, THE UNITED KINGDOM AND NATIONAL SELF-DETERMINATION

#### A- Brexit and the National Self-Determination of the United Kingdom

- A General definition of Self-Determination :

**“The Process by which a country determines its own statehood and forms its own government” (Oxford Dictionaries)**

- The definition of Self-Determination under international law :

**Charter of the United Nations** (1945)

#### Article I

The Purposes of the United Nations are :

2. To develop Friendly Relations among **nations** based on the respect for the principle of equal rights and self-determination of **peoples** [...];

**International Covenants on Human Rights** (1966)

#### Article I

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

3. The **States** Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

**Declaration on Friendly Relations** (1970)

#### The principle of equal rights and self-determination of peoples

By virtue of the principle of equal rights and self-determination of peoples enshrined in the Charter of the United Nations, all **peoples** have the right freely to determine, without external interference, their political status and to pursue their economic, social and cultural development, and every State has the duty to respect this right in accordance with the provisions of the Charter.

The establishment of a sovereign and independent State, the free association or integration with an independent State or the emergence into any other political status freely determined by a people constitute modes of implementing the right of self-determination by that people.

**- The right of self-determination is entrusted to a people and not to a State. Its “titulaires” (beneficiaries) are peoples and not States. With regards to the United Kingdom, it belongs to its peoples, i.e. to England, Wales, Scotland and Northern Ireland... and Gibraltar.**

**- Thus, the United Kingdom cannot claim a right of self-determination and affirm that Brexit is an act of self-determination under international law. So, under international law, what is Brexit ?**



# BREXIT : AN ACT OF NATIONAL SELF-DETERMINATION ?

## ACT I

### BREXIT, THE UNITED KINGDOM AND NATIONAL SELF-DETERMINATION (*continued*)

#### B- Brexit and the decision of the United Kingdom to withdraw from the European Union

**Brexit is an act of withdrawal from an international (supranational) organisation and not an act of national self-determination under international law**

#### *Treaty of the European Union (TEU)* **Article 50**






1. Any Member State may decide to withdraw from the Union in accordance with its own constitutional requirements.
  - 2..A Member State which decides to withdraw shall notify the European Council of its intention. In the light of the guidelines provided by the European Council, the Union shall negotiate and conclude an agreement with that State, setting out the arrangements for its withdrawal, taking account of the framework for its future relationship with the Union. That agreement shall be negotiated in accordance with Article 218 (3) of the Treaty on the Functioning of the European Union. It shall be concluded on behalf of the Union by the Council [of the European Union], acting by a qualified majority, after obtaining the consent of the European Parliament.. [...]
- See the *European Union (Notification of Withdrawal) Act*, 2017, *Miller v. Secretary of State for Exiting the European Union*, [2017] UKSC 5 and the *European Union (Withdrawal) Act*, Stat. UK 2018
  - See the *Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community* (Withdrawal agreement) and the *Political declaration setting out the framework for the future relationship between the European Union and the United Kingdom*, November 25, 2018
  - And to come, the 11 December 2018 vote in the House of Commons, the vote in the European Parliament and the ratification of the *Withdrawal Agreement* by the United Kingdom and the 27 Member States of the European Union.
  - **If such votes and ratifications occur and the *Withdrawal Agreement* enters into force on 30 March 2019, Brexit will be an act of withdrawal from an international (supranational) organisation under international law.**

# BREXIT : AN ACT OF NATIONAL SELF-DETERMINATION ?

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## ACT II

### BREXIT, SCOTLAND, NORTHERN IRELAND, GIBRALTAR AND NATIONAL SELF-DETERMINATION

PEOPLE'S <b>BREXIT</b> <b>REFERENDUM</b> RESULTS							
23 June 2018							
PEOPLES			LEAVE	%	REMAIN	%	TURNOUT
		England	15 188 406	53,3%	13 266 996	46,7 %	73,0%
		Wales	854 372	52,5%	772 347	47,5%	71,7%
		Northern Ireland	349 442	44,2%	440 707	55,8 %	62,7%
		Scotland	1 018 322	38,0%	1 666 191	62,0 %	67,2%
		Gibraltar	823	4,1%	19 322	95,9 %	83,5%

# BREXIT : AN ACT OF NATIONAL SELF-DETERMINATION ?

## ACT II

### BREXIT, SCOTLAND, NORTHERN IRELAND, GIBRALTAR AND NATIONAL SELF-DETERMINATION

#### A- Brexit, the National Self-Determination of the peoples of Scotland and Northern Ireland

##### A reminder :

*Declaration on Friendly Relations* (1970)

##### The principle of equal rights and self-determination of peoples

By virtue of the principle of equal rights and self-determination of peoples enshrined in the Charter of the United Nations, all **peoples** have the right freely to determine, without external interference, their political status and to pursue their economic, social and cultural development, and every State has the duty to respect this right in accordance with the provisions of the Charter.

**The establishment of a sovereign and independent State, the free association or integration with an independent State or the emergence into any other political status freely determined by a people constitute modes of implementing the right of self-determination by that people.**



- 62% of voters in Scotland freely determined to « Remain » in the European Union. In withdrawing from the European Union, the United Kingdom will be in violation of Scotland's people's right to a political status within the European Union. To « Remain » in the European Union, Scotland could envisage to exercise its right of self-determination to once again attempt through the establishment of « a sovereign and independent State » and apply for membership in the European Union.



- 55,8% of voters in Northern Ireland freely determined to « Remain » in the European Union. In withdrawing from the European Union, the United Kingdom will be in violation of Northern Ireland's people's right to a political status within the European Union. To « Remain » in the European Union, Northern Ireland could envisage to exercise its right of self-determination by the establishment of « a free association » with the independent State of Ireland which is member of the European Union.



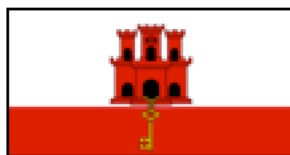
# BREXIT : AN ACT OF NATIONAL SELF-DETERMINATION ?

## ACT II

### BREXIT, SCOTLAND, NORTHERN IRELAND, GIBRALTAR AND NATIONAL SELF-DETERMINATION (*continued*)

#### B- Brexit and National Self-Determination of the people of Gibraltar

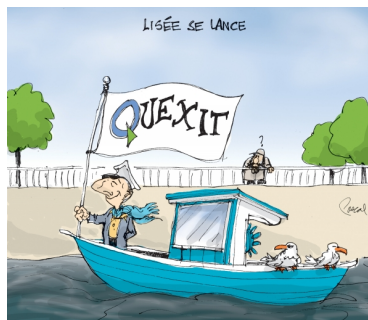
- 95,9 % of voters in Gibraltar freely determined to « Remain » in the European Union. In withdrawing from the European Union, the United Kingdom will be in violation Gibraltar people's right of self-determination as a non-self-governing territory and to a political status within the European Union. To « Remain » in the European Union, Gibraltar could envisage to exercise its right of self-determination through several modes of implementation.



- Yet, in light of previous « self-determination referendums » (2002 and 2006), Gibraltar faces a quandary :
- It does not appear to want to establish a « sovereign and independent State » which would allow for an application for membership of the European Union;
- It does not appear to want to establish a « free association » with the independent State of Spain which is a member of the European Union;
- It wants maintain its « free association » with the independent State of the United Kingdom, but in so doing it will be out of the European Union
- See DENIS MATTHEWS, representative of the Self-Determination for Gibraltar Group, said Gibraltar belonged to Gibraltarians, not to the United Kingdom or Spain. Its population, forged in a similar manner to that of many countries in the Americas, had “virtually unanimously” repudiated Spain’s claim to Gibraltar. The Self-Determination for Gibraltar Group sought recognition for Gibraltar and to inform its population about options for decolonization. Decolonization, he said, could only proceed by application of the principle of self-determination. Thus, it was “totally irrational to suggest” that the principle of territorial integrity could be used without consent of the area’s inhabitants. Self-determination was enshrined in the United Nations Charter, making it “totally unethical to even contemplate” handing the territory over against Gibraltarians’ wishes. Noting several historical examples of Spain affirming cession of Gibraltar to the United Kingdom, he said that Spain continued with its “indefensible and invalid claim”, rejecting two referendums held in Gibraltar, and resorting to “bullying and harassment” to achieve their aim. (Statement before the United Nations Special Committee on Decolonization, June 12, 2013 (<https://www.un.org/press/en/2013/gacol3254.doc.htm>))
- A solution : Maintain a “ free association ” with the United Kingdom, but demand to remain within the European Union ?

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## EPILOGUE



Pascal Élie

A well respected Québec political commentator, **François Brousseau** wrote in *Le Devoir* on 26 novembre 2018 the following : " And above all, there was the rallying of Theresa May, British Prime Minister, to the idea that a compromise, even a considerable one, on the future sovereignty of the "free" United Kingdom is preferable to the leap into the void that the "hard Brexit" would represent. The "hard pro-Brexit" scream treason, because the result of this negotiation is more like **sovereignty-association** than pure independence..

### Scene 1

**A Sovereign Québec in a Canadian Union ? (René Lévesque, Option Québec, 1968)**

### Scene 2

**Québec's " Sovereignty-Association " Referendum (20 May 1980)**

The Government of Quebec has made public its proposal to negotiate a new agreement with the rest of Canada, based on the equality of nations; this agreement would enable Quebec to acquire the exclusive power to make its laws, levy its taxes and establish relations abroad - in other words, **sovereignty** - and at the same time to maintain with Canada an economic **association** including a common currency; any change in political status resulting from these negotiations will only be implemented **with popular approval through another referendum**; on these terms, do you give the Government of Quebec the mandate to negotiate the proposed agreement between Quebec and Canada?

### Scene 3

**Québec's " Sovereignty-Partnership " Referendum (30 Octobre 1995)**

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

### Scene 4

**A Sovereign Québec's in Canadian Union (20??)**

- In 1918, 100 years ago, in the context of the formulation of Woodrow Wilson 14 points which included national self-determination, this concept was seen as a « catchword for international politics ». In 2018, it can - and is relied upon - under international law to allow peoples to freely determine their political status, wherever it become independent States or members of unions... or both !