

## THE FUNDAMENTAL POINTS OF THE PLAN IBARRETXE: The Right to Self-determination and the example of Quebec

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### Summary

In September 2002, the President of the Basque Government put forward the proposal “A new political pact for coexistence”, the “plan Ibarretxe”. In September 2007, he presented his “road map”: in October 2008 the Basque Country would be consulted, regardless of whether an agreement would have been reached with the State. The process would conclude with a decisive referendum, in 2010, setting forth the right to self-determination of the Basque People. The “plan Ibarretxe” resuscitates the old “principle of nationalities”, removed from the new international and European order, as opposed to the “principle of integrity” of the member States of an international society, and the “principle of stability” provided by the international institutions. The “plan Ibarretxe” wants to make the exception the rule, generalising the ‘Yugoslav model’. Additionally the plan Ibarretxe derived directly from the process undertaken in Canada with Quebec claiming sovereignty, but based on a tergiversated exposition of the evidence. The plan Ibarretxe sustains that the process undertaken in Quebec protects what it expressly rejects. The Supreme Court of Canada expressly rejects for Quebec the right to self-determination in the light of international law.

## Introduction

The political proposal commonly known as the *plan Ibarretxe* had its first parliamentary manifestation during the general political debate held in the Parliament of the Basque Country Autonomous Community of the (BCAC) in September 2002, when the President of the Basque Government - the *lehendakari* – presented the proposal titled “A new political pact for coexistence”. After that moment, the *plan* was developed in successive instalments until approval of the Proposal by the Basque Parliament on 30 December 2004 with 39 votes in favour and 35 against. This majority was possible because three of the six representatives for Batasuna – the party politically linked to ETA- voted in favour of the proposal, while the other three voted against, in a completely deliberate political operation. When the Proposal was taken to the General Courts (State Parliament), its consideration was rejected on 1 February 1 2005 with 29 votes in favour, 313 against and 2 in blank, after a debate in which the President of the BCAC intervened as representative of the Basque Parliament.

The corollary to this process was undertaken by the *Lehendakari* in a full session of the Basque Parliament in September 2007, in which he presented what he called ‘road map, setting out that in October 2008 the voting public of the Basque Country would be *consulted*, regardless of whether an agreement had been reached or not with the State in respect of a reform of the Statute of Autonomy, for the purpose of ratifying the agreement reached, in the former case, or, if no such agreement had been reached, to *implement* a process for solution’; that process would conclude with a *decisive referendum*, to be held in the second half of 2010, which would set forth ‘the right to freely decide on their future’ for the Basque people.

In the debate on the Proposal for the new Political Statute, the basis on which its legitimacy would be grounded has played a key role. To that end, its proponents and defenders have resorted to various arguments, which are not always mutually compatible. In this process, they have tried to show that the Proposal was in no way extraordinary in a European, and even world wide, context. Accordingly, depending on the drift of international events reflected in the press, the Proposal would reflect what was happening in the Åland Islands, the Faeroe Islands –they forgot about Greenland-, in Puerto Rico, in Quebec, in Scotland, in Montenegro and, finally, in Kosovo; the situation in the Basque Country would even be comparable to that currently existing in Tibet, as the spokeswoman of the Basque government recently affirmed. Anything goes; anything can be sued to demonstrate the unarguable legitimacy of the objectives contained in the *plan Ibarretxe*. Only the absence of a profound democracy in Spain would impede the materialisation in our midst of what is commonplace the whole world over.

During this long trek through the world's geography, the fundamental points of the Proposal have remained unalterable. In this document we will look to analyse the problems posed by those fundamental points from the perspective of their legitimacy.

### **The right to self-determination and the new paths of the 'principle of nationalities: an interpretation without basis**

The *plan Ibarretxe* - and the Proposal for a new Political Statute for the Basque Country in which it was eventually materialised – are grounded in a notion of the national condition of the Basque people which tries to resuscitate the old “principle of nationalities”, trying to take it down new paths.

The Basque people are configured as a nation and, as such, hold title to a native political legitimacy to decide, for themselves, unilaterally, the form of political institutionalisation they consider to be appropriate. The institutionalisation of the Basque Country, the legitimacy of its powers and its limits would not be conditioned, consequently, by the Spanish Constitution. As a result, the exercise of their right to sovereignty would not be limited by the Constitution as regards the content of that document or in respect of procedure. The Proposal for a new Political Statute would not be bound by those issues.

During the presentation of the first instalment of the Plan, in September 2002, the President of the Basque Government indicated that the “national identity” of the Basque People is grounded in the “native sovereignty” of the Basque People “recognised on the basis of the current and updated status of our pre-existing historical rights, explicitly set out in the Constitution”<sup>1</sup> and “in accordance with the Additional Provision to the Statute of Gernika<sup>2</sup> and the Basque Parliament

<sup>1</sup> The First Additional provision to the Constitution establishes that: “1. The Constitution protects and respects the historical rights of *foral* territories. 2. The general updating of the foral regime will be carried out, where appropriate, within the framework of the Constitution and of the Statute of Autonomys”.

<sup>2</sup> Additional provision to the Statute of Autonomy of the Basque Country establishes that: “Acceptance of the regime of autonomy established in the statute does not imply a relinquishment by the Basque People of the rights that would have corresponded thereto by virtue of their history, which could be subject to updating in accordance with the provisions of legal regulations”.

Agreement of 15 February 1990<sup>3</sup>, which claimed the right of the Basque People to self-determination”. The references to constitutional provisions and to the parliamentary agreement are merely rhetorical, as they represent interpretations convenient to the objectives of the proponents, without consideration for their systematic interpretation and their original meaning; without consideration for the interpretation established by the bodies with legitimate powers for such interpretation.

The Proposal for a new Political Statute is based, in accordance with statements made in the Basque Parliament, on three basic pillars: “a) The Basque People are a People with a separate identity, b) they have the right to decide on their own future, c) respect for the decisions taken by the citizens in the different legal and political ambits in which the society is currently articulated”. The separate identity of the Basque People consists, in accordance with the Proposal, of a “feeling of national identity”, a “sense of belonging” which “goes beyond legal norms or political borders”. And that “national identity” give the Basque People, in accordance with the Proposal, the “right to be consulted so as to decide on their own future”. These three pillars are those which are reproduced in the Statement of Reasons to the Proposal finally approved by the Basque Parliament.

These principles will be the basis for the element around which, basically, moves the unquestionable – in the opinion of the proponents - legitimacy of the Proposal: the right to SELF-DETERMINATION. As has been reiterated at each and every one of the parliamentary interventions by the President of the Basque Government in defence of his Proposal, and as set out in the Statement of Reasons, the Basque People would hold the right to self-determination as recognised in the International Covenants for Civil and Political Rights and for Economic and Social Rights, of 1966.

<sup>3</sup>- The Basque Parliament at a full session on 15 February 1990 approved a “motion regarding the right to self-determination of the Basque People” (*Official Gazette of the Basque Parliament*, III Legislature, n.º B-IV-134-135, de 26.2.1990), which affirmed that the Basque People “have the right to self-determination”, a right which “resides in the power of its citizens to freely and democratically decide on their political, economic, social and cultural status, either by creating a separate political framework or by sharing, in part or in full, their sovereignty with other peoples”. Subsequently, it was added that the Statute of Autonomy “resulting from a pact freely ratified by the Basque citizens, constitutes a meeting point for the will of the majority and the legal framework which Basque has created for itself at a certain historical moment in order to attain self-government and to regulate peaceful coexistence, representing, consequently, the legitimate expression of the will of the Basque People. In this regard, the statutory strategy and the more in-depth take on self-government through the full and faithful development of each and every aspect of the content of the Statute represent for Basques citizens the valid framework for progressive resolution of the problems of Basque society, and for advancement in the national construction of Euskadi”. This was, accordingly, an agreement which affirmed the right to self-determination by the Basque People, but referring to the Statute of Autonomy as a manifestation of that right and as the framework for the setting forth of any political objectives.

But, once again, the 'right to free determination' of peoples is interpreted by attributing a significance, a content, which is lacking in grounds, and which is absolutely not based on the interpretation that has been given it by the international institutions which are responsible for such interpretation. The need for a systematic interpretation of the right to free determination of peoples and the principle of integrity of the member States of an international society, together with the principle of stability in the international order of States to which it is linked – which makes up the axis around which the international order is established in accordance with the San Francisco Charter (1945) creating the UN -, has given as a result, in coherence with the provisions of article 73 of said charter –in reference to States which administer 'non-autonomous territories'-, an interpretation of the right to self-determination -firmly consolidated within the scope of international Law- linked Trade Marks he process of decolonisation. This is what is stipulated in the well-known Resolution 1.514 of the UN General Assembly, which interprets the right to self-determination as a right to independence. When a more broad interpretation has been sought for the term 'right to free determination', as was the case in the Resolution 1.541 of the UN General Assembly, which interprets the right to self-determination in the internal scope, that interpretation has been limited to a demand for the 'political recognition' of the affected people, which translates to the recognition of democratic forms of political representation, as well as an undetermined autonomy within the State of which they form a part. That is, precisely, the significance which should be given to the agreement undertaken by the Basque Parliament on 15 February 1990, regarding the right to self-determination –mentioned previously -; and that is the content of the recognition of the political autonomy of the Basque Country, and of its cultural and linguistic differences. Proposal for a new Political Statute runs counter to that interpretation.

On these pillars, the Proposal resuscitates the old 'principle of nationalities', trying to take it down new paths. Each nation would have the right to decide for itself the means of articulations it wants for itself. That would comprise the possibility of deciding its position within the State of which it forms a part, as well as, especially in the case of a State which does not accept a form of institutionalisation that satisfies the objectives of the nation, the permanent disposition of the right to become, as a last resort, a sovereign State.

But the 'principle of nationalities' does not constitute an element of the new European order developed, especially, after the fall of the Berlin Wall in 1989. It constituted one of the elements on the basis of which the establishment of a new order was attempted after the Great War in 1918, and contributed to its dramatic failure with the outbreak of World War II. In other terms, the applicability of this principle was reduced, especially, to the reordering of the ruins of the Austro-Hungarian Empire, within the geopolitical limits of Central and Eastern

Europe - establishing what is known as a 'double paradigm' in the protection of national minorities from Western Europe - and certain isolated cases of minor modifications to the borders between neighbouring countries.

For these reasons, the 'principle of nationalities' has been removed from the fundamental elements of the new European order, in accordance with the activities of the OSCE, continued by the Council of Europe (COE) and, finally, by the EU. Only in situations in which application of the 'OSCE model' has failed clamorously - like in the disarticulation of the former Yugoslavia - has that principle been revived to a certain degree. The *plan Ibarretxe* wants to make the exception the rule, generalising the 'Yugoslav model'.

The idea, in the fundamental points of the *plan Ibarretxe*, to ground in that principle, in the core of Western Europe, the possibility of a reopening of the *status quo* of the system of States, sustaining the legitimacy of the disarticulation of the *nations* existing within that system. And with significant territorial irredentism, to the degree that the Basque nation, at the decision of the representatives of the BCAC, is configured to include territories which do not form part thereof and which, in certain cases, do not even form part of Spain.

### **The 'Democratic principle' and the right to sovereignty: the tergiversation of the doctrine of the Supreme Court of de Canada regarding the secession of Quebec**

The Proposal for a new Political Statute derived directly from the process undertaken in Quebec claiming sovereignty, appearing in various parliamentary interventions by the *Lehendakari* Ibarretxe as a fundamental legitimising element. His very Proposal for a "status of free association" for the Basque Country, made in his parliamentary intervention in the debate of September 2003, is deeply in debt to the Quebec Proposal for sovereignty in the form of association or political and economic *partenariat* with Canada. But the Proposal set forth by Ibarretxe is based on a tergiversated exposition of the process in Canada and, very especially, of the doctrine established by the Supreme Court of Canada in its Ruling on the secession of Quebec, dated 20 August 1998, and on the political process carried out in Canada subsequent to said Ruling. Specifically, those who defend the Proposal have tried to sell as a *Canadian parameter* what is actually only one part of the process: the strategy of sovereignty applied by the *Parti Quebecois*.

In order to sustain their objectives, the defence of the Proposal for a new Political Statute has had to tergiversate the Canadian doctrine, even sustaining that it protects that which it expressly rejects. This is the case with the right to self-determination, which the Supreme Court of Canada expressly rejects for Quebec

in the light of international law, but which, as indicated previously, constitutes a substantial fundamental element of the Proposal for a new Political Statute. The tergiversation of the doctrine of the Supreme Court of Canada by the *Lehendakari* Ibarretxe in order to defend the Proposal goes even further. It moves around the significance of the consequences which derive from the 'democratic principle' in relation to what has been called the exercise of sovereignty. The Supreme Court of Canada established, first of all, that the object under study referred to the objective of secession. Any other objective relating to the status of a territory within a federal State should materialise by applying the principles of the federal system, and not through a move for secession. This is important because in both Quebec and the Basque Country the resolve to secede is played with not with a directly secessionist purpose, but rather with the aim of forcing a 'settlement in their favour.

Consequently, the Supreme Court indicates that, when the resolve to secede is in play, said resolve should be clearly stated, without double entendres of dual Proposals ('secession if our Proposal is not accepted'), sustained by a 'broad majority' in a qualitative sense ('free of any ambiguity as regards both the matter set forth and the support received'). In this sense, the regulation contained in article 13 of the Proposal for a new Political Statute for the Basque Country is of extraordinary significance relating to the so-called "democratic exercise of the right to decide", and establishing that the "clear and unequivocal will" of Basques citizens "will be sustained in the absolute majority of the votes declared valid"; that is, in practice, it could simply mean more votes in favour than against. This could not be further from the idea of *majorité élargie*, in the qualitative sense established by the Supreme Court of Canada.

Finally, the Supreme Court of Canada establishes that, when the above circumstances occur at once, the democratic principle requires that the parties negotiate. Negotiations which are faithful to that principle, which demand that any of the possibilities in the secessionist hypothesis be accepted. But the negotiations must respect the principles on which they are based and neither of the parties can count on a guaranteed outcome. The *lehendakari* Ibarretxe, however, sustains that, in the event that the results of the negotiations were not considered to be acceptable, the right to self-determination of the Basque People would grant legitimacy to the option of unilateral secession.

The *Lehendakari* Ibarretxe, consequently, avers that the Supreme Court of Canada says what it denies with regard to the right to self-determination for the Basque People; and tergiversates, to the point of denaturalisation, the conditions that the Supreme Court establishes. He continues to play with the 'dual Proposal' ('if the State does not accept the Proposal as a form of remaining in Spain, the Basque Country will opt for secession'), consequently denaturalising said proposal within

the democratic parameters established in the aforementioned legal doctrine. It denaturalises the requirement of a broad majority of a qualitative nature. It excludes the conditions which the democratic principle imposes for the negotiation process that would be opened. Elude that it would not be a process for negotiation of the status within the autonomic system, but rather of the conditions for secession. And it does not contain the necessary application of the consequences of the democratic principle within the Basque Country; because the same demands that require that the State negotiate the hypothesis of secession also oblige the internal operations of the subject wishing to separate. Because when certain conditions - territorial continuity and others - coincide, internal minorities have a similar right to not follow the rest of their community in the recessionary adventure. In the Basque Country, as in Quebec, and while the proponents of sovereignty do not want to accept it, the biggest obstacle to their objectives is the internal plurality of their society, their internal diversity, which makes coincidence of the conditions that, in accordance with doctrine of the Supreme Court of Canada, are required by the democratic principle extremely difficult. Political representation in the Basque Country over the decades expressly manifests this matter.