

**The Pursuit of International Legitimacy as a Sphere of Communicative Action:  
Separatism and Communicative Action in International Society**

As often happens, the ideas brought up in this paper developed out of an earlier research. In this case, it is my doctoral research which serves as the initial source for the ideas outlined in this paper. In this research I have focused on the transition from guerrilla fighting into state-building in separatist entities, also known in the International Relations (IR) literature as *de facto* states (Pegg 1998; Bahceli et al 2004; Dov Lynch 2004). As part of my research I have also focused on the interaction between the separatist movements and the international society, trying to understand the “foreign policy” of these actors. Maybe unsurprisingly, this interaction has revolved around the pursuit of international legitimacy and recognition for their claims. Subsequently, this interaction has involved a great element of communicative action in the form of a dialogue, argumentation and deliberation about the nature of legitimacy, membership in international society, and the right for statehood. Consequently, the pursuit of international legitimacy and recognition could be better understood if approached as a sphere of a dialogue and argumentation.

Both legitimacy and separatism have gained a renewed interest in the post-Cold War IR literature. Yet, students of both separatism and legitimacy have missed the interconnection between the two. Studies on separatism and secession have tended to focus either on the nature of the armed conflict or, alternatively, the legal and political implication of these actions on the state-system. Works on international legitimacy, in contrast, have generally focused on the constitution of legitimacy at the international level, and less on the manner in which actors that search for legitimacy actually engage with international society and its concept of legitimacy.

Approaching the pursuit of legitimacy and recognition as a sphere of an international dialogue and argumentation is not merely a theoretical practice. Argumentation and dialogue are seen as sources of changes at both the domestic and international level and as such can explain developments which have been so far overlooked in IR scholarship. I do so by applying the theoretical framework of communicative action and argumentation to the pursuit of legitimacy, and by so doing I hope to shed a new light on processes and developments which have been overlooked so far in the literature.

## A. Legitimacy as Membership in International Society

As Shane Mulligan (2006) has noted, legitimacy has had various uses in IR literature, which requires a careful definition of the term. And indeed, legitimacy has been used with reference to rules (Franck 1990), institutions (Claude 1966; Hurd 2007) and practices (Finnemore 2003; Collingwood 2006) in international politics.

This paper follows another common perception of international legitimacy in IR literature, as a “moral acceptability... to the remainder of international society,” and as “the collective judgement of international society about rightful membership of the family of nations” (Wight 1972: 1). In other words, legitimacy in this paper means recognition for the right of statehood – or what Buchanan (1999) has defined as *recognitional legitimacy*. Viewing international legitimacy as an institution based on norms and values, Wight sought to review the historical shift of legitimacy in international history from being based on the monarchical order in mediaeval international society, to one being based on popular sovereignty in the era of the great revolutions of the seventeenth and eighteenth centuries, and then shifting again during the era of decolonisation to based on the principle of ethnic majority and territorial integrity (Wight 1972).

Following studies have expanded this initial study to review the mechanisms of legitimation, the historical moments of change and the ideas that inspired the change (Williams 1998; Hurd 1999; Bukovansky 2002). One of the most prolific authors on the subject of legitimacy, Ian Clark (2005, 2007, 2009), has argued that understand legitimacy is to understand international society. For Clark, international society is seen as a “set of historically changing principles of legitimacy... not necessarily expressed in institutions... And too informal to be classed as rules” (2005: 7). These principles, according to Clark, gain legitimating status because they are perceived as guaranteeing international order and stability. Hence, Clark suggests, if one wishes to understand legitimacy it is more useful to examine historical moments of normative change. And these moments of great change take place in the aftermath of major wars, when peace agreements are signed and the principles of global order are redrawn

[A]t these periods the impetus for speculation is strongest, and appeal to broad principles most likely. On the other [hand], the spirit of pragmatism is equally prominent when the

international order has collapsed, and the imperative is to rebuild consensus, usually in the most inauspicious of circumstances (2005: 8).

The end of the Cold War, asserts Clark, is an example for such a peace agreement, concluding not only the conflict between the Soviet and American superpowers, but also the Second World War (2001). This peace agreement has given birth to what Clark has defined as the “liberal rights order,” whose main elements are “a concern with the beneficial effects of democracy, and a programme of encouraging its extension; a greater international interest in human rights; and a rhetorical, if not always practical, commitment to self determination” (2001: 224; see also Donnelly 1998). These values have been promoted by Western international society as standards of good statehood throughout the latter stages of the Cold War, as can be seen in the Helsinki Final Act (CSCE 1975) and they have gained further boost at the end of the Cold War, as can be seen in the Charter of Paris for a New Europe. The secession of the Soviet and Yugoslav republics allowed Western international society to apply these values to circumstances on ground, in what came to be known as *democratic legitimacy* (Williams 1998; Murphy 1999; Clark 2007, 2009).

The ideas of democratic legitimacy and of legitimacy as a constantly changing institution are rather convincing,<sup>1</sup> particularly if we examine the process of recognition in the post-Cold War era. What this paper is trying to challenge is the general tendency among the scholars of legitimacy to ignore the manner in which the actors which seek legitimacy and recognition, i.e. separatist and secessionist movements have engaged with the standards of legitimacy. The manner in which the ideas about legitimate statehood have been conveyed to those actors from the international society, the ways they have implemented them, and how they have used them to justify their claims is necessary for understanding the changes that both those actors and international society have gone through. The following section of paper aims to do that by setting the concept of legitimacy in the theoretical framework of communicative action in IR.

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<sup>1</sup> Although by no means uncontested (Horowitz 2003; Fawn and Mayall 1996; Rhodes 2003; Smith 2000; Al-Ali and Pratt 2009; Bukovansky 2007)

## B. IR Theory and Communicative Action

Trying to apply the Habermasian concept of communicative action to IR theory, Thomas Risse (2000) argues that the manner in which actors come to judge which norm applies and what values constitute a “good” behaviour is through argument and deliberation. As he asserts

When actors deliberate about the truth, they try to figure out in a collective communicative process (1) whether their assumptions about the world and about cause-and-effect relationships in the world are correct (the realm of theoretical discourses); or (2) whether norms of appropriate behavior can be justified, and which norms apply under given circumstances (the realm of practical discourse) (ibid: 7).

Hence, through argumentation actors challenge common assumptions and normative beliefs, seek consensus about their claims, but also to justify them. “In arguing mode, actors try to convince each other to change their causal or principled beliefs in order to reach a reasoned consensus about validity claims” (ibid: 9). *Change* is a key element of dialogue and argumentation: “When actors engage in a truth-seeking discourse, they must be prepared to change their own views of the world, their interests, and sometimes even their identities” (ibid: 2). And when actors are willing to change their mind through their communication with other actors, we are witnessing argumentation (ibid: 18).

Accepting the idea that argument and deliberation take place in international politics is necessary for understanding changes in the norms, principles, rules and values that guide international society – as they are constructed through moral debates “about legitimate statehood and rightful domestic and international conduct, products that are reproduced through routinised communication and social practice” which take place between the various actors in international society, state and non-state actors alike (Reus-Smit 2001: 526). As in the domestic sphere, the constitution of new norms, principles and values relies on certain ‘high values’, the constituents of the lifeworld, that is, the “storehouse of unquestioned cultural givens from which those participating in communication draw agreed-upon patterns of interpretation for use in their interpretive efforts” (Habermas 1991: 136, as cited in Reus-Smit 2001: 527) to which actors resort when they aspire to justify their behaviour and persuade other actors to change their beliefs. “At the international level, moral claims that are shown

to be consistent with intersubjective beliefs about the behaviour and goals of ideal states, or to foster the development of such states, carry the greatest weight” (ibid: 527).

The state-system, according to Risse, consists of the two preconditions for the existence of a communicative action: a common, even if thin, “lifeworld” – and the possibility for a “truth-seeking behaviour,” which can lead to a reasoned consensus (Risse 2000: 16-19). This rational is also supported by Marc Lynch (2000: 315), who argues that the public sphere – the space where interaction occurs and argumentation and deliberation can take place – exists in the international level as well. Globalisation, the decentralisation of communication, and the growth of transnational civil society have allowed the creation of new spaces for dialogue (ibid: 316). International public spheres, which encompass international conferences, media debates, and various virtual forums, may help groups that traditionally had been denied of it, gain access to wider audiences. And the participation in a public sphere, maintains Lynch, “carries a constitutive as well as a strategic dimension” (2000: 324). The transformations that actors may go through when taking part in a deliberation are patterned to a lot of extent by the public spheres in which they take place.<sup>2</sup>

Finally, by creating new international public spheres, communicative action on its various forms may provide a platform for transnational advocators of changes to take an active part in the process and to function as agents of change. As international society experiencing normative shifts, and as candidate states or secessionist movements try to understand the expectations of international society, transnational activists get an opportunity to offer their ideas and values and legitimise them through the process of argumentation.

The pursuit of international legitimacy, whether it ends up in formal legal recognition, or in failure, as in the case of many separatist movements, should be examined as a form of argumentation. This is because the endeavour by separatist and secessionist movements to gain legitimacy is essentially a dialogue in which both actors aim to persuade the other party to accept its claims. Secession means the violation of one of the most important values of international society, that of territorial

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<sup>2</sup> For an interesting study of the interaction between the national and the international public sphere and its impact on foreign policy making see Lynch’s analysis of Jordanian foreign policy (1999).

integrity. Consequently, the separatist leadership finds itself forced to justify its actions, mostly based on moral and practical grounds (i.e. already obtaining de facto statehood) (Geldenhuys 2009). International society, on the other hand, has often found itself forced to defend its reluctance to legitimise claims for legitimacy. In many of the cases of secession and separatism both sides showed willingness to change their initial stand, interests, behaviour and even identity. And although in other cases changes proven less easily attainable, dialogue has still taken place.

The international values of democratisation, human rights and free-market economy have played an important part in the deliberation, firstly introduced as the standards of legitimacy, as already noted above, then coming to serve those actors which were rejected legitimacy. Understanding, therefore, the search for international legitimacy and its outcomes could be better understood if examined in the theoretical framework of communication action. Doing so, in turn, could serve as a further layer to the study of norms and ideas in international politics.

### **C. The end of the Cold War and the Beginning of the Recognition Argumentation**

The end of the Cold War marked the beginning of a process of mass recognition, not seen since the era of decolonisation. As such, it also serves as the starting point of the renewed debate about recognitional legitimacy, shaping the following steps of argumentation. Throughout this process, which saw the emergence of twenty states (including the division of Czechoslovakia), the norms of democracy and human rights were invoked by both sides, used to justify secession, recognition and non-recognition. The starting point of this process was the three Soviet Baltic republics' declaration of their desire to "restore their independence." The secession of the Baltic republics was fiercely objected, not only by the Soviet leadership, but also by the West, headed by the US, which feared of the implications of such actions on international stability (Murphy 1999: 558). The three republics reacted to this by emphasising their democratic nature – all three republics were led by nationalist parties, elected by the public in the local democratic elections which took place as part of the glasnost reforms; and all three conducted referenda to support their claims for secession (Fawn and Mayall 1996: 197-199). Eventually, after Moscow had

recognised the new republics, the US and other loath Western states had no much choice but to accept the change, opening the door to further secessionist moves in the Soviet Union. Under such circumstances, Washington had given up on its earlier objection to secession, now conditioning its recognition to states that demonstrated adhere to the democratic norm presented in the Charter of Paris and Helsinki Final Act. And indeed, the majority of the seceding republics (excluding the Central Asian ones) came to support their secession with popular referenda and democratic elections (Fawn and Mayall 1996: 199).

The violence that characterised the disintegration of Yugoslavia can be seen as another milestone in reformulating the post-Cold War process of recognition. It has certainly had an important impact on the debate about legitimacy and international recognition. As in the case of the Baltic republics, Slovenia and Croatia's declarations of their desire to secede from the federacy encountered an objection not only from the side of Belgrade, but also from the side of other European states, such as France, which was facing secessionist threats in Corsica (Coggins 2006: 201; Radan 1994: 191). As part of its efforts to solve the predicament in the former Yugoslavia, the European Community (EC) established the Badinter Arbitration Commission, composed of five European jurists, in order to provide the Peace Conference on the Former Yugoslavia with legal opinions. The Commission, whose nature as an arbitration mission was vague from the start,<sup>3</sup> based its recommendations on the decisions of the Helsinki Final Act and the Charter of Paris and the candidate states were expected to meet the standards of democracy, human rights and international law, guarantee the rights of ethnic and national minorities and respect existing territorial boundaries (Rich 1993: 42-44). The EC was recommended to recognise Slovenia and Macedonia, but not Croatia, whose treatment of the Serb minority in its territory was condemned, and Bosnia-Herzegovina, which was required by the Commission to conduct a referendum.

In contrast to the recommendations of the Commission, the EC chose to recognise Croatia and Slovenia, with the former finally committing to guarantee the rights of the Serbian minority on the eve of recognition, after refusing to do so earlier (Radan 1993: 192). Macedonia, on the other hand, was denied immediate recognition

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<sup>3</sup> I discuss this later in the paper

although it “seemed intent on pursuing independence in a fashion tailored to Western, particularly EC, norms” and “did not request but responded to the EC’s proposal of recognition on a conditional basis and was deemed to have met the criteria” (Fawn and Mayall 1996: 202). This is because of Greek objection to Macedonian independence out of fear of the latter’s potential irredentist claims. Croatia, nevertheless, This has led observers to stress that the process of recognition was shaped by political, rather than legal, considerations (Radan 1994: 191) and that international society’s commitment to democracy proved to be vague (Fawn and Mayall 1996). Clearly, political considerations were central to this process. Yet, it is hard to avoid the fact that deliberation did take place: the actors reacted to the demands of international society, embodied in the Badinter Commission and later the Declaration on the Recognition of Yugoslavia, trying to satisfy them and eventually doing so. The fact that the secessionist leadership in the republics was attentive to the demands of international society is exemplified by the fact that all seceding republics supported their secession with plebiscites, although only Bosnia-Herzegovina was required to do so by the Commission (Coggins 2006: 188).

Of no less importance, as Radan points out to as well, the recognition of Croatia and Slovenia has led to notable changes in the perception of self-determination, which now came back to rely on the “understanding of self-determination being based on principles of popular sovereignty and representative government,” rather than the ethnic-based nature of decolonisation (Radan 1994: 192-193); the norms of territorial integrity and inviolability of borders; and the criteria of recognition, as new standards of the rule of law, democracy and human rights (ibid: 193-194). These changes did not occur out of the blue, but were the products of a deliberation within international society, and between international society and the actors that sought to justify and legitimise their violation of the former values and norms.

The above comment is exemplified in the cases of other separatist movements active during this era. In northern Iraq, for instance, the first step taken by the Kurdistan Regional Government (KRG), which gained de facto autonomy from Iraq following the latter’s defeat in the Gulf War in 1991, was to conduct general elections for the Kurdistan National Assembly and for the president of the region. The elections, which in fact preceded the establishment of the government and of the new

parliament, took place in May 1992 and were observed as relatively free and fair by external observers (Cook 1995: 78) – the first to take part in Iraq’s history. The KRG was not required to do so by any international body – as it was not a recognised state – nonetheless, this step was perceived as essentially linked with statehood by the Kurdish leadership. As one member of the new parliament stated

The democratic principle has been shown to have universal validity... the IKF [Iraqi Kurdistan Front – the umbrella organisation of Kurdish guerrilla movements], as a de facto ruling power... is taking the first step to catch the train of the civilized world. It intends to reconstruct Kurdish society on the basis of democracy and respect for human rights in accordance with international norms and agreements. It will demonstrate to the world that the people of Iraqi Kurdistan are capable of such self-government (Kakai 1994)

In another example, Mas’ud Barzani, a prominent guerrilla leader and the head of the Kurdistan Democratic Party, declared to a crowd before the elections campaign that

These elections should demonstrate to the entire world that when our people are given the chance, we can run our own affairs. The world should see that we know how to practise and entrench democracy, and how to live with the freedom and dignity which we have lacked so far because we have not been given a chance to exercise these rights (BBC 1991).

This was followed with steps which aimed to prove the readiness of the KRG to protect its ethnic and religious minorities and to guarantee their linguistic and cultural rights (Natali 2005: 64). The campaign to prove the KRG’s willingness to meet international standards came gradually to dominate its relations with the international society, supplementing and sometimes even replacing claims for moral legitimacy which had served the Kurds in their struggle for self-determination, such as the invocation of historical rights to statehood or the violation of the human rights of the Kurdish people by the Iraqi government. The collapse of Iraq following the 2003 invasion and the eruption of sectarian violence contributed further to the Kurdish efforts to justify its autonomous existence, now embracing the image of “the other Iraq” – a success story of a safe-haven in a chaotic region in which freedom of expression, secularism and women and minorities’ rights are protected (Gol 2009; KRG 2008, 2009).

Once again, a clarification is required: this is not to argue that the KRG should be seen as a Western-style democracy, or alternatively, should gain legal recognition. The aim here is to underline the fact that the KRG was shaped by the developments in international society and began to bargain with international society based on these changes. By so doing the Kurdish leadership has been both justifying its action of (de facto) separatism and legitimising its ever-contested existence. The same developments have also taken place in the Republic of China (Taiwan), which has developed what Madsen (2001) defines as “alternative legitimacy” that relies on the democratic and liberal nature of Taiwanese politics and economy as part of its campaign to gain recognition (see also Chen Jie 2002; Rawnsley 2003); and also in Somaliland, which has enjoyed several election campaigns and has used them as well to justify its right to self-determination, particularly amid the chaos in its parent-state of Somalia (Bradbury 2008).

Better known are the events that took place in the post-communist space, particularly in Kosovo. Affected by the collapse of Yugoslavia, the ethnic Albanians, constituting the vast majority in the Serbian autonomous region of Kosovo, engaged in a violent separatist conflict with Belgrade. Following acts of ethnic-cleansing committed by Serbian militias against Albanian Kosovars, NATO attacked Serbian targets and eventually led to the creation of a de facto autonomous Kosovo in 1999. Most members of the Western international society reached a conclusion that reunification is impossible and that Kosovo status should be reassessed. This meant another change in international society’s norms of recognition as Kosovo, in contrast to the other newly independent republics, was not a federal unit but a sub-federal one. The UN General Assembly established the UN Interim Mission in Kosovo (UNMIK) which in turn demanded the Kosovar authorities to meet eight standards of governance, concerning democratisation, the rule of law, freedom of movement, the protection of the rights of the various ethnic and religious minorities in the region, and the implementation of free market principles (UNMIK 2003). Further discussion on Kosovo’s status was conditioned by these standards, which subsequently came to be known as the Standards-before-Status policy.

As in the case of Croatia, although Kosovo failed initially to meet these standards, and particularly these concerned with protecting the Serbian minority, Kosovo’s status was reassessed and eventually Kosovo’s declaration of independence

in 2008 was recognised by more than 60 states, including the US, Germany, France, the UK, Japan and Canada, among others, not before Kosovo enhanced its efforts to meet the standards-before-status (Ker-Lindsay 2009). Once again, the argument that in the case of Kosovo political factors have proven to be more influential than legal considerations is not untrue. Here again, notwithstanding, one should not ignore the fact that a dialogue had an important part in the evolution of the question of Kosovo. The West was convinced that Kosovo's independence would bring stability to the Balkans – but in return demanded the candidate's adherence to international norms. Kosovo had not gained immediate success in doing so, but also did not reject such an intervention in its affairs. Hence the process is described an attempt by international society to “mould a nation state” (Hehir 2007) – although if we review the process of post-Cold War recognition it could hardly be seen as a precedential policy.

The developments in Kosovo resulted in what Fawn (2008) has defined as the “Kosovo – and Montenegro – effect” (Montenegro seceded from Serbia with the latter's consent in 2006) among other separatist movements in the post-communist space. Closely observing the events taking place in Kosovo, the other secessionist movements, and especially those that achieved de facto statehood, e.g. Nagorno-Karabakh, South Ossetia, Abkhazia and Transdniestria, began to reassess their own interaction with international society. Albeit consistent refusal from the side of international society to recognise them, these entities still managed to institutionalise their secession by establishing governmental, legislative and judicial authorities, and thus have moved to demand recognition not only based on moral claims, i.e. self-determination and violation of their human rights, but also on practical terms – their already achieved statehood (Fawn 2008; Caspersen 2008a,b, 2010). Referring to Kosovo, the political elites in these entities began to emphasise their right to recognition stressing not only their de facto statehood but also their success in the transition to democracy and the hypocrisy of international society for recognising Kosovo but not them, who have been more successful in meeting the standards of international societies. In order to support that claims, several of these entities, such as Nagorno-Karabakh have conducted referenda about their demands for independence as well as democratic elections which were observed by Western academics and NGOs and described as free and fair (Caspersen 2008). Every success gained by a separatist entity to meet the standards of international society, or at least to appear as

doing so, has become part of its foreign policy – ratifying the existence of argumentation in international politics.

The idea that separatist movements are potentially more open to the ideas of international society has already been brought up. Buchanan and Macedo, for example, when reviewing the prospects of establishing democracy as a legal standard for recognition, suggest that:

[N]ew entities created by secession are more amenable to international influence than existing states because they crave international recognition as legitimate states. Thus international community has greater leverage over secessionist entities than over existing states and may be able to do a better job of protecting minorities in the former than in the latter (2003: 5).

Yet, no much reference has been given to this in the literature – including in Buchanan and Macedo’s edited volume (2003).

The last section of this paper focuses on the dialogue about legitimation as a platform of advocacy. This is important, since the actions of advocacy taken by actors which are not necessarily directly linked with one of the parties, or whose ideas go beyond that of recognition, are important for understanding how changes may take place due to the communicative action.

#### **D. The Pursuit of Legitimacy as an Opportunity Structure for Advocacy**

So far, this paper focused on the interaction between the separatist or secessionist movements and the international society. The argumentation around the nature of legitimacy and membership in international society, nonetheless, is not confined to this interaction. Transnational actors as well participate in the process at both the systemic and the domestic level. They contribute to the constitution of new international norms and practices, but also perform as agents of change in the domestic level by conveying ideas from the system-level into the agent-level. In many cases those transnational actors use the process of argumentation to advocate their own ideas about justice, good governance and international order, often achieving some success in their mission by portraying their ideas as necessary for obtaining international legitimacy (when operating at the agent-level) or international order.

Among those actors we can count international and national NGOs, academics, jurists, members of the diaspora and individual activists. If argumentation and other forms of communicative action are seen as sources of change, then understanding the role of agents of change can explain why such change may occur.

The notion that transnational actors take part in the process of constituting the norms of legitimacy or generate changes at the domestic level has already been brought up in the IR literature. Ian Clark (2007) for instance, has noted the important role of transnational actors had played in the construction and reconstruction of international legitimacy throughout international history, stressing, for instance, the role of NGOs in the constitution of the Charter of Paris – considered to be one of the foundation stones of democratic legitimacy (ibid: 153-174). Yet, in accordance to his systemic approach, Clark's analysis remains at the international level. Other studies, in contrast, have stressed the importance of transnational activists in conveying new ideas from the international level into the domestic level, explaining changes in policy-making processes, as well systemic shifts through this advocacy of new ideas (Checkel 1997; Evangelista 1999; Keck and Sikkink 1998; Ropp, Sikkink and Risse 1999). These studies, however, refer neither the issue of international legitimacy nor to the issue of separatism and secessionism.

The idea of the process of legitimation and recognition as a platform for transnational actors to advocate their ideas stems from the fact that the search of legitimacy and recognition involves the creation of new international public spheres. Secessionist and separatist movements usually seek to internationalise their case in order to bring it to a wider audience and thus put pressure on other governments and IOs to take action with regard to their cause. This, almost inevitably, expands the sphere of deliberation to now include new actors that now have an interest in the pursuit of legitimacy, the interaction and its outcomes. And these actors may have their own ideas about the issues deliberated. The internationalisation of the communicative action not only allows them to participate, but has the potential of amplifying their arguments.

The nature of the transnational intervention in the communicative action is complex, as it is linked with the issue of epistemic communities, domestic structures and the nature of social movements. Unfortunately, the space limitations of this paper

do not allow me to delve further into this issue.<sup>4</sup> What I do intend to do here is exemplify this argument with relevant cases which have already been discussed above.

The re-emergence of the academic literature which calls for the introduction of democracy, human rights and other justice-related values as legal conditions for recognition or “recognitional legitimacy” could be seen as one such example. Many of these works, composed by international legal scholars and political and legal philosophers (e.g. Franck 1992; Orentlicher 2003; Rich 2001; Buchanan 1991; 1999; 2003) were attracted directly by the events in the aftermath of the Cold War and the conclusions rely at least partly on the cases of the former Yugoslav and Soviet republics now turned states. In addition to attracting a renewed academic debate about the nature of recognition, these works have also contributed to the shaping of democracy promotion policies – as some of these studies served governmental bodies, at least in the US, in the preparation for, and justification of, campaigns for democracy promotion, for example.<sup>5</sup> In other cases, some of these scholars have gone to serve in the state department, such as Diane Orentlicher in 2009. Yet, I acknowledge that this, at least for the moment, is more of a hypothesis as more study needs to be done on the impact of this literature on policy-making.

A more tangible example perhaps is that of the Badinter Commission. Indeed, defining the Badinter Commission as a transnational actor stretches somewhat the definition of transnationalism, as the Badinter Commission was set by the EC which was also the recipient of the Commission’s recommendations. Yet, the Commission was composed of five independent jurists from different European countries (Germany, Belgium, Italy, Spain and France) whose recommendations were based on their own experiences and their own interpretation of the International Court of Justice rulings (Pomerance 1998: 31).<sup>6</sup> The effectiveness and authority of the Commission derived from the fact that its recommendations were supposed to have a weight in the decision-making process of the EC about the recognition of the new states; and the idea that its recommendation may lead to peace and stability.

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<sup>4</sup> I do so in my research.

<sup>5</sup> Both Thomas Franck’s thesis about the right to democratic governance (1992) and Roland Rich’s work (2001) for example, served USAID in outlining its policies about democracy promotion (2002).

<sup>6</sup> According to Pomerance (1998: 31) the Commission often misused these rulings.

Although eventually the Commission's recommendations were only partially respected, as already shown above, it did succeed in conveying the ideas about good governance to the candidate states. Even though only Bosnia-Herzegovina was required to conduct a referendum, all other seceding republics chose to do so, in an effort to tailor their secession to the demands of the Badinter Commission (Coggins 2005: 188). Moreover, the Commission's recommendation contributed directly to the formulation of the Guidelines on the Recognition of the New States in Eastern Europe and in the Soviet Union, as well as the Declaration on Yugoslavia (Orentlicher 2003: 34-38), two documents which are considered to be foundations of the democratic legitimacy in the post-Cold War order. Finally, in addition to promoting the norms of democracy and human rights, the Badinter Commission also promoted, at least implicitly, an increased role to jurists and to adjudication in international affairs. The fact that the Commission has referred some of its recommendations to the ICJ rulings (Pellet 1992: 185) strengthens the notion that these jurists have also aspired to institutionalise the role of international legal bodies. The opportunity to do so was provided through the deliberation about the nature of legitimate statehood that ensued by the collapse of Yugoslavia. Albeit the optimistic views about the role of arbitration bodies in resolving future conflicts, as expressed by Pellet (1992: 181) could be seen as too early and too sanguine, it is hard to avoid the nature of the process of legitimation and recognition as a platform for further advocacy of new ideas.

In other cases, various transnational activists and advocacy networks integrated in the argumentation and the debate by utilising the need of separatist leaders and elites to learn and understand the expectations of international society. Often, the political leadership of separatist entities is composed of former guerrilla warriors, and are conscious about their lack of experience. This, in some cases, has provided an opportunity for transnational actors to function as advisors and through this function offer their own ideas, shaped by their experiences and world-views, as solutions to the problems facing the unrecognised entity.<sup>7</sup> Once again, this assertion builds on constructivist studies of transnational activism and domestic structures as opportunity structures for such activism (1994; 1995). As Risse (1994) states, "ideas do not float freely" – they are developed in the system and conveyed to actors by various agents. Secessionist movements and separatist entities provide a domestic

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<sup>7</sup> This assertion fits more the study of de facto states which actually have clear state-institutions.

structure that allows advocates of certain values and ideas – national and transnational in nature – to present these.

Here the KRG once again serves as a good example.<sup>8</sup> The Kurdish leadership was aware of its disadvantage and the need to learn the principles of good leadership. Jalal Talabani, the leader of the Patriotic Union of Kurdistan (PUK), acknowledged in an interview: ‘we came from the mountains, we were trained as fighters, and now we had to run cities’ (Stansfield 2003: 123). Hence, since its emergence as a de facto autonomous entity, the KRG has engaged with various transnational actors, starting from aid organisations to international NGOs, through foreign advisors, and to activists from among members of the diaspora. Thus, for example, at least four Western scholars have taken part in the constitution of the KRG. One of them, Brendan O’Leary, a political scientist from the University of Pennsylvania, stated to me in an interview that he was approached by representatives of the KRG due to his experiences in other separatist struggles (he advised Tony Blair on the issue of Northern Ireland) and his scholarly focus on federalism and state-building (interview with Brendan O’Leary 2009). Other scholars who served as political advisors to the KRG on issues of governance have been Gareth Stansfield, a British Political Scientist and Denise Natali, a British-based American political scientist.<sup>9</sup> Once again, more investigation is to be done on the impact of such scholars in this front, yet the fact is that these scholars were hired by the KRG and the (somewhat optimistic) postulation is that such actors have carried with them their own experiences and convictions when advising to the KRG on such issues as government building.

More notable advocates of change in the case of the KRG have been members of the Kurdish diaspora in Western Europe and North America and returnees to the KRG. Those have enjoyed a special status in Kurdish society because of their education and experience in the West (King 2008), but also for their part in the Kurdish struggle and advocacy of their Kurdish cause in their new homes

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<sup>8</sup> Other interesting example is that of Somaliland, in which diaspora has taken a great part in the state-building process and there is referred to as a “transnational-state” by Mark Bradbury 2008: 1-8). Diaspora activity has particularly notable in the fledgling democratisation in the entity (ibid: 130; Laura Hammond 2010). Other interesting cases for examination are the case of the Palestinian Authority and Eritra.

<sup>9</sup> Interestingly, James Crawford, an international legal scholar who specialises in international sovereignty, also functioned as an advisor to the KRG, determining that according to the Iraqi constitution the KRG is entitled to produce and export the oil in its territory (KRG 2009b: 94-95). Yet, at this stage, it is not yet clear to me whether Crawford was hired by the KRG.

(Emanuelsson 2005). These traits have turned returnees and members of the diaspora into an important asset for the KRG, as seen by the fact that many positions in the administration and education have been filled by returnees and members of the diaspora (King 2008; Emanuelsson 2008). This status has allowed members of the diaspora to embrace also the role of agents of change within the KRG. By utilising the need of the Kurdish leadership to legitimise its abnormal status in the state-system, and by gaining access to this leadership due to their unique status, diaspora-based advocacy groups have managed to have some impact on decision-making processes in the KRG, particularly with regard to human rights and freedom of expression.

One interesting example is that of the struggle for women's rights in the region. Although the KRG still suffers from high rates of "honour" killings, female genital mutilation and polygamy, diaspora-based women organisation have played an important part in the struggle to criminalise such acts, gaining some major successes during the last decade (Al-Ali and Pratt 2009: 142-145). The success of these organisations to bring to changes in the legislation and to force the KRG to fight such phenomena relied mainly on the ability of the activists to portray their ideas as linked with international legitimacy (Mojab and Gorman 2007) and "shame" the KRG in various international public spheres. The author of this paper attended a meeting in London between a senior Kurdish politician and a diverse crowd, which was dedicated to the development of the KRG. Asked by a member of the audience about the issue of violence against women, the politician dedicated the majority of the Q & A session to demonstrate the KRG's dedication to tackling the issue of violence against women.<sup>10</sup> In other examples, Kurdish diaspora organisations, as well as human rights NGOs such as Amnesty International (AI), have managed to pressure the KRG to release detained journalists and maintain the freedom of press mainly by depicting such behaviour as bad statehood (AI 2009a; interview with a member of the Kurdish Institute in Paris). The fact that the Kurdish leadership strives to demonstrate its rightful conduct allowed AI more access to the government than in most (or maybe all) other countries in the region. Nechirvan Barzani, the Western-educated former Prime Minister of the KRG was one of the few leaders in the Middle East to meet with AI representatives and commit to meet their demands (AI 2009b). And in

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<sup>10</sup> The KRG has also sponsored several conferences and research projects on issues related to violence against women in the region, including a project conducted by the universities of Bristol and Roehampton.

another example, advocates of full constitutional independence to Kurdistan have used the reality of the post-2003 Kurdistan to conduct a referendum to justify their claim for Kurdish independence – although the movement encountered objection from the side of the KRG (Berwari and Ambrosio 2008), cautious about Turkish and Iranian reaction to the idea of Kurdish independence.

Being successful in implementing the ideas and values advocated by such actors, or at least hoping to be seen as successful, separatist entities have taken these ideas back to the international society in order to justify their existence and aspirations. The separatist actors, by doing so, help amplifying the liberal standards as standards of legitimacy, as they generate a debate which unavoidably revolves around such claims.

The point made in the above paragraphs is not to assess the nature of the KRG (or any other separatist entity in this respect), make judgement of its commitments to internationally-held standards, or call for changes in the status of separatist movements. As this paper aimed to demonstrate that the pursuit of international legitimacy should be seen as a sphere of dialogue and argumentation which can lead to changes in the behaviour and conduct of the actors involved, this part tried to highlight some of the sources for these changes and how the nature of the pursuit of international legitimacy as a sphere of dialogue has actually served new actors to engage in the process, shape it, and with it try and shape international society.

## **E. Conclusion**

Attempts at separatism and secession, which are in fact a search for international legitimacy for one's claim to statehood, seem to be an inseparable element of the state-system, due to the privileges that come with the status of statehood, and since statehood is perceived as the ideal form of national self-determination. Consequently, scholars should be more aware of the implications of such a process. This paper highlights the nature of the pursuit of legitimacy and the process of recognition as a sphere of a dialogue, argumentation and deliberation. It aims to show that such a perception of the process can lead to better understanding of the changes which sometimes take place through this process, and which are usually ignored by the

students of such cases. As such, this paper can also serve as a starting point for a more thorough empirical study of more cases of separatist struggle, in addition to its potential contribution to the theoretical study of communicative action in IR theory.

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