Di seguito proponiamo uno stralcio del saggio di Cristina Fasone dal titolo "Secession and the Ambiguous Place of Regions Under EU Law", pubblicato all'interno del volume "Secession from a Member State and Withdrawal from the European Union" (Cambridge University Press, 2017).

IV How Should the EU Deal with These Secession Attempts? Some Provocative Thoughts

In the light of the EU's foundation on the values of democracy and the Rule of Law, common national constitutional traditions and, at the same time, respect of the national identity (singular) of the Member States, it does not appear legally feasible that the EU could allow regions which unilaterally secede in breach of national constitutional rules to enter the EU. The same logic would apply to the Member States, which of course would be asked to agree to such accession (Article 49 TEU) or Treaty revision, if the path of Article 48 TEU and a fast-track procedure are followed.[45]

Nor could those principles of democracy and the Rule of Law be invoked by the seceding territories against 'their' Member States in the name of self-determination, at least if we agree with the interpretation of this notion provided by the Supreme Court of Canada in the Secession Reference (and by international law).[46] No region within the EU Member States is definitely in the exceptional situation of oppression, violation of human rights, or colonisation which could allow a seceding territory to struggle for its self-determination.

Although this is certainly a provocative thought in challenging, to some extent, the autonomy of the Member States and the present limits of EU competence, in the future the EU could set out in a *new ad hoc* provision in the Treaty the minimum requirements an aspiring seceding territory should have to meet in order to apply for EU accession afterwards. This would appear desirable to protect the fundamental values of the Union, including its unity, and to make the transition from secession to new EU membership smooth, which might be appropriate particularly in the case of Scotland and in light of the UK's withdrawal from the EU.[47] A seceding region, indeed, is not precisely in the same position as a third country, where no EU law is applied and where no EU citizenship is acknowledged.[48] On the other hand, the peaceful and harmonious development of the EU integration process could be undermined if a seceding territory is admitted to join the EU as a new Member regardless of the lawfulness of the secession procedure and the relationship with the Member State affected by secession.

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[45] See P. Athanassiou, Accession from Within? - An Introduction', *Yearbook of European Law*, (2014), pp.1-50 and M. Chamon and G. Van der Loo, 'The Temporal Paradox of Regions in the EU Seeking Independence: Contraction and Fragmentation versus Widening and Deepening', *European Law* Journal, 20 (5) (2014), pp.613-629.

[46] The position of international law is however nuanced in that it neither forbids nor expressly authorises secessions: *see* A. Cassese, *international* Law (Oxford, Oxford University Press, 2001), p. 108; and A. Tancredi, 'Neither authorized nor prohibited? Secession and international law after Kosovo, South Ossetia and Abkhazia' *Italian Yearbook of International Law* (2008),pp. 37-61

[47] See the chapters 9, 10, 11, 12 and 13 of this volume. It is worth recalling that in the &exit referendum, 62 per cent of the voters in Scotland voted to remain in the EU and, in the wake of the national results of the referendum, the Scottish First Minister Nicola Sturgeon hinted at holding a second referendum on independence from the UK; a 'commitment' that has been subsequently confirmed, following the judgment of the UK Supreme Court of 24 January 2017 *(IZ (on the application of Miller and Dos Santos) v Secretary of Mate for Exiting the European Union and associated references*, [2017; UKSC 5), which has not considered the involvement of the devolved legislatures a requirement for triggering Article 50 TEU

[48] See J. Shaw, (note 7) above.

V Conclusions

Is the EU today able to 'rescue' Member States from internal disintegration and should it play any role in this regard? Since the Treaty of Maastricht, a process has begun leading to the gradual recognition of a role and place for the regions in the EU, in particular those with legislative powers, which is no longer 'regionally blind' and whose legal impact on the territorial organisation of the EU's Member States, even on regional forms of government, is a reality.

Not only are the regions aware of these legal changes, but particularly those claiming greater autonomy, if not independence, view EU membership as a constant point of reference. Secession initiatives in Italy, Spain and the UK tried immediately to establish a link between their demands and EU membership. A European Citizens' initiative, one that the European Commission refused to register, requested Catalonia's automatic accession to the EU and for the continued citizenship of its nationals, in the event that it declared independence.[51]

Furthermore EU membership is indeed a contentious issue when it comes to Scottish secession and a major point of controversy between the UK, now in the process to withdraw from the EU, and Scotland, which convincingly voted for the 'remain' at the Brexit referendum (62 per cent of the voters).

By impacting on the national division of competence between State and regions, on their institutional design, and on the way these institutional actors participate in EU policymaking, the EU cannot claim to remain neutral and indifferent to secession within its Member States, although it does not enjoy a specific competence in this field. In other words, the EU bears part of the responsibility for these developments and after the Treaty of Lisbon it has acted as if it were regionally oriented.

Despite there being constitutional differences among the EU Member States regarding the conditions and procedures for allowing the secession of a region, it is felt that a set of minimum requirements can be identified from the constitutional traditions common to these countries in order to characterise a lawful secession from an EU perspective. In particular, the prohibition of unilateral declarations of independence, respect for the principles of democracy and the Rule of Law and compliance with national constitutional rules are conditions that the ELT and its Member States should take into account when evaluating requests for accession by seceding territories.

Moreover, it is argued that ELI law in prospect should contemplate introducing a procedure for monitoring ongoing secession processes by the European Commission under a substantive (compliance with common constitutional traditions and Article 2 TEU values) and procedural (exchange of information and delivery of progress reports) perspective. This monitoring procedure would permit channelling secession into a path which is acknowledged as feasible and legally sustainable, more transparent and predictable, also for the many parties concerned, and finally it would discourage regions from seeking secession lightly or, when they do so, the European monitoring procedure would enhance the prospects of cooperation between the seceding territory and the Member State in question.

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[51] See European Commission, Response to the application to register a citizens' initiative on the Tortalecimento de la partecipacion ciudadana en la toma de decisions sobre la soberania colectiva', CO M(2012) 3689 final, 30 May 2012.