The European Union in the face of sovereignty conflicts

TOWARDS A FRAMEWORK OF CLARYTY
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HACIA UN MARCO DE CLARIDAD

Report document

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01 / Democratic management of internal sovereignty disputes in the Spanish state, European and global context. Contributions to the Conference on the Future of Europe (CoFoE)

This first panel reflected on the current political context and the advisability of promoting a framework of clarity as a contribution both to the European rule of law and to the resolution of internal sovereignty disputes in states, from an academic perspective with comparative theoretical contributions and dialogue on the contribution that the European Union could make to the democratic resolution of sovereignty disputes in European states.

To this end, contributions were received from academics who addressed the issue from different points of view. The first speaker was Professor Francesco Palermo, who addressed the issue from the perspective of constitutionalism. The second intervention was by Nicola McEwen, in which she spoke mainly about the experience of the United Kingdom and Scotland. Finally, Professor Gemma Ubasart and Professor Juan José Álvarez combined both the European and state dimensions in their analysis. The following are a summary of each of their contributions.

01.1. Theoretical Approach: Constitutionalism... Obstacle or solution to sovereignty disputes?

Francesco PALERMO. Institute for Comparative Federalism – EURAC.

Professor Francesco Palermo posed a first question: Is Constitutionalism an obstacle or the solution to sovereignty disputes?

Firstly, he informed us that the ***diagnosis is simple, however, the solution is much more complex***. As far as the first question is concerned, he indicated that the only alternative to constitutionalism and the principles of the rule of law is violence and arbitrariness, and that we should therefore try to tackle the issue in the most complex way possible in order to avoid a violent solution. Therefore, it is very easy to make a diagnosis, the law and constitutional procedures must prevail, because in their absence the door is open to arbitrariness and force. If there is no legal response, disputes do not disappear, they become more violent, so the law must respond to them. The law must solve and regulate disputes.

As far as the solution is concerned, it is always much more complex, but that does not mean that it is impossible. A procedure and a legal response need to be established. We cannot just say that political problems need political solutions or that if the law does not allow a solution, the law must remain unchanged. If the law does not respond to the dispute it must be changed to solve the problems.

What kind of legal responses are available to us? The international context offers many examples. The first instrument is ***the referendum*** since it is the most directly related to the democratic decision of the citizens. The referendum may be necessary, but the key lies in the procedure, how the referendum is organised, etc. A referendum without a clear and well established procedure can be problematic and can completely divide society. In certain cases minority groups can boycott referendums. Procedures must make the referendum a serious exercise. Looking at the international context we have to take into account different dimensions:

1. Turnout. A minimum turnout is usually a requirement for it to be representative.

2. Double majority. In the European Union we have good examples, like Montenegro, where a 55% majority was required with a minimum turnout of 50%.
3. Several series of referendums (over time). This is the example of New Caledonia where there have been several referendums since 1987, or the case of Denmark with the Maastricht Treaty.
4. Referendums containing several questions. This was one of the issues debated in Scotland to initially propose a non-binary yes or no option.
5. Safeguards for structural minorities. To prevent one group from using its majority to impose certain policies on a minority group (on language issues, for example).
6. Territorial boundaries. Limits on application can be set within the borders of a country.

In addition to a referendum, other mechanisms can be used. These can be both an alternative to a referendum and a complementary element to it. For example, requiring ***qualified majorities in parliaments*** before holding a referendum. Another option is to offer ***specialised courts*** the possibility of giving their opinion on the issue that may pave the way for a new procedure. These procedures may include the possibility of holding elections before a referendum and a complete revision of the constitution.

Based on all these options, ***what should the EU's role be?*** As an international organisation it may not take a proactive stance as these issues are often dealt with at the state level. However, this does not mean that the EU's role should be secondary. Article 2 of the EU Treaty states that there are certain values that are the foundations of the union, such as upholding the rule of law, minority rights, pluralism, tolerance etc. Based on this, the EU should at least encourage its member states to adopt measures at the domestic level to manage sovereignty disputes, meaning there is room for EU intervention from a less dogmatic and more creative perspective. It is a question of using legal instruments in an appropriate way to avoid disputes.

01.2. Global approach: Solutions to sovereignty disputes in comparative politics: The case of Scotland.

Nicola McEwen. Centre for Constitutional Change – CCC.

Professor McEwen first provided an overview and then took a closer look at the specific case of Scotland. To begin with, she indicated that sovereignty disputes emerge in places where several nationalities coexist in the same state. This requires a response from the actual state to manage this plurality. This can be the recognition of self-government, recognition of cultural plurality, concessions at the level of public policies, etc. These instruments can meet the needs of these communities and avoid disputes. However, they are often not sufficient and disputes emerge.

What other instruments are available to states in such cases in a democratic context? One option may be to do nothing, to ignore the dispute. Another option is to compete, another is accommodation, to provide mechanisms to accommodate such sovereignty claims. What could the EU do? The answer has generally been to indicate that these are internal issues for member states, and while this is true, there is also scope for action since it has a responsibility to participate in those disputes in which EU citizens take part.

Few countries recognise self-determination in their constitutions and the UK is not one of them. However, there is no explicit constitutional barrier to the independence of a part of its territory.

The most important constitutional doctrine is that of ***Westminster's parliamentary sovereignty*** and this can be problematic in terms of legal doctrine, but at the same time it can facilitate its resolution. In 2014 there was a Scottish independence referendum with a simple, binary question and only a simple majority was required to start negotiations between the governments.

This is highly unusual in comparative politics. Why did it happen? There are 2 reasons:

1. There is a majority political culture in the UK. The Scottish system, however, is proportional and yet the SNP has won consecutive majorities. The system was designed so that one party would not get a majority and the SNP did. This reinforced the demand for a referendum.
2. On the other hand, no one expected independence to win, so it took the risk out of holding the referendum.

The process was very successful, but the fact that 2 years later the UK voted to leave the EU has reopened the debate. By treating the whole of the UK as a single constituency, the majority voted in favour, but in reality, it was a majority English vote, which creates a problem in a plurinational and non-homogenous state. In 2016, this plurinationality was clearly visible and revived demands for sovereignty.

Last year the SNP was re-elected in a Scottish parliament with a clear majority in favour of independence, also counting minor parties such as the Greens. A referendum bill in Scotland would go ahead with no problems, but the debate centres on the fact that ***constitutional matters should be decided by Westminster***. The response from the British government at this stage is very different from the previous one. It does not seek accommodation and rejects the possibility of a referendum, so they have chosen to wait for the sovereignty claims to decrease and they have also decided to contest the Scottish Government in the courts.

What could the EU do in this context? Given that the UK is no longer a member state, it could choose to do nothing. We also know that if Scotland were to gain independence it should apply for EU membership. There will be a time when the EU will have to respond to the positions of both pro-independence and anti-independence supporters. In this regard, it should provide a clear response in order to be as impartial as possible. It will have to respond to both the timing and the conditions of accession to the EU. As far as time is concerned, it cannot simply say that we have to wait for everything to be negotiated internally in the UK. Another aspect will be flexibility in relation to Schengen, whether an independent Scotland within the EU could be part of the common transit area with the British territories, whether there will be passport control at the border between England and Scotland, etc.

01.3. European and state rapprochement: Quo Vadis, Europe? Quosque tandem, Spain? On the democratic management of sovereignty disputes: State and European dynamics

In this section, Professor Gemma Ubasart and Professor Juan José Álvarez addressed the issue from a European and a Spanish state perspective. Professor Ubasart spoke first, followed by Professor Álvarez.

Gemma UBASART. University of Girona

Professor Ubasart indicated the importance of understanding the current context, which is highly complex, but which at the same time makes the need for a framework for dispute resolution in Europe more evident. Without rejecting the legal view, she advocates a political perspective to deal with the issue.

Sovereignty and the question of self-determination is the basis for both a pro-independence project and for the institutional embodiment of a plurinational state. The possibility of holding a consultation on the political future of a territory is a matter directly related with its recognition as a political nation; it is one of the key elements embedded in the issue of understanding plurality.

In her opinion, the self-determination of peoples is enshrined in various texts of international law. However, since the 1960s, the majority interpretation has limited self-determination to decolonisation processes. What is more relevant is to focus the debate from a more political perspective. What is most important is to observe how some Western democratic states that place the idea of pluralism at the centre of the debate resolve intrastate sovereignty disputes. Here the ***metaphor of the right to decide*** gains force. It refers to the idea of democratically deciding the future in a different way than traditional self-determination.

It is in this logic that we understand the advisory opinion of the Supreme Court of Canada in 1998, which is of more interest than the subsequent law of clarity. In Professor Ubasart's opinion, it can be summed up very simply: even if secession is not recognised either in international law or in one's own constitutional order, in a democratic state the means must be found to make the citizens' decision on their future effective. This is ***a political problem***, not a legal one. The political problem will then have to be channelled into a legal form, but the main issue is the political problem.

The agreement between the Scottish Government and the United Kingdom was inspired by this spirit and she believes that this should be the way to manage these disputes at the European level. In the case of Spain, a similar route could be taken, which is not a legal issue but a political one, so we should not get bogged down in the legal debate. Some jurists believe that it would be possible to call a referendum within the Spanish Constitution using different articles: Art. 92 referendum called by the state government's President; 150.2 transfer of the state competence to autonomous governments to call a referendum or via a specific law of consultation. The rulings of the Constitutional Court are not consistent, but they are becoming more and more restrictive in terms of calling consultations. It depends more on the correlation of forces than on the law itself.

In her opinion, in the ***Canadian spirit*** and with the range of options on the table, a European mechanism should be adopted and applied in the territories of the member states. A common agenda of demands is required, working with internal alliances in which both pro-independence and plurinational interests converge, as well as in international alliances. This national and international agenda must have a programmatic content that deals with issues such as the problem of the political bias of the Spanish Constitutional and Supreme Courts.

The resolution of such disputes will require a great deal of politics because despite the legal avenues being available, what is really required is more political will and a stronger alliance to strengthen a common political agenda. To conclude, she indicated that, at European level, the war in Ukraine has brought to the table the need to rethink borders and shared sovereignty.

Juanjo ÁLVAREZ. University of the Basque Country/Euskal Herriko Unibertsitatea
From the outset, Professor Álvarez stressed the need to interpret moments such as the present, which he considers to be "pivotal" moments, which are times of unease and uncertainty, when it is possibly more necessary than ever to offer certainties. In his opinion, this makes it an excellent time for Europe to offer a solution to sovereignty disputes.

He stressed that in the current context, ***international legality is very weak***, citing the case of the Sahara as an example. He believes that the law is there to build bridges, and that an open interpretation of the constitutional framework is necessary to ensure it is the law that adapts to reality and not vice versa. Does talking about issues such as a clarity directive, or the academic debate promoted by Eusko Ikaskuntza with transnational support on deciding on the status of sovereignty, of co-sovereignty, of interdependence, mean encouraging secession? Does it mean going down the unilateral route? Does it mean violating state or European legality? In his opinion, the answer to these three questions is no.

He believes that the only way to confront the debate is as Taylor said in Quebec: "a sovereigntist's dream must not become a non-sovereigntist's nightmare". Another criterion that goes way back in Basque politics has been "do not impose and do not impede". It also brings us to what Sennet claims about governing in democracy, which is nothing but governing disagreement. Life in democracy is not a happy Arcadia, it is a life in which problems have channels for solution. If you don't channel them, they become entrenched, and the Sahrawi example clearly indicates this. Some who militate in favour of strict legality in some cases, change their position in other cases and choose to clearly violate it.

Another point he wanted to stress is that the law does not change reality. Respect for the rules of the game in democracy is important, but if ***channels are not established to ensure that democratically expressed political will*** is taken into account, the system itself ceases to be democratic. The problem with the Spanish constitution is that it fears citizens' opinion. It must be remembered that only two referendums have been called in Spain since the beginning of democracy, namely on NATO membership and the European Constitution.

Another consideration is whether we are talking about ***internal or European disputes***. It is not external interference for the European Union to propose a channel for the resolution of this type of disputes without the pragmatic responses that has prevailed so far. Moreover, this approach does not affect Europe's territorial integrity. Professor Álvarez believes that there is a legal basis at the European level to regulate these issues. He believes that between the intergovernmental and the supranational, in issues like sovereignty, the intergovernmental vision of the European Union has taken precedence. Nevertheless, there are legal elements in the EU that could be used in these disputes, such as article 3 when it speaks of peoples and cultural diversity, the promotion of peace, the principle of non-domination, the principle of cooperation, democratic quality, respect for fundamental rights, etc. There are many arguments for a common framework of standards for this aspect as well.

He stresses that the Scottish vision shows how independence can be relativised. The classical concepts of nineteenth-century state-building faded away. The Scottish proposal maintained a shared head of state, they remained in the Commonwealth, they maintained a shared currency, they were not going to have their own army because they understood that the British army was going to provide the services. They advocated for independence to lose a lot of those powers in favour of the European Union. It is a ***21st-century concept of independence*** that plays down many issues. On the other hand, demonising the concept of multi-nationalism is the antithesis of Scotland where people voted rationally rather than with their hearts and without any element of identity. He also mentions the Quebec process and the decisions of the Supreme Court of Canada as very positive contributions to dispute resolution.

He also highlights the ambiguity and pragmatism that exists in this area. In some cases, international law has been violated. The 22 July 2008 ruling on Kosovo by the International Court of Justice in The Hague ambiguously stated that international law does not prohibit a unilateral declaration of secession. International law does not confer the right to independence, but, on the other hand, a declaration of independence is not contrary to international law. There is no legal rule governing when and how a state can be independent, but pragmatism reigns supreme.

Legality will never allow the use of violence to create an independent state. However, there is no clear regulated path to reach it, so jurists should set guidelines to ensure the process is governed by democratic parameters. In this sense, it may be a good time for the European Union to take this forward, to understand that the best way to solve a problem is to regulate it democratically.

To conclude, Professor Álvarez pointed out that ***international law*** has the means to act, as does the European Union, and that in the geopolitical chaos in which we find ourselves, a calm, relaxed debate that would demonstrate that the goal is to do things right and to set guidelines for them will generate a higher quality of democracy. This makes the debate that has been held, that has an academic content and above all that is not politically labelled, a timely one.

02 / Towards a European framework of clarity. Contents of the background document for the resolution of territorial sovereignty disputes in the European framework.

02.1. Description of the project promoted by Eusko Ikaskuntza and the Institut d'Estudis Catalans

The main objective of this project **is to offer a proposal for the bases for the resolution of territorial disputes of sovereignty within States**. A proposal open to public debate on the need to approve an instrument of clarity that includes a common standard to guarantee European citizens that territorial sovereignty disputes will be managed and resolved in accordance with the principles and values of the rule of law, that is, guaranteeing the principles of democracy, respect for minorities and human rights and legal certainty. **In short, a "standard" that could be accepted by the different European institutions as a proposal for the development of a framework of clarity in the democratic resolution of territorial sovereignty disputes.**

To this end, it has been necessary to achieve the academic, social and institutional alliances required to open a structured public debate at the European level. A context that, based on collaborative governance, considers the final product as a collective result with the necessary legitimacy to be presented to the different European institutions.

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02.2. Fundamental lines of the background document for the resolution of territorial sovereignty disputes in the European framework: explanatory memorandum and executive summary

The aim of the document is to present background to initiate an orderly debate within the European institutions on the need to provide a democratic response to intrastate territorial sovereignty disputes and, where appropriate, to serve as an initial document for the drafting of various legal instruments or proposals (code of good practice, resolutions, etc.) that contribute to their democratic solution.

The drafting of this collective document, in which more than 50 academics from various universities and research institutions participated, promoted by Eusko Ikaskuntza and the Institut d'Estudis Catalans, is based on common premises accepted by all its authors.

Firstly, the existence of this type of dispute in the European and international framework. There are disputes in the world and in Europe today that can be defined as "internal territorial sovereignty disputes".

Secondly, the existence of such disputes are not marginal or the result of tensions and conceptions of the past, but that, even though they may be connected to previous events, they are related to claims that are totally legitimate, that appeal to current values and rights, and that are presented through legitimate demands.

Thirdly, although they are usually treated as internal affairs of states, insofar as they affect individual and collective rights, they should be treated from the conviction that their protection is a matter that transcends state borders and concerns the entire international or regional community. To this conviction we must add the fact that, given its characteristics, in which one of the parties to the dispute is the actual state, it is difficult for the state to act as arbiter at the same time, making a third party even more necessary to facilitate their resolution.

Fourthly, there is the need for this resolution to be set out and promoted with full respect for democratic principles, the rule of law and human and collective rights. In other words, in line with the dominant values of the 21st century.

Fifthly, it is clear that this type of dispute is complex, with multiple, intersecting dimensions and, therefore, its solution requires responses that take this complexity into account. It is therefore necessary to promote public reflection on these disputes and to provide common bases to support the development of tools for their resolution, as proposed in this document.

Sixthly, it is noted that, within the European framework, there are various institutions that could contribute to the development and promotion of these solutions. With different criteria and areas of action, the various European institutions in the broad sense (the European Union, the Council of Europe, or the Organization for Security and Co-operation in Europe) could, in accordance with their competences, principles and inspiring values, promote solutions that could involve having a common framework of standards for the resolution of territorial sovereignty disputes.

Seventh, it is based on the conviction that contributing to the resolution of this type of dispute strengthens the European project. Both from the perspective of reinforcing its founding values and from a pragmatic point of view, having shared legislative tools or standards contributes to stability, by having an early impact, without ad hoc interpretations, on tensions that may indirectly affect the entire European area. They also contribute to a system of governance that strengthens the links between European citizens and territories, reinforcing the role of arbiter and promoter of the values and principles of the European Union and the rest of the European institutions.

This Background is divided into three parts to address three types of issues: (1) What is a territorial sovereignty dispute? (2) What could be done to channel them into a democratic solution? (3) Why should European institutions commit to resolving them and in what way?

Thus, in the first part, territorial sovereignty disputes are defined as disputes in which a relevant part of the citizenry of sub-state political communities claim, without sufficient recognition by the state in which they are integrated, the capacity to democratically decide their political status, including the possibility of these territorial communities being able to be established as sovereign states.

Often, a significant number of citizens of these sub-state territorial communities share a sense of national or collective belonging that does not coincide with that assumed as their own by the nation-state in which they are integrated, although they may enjoy varying degrees of recognition and self-government by the state in which they find themselves.

The territorial sovereignty dispute arises in those cases in which the state's political system does not articulate or allow an agreed channel to exercise the capacity to freely decide the political status of a sub-state political community in which there is a relevant collective will that does not coincide with that of the majority in the state, which always leads to clashes between different democratic majorities.

Examples of this type of dispute in the European framework include Catalonia and the Basque Country (regarding Spain and France), Flanders (regarding Belgium), Scotland and Northern Ireland (regarding the United Kingdom), the Faroe Islands and Greenland (regarding Denmark). Similarly, with a different intensity in the externalisation of the dispute, situations such as Galicia (Spain), Corsica (France), Wales (UK), South Tyrol (Italy) and Gagauzia (Moldova), among others, could be included in a more extensive list.

In similar cases, or in specific situations in these same disputes, it has been possible to channel them through democratic practices that can serve as an example to elaborate a framework for their peaceful and democratic resolution. On the basis of these examples, and an analysis of the general conditions of democratic legitimacy in which they may be set, a series of proposals can be made as to how the demands should be formulated, what democratic response would be the

most appropriate, and how the democratic decision achieved should be developed and implemented.

This is the aim of the second part of the paper, which develops the main elements to be included in general standards assumed as legitimate by the international or supra-state community. These should allow for a balance between representative and direct democracy, articulate formulas that guarantee quality public deliberation and pluralism, equality between the parties, political stability and full confidence in the resolution processes.

As discussed in the third part, the European institutions have different competences, resources and mechanisms to promote this type of standards, based on their respective legal bases and areas of action.

02.3. Participatory exercise of the day, contributions: highlighted key-ideas, key-ideas to be added, proposal of future initiatives.

Highlighted key ideas

A RESPONSE FROM THE EUROPEAN RULE OF LAW IS NEEDED:

- Functionality and feasibility. Democratising impact of a shared standard for the democratic resolution of this type of dispute.
- A proactive instrument in the face of the changes to come.
- These are not disputes of the past, they are totally contemporary.
- A common framework for resolving these disputes is desirable.
- It strengthens the European project.
- Territorial sovereignty disputes require international involvement; today there are no disputes that are "internal to states" anywhere, least of all in Europe.
- They have a legal place: rule of law, human rights, democratic principle, principle of non-domination, respect for plurality and the peoples of Europe.
- A legal framework needs to be created on a European issue on which Europe has substantive competence (and should have a role).
- There is a legal gap and this may be an opportunity to regain optimism.
- It comes at a key moment in the debate on European values and the role of the EU, the member states and the peoples of Europe.
- It is necessary to find a channel between interests and international law, which allows us to overcome the *Realpolitik* that does not guarantee human rights and democratic values.
- It deals with disputes that remain in the internal sphere of states, giving the false impression that they do not exist externally, remaining silenced, with the consequent risk of polarisation and radicalisation or chronification;
- These are complex disputes that require sophisticated management.
- It is essential to establish conditions and limits that prevent hasty decisions in the heat of the moment.

Key ideas to be added

- Provide a framework of opportunity to talk about resources and their distribution.
- Emphasise that the project is linked to the *acquis communautaire*.
- The procedure must offer more than one path, it should offer various options for dispute management.
- The involvement of supranational institutions produces fear or mistrust in member states, it is necessary to consider a way to overcome these fears.
- Majorities/minorities are fluctuating, it is in everyone's interest that procedures are clear and guaranteed.
- Highlight the crisis/emergency context.
- Highlight the transversality of the project.
- Reflect on the meaning of sovereignty.

Proposals for future initiatives

- Activate the European right of petition/European citizens' initiative.
- Institutional declarations of adhesion (Address parliaments and other supra-state/state/sub-state institutions...).
- Support from other European sub-state entities in similar situations.
- Support and involvement of social players and movements, feminists, pacifists...
- Send a proposal to the European Commission to draw up a minimum standard for the resolution of these disputes.
- Define a shared agenda and involve the agents concerned.
- Greatly strengthen the alliances between political communities that share sovereignty disputes: Basque Country, Catalonia, Scotland, Ireland, Corsica, Flanders....
- Promote university debates for the new generations.
- Achieve a greater presence in the media, social networks...
- Broaden the consensus on minimum standards among those agents, peoples, institutions, experts, etc. who share the objective of establishing a common minimum standard.
- Promote a reform of the EU treaty (European Constitution).
- Promote debate beyond the academic sphere.
- The European institutions must understand that they have a problem that needs to be solved and must anticipate the dispute. Otherwise, it will be the people who will "create" this problem with initiatives that directly challenge Europe.

03 / Instrumental dimension: on the implementation of the framework of clarity in the European institutions

03.1. Institutional mapping: Opportunities offered by the EU for the implementation of a framework of clarity

Neus TORBISCO. Graduate Institute Geneva.

First of all, Neus Torbisco, Professor at the Graduate Institute of Geneva, described a first institutional mapping of where we can locate the opportunities offered by the European ecosystem to incorporate the foundations of clarity.

In order to find concrete institutional paths and responses, Professor Torbisco believes that firstly it is essential to address and settle the debate on why the EU should resolve these territorial sovereignty disputes. In other words, the debate on how the EU should address these disputes is directly related to and conditioned by the ability to rethink the EU's dominant paradigms or axioms about its own political identity.

Why is this the EU's responsibility? This is the first question we must answer. In this sense, the dispute between Spain and Catalonia has been a clear example of the EU's framework of thought in this type of dispute. On the one hand, we have seen a central reaction around the condemnation of the violations of individual human rights by the disproportionate police violence of the Spanish state, but at the same time, we have witnessed an explicit silence on any possibility of the EU intervening, either as an arbiter or by establishing some concrete parameters on collective rights or on the exercise of sovereignty in the framework of the right to self-determination.

On the other hand, according to Professor Torbisco, there is a paradox regarding the recognition of collective rights that is still present in the EU today. Collective rights have not been assumed in the EU beyond the individual rights of the members of these collectives. Only when there is a mass violation of individual rights is it understood that there is an obligation and responsibility to act. And it is then that tools for recognising sovereignty are taken into account, but only in conjunction with this idea of security, and not aimed at promoting collective rights as an instrument for preventing the violation of individual rights.

And thirdly, in the EU, the idea persists that these disputes would disappear once supranational structures of governance were consolidated. For Professor Torbisco, however, the present is a clear demonstration that these disputes do not magically vanish. In fact, the main cause of human rights violations today are internal disputes on cultural, identity or ethnic grounds. In the end, *Realpolitik* rules in the EU, i.e. these disputes are not assessed from a preventive but rather a reactive analysis, the only thing the EU does is to react to these disputes when they become evident.

This stance by the EU clearly shows the limitations of the framework of thought on these disputes. This political will that sees these disputes beyond the limits of the EU needs to be transformed in order to bring about institutional change. And it is precisely the CoFoE that opens a window of opportunity to change this dominant model of approach to this type of dispute. It is a question of generating a framework where this debate can be successfully promoted, where a change of institutional vision can be proposed, where the ideal of the Rule of Law can be extended through the democratic principle to better include and accommodate the democratically expressed interests of territorial and national minorities.

In conclusion, Professor Torbisco proposed to once again promote the creation of a public and political institutional space within the European architecture for entities other than sovereign member states. It is true that at the time the Maastricht Treaty created the Committee of the Regions, but in the end the Europe of the states has prevailed and it has had a merely advisory role. For Professor Torbisco, it is therefore a priority to reopen the debate on the creation of an area that can develop and implement a proposal such as the one presented in this project.

03.2. Round Table. After the CoFoE, what initiatives that could promote a framework of clarity in the EU should we take into consideration?

After Professor Torbisco's first speech, the round table began with contributions from three MEPs, through video recordings:

The first speaker was **María Eugenia Rodríguez Palop** MEP (Podemos, The Left), who stressed the need to understand the right to self-determination as a human right, and that for this it is essential to make a paradigm shift and understand human rights in a different way. What is important when defining rights is not who the holder of the rights is, but rather, the object they are meant to protect. What is essential in human rights is not the subject or their holder (whether individual or collective), it is not the individual good that they protect, but the way in which they stimulate the exercise of democracy and relational practices.

In this way, Rodriguez Palop spoke of rethinking the hierarchy of rights and prioritising political and social rights over civil rights, since it is political rights that guarantee political participation and social rights that guarantee social cohesion. What is important about political and social rights is the way in which the subjects of these rights relate to each other. Thus, it is essential that they facilitate the encounter and the sense of belonging, and this is centred on the basis of both chosen and unchosen ties.

Rights are not possessions; they are not about having but about doing; they are the fruit of a relational context; they are a way of being and doing in common. And just as we must question the hierarchisation of rights, we must also question the patrimonialist conception of rights.

Thus, if we understand that this is how it is, for Rodriguez Palop, we must understand that the right to self-determination of peoples is a human right, and therefore deserves to be guaranteed and protected.

In a Europe of states, where it is true that states have not been abolished, but have been superseded by both infra-state and supra-state bodies. It is important to talk about the right to self-determination of nations and communities, understood not in a rigid, closed and exclusive sense, but where both "bioregional management" and geostrategic management are what is important.

Secondly, it was the turn of **Chris MacManus** MEP (Sinn Féin, The Left), who shared his analysis of the Irish Republican Party. In this case, he began by highlighting the right to self-determination of all peoples and nations. The claims of the Irish Republican Party date back to 1916, where the right of the Irish people to ownership of Ireland, to control their own destiny or future and to sovereignty was proclaimed.

On the other hand, to speak about the right to self-determination in the Irish context, he highlighted the importance of the Good Friday Agreement, which for the first time outlines a political path or channel for building a united and sovereign Ireland. Thus, in the event that a sufficient majority of the citizens of Northern Ireland wished to join the rest of Ireland, the agreement established that a referendum be held.

And, precisely at a time when Ireland is experiencing the consequences of Brexit, a decision taken against the majority will of the people of Northern Ireland, ironically, this situation is encouraging an appetite for constitutional change in the nations that make up the UK. MacManus MEP concluded by making it clear that it is not a question of if, but when the referendum will

take place, and highlighted the role that the EU should play in guiding the implementation of the right to self-determination.

Thirdly, **Jordi Solé** MEP (ERC, Greens/EFA) as a member of the CoFoE shared the opportunities offered by this framework to set out our shared future together as European citizens. It is an exercise that combines participatory democracy and direct democracy, giving European citizens a relevant role in this debate. However, the conference has failed to reach out to a wider public, as the follow-up of the conference has not gone beyond what is known as "the European bubble".

One of the channels opened for European citizens to participate in this conference is the multilingual digital platform, however, this platform has unfortunately not been as multilingual as it should have been, as it has been built only within the framework of the official EU languages, without including the rest, such as Basque or Catalan.

On the other hand, according to Solé MEP, one of the most successful issues dealt with in the CoFoE treaty, in the democracy section, was precisely the demand for a clear framework for the exercise of the right to self-determination. This proposal should therefore be included in the final conclusions of this conference.

However, from Jordi Solé's point of view, the big question is: What will happen once the conference is over, what will we do with all the proposals on the table? The final conclusions must not just be a document full of nice ideas, we must foresee concrete ways of development for all the contributions, such as the creation of a Convention for the modification of the European treaties.

On the other hand, after listening to the ideas of these first three speakers, the moderator and Professor Joxerramon Bengoetxea (UPV) opened the debate table, where MEPs Izaskun Bilbao (EAJ/PNV, Renew), Pernando Barrena (EH Bildu, The Left), François Alfonsí (Fermu a Corsica, Greens/EFA) and Toni Comín (Junts, NI) shared their reflections on initiatives beyond the CoFoE in order to promote a European framework of clarity.

Izaskun Bilbao began by underlining that the call for a clarity directive for territorial disputes in the European framework is a long-standing issue. Two parliamentary terms ago, in the intergroup on linguistic, political and territorial minorities, they managed to approve a declaration that included the need for a clarity directive to resolve political disputes.

In addition, Izaskun Bilbao MEP informed that they have tried to ensure that all annual reports on human rights include the problem of political disputes and that the existing deficiencies in resolving them be addressed. As for the CoFoE, they have formed a group of MEPs to build a petition to promote a European framework of clarity and to stimulate this debate at the conference. The MEP sincerely believes that the CoFoE could be an opportunity to break the block that member states have in relation to these disputes. The issue, according to Izaskun Bilbao, is clearly political, and lies fundamentally in the fact that there is no political will to address this issue, generating a constant blockage.

Finally, Izaskun Bilbao concluded by proposing other possible ways to promote the debate on a European framework of clarity, from the mechanism on the rule of law, to presenting initiatives to the European Commission, to informing the European Ombudsman of the situation of violation, or even launching a popular citizens' initiative, as was already carried out with linguistic rights.

For his part, **Pernando Barrena** highlighted that although it was clear from the beginning that the CoFoE was going to be a limited initiative, from the start they saw it as an opportunity; at least an opportunity to build a space between different MEPs who are willing to promote a mechanism of clarity.

In any case, Pernando Barrena pointed out that one of the most relevant shortcomings of this conference is that we still do not know what will be done with the conclusions of the debate; whether they will be binding or not; what the European institutions will do with them... Moreover, many of the proposals are of great significance and will lead to a Convention for treaty reform, but we will surely have to fight for these conclusions to be taken into account.

Secondly, according to Barrena MEP, we must take into account the major debates that are currently influencing the European political debate. On the one hand, the debate that has been going on almost since the creation of the European Community, between the statist, intergovernmental approach and the federal approach, i.e. between those who think that the states have already bequeathed sufficient competences to the EU and, on the other hand, those who wish to see the European integration project through to its conclusion. Furthermore, the war in Ukraine has once again highlighted the debate on the European security model.

Finally, Barrena concluded by stressing that the exercise of the right to self-determination is a tool for peace. Even more so in the European context and in the European integration project, which, far from separating, involves facilitating the creation of new states that will be solid anchors of the European project throughout the continent. Thus, according to Pernando Barrena, we must try to overcome the old myths that link the right to self-determination with unrest and explain it as a tool for peace and dialogue between peoples, in other words, to strengthen the European project.

Thirdly, **François Alfonsí MEP**, began by saying that if Spain had not been part of the European Union, Toni Comín MEP would be in a Spanish prison today. And we would not know how the Spanish state's intervention in the Catalan referendum of 1 October 2017 would have ended either.

It is clear that Europe's role so far has been a passive one, but it is not indifferent, far from it. The question we must address, according to Alfonsí, is how we can move Europe from a passive to an active role. Sovereignty disputes are disputes of power relations and we cannot expect the solution to come from within the states involved. Europe should intervene, first and foremost, by recognising the peoples of Europe in the construction of Europe. When we talk about the future of Europe, it is essential to talk about the future of our peoples, about a fairer future that we can find in the construction of Europe.

With regard to the CoFoE, Alfonsí stressed that the conference on the future of Europe is facing major difficulties. Some are objective, such as the health crisis, but others are political, as the debate was imposed on many heads of state who did not want it.

The objective of the clarity proposal is not that the EU should support independence, but that the European institutions should make it obligatory for mechanisms for the resolution of territorial sovereignty disputes to be in place. The rule of law that was demanded of Hungary or Poland, but which did not exist when Oriol Junqueras was imprisoned, should be enforced.

Europe has principles and values that are neither Jacobin nor Francoist, which imply that all peoples should live in harmony. At the same time, however, there are state interests that prevent the recognition of sovereignty and independence aspirations.

Alfonsí concluded by emphasising that the road we will have to travel will necessarily be a collective one, and with the certainty that it will come to fruition because the will of the peoples is historic, but a great deal of common work will be needed to reach a solution.

Finally, **Toni Comín** MEP took the floor, and he began by claiming that on 1 October 2017 Catalonia had already exercised its right to self-determination, and it was a legitimate and legal exercise. In other words, in his opinion, they are working on the premise that independence has already been declared. The problem is not one of legitimacy, but of the correlation of forces to be able to make the 1-O mandate effective.

On the other hand, with regard to the idea of a European clarity directive, basically we are talking about being able to understand the constitutional texts or frameworks in a flexible way on the basis of the democratic principle. But according to Toni Comín, the question is, why should the EU do anything about these disputes? Because if we go to the founding principles and values of the EU, as they appear in the treaties, the interpretation of the constitutions of the states corresponding to these values is a flexible and open interpretation.

And, according to Comín, it is precisely this idea that should be explained in the CoFoE, that is, whilst the member states do not make open interpretations of their constitutions we will be incurring in a great contradiction, and it is the EU that has the responsibility to try to resolve and not allow this contradiction. First of all, a change of mentality is required. We must work on a first step, which would be to go to the founding bases of the European institutions and seek a change of paradigm; and, in turn, to work on these ideas in public opinion.

To conclude, and drawing on the Canadian case, Toni Comín highlighted a contradiction that occurred in this case, since creating a law of clarity in the European Union member states entails much lower costs in terms of political stability than doing so in a state (such as Canada) that is not part of an institutional framework like the European one. In other words, the great adversary of the right to self-determination is the principle of stability. However, if there is anywhere in the world where a law of clarity entails low risks for political stability, it is precisely in the EU, since we share a number of elements (institutions, currency, trade policies...) which means that a process of self-determination does not constitute a process of independence, but rather a process of internal enlargement.

03.3. PNV-EHBildu joint declaration

Finally, to conclude the conference, MEPs Izaskun Bilbao (PNV) and Pernando Barrena (EHBildu) presented some shared conclusions that can be summarised in the following ideas:

- In January 2021, a group of MEPs from different territories with different territorial claims set up the working group "Self-Determination Caucus: 4D4All Democracy, Diversity, Dialogue, Decision for all", in which it was agreed to promote a European framework of clarity.

- The following are the concrete proposals they will work on:

    - Recognising at the EU level the right of peoples to decide their future, accepting the exercise of the right to self-determination as a real possibility if supported by a sufficient majority. Raising this claim ad intra in a member state is not, from the perspective of international law, an attack on territorial integrity but an opportunity for democracy and politics.

- Emphasising that the implementation of this democratic resolution mechanism has a solid legal base in both international and EU law.
- Presenting a solution linked to these territorial disputes and putting an end to their presentation in terms of dispute.
- Associating resolution mechanisms with European values and successful international procedures for resolving these problems.
- Highlighting the principles of dialogue, negotiation, agreement and democratic ratification.

- Finally, the foundations of this work have already been presented at the CoFoE and its objective is to serve as a basis for the defence of this proposal in all forums and for the drafting, if necessary, of an articulated document with which to promote this initiative both in the debates following the CoFoE and in the internal institutional and community sphere through all types of initiatives.

04 / To move towards a framework of clarity: Instrumental dimension and management of the background document for the resolution of territorial sovereignty disputes in the European framework.

04.1 Preliminary ideas

[New democratic paradigm]It is necessary to promote a new mentality, a new mental framework, which overcomes the dominant axioms when dealing with this type of dispute and which allows territorial sovereignty disputes to be addressed with a new, more open and resolute outlook based on democratic parameters and with a vocation for dispute prevention. Overcoming prejudices against collective rights and their democratic exercise. An advanced democracy cannot refuse to debate democratically and offer regulated channels for altering internal borders within the European Union.

The current paradigm of thought makes it difficult to implement how to resolve these disputes without first resolving why it is the EU's responsibility.

[The Europe of the peoples] It is necessary to look deeper into the EU's political identity from the perspective of the Europe of the peoples, recovering the original idea that made it possible to share the idea of the European project.

The EU must offer a more stable framework for politically articulated communities in which diversity, expressed as one of the European values, can be preserved with adequate guarantees.

[The EU's responsibility] The reasons for the European institutions to share the responsibility for providing a democratic channel for democratically expressed demands on the ability to decide on the status of a politically articulated community must be explored in greater depth.

The current mindset regards this issue as alien to the purposes of the European institutions and denies their possibilities of successfully intervening in the democratic resolution of sovereignty disputes. How can we transform this political will in favour of the creation of an instrument of clarity? (Neus TORBISCO).

The contradictions of the current approach (respect for individual rights, condemnation of disproportionate action by the Spanish authorities against the citizens and democratic representatives of Catalonia...) and its inefficiency in providing a rational and stable solution to this type of dispute should be highlighted.

The advantages of establishing some parameters on the relevance of collective rights and the protection of the exercise of sovereignty in the framework of the exercise of self-determination should be made clear. The actions of European institutions only protect the idea of security in the light of mass violation of individual rights, without recognising that the protection of collective rights has a preventive function in the violation of human rights.

[European rule of law] In contrast to the idea that the "law is the only way", our approach goes beyond that: it is the way (agreed, regulated and equipped with guarantees) that is the only law.

European constitutionalism, as a dynamic framework in permanent construction, allows for a new interpretation of the EU's competences, so that it encompasses the idea that the European "rule of law" must offer a more accommodating framework for these legitimately expressed claims of minority nations and other national minorities, on respect for the relevant role of the democratic principle and the effective guarantee of human rights and minority rights. Voting in and organising citizens' consultations cannot be a criminal offence in the European Union.

04.2 Objectives in the management of the background document to approach a framework of clarity

- Creating a democratic public space in which local and regional authorities can participate and where the background document can be discussed on an equal political footing. Articulating a structured dialogue on the adoption of a European framework of clarity.
- Ways or channels to be explored and articulated:
    - Creation of a broad state of opinion (critical mass at European level) on the need and opportunity to have a European regulatory framework of clarity for the management of territorial sovereignty disputes.
    - Creation of a network of influence to promote the project (European political groups, European Federalist Movement (EFM), political parties at the Spanish state level, Basque-Catalan partnership).
    - Achieving a suitable channel to promote the debate within the institutions.
    - Providing adequate management of the deliberative process with a satisfactory result: structured dialogue at European level for the creation of the appropriate regulatory instrument for the framework of clarity.

04.3 Instrumental dimension of the background document for the resolution of territorial sovereignty disputes in the European framework. Proposal for the elaboration of a European framework of clarity.

1. SCOPE OF THE REQUESTED INTERVENTION

1. [Role of the European Institutions] Territorial sovereignty disputes should be treated as European issues. Legal and pragmatic reasons support the intervention of European institutions to ensure their democratic resolution.

2. [Scope of intervention] The ultimate aim is to establish a common and shared European democratic standard for the exercise of self-determination for peoples. It calls for the adoption of a Code of Best Practice (CBP) containing generally applicable guidelines or principles of action for the democratic resolution of this type of dispute in Europe.

3. Regional international organisations that could take action in this area include: the **European Union (EU)**, the **Council of Europe (CoE)**, and the Organization for Security and Co-operation in Europe (**OSCE**).

4. In order to achieve their involvement, the singularities and operating dynamics of the aforementioned European institutions must be taken into account.

2. INSTRUMENTS FOR IMPLEMENTING THE EUROPEAN STANDARD OF THE CODE OF GOOD PRACTICE

A. EUROPEAN UNION (EU)

5. [Primary law] The route of expanding competences to extend the EU's scope of action or to intensify the powers it already possesses (Art. 352 TFEU) requires unanimity of the members, which seems very difficult to achieve in the context of a dispute of this nature.

6. [Soft law] However, without reforming primary law, there are possibilities for action regarding those EU institutions that have broader and more flexible possibilities for intervention. The following is a non-exhaustive list of some suggested instruments that could help to achieve this goal.

7. [European Commission] The powers conferred to the European Commission by the Treaties of the European Union would enable it to give a definitive push to a project such as this one. The Commission has the capacity to adopt initiatives to promote the Union's annual and multi-annual programming with a view to reaching inter-institutional agreements[1], and it also has the

[1] In this regard, it should be noted that one of the Commission's strategic lines of action for the period 2019-2024 is to give "A new push for European democracy. Nurturing, protecting and strengthening our democracy". A European Democracy Action Plan is also underway, which could

legislative initiative. To this end, the Commission could promote a Communication to launch an articulated debate on the need for a clear European framework, in accordance with Articles 11 and 17 TEU[2] and Article 12 of the Commission's Rules of Procedure [C(2000) 3614].

8. [European Citizens' Initiative]. The European citizens' initiative (art. 11.4 TEU) allows access to the European Commission and can be a useful way to ask the Commission to promote a code of good practice based on the founding values and principles of the EU.

9. [European Parliament] The growing concern expressed by the European Parliament about the erosion of the quality of democracy and the rule of law that it sees in the States of the Union opens up an opportunity. With prior work, an initiative could be proposed calling for the resolution of territorial sovereignty disputes in accordance with democratic values and respect for fundamental rights and the rule of law, and calling for the establishment of a European code of good practice or standard. It could be promoted at the request of members of the European parliamentary groups or by means of a citizens' petition (art. 227 TFEU). The adoption of a resolution or pronouncement by the European Parliament or one of its committees on this matter would have very significant political value.

10. [European Committee of the Regions (CoR)]. Its status as an advisory body in the EU rule-making process with the power to issue opinions, including on its own initiative, determines the interest in this body. So far it has not dealt with issues related to territorial sovereignty disputes. However, for the period 2020-2051 its top priority is "*Bringing Europe closer to people: Democracy and the future of the EU*". It remains to be seen whether within this framework it is feasible for this body to promote the drafting of an own-initiative opinion endorsing the elaboration of a Code of Good Practice such as the one proposed.

11. [European Economic and Social Committee (EESC)]. The European Economic and Social Committee is another advisory body that should not be disregarded. It maintains contact with regional Economic and Social Councils throughout the EU. One possible initiative could focus on getting the EESC, at the request of the Economic and Social Councils of European towns and villages, to discuss the reasons for and justification of the adoption at European level of a Code of Good Practice and, if necessary, to draw up an opinion on the subject.

12. [Conference for the Future of Europe] Another avenue is offered by the Conference for the Future of Europe. The possibilities for participation and intervention offered by such a forum should be explored. There are various initiatives or proposals of a very diverse nature that could be promoted. Taking advantage of the process of revising the Treaties, one clear line is the reform of Article 49 TEU to provide for the internal enlargement of the EU. Another would be the incorporation of a specific provision recognising the right of citizenship of the peoples of Europe to democratically determine their political status in accordance with the European

incorporate an action aimed at debating and researching the desirability of an instrument of clarity for the resolution of territorial sovereignty disputes, both as a human right and as a dispute prevention mechanism, thereby strengthening the European rule of law.

standard to be set. It would also be worth proposing the adoption of a regulation, directive or recommendation establishing the content of a Code of Best Practices to facilitate the democratic resolution of territorial sovereignty disputes in Europe.

The COFoE opens a window of opportunity to rethink the dominant model of approach to sovereignty disputes, which negatively affects the foundations, values and goals of the EU. It allows for a change of institutional vision, which can broaden the ideal of the European rule of law.

13. [CJEU jurisprudence] It is advisable to bear in mind the jurisprudential doctrine of the CJEU in relation to democracy and its strengthening, fundamental rights and the rule of law as essential European values. If the European institutions were to develop a code of good practice, its foundations and principles would be based on it.

B. COUNCIL OF EUROPE (CoE)

14. [Proposal for direct intervention] The Council of Europe has the capacity to play a relevant role in determining criteria to guide the solution of sovereignty disputes based on the values and principles on which the Council of Europe is founded, such as respect for fundamental rights, democracy and the rule of law. The involvement of this institution could be sought through a **motion for a resolution** in the Parliamentary Assembly (PACE), followed by a report and the adoption, if necessary, of a resolution of the Assembly and a **recommendation to the Council**, to initiate a process to adopt a legal framework on the matter.[3]

15. [Cases of indirect intervention] The Council of Europe can play an important role in territorial sovereignty disputes through the adoption of **non-binding recommendations** or **principles for action**.

16. Another line of work could focus on the "guest country status" provided for in Art. 5 of the CoE Statute for the possibilities it offers to "countries in special circumstances" to be represented and to facilitate their intervention in the Parliamentary Assembly (PACE). The difficulty of this route is not concealed, since the recognition of this special status responds to a purely political decision in which the Committee of Ministers observes the existence of "special circumstances". However, this difficulty does not constitute an insurmountable obstacle. If PACE were to appreciate the importance of granting a democratic channel to the legitimate claims of politically articulated communities to decide on their political status, it would be able to promote the approval of a special status of protection for those countries that, without the status of independent state, are immersed in a process of self-determination of their political status, when they expressly request it and as long as they meet the conditions of democratic legitimacy established by the framework of clarity, attributing to them the "guest country status" for the duration of the process of collective decision or self-determination.

[3] RIK DAEMS has been President of PACE since January 2020 (Flemish and ALDE member). Laura Castel (ERC) is a member of the Assembly of the Council of Europe and the president is

17. Some kind of **contact or meeting with the Venice Commission**, as an advisory body of the Council of Europe, should not be ruled out. Indeed, it could be suggested that they adopt an Annex to their recently updated Code focusing on the particularities of territorial sovereignty disputes.

18. [European Court of Human Rights (ECHR)] The jurisprudential doctrine of the ECHR and the interpretation that this judicial body will make in the coming years of the right to freedom of expression, freedom of assembly or free political participation in democratic contexts in Europe may become decisive and contribute to giving the definitive push to initiatives such as those contained in this document.

C. ORGANIZATION FOR SECURITY AND CO-OPERATION IN EUROPE (OSCE)

19. [High Commissioner on National Minorities] One line of intervention could be to request a meeting with the High Commissioner on National Minorities to present this project to them and ask them to issue a thematic recommendation.

20. [Human Dimension Area] Within the OSCE, the main focus of activity should be on the Office for Democratic Institutions and Human Rights (ODIHR), which is responsible for OSCE human dimension activities. Various initiatives could be promoted before this body. Among others, we could call for seminars, forums or expert meetings to address territorial sovereignty disputes and what a European framework of clarity would entail. Another avenue to explore could be to take advantage of the Human Dimension Implementation Meeting organised annually by the ODIHR, which provides NGOs with a platform to freely express their concerns in the field of human rights.

05 / Conclusions

BUILDING POLITICAL WILL AND A NEW MINDSET

Why are these issues not being addressed?

- *Realpolitik* takes precedence and this type of dispute is not analysed from the perspective of the values at stake, but rather, from a reactive vision. Disputes are reacted to when they are already more than evident, when the dispute escalates and fundamental rights are violated.
- Disputes do not disappear as if by magic. One of the causes of the war in Ukraine is the failure to address them.
- These disputes are here to stay. The main cause of human rights violations.

CREATING WINDOWS OF OPPORTUNITY IS IN OUR HANDS.
Will it be necessary to create the problem and then present the solution?

IT IS NOT A LACK OF LAW. IT IS A LACK OF POLITICAL WILL.
INTERVENTION BY EUROPEAN INSTITUTIONS: NOT FORESEEN, TP PROHIBITED

COUNCIL OF EUROPE ECOSYSTEM (Venice Commission)	OSCE ECOSYSTEM	EU ECOSYSTEM (Council, Parliament and Commission)
I. In accordance with its principles. II. Reports on principles to be upheld in the processes of secession and independence. III. Relevant role in determining criteria and standards. IV. Venice Commission on referendums (2006-7 and 2020) V. Partner country status in the transition to statehood.	I. Preventive and resolutive intervention in inter-state disputes, not in internal ones, but... II. Special attention to national minorities, especially those present in two or more states. III. High Commissioner's thematic recommendations on national minorities. IV. Recognition of peoples' right to self-determination in the Helsinki Final Act (1975).	I. Inherent Treaty Powers II. Peoples of Europe: Closer union (Art 1 TEU). Respect for and promotion of their development (Art. 3 TEU). III. Promotion of peace and non-domination. IV. Cooperation and unitary framework (Art 4 TEU). V. EU values: Fundamental rights, minority rights, democracy and rule of law. Democratic quality and enhanced integration.

OBJECTIVES FOR THE MANAGEMENT OF THE DB-MC

— Creating a democratic public space in which local and regional authorities can participate and where the background document can be discussed on an equal political footing.
— To articulate a structured and ordered dialogue on the adoption of a European framework of clarity in the heart of the European institutions.

WAYS OR CHANNELS TO BE EXPLORED AND ARTICULATED

- [Critical mass at European level] Creation of a broad state of opinion on the need and opportunity to have a European regulatory framework of clarity for the management of territorial sovereignty disputes.
- [Paradiplomatic network] Creation of a network of influence to promote the project (European academic network, European political groups, European Federalist Movement (EFM), Political parties at the Spanish state level, Basque-Catalan partnership).
- [Deliberative channel] Achieving a suitable channel to promote the debate within the institutions.
- [Effective governance] Providing adequate and multi-level management of the successful deliberative process, working on the different sources of legitimacy, (social, academic, political and institutional): structured and orderly dialogue at European level for the creation of the appropriate normative instrument of the framework of clarity.

EUROPEAN UNION: MAP

MAP OF INSTITUTIONS CONCERNED	USEFUL INSTRUMENTS AND WINDOWS OF OPPORTUNITY
EUROPEAN PARLIAMENT	Deliberative and policy-driven role Adoption of **resolutions, recommendations** in favour of a framework of good practice for the democratic resolution of territorial disputes Proposal to the Commission to exercise the legislative initiative, through the groups or the ECI.
Subcommittee on Human Rights (DROI), the Committee on Civil Liberties, Justice and Home Affairs (LIBE), the Committee on Constitutional Affairs (AFCO), and the Committee on Petitions (PETI).	EP motions for resolutions "draft report on the establishment of an EU Mechanism on Democracy, Rule of Law and Fundamental Rights". Conference on the Future of Europe
EUROPEAN COMMISSION	Legislative initiative and **advisory role**, through recommendations, reports and opinions. **Drafting of Communications**
European Union Fundamental Rights Agency (FRA)	Monitoring the situation of fundamental rights and providing advice to the EU institutions and the Member States in this field.
European Committee of the Regions (CoR)	Promoting **resolutions** in favour of the regulation of European principles and best practices facilitating democratic dispute resolution
CJEU	Promoting **jurisprudence favourable** to considering the democratic resolution of territorial disputes in accordance with best practices as elements shaping the European constitutional order, in development of its doctrine on the Rule of Law.

COUNCIL OF EUROPE: MAP

MAP OF INSTITUTIONS CONCERNED	USEFUL INSTRUMENTS AND WINDOWS OF OPPORTUNITY
Parliamentary Assembly (PACE)	**Recommendations, Resolutions, Opinions and Directives** A motion for a resolution could be presented in the Parliamentary Assembly, followed by a report and the adoption, if appropriate, of a resolution of the Assembly and a recommendation to the Council, to initiate a process for the adoption of a convention on the matter of Special "**guest country**" status
Committee on Political Affairs and Democracy and Committee on Legal Affairs and Human Rights	**Reports** addressing various aspects of territorial conflicts and in favour of their democratic resolution. An **appearance** to present the proposal could be requested
Congress of Local and Regional Authorities. Governance Committee	Preparing a **report** on "regional identities": improving dialogue to reduce regional tensions to be submitted for discussion and adoption on 21.09.2020
Commissioner for Human Rights	Promoting dialogue with national authorities and civil society, including through **thematic reports** or **awareness-raising** activities.
European Committee on Democracy and Governance (CDDG)	Intergovernmental forum. Developing the **recommendations and guidelines** of the Committee of Ministers for strengthening democratic institutions and citizen participation, among other issues.
Venice Commission	**Recommendations, studies** and organisation of **conferences** on constitutional, democracy, human rights and rule of law issues
ECHR	Promoting **jurisprudence** favourable to considering the democratic resolution of territorial disputes according to best practices as elements shaping **democratic societies**.

OSCE: MAP

MAP OF INSTITUTIONS CONCERNED	USEFUL INSTRUMENTS AND WINDOWS OF OPPORTUNITY
OSCE, in general	Preventing, managing and remedying disputes in Europe, including interventions on the ground (including operational missions with observers, appointment of rapporteurs to investigate and suggest appropriate solutions, diplomacy to help prevent and promote solutions to controversial issues)
Parliamentary Assembly General Committee on Democracy, Human Rights and Humanitarian Issues	Deliberative role on state compliance with commitments; parliamentary **resolutions and recommendations**; development of **mechanisms for dispute prevention and resolution**; support for strengthening and consolidating democratic institutions; **studies** from a **human dimension** perspective.
Permanent Council Human Dimension Committee	**Early warning** activation
Secretary General	Proposal for early warning activation
The Office for Democratic Institutions and Human Rights (ODIHR)	Field **missions** **Seminars, annual report, drafting of policy proposals**
High Commissioner on National Minorities	**Advisory** role, promotes early warning, and exercises quiet diplomacy
Court of Conciliation and Arbitration	Of little use and does not act at the request of individuals.

ANNEX. BACKGROUND DOCUMENTS FOR THE RESOLUTION OF TERRITORIAL SOVEREIGNTY DISPUTES IN THE EUROPEAN FRAMEWORK

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BASES FOR THE RESOLUTION OF TERRITORIAL SOVEREIGNTY CONFLICTS IN THE EUROPEAN FRAMEWORK

Version 2021 (1)

EXPLANATORY MEMORANDUM AND EXECUTIVE SUMMARY

The purpose of this document is to present a basis for initiating an orderly debate within the European institutions on the need to provide a democratic response to territorial sovereignty conflicts and, where appropriate, to serve as an initial document for the development of various legal instruments or proposals (code of good practice, resolutions, etc.) that contribute to their democratic solution.

The preparation of this collective document, in which more than 50 academics from various universities and research institutions participated, promoted by Eusko Ikaskuntza and the Institut d'Estudis Catalans, is based on common premises accepted by all its authors. These premises are listed below.

Firstly, the existence of this kind of conflicts in the European and international framework must be acknowledged. Today, in the world and in Europe, there are conflicts that can be defined as "territorial sovereignty conflicts".

Secondly, the realization that such conflicts are not residual, the result of tensions and conceptions of the past, but that, although they may be connected with earlier events, they have to do with fully current claims that appeal to current values and rights and are presented through legitimate demands.

Thirdly, although they are usually treated as internal affairs of states, insofar as they affect individual and collective rights, they should be treated from the conviction that their protection is a matter that transcends state borders and concerns the entire international or regional community. To this conviction must be added the fact that, given their characteristics, in which one of the parties to the conflict is the State itself, it is difficult for the latter to act as an arbitrator at the same time, making a third party even more necessary to facilitate their resolution.

Fourthly, there is a need for this resolution to be framed and promoted with full respect for democratic principles, the rule of law and human and collective rights: in coherence with the dominant values of the 21st century.

Fifthly, it is clear that these conflicts are complex, have multiple dimensions that intersect and, therefore, require responses that take this complexity into account. It is therefore necessary to promote public reflection on them and provide common bases to support the development of tools for their resolution, as proposed in this document.

Sixthly, it is noted that, within the European framework, there are various institutions that could contribute to the development and promotion of these solutions. With different criteria and spheres of action, the various European institutions in the broad sense (European Union, the Council of Europe, or the Organization for Security and Cooperation in Europe) could, in accordance with their competencies, principles and inspiring values, promote solutions that could involve a common framework of standards for the resolution of territorial sovereignty conflicts.

Seventh, it is based on the conviction that the contribution to the resolution of this kind of conflicts strengthens the European project. Both from the point of view of reinforcing its founding values and from a pragmatic point of view, the availability of legislative tools or shared standards contributes to stability by influencing, in advance and without ad hoc readings, on tensions that may indirectly affect the entire European space. They also contribute to a system of governance that strengthens the links between European citizens and territories, reinforcing the role of arbiter and promoter of values and principles of the European Union and the rest of the European institutions.

These Bases are divided into three parts to address three types of questions: (1) What is a territorial conflict of sovereignty? (2) What could be done to channel them into a democratic solution? (3) Why should the European institutions commit themselves to their solution and in what way?

Thus, in the first part, territorial sovereignty conflicts are defined as disputes in which a relevant part of the citizens of sub-state political communities claim, without sufficient recognition by the State in which they are integrated, the capacity to democratically decide their political status, including the possibility that these territorial communities may constitute themselves as sovereign States.

Often, a significant part of the citizens of these sub-state territorial communities share a sense of national or collective belonging that does not coincide with that assumed as their own by the nation-State in which they are integrated, although they may enjoy varying degrees of recognition and self-government by the State in which they find themselves.

The territorial conflict of sovereignty arises in those cases in which the political system of the State does not articulate or makes impossible an agreed channel for exercising the capacity to freely decide the political status of a sub-state political community in which there is a relevant collective will that does not coincide with the majority in the State, which always involves a clash between different democratic majorities.

Examples of this kind of conflicts in the European framework includes Catalonia and the Basque Country (with respect to Spain and France), Flanders (with respect to Belgium), Scotland and Northern Ireland (with respect to the United Kingdom), the Faroe Islands and Greenland (with respect to Denmark). Likewise, with a different intensity in the externalization of the conflict, situations such as Galicia (Spain), Corsica (France), Wales (United Kingdom), South Tyrol (Italy) and Gagauzia (Moldova), among others, could be included in a broader list.

In similar cases, or in specific situations in these same conflicts, it has been possible to channel them through democratic practices that can serve as examples to elaborate a framework of proposals for their peaceful and democratic resolution. On the basis of these examples, and an analysis of the general conditions of democratic legitimacy that can frame them, a series of proposals can be put forward on how the demands should be formulated, what democratic response would be the most appropriate and how the democratic decision achieved should be developed and implemented.

This is the objective of the second part of the document, which develops the main elements to be included in standards of a general nature, assumed as legitimate by the international or

supra-state community. These should allow a balance between representative and direct democracy, articulate formulas that guarantee quality public deliberation and pluralism, equality between the parties, political stability and full confidence in the resolution processes.

As discussed in the third part, the European institutions have different competencies, resources and mechanisms to promote these types of standards, based on their respective legal bases and fields of action.

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BASES FOR THE RESOLUTION OF TERRITORIAL SOVEREIGNTY CONFLICTS IN THE EUROPEAN FRAMEWORK

I. INTRODUCTION

1. [Purpose] The purpose of this document is to propose the basis for the democratic resolution of territorial conflicts of sovereignty in European States. To this end, we appeal to the States and the various European institutions to promote initiatives and act, within the scope of their respective competencies, to ensure that these types of conflicts are resolved in accordance with democratic values and respect for fundamental rights and the rule of law, taking as a reference the good practices that emerge from past experiences.

2. [Scope of application] In several European States there are demands or aspirations that are territorially identifiable on the part of significant sectors of the population that seek to have a level of political decision-making or sovereignty equal to that of the whole population of the State. These aspirations or demands, democratically expressed, raise the debate on the possibility of new or existing *demoi* becoming sovereign political subjects. These *demoi* are usually territorial minorities within the State that display a political vocation that questions all or part of the current sovereignty of the state. At the same time, these demands or aspirations are expressed in electoral or political terms through significant and reiterated support for political projects that pose a substantial modification of the distribution of political power in the territory, which sometimes includes the explicit desire to constitute a new independent State.

3. [Adequate management] Appropriate management of such conflicts should allow the expression of the will of the democratically-expressed majority in the sub-state community, and channel it with full respect for the individual and collective rights of the people concerned. In this sense, it is convenient to have a framework or tool for the democratic management of these situations that avoids undesired consequences or permanent political deadlocks. This document aims to offer sufficient guarantees to all the parties involved, avoiding the prolongation or escalation of tensions or conflicting situations in the long term.

4. [Importance of democratic resolution] The democratic resolution of this kind of conflicts, within a framework of legal security and in accordance with the values and principles that should inspire the European project, prevents disputes that lead to the violation of individual and collective rights. Social and economic development, cohesion, and the stability of Europe depend on relations between all peoples being established

freely and voluntarily, so that they can develop their capacities harmoniously, fairly and efficiently.

5. [Impulse from the European Institutions] These bases may give rise to various actions on the part of the European institutions in a broad sense (European Union, Council of Europe and Organization for Security and Cooperation in Europe), to whom this document is addressed in the first instance. Examples, among others, of the impetus or actions could include the drafting of a Code of Good Practice, a Directive on clarity, or various types of resolutions. All these actions, as well as the Bases themselves, could also serve as a model beyond the European framework.

6. [Parts of the report] This report is divided into 3 parts to address 3 categories of questions: (1) What is a territorial sovereignty conflict; (2) What could be done to channel its democratic solution; (3) Why should the European institutions engage in its solution and in what way?

II. ON THE TERRITORIAL CONFLICTS OF SOVEREIGNTY

1. CHARACTERISATION OF TERRITORIAL SOVEREIGNTY CONFLICTS

7. [Definition of the conflict] Territorial sovereignty conflicts are defined as disputes in which a relevant part of the citizens of sub-state political communities claim, without recognition by the State in which they are integrated, the exercise of the right to decide freely and democratically their political status, including the possibility that such territorial communities may be constituted as sovereign States. Therefore, the territorial conflict of sovereignty goes beyond the mere request for recognition of the political community or its demand for self-government and refers to the possibility of accessing sovereignty understood as the supreme and original decision-making power of a political community, which does not prejudge or limit its subsequent legal-political status.

8. [Sub-state communities] The formation of today's States has sometimes included communities that have maintained their own personality, expressed in political terms as the will to self-governance. A relevant number of citizens of such sub-state territorial communities share a national feeling or a sense of group-belonging or identity that does not coincide with what is assumed to be theirs by the nation-state in which they are integrated.

9. [Various degrees of recognition] These distinct political communities, peoples or nations have received different degrees of recognition from the State in which they are situated, varying from mere assimilation to accommodation through granting different levels of self-governance.

10. [Unsatisfactory accommodation] However, the processes of State and nation building have been inspired by homogenizing ideas, if not by cultural genocide and, in their political development, have responded, throughout history, to warlike or democratically limited logics, so that the concerned political communities, peoples or nations, have not been able to express their will to join a specific State entity. On occasions, accommodating sub-states with their own personality within the State where they are integrated has not been resolved in a satisfactory manner.

11. [Emergence of conflict] Territorial sovereignty conflict arises in those cases in which the political system of the State does not articulate or make impossible a channel for exercising the right to freely decide the political status of a sub-state political community in which there is a significant collective will that does not coincide with the majority in the State.

12. [Relevant demand] The sub-state community's unsatisfied demand for the sovereignty to decide a new arrangement within the state or to constitute an independent state may have an institutional, electoral or socio-political expression, conveyed through various forms of collective action. The conflict will continue if such a claim is not adequately channelled by the State and is exerted by a relevant part of the sub-state's citizens, repeatedly over time and consistent in their claims.

13. [Unilateralism of the nation-State] State models based on a dogmatic and closed concept of national sovereignty make it difficult to adequately manage these conflicts. Meeting the demand of the sub-state community depends on the sovereign and unilateral consent of the State. It depends only on the State that this demand can legally be channelled by democratic means, and, where applicable, grant or recognise the sovereignty of the political subject that has expressed its desire to freely review its status or even to form an independent State. In these cases, the limitations derived from the dogmatic and closed concept of sovereignty are compounded by the non-existence or weakness of consensual procedures for assessing the will of the sub-state community and managing the conflict, insofar as such management depends on the unilateral will of one of the parties, the State.

14. [New conceptions of sovereign and constituent power]. Certain states facilitate the management of this kind of conflicts since they facilitate the political recognition of sub-state political communities and even, in the most advanced constitutional models, the right of these communities to decide. In these cases, whilst there may be no regulated consensual procedures, a more democratic concept of sovereign and constituent power, and the political will of the parties, could allow for adequate management of the conflict.

15. [European institutional evolution and the dynamic and open character of state sovereignty]. Although States continue to reserve the ultimate decision-making capacity over their political status, European institutional evolution is an example of the dynamic nature of State sovereignty, and of its evolution towards complex formulas of legal-

territorial organization of power in which legally-binding decisions are shaped by the free participation of different political entities, under the framework of shared or self-limited sovereignty.

16. [Contrasting democratic majorities] However, even in cases where sub-state territorial communities are recognised and enjoy the political capacity to express their will democratically, there may be a discrepancy in the scale of application of majority rule or in the definition of political decision-makers. A majority in favour of a change in the political status in the sub-state community may result in a permanent minority in a decision-making process developed at State level. It is, therefore, necessary to regulate comprehensively, not only internally, the management of conflict between legitimate dissenting majorities in the State and the sub-state community.

2. CASES. EUROPEAN AND EXTRA-EUROPEAN EXAMPLES

17. [Globalised scope] Territorial sovereignty conflicts have been constant throughout history. At the same time, the consolidation in the 20th century of the State as the dominant political form all over the planet, following decolonisation processes, has extended the possibility of identifying this type of conflict to all five continents.

18. [Results] A comparative analysis of various territorial sovereignty conflicts and their evolution helps identify the most appropriate guidelines for their adequate and effective management. At the same time, it endorses the convenience and opportunity of offering democratic frameworks for solutions that anticipate and regulate possible ensuing political scenarios. If we look at a relatively recent historical period (20th and 21st centuries) and at Europe as a preferential geographical and political space, experience suggests that most or a good number of the conflicts that have arisen in these terms ended with territorial rearrangements or the creation of new independent states through a process of legal rupture that might have occurred in very different historical and social contexts. However, there is currently a significant number of cases pending both in Europe and globally.

19. [Completed independence processes] If during the 19th century a total of 6 processes of generally recognised independence took place in the European continent[1], in the 20th century 25 new States emerged in the continent[2], to which two more have been added in the 21st century[3]. A good number of these countries in their pre-independence phase constituted a case of territorial sovereignty conflict within the State to which they previously belonged. In most cases, independence was the result of

[1] Belgium, Serbia, Romania, Bulgaria, Montenegro and Greece.

[2] Norway, Albania, Finland, Poland, Czechoslovakia, Hungary, Estonia, Latvia, Lithuania, Iceland, Ireland, Malta, Cyprus, Slovenia, Croatia, Belarus, Ukraine, Armenia, Georgia, Azerbaijan, Czech Republic, Slovakia, Northern Macedonia, Bosnia-Herzegovina, Moldova.

[3] Montenegro and Kosovo.

a process that had not previously been regulated or contemplated as such. The Montenegro process of 2006 would be an exception to this statement, while, at the same time a successful solution to the previous territorial sovereignty conflict.

20. [Independence as a possible solution to the conflict,] Apart from the possible exceptions derived from supra-state interventions in an attempt to pacify military confrontations such as those in Bosnia-Herzegovina or Kosovo, it can be stated that in the rest, access to statehood itself has meant the cessation of previous conflict and therefore a solution accepted by the international community. In specific cases (Cyprus, Georgia, Moldova) this new statehood has meant the appearance of new territorial sovereignty conflicts, although, in most cases, independence has brought about the solution of the sovereignty conflict. In any case, in the middle of the 21st century it is desirable and appropriate that access to independence as a possible solution should be regulated through a foreseeable procedure that can offer greater legal security to all parties involved and a reduction in possible tensions.

21. [Independence without conflict resolution] In contrast to the cases mentioned above, we find a series of territorial sovereignty conflicts in the European geopolitical space that have also led to the proclamation of new independent states which have, however, obtained minimal or no recognition from the international community[4], or consist of more or less rhetorical declarations of independence[5] or lack legal *erga omnes* effects[6]. Both cases reflect the existence of a territorial sovereignty conflict that has not been resolved, to date, in an adequate or consensual manner.

22. [Territorial sovereignty conflicts in Europe] Beyond the cases in which a secession process has already taken place more or less effectively, or with more or less international recognition, other territorial conflicts of sovereignty can be identified in the European space, with a greater or lesser degree of intensity. So, among the cases that in principle best fit the definition given, we find the current cases of Catalonia and the Basque Country (with regard to Spain and France), Flanders (with regard to Belgium), Scotland and Northern Ireland (with regard to the United Kingdom), the Faroe Islands and Greenland (with regard to Denmark.)

23. [Latent conflicts] With a different intensity in the external visibility of the conflict, taking into account the lower percentage population that supports the demands for sovereignty, their political representation, and the permanence and visibility of social demands in this sense, we could also include, in a broader list, situations such as Galicia

[4] Crimea (with reference to the Ukraine, regarding its proclamation of independence before its decision to join the Russian Federation), Northern Cyprus (with reference to Cyprus), Transnistria (with reference to Moldavia), Abkhazia and south Ossetia (with reference to Georgia), Chechnya (with reference to Russia), Donetsk (with reference to the Ukraine) and Artsakh (with reference to Azerbaiyan).

[5] We could consider as such the declarations of Tatarstan in 1990-92 (with reference to Russia) or Padania in 1996 (with reference to Italy).

[6] There is the case of Catalonia in 2017 (with regard to Spain).

(Spain), Corsica (France), Wales (United Kingdom), South Tyrol (Italy) and Gagauzia (Moldova), among others.

24. [Irredentism and third States] Although the good practices contained in this document could be valid for the democratic management of various territorial conflicts, this proposal does not pretend to be an instrument for the resolution of territorial sovereignty conflicts in which third States are directly involved or are raised regarding of unredeemed territories.

25. [Beyond Europe] Outside the European continent, and beyond what can be clearly identified as decolonization processes, there are territorial sovereignty conflicts that are currently active in different states. Among them, we can cite Quebec (with regard to Canada), Puerto Rico (with regard to its association with the United States), Kashmir (with regard to India), Kurdistan (with regard to Turkey and Iraq mainly) or Palestine (with regard to the occupation of Israel). Other former territorial sovereignty conflicts have been concluded via newly acquired independence (Eritrea, South Sudan, Bangladesh or East Timor) or channelled by virtue of the existence of a constitutional regulation (Saint Kitts and Nevis).

26. [Channel or conflict] Comparatively speaking, from both a historical and a geographical point of view, it is possible to affirm that in cases where the populations of the sub-state communities were able to develop a democratic decision-making process (previously regulated or not) and to express themselves about their political future, they have had a much more favourable and peaceful political evolution than the cases where this has not been allowed or channelled. The highest levels of conflict that these political aspirations represent persist in cases where the existence of a democratic decision-making process has been denied or thwarted for the populations requesting it (Northern Ireland, Catalonia, Euskal Herria, Corsica, Kosovo, Chechnya, Kurdistan, Kashmir, Palestine, Western Sahara, Tibet...).

27. [Examples of channelling] On the contrary, in the cases where this expression has been possible or has been channelled or anticipated, the levels of conflict have been significantly lower. In the first case (expression already channelled) we can mention most of the newly independent States in Europe (Slovenia, Estonia, Iceland, Montenegro...), but also other situations that have not necessarily resulted in independence (Quebec, Scotland, the Faroe Islands or Puerto Rico). In the second case (foreseeing a possible democratic expression) another group of potential future demands of sovereignty entail the legal provisions for it (Saint Kitts and Nevis, Greenland, Northern Ireland or Gagauzia).

28. [Conflict resolution mechanisms already applied] In any case, where there have been specific mechanisms for regulating these aspirations, such as the ones this document intends to propose, territorial sovereignty conflicts have found a channel that has significantly reduced tensions, managing to make the case non-conflictive regardless of the final political outcome. Such regulation, with a greater or lesser level of detail and

legal rank, has been incorporated in the cases of Greenland[7], Scotland[8], Northern Ireland[9], Montenegro[10] (in Europe); Saint Kitts and Nevis[11], Ethiopia[12], Quebec[13], and South Sudan [14] (outside the European continent). These regulations can in turn provide an important basis for inferring generally applicable principles in the framework of a democratic solution.

3. THE RIGHT OF SELF-DETERMINATION AND THE PRINCIPLE OF TERRITORIAL INTEGRITY IN INTERNATIONAL LAW

29. [International law and territorial sovereignty conflicts] Beyond the constitutional framework, two important principles in the scope of International Law are proposed, the respect for which must be made compatible with any type of recommendation or proposed resolution. One is the principle of the territorial integrity of States and the other is the principle of self-determination of peoples which, in the present day, is a collective human right whose application to the conflicts referred to here is subject to discussion.

30. [The principle of territorial integrity of States] One of the basic principles of International Law is respect for the territorial integrity of States. The scope of application of this principle is the sphere of relations between States, its essential objective being to guarantee non-interference of one state with another as a basic principle of international relations. Nevertheless, this does not necessarily imply an internal guarantee to States regarding their borders or their territorial integrity. The Declaration on Principles of International Law concerning Friendly Relations and Cooperation between States in accordance with the Charter of the United Nations (1970)[15] and the Declaration on the occasion of the 50th anniversary of the United Nations, (1995)[16] both uphold this principle of territorial integrity. Moreover, this principle has been

[7] Act on Greenland Self-Government, Act no. 473 dated 12th June 2009 (Denmark)

[8] Agreement between the United Kingdom Government and the Scottish Government on a referendum on independence for Scotland, dated 15th October 2012.

[9] The Northern Ireland Peace Agreement, dated 10th April 1998 (United Kingdom and Republic of Ireland).

[10] Constitutional Charter of the State Union of Serbia and Montenegro, dated 4th February 2003.

[11] The Constitution of Saint Kitts and Nevis, dated 22nd June 1983.

[12] Constitution of the Federal Republic of Ethiopia, dated 8th December 1994.

[13] Referendums carried out in 1980 and 1995, and Clarity Act, S.C. 2000, c. 26, dated 29th June 2000 (An Act to give effect to the requirement for clarity as set out in the opinion of the Supreme Court of Canada in the Quebec Secession reference).

[14] The Comprehensive Peace Agreement between The Government of the Republic of The Sudan and The Sudan People's Liberation Movement/Sudan People's Liberation Army, Naivasha (Kenya), dated 31st December 2004.

[15] Declaration adopted by the General Assembly Resolution 2625 (XXV) of 24 October 1970.

[16] Declaration adopted by General Assembly Resolution 50/6 of 9 November 1995.

interpreted explicitly in the Opinion of the International Court of Justice on the Secession of Kosovo on 22 July 2010 (para. 80[17]).

31. [Right to self-determination and territorial sovereignty conflicts] The right of all peoples to self-determination is the subject of numerous debates, both doctrinal and institutional, concerning both the titleholder of the right and its content and exercise. To date, a restrictive interpretation of the right to self-determination, recognised in International Law, has prevailed in intergovernmental circles, to exclude the possibility of intervention by international organisations in territorial sovereignty conflicts. However, the intervention of international organisations does not have to be based exclusively on that right, regardless of how it is interpreted. Other rights exist which may form the basis for such intervention in addition to possible humanitarian or pragmatic reasons.

32. [Internal and external self-determination] The right to self-determination is defined as a people's capacity to freely determine its political status and to pursue its own form of economic, social and cultural development[18]. A distinction is usually made between the internal and external dimensions. The internal dimension presupposes that the right can be applied within the territorial State, provided the democratic and self-governing conditions exist to make this possible. The external dimension, according to the hitherto dominant interpretation, grants certain peoples, subject to colonial domination, oppression or serious and systematic violation of human rights, the option of political separation from the State on the basis that in such cases the conditions for internal self-determination do not exist[19]. This dual dimension of the right to self-determination makes it compatible with the principle of respect for the integrity of States.

33. [A right of all peoples] The international instruments that recognise the right to self-determination do so for all peoples, without distinction[20]. However, the interpretation of the concept of "people" in International Law is not univocal. In the United Nations, a dominant interpretation has prevailed that limits this right, at least in its external dimension, to peoples subject to a colonial regime or to foreign subjugation, domination or exploitation.

34. [Evaluating the internal dimension] Recognising the degree of absence of internal self-determination or of domination that would justify the right of a people to exercise external self-determination is monopolised by the States already constituted and by the international bodies in which they are represented. However, more recent doctrinal and jurisprudential developments grant a greater degree of recognition to the peoples concerned, so that their willingness to exercise external self-determination becomes a

[17] ICJ, As. Kosovo, paragraph 80. According to which the scope of the principle of territorial integrity is limited to the sphere of relations between States.
[18] Resolution AG 1514 of 1960, section 2
[19] Reference re Secession of Quebec, [1998] 2 S.C.R. 217: paragraph 138. https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1643/index.do
[20] Article 1 of the International Covenant on Civil and Political Rights (New York, 1966).

fundamental factor of legitimacy. The feasibility of exercising such a right in a regulated manner is a measure of their degree of internal self-determination and, therefore, of the democratic quality of the State in which they are established.

35. [International protection] Given the existence of territorial sovereignty conflicts, it is required to regulate or clarify the conditions in which the internal governance system of a State, that is home to a plurality of peoples, fails to comply with its obligations in terms of the equality and internal self-determination of these peoples. At the same time, it is necessary to recollect the international commitments undertaken by democratic States to resolve conflicts by peaceful means and political dialogue, so that if a people democratically express their free will to decide on a political status, distinct from the one it possesses, the State must offer a democratic procedure to facilitate this. International organisations of a regional scope have a special responsibility when it comes to establishing such guidelines or procedures to facilitate the resolution of such disputes in accordance with the general principles of law, democracy and respect for the human rights of all people.

36. [Democratic principle as the legitimate basis of the right to self-determination]. For all the aforementioned reasons, beyond a reactive interpretation of the right to self-determination, as a restorative response to an undesirable situation in varying degrees, it is convenient to propose the exercise of the right to self-determination as the expression of the will of a people that wants to equip itself with a new institutional framework with the object of improving its economic, social and cultural development, including the possibility of becoming a new independent state, through a democratic and peaceful way. Although it makes sense to exhaust the avenues for internal self-determination, the democratic principle and the principle of non-domination should be sufficient to support a demand for external self-determination of all peoples, in any type of State, under certain conditions which this code seeks to determine. The right to self-determination based on a democratic principle and not on a just or remedial cause, is embodied in the concept of the "right to decide", whose progressive inclusion in the legal system could be an appropriate way of resolving territorial sovereignty conflicts.

III HOW TO INTERVENE? CONDITIONS FOR THE DEMOCRATIC MANAGEMENT OF TERRITORIAL SOVEREIGNTY CONFLICTS.

1. PRINCIPLES AND VALUES

37. [Democratic principle] A democratic solution to a territorial sovereignty conflict requires that the territorial delimitation of the sphere of decision and the demos concerned be not arbitrary and subject to democratic debate. If citizens have to assume a delimitation that is not defined on the basis of democratic reasoning and which, moreover, cannot be questioned through democratic means, the de facto catalyst exists

for the conflict to end up being settled by non-democratic means, namely war, repression, agreement between elites or mere authoritarian intervention. Therefore, territorial sovereignty conflicts within states can and should be managed democratically, so that all options for territorial sovereignty, including secession, may be viable.

38. [Sovereignty principle] The safeguarding of state sovereignty is compatible with the recognition of the "right to decide" of sub-state communities with their own political personality. The assumption of concepts of a more open and more dynamic sovereignty, and the existence of constitutional recognition of the existence of political communities with the right to self-governance and to decide their political status facilitate democratic political solutions. Exercising this right should lead to the emergence of a new sovereign state if a sufficient majority of its citizens unequivocally demonstrate this by a free and democratic expression.

39. [Principle of respect for fundamental rights] The procedure for the democratic management of these conflicts must in all cases respect the fundamental rights and freedoms of the peoples concerned.

40. [Principle of the rule of law]. The process by which a sub-state community decides its political status must safeguard the principle of the rule of law. This principle is not reduced to mere respect for the legislation in force at a given moment, but also necessarily includes respect for fundamental rights and the democratic nature of the law as essential presuppositions without which the rule of law becomes a simple rule by law. Only respect for the rule of law in these terms can provide an adequate framework of legal security in which the process of resolving territorial sovereignty conflicts takes place.

41. [Principle of subsidiarity]. The initial and primary responsibility for protecting fundamental rights in the democratic management of sovereignty conflicts lies with the parties to the conflict. The procedure to be followed for the democratic definition of the legal-political status of the sub-state political community, the territorial areas involved and the future consequences of the decision should be discussed and agreed upon by the legitimate representatives of the sub-state political community and those of the State concerned.

42. [Centrality of dialogue]. It is necessary to manage sovereignty conflicts through a peaceful and democratic dialogue that respects human rights, minority rights and the principle of legality. Mutual recognition between the sub-state community and the State of which it forms a part are basic conditions for a fair and effective dialogue.

43. [Pacific means] Respect for the rules of the democratic game by all the actors involved, and their commitment to exclusively peaceful and democratic means of raising and managing their political demands is a basic condition for the democratic management of sovereignty conflicts.

44. [Open constitutional framework and constitutional dialogue] Democracies are configured as a process of continuous construction in which it must be ensured that constitutional dialogue is fluid and constant. The explicit or implicit constitutional recognition by the State of the political identity of sub-state communities, their right to self-governance or the right to decide democratically their political status facilitates the democratic management of territorial sovereignty conflicts.

45. [Pluralism and democratic political culture] The authority of constitutional law depends on its democratic legitimacy. The due recognition of pluralism as an essential value of contemporary democracies is what gives authority and legitimacy to the constitutional system and is what allows people with different convictions and conceptions to coexist. A democratic political culture that recognizes and guarantees pluralism entails an open interpretation of constitutional norms and assumes the evolution derived from the democratic principle, including the provision of the referendum as an instrument for the management of collective decision-making processes, promotes democratic solutions to conflict as it happens or has happened in Quebec, Northern Ireland, Scotland, Montenegro, Kosovo, Greenland, Faroe Islands....

2. GENERAL CONDITIONS OF DEMOCRATIC LEGITIMACY

46. [Controversy on sovereignty] Territorial sovereignty conflicts start with the existence of controversy over the question of sovereignty in a sub-state political community, in which the political statute of belonging to the present State is queried. Although channels exist in certain political regimes whereby you can review the self-government of institutionally recognised sub-state communities, where this involves a constitutional review of the subject of sovereignty or even the eventual achievement of independence by the sub-state community, undesired political disputes may arise. Such political disputes are partly due to the unarticulated confrontation of democratic majorities and pose a risk of escalation and entrenchment.

47. [Conflicting majorities] Democratic political systems must be based on the consensus of the population and must have the capacity to change and adapt, without past consensus, or a closed interpretation of the constituent power, justifying the perpetuation of the status quo. When a general constitutional consensus to resolve the situation is not possible, at state and sub-state level, the viability of a democratic solution to the claim is encumbered internally in the State because, albeit this claim may be supported by a majority in the sub-state community, this would probably imply just a minority at state level.

48. [Principles for democratic resolution]. The procedure for managing this type of conflicts must provide for the existence of opposing majorities, at state and sub-state levels, and articulate a process of dialogue and negotiation that avoids both de facto channels and imposition. Territorial sovereignty conflicts today can only be legitimately

resolved if they are based on the democratic principle, which includes the free expression of the will of the communities concerned, respect for the fundamental rights of all individuals and groups, respect for the rule of law and good faith negotiation by all parties.

49. [Bilateral system of guarantees] In this respect, a system of bilateral guarantees would be appropriate to ensure compliance with the principles and values set out in this document, to provide for preventive mechanisms to avoid deadlock in disputes that may arise during the process and to facilitate mechanisms to enable their resolution through dialogue and negotiation.

50. [Agreed conditions] The conditions for clarity regarding the exercise of the right to decide of the sub-state community should be agreed in good faith between the institutions of the State and the representation of the sub-state community, with no insurmountable limitations being placed on the materialisation of the free will of the citizens.

51. [Public conditions] The conditions that determine the legitimacy of the decision-making process must be clear and known to the citizens beforehand, and cannot be altered unilaterally.

52. [Clear legal basis] The conditions for the management of the sovereignty dispute should have a clear and sufficient legal foundation, assumed beforehand by all the parties concerned.

53. [Neutral supervision] Although the resolution of this type of conflicts is primarily the responsibility of each state, the various European institutions could contribute to facilitating its resolution, from their respective competencies in accordance with the values on which they are based. From the moment the claim to initiate a decision-making process on sovereignty is legitimately expressed, the various European institutions, within the framework of their respective functions and competencies, should act to promote a resolution in accordance with the principles and values set forth above, including the possibility of articulating a mechanism of neutral supervision, independent of the parties.

54. [Phases] A model of good practice in managing territorial sovereignty conflict should take into account the conditions of democratic legitimacy required at each stage of the process: the legitimacy of the sub-state community's claim, the legitimacy of the decision, and reciprocal guarantees in implementing the result, where appropriate.

3. CONDITIONS OF LEGITIMACY OF THE CLAIM TO SOVEREIGNTY

55. [Right to review its political statute] The sub-state community must be able to initiate a review process of its political status that might lead to a decision on its sovereignty, if the conditions for the legitimacy of the claim are met.

56. [Democratic legitimacy of the claim] The democratic legitimacy of the claim to sovereignty is based on the support of broad sectors of the population, the pronouncement in this sense of their representative institutions, and respect for fundamental rights and the rule of law in the defence of their propositions. Consequently, obtaining significant percentages of votes in the territorial area that they aspire to represent is an important criterion for this purpose, as is the direct expression of the popular will by means of a popular consultation called for this purpose.

57. [Quantifiable democratic will at the start of the process] It is essential to differentiate between the support required to initiate this review process, not necessarily a majority, and the final decision on the controversy raised. Therefore, assessing the will of the people as sufficient to initiate the statute review process of the sub-state community can be done in different ways:

a) In the case of a demos or an institutionalised sub-state political community with a legislative chamber, the condition to initiate the process would be the existence of a parliamentary and/or governmental majority in this sense. The role of the sub-state parliament, if any, should be especially relevant.

b) In the event that the sub-state community is formally represented in the central organs of the State, the initiative proposed by its representatives in these central institutions, particularly in its parliament, should be relevant.

c) If there is no such degree of institutionalisation, a second option would be to add to the initiative a significant number of local institutions in the territory of the sub-state community which could open up a dialogue with the state for the purpose of reviewing the political statute.

d) The competent institutions in the sub-state political community, on their own initiative or on citizen-driven initiative, could convene a non-binding popular consultation within the sub-state community in order to ascertain citizens' opinion on the claim to review its political statute.

58. [Alternative democratic mechanisms] Should the state not provide regulated mechanisms to evaluate the political will of the sub-state community regarding the review of its political status and for the purpose of answering this claim, the European institutions could take into consideration the will expressed by the citizens of the sub-

state community through democratic instruments. One example of such instruments would be popular consultation organised by the civil society of that community.

4. CONDITIONS OF LEGITIMACY OF THE DECISION

59. [Quality deliberation] The decision on the status of the sub-state community should be taken in the framework of a transparent deliberative process, in which contrasting, truthful information and equitable public debate are ensured. All options in this respect must provide sufficient information on their proposals, and to this end, it must be possible to freely draft such information. Free debate must also be possible in all media, especially the public, both at state and sub-state level, on an equal footing.

60. [Representative and direct democracy] It is up to the citizenry of the sub-state community to make the ultimate decision on its sovereign status. In this decision-making process, the different ways of expressing democratic will should be combined and coordinated, so that any decision adopted has sufficient legitimacy. In this sense, the mechanisms of direct democracy -consultations and referendums- should be articulated within the framework of representative and participatory processes continued over time, so as to avoid sudden plebiscitary decisions.

60a. [Modalities of referendums] The mechanisms of direct democracy that could form part of a decision-making process can be both citizen-initiated and institutional and can include different options: non-binding popular consultations, ratification, multi-option or successive regulatory referendums, with a pre-set time distance, in the event of not achieving a sufficient difference, previously defined, between the options put forward.

61. [Equality among the parties] In consultation and referendum campaigns it must be ensured that all options regarding the sovereign status of the sub-state community can compete on an equal footing, in application of what has already been recommended by the Venice[21] Commission and the Parliamentary Assembly of the Council of Europe[22] on the subject of referendums.

62. [Campaign funding] Fairness and equality in citizens' deliberation should be guaranteed by public funding of the campaign, so as to ensure sufficient dissemination of the options put forward and a balanced debate among them.

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[21] CDL-AD (2007) 008rev-e
Code of good practice on referenda adopted by the Council for Democratic Elections at its 19th meeting (Venice, 16 December 2006) and the Venice Commission at its 70th plenary session (Venice, 16-17 March 2007). The Venice Commission, dated October 8, 2020, has reviewed and updated its position on referendums through the document "Revised Guidelines on the Conduct of Referendums" CDL-AD(2020)031.

[22] Resolution 2251 (2019) 1
Update of the guidelines to ensure a fair referendum in the Council of Europe's member states.

63. [Date] Dates for relevant democratic decisions, whether taken directly by citizens or through their representatives, should be agreed and published in good time, so that the preceding political campaign can guarantee satisfactory knowledge of the options and quality public deliberation.

64. [Question] The question whose answer expresses the citizens' will regarding the sovereignty statute of the sub-state community should be sufficiently clear and easy to understand, so that there is no doubt about the democratic decision adopted in each case. The ideal would be that the parties concerned, the State and the sub-state community agree on the wording of the question.

65. [Electoral roll]. The electoral roll applicable in popular consultations and referenda concerning the revision of the sovereignty statute of the sub-state community should be in line with what is applicable in ordinary elections held in that territory, unless agreed among the parties concerned.

66. [Electoral commission] The process of citizens' decision-making by way of a referendum should be supervised by an electoral commission, independent of the governments, which must ensure that the legal and/or agreed conditions are met. Alternatively, the European institutions could exercise such a role, in agreement with the parties.

67. [Majority decision] In the event of one or more decisional or ratification referendums, the final binding decision on the political status of the sub-state community should be taken by a majority of its citizens, in accordance with the recommendations of the Venice Commission and the Parliamentary Assembly of the Council of Europe.

68. [Reversibility and repeatability] The reversibility of any decision should be guaranteed, as well as the repeatability of the claim. Both constant reconsideration of the issue and absolute closure to other possible future decisions on the statute of the sub-state community should be avoided by establishing the necessary conditions of clarity.

5. CONDITIONS OF LEGITIMACY AND GUARANTEES IN IMPLEMENTING THE NEW STATUS

69. [Will to cooperate] The prior and express will to maintain cooperative relations between the State government and the sub-state community, in a possible subsequent scenario of secession of the sub-state community and the emergence of a new independent state, is an essential factor that facilitates the democratic management of territorial sovereignty conflicts.

70. [Collaboration and goodwill] Once the corresponding decision has been taken in accordance with the agreed procedures, the sovereign State in which the sub-state community is integrated should accept the decision of the majority of its citizens, and collaborate in good faith to implement the result.

71. [Consequences of non-compliance] If the State does not act in good faith or does not comply with the rules agreed with the sub-state community or those established through the Bases for the resolution of territorial sovereignty conflicts, promoted by the European Institutions, the latter should take unilateral declarations of independence into consideration once their democratic legitimacy has been verified.

6. PRECEDENTS OF GOOD PRACTICE

72. [Recent practical examples] Although the conditions mentioned above are based, primarily, on the development of the principle of democracy, legality and respect for minorities and fundamental rights, recent practical instances exist where this type of conflicts has been handled with satisfactory results. These precedents could, therefore, contribute to the development of an international standard of good practice, to establish a basis for the resolution of this type of conflicts. Despite the variety of political contexts, some considerations can be extrapolated that reinforce the logic of the conditions outlined above.

73. [Open interpretation of the Constitution] The territorial sovereignty conflict between Quebec and Canada has found a suitable framework for its management in an open interpretation of the Constitution in accordance with its implicit principles: democracy, federalism, constitutionalism and the Rule of Law, and protection of minorities.

74. [Referendum based on internal legality] Determining the will of the sub-state through a referendum not based on international legality or a process of decolonization but on political will and an open interpretation of the constitutional framework has been possible in Quebec and Scotland, and it is expected to be developed in the case of Northern Ireland. The possibility of holding a referendum on self-determination is also envisaged in the reform of Greenland's Self-government Statute (2009)

75. [Conditions and rules previously established in the Constitution] The *a priori* determination of the conditions for holding a referendum also took place in the case of the independence referendum in Montenegro, whose constitutional framework expressly provided for such a possibility.

76. [Negotiations between governments] Negotiations between representatives of the state and sub-state governments to agree on the referendum terms (date, clear question, electoral roll, level of required participation and majority, along with other

regulations) occurred in the case of Scotland, were endorsed by the Supreme Court of Canada. Both cases can be placed within the general framework set out in the Council of Europe's Code of Good Practice on Referenda.

IV. INTERVENTION OF EUROPEAN INSTITUTIONS

1. THE LEGAL-POLITICAL DIMENSION OF EUROPEAN INTERVENTION IN TERRITORIAL SOVEREIGNTY DISPUTES

1) Introduction

77. [Legal basis for intervention of European Institutions] The possibility of regulating or arbitrating the principles for resolving territorial sovereignty conflicts within European States may concern three regional international organisations distinct in nature and functioning: the European Union (EU), the Council of Europe (CoE) and the Organisation for Security and Co-operation in Europe (OSCE)[23].

78. [Legal possibility of direct and indirect intervention] The legal or political possibility of intervention by each of the aforementioned institutions depends on the functional and institutional configuration of each one. Two broad types of intervention can be distinguished: direct intervention in a given conflict, actively participating in the resolution process, and indirect intervention projected on contextual elements of a conflict that can help its resolution.

79. [Indirect intervention of European Institutions] The three institutions do not have full powers to intervene directly in the territorial sovereignty conflicts that occur within their Member States, except that violations of the Treaties are produced as a consequence of the aforementioned conflicts. However, they can indeed pursue various actions in this direction, including the possibility of regulating or adopting guidelines or principles of action to resolve such conflicts, in general.

2) Legal basis for the intervention of European institutions

a) European Union (EU)

80. [Jurisdictional basis] EU law does not contain any regulation that limits the possibility of intervention. In fact, the EU possesses implicit powers and possibilities for action that could be essential for its intervention in territorial sovereignty conflicts. These powers

[23]It is not the purpose of this document to analyze the contributions that may be made by jurisdictional bodies, such as the European Court of Human Rights or the Court of Justice of the European Union.

or possibilities are linked to the aims, values and principles of the Union, defined in its founding treaties or in matters of interest to the Union.

81. [Beyond the explicit competencies] Some EU institutions have a wide range of possibilities for action that go well beyond the exercise of Community competencies in the strict sense. The European Council, for example, as a politically-driven institution, provides a forum where issues and matters of relevance to the Union can be discussed. Similarly, the representative nature of the European Parliament gives it the legitimacy to act, in a broad sense, beyond the narrow circle of powers attributed to the EU. Both institutions can debate and express their views on questions of crucial interest to the Union, its citizens, or the Member States, since this is in keeping with the nature of these bodies and with the general and open nature with which the Union Treaty itself tackles the aims of the EU in Articles 3 and 13.1.

82. [Peoples of Europe] The EU recognizes "the diversity of cultures and traditions of the peoples of Europe (Charter of Fundamental Rights of the European Union) and therefore assumes the commitment to respect the "peoples of Europe", to promote their development and to safeguard their welfare (Art. 3 TEU). It also recognises it is immersed in a "process of creating an ever closer union among the peoples of Europe, in which decisions are taken as closely as possible to the citizens, in accordance with the principle of subsidiarity" (Art. 1 TEU), interpreted in an open, dynamic and flexible manner.

83. [Promoting peace] One of the founding objectives of the European Union is to promote peace. European history is marked by various incidences of territorial sovereignty conflicts which escalated to the point of jeopardising peace understood in its narrowest sense as the absence of physical violence against people. In a wider interpretation of the notion of violence, such conflicts sometimes result in episodes of repression, ideological persecution, discrimination or abuse of authority. The absence of orderly channels of conflict resolution facilitates polarisation, confrontation and social fracture, all of which increase instability and the potential for violent manifestations of conflict. The adoption of a Bases for the democratic resolution of territorial sovereignty conflicts responds to the objective of promoting peace which the EU establishes for its institutions.

84. [Non-domination] EU treaties also establish a principle of non-domination, and the contribution of the Bases for the Resolution of Territorial Sovereignty Disputes to this purpose is twofold. In a proactive sense, it makes it easier for European citizens who wish to express their disagreement with the current status quo of territorial sovereignty to have an orderly channel for doing so, in complete freedom. In a reactive sense, the incorporation of these Bases into the European legal system, with different possible legal and political formulations, limits the possibilities of generating and escalating conflicts.

85. [Cooperation and unitary framework] Article 4 TEU establishes the notion of sincere cooperation and compliance with obligations arising from the treaties, both points being linked to mutual recognition and democratic inclusion. The principle of loyal cooperation denotes the duty of Member States to comply with their obligations and to refrain from adopting measures that could jeopardise the Union's objectives. This principle also stresses that all EU institutions have a responsibility to assist Member States in ensuring respect for the Rule of Law. In this sense, a shared basis for the resolution of territorial sovereignty conflicts places member States in a context of interdependence that inevitably goes beyond the borders of the state directly affected.

86. [EU fundamental values and principles] Respect for fundamental rights, including the rights of persons belonging to minorities, democracy and the Rule of Law, are values on which the Union is founded and whose institutional system must promote. All EU actions aimed at promoting and developing these values contribute to creating or improving the context necessary so that the resolution of territorial sovereignty conflicts within Member States adheres to these fundamental values and principles. These fundamental values and principles of the EU, together with the principle of subsidiarity and the right to democratic participation, recognised for all EU citizens, protect and support the aspiration that the EU provide itself with a Bases for the democratic resolution of territorial sovereignty conflicts in the European area.

87. [Protection and guarantee of European citizens' rights] European institutions must ensure that the interests, welfare and rights of all European citizens have a channel of expression and, where appropriate, can be put into practice. European citizens immersed in a territorial sovereignty conflict affecting one (or several) Member State(s) must be able to rely on the European Union taking the necessary measures to ensure compliance with this principle, deepening the aspirational ethos of an "ever closer union of citizens" insofar as it helps to overcome differences between European citizens.

88. [Concern for democratic quality and respect for the Rule of Law] Within EU institutions, basically in the European Parliament, there is growing concern about the violation of European values by Member States and the erosion of democratic quality, and with it the rule of law. The rule of law is a shared value, and its key principles include legality, legal security, equality before the law, the separation of powers, prohibition of arbitrariness, sanctions for corruption and effective judicial protection by independent courts. In this sense, the European Commission has identified ways to strengthen the set of instruments of the rule of law and has expressed its intention to deepen the monitoring of events related to the protection of the rule of law in the Member States through a periodic cycle of review.

b) Council of Europe (CoE)

89. [Principles of the Council of Europe] The Council of Europe, as an organisation for inter-state cooperation, has an extraordinary capacity for political weight across the continent. The principles which inspire its actions include the consolidation of peace, based on justice and international cooperation, and adherence "to the spiritual and moral values which are the common heritage of its peoples and the true source of individual freedom, political freedom and the Rule of Law, principles on which all genuine democracy is based".

90. [Matters of common interest in the protection of national minorities] The Council has on many occasions addressed issues related to the rights of national minorities in Europe, including the adoption of treaties that seek to ensure that States respect the civil, political and cultural human rights of persons belonging to a national minority. Collective political rights have also been tackled by the Council, especially by the Parliamentary Assembly.

91. [Political dimension of the national minorities] The Council of Europe claims that these conflicts can be resolved by respecting the principle of unity and territorial integrity without undermining the principle of cultural diversity, while upholding a European democratic culture committed to peace and the prevention of violence as essential elements in promoting human rights, democracy and the Rule of Law.[24] In particular, the Council of Europe has committed itself to territorial autonomy as an ideal instrument to reconcile territorial unity with cultural diversity[25], as a concrete expression of the right to self-determination, without excluding other possible solutions[26].

92. [European principles for processes of independence and secession] In this respect, the Council of Europe has debated various aspects of territorial sovereignty conflicts based on some conflicts currently existing in the European continent[27], revealing the

[24] Report Political Affairs Committee (3 June 2003), "Positive experiences of autonomous regions as a source of inspiration for conflict resolution in Europe", Rapporteur: Mr Gross, Switzerland, Socialist Group.
[25] "Positive experiences of autonomous regions as a source of inspiration for conflict resolution in Europe": Resolution 1134, of 24 June 2003, Parliamentary Assembly; and Recommendation 1609, of 24 June 2003, Parliamentary Assembly.
[26] "National sovereignty and statehood in contemporary international law: the need for clarification", Committee on Legal Affairs and Human Rights, Rapporteur: Ms Marina SCHUSTER, Germany, Alliance of Liberals and Democrats for Europe (Doc. 12689, of 12 July 2011). Resolution 1832 (2011), of 4 October 2011, "National sovereignty and statehood in contemporary international law: the need for clarification".
[27] Information report Destexhe Doc. 14390, 04 September 2017, "Towards a democratic approach to the issues of self-determination and secession" Information report, Committee on Legal Affairs and Human Rights; Rapporteur: Mr Alain DESTEXHE, Belgium, Alliance of Liberals and Democrats for Europe. Doc. 13895, 30 September 2015, Towards a democratic approach to the issues of governance in European multinational States, Motion for a resolution tabled by Mr Stefan SCHENNACH and other members of the Assembly.

need to resolve disputes relating to sovereignty and secession through peaceful and democratic dialogue that respects the Rule of Law and human rights.

93. [Intervention capacity] The Council of Europe, through various initiatives, has the capacity to play a relevant role in determining the criteria that lead to the resolution of territorial sovereignty disputes, based on the values and principles on which the Council is founded, such as respect for fundamental rights, democracy and the Rule of Law. By recommending compliance with a common European standard, recognizing the aforementioned European values, and incorporating it into a code of good practices for the democratic resolution of this type of conflicts, the Council of Europe can play a crucial role.

93a. [Code of Good Practice] The Council of Europe can play a leading role in the resolution of this kind of conflicts by recommending compliance with a common European standard in accordance with the aforementioned European values and contained in a Code of Good Practice, in line with other codes of good practice drawn up by the Venice Commission, and as a concretization of these General Guidelines.

93b. [Granting a special status of protection to the sub-State community during the process of self-determination of its political status] The Council of Europe provides in its Statute (Art. 5) for the possibility of recognizing a "European country" as an "associate member" in special circumstances. This status gives it the right to be represented in the Assembly of the Council of Europe. In this sense, the Council of Europe has the capacity to develop this status of "associate member" and to recognize those countries, which, lacking the political status of an independent state, are part of a European member state, and request it. This particular status would allow the participation of this country in the Assembly of the Council of Europe, with voice, but without vote, during its process of free decision on its political status and would enable the IIEE to supervise the effective fulfillment of a framework of clarity that could be developed from these Bases.

c) Organization for Security and Co-operation in Europe (OSCE)

94. [Intervention perspective] The OSCE's approach to territorial sovereignty conflicts stems from the perspective of relations between States and when such conflicts might or do pose a risk to the security or stability of these relations. Its political weight, however, is central in matters relating to peace, security and democracy in Europe. Moreover, the intervention of the OSCE is of great importance to ensure resolution by peaceful means and in promoting the necessary climate of confidence and security to avoid conflict.

95. [Inter-state nature of the right to self-determination] The right to self-determination of peoples is embodied in the Helsinki Final Act as one of the basic principles of relations between the participating States.

96. [Dealing with national minorities] The OSCE has dealt with the question of national minorities, especially those established in several States or that have a reference State. The OSCE seeks to guarantee the rights of national minorities, as essentially cultural rights linked to their identity, and as a prohibition of discrimination in the exercise of individual and political rights on the grounds of belonging to a national minority.

97. (Intervention mechanisms) Since 1992, the OSCE has had a High Commissioner on National Minorities charged with the task of containing and de-escalating tensions that might arise concerning national minorities and alerting the organisation to take preventive measures to avoid potential conflicts. Its fundamental perspective is to ensure the coexistence of multi-ethnic societies, to make them more inclusive and stable. The thematic recommendations that the High Commissioner has drawn up over the years in the areas of education, language, political participation, cross-border cooperation, police and security, inter-state relations, social integration and access to justice are worth highlighting.

2. THE PRAGMATIC DIMENSION OF EUROPEAN INTERVENTION IN TERRITORIAL SOVEREIGNTY DISPUTES: REASONS FOR INTERVENTION AND WINDOWS OF OPPORTUNITY

98. [Dimensions to be considered] Discussions on territorial sovereignty conflicts have revolved around the moral conditions to be met by non-state territorial communities in order to consider their political aspirations as legitimate. In consolidated democratic contexts, the democratic will should be a necessary and sufficient condition to provide a channel for their democratic resolution. Yet, in a considerable number of cases, the process of materialising these aspirations is "de facto" conditioned by practical and power-related considerations. From this perspective, reasons for intervention and various windows of opportunity can also be identified during the course of the development of the European Institutions.

99. [Europe as a model] A normative dimension that reinforces the importance of a Bases for the democratic resolution of territorial sovereignty conflicts is that it may offer models or approaches that can contribute to advancing and spreading the foundational values that underlie the model of democracy in Europe to other regions of the world. To have this type of Basis (which may take various forms: Code of Good Practice, Clarity Directive, etc.). facilitates dialogue with other areas in the world that might be experiencing comparable conflicts, shared learning, and Europe's external projection, and alignment with the aspiration to work on building what the European Commission has denominated *European blueprints*[28].

[28] https://ec.europa.eu/eip/ageing/blueprint_en

100. [The Scottish precedent as a need for a clear and common response] Occurrences such as the Scottish independence referendum in 2014 demonstrate that European institutions do not have a clear roadmap for addressing and positioning themselves in the face of such situations that can lead to conflict. This merely augments the uncertainty and insecurity of natural and juridical persons involved in this type of conflict. The situation of Scotland itself once the United Kingdom's exit from the European Union opens the possibility of a new referendum and makes plausible the scenario of an independent Scotland, striving to access some of the institutions that constitute democracy in Europe. In such a situation, it is desirable that the European institutions have a basis which offers the various players a clear scenario for action.

101. [Democracy in Europe and its social legitimation] These Bases are aligned with the development of democracy in Europe to reverse the political disaffection and Euroscepticism that has been growing since the crisis of 2008. Although territorial sovereignty conflicts do not necessarily respond to any of these patterns, their escalation or entrenchment may contribute to the citizens affected increasing their detachment from politics in general and, in the absence of intervention or contribution to the resolution of the conflict, from European politics in particular.

102. [Avoiding antidemocratic drift] The rise of exclusionary populism and the increase in anti-democratic inclinations may eventually concur with settings of territorial sovereignty conflicts. The potential escalation or entrenchment of a conflict in the absence of a democratic channel for its resolution tends to destabilize the political system, obstructing not only the existence of quality public debate but also the capacity of *delivery* of the political system itself: a scenario that could benefit anti-democratic political alternatives and, therefore, reinforces the opportunity of the present Bases.

103. [Constitutional momentum] As far as the European Union is concerned, a new *constitutional moment*[29] can be found in which the possibility of transforming the legal-political pillars of its institutional framework is once again being considered. In this debate, the existence of a document of Bases such as this one contributes to reducing the scope of conflict, facilitating, therefore, the democratic conversation necessary to deepen the process of European construction or integration.

104. [Transnational sovereignty in the EU] These Bases contributes to overcoming the statist obstructionism that may occur in the EU, steering towards a European framework of transnational sovereignty and deepening the federal perspective of the Union. A political project under construction, such as that of the EU, benefits from these bases insofar as it de-dramatizes and relativises controversies over sovereignties, giving them

[29] Council's position on the Conference on the Future of Europe, 24 June 2020: https://www.consilium.europa.eu/media/44679/st09102-en20.pdf

an orderly and democratic channel for resolving certain conflicts, favouring the promotion of more horizontal, cooperative and pluralist visions of sovereignty.

105. [Clarity] These bases help to define a clear framework for action and the reasonable expectations of the European actors in these conflicts. This favours not only the moral aspects of such conflicts, but it also helps to ensure that diversity is not expressed in terms of confrontation or exclusion, consequently reinforcing the stability of the European political system itself. In this sense, the Bases, and their subsequent development, offers an orderly channel that combines the recognition of the plurality of political subjects with respect for the democratic principle and the rule of law, thus providing stability to the European framework and its eventual internal expansion process, in coherence with European values.

106. [European cohesion and territorial capacity] These bases also seek to prevent Member State logics from hindering or preventing UE agreements due to internal territorial conflicts, as well as allowing the activation of sub-State capabilities to positively contribute to the UE purposes. Thus, the Bases for the resolution of territorial sovereignty conflicts contribute to reducing the number and intensity of these conflicts which diminish the capacity of the actors involved to actively and synergistically participate in the public policies of European institutions. Likewise, the overcoming of such conflicts or potential conflicts contributes to the capacities of the different democratic scales of governance to be reactivated.