SOVEREIGNTY CONFLICTS: THE EUROPEAN DEBATE

Problematising the Role of the EU in Territorial Sovereignty Conflicts

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Skoutaris argues that the European Union's role in territorial disputes should be more active, and advocates the creation of an EU "code of good practice" on territorial sovereignty to promote consensual and democratic resolutions of Member States internal conflicts. Illustration: César Cromit

The EU's historical success as a peacemaker between France and Germany has inspired many to wonder whether the EU may also bring peace to other conflicts. It is true that historically speaking at least, the EU area itself has proved remarkably free of conflict. Having said that, the Union has not managed to play a significant role as an actor in the settlement of territorial sovereignty disputes that have taken place inside its borders, such as the ones in Northern Ireland, the Basque country or even Cyprus [1]. Taking the cue from this somewhat paradoxical situation, the paper problematises the role of the European Union in territorial sovereignty conflicts. It argues that it is the limited legal toolbox that does not allow the EU to undertake a more active role in conflict resolution within its borders and has made her appear as a rather reluctant peacemaker. The paper develops its argument in three steps. In the following section, the paper provides for three reasons why the EU should consider assuming a more active role in territorial sovereignty conflicts. Section III points to the inherent characteristics of the Union constitutional structure that constrain the EU from assuming such role within its borders. The paper concludes with

some thoughts about how the EU could assume a more constructive role and how the Code of Good Practice could contribute to that.

Why should the EU intervene?

The minimum (if any) involvement of the EU in disputes such as the ones in the Basque Country and Northern Ireland together with its failure to 'catalyse' a solution in the Cyprus issue, demonstrate that the toolbox of the Union is rather limited when dealing with conflicts within its borders and that the EU membership itself is far from a *panacea* as we will see in the next section. Having said that, there are at least three reasons why the EU should at least consider assuming a more active role in the resolution of territorial sovereignty disputes.

Firstly, from a normative point of view, such role would very much be in conformity with its *raison d'être* as a peace plan. Rather than actively fighting to eradicate nationalism, the EU –since its inception– has provided for a pragmatic legal, political and economic framework where competing nationalisms co-exist and even cooperate. It has designed political and legal institutions in which the competing nationalisms can continue to be negotiated [2]. It is precisely the historical success of this pragmatic framework that transformed foes of the past such as France and Germany to reliable partners of today. Such success has inspired many to wonder whether the EU may also catalyse the settlement of other conflicts both within its territory and in its immediate neighbourhood [3]. A more active engagement in territorial sovereignty disputes that pose a threat to the peaceful and democratic politics in the European continent would be very much in tune with EU's existential scope to promote peace between its members.

Secondly, within the European constitutional landscape, one has to take into account the multilevel aspect of the right of self-determination. This right and in particular its external and most controversial dimension ie. secession consists simultaneously of the 'ultimate challenge to state sovereignty [and] the reinforcement of [its] virtues' [4] by envisaging 'the voluntary withdrawal of a political territory from a larger one in which it was previously incorporated' [5]. Within the EU, however, secession can be also seen 'as a move to change the status or affiliation of a territory within a wider constellation of polities' [6]. The Catalan independentists, for instance, have claimed that they want to create a 'nou Estat d' Europa'. Meanwhile, the Scottish National Party has long campaigned on the slogan 'independence in Europe'. In fact, their post-Brexit strategy has been intrinsically linked with a second independence referendum that would subsequently lead to their re-accession to the EU. In both cases, the independendists do not favour a Robinsonian existence of the respective new States. Instead, they prioritise their 'upgrade' from mere subnational authorities [7] to fully functional Member States within the EU legal order. Such ambition by itself raises a number of questions for the Union: Is there a pathway to membership for independent States coming out of such a process? What kind of conditions for accession are imposed on them? What are the responsibilities of the rump State? A more active role in such conflicts would allow the Union to effectively address those questions and become a stabilising factor within the unstable environment of those constitutional crises.

> A more active role of the EU in territorial sovereignty disputes that take place within the territory of Member States would bring greater consistency and would reduce the discrepancy between EU's external and internal actions

Finally, the EU has declared conflict resolution as one of its key foreign priorities in its southern and eastern neighbourhoods, presenting it as an "essential aspect of the EU's external action" [8]. In 'Global Strategy for the European Union's Foreign and Security Policy' it is underlined that "[t]he EU will engage in a practical and principled way in peacebuilding, concentrating our efforts in surrounding regions to the east and south, while considering engagement further afield on a case by case basis" [9]. We do not find similar aims with regard to disputes that take place within its borders. This creates a discrepancy between its external and its internal actions. A more active role of the EU in territorial sovereignty disputes that take place within the territory of Member States would bring greater consistency between the EU actions both within and outwith its own borders.

Problematising the role of the EU

The previous section referred to three reasons why the EU should engage in a more active fashion in territorial sovereignty disputes. From a normative point of view, an apathetic role sits uncomfortably with the ethos of the EU as a peace plan. At the same time, from the standpoint of the EU as a constitutional order of States, it is important to effectively address the ambitions of those political entities that aim at becoming fully functional Member States. Finally, greater consistency is needed between the EU policies towards conflicts that take place within its boundaries and in the rest of the world.

Having said that, we should problematise the role of the EU. The fact that a more active role in the resolution of territorial sovereignty disputes is in conformity with the aforementioned principles, does not mean that its current legal toolbox provides for the necessary space for the EU to assume such role. There are intrinsic characteristics of the Union constitutional structure that constrain the EU from becoming more active in intrastate conflicts within its borders. The Member States as 'Masters of the Treaties' refrain from allowing the EU to become active in an area that touches on the very core of their sovereignty. This becomes particularly evident if one examines closely whether the EU has a legal basis to act as an honest broker in such conflicts. Finally, the asymmetrical nature of the relationship that the EU enjoys with its Member States and their regions, poses a question as to whether it is even politically prudent for the EU to assume such role.

Member States as 'Masters of the Treaties'

Dashwood once famously proclaimed that the EU is a "constitutional order of States."11 This means *inter alia* that the Member States as *Herren der Verträge* have to unanimously agree on the text of the EU Treaties in order to design the constitutional framework of the

Union. They are the authors of the constitutional charter of the Union [11]. Taking that into account, it is hardly surprising that the Member States do not want to impute any particular role to the EU with regard to issues that touch upon their national sovereignty, such as intrastate conflicts. Those conflicts often question the sovereignty of a metropolitan State over a given territory and thus the very essence of statehood.

A mere look to the text of the EU Treaties verifies our conclusion. Apart from generic references to 'the Union's aim […] to promote peace [12] that are often referring to its relations with the wider world [13], there is no explicit reference to the role of the EU in intrastate conflicts that take place within its territory. This is hardly unexpected given the painful compromises that Treaty amendments have always entailed and how difficult it has been to reach those compromises in each and every intergovernmental conference. So, reaching a consensus on how the EU could deal with intrastate territorial disputes, would have always been a sisyphean task for the 27 Member States that have not even adopted a common position with regard to the recognition of Kosovo.

This is not to suggest that the EU should not or would not admit independent States that have been created out of consensual and democratic secession as members, as some authors have suggested [14]. The Union has already accommodated within its legal order the results of secessions that have taken place through consensual processes. This is evident from the fact that a number of Member States such as the Czech Republic and Slovakia have become independent through such processes and this was not considered to be a hurdle to their accession

Even on the heated debate of the continuing membership of a region that has consensually seceded from a Member State as it was rehearsed mainly before the 2014 Scottish referendum the main question had to do not with whether Scotland could become an EU Member State but rather what was the appropriate process. Still, it is important to highlight the constructive ambiguity about the right of continuous EU membership of a seceding region of a Member State. Such ambiguity points to the fact that the Member States and the institutions do not share –at a minimum– a common view on the issue making it difficult for the EU to become more active in such situation.

In the 2014 debate about Scotland's right to remain in the EU, the interested parties interpreted the Treaties in opposing ways. On the one hand, the official position of the Commission at the moment was that:

- *If part of the territory of a Member State would cease to be part of that State because it were to become a new independent state, the Treaties would no longer apply to that territory. In other words, a new independent state would, by the fact of its independence, become a third country with respect to the EU and the Treaties would no longer apply on its territory* [15].

Thus, Scotland would have had to follow the procedure under Article 49 TEU in order to become an EU Member State.

However, the Scottish government held a different view. They based their argument [16] eon the fact that the Scottish situation was *sui generis*. It would have been the first time that a region would secede from an EU Member State by a consensual and lawful constitutional process. It did so in order to distinguish itself from other secessionist claims in Europe and to ease the concerns of the respective metropolitan States. According to the Scottish position, Article 49 only regulates "conventional enlargement where the candidate country is seeking membership from outside the EU" [17]. But Scotland had been part of the EU since 1973. Therefore, the appropriate legal basis that would have facilitated Scotland's transition to Union membership would have been Article 48 TEU, the generic provision on the amendment of the EU Treaties. In other words, the Scottish position was that the amendment of Article 52 TEU, which provides for the States to which the Treaties apply and the relevant articles concerning the composition of the EU institutions would have been, by and large, sufficient in order for Scotland to become an EU Member State after its independence.

The ambiguity as to how EU law applies in such situation [18] points to the lack of consensus between the Member States. Such difference of views was underlined during the long hours of the morning of 19 September 2014 when the then Spanish Secretary of State for the European Union, Íñigo Méndez de Vigo made clear that if Scotland had become independent, it would have had to join the queue of the other candidate States, highlighting how time-consuming this might be. More importantly, his statement shed doubt on whether Spain would ever accept Scotland as a Member State, fearing that this would create a dangerous precedent especially for the secessionist movements that exist in Spain [19]. Again, this shows that the Member States as 'Masters of the Treaties' have never intended to allow the Union to have a more active role in 'catalysing' settlements of their intrastate territorial sovereignty conflicts. Occasionally, they even use the legal and political levers provided by the Treaties to frustrate processes that they consider as a threat to their own territorial integrity.

The Legal Basis Problem

Article 5 TEU clarifies that the Union is an organisation of conferred powers. The Union can only act on competences that the Member States have conferred on it. A closer look to its present institutional and legal framework clearly shows that although the Union can become a mediator in any conflict that takes place beyond its borders, it cannot assume such a role for intrastate conflicts that are within its territory. This lack of competence shows how much more difficult it is for the EU to 'catalyse' the settlement of a territorial sovereignty dispute inside its borders than outside. It also points to the fact that there is a clear 'break point' in the linearity of enhanced conflict resolution potential on the part of the EU at the moment of the accession of any given State.

The Common Foreign and Security Policy

In its relations with the wider world, the Union has to contribute *inter alia* to peace and security [20]. That is why the adoption of a legislative act that could allow the EU to engage

in principal mediation in negotiations for the settlement of any territorial sovereignty conflict could be *prima facie* legally based on the provisions for the Common Foreign and Security Policy. The Union could assume such a role in order to "safeguard its values, fundamental interests, security, independence and integrity; consolidate and support democracy, the rule of law, human rights and the principles of international law; preserve peace, prevent conflicts and strengthen international security" [21].

In order to achieve this Common Foreign and Security Policy scope, the Union could adopt a decision defining the relevant actions to be undertaken [22]. The device of the CFSP decisions has been introduced by the Lisbon Treaty and, in essence, it replaces what was known in the pre-Lisbon era as joint actions [23]. The joint actions were addressing specific situations where operational action by the EU was deemed necessary [24]. They have concerned *inter alia* activities such as support for peace and stabilisation processes through the convening of an inaugural conference [25], general support of a specific peace process [26], a contribution to a conflict settlement process [27] and the appointment of a Special Representative [28]. Thus, both the current provisions of the Treaties and the Union practice in the past suggest that the role of the negotiator between the parties in a dispute could be attributed to the EU by a decision defining an action.

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The adoption of such a decision for a territorial sovereignty conflict within the borders of a Member State, however, may be problematic from a legal point of view. If the Treaty on European Union is interpreted in accordance with the ordinary meaning to be given to its terms, following the well established rule of Article 31(1) Vienna Convention on the Law of the Treaties [29], it would be difficult to justify the use of a CFSP device for an area that is part of the Union and for mediation between parties, whose members are Union citizens. In that sense, the adoption of a CFSP decision by the Council, in order to authorise the Union to play the role of the honest broker in an intrastate conflict that takes place within its borders, can be considered an *ultra vires* act since a CFSP device cannot be used for an area that is part of the Union.

Other Union Competences

Unsurprisingly, conflict resolution does not appear in Title I of the Treaty on the Functioning of the EU, which deals with categories and areas of Union competence. Thus, one could rightly argue that *prima facie* the TFEU cannot provide for any legal basis in order for the Union to authorise itself to actively engage in negotiations for the resolution of a territorial sovereignty conflict. However, the EU does possess a residual power in

accordance with Article 352 (1) TFEU:

- *If action by the Union should prove necessary, within the framework of the policies defined in the Treaties, to attain one of the objectives set out in the Treaties, and the Treaties have not provided the necessary powers, the Council, acting unanimously on a proposal from the Commission and after obtaining the consent of the European Parliament, shall adopt the appropriate measures.*

To the extent that assuming the role of the mediator in a territorial sovereignty dispute can be deemed as necessary for the achievement of one of the Treaty objectives, one could argue that Article 352 TFEU could provide for the legal basis.

However, the Lisbon Treaty has clarified that the aforementioned Article cannot serve as "a basis for attaining objectives pertaining to the common foreign and security policy" [30]. This follows the well-established case law of the Court of Justice which has held that "recourse to that provision demands that the action envisaged should," on the one hand, relate to the "operation of the common market" and, on the other, be intended to attain "one of the objectives of the Community" [31]. "That latter concept, having regard to its clear and precise wording, cannot on any view be regarded as including the objectives of the CFSP" [32]. As already mentioned, the role of the 'broker' in dispute resolution is considered as rather serving CFSP objectives.

For the sake of argument, however, let us imagine that the Council unanimously approves a Commission proposal under Article 352 TFEU. Such legislative act would authorise the Union to become the principal actor in the negotiations for a settlement of a territorially sovereignty dispute. Even in this case, the *2/94 Opinion* [33] of the Court of Justice questions the legality of such a decision. On that occasion, the Council had requested the Opinion of the ECJ, both as regards the competence, under the then EC Treaty, for the Community to accede to the European Convention of Human Rights and the compatibility of such an accession with substantive provisions and principles of EC law. According to the Court, ex Article 308 TEC (now Article 352 TFEU) could not serve as a basis for widening the scope of EC powers beyond the general framework created by the Treaty provisions, as a whole, and by those that defined the tasks and the activities of the then EC [34]. Article 352 TFEU (ex Article 308 TEC) cannot be used as a basis for the adoption of provisions whose effect, in substance, would be to amend the Treaty without following the procedure provided for that purpose [35]. If that proposition applied to this case, it would mean that by attributing the role of the principal mediator to the Union following the adoption of a legislative act under Article 352 TFEU, the scope of the Union competences contained in the TFEU would most probably be widened beyond the general framework created by the provisions of this Treaty. Therefore Article 352 TFEU should not be used as a legal basis to that effect.

On the other hand, one has to note that accession to the European Convention on Human Rights would have been, in substance, a Treaty amendment without following the procedure provided for by the Treaty. Thus, it is rather difficult to draw conclusions from

this Opinion for the purposes of this paper given that the constitutional significance of extending the scope of Union competences under the TFEU to include dispute resolution would have been much more trivial than the accession to the European Convention on Human Rights.

In any case, the fact that there is –at a minimum– an ambivalence about the existence of a legal basis that could allow the EU to assume a more active role to the resolution of territorial sovereignty disputes has political repercussions. It is more than probable that, should the Union ever try to assume such a role without the consent of all parties in the conflict, those constraints will be used against the procedure. It is not uncommon for the parties in a conflict to use every *forum* as another arena for their political battle, a platform for seeking international and local endorsement of their political arguments.

The Duty of Loyal Cooperation

So far, we have noted the inherent limitations of the Union constitutional structure that constrain the EU from becoming more active in intrastate conflicts within its borders. Still, Member States as Masters of the Treaties could always amend the text in order to create the necessary space for the EU to actively engage with the resolution of territorial sovereignty disputes. Even if such damascene conversion takes place and Member States allow the EU to intervene in what they so far consider to be strictly internal matters, there is a question concerning the political prudence of such development.

The EU system of governance includes a number of channels for Member States to participate in and effectively influence the decision-making process. Heads of States and/or Governments take part in the European Council [36] and ministers of the national governments predominantly consist of the Council of the EU [37]. There are less opportunities and forums for legislative regions to have a say on how EU decisions are reached [38]. This creates an asymmetry. It is much easier for Member States to influence the EU positions, including the EU with regard to the resolution of territorial sovereignty disputes, than it is for constitutional regions.

Such asymmetry is intensified by the very existence of the duty of loyal cooperation between the EU and the Member States enshrined in Article 4(3) TEU [ex Article 10 TEC]. Cremona argues that ‘the duty of cooperation is a constitutional principle developed in the context of mixed agreements but of broader application and deriving from the requirement of unity in the international representation of the [Union]’ [39]. Such a duty is of general application and does not depend either on whether the Union competence concerned is exclusive or on any right of the Member States to enter into obligations towards non-member countriess [40]. The Court held, in its judgment in *Ireland v Commission* [41], that ‘the duty to cooperate in good faith governs relations between the Member States and the institutions’ [42] and has emphasised that this obligation ‘imposes on Member States and the [Union] institutions mutual duties to cooperate in good faith’ [43]. As expressed more directly in the Treaty of Lisbon, ‘the Union shall respect [the Member States’] national identities inherent in their fundamental structures… it shall respect their essential State

functions, including ensuring the territorial integrity of the State' [44].

> The role of the EU as a neutral arbiter is very difficult. The possibility that the EU would be seen as promoting the interests of the metropolitan State is very real

So, to the extent that a more active role of the EU in the resolution of a territorial sovereignty dispute would be seen as questioning the territorial integrity of a Member State, the duty of loyal cooperation might be breached. That makes the role of the EU as a neutral arbiter very difficult and the possibility that the EU would be seen as promoting the interests of the respective metropolitan State very real. This is why one has to question the political prudence of requesting the EU assuming the role of the neutral arbiter with regard to such disputes.

Conclusions: two thoughts on the Code of Good Practice and a more constructive role for the EU

Overall, it has been shown that there are important legal constraints in the present Union institutional framework that would make the assumption of a more active role on the part of the EU with regard to territorial sovereignty disputes that take place within the borders of its Member States somehow problematic. The Union does not seem to have a competence to act as mediator between parties in such intrastate conflicts while the political prudence of such move is at least questionable. Still, it is possible for the EU to assume a more constructive role through informal channels of negotiation and the socialisation that the EU membership entails. The Code of Good Practice could greatly contribute with regard to both fronts.

An Informal Way Out of the Legal Conundrum: The EU Role in the Croatia-Slovenia Border Dispute

The leading role that the European Commission played in bridging the differences of Croatia and Slovenia over a border dispute might suggest that the political reality is more nuanced than presented before. In that particular case, the then Commissioner for Enlargement Olli Rehn "took the unusual role of mediating between a Member State and a candidate country." Indeed, the agreement that was signed in November 2009 unblocked the accession negotiations between Croatia and the 27 Member States [45].

By analogy, this could mean that if the parties to a territorially sovereignty dispute ask the Union to act as mediator in a conflict situation –as Slovenia and Croatia have done– it would be rather difficult for the EU to reject such a request. In that sense, the EU could use a rather informal setting as it has done in the aforementioned case in order to act as a

mediator and to ‘catalyse’ a settlement in an intrastate conflict. In any case, a limited reading of the role that the Union could play in the quest for the settlement of a conflict may disregard the fact that the scope of the CFSP over the years has been defined widely and the role of the European Council has been construed broadly.

Within such an informal setting the Code of Good Practice in Resolving Territorial Sovereignty Conflicts could play a catalytic role as a soft law instrument. It could offer much-needed guidance as to how the EU could positively engage with and contribute to the resolution of those disputes. It could also act as a yardstick that spells out the appropriate constitutional behaviour of all the conflicting parties during such crisis.

Having said that, the recent CJEU judgment *Slovenia v Croatia* points also to the limits of such informal approach [46]. Croatia informed Slovenia of its decision to terminate the arbitration agreement brokered under the auspices of the EU on the ground that one of the arbitrators was secretly communicating with the Slovenian agent. The arbitral tribunal acknowledged the breach but did not accept that its gravity justified the termination of the agreement. In June 2017, the tribunal rendered a final arbitration award whose validity has been fiercely denied by Croatia.

This cautionary tale serves as a reminder that parties to such disputes would always try to strengthen their political positions using all available legal arenas. This makes the adoption of the code as a soft law instrument all the more important securing that the EU would follow the appropriate standards of conduct when engaging in the resolution of such conflicts. To the extent that the resolution of a territorial sovereignty dispute follows a democratic and consensual approach, one could even argue that the use of such code could contribute to the effective protection of Article 4(2) TEU. There, the Union proclaims its obligation to respect the national identities of the Member States inherent in their fundamental political and constitutional structures. A resolution process guided by the principles underpinning the code could be regarded as respecting the rights and obligations enshrined in the constitutional orders of both the relevant Member State and the EU and in particular the founding values of the Union as provided in Article 2 TEU.

Socialisation

The Union has failed to ‘catalyse’ a comprehensive settlement in a number of territorial sovereignty disputes within its borders. This does not mean that Union membership should be understood as a trivial change of context that cannot alter the dynamics of a given conflict and contribute to its resolution. Guelke suggested as early as in 1989 that the place of Northern Ireland in the EU, European standards on democracy, human rights, and the treatment of minorities would be just as important as the interlocking internal, North-South, and East-West dimensions of a solution inspired by local and British-Irish ideas [47]. Some years later, Meehan argued that the broader European background and new perceptions of sovereignty that EU membership has facilitated, influenced the designing of Good Friday Agreement [48].

- *To be sure, the EU has had no impact on sectarian factionalism within Northern Ireland. However, it has provided a framework for improved practical relations between the UK and Irish governments. In this way, the sharing of sovereignty within the EU has spilled over into some sharing of sovereignty over Northern Ireland* [49].

EU's indirect but significant contribution to the peaceful resolution of the conflict in Northern Ireland points to the fact the Union could potentially offer some inspiration with regard to issues of shared sovereignty, consociational policy mechanisms and democratic resolution in all territorial sovereignty disputes. At the end of the day, the Union's comparative advantage is in its long-term efforts to change the environments out of which conflicts spring, so as to inoculate against them [50].

> By adopting such Code as a soft law instrument, the EU would make clear that the consensual and democratic resolution is the appropriate way for the resolution of territorial sovereignty conflicts without appearing as overly intrusive in the "internal affairs" of its Member States

This is precisely where the Code of Practice could help the EU spell out all those principles and mechanisms that should be used in resolving those disputes. By adopting such Code as a soft law instrument, the EU would make clear that the consensual and democratic resolution is the appropriate way for the resolution of territorial sovereignty conflicts without appearing as overly intrusive in the "internal affairs" of its Member States. The message that such adoption would send is that the political and constitutional ethos of the EU necessitates that those disputes should be resolved accordingly hoping that the Member States would start slowly but surely reconsidering their views. If this strategy is verified, it would be another case that would prove that the Union is mainly a mechanism that promotes, to use Popper's terms, 'piecemeal social engineering' rather than 'Utopian' [51]. At the end of the day, Europe itself was not made all at once, or according to a single plan. It was built through concrete achievements which first created a *de facto* solidarity [52].

REFERENCES

1 — Hill, C., "The EU's Capacity for Conflict Prevention" (2001) 6 *European Foreign Affairs Review*, p. 315, 326.
2 — See Bell, C., *On the Law of Peace, Peace Agreements and the Lex Pacificatoria*, (Oxford, Oxford University Press, 2008), p. 200.

3 — See generally Akçali, E., "The European Union's Competency in Conflict Resolution: The Cases of Bosnia, Macedonia and Cyprus" in Diez, T. i Tocci, N. (eds.), *Cyprus: A Conflict in the Crossroads* (Manchester, Manchester University Press, 2009), p. 180; Féron, E. & Güven Lisaliner, F. "The Cyprus Conflict in a Comparative Perspective: Assessing the Impact of European Integration" in Diez, T. & Tocci, N. (eds.), *Cyprus: A Conflict in the Crossroads* (Manchester, Manchester University Press, 2009), p. 198.
4 — Mancini, S., "Secession and Self-Determination", in Rosenfeld, M. & Sajó, A. (eds), *The Oxford Handbook of Comparative Constitutional Law* (Oxford, Oxford University Press, 2012), p. 481.
5 — Bauböck, R., "A Multilevel Theory of Democratic Secession", (2019) 35 *Ethnopolitics* 227, p. 227.
6 — *Ibídem*, p. 229.
7 — See Finck, M., *Subnational Authorities in EU Law* (Oxford, Oxford University Press, 2017).
8 — See for instance European Commission, European Neighbourhood Policy Strategy Paper, COM (2004) 373 final, 12 May 2004, 3.
9 — High Representative of the Union for Foreign Affairs and Security Policy, Shared Vision, Common Action: A Stronger Europe. A Global Strategy for the European Union's Foreign and Security Policy, June 2016, 28. Available online.
10 — Arnull, A., *et al.* (eds.), *A Constitutional Order of States? Essays in EU Law in Honour of Alan Dashwood* (Oxford, Hart Publishing, 2011).
11 — Case C-294/83, *The Greens (Les Verts) v. The Parliament* ECLI:EU:C:1986:166.
12 — Art. 3 (1) TUE.
13 — Arts. 3 (5), 8 (1), 21 (2) (c) TUE.
14 — JHH Weiler, "Slouching towards the Cool War; Catalonian Independence and the European Union; Roll of Honour; In this Issue; A Personal Statement", (2012) 23 *European Journal of International Law*, p. 909.
15 — President of the European Commission José Manuel Barroso, Letter of 10 December 2012 to the House of Lords Economic Affairs Committee regarding the status of EU membership for Scotland in the event of independence. Available online. In fact, this letter follows almost verbatim a similar position expressed by a previous President of the Commission, Romano Prodi, in 2004. According to it, "[w]hen a part of the territory of a Member State ceases to be a part of that state, e.g. because the territory becomes an independent state, the treaties will no longer apply to that territory. In other words, a newly independent region would, by the fact of its independence, become a third country with respect to the Union and the Treaties would from the day of its independence, not apply anymore […]" If the new country wished them again to apply there would need to be "a negotiation on an agreement between the Applicant State and the Member States on the conditions of admission and the adjustments to the treaties which such admission entails. This agreement is subject to ratification by all Member States and the Applicant State.", President of the European Commission Romano Prodi, Answer to Written Question P-0524/04, OJ 2004 C 84E, 421.
16 — See Scottish Government, *Scotland's Future: Your Guide to an Independent Scotland*, 216-224. Available online.

17 — *Ibídem*, p. 21.
18 — For a summary of the different academic views on this debate see verfassungsblog.de and N Skoutaris, 'Territorial Differentiation in EU Law: Can Scotland and Northern Ireland Remain in the EU and/or the Single Market?' (2017) 19 *Cambridge Yearbook of European Legal Studies*, 287.
19 — Find a summary of the views of the Spanish government on the Scottish independence referendum 2014 in The Guardian (2014), "Spain says it could take independent Scotland years to win EU membership", available online.
20 — Art. 3 (5) TUE.
21 — Art. 21 (2) TUE.
22 — Art. 25 TUE.
23 — Ex art. 12 TUE.
24 — Ex art. 14 (1) TUE.
25 — Joint Action 93/728 on the inaugural conference on the stability pact [1993] OJ L339/1.
26 — Joint Action 94/276 in support of the Middle East process [1994] OJ L119/1.
27 — Joint Action 2001/759 regarding a contribution from the European Union to the conflict settlement process in South Osetia [2001] OJ L286/4.
28 — Joint Action 2002/211 on the appointment of the EU Special Representative in Bosnia and Herzegovina [2002] OJ L70/7.
29 — Vienna Convention on the Law of Treaties, 13 May 1969, UNTS 1155, 331.
30 — Art. 352 (4) TFUE.
31 — Joined Cases C-402/05 P and C-415/05 P, *Kadi and Al Barakaat v. Council of the European Union*, ECLI:EU:C:2013:518, para. 200.
32 — *Ibid*., par. 201.
33 — Opinion 2/94, *Accession by the Communities to the Convention for the Protection of Human Rights and Fundamental Freedoms*, ECLI:EU:C:1996:140. For a comprehensive analysis of that judgment and the use of ex Art. 308 TEC see generally R Schütze, *From Dual to Cooperative Federalism: The Changing Structure of European Law* (Oxford, Oxford University Press, 2009), 133-143.
34 — Opinion 2/94, paras. 27-30.
35 — *Ibid*.
36 — Art. 15 TUE.
37 — Art. 16 TUE.
38 — See Skoutaris, N., "The Role of Sub-State Entities in the EU Decision-Making Processes: A Comparative Constitutional Law Approach" in Cloots, E., De Baere, G. I Sottiaux, S. (eds.), *Federalism in the EU* (Oxford, Hart Publishing, 2012) p. 210.
39 — Cremona, M., "Defending the Community Interest: The Duties of Cooperation and Compliance" in Cremona, M. & De Witte, B. (eds.), *EU Foreign Relations Law: Constitutional Fundamentals* (Oxford, Hart Publishing, 2008), p. 125. See also Opinion 2/91 (*re ILO Convention No 170*) [1993] ECR I-1061, paras 36–38; Opinion 1/94 (*re WTO Agreements*) [1994] ECR I-5267, para 108.
40 — Case C-266/03 *Commission v Luxembourg* ECLI:EU:C:2005:341, para 58.
41 — Case C-339/00 *Ireland v Commission* ECLI:EU:C: 2003:545.

42 — *Ibid*, par. 71.
43 — *Ibid*.
44 — Art. 4 (2) del TUE.
45 — Hoffmeister, F., "The European Union and the Peaceful Settlement of International Disputes", (2012) 11 *Chinese Journal of International Law*, 77, p. 102.
46 — Case C-457/18, *Slovenia v Croatia* ECLI:EU:C:2020:65.
47 — Guelke, A., Guelke, *Northern Ireland: The International Perspective*, (London, Gill and Macmillan, Ltd 1988), p. 135-153.
48 — Meehan, E., "Britain's Irish Question: Britain's European Question? British-Irish Relations in the Context of European Union and The Belfast Agreement", (2000) 26 *Review of International Studies*, p. 83.
49 — Douglas-Scott, S., "A UK Exit from the EU: The End of the *United* Kingdom or a New Constitutional Dawn?". Available online (p. 9).
50 — Hill, C., "EPC's Performance in Crisis" in Rummel, R. (ed.), *Toward a Political Union: Planning a CFSP in the EC* (Colorado, Westview Press, 1992), p. 135, 146.
51 — Popper, K., Popper, *The Open Society and Its Enemies (volumes 1 and 2)* (Princeton, Princeton University Press, 1971).
52 — Schuman Declaration, 9 May 1950. Available online.

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