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# BASIS FOR THE WRITING OF

# A CODE OF GOOD PRACTICE

# IN RESOLVING TERRITORIAL SOVEREIGNTY CONFLICTS

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# Contents

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## I. ON THE TERRITORIAL CONFLICTS OF SOVEREIGNTY

### 1. INTRODUCTION

1. [Purpose] The purpose of this document is to propose the basis for the writing of a code of good practices 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 competences, 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 unified 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 type of conflict, 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.

## 2. CHARACTERISATION OF TERRITORIAL SOVEREIGNTY CONFLICTS

5. [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.

6. [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.

7. [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.

8. [Unsatisfactory accommodation] However, the processes of State and national 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.

9. [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.

10. [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 constant in their claim.

11. [Unilateralism of the nation-State] State models based on a concept of concentrated 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 concentrated 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.

12. [New concepts of sovereignty] Some models of state tend to facilitate the management of this type of conflict 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 sovereignty and the political will of the parties could allow for adequate management of the conflict.

13. [European institutional evolution]. 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.

14. [Contrasting democratic majorities] However, even in cases where sub-state territorial communities are recognised and enjoy 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 will be 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.

## 3. CASES. EUROPEAN AND EXTRA-EUROPEAN EXAMPLES

15. [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.

16. [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. In fact, 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.

17. [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 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.

18. [Independence as a solution to the conflict, among others] 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

[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.

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.

19. [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.

20. [Territorial sovereignty conflicts in Europe] Apart from cases in which a process of secession has already taken place in a more or less effective or rhetorical way, other territorial sovereignty conflicts in the European space can be identified, with a greater or lesser degree of clarity as to their determination as such. 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) and the Serbian Republic (with regard to Bosnia-Herzegovina).

21. [Latent conflicts] With a different intensity in the external visibility of the conflict, taking into account the 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 (Spain), Corsica (France), Wales (United Kingdom), South Tyrol (Italy) and Gagauzia (Moldova), among others.

22. [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

[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).

sovereignty conflicts in which third States are directly involved or are raised regarding of unredeemed territories.

23. [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, Ethiopia).

24. [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 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, inner Bosnia-Herzegovina, Catalonia, Euskal Herria, Corsica, Kosovo, Chechnya, Kurdistan, Kashmir, Palestine, Western Sahara, Tibet...).

25. [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 that entail the legal provisions for it (Saint Kitts and Nevis, Greenland, Northern Ireland or Gagauzia).

26. [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, such as the one intended to be proposed through this code of good practice.

## 4. BASIS AND PRINCIPLES FOR THE DEMOCRATIC MANAGEMENT OF SOVEREIGNTY CONFLICT

From the cases presented, it is possible to extract certain standards that allow for the elaboration of a code of good practice within the framework of European institutions, in accordance with the following basis and principles which will be developed in the last section of this document:

### A) Conceptual basis: territoriality and new concepts of sovereignty

27. [Democracy and territory] The institutional and jurisdictional areas in which democratic life unfolds are defined by territorial boundaries. Shared territoriality offers the material conditions to guarantee the political autonomy, trust and impartiality necessary to establish a common framework of rights and obligations. These rights and obligations require a territorially stable sovereign power capable of exercising the coercion necessary for their effective implementation. Political units are defined by the existence of common interests and relationships built through the sustained interaction between free and equal individuals and groups in a given territory. The territory ensures

[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.

community attachment and the possibility of building agreements or of making disagreements sustainable.

28. [New concepts of sovereignty] The democratic approach to sovereignty and its material expressions may facilitate the democratic management of territorial conflicts. The dogmatic conception of sovereignty as a single power that entails the indissoluble and perpetual unity of States must be overcome by open and dynamic perspectives that allow for a better interface between political power and its source of legitimacy, the democratic will of the citizens established in a territory.

29. [Evolution of constituent power] Sovereignty in the twenty-first century is understood as an open power that can be exercised on multiple scales and by diverse subjects. The existence of fix and inextinguishable constituent subjects is called into question in recent interpretations of the concept of sovereignty. In other words, the opportunity emerges, in the development of a concrete political community, to question the legitimacy of the constituent subject and for new non-subordinate subjects to emerge.

30. [Multilevel democracy] Although the practice of federal states in existence today does not offer adequate management of sovereignty conflicts, one way could be found in theories of plurinational federalism to adapt these new realities by questioning the idea of a single *demos* and legitimizing the articulation among multiple nations and even legitimizing the emergence of a new constituent power. So, the question of territory and sovereignty can/should be understood as a multilevel problem. In this way, it is preferable to conceive of territorial conflicts or territorial issues as democratic processes of mutual recognition and sovereignty construction which implies different territorial scales.

### B) Principles and values

31. [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.

32. [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.

33. [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.

34. [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.

35. [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.

36. [Centrality of dialogue]. The code of good practice underlines the need 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.

37. [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.

38. [Open constitutional framework] 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.

39. [Democratic political culture] Likewise, an open interpretation of the constitutional rules and in accordance with the evolution of the democratic principle, including the

provision of the referendum as an instrument for the management of collective decision-making processes, promote democratic solutions to the conflict (as it is or it has been the case in Quebec, Northern Ireland, Scotland, Montenegro, Greenland, Faroe Islands).

# II. INTERVENTION OF EUROPEAN INSTITUTIONS

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

### A) Introduction

1. [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)[15].

2. [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.

3. [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.

### B) The right of self-determination and the principle of territorial integrity in International Law

4. [General principles usually invoked] Two important principles in the scope of International Law are proposed, the respect for which must be made compatible with European institutional intervention in territorial sovereignty conflicts. 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.

[15] We are referring here only to European political institutions, not to jurisdictional ones, such as the European Court of Human Rights or the Court of Justice of the European Union.

5. [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)[16] and the Declaration on the occasion of the 50th anniversary of the United Nations, (1995)[17] both uphold this principle of territorial integrity. Moreover, this principle has been interpreted explicitly in the Opinion of the International Court of Justice on the Secession of Kosovo on 22 July 2010 (para. 80[18]).

6. [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

7. [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[19]. 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[20]. This dual dimension of the right to self-determination makes it compatible with the principle of respect for the integrity of States.

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

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

[18] 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.

[19] Resolution AG 1514 of 1960, section 2

[20] 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

8. [A right of all peoples] The international instruments that recognise the right to self-determination do so for all peoples, without distinction[21]. 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.

9. [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 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.

10. [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 expresses its 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.

11. [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

[21] Article 1 of the International Covenant on Civil and Political Rights (New York, 1966).

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.

## C) Legal basis for the intervention of European institutions

### *a) European Union (EU)*

12. [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 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.

13. [Beyond the explicit competences] Some EU institutions have a wide range of possibilities for action that go well beyond the exercise of Community competences 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.

14. [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.

15. [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 code of good practices for the democratic resolution of territorial sovereignty conflicts responds to the objective of promoting peace which the EU establishes for its institutions.

16. [Non-domination] EU treaties also establish a principle of non-domination, and the contribution of a code of good practices 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 this code into European law limits the possibilities of generating and escalating conflicts.

17. [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 code on territorial sovereignty conflicts places member States in a context of interdependence that inevitably goes beyond the borders of the state directly affected.

18. [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 code of good practices for the democratic resolution of territorial sovereignty conflicts in the European area.

19. [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.

20. [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)*

21. [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 action 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".

22. [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 which 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.

23. [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.[22] In particular, the Council of Europe has committed itself to territorial autonomy as an ideal instrument to reconcile territorial unity with cultural diversity[23], as a concrete expression of the right to self-determination, without excluding other possible solutions[24].

[22] 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.
[23] "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.
[24] "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

24. [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[25], revealing the need to resolve disputes relating to sovereignty and secession through peaceful and democratic dialogue that respects the Rule of Law and human rights.

25. [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 incorporated in a code of good practices for the democratic resolution of this type of conflict, the Council of Europe can play a crucial role.

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

26. [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.

27. [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.

28. [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.

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".

[25] 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.

29. (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

30. [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.

31. [Europe as a model] A normative dimension that reinforces the importance of a code 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. Such a code of good practices facilitates dialogue with other areas in the world that might be experiencing comparable conflicts, shared learning and Europe's external projection, and is aligned with the aspiration to work on building what the European Commission has denominated *European blueprints*[26].

32. [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

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

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 code of good practices which offers the various players a clear scenario for action.

33. [Democracy in Europe and its social legitimation] This code of good practices is consistent with the interest 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.

34. [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 code.

35. [Constitutional momentum] As far as the European Union is concerned, a new *constitutional moment*[27] 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 code of good practices 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.

36. [Transnational sovereignty in the EU] The present code 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 this code insofar as it de-dramatizes and relativises controversies over sovereignties, giving them an orderly and democratic channel for resolving certain conflicts, favouring the promotion of more horizontal, cooperative and pluralist visions of sovereignty.

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

37. [Clarity] This code helps 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. This code of good practices 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.

38. [European cohesion and territorial capacity] This code also seeks 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. The code aims to 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.

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

## 1. GENERAL CONDITIONS

1. [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.

2. [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 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.

3. [Principles of resolution]. The procedure for managing this type of conflict 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.

4. [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.

5. [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.

6. [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.

7. [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.

8. [Neutral supervision] Although the resolution of this type of conflict is primarily the responsibility of each state, the various European institutions can contribute to facilitating its resolution, from their respective competences 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 competences, should act to promote a resolution in accordance with the principles set out in chapter II of this document, including the possibility of articulating a mechanism of neutral supervision, independent of the parties.

9. [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: legitimacy of the sub-state community's claim, legitimacy of the decision, and reciprocal guarantees in implementing the result, where appropriate.

## 2. CONDITIONS OF LEGITIMACY OF THE CLAIM TO SOVEREIGNTY

10. [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. The purpose of this document is to provide a framework of good practice for the management of status review processes for sub-state communities where a claim to sovereignty is made.

11. [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.

12. [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.

13. [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.

## 3. CONDITIONS OF LEGITIMACY OF THE DECISION

14. [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.

15. [Representative and direct democracy] The decision-making process should combine and coordinate the various channels of expression of the democratic will, so that any decision adopted has sufficient legitimacy. The representative institutional instruments - government and parliaments - should be articulated with different mechanisms of direct democracy - consultations and referenda - that allow the citizens concerned to have their say.

16. [Equality among the parties] The decision-making process must ensure that all options concerning the sovereignty statute of the sub-state community compete on an equal footing. The Venice[28] Commission and the Parliamentary Assembly of the Council of Europe[29] have already recommended the application of such options in referenda matters.

17. [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.

18. [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.

19. [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.

20. [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.

21. [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.

[28] 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)
[29] Resolution 2251 (2019) 1
Update of the guidelines to ensure a fair referendum in the Council of Europe's member states.

22. [Majority decision] The final binding decision on the political status of the sub-state community should be taken by a majority of its citizens in a referendum called for that purpose, in accordance with the recommendations of the Venice Commission and the Parliamentary Assembly of the Council of Europe.

23. [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.

## 4. CONDITIONS OF LEGITIMACY AND GUARANTEES IN IMPLEMENTING THE NEW STATUS

24. [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.

25. [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.

26. [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 a Code of Good Practice for the resolution of territorial sovereignty conflicts, promoted by the European Institutions, the latter shall take unilateral declarations of independence into consideration once their democratic legitimacy has been verified.

## 5. PRECEDENTS OF GOOD PRACTICE

27. [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 conflict has been handled with satisfactory results. These precedents could, therefore, contribute to the development of an international standard of good practice. Despite the variety of political contexts, some considerations can be extrapolated that reinforce the logic of the conditions outlined above.

28. [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 or explicit principles: democracy, federalism, constitutionalism and the Rule of Law, and protection of minorities.

29. [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 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)

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

31. [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 and is established as general practice in the Council of Europe's Code of Good Practice on Referenda.