



Thematic Session 3:

Obstacles to implementing the rights of minorities and early effective conflict prevention

Territorial conflicts of sovereignty in Europe: good practices and proposals for resolution

I. INTRODUCCIÓN

This third panel that we are discussing today, it intends to address the obstacles for the implementation of minority rights, and the effective prevention of conflicts. In this sense, it is well known that one of the main obstacles for the protection of minorities is the absence of a legal definition of this subject: minorities.

Despite this legal gap, global reality shows that there are communities (which may be settled in a specific territory or not) whose members share some elements (like the language, a common history and roots, religion, legal tradition or some institutions...) that make them cohesive, that make them a distinct human group with a distinct identity. These communities also manifest and express their will to persist and develop as such (a distinct human group), but the lack of ability to decide its own definition, to decide its own political status, and the lack of protection of these groups has historically been the cause of human rights violations and many violent conflicts.

In the case of the project I am presenting today, we refer to situations where a political nation that is a minority within one or more nation-states claims sovereignty over a given territory. In other words, besides the question of the recognition of the national minority, we are talking about conflicts in which the states territorial sovereignty is in dispute.

We call them, **territorial sovereignty conflicts**.

We can define this kind of conflicts by three main elements:

- There is a collective demand of a relevant part of the citizens of the sub-state community. This claim is often based on a national claim, a claim based in a national feeling, so, we could frame this collectivity as a “national minority”.
- The demand refers to the possibility of deciding the political status of the sub-state community, including the possibility of becoming a sovereign state.
- The right to decide the political status of the sub-state community is not acknowledged or recognised by the parent state and this produces a significant political conflict (also time wise).

These conflicts are usually treated as internal affairs of states, but, as they affect to individual and collective rights, their protection is a matter that should concern the international community, or supranational communities like the EU. The fact that one of the parties in conflict is the sovereign State itself makes it even more necessary the participation of these third parties (UNU, EU, European Council...).



OUR PROJECT: BASES FOR A RESOLUTION

“Bases for a resolution of territorial sovereignty conflicts” was developed in collaboration, and with the approval of, over 80 international scholars. Beyond the debate on the definition of the subject and this kind of conflicts, the Bases focuses on the procedures for the prevention and also for the resolution of these conflicts.

In short, with this project we want to promote a European framework of clarity for the resolution of sovereignty conflicts within Europe.

A FRAMEWORK OF CLARITY

What does the framework of clarity consist of?

- A framework that provides legal security. This means, the protection of individual and collective rights, and the application of democracy and the rule of law.
- A framework of clarity that establishes a regulated and agreed procedure upon the different parties of the conflict.
- A supranational framework of clarity that goes beyond domestic legality and establishes a standard for the States. That goes beyond the borders of a particular legal system.
- A framework that can be assumed by different institutions of the European area and developed according to the respective and different competences of the European Parliament, the Commission, the Council of Europe or even the OSCE.
- A framework that establishes a minimum democratic standard for the state parent and a democratic procedure, as well as the conditions of democratic legitimacy of each of the phases of this procedure.

THE FRAMEWORK OF CLARITY AND NATIONAL MINORITIES

These conflicts may be framed and managed from different paradigms and procedures:

- From a frame of protection of national minorities
- From a frame of recognition of the right to self-determination
- Or from a frame of recognition to the political communities of the right to decide their political status as a result of a democratic principle (and in accordance with the rule of law).

The clarity framework can be applied no matter what is the main approach that is used to define the conflict.

On the other hand, no matter what is the exact definition of minority it is clear that the conflicts of sovereignty involves a non-resolved dispute between a majority in the state and a minority in the sub-state territory which often identifies itself as a stateless nation.



To conclude, according to the results and conclusions of the BASES FOR THE RESOLUTION OF TERRITORIAL SOVEREIGNTY CONFLICTS IN THE EUROPEAN FRAMEWORK, three recommendations can be underlined (among others). Three proposals or recommendations **FOR AN EARLY EFFECTIVE CONFLICT PREVENTION:**

- 1. Recognize the right to decide** their political status to national minorities, including the possibility to access to state sovereignty, by democratic procedures with agreed clarity conditions.
2. Agree and write a **supranational legal framework** (e.g., European) that develops the clarity conditions for the resolution of territorial conflicts of sovereignty, according with the principles of democracy, the rule of law and the protection of individual and collective rights.
- 3. No criminal prosecution** for non-violent sovereignty demands. Voting cannot be considered a crime in any democratic system.