

Secession of States and Self-determination in contemporary International Law

European Union policy towards secessionism in neighbouring countries

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Abstract: The aim of this article is to analyse EU's behaviour in the pro-secession attempts that have taken place in neighbouring third-countries. The article considers whether there was an agreement with the parent state or, on the contrary, the secessionist attempt was unilateral. It also reviews whether a legal procedure was followed. It is shown that the EU has always rejected those independence movements carried out unilaterally, except in the case of Kosovo, where gross human rights violations were committed. Furthermore, recently the EU has also demanded a respect for the Rule of Law in the pro-independence process (e.g. Montenegro's independence).

Keywords: Neighbouring countries – Pro-secession attempts – Consensual and lawful secession – Non-consensual and unlawful secession

(A) INTRODUCTION

Secession is a live issue in today's Western Europe. In the last years, we have witnessed the failure of two pro-independence attempts in Scotland and Catalonia. In the near future, we might see the rise of other pro-secession movements in other European regions and the re-emergence of the former. The debate of the legal response that the European Union should offer (and, consequently, the position of the new sovereign entity within the EU) has been one of the multiples issues widely discussed among scholars and politicians. There is no legal provision (either EU primary law or secondary law) facing the issue, nor any clear precedent,¹ although one can derive some lessons from the 2017 Catalan case. Given this legal uncertainty, scholars have offered very different interpretations of EU law. Some believe that because of teleological reasons the EU should oppose any type of secession.² Others sustain that following

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¹ A. Boyle et al., '[Annex A Opinion: Referendum on the Independence of Scotland - International Law Aspects](#)', published on 10 December 2012, at para. 143, accessed 14 June 2018.

² Among others, J. H. H. Weiler, '[Catalonian Independence and the European Union](#)', *EJIL: Talk!*, accessed 14 June 2018.

the democratic principle, the EU should welcome and recognize any democratic secession.³ There are also scholars who, sustaining a more nuanced position, believe that the EU should distinguish between on the one hand legal and agreed pro-secession attempts and on the other hand unlawful and unilateral pro-independence processes.⁴ However, scholars have not paid so much attention to what one could call the historical or practical argument, i.e., how has the EU reacted, which have been the reasons invoked, in pro-independence attempts in neighbouring countries? This is precisely the object of this article: to analyse EU's behaviour in the pro-secession attempts that have taken place in neighbouring third-countries. This analysis aims to enrich the debate about which should be the legal position of the EU in pro-independence attempts within EU Member states. However, although we should ask for a certain degree of coherence and consistence between EU internal and external policies, we should also be aware that the categories *Member state* and *third country* are not merely interchangeable.

First, this article will review the case of the Turkish Republic of Northern Cyprus and the EU attitude towards it since its declaration of independence. Next, we will examine the experiences of the countries borne right after or immediately before the crumbling of the Soviet Union (Baltic States, dissolution of Czechoslovakia and Yugoslavia). These are examples of national fragmentation in the post-communist world and cannot be considered genuine secessionist challenges comparable to the ones posed in constitutional and liberal democracies. However, some of the lessons drawn from these experiences might tell us something relevant about EU and secessionism. This will be followed by analysis of EU policies towards more recent secessionist attempts in neighbouring countries such as Serbia with the two key cases of Montenegro and Kosovo. Finally, the cases of Transnistria (Moldova), South Ossetia and Abkhazia (Georgia), Nagorno-Karabaj (Azerbaijan) and Crimea (Ukraine) will be analysed. What has been the position of the EU regarding the proclaimed entities? Has the EU recognized them? Is there any *rationale*, any constant and coherent trend?

In the analysis of all the conflicts mentioned above, we will consider the following features: was there an agreement with the Mother state or was the secessionist attempt unilateral? Did it follow a legal procedure? It will be shown that the EU has rejected those independence movements achieved unilaterally and that recently the EU has also demanded a respect for the Rule of Law.

(B) THE NORTHERN TURKISH REPUBLIC OF CYPRUS

³ J. Matas et al., 'The Internal Enlargement of the European Union', Centre Maurits Coppieters, 2011, accessed 14 June 2018.

⁴ Among others, C. Closa, 'Secession from a Member State and EU Membership: the View from the Union' 12(2) *European Constitutional Law Review* (2016) 240-264 [doi:10.1017/S1574019616000146].

In 1974, the Greek Military government organized a *coup d'état* in Cyprus and extended the Greek dictatorship to the island, which provoked the Turkish invasion through the North. Greece joined the European Community (EC) in 1981. In November 1983, the Turkish-Cypriots declared unilaterally the Turkish Republic of Northern Cyprus (TRNC). The European Commission and the then 10 Member states issued statements declaring that they profoundly regretted and rejected the unilateral declaration of independence.⁵ The international community as a whole also condemned the act of secession.⁶

In 2002 Cyprus was invited to join the EU. The process was launched by the Greek Cypriots and the Turkish Cypriots were excluded from the process.⁷ The understanding within EU institutions was that a settlement was a precondition of accession.⁸ Such conditionality gave the EU strong bargaining power in the conflict. EU accession could make both communities reconsider its opposition to reunification, which was the preferred optimistic solution.⁹ Surprisingly this conditionality position was abandoned.¹⁰ The main reason was Greece, the only Member state with strong and clear interests in Cyprus. It made its consent to strengthen ties with Turkey conditional on the progressive lifting of conditionality on the Greek Cypriots.¹¹ It also threatened to veto EU enlargement to the north and to the east.¹² When in 2004 a divided Cyprus joined the EU, Turkish-Cypriots were left outside the EU.¹³ As one

⁵ Bull. EC 11-1983, point 2.2.34 and Bull. EC 11-1983, points 2.4.1 - 2.4.2.

⁶ N. Tocci, *The EU and Conflict Resolution. Promoting peace in the backyard* (Routledge, Abingdon, 2007), at 33 [doi: 10.1111/j.1468-5965.2008.00797_17].

⁷ Ibid., at 41.

⁸ European Commission, 'Opinion on the Application by the Republics of Cyprus for Membership' doc/93/5 June 30, 1993.

⁹ G. Christou, 'Cyprus and the EU: Two years later: The European Union: What role in the Cyprus conflict?' 41(2) *The International Spectator* (2006) 19-31, at 19 [doi: 10.1080/03932720608459413]

¹⁰ Ibid., at 23.

¹¹ In effect, "Cyprus has been closely intertwined with Greece and Turkey and has had a strong impact on the Greek-Turkish relationship." E. Tannam, 'The European Union and Conflict Resolution: Northern Ireland, Cyprus and Bilateral Cooperation', 47(1) *Government and opposition* (2012) 49-73, at 52 [doi: 10.1111/j.1477-7053.2011.01354]. It is worth mentioning that the Greek position towards Turkey met the tacit consent (if not encouragement) of other EU Member States also reluctant to strengthen ties with Turkey. Thus, Greek interests were not at odds with the position of other EU Member States.

¹² Tocci, *supra* n. 6, at 52.

¹³ G. Kyris, 'Europeanization and the Turkish-Cypriot Political Parties: How Europe Matters' 13(3) *Turkish Studies* (2012) 471-487, at 478 [doi: 10.1080/14683849.2012.717446]. Does it mean that the EU has no contact at all with TRNC? The Union has been very cautious in dealing with Turkish Cypriots authorities, since it could constitute or be interpreted as an act of recognition. Tocci, *supra* n. 6, at 49. Despite the absence of diplomatic recognition, the EU is trying to help the Turkish Cypriots out of their isolation. Christou, *supra* n. 9, at 23. Partially this EU approach was triggered by the results of the Annan Plan referendum, which altered the Commission's perceptions of 'fault' and 'blame' for the situation in Cyprus, giving Turkey and the Turkish Cypriots the 'moral' high ground in efforts to find a solution. Ibid, at 24. The European Commission has two

expert points out, “[t]he Cyprus conflict was the clearest case in which the strong national interest of one Member state played a pivotal role in determining the conduct of contractual relations with Cyprus and Turkey.”¹⁴ The national interest of an EU Member state can play a key role in changing the whole European approach, particularly when there is no conflict with the interests of the other EU Member states.

(C) NEW EUROPEAN STATES AFTER THE DISSOLUTION OF THE SOVIET UNION: BALTIC STATES, YUGOSLAVIA AND CZECHOSLOVAKIA

(1) Baltic States

At the end of the 1980s, the case for the independence of the Baltic States was clear.¹⁵ Their forced incorporation in the Soviet Union in 1940 was a violation of international law.¹⁶ However, the EC and its Member states did not support enthusiastically the 1990 Baltic Spring. They were particularly reluctant to accept any movement that could endanger the cordial German-Soviet relations.¹⁷ The disintegration of the Soviet Empire in the 1991 summer and the consolidation of President Yeltsin, who did not oppose Baltic secessions, enabled the EC and its Member states to welcome the restoration of the sovereignty of the Baltic States.¹⁸ Democratic legitimacy and historical reasons were not enough to support Baltic independences given the threats that the Soviet Union represented. A typical case of *realpolitik*.

(2) Yugoslavia

In Yugoslavia, after Milosevic’s ascension to power in 1987, ethnic tensions turned the country into a minefield.¹⁹ At first and given the risk of instability the EC and its Member states reacted asking for a democratic and united Yugoslavia.²⁰ But shortly after the first declarations of

main instruments to interact with the TRNC: (i) the aid programme ‘to help the Turkish Cypriots prepare for reunification’ (in place since 2006) and (ii) the Green Line Regulation (in place since 2004), aimed at regulate and facilitate trade between the divided island. In order to avoid direct contact with the TRNC authorities, the European Commission works closely with the TRNC Chamber of Commerce. Kyriz, *supra* n. 13, at 479.

¹⁴ Tocci, *supra* n. 6, at 171.

¹⁵ J.A. Trapans, ‘The West and the recognition of the Baltic states: 1919 and 1991. A study of the politics of the major powers’ 25(2) *Journal of Baltic Studies* (1994) 153–173, at 163 [doi: 10.1080/01629779400000071].

¹⁶ M. Malksoo, ‘The Memory Politics of Becoming European: The East European Subalterns and the Collective Memory of Europe’ 15(4) *European Journal of International Relations* (2009) 653–680, at 669 [doi: 10.1177/1354066109345049].

¹⁷ A. M. Klein *et al.*, ‘Die Beziehungen Deutschlands zu den Baltischen Ländern seit der Wiedervereinigung’, KAS Auslandsinformationen, published in October 2010, accessed 15 June 2018.

¹⁸ Bull. EC 7/8-1991, point 1.4.23. In the same sense, 6th September Declaration. EC 9-1991, point 1.4.3.

¹⁹ R. M. Hayden, ‘Yugoslavia’s Collapse: National Suicide with Foreign Assistance’ 27(27) *Economic and Political Weekly* (1992) 1377–1382, at 1380.

²⁰ EPC Joint Statement dated 8 May. Bull. EC 5-1991, point 1.4.3 (emphasis added).

independence, the EC seemed more inclined to accept Yugoslav disintegration due to the following reasons: excessive use of force by Serbia;²¹ lack of Soviet reaction due to its own collapse;²² the opinions of the Badinter Commission admitting the irreversible breakup of the country;²³ Germany's insistence in the recognition of Slovenia and Croatia²⁴ and French interest in keeping a unified European policy.²⁵ Finally, France and Germany reached an agreement to recognize the new republics under certain conditions.²⁶ Thus, the EC institutional framework had facilitated an agreement among its members despite their initial divergent positions.

The Yugoslav case had many particularities. Like in the case of Czechoslovakia (and unlike the Baltic independence movements), there was no Soviet threat. But whereas the Czechs and the Slovaks were able to reach an agreement, the different Yugoslav nations engaged in wars. The lack of a peaceful settlement did not enable a quick EC recognition. However, the irreversible dissolution of the Mother state, i.e. Yugoslavia, (as the Badinter Commission acknowledged), together with the German impulse allowed for a conditional EC recognition policy once it was evident that the pre-war situation could not be restored.

(3) Czechoslovakia

Slovak disappointment within Czechoslovakia was a constant throughout the 20th century,²⁷ but Czechs and Slovaks protested united after the East Germany regime collapsed in November 1989. Nobody then expected the dissolution of the country.²⁸ But diverging policy views in the two enclaves exacerbated the debate over the breakup of the country. The 1992 elections accentuated the political division among the two Republics. The huge economic disparity did

²¹ R. Caplan, *Europe and the Recognition of New States in Yugoslavia* (Cambridge University Press, Cambridge, 2005), at 22.

²² Ibid., at 23.

²³ In its Opinion n°1, dated 29 November 1991, the Badinter Commission noted "that the Socialist Federal Republic of Yugoslavia [FRY] is in the process of dissolution." A. Pellet, 'The Opinions of the Badinter Arbitration Committee. A Second Breath for the Self-Determination of Peoples', 3 *European Journal of International Law* (1993) 178-185, at 183 [doi: 10.1093/oxfordjournals.ejil.a035802]

²⁴ Caplan, *supra* n. 21, at 18.

²⁵ Ibid., at 43-46. "Germany was among the first to realize that Serbian policies made the demise of the former Yugoslavia inevitable, and that this development had to be accepted in order to direct the process of dissolution into orderly channels and to limit its destructive effects." M. Libal, *Limits of persuasion: Germany and the Yugoslav Crisis, 1991-1992* (Praeger, Westport and London, 1997), at 161.

²⁶ S. Lucarelli, *Europe and the breakup of Yugoslavia: a political failure in search of a scholarly explanation* (Kluwer Law International, The Hague and Boston, 2000) at 154-157.

²⁷ H. A. Osterland, 'National self-determination and secession: the Slovak model', 25 *Case Western Reserve Journal of International Law* (1993) 655-702, at 685.

²⁸ J. Batt, 'Making a success of Montenegrin independence – lessons from Slovakia', ISS, published on 1 June 2006, accessed 15 June 2018.

not help to mitigate the tense situation.²⁹ The political paralysis, some degrees of indifference on the Czech side and resentment on the Slovak side led the leaders of both Republics, Vaclav Klaus and Vladimir Meciar, to negotiate the end of the federation through the 1968 constitutional amendment process.³⁰ The process, though, was full of legal and democratic flaws, public opinion polls showed that a majority of Czechoslovaks favoured unity³¹ and no referendum was held to ratify the decision, despite demands for it. The breakup occurred against friendly (and unofficial) advice from members of the EC.³² However, due to the peaceful and negotiated path of the dissolution, the EC did not oppose it.

These three cases show that for the EC the ‘agreement’ factor has been key in determining its policy. As for the Baltic States, only after the Soviet Union opposition vanished, did the EC Member states accept their independence. In Czechoslovakia, despite a contested procedure (no popular referendum), EC Member states did not oppose the dissolution of the country since there was a peaceful agreement. And in the Yugoslav case, it was precisely the lack of such agreement (namely Serbia’s opposition) that prevented a quick EC common policy. EC Member states accepted the emergence of new states in the former Yugoslavia only after violence made clear that its dissolution was an irreversible fact.

(D) SECESSION AFTER THE DISSOLUTION OF YUGOSLAVIA: MONTENEGRO AND KOSOVO

(1) Montenegro

In 1992 Montenegro joined together with Serbia in the Federal Republic of Yugoslavia. Despite Montenegro has no history of conflict with Serbia, political trends began to turn within Montenegro.³³ In 2000 Montenegro’s President Djukanovic³⁴ favoured independence, despite

²⁹ S. Massa, ‘Secession by mutual assent: a comparative analysis of the dissolution of Czechoslovakia and the separatist movement in Canada’ 14 *Wisconsin International Law Review* (1995) 183-222, at 190.

³⁰ S. Engelberg, ‘Czechoslovakia Breaks in Two, to Wide Regret’, *New York Times*, published on 1 January 1993, accessed 18 June 2018.

³¹ Osterland, *supra* n. 27, at 692. See also Massa, *supra* n. 29, at 192 and E. Macek-Macková, ‘Challenges in conflict management in multi-ethnic states – the dissolution of Czechoslovakia and Serbia and Montenegro’ 39(4) *Nationalist Papers: The Journal of Nationalism and Ethnicity* (2011) 615-633, at 619 [doi: 10.1080/00905992.2011.579952].

³² On 22 June 1992, the then EC spokesman said that dissolution was an “internal decision”. He also revealed his disappointment “because the aim should be integration rather than disintegration”. J. Rupnik, ‘The International Context’, in J. Musil (ed), *The End of Czechoslovakia* (Central European University Press, Budapest, 1995) 271, at 276.

³³ As Tocci says, “Serbia’s legacy of war in the Balkans and its policies towards Kosovo sparked Montenegro’s desire to secede.” Tocci, *supra* n. 6, at 156.

³⁴ Macek-Macková, *supra* n. 31, at 619.

the division among the population.³⁵ The EU repeatedly argued against further secessionism in the Western Balkans region.³⁶ In the 2001 elections, pro-independence parties took the lead. Given the EU Member states opposition to a new split in the Balkans, Javier Solana stepped in and mediated the Belgrade Agreement, which gave birth to the State Union of Serbia and Montenegro (the Union). The text established a loose federal level of government and allowed for a referendum on secession in either one or in both republics after three years of its establishment. For Serbia and Montenegro the motivation behind it was not the Union itself (no one wanted it), but the prospect of EU integration, since the EU had made the Union a condition of Serbia and Montenegro's admission.³⁷ Despite international efforts, the regime was highly dysfunctional³⁸ and it failed to gain domestic support and legitimacy.³⁹ By 2005 trends inexorably pointed towards a referendum in Montenegro. The Serbs had resigned themselves when faced with the political stalemate.⁴⁰ Since the situation seemed irreversible, the EU decided to cooperate and make sure that the process went as smoothly as possible. The Constitutional Charter was revised in 2005 to ensure that an eventual referendum would comply with the guidelines of the Council of Europe's Venice Commission.⁴¹ The EU stepped in⁴² and imposed that there would have to be a required turnout of 50 per cent + 1 voter and a 55 per cent majority in favour of independence. The EU supervised the formation of the Montenegrin Referendum Commission, as well.⁴³ The referendum took place on the 21 May 2006 with an 86,5% voter turnout and a sufficient (albeit extremely narrow) 55,5 per cent majority in favour of independence. It was considered a major success for EU's soft power.⁴⁴ The EU recognized rapidly its outcome and stressed both the legal conformity of the process and the agreement and consent of Serbia.⁴⁵

³⁵ "Support for independence dropped after the ouster of Milosevic, and stayed below 50 per cent in most opinion polls thereafter." Batt, *supra* n. 28.

³⁶ [Stockholm European Council Presidency Conclusions](#), published on 23- 24 March 2001, accessed 18 June 2018.

³⁷ Macek-Macková, *supra* n. 31, at 627.

³⁸ Tocci, *supra* n. 6, at 86.

³⁹ *Ibid.*, at 87.

⁴⁰ Macek-Macková, *supra* n. 31, at 628.

⁴¹ See European Commission for Democracy Through Law (Venice Commission), '[Opinion on the compatibility of the existing legislation in Montenegro concerning the organisation of referendums with applicable international standards](#)' adopted at its 65th Plenary Session, 16-17 December 2005, CDL-AD(2005)041, accessed 18 June 2018.

⁴² Macek-Macková, *supra* n. 31, at 625.

⁴³ Tocci, *supra* n. 6, at 88.

⁴⁴ J. Batt, '[Montenegro and Serbia after the referendum](#)', ISS, published on 1 May 2006, accessed 18 June 2018.

⁴⁵ [2737th Council Meeting General Affairs and External Relations](#), published on 12 June 2006, accessed 18 June 2018.

(2) Kosovo

Although the EU was committed to the maintenance of the territorial integrity of Serbia, dramatic events in the following years made the international community change its mind. Serbia virtually abolished Kosovo's autonomy and a period of repression and (at least) attempt of ethnic cleansing followed. After the NATO intervention in 1999, and the establishment of the United Nations Interim Administration Mission in Kosovo (UNMIK),⁴⁶ various rounds of negotiations between Kosovo and Serbia were held to discuss a settlement proposal. One of the guiding principles of the negotiations was that unilaterality was unacceptable.⁴⁷ But the parties were unable to make any progress and in 2007 the UN Special Envoy concluded that "the only viable option for Kosovo is independence".⁴⁸ In February 2008 the new elected Assembly of Kosovo adopted the declaration of independence.⁴⁹ The International Court of Justice (ICJ) assessed the compatibility of the declaration with international law and concluded that the declaration of independence did not violate any applicable rule of international law.⁵⁰

West European states hoped to present the case of Kosovo as a unique one. In its Conclusions on Kosovo, adopted immediately after the declaration of independence, the Council of the European Union noted that "Member States will decide, in accordance with national practice and international law, on their relations with Kosovo."⁵¹ This pragmatic approach avoided a split within the Union, which would not have been able to agree a common stance on this issue.⁵² After reaffirming the EU commitment to the stabilization of the area, the Council added that Kosovo constitutes a *sui generis* case. Almost all EU Member states did recognize Kosovo's independence immediately. Only five EU Member states (Spain, Greece, Slovakia, Romania and Cyprus) did not out of domestic concerns.⁵³

⁴⁶ [United Nations doc. S/RES/1244](#), published on 10 June 1999, accessed 18 June 2018.

⁴⁷ ['Guiding principles of the Contact Group for a settlement of the status of Kosovo'](#) United Nations doc. S/2005/709, published on 10 November 2005, accessed 18 June 2018.

⁴⁸ ['Report of the Special Envoy of the Secretary-General on Kosovo's future status'](#) United Nations doc. S/2007/168, published on 26 March 2007, accessed 18 June 2018.

⁴⁹ [Kosovo Declaration of Independence](#), published on 17 February 2008, accessed 18 June 2018.

⁵⁰ *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo*, Advisory Opinion, ICJ Reports (2010) 403, para. 122.

⁵¹ [2851th General Affairs and External Relations Council of the European Union](#), published on 18 February 2008, accessed 18 June 2018.

⁵² M. Weller, ['Negotiating the Final Status for Kosovo'](#), *Chaillot Paper*, published on 31 December 2008, accessed 18 June 2018.

⁵³ In order to honour the different positions of EU member states concerning Kosovo, when referring to her, many EU documents include an asterisk clarifying that "[t]his designation is without prejudice to position on status, and is in line with UN Security Council Resolution 1244/99 and the International Court of Justice Opinion on the Kosovo declaration of independence."

(E) SECESSION WITHIN FORMER SOVIET REPUBLICS

(1) Transnistria (Moldova)

Transnistria declared its independence from Moldavia (a Soviet Republic) in September 1990, while the Moldovan Parliament seceded from the Soviet Union in August 1991. A short war from March 1992 to July 1992 between the secessionist entity and the Mother state was ended by Russian military intervention, which used the entity to maintain influence and military presence in the region. No European state has recognized the *sui generis* independence of Transnistria (in fact, the entity could not survive without Russian aid).⁵⁴

At first the EU was not interested in contributing to conflict settlement in Transnistria.⁵⁵ However, by the second half of 2002, the EU was actively looking for ways to play a bigger role in resolving a conflict that would border the EU in just a few years.⁵⁶ EU engagement, though, is limited to technical and low-politics instruments, in order to avoid direct confrontation with Russia. Besides, the EU official position supporting the territorial integrity and sovereignty of Moldova has been constant.⁵⁷ However, it has not been translated into a commitment to restore such integrity, a good example of the clash between EU's interests and Russia's assertion of her sphere of influence. This case highlights the attachment of the EU to the traditional principles of territorial integrity and non-recognition without a negotiated settlement between the secessionist entity and the Mother state.

(2) Abkhazia and South Ossetia (Georgia)

Abkhazia and South Ossetia (former autonomous republics within Soviet Georgia) fought secession wars against Georgia in the 90s. Russia is deeply engaged in these two conflicts,⁵⁸ particularly since Georgia expressed its desire to join NATO. Moscow policies have consolidated their *de facto* independence, but also their integration into Russia.⁵⁹ After the peaceful 2003 Rose Revolution in Georgia, the EU was committed to supporting Georgia's reform process as technical assistance, but not willing to challenge Russia by assuming a too high profile in the secessionist conflicts.⁶⁰ Virtually all EU declarations on these two conflicts (before and after the 2008 war) have emphasized the non-negotiable principle of Georgia's

⁵⁴ N. Popescu, 'The EU in Moldova-Settling conflicts in the neighbourhood', ISS Occasional Paper, published on 1 October 2005, accessed 18 June 2018.

⁵⁵ N. Popescu, *EU Foreign Policy and post-soviet conflicts. Stealth Intervention* (Routledge, London, 2011), at 42.

⁵⁶ *Ibid.*, at 44 and 45.

⁵⁷ See the [Conclusions of the 2996th Foreign Affairs Council meeting](#), published on 22 February 2010, accessed 18 June 2018.

⁵⁸ Popescu, *EU Foreign Policy...*, *supra* n. 55, at 68.

⁵⁹ Tocci, *supra* n. 6, at 134.

⁶⁰ Popescu, *EU Foreign Policy...*, *supra* n. 55, at 82.

sovereignty and territorial integrity.⁶¹ Besides, the EU has used extreme caution in avoiding official contact with secessionist authorities.⁶² Like in the case of Transnistria, the EU seems inflexible in its non-recognition policy.

(3) Nagorno-Karabakh (Azerbaijan)

Nagorno-Karabakh (predominantly ethnic Armenians and Christians) was an autonomous region of the Soviet Azerbaijan, where Azeris, Muslims, are the predominant ethnic group. A full-scale war between Armenia and Azerbaijan took place between 1992 and 1994 and ended with a military victory of Armenia.⁶³ Azerbaijanis claim that Nagorno was unlawfully occupied by Armenia, violating international law. In 2006, the EU negotiated with both Azerbaijan and Armenia their European Neighbourhood Policy Action Plans.⁶⁴ The EU tried to keep the negotiations as technical and depoliticized as possible.⁶⁵ However, the EU-Azerbaijan Action Plan admits the respect of and support for the sovereignty, territorial integrity and inviolability of internationally recognised borders.⁶⁶ EU engagement is almost non-existent. Although there is no direct confrontation with Russia, it lies in the high politics domain, where EU involvement is always more problematic.⁶⁷ Besides, Nagorno is located in an area geographically far from the EU and it is a conflict between two (already) recognized states, Armenia and Azerbaijan, each having its own partnership with the EU. Again, we find EU opposition to the independence of the secessionist entity despite the irreversibility of the situation due to the lack of consent of the Mother state.

(4) Crimea (Ukraine)

Crimea has a long history of independence, but since the 18th century it belonged to the Russian Empire. It remained part of Russia until 1954, when it was ceded to Ukraine.⁶⁸ After the fall of the Soviet Empire, it remained under Ukrainian jurisdiction, with episodes of growing

⁶¹ 'Declaration by the Presidency on behalf of the EU concerning the recent 'parliamentary elections' in Abkhazia, Georgia', published on 12 March 2002, accessed 18 June 2018; 'Declaration by the Presidency on behalf of the European Union on Russian President Medvedev's visit to the Georgian region of South Ossetia', published on 16 July 2009, accessed 18 June 2018.

⁶² Tocci, *supra* n. 6, at 142-147.

⁶³ Popescu, *EU Foreign Policy...* *supra* n. 55, at 97.

⁶⁴ B. Dimitrova, 'Imperial re-bordering of Europe: the case of the European Neighbourhood Policy', 25(2) *Cambridge Review of International Affairs* (2012) 249-267, at 250 [doi:10.1080/09557571.2012.678298].

⁶⁵ Popescu, *EU Foreign Policy...*, *supra* n. 55, at 102.

⁶⁶ See [EU-Azerbaijan Action](#), published on 7 October 2016, accessed 18 June 2018.

⁶⁷ Popescu, *EU Foreign Policy...*, *supra* n. 55, at 101.

⁶⁸ A. Remiro Brotons, 'Derecho y poder en el destino de Crimea', 34 *Anuario Español de Derecho Internacional* (2018) 231-244, at 232. [doi: 10.15581/010.34.231-243].

separatism.⁶⁹ During the 2014 Ukrainian crisis, Russian troops emerged in Crimea and the city of Sebastopol. Immediately, the Crimean regional parliament voted to hold a referendum ten days later on the region's secession from Ukraine and possible reunification with Russia (inconsistent with the Ukrainian Constitution).⁷⁰ According to the data released, the turnout was high (around 82%) and almost 96% voted in favour of reuniting with Russia. On March 17 Russia recognized Crimea as an independent state, despite strong opposition from Ukraine. On March 18 Russia and the Republic of Crimea signed an accession agreement. Crimea is now *de facto* part of Russia. This process received immediate condemnation from the EU (and the US). In March 2014 the European Union released a Joint statement on Crimea declaring that the referendum is illegal and illegitimate and its outcome will not be recognised.⁷¹ The European Union position has not varied since then.⁷²

(F) CONCLUSIONS

Some general lessons can be drawn both from those conflicts where EU engagement has been key (e.g. Montenegro's independence), and from those where EU presence has been barely perceived (e.g. Transnistria, Nagorno-Karabakh):

- (1) With the exception of the unique case of Kosovo (that included gross human rights violations) the EU has always opposed unilateral independence (e.g. Turkish Republic of Northern Cyprus, Transnistria, South Ossetia, Abkhazia, Nagorno-Karabakh, Crimea).
- (2) The EU's main criteria for recognizing a secessionist entity has been the approval of the nation state from which an entity is seceding. The cases of the Baltic States and Montenegro are paradigmatic. Czechoslovakia, although not a secessionist process, also confirms this approach to the extent that EC Member states did not oppose the split, given that there was an agreement between the two Republics.

⁶⁹ S. Stewart, 'Autonomy as a mechanism for Conflict Regulation? The Case of Crimea' 7(4) *Nationalism and Ethnic Politics* (2001) 113-141, at 118 [doi: 10.1080/13537110108428647].

⁷⁰ See European Commission for Democracy Through Law (Venice Commission), 'Opinion on whether the decision taken by the Supreme Council of the Autonomous Republic of Crimea in Ukraine to organise a referendum on becoming a constituent territory of the Russian Federation or restoring Crimea's 1992 constitution is compatible with constitutional principles' adopted at its 98th Plenary Session, 21-22 March 2014, CDL-AD(2014)002, accessed 18 June 2018.

⁷¹ Joint statement on Crimea by President of the European Council Herman Van Rompuy and President of the European Commission José Manuel Durao Barroso, published on 16 March 2014, accessed 18 June 2018.

⁷² Declaration by the High Representative on behalf of the EU on Crimea, published on 16 March 2015, accessed 18 June 2018.

- (3) Another important lesson of the cases reviewed is that the EU position has proved to be highly vulnerable to the national interests or priorities of EU Member states when dealing with secessionist issues. Note the case of Greece and Cyprus, where the EU accepted a radical change in her policy towards the conflict. Or the pressure exerted by Germany when the declarations of independence of Croatia and Slovenia.
- (4) As a final note, let us underline the relevance of the secession of Montenegro: it was the first time that the EU got so deeply involved in a secessionist conflict. What should be highlighted (apart from what has been said about Serbia's acquiescence) is that the EU required respect for the Rule of Law and for the democratic principle (imposing certain rules for the celebration of a referendum on independence).

These conclusions apply only with caution to cases of secession within current EU Member states since these conflicts occurred beyond EU frontiers, not within. However, considering this warning, the conclusion goes as follows. One can assume a fierce opposition towards pro-independence movements that breach the legal constitutional order of EU Member states and that are conducted without the agreement of the EU Member state affected. However, it would not be so obvious the position of the EU in a consensual and lawful pro-independence movement.