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National sovereignty and statehood in contemporary international law: the need for clarification

Opinion¹

Committee on Political Affairs and Democracy

Rapporteur: Mr Patrick MORIAU, Belgium, Socialist Group

A. Conclusions of the committee

The Political Affairs Committee congratulates Ms Schuster on her report and agrees with the rapporteur's main conclusions that the criteria for statehood and protection of national sovereignty need to be clarified and examined thoroughly in the framework of a follow-up conference to the International Commission on Intervention and State Sovereignty (ICISS).

B. Proposed amendments to the draft resolution

Amendment A (to the draft resolution)

In the draft resolution, paragraph 6, replace the word "relinquishment" with the word "transfer".

Amendment B (to the draft resolution)

In the draft resolution, paragraph 6.2, replace the words "is obliging the majority of European Union member states to abandon their sovereignty concerning choice of" with the following words:

"has entailed the transfer to the European Union of a number of sectors which were traditionally under national sovereignty, particularly in matters of".

Amendment C (to the draft resolution)

In the draft resolution, paragraph 6.2, replace the words "fiscal and social policies" with the following words:

"economic and monetary policies, and is increasingly affecting choices of fiscal and social policies".

Amendment D (to the draft resolution)

In the draft resolution, paragraph 7, after the words "national or ethnic minorities", insert the following words:

"or even, in some cases, national majorities".

1. Reference to committee: [Doc. 12251](#), Reference 3683 of 21 June 2010. Reporting committee: Committee on Legal Affairs and Human Rights. See [Doc. 12689](#). Opinion approved by the committee on 6 September 2011.



Amendment E (to the draft resolution)

In the draft resolution, after paragraph 8.1, add the following sub-paragraph:

“will continue to analyse the origin and trends of self-determination movements by addressing the most salient factors, in particular instances of growing tensions among minority or ethnic groups, and to support national parliaments in addressing these demands for self-determination through dialogue and reconciliation, in order to prevent the recourse to violence and secession;”

C. Explanatory memorandum by Mr Moriau, rapporteur for opinion

1. The rapporteur notes with concern that a recurrent source of potential and current conflicts lies in a clash between the principles of territorial integrity and the right to self-determination. Mainly at issue is the clash between secession based on self-determination and the international community's predilection towards maintaining territorial integrity for the sake of order, peace and stability.
2. The rapporteur takes the view that this kind of confrontation involves law, politics, economics and identity. He observes that in many cases, but not all, secession claims are rooted in a history of repression, an exclusionary vision of governance, the denial of rights of minority groups, territorial disputes and different perceptions of economic and political viability.
3. The very propagation of the idea of human rights intensifies demands for greater recognition – including independent statehood – among minority groups which invoke human rights violations to support their demands. Often, however, self-determination claims may lead to the use of violence and result in serious violations of human rights.
4. The rapporteur firmly believes that self-determination is a right that must initially be fulfilled at national level, thus imposing on sovereign states serious obligations regarding democracy and the protection of human rights and minority rights.
5. In the rapporteur's view, it is of paramount importance to adopt a conflict-prevention approach. Inclusive governance provides the best protection against secession claims of national minorities and the Council of Europe Framework Convention for the Protection of National Minorities (ETS No. 157) represents a useful framework in this respect and a tool which is worthy of further promotion.
6. However, it has to be said that when secessionist claims turn violent, the international community, when faced with a total breakdown of the rule of law, cannot blindly support the monopoly on the use of force by those governments which repress or brutally deny the rights of minority groups. Territorial integrity cannot be maintained at any price, and in particular not by the brutal repression of a people in violation of its right to self-determination, which requires national political space for the free pursuit of a people's social, economic and cultural development.²
7. On the other hand, the rapporteur observes that the goal of world and regional peace and stability has often ranked higher than the defence of human rights, and this policy risks having effects which are contrary to the desired goal. Groups seeking independence quickly realise that by using violence their demands are more likely to be satisfied, or at least addressed by states, in the name of promoting peace and regional stability.
8. In the face of the growing number of self-determination movements, establishing a clear definition of the right to self-determination and statehood is necessary, although agreement on such a definition will not be easy and even then it is not likely to be conclusive and unequivocal. Instead, a proactive and preventive approach must be taken to promote the full respect by national governments of the right of the people to self-determination, including by providing some form of political autonomy and participation, so as to avoid the emergence of secessionist claims.
9. As stressed by the ICISS in its 2001 report, “it is more than high time for the international community to be doing more to close the gap between rhetorical support for prevention and tangible commitments ... and to exhaust prevention options before rushing to embrace intervention”.

2. See speech by Louise Arbour, President and CEO of the International Crisis Group (ICG) to the Carnegie Council for Ethics in International Affairs, 22 September 2010, on “Self-determination and conflict resolution: from Kosovo to Sudan”, available on the ICG website.

10. Against this backdrop, it is worth recalling that, during the January 2010 part-session, the Political Affairs Committee established a sub-committee on conflict prevention through dialogue and reconciliation, with a view to implementing the recommendations of the Forum on early warning in conflict prevention, which took place in Strasbourg on 24-25 September 2009.

11. The committee will play its part in this debate by making use of its sub-committee to keep under review potential or actual situations of tension or conflict in the member states of the Council of Europe, with a view to identifying possible Assembly contributions and working out possible rapid reaction mechanisms when crises arise.

12. With regard to paragraph 6.2 of the draft resolution, the rapporteur wishes to point out that the majority of European Union member states have, in practice, abandoned their sovereignty in economic and monetary affairs, but have retained their sovereignty in fiscal and social affairs. However, it is acknowledged that European Union policies increasingly affect fiscal and social policy choices at national level.

13. Finally, as far as the amendment to paragraph 7 is concerned, it seems that in certain countries the nationalist and independent movements are usually to be found at the heart of the majority of the population of the state and with regard to the minority of the same state. For example, in Belgium, the nationalist movements are stronger in Flanders than in the French- and German-speaking regions of the country, whilst paradoxically Flanders does not constitute a national minority, the movement being linked more to Flemish history.