

Possibilities of a split of the Belgian Federation : The international recognition issue

by

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The idea of a splitting of Belgium in two or three independent states has largely been exposed during the 2010-2011 crisis. But something was, most of the time, forgotten: the fact that splitting a country is not a further step in decentralization or state reform. It is something totally different from the kind of evolution Belgium has already experienced.

The main difference is that whereas Belgium can change radically its federalism or become a confederal (or even unitary) state without referring to any external actor, a new independent state has to be recognized by fellow states to exist.

It is this radical outcome that we will discuss in this paper through the recognition issue. After having presented what recognition means and how it operates in the current international system (I), we will study the conditions under which a country can be quickly and generally recognized (II). After that, we will apply these conditions to Belgium and Flanders in order to estimate, as far as possible, the possibilities of Belgium to split (III).

The different possibilities for splitting a country

We can distinguish 3 main ways by which a country is split:

- civil war or war of independence (ex : Croatia, Slovenia, Bosnia)
- unilateral secession (ex : Kosovo¹)
- negotiated separation (ex : Montenegro, Czechoslovakia)

In this paper, we will analyze the conditions and feasibility of each of these means in the hypothetical case of a split of Belgium.

From the outset, we can argue that considering a Belgian civil war is unrealistic. The reasons are both internal and linked to the European and international context.

¹ Kosovo is not considered as a case of war leading to independence because of the delay between the end of military operations (1999) and the declaration of independence (2008). South-Sudan's independence is neither considered as a war of liberation considering the international community implication and the delay between the end of fighting and the agreement about splitting the country.

Firstly, manifestations of violence are rare in the Belgian linguistical conflict. In fact they are diminishing, if not totally disappearing in the last 20 years. We count only one dead since World War II². Massive demonstrations (Flemish marches on Brussels) and even violent ones (*Wallen Buiten* in Leuven, clashes in Fourons) occurred. But these seem to have disappeared in the last 20 years and official nationalists demonstrations no longer mobilize more than 2000 participants. Even if a most unlikely civil war would happen, it will probably won't last more than the few days or hours necessary to the international community to intervene. In a country in the heart of Europe, where the European Union and NATO have both their headquarters, and where live more than half a million of European citizens, a civil war cannot be allowed. Hence, the situation of Brussels can't be compared with Sarajevo nor Belgium's with a remote country in Caucasus or central Asia.

1. The other ways of splitting: the recognition issue

For considering the other ways of splitting a country we must consider the recognition issue. Indeed the success or failure of a splitting process mainly depends on the international recognition the new state will have.

Contrary to a widespread idea, international recognition is far from automatic. This false idea largely comes from that, in essence, we know very few about largely unrecognized or de facto states. For example, Transnistria, South Ossetia, Abkhazia or Somaliland are independent entities, but not recognized – or only marginally.

This idea also comes from the fact that the number of states admitted in the United Nations has dramatically increased from 51 to 192 since the end of World War II. But most of these new countries resulted from decolonization or, most recently, collapse of communism. Since the end of the aftermaths of the cold war, new widely recognized states are, in fact, rather rare.

However, recognition is essential for a new country in general and certainly for states that would arise from a splitting of Belgium. Indeed, an unrecognized state can't enter an international organization (UN, NATO, EU). In case of a crisis it is difficult for it to use mediation or international arbitration. What is more, its insecure legal status deters foreign investors and can make importation and exportation of trades and goods difficult³.

For a so politically and economically integrated region such as Flanders (or whatever other Belgian region) this non-recognition, even temporarily, seems unbearable and impossible to accept both by population and economic elite. Consequently, we will consider the ways of independence that would secure a quick and general recognition, at least among Europeans partners.

Beforehand, we must precise that there is no obligation in international law to recognize a new state as a peer in the international system⁴. The only exception

² Jacques Georgin in 1970.

³ J.D.B. Miller, « Sovereign as a Source of Vitality for the State », *Review of International Studies*, Vol. 12, 1986, pp. 79-89.

⁴ Conversely, situations exist where recognition is forbidden (see: CIJ, advisory opinion Namibia 1971, advisory opinion Mur 2004).

concerns the right for colonized people to self-determination⁵. Apart from this limitation, international recognition is a discretionary and fully political act⁶. Consequently, a state's decision to recognize a new peer in the international system is based on its interpretation of its own national interest.

2. Determining the conditions for a quick and general recognition

In this study, we put aside the cases of post-colonial states and violent splitting of countries. Apart from these cases, it appears that we are in an international context where conditions for a quick and general recognition are very demanding. Indeed, states are mainly concerned in their preservation and integrity and are, therefore, reluctant to give incentives that independence and recognition could be easy. This is particularly true for Asian and African countries which see themselves as fragile because of ethnic diversity. This is also the case for the United States of America which have a recognition policy based on an "anti-secessionist bias"⁷. As we will see below, European countries also demonstrate a rather restrictive policy. Indeed some big European countries (Great Britain, France, Spain, Italy) are confronted with regional demands of autonomy or independence (Scotland, Corsica, Catalonia, Basque Country, Padania). Central and Eastern Europe countries are also reluctant to encourage new claims considering their ethnic diversity. All these countries are concerned the domino effect a precedent could initiate.

All of these attitudes lead to a clearly conservative international context where states are unwilling to accept new members in the international community, unless certain conditions are respected.

This said, what are the conditions under which a new state can secure recognition?

Considering recent independence cases, we can put forward the following hypothesis:

To secure a quick and general recognition, at least in Europe, the two following cumulative conditions must be fulfilled:

1: A negotiated agreement between the independantist entity and the central state (or the other entities). This condition excludes the possibility of a unilateral declaration of independence.

2: A referendum (or popular consultation) in the independantist entity to secure the fact that population favors independence.

⁵ Even if this right of self-determination does not legally imply recognition, states coming from decolonization benefited from large and easy recognition.

⁶ Joe Verhoven, *La reconnaissance internationale dans la pratique contemporaine : les relations publiques internationales*, Paris, Pedone, 1975.

⁷ Jonathan Paquin, *A Stability-Seeking Power: U.S. Foreign Policy and Secessionist Conflicts*, Montréal & Kingston, McGill-Queen's University Press, 2010.

We will try to verify this hypothesis by considering recent independences⁸. These are shown in the following table :

Cases	Negotiated agreement	Referendum	Recognition	Hypothesis validation
Czechoslovakia (1993)	yes	no	yes	no
Eritrea (1993)	yes	yes	yes	yes
East Timor (1999)	yes	yes	yes	yes
Montenegro (2006)	yes	yes	yes	yes
Kosovo (2008)	no	no but referendum election	no	yes
Quebec (1995)	no	yes	NA	yes concerning the necessity of referendum
Scotland (forthcoming)	?	yes	NA	yes concerning the necessity of referendum

Considering the scarcity of cases, we add two cases that are hypothetical. First one is Quebec, which held referendums in 1980 and 1995. Both failed to find a majority for independence. The second is the Scottish referendum which is supposed to take place in 2012 and would concern both autonomy and independence. As independence was not declared, it is impossible to say whether recognition would happen. But both cases confirm the necessity to hold a referendum.

We will study three European real cases (Czechoslovakia, Kosovo and Montenegro) more precisely in order to understand the action of European countries in such a context. By doing so, we will concentrate on the two cumulative conditions of the hypothesis presented.

2.1. Montenegro: a model case of splitting?

Firstly, it seems useful to detail what seems to be the closest case to a hypothetical Belgian splitting: Montenegro's independence occurred in 2006.

Montenegro's willingness for independence was obvious since the end of the 90's. At that time, the Yugoslav federal state still formally existed but was in fact replaced by a confederal way of governance. Serbian and Montenegrin governments tried to find an agreement but without any success. Then European Union intervened in order to avoid a separation that could have negative consequences on Bosnia and Kosovo. From the outset, Europeans did all they can to avoid Montenegro's independence. Apart from the regional situation, the goal was also to prevent creating a precedent.

⁸ By « recent independence » we mean independence occurring after the end of the cold war and which are not directly linked to it (as independence of former soviet republic). For this reason, we also exclude from this table cases like Transnistria, South Ossetia or Abkhazia, which have never really been seriously considered by European countries or international community as a whole. What is more, these cases all happened by unilateral secession and none of them has been recognized more than marginally. Si they confirm our hypothesis.

Spain in particular feared to give a bad incentive to Basque and Catalan independantists⁹.

But Europeans failed to put together again the two parts of the rest of Yugoslavia. In 2003, a confederal constitution was established in which it is specified that Montenegro couldn't become independent within the next three years.

Once this delay had expired, EU helped both parties to find an agreement about their separation. The EU imposed precisely the pattern described in our hypothesis: a negotiated agreement followed by a referendum. The discussion mainly concerned modalities of the latter. Once again, European mediation favored the anti-independence side by setting the necessary level of support of independence at 55% of voters - instead of 50% plus one vote which is the common rule.

2.1. The necessity of a negotiated agreement: Kosovo case

Between NATO intervention (1999) and the declaration of independence (2008), multiples attempts were made in order to find an agreement between Serbia and Kosovo - all in vain. Eventually, independence appeared to be the only solution for the former Serbia's province and Kosovars decided to proclaim it unilaterally. Before that, legislative elections gave more than 80% of votes to parties who proclaimed that they would declare independence soon after the election. Even if no referendum was held, we can consider that popular support for independence was secured.

Despite this clear popular support and the diplomatic support of the United States and European big countries, Kosovo is still not recognized by a majority of UN member states. More important, five EU members (Spain, Slovakia, Cyprus, Romania and Greece) refuse to recognize the new country. This non-recognition seems long-standing as long as an agreement hasn't been found with Serbia¹⁰. This non-recognition is the direct consequence of the absence of agreement with Serbia.

Even if most of European Union members recognized Kosovo, this is clearly not a quick and general recognition. Therefore, is it a negative case that confirms our hypothesis. It is interesting to notice that, despite the pressure from the United States to recognize Kosovo, Spain still refuses to comply even if it has close relations with the USA. The internal problems seem to have, in this case, precedence on the relation between Spain and its main allies (USA and big European countries).

2.2. The necessity of a referendum

If we consider the recent cases of independence, holding a referendum always seems to go with it. This was the case in Eritrea, East Timor, Montenegro and, most recently, South Soudan. The two Quebec's attempts to declare "sovereignty" were also made through an attempt to win a referendum.

The promised Scottish referendum on independence enforces the idea that an independence, to be legitimate, must be supported by the people directly concerned.

⁹ International Crisis Group, "Montenegro's Referendum", Europe Briefing No 42, Podgorica/Belgrade/Brussels, 30 May 2006, p. 2.

¹⁰ Most notably, Spain declared that it will never recognize Kosovo.

An exception to explain: Czechoslovakia

Nevertheless, the “velvet divorce” which took place in 1992-1993 is a unique case of splitting a country in a democracy, without any violence but without consulting the population in any way. It must be reminded that, contrary to what happened in Kosovo, no main political party officially favored independence before the 1992 elections – and probably no one thought that the country could disappear after it.

Some factors, either internal or linked to international environments and perceptions of Czechoslovakia could explain why this case is exceptional.

In her book dedicated to this divorce¹¹, Abby Innes puts forward that one of the main reasons for this outcome consists in the political culture inherited from communism. This allowed political representatives to do something they were not elected for without consulting population or civil society. In well-established democracies, this situation can be considered as exceptional and unlikely to happen.

What is more, the fact that nobody (even political leaders) expected a country splitting is not only exceptional: it largely facilitated it. There was no lobby organized against the splitting or defending particular (Czech or Slovak) interests. Under these conditions, an agreement is far easier to reach.

But the international situation in 1992-93 also makes the Czechoslovak case so unique. Indeed, this split happened in the aftermaths of the explosion of Yugoslavia and USSR. Western observers tended to think that these artificial constructions built after World War I were bound to disappear.

More precisely, the acceptance by Europeans of the “velvet divorce” has much to do with the failure of these Europeans to prevent or alter the Yugoslav conflict. This bloody civil war and the incapacity of Europeans to deal with it probably led them to allow the Czechoslovakian pacific and consensual splitting even without popular support.

Another difference with a hypothetic Belgium’s splitting is that – if we consider pacific movements and not terrorist armed actions – independentists and autonomists were less active in Europe in 1992 than they are now. This has changed when the Montenegro case (2006) occurred and explains the unwillingness of Europeans to permit independence.

What is more, the Czechoslovak case was seen as part of Central Europe and post-communists context, so very different from Western Europe one. Even if in fact the Czechoslovak case was closer to potential Belgian or Catalan cases than the Yugoslav one, it wasn’t perceived as such. Therefore the incentive for further independences was supposed to be limited to an area (Central and Eastern Europe) and a historical moment (fall of communism). In contrast, a Flanders’s independence would clearly be linked to Catalan issue for example.

Last but not least, Czechoslovakia was far less internationally integrated, both politically and economically, in 1993 than today’s Belgium. Czechoslovakia wasn’t a

¹¹ Abby Innes, *Czechoslovakia: The Short Goodbye*, New Haven and London, Yale University Press, 2001.

member of NATO or the European Union, as WTO didn't exist at that time. So Slovakia and Czech Republic only had to re-join the United Nations¹².

The risk to allow independence without popular support

Considering table 1, if we base our analysis only on the results displayed, we can note that a referendum or its absence seems to have no impact on the international recognition. Whether there is a referendum or not, the state is quickly and generally recognized in presence of a negotiated agreement.

But we must consider two facts. The first one is that, except for the Czechoslovakian divorce, we see no case of independence proclaimed without secured popular support. Referendum seems to become a standard element of independence. The condition imposed by the European Union to Montenegro leads to consider the Czechoslovak case as an exception that Europeans don't want to confirm.

The other element to have in mind is to consider that some European countries, fearing to create a precedent, are reluctant to recognize new states. In fact, recognizing a country without referendum – the agreement being only grounded by political elite – could appear as a very dangerous message. Indeed, it could be, for an independentist region, an incentive to block a federal system as much as possible, hoping that the central government, tired of all these problems, would start negotiations about separation. Many European countries have an interest in raising as high as possible standards for independence. Taking such an important decision on behalf of the people as leaving a country to create a new one without their consent could easily be considered as undemocratic. Thus, it appears to be a very good point, sufficient to refuse recognition.

If we consider Montenegro case, we see no reason why EU as a whole or a particular country like Spain would be less demanding than they were in 2006. In fact, some factors lead to think that they would be stricter:

- As Brussels is the European institutions headquarter and Belgium is already an EU member, the EU has more possibilities and more interests in intervening than in a Balkan country like Montenegro
- As a western country and already an EU member, the Belgian case would be closer to other autonomists or independantists regions of Europe than was Montenegro
- Since 2006, autonomist or independantist regions's issue has not decrease in intensity but rather increased concerning the most salient cases (Catalonia, Scotland and Padania)

Consequently a risk of non-recognition exists if there is no referendum. Considering the dramatic damages a non-recognition could imply for a Flemish independent state, we can assume that not holding a referendum is a risk unlikely to be taken. Indeed, if

¹² This observation leads to the idea that, contrary to a widely admitted point of view, international integration and globalisation make independence more difficult. Indeed, a less integrated country (such as Kosovo for example) can endure a period of incomplete recognition. A country as politically and economically integrated as Belgium does not have this possibility. In other words, leaving a poorly integrated state is, for the new state, a far less important loss than leaving a highly integrated one.

the region fails to be recognized, it could be difficult to go back and reintegrate the federal system. Economical and political damages to such an adventure and drawback could be disastrous.

From these observations, it is difficult to be totally affirmative about the fact that if a would-be state neither negotiates an agreement nor organizes a referendum it will fail to be recognized.

Nevertheless, even if it is theoretically possible for an independentist region to be recognized and succeed in becoming fully independent without these two conditions, the only way to ensure recognition consists in having an agreement and demonstrates popular support for independence¹³.

3. The Belgian case

These international constraints established, we can consider how they could be met in Belgium and especially Flanders. In the following considerations we will focus about potential obstacles if Flanders wants to follow the sequence supposed necessary to gain independence and international recognition rapidly and widely.

3.1. The negotiated agreement

A splitting agreement between Flanders and Francophones (or with Wallonia and Brussels separately) would count numerous points of possible frictions or impossibilities. But we can identify two particular problems where reaching an agreement for Flemish and Francophones would be particularly difficult if not impossible, if we consider the current situation on these issues.

3.1.1. The Belgian debt

The amount of the Belgian debt (around 100% of GDP) could be a problem regarding both its repartition and the splitting process in itself.

Firstly, splitting could be problematic as Wallonia's capacity to assume its share of the federal debt is dubious. According to a study of CERPE (*Centre de recherche en Economie Régionale et Politique Economique*), primary deficit of Wallonia if the country were to split would be around 6.2 billion euros or 8.4 % of Walloon GDP. Wallonia would then face serious economic and financial problems if it had to assume alone its share of the federal debt. The consequence would be that Wallonia would not accept the splitting of the country unless Flanders takes more than its normal share, or if Wallonia is helped by another entity (France, the EU, the European Central Bank,...). An external actor would then have his word to say in the splitting of Belgium.

¹³ This sequence may be reversed and it is also possible to make referendum first in order to have a mandate to negotiate splitting. But the question of the referendum must be clear about the fact that people vote for independence. This question created a debate in 1995 in Canada about Quebec's referendum which question was considered unclear by the federalists. In the first referendum in 1980, the position of nationalist Quebecois leader was that a referendum must be held to have a mandate to negotiate. After the negotiation, another one has to be organized to endorse its result.

A second problem, linked to the latter concerns market's fear about the splitting of the debt. If a splitting process of the Belgian federation were to begin, markets would have to face numerous uncertainties: would the debt be paid off? Which part of the federal debt each new state would assume? Would these new states be able to pay off their share of the debt?

In such a context of uncertainty, markets may impose very high rates to any loan taken out during the period between the beginning of the splitting process and the moment where answers to all these questions would be given. This period could be very long. We can recall that the splitting process in Czechoslovakia lasted six months and that Belgium's splitting would probably be more difficult to achieve than Czechoslovakian's. How and at which interest rate Belgium would take loan during this period? The question remains open.

Because of this uncertainty inherent to the splitting process, maybe splitting itself is something a country indebted around 100% of its GDP can't really afford.

3.1.2 Brussels

Brussels is usually presented as an obstacle to a Belgian splitting. This idea has been exposed numerous times, so we won't detail all the arguments describing Brussels as the bond of Belgium. We will just recall that the current situation where every region or entity has access to Brussels suits everyone. This situation would end in the scenario of a splitting of Belgium. Indeed, in the current international system, every territory belongs to one and only one state. It is also useful to recall that the cogestion of a territory disappeared since the end of the colonial era and that the European Union is not willing (and probably not able) to manage a city that would become a hypothetical European district.

Once again some sort of arrangement is theoretically possible (as everything is theoretically possible). But for the moment, we don't see a realistic solution that would be acceptable for both parties. To solve this problem, the most likely solution would be simply that Flanders give up Brussels – whether it becomes an independent city-state or joins Wallonia.

3.2 The referendum or popular consultation

Before treating this question we must answer to a legal point that can be put forward: the impossibility to hold a referendum in Belgium as the Constitution does not allow it. It is possible to answer that by entering in a process of Belgium splitting, one no longer has to comply with the Belgian Constitution but with rules decided by international community in a whole or some actors in order to be recognized. Moreover splitting the country is, no more than referendums, allowed by Belgian Constitution. Finally, if holding an official referendum is a real problem, a popular consultation could be organized. Indeed, the important point is to ensure people's support for the independence.

This juridical problem solved, we have to wonder about the possibility to gather a majority of Flemish in favour of independence. At the moment, this possibility seems

close to nil. Indeed, every data, whether from academic research¹⁴ or polls, show that no more than 15% of Flemish people favour independence for their region. More important, the current crisis – often described as the worst Belgium ever suffered and endangering the very existence of the country – has no real consequence on this proportion¹⁵.

This stability regardless political situation could be explained by the fact that desire for independence is more related to deep feelings like identity than to a political situation. Logically, we could think that Flemish who favour independence feel only Flemish and not Belgian. If we look at the results of the Moreno question in Flanders, we see that only 8% of the region's inhabitants feel only Flemish, 11% only Belgians while 80% feel, at various degree, both Flemish and Belgian¹⁶. The link between favouring independence and pure regional identity could explain the stability because sociological data (like identities) are far more stable than political ones (results of elections).

If we look at other cases of regions with independentists demands (Quebec, Scotland, Catalonia), we can observe a very stable percentage of population in favour of independence. But recent evolution in Catalonia shows that dramatic changes are possible – even if this Catalan evolution must be confirmed.

Finally, no data shows that young Flemish are more pro-independence than the rest of the population¹⁷.

As a conclusion, we can say that the proportion of the population favouring independence seems to be a very stable data and we see no clue that this proportion could change in Flanders. Anyway, with a current situation at 15%, reaching a majority implies a dramatic change impossible to forecast.

¹⁴ Pole Interuniversitaire Opinion publique et Politique (PIOP, UCL), Center for Sociological Research (CeSO, KUL), and especially Institute of Social and Political Opinion Research (ISPO, KUL) produced various studies that all confirms approximately the same part of Flemish favouring independence: from 10 to 15%.

¹⁵ On of the last polls that asked this question (ISPOS Belgium) was held in December 2010 and still revealed the proportion of 15% of Flemish favouring independence. Nevertheless, a more recent poll held on September 2011 (TNS Media) shows a different figure: 22% of Flemish was favouring independence. But the question was presented differently from other polls as no intermediary choice (confederation for example) was offered. Anyway, this poll presents no dramatic evolution after a 15 months crisis. It also shows that 42% of Flemish are totally against a splitting of Belgium (while 34% are against), which underlines the difficulty to find a majority to support independence.

¹⁶ Lieven De Winter, « La recherche sur les identités ethno-territoriales en Belgique », *Revue Internationale de Politique Comparée*, Vol. 14, No 4, 2007, p. 581.

¹⁷ When a difference can be distinguished, young generations seem less in favour of independence.

Conclusion:

From what precedes, we can identify three types of locks that can prevent a splitting of Belgium: debt, Brussels status, and Flemish population's unwillingness to leave Belgium. None of them are, theoretically, impossible to unlock. But this is not an easy task and it probably won't be achieved in short or medium term. International and European contexts about independence and recognition could also be modified. It could happen, for example, after an independence of regions such as Catalonia or Scotland. These regions seem to face fewer difficulties than Flanders to achieve independence.

But, for now, in the eventuality of an absolute deadlock between Flemish and Francophones, the "solution" put forward by the European Union would most probably be the same as in Montenegro in 2003: not a splitting but a confederal sort of state. The difference would be that without people's willing to leave Belgium, Flanders would not follow the path Montenegro did in 2006. Indeed, independence processes of Montenegro and Kosovo reveal that independence is considered as a last possibility, only when all other options have been investigated.