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The status of Brussels in the hypothesis of confederalism

Le statut de Bruxelles dans l'hypothèse du confédéralisme

Het statuut van Brussel in geval van confederalisme

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The status of Brussels in the hypothesis of confederalism [1]

Translation: Gail Ann Fagen

Abstract

This article looks into the future of Brussels in the hypothesis of Belgium's move towards confederalism. After defining this term and making a distinction between its legal and political usage, the authors explore various scenarios that could lead from federalism to confederalism, showing that the latter is not a mere continuation of the former and that the path is strewn with heady questions. They then review the statuses that could be envisaged for Brussels in the hypothetical wake of such a move, and call for an interdisciplinary and citizen-based reflection in reaction to their analyses.

Introduction

In terms commonly accepted by most legal experts, confederalism is an association among several sovereign States, founded on an international treaty and formed in the aim to organise the common management of a determined set of matters. With this definition we can immediately dismiss as totally incongruous the idea of applying the confederation label to the contemporary Belgian State, knowing that it essentially follows the broad principles of federalism.

Nevertheless, the present characteristics of the Belgian institutional framework authorise a degree of comparison, at the political level, with the confederal model. The parity of the Council of Ministers, which clearly expresses the essentially bipolar nature of our State, is the most striking example. If all the French-speaking ministers or all the Flemish-speaking ministers oppose a proposed decision, we find ourselves with a right of veto of sorts that inevitably brings to mind the principle of unanimity that defines the confederal model. In law, however, this is not a confederal charac-

[1] This is the adapted text of a lecture presented on 18 March 2005 in a colloquium organised by the Centre Jacques Georgin. The papers of this colloquium are due to be published in the Cahiers published by this study centre, together with other scholarly articles on the theme of confederalism prepared V. de Coorebyter, A.-E. Bourgaux, Robert Deschamps and Philippe Cattoir. Since the time of this colloquium, the debate on the future of the Belgian State and thus on that of Brussels has taken on a greater dimension in public opinion. The fictional documentary "Bye, bye Belgium", broadcast 13 December 2006 on RTBF, likely played a role in this growing debate at least among the French-speaking Community (the testimonies and scientific contributions compiled by the director for this highly controversial broadcast can be found in his book: Ph. DUTILLEUL (dir.), *Bye-bye Belgium*, Loverval, Labor, 2006. We also draw your attention to the comments by H. DUMONT, "Bye-bye Belgium, une fiction révélatrice" (Bye-bye Belgium, a revealing fiction) in *La Libre Belgique*, 10 January 2007. But the debate on a possible break-up of Belgium extended throughout the population mainly after the federal legislative elections of 10 June 2007 and the difficulty in forming a new government. Despite these new events, we chose not to modify the initial tone of the text, which was intentionally marked by prudence and strict respect of scientific methods.

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teristic per se since the ministers of the federal government, deliberating under the rule of consensus, have no need for instructions from the community or regional governments, nor must they answer to these bodies.

If we listen to some players who use this term in its purely political sense, confederalism takes on a different meaning. It does not refer to replacing the Belgian Constitution with a treaty concluded at the initiative of the former components of the Belgian State (or a portion of them) which have become sovereign and independent, nor is it an audacious description of the current institutional structure. Rather it designates an alternative model primarily based on the following four characteristics: accentuation of the current bipolarity by marginalizing the Brussels-Capital Region and the German-speaking Community, defederalisation of several sensitive powers presently held by the federal authority, transforming the mechanisms of inter-regional solidarity in order to reduce and condition financial transfers from the north to the south, and rewriting our present Constitution, almost "tabula rasa" in the aim to deploy its Article 35 in order to limit the powers of the federal authority to those that are expressly attributed to it.

As we know, this article 35 stipulates an inversion of the residual powers which would then be transferred from the federal authority to the Communities or the Regions. Its entry into application is subject to two conditions which have not been met, one of which is the drafting of a new constitutional provision listing the exclusive powers reserved for the federal authority. This could be the occasion for the political groups of the Vlaams Parlement who adopted the resolutions of 3 March 1999 to fulfil their wishes. This scenario would effectively allow them to call for the devolution of all powers of interest to the Flemish Region in the political, economic and financial realm, and to maintain the advantages of joint rule of the Brussels Region. Many political actors, especially Flemish, see confederalism along these lines. Legally, it would merely amount to an intensification of the centrifugal trend reconcilable with preserving a single State, even if it were reduced to a hollow shell.

In the remarks and plans of other actors, the same term nevertheless refers to the legal definition given in the first lines of this paper. This time the term indeed refers to the transformation of present Belgium into an association between several sovereign States, on the basis of an international treaty and formed in the aim to organise the common management of a determined set of matters. This is the hypothesis that we shall explore in this article. And this is the context –a legal revolution we must admit - in which we shall discuss a possible status for Brussels. The task is indeed perilous in many ways. Thus we set out on this task with a good measure of hesitation and reticence.

Is it the realm of constitutionalists to reason on imaginary scenarios which, although surely conceivable in the abstract, are nevertheless highly problematical? Pondering the future of Brussels in case of confederalism, indeed implies hypotheses such as: annexing of the Brussels Region to one of the future entities forming the confederation; its acquiring on its own of the status of a constitutive entity of the confederation; joint rule by the other constitutive entities of the confederation; creation of an “Europan district” status managed by the European Union itself... Some scenarios are certainly more plausible than others. In particular, we should not discount objections or reticence on the part of Belgium's partners in the EU who may oppose certain "institutional fantasies" the Belgians might decide together or in random order.

Nonetheless, it must be said that a priori the law neither precludes nor imposes one or another scenario imperatively. On the other hand, the law obviously has certain lessons it can provide concerning the procedure that would lead to adopting a new status for Brussels, no matter what it is. How would this new status come about? Who would decide? And more specifically: would Brussels and its citizens have a say in the fate reserved for them in a confederal Belgium?

If we accepted to look into each of these questions, this is simply because the political situation obliges us to seriously envisage the hypothesis of an end to federal Belgium[2] and to summarise scenarios theoretically possibly that could lead to this end, whilst leading to alternatives of a confederal type.

This said – and we would like to stress this point – the discussion that follows obviously does not reflect neither an action plan – we do not have the responsibilities of the political actors – nor a set of suggestions *de lege ferenda*. We have limited ourselves to a true exercise in institutional imagination, deliberately theoretical, on the basis of elements found in constitutional law and international law. We did not dismiss certain hypothesis on the grounds that they may be highly unlikely. We might say we simply identified scenarios that were theoretically imaginable, in the light of these legal elements. In any case, this is how we chose to interpret our task.

The second motive justifying our initial reticence is theoretical. In today's world one can no longer find a genuine confederation, which meant that the examples desired or sought are few and far between. At this time there is no "confederal organisation model" that could serve as a benchmark. Of course we could think about the CIS, the Commonwealth of Independent States, that succeeded the Soviet Union, but legal experts have noted that due to the CIS's weak institutional instruments it is below the confederal model. We could also imagine the European Union, often described as a "highly integrated confederation",[3] but as a matter of fact it is so highly integrated that for all practical purposes it presents as many federal facets as confederal aspects. Or we could even consider all the international cooperation organisations, such as the Council of Europe, which reflect the confederal logic. But in this case, instead of a model, we only find a range of organisations made to measure. Thus we lack a concrete example of confederation to which we could refer as we attempt to imagine what a Belgian confederation might be. The only examples that

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[2] For further clarifications on this subject, see H. DUMONT, "Organisée en Etat, la communauté est capable de prendre des décisions" (Organised in a State, the community is capable of taking decisions), in *La Revue générale*, February 1999, p. 29-38; IDEM, "Saint-Polycarpe ou l'impossible cohérence du fédéralisme belge" ([The] Saint Polycarpe [agreements] or the impossible coherence of Belgian federalism), in *Administration publique*, T 2-3-4, 2002, p. 314-319; IDEM, "La mobilisation du droit comme instrument de changement du cadre national en Belgique" (Mobilisation of the law as an instrument to change the national framework in Belgium) in *Appartenances, institutions et citoyenneté*, dir. by P. Noreau and J. Woehrling, Montreal, Wilson et Lafleur Itée, 2005, p. 89-107.

[3] Y. LEJEUNE, "L'idée contemporaine de confédération en Europe: quelques enseignements tirés de l'expérience de l'Union européenne" (The modern conception of confederation in Europe: some lessons from the experience of the European Union), in COMMISSION EUROPÉENNE POUR LA DÉMOCRATIE PAR LE DROIT*, Le concept contemporain de confederation*, Strasbourg, Éditions du Conseil de l'Europe, 1995, p. 147.

are authoritative in general statehood theory date from the 18th and 19th centuries: primarily the Swiss, American and German confederations.[4]

A third difficulty should also be mentioned, linked to the nature and effects of the legal norms that govern the highly hypothetical procedure that would lead us from the Belgian State into a confederal bond more or less replacing it. These norms are comprised of an unprecedented and complex combination of the rules of public international law and the rules and principles of Belgian constitutional law. The scope of the applicable rules of public international law and occasionally their very existence are debatable. As for the rules and principles of constitutional law that would have to combine with international law, their implications are just as equivocal in the context of such an exercise. The reason for this is obvious. These rules and principles were designed to build and ensure the functioning of a federal State in the respect of a certain internal equilibrium. But we now find ourselves in the situation where these rules would be diverted from their original intent, by seeking implications they may have in a completely different context: the extreme dismembering of this State.[5]

We can thus see that, if the law and legal experts can surely provide some elements of a response regarding the consequences a possible (but somewhat improbable) confederalism could have on the status of Brussels, this is undertaken with a heavy dose of modesty, prudence, and in an resolutely conditional tone. And we shall adopt this prudence, modesty and resolutely conditional tone throughout this short essay.

It is first necessary to discuss the procedure by which the Belgian state would come to an end, a prerequisite for the confederal hypothesis. The move to the confederal phase indeed requires breaking up the state framework and replacing it, if only for a period of reasoning, by the co-existence of independent and sovereign entities in no relation to one another. It is only after this disruptive phase that the sovereign States could agree in common to sign a treaty founding a confederation. In the first section of this paper, we will discuss the procedures that could lead to this dissolution and refounding. We shall pay particular attention to the Brussels Region, and ask whether it will have a say in the course of these virtual procedures (I).

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[4] In particular see L. LE FUR, *Etat fédéral et confédération d'Etats* (*Federal State and Confederation of states*) (1896 thesis), Paris, Editions Panthéon Assas, reprinted 2000; Ch. DURAND, *Confédération d'Etats et Etat fédéral (Confederation of States and Federal State*), Paris, Librairie Marcel Rivière, 1955; EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW, *The modern conception of confederation*, *op. cit.* ; O. BEAUD, "Fédéralisme et souveraineté. Note pour une théorie constitutionnelle de la fédération" (Federalism and sovereignty. Note for a constitutional theory of the federation), in *Revue du doit public*, 1998, p. 83 ; Vl. CONSTANTINESCO, "Europe fédérale ou fédération d'Etats-nations" (Federal Europe or Federation of Nation-States), in *Une Constitution pour l'Europe?,* dir. R. Dehousse, Paris, Presses de sciences po, 2002, p. 115-149.

[5] See N. ANGELET, "Quelques observations sur le principe de l'*uti possidetis* à l'aune du cas hypothétique de la Belgique" (A few comments on the principle of *uti possidetis* in the light of the hypothetical case of Belgium), in *Démembrements d'Etats et délimitations territoriales: l'Uti possidetis en question(s) (Dismembering of States and territorial delimitations: Uti possidetis in question)*, dir. O. Corten, B. Delcourt, P. Klein and N. Levrat, Brussels, Editions de l'Université de Brussels, 1999, p. 220.

Next, assuming that the process of confederal metamorphosis has been achieved, we will then review some of the statuses that Brussels could take on within the confederal framework (II).

I. The end of the Belgian State and refounding as a consideration

In order to trace the highly hypothetical path leading out of the Belgian State and creating a confederation of States, we must address no less than four questions:

1. Through which legal or political act would the Belgian State be dissolved or split up (§ 1)?
2. Immediately following this dissolution, which political collectivities could claim to be sovereign and, thus able to participate freely in the ensuing process of re-forming as a confederation (§ 2)?
3. Through which procedure could these political collectivities express their will to enter in one or another confederal structure with one or another partner (§ 3)?
4. How would the borders of these new confederate States be determined (§ 4)?

§ 1. The dissolution of the Belgian State

A priori, five dissolution procedures are conceivable.

First procedure imaginable: the unilateral secession of one of the present federate collectivities in virtue of international law, invoking the right of peoples to self-determination. This first hypothesis can be swiftly discarded, for it is based on an interpretation whereby all people who hold in common a territorial setting, a historical past, economic and cultural ties, as well as political and social objectives would have the right to secede and form an independent and sovereign State solely on condition that this right is enjoyed by the whole population, for example following a referendum of self-determination. Contemporary international law interprets the right of peoples to self-determination in a more restrictive manner however: as the Supreme Court of Canada recently recalled, the right of unilateral secession can only be justified "where 'a people' is governed as part of a colonial empire; where 'a people' is subject to alien subjugation, domination or exploitation; and possibly where 'a people' is denied any meaningful exercise of its right to self-determination within the state of which it forms a part.[6] In other circumstances, peoples are expected to achieve self-determination within the framework of their existing state.[7] It is also admissible that a people can exercise a right to self-determination under the hypothesis that it is victim of systematic and flagrant violation of human rights or is deprived of all representation or else massively under-represented in an anti-

[6] In other words, according to this Court, a people who have "been denied meaningful access to government to pursue their political, economic, cultural and social development"

[7] Reference re Secession of Quebec, [1998] 2 S.C.R. 217. In particular see A. BAYEFSKY, *Self-Determination in International Law: Quebec and Lessons Learned,* The Hague/London/Boston, Kluwer Law International, 2000 ; S. SMIS, "Het zelfbeschikkingsrecht der volkeren", in *Recht en minderheden. De ene diversiteit is de andere niet*, *Tegenspraak-Cahiers*, Cahier 26, Brugge, Die Keure, 2006, p. 201-213.

democratic and discriminatory manner.[8] These circumstances enter into the last hypothesis cited by the Supreme Court of Canada, that of a people "denied any meaningful exercise of its right to self-determination within the state of which it forms a part".

Obviously none of these situations can be found in Belgium.

Second dissolution procedure that is conceivable a priori: unilateral secession by one of the present federate political collectivities by virtue of Belgian constitutional law. This hypothesis is to be discarded immediately since the Belgian Constitution, like that of almost all federal States, excludes the unilateral secession of one of its components.[9] The large majority of authors acknowledge that renouncing the right to unilateral secession is a logical derivative of constitutionalism. The decree of 18 November 1830, which will be discussed below, confirms this axiom.

Third hypothesis: transformation of the Belgian State into a confederal structure, decided by a simple revision of the current federal Constitution.[10] This third procedure is also to be discarded on legal grounds. Indeed, a Constitution "cannot itself ordain or authorise the suppression of the State that upholds it".[11] The "derived constituent power" (Pouvoir constituant dérivé) is allowed to amend the Constitution, but not to repeal it. And forcibly this would be the case if the Constitution were replaced by a treaty that was the exact opposite of the Constitution, which is a unilateral legal act. In other words, the "derived constituent power" does not have the right to transfer national sovereignty which is the sole realm of the "original constituent power": the Belgian people themselves. In Belgium, this argument of pure constitutional logic is reinforced by the decree of 18 November 1830 by which the National Congress proclaimed the independence of the Belgian people. Indeed, this decree was deliberately withheld from the constitutional corpus of 7 February 1831 because the National Congress wanted to shield it from article 131 (later article 195) which regulates the exercise of the "derived constituent power". This decree thus raises the independence of the Belgian people, and consequently the existence of the Belgian State, above the Constitution.

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[8] See "Report" by L. WILDHABER, in *Self-Determination in International Law: Quebec and Lessons Learned*, *op. cit.*, p. 64.

[9] The only federal Constitution that presently allows the unilateral right of secession is that of Ethiopia (article 39), but it is for this very reason that some experts have questioned whether Ethiopia is a true federal State, as its Constitution reflects more the philosophy of an international treaty than that of a real Constitution. See P. H. BRIETZKE, "Ethiopia "leap in the dark": Federalism and self-determination in the new Constitution", in *Journal of African Law*, 1995, p. 19-38. On the right of secession in federal States, of particular interest is C. LLOYD BROWN-JOHN, "Self-Determination, Autonomy and State Secession in Federal Constitutional and International Law", in *South Texas Law Review/South Texas College of Law*, 1999, p. 567-601 ; V.C. JACKSON, "Comparative constitutional federalism: its strengths and limits", in *Le fédéralisme dans tous ses états – The States and moods of federalism*, dir. J.-Fr. Gaudreault-Desbiens and F. Gélinas, Brussels, Bruylant, Cowansville, Yvon Blais, 2005, p. 161-168.

[10] Under this hypothesis the Brussels-Capital Region would have no say, since the procedure to revise the Belgian Constitution does not associate the federate collectivities – and Brussels to an even lesser extent – in the constituent process.

[11] O. BEAUD, *La puissance de l'Etat (The Power of the State)*, Paris, P.U.F., 1994, p. 462.

Of course, this norm could not keep the holder of the original constituent power from transferring its sovereignty to the components of the State, but such an agreed dissolution by the latter should be analysed as a constitutional revolution, and not a constitutional amendment.[12] This case will be examined below in the fifth hypothesis.

Before we do this, however, a fourth hypothesis is worth noting: the unilateral secession of one of the current federate collectivities. But this time not in the name of a right which, as we saw above, does not exist. Rather it would come about through a purely de facto decision based on political arguments. This hypothesis is less inconceivable than those discussed above. Indeed, although the right to unilateral secession does not exist de jure, this does not preclude a unilateral secession being decreed de facto, and in the end crowned with legal success, in other words leading to the a new State whose existence, independence and sovereignty would be recognised by the international community. International law does not prohibit secessions, but sees them as events that can be recognised afterwards if they are successful. And this process has several precedents.[13] It is all a question of effectivity. In other words, it all depends on whether the other States of the international community, and particularly in our case the EU Member States, accept to recognise the secessionist entity at the risk of angering the State from which this entity has seceded.

We should add that the broad consensus among the UN member states is to "do nothing to favour secessions".[14] In the EU context, one can state even further that such a unilateral secession would be very badly received: it would serve as an example that might encourage other secessions in Member States such as Great Britain, France, Spain, etc. How could these EU members recognise any State(s) resulting from this secession without creating a precedent they would surely consider detestable?

Nonetheless, we are obliged to envisage this hypothesis in view of the growing pressure from Flemish groups in favour of their Region seceding. This hypothesis would lead to a reconfiguration of the Belgian State outside the confederal mechanisms discussed here. According to some experts, secession by the Flemish Region on its own, as it were, would simply leave the federal authorities – admittedly reduced to their components in the Brussels and Walloon Regions – the responsibility to ensure the continuity of the Belgian State amputated of its northern territory. This modus operandi would have the advantage of sparing the remainder of Belgium the task of requesting international recognition as well as applying for membership in the international organisations to which the Belgium belongs. This situation does however raise some questions that are beyond the scope of our paper. The proposi-

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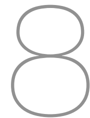
[12] Concerning our interpretation of the decree of 18 November 1830, the doctrine is not unanimous. See M.-Fr. RIGAUX, *La théorie des limites matérielles à l'exercice de la fonction constituante*, (*The Theory of Practical Limits to the Exercise of the Constituent Function)* Brussels, Larcier, 1985, p. 54 and foll. This could be the subject of another paper dealing with this issue in depth.

[13] In particular see the case of Bengladesh.

[14] J. SALMON et E. DAVID, *Droit des gens (International Law)*, syllabus U.L.B., Brussels, P.U.B., 2003, T. 3, p. 675.



tion that, following a Flemish secession, the Walloon and Brussels regions would continue the personality of the Belgian federal State with a diminished territory, while the Flemish Region alone formed a new State, is in any case highly disputable. As Marianne Dony has pointed out: "international law does not contain any precise rules in this area: it is primarily political considerations – first those of the concerned parties and then other States – that determine whether the changes occurring in the territory of a State modify the State's personality or not."[15]

Fifth and final hypothesis: partition, in other words a dissolution of the Belgian State that is negotiated and agreed with the assent of the various entities that make up federal Belgium. This scenario of divorce by mutual consent could invoke doctrine in its favour, especially that of the Supreme Court of Canada[16], and also the precedent of Czechoslovakia. This raises the question, among others, of how the populations concerned could express their consent to this divorce. And neither is this matter codified by international law.[17] As regards constitutional law, in our opinion the question should be approached on the basis of the principle of national sovereignty granted by article 33, paragraph 1, of the Belgian Constitution and taking into account the above-mentioned decree of 18 November 1830 which made the independence of the Belgian people a non-revisable constitutional norm. Consequently, as we saw above, it is impossible to dissolve the Belgian State merely through a Constitutional amendment. Divorce by mutual consent thus calls for a constitutional revolution, consisting of a "deconstituent" act that only the original constituent power itself, i.e. the Belgian Nation, can propose in complete legitimacy. In this context, holding a self-determination referendum seems the most appropriate method to assess the Belgians' consent to this deconstituent act.[18]

§ 2. The political collectivities that can lay claim to sovereignty after dissolution of the Belgian State

The instant following the hypothetical dissolution of the Belgian State, which political collectivities can claim sovereignty and, in this capacity, freely participate in the ensuing process to re-form as a confederation? Does Brussels have any chance to be among those eligible for these new titles of sovereignty? In an attempt to address these questions, we must first present a rule of international public law, the rule of *Uti possidetis iuris, ita possideatis*: as you possessed under law, you will possess. This principle was first used during the decolonisation process in the Americas: the newly independent States of Latin America accepted to have their national frontiers coincide with the administrative boundaries that had existed between the Spanish

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[15] M. DONY, "Conséquences en droit international et en droit communautaire d'une scission de la Belgique" (Consequences that a break-up of Belgium would have in international and european law), in *La Revue générale*, 1997/1, p. 91.

[16] See above, note 6.

[17] See J. SALMON et E. DAVID, *op. cit.*, p. 670.

[18] See H. DUMONT, "Réflexions sur la légitimité du référendum constituant" (Reflections on the legitimacy of the constituent referendum), in *Variations sur l'éthique. Hommage à Jacques Dabin*, Brussels, Publications des Facultés universitaires Saint-Louis, 1994, p. 331-356 ; et IDEM, "La réforme de 1993 et la question du référendum constituant" (The 1993 reform and the issue of the constituent referendum), in *Administration publique*, 1994, T. 2-3, p. 101-107.

colonies as the result of Spanish domestic law.[19] The same principle was then applied to settle all territorial conflicts arising from decolonisation[20] and finally the rule was lifted from its post-colonial context and transposed, in Europe, to settle territorial problems that appeared with the dissolution of former federal States. In particular this transposition was adopted by the Arbitration Commission of the European Conference for Peace in Yugoslavia, the so-called "Badinter Commission" named for its president. In its opinion n° 3 of 11 January 1992, the commission deemed that, except where otherwise agreed, the international frontiers of the new States arising from the dissolution of former-Yugoslavia would correspond to the internal boundaries between the respective territories of the federate collectivities of the former Yugoslav federal State. The same solution was retained by mutual consent for the partition of Czechoslovakia and the dismembering of the former Soviet Union.[21]

Before testing the applicability of *Uti possidetis* to the hypothetical dissolution of Belgium, we must make two important remarks.

First, it appears that transposition of the rule outside the context of decolonisation ran into criticism from a formidable doctrine. The Badinter Commission's opinion n° 3 was, and remains, the subject of sharp debate. Thus, according to Prof. Jean Salmon, "the principle of *Uti possidetis iuris*, in the hypothesis of secession/ dissolution, only applies to the external frontiers of the dismembered State. On the other hand, as regards the new frontier drawn up between the predecessor State and the seceding entity, the former administrative boundaries are adopted as frontiers only if the protagonists agree on this solution or if this solution is imposed from the outside through an agreement by the adjacent powers. In both cases, this solution is adopted not by virtue of the principle of *Uti possidetis*, by application of a rule of law, but as the result of a relation of force or of a consent – resignation before an insurmountable de facto situation."[22]

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[19] See J. SALMON et E. DAVID, *op. cit.*, T. 2, p. 251.

[20] See *ibidem*, p. 342.

[21] See O. CORTEN, B. DELCOURT, P. KLEIN, N. LEVRAT, *Démembrements d'Etats et délimitations territoriales*, *op. cit.*, especially J.-P. COT, "Des limites administratives aux frontières internationales, rapport général" (From administrative boundaries to international frontiers, general report), p. 17-33. For the text of the Opinions of the Badinter Commission see: http://www.ejil.org/journal/Vol3/No1/art13.html

[22] J. SALMON, "Les frontières de la Belgique lors de son indépendance" (Belgium's frontiers at the time of its independence), in *Démembrements d'Etats et délimitations territoriales*, *op. cit.*, p. 149. Likewise, according to L. WEERTS, "Heurs et malheurs du principe de l'*uti possidetis:* le cas du démembrement de l'U.R.S.S." (Joys and sorrows for the principle of *uti possidetis*: the case of the dismembering of the USSR), in *ibidem*, p. 79-142, the doctrine of *uti possidetis* was not applied as a custom with *opinio iuris* for the territorial dilimitation between Russia, Estonia, Latvia and Lithuania, neither from the point of view of the States in question, nor from that of other countries. She argues the same thesis regarding the other republics that arose after the disintegration of the USSR. In cases where a highly prevalent doctrine sees *Uti possidetis* as applicable when international frontiers are traced between new States, Laurence Weerts sees it as the result of the supreme rule applicable in this area: agreement between the States concerned.

The problem arises from the fact that States "do not refer expressly to *Uti possidetis* in their treaties or political discourses." [23] It remains however that we have before us a uniform practice: the transposition of the *Uti possidetis* rule was accepted without argument by the EU Member States who incorporated it in their policy regarding recognition of new European States. The question is whether this uniform practice is sufficient to constitute an international custom. As the international law expert Jean-Pierre Cot writes, "we know that proof by opinio iuris is not easy. It is not the habit of States to affirm their respect of a customary norm each time they comply with it. They tend rather to apply custom as Monsieur Jourdain spoke prose. Without lending oneself to a paralysing voluntarism, we thus tend to accept (...) that a uniform behaviour constitutes proof of opinio iuris in the absence of proof to the contrary."[24] It is also helpful to add that Belgium, for its part, has never raised any objection to this point. If we wish to remain on the grounds of pure effectivity, this is undoubtedly the data to be retained, rather than doctrinal debates.

Secondly, from a purely logical point of view it appears that the rule of *Uti possidetis* should only serve a highly limited purpose. It is only intended to serve down the line, in other words to determine the territorial boundaries of an entity whose sovereignty and independence has already been recognised.[25] The rule of *Uti possidetis* in itself does not confer the right of sovereignty and independence on one entity any more than another, and surely not outside the context of decolonisation when international law does not designate the beneficiaries of this right. According to Nicolas Angelet these beneficiaries can only be identified through reference to the constitutional law of the predecessor State. In his opinion, "this reference is justified when the Constitution of the predecessor State recognises the right to the secession, but not outside this hypothesis." It would thus be "vain (...) to state that *Uti possidetis* was applicable to federate entities."[26] Nevertheless, it seems to us that in practice this reasoning, inspired by a linear logic, is up against an inevitable phenomenon of retroactivity: an entity found on a territory over which, in application of *Uti possidetis*, no other entity itself can claim sovereignty will find in this situation a right to be recognised as independent and sovereign. In other terms, the delimitations performed through *Uti possidetis* down the line, have an influence, further up, on the distribution of rights to sovereignty and independence. In quite simplistic terms, we find ourselves in a "chicken or the egg" logic where the consequences have a retroactive effect on the causes.[27]

Bearing in mind this circular form of logic, we can thus attempt to answer our questions. But now we run into a new difficulty. Federal Belgium is not underpinned by just one category of purely territorial federate collectivities endowed with perfectly symmetrical powers. In fact, as we know, it is underpinned by regional and commu-

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[23] J.-P. COT, "Intervention au cours des débats" (Intervention in the debates), in *ibidem*, p. 145.

[24] J.-P. COT, "Des limites administratives aux frontières internationales?", *op. cit.*, p. 25-26.

[25] N. ANGELET, *op. cit.*, p. 219.

[26] N. ANGELET, *op. cit.*, p. 219-220.

[27] According to N. ANGELET, *eodem loco*, applying the principle of *uti possidetis* is justified in cases where separation by mutual agreement entails prior identification of the principle's beneficiaries.

nity divisions. We can nevertheless make some headway by first identifying the federate political collectivities whose right to sovereignty seems less arguable.

At first view, the Flemish Region and the Walloon Region could more easily lay claim to their sovereignty. But when we look closer, we find a difficulty with the Walloon Region that is not found in the Flemish Region. Effectively, the latter Region coincides, as we know, with the Dutch-speaking region, whereas the Walloon Region contains not only the French-speaking region and but also the German-speaking region which coincides with the territory of the German-speaking Community. The evening after dissolution, it would be perfectly conceivable for this Community, as a federate political collectivity, to claim a right to sovereignty. In so far as it is part of the Walloon Region, for regional matters, it is hard to see how a possible question of sovereignty could be settled without an agreement between the entities concerned.

And what about the Brussels Region? Several arguments, in our view unconvincing, can be summoned to oppose a claim by Brussels to sovereignty and independence over the territory of the bilingual Brussels-Capital Region.

A first objection could be deduced from the fact that the Brussels Region, unlike the Flemish Community and the Walloon Region, is not endowed with what is called "constituent autonomy" by virtue of articles 118 §2 and 123 §2 of the Constitution. This objection does not go far, however, in view of the "sparse" prerogatives invested in this notion of constituent autonomy under Belgian constitutional law.[28]

A second objection might be drawn from the tutelage that the federal State can exercise over the Brussels Region in application of article 45 of the special law of 12 January 1989 on the institutions in Brussels. This objection can be discarded for three reasons. To begin with, the tutelage in question is exceptional. It is not a “general tutelage of opportunity” (tutelle générale d’opportunité) since it is only foreseen in four clearly defined regional matters and for special motives. Furthermore, it is primarily symbolic as it has never been applied. And lastly, it presupposes the existence of a tutelage authority, that is the State, which hypothetically would no longer exist.

One final institutional particularity of the Brussels-Capital Region could also be evoked to oppose its federate entity status, and consequently its right to sovereignty (still within the limits of the circular logic presented above). This is the rule under article 9 of the same special law that submits ordinances enacted by Brussels to a jurisdictional validity control that is broader than the one for decrees. This third objection is no more convincing than the two above in so far as this control, in practice of a quite limited scope, has never been held up as liable to deprive Brussels of its status as a federate Region, and even less so because this control is even further reduced in ratio to the extension of the constitutionality controls entrusted to the Constitutional Court for all legislative norms, including ordinances.

Conclusion: if Brussels is seen as a Region, its claim to sovereignty could not be seriously opposed. But a more delicate question is that of the impact on this claim by the powers currently endowed to the Flemish and French-speaking Communities in uni-communitarian matters in the territory of the bilingual Brussels-Capital Region.

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[28] See Cl. MERTES, "L’autonomie constitutive des Communautés et des Régions" (The constituent autonomy of the Communities and the Regions), *C.H. du CRISP*, 1999, n° 1650-1651.

Should it be considered that the very existence of these powers cancels any claim the Brussels Region may have to sovereignty, relegating it to the rank of condominium of the Walloon and Flemish Regions? With the effect that – learning a lesson from the International Court of Justice in the case Frontier dispute Burkina Faso – Republic of Mali[29] - the fate of Brussels in the context of a confederal process would be settled, not by the people of Brussels themselves, but by common agreement between the Walloons and the Flemings?

This question recalls the well-known confrontation between the Flemish and French-speaking visions of Belgian federalism: a federalism essentially founded on two communities for the former, and on three regions for the latter. Is Brussels essentially a form of territorial extension common to the two large Communities, French-speaking and Flemish? Or on the contrary is it a full-fledged federate collectivity, even if, by exception, these two main Communities exercise their powers beyond their basic territorial seat (i.e. the Dutch-speaking region and the French-speaking region)? In our opinion, several arguments weigh in favour of this second description.

The first argument: The Flemish and French Communities only exercise some of their powers in the territory of the Brussels-Capital Region. In bi-cultural, bi-educational, bi- "person-related" matters (matières "bi-personalisables), and in the area of language use, their decrees cannot apply in the Brussels territory. Bi-"person-related" matters, like regional questions, come under the powers of Brussels, through the Common Community Commission (Commission communautaire commune) which for all practical purposes coincides with the Brussels Region.

Second argument: recent institutional evolution reveals a further strides by the region and a slackening of the link between Brussels and the two main Communities. One the one hand, the French Community, under article 138 of the Constitution, transferred the exercise of several powers to the Walloon Region in areas concerning the French-speaking region, and to the French Community Commission (Commission communautaire française) for the bilingual region of Brussels-Capital. On the other hand, we have also observed looser ties between the Brussels Region and the Flemish community since the last reform of 2001, which abolished the seats in the Flemish Parliament for six Brussels Dutch-speakers from the Brussels Region Parliament.

Third argument: the political collectivity that more closely reflects the concept of State is the region and not the community, precisely because the former, unlike the latter, has its own territory.

From all of the above, we would be inclined to deduce that on the famous evening of Belgium's dissolution, Brussels could claim the title of sovereign and independent entity, and title that would confer a right to self-determination in the context of the confederal process.

[29] *C.I.J.*, order of 22 December 1986.

§ 3. How would the three, now sovereign, regions exercise their right to self-determination?

If, following the demonstration given above, we allow that the three Regions are the entities that could claim sovereignty in the wake of the hypothetical dissolution of the Belgian State, we now need to look into the procedure these political collectivities could adopt to express their will to form one confederal structure or another, with one partner or another. We recalled that the right of peoples to self-determination, guaranteed by article 1 of the UN's 1966 International Covenant on Economic, Social and Cultural Rights, does not confer any right to secession. It does however reflect the citizen's right to participate in public affairs and entails the right to freely determine the internal and international political status. Accordingly, the people of this State "must have the possibility to choose between different options, including independence"[30] Once the Walloon, Brussels and Flemish Regions, hypothetically, have become independent and sovereign States, it is up to their citizens, through their representatives or by plebiscite, to decide whether they wish to maintain their newly acquired independence or opt for one of the statuses discussed in the second part of this paper.

§ 4. Determining the frontiers of the three, now sovereign, Regions

If we allow the lines of argument exposed above, unless decided otherwise the present territorial boundaries of the three Regions that form federal Belgium would acquire the nature of frontiers protected by international law. Brussels would thus only exercise its sovereignty over the territory of the Brussels-Capital Region, which was delimited by article 2 of the special law of 12 January 1989 on the institutions of Brussels. This provision reflected the limits of the bilingual Brussels-Capital Region as determined by the coordinated laws on the use of language in administration, which in turn refer to the boundaries set in 1963. Without contradicting the premises that underpin our reasoning, we can nevertheless raise the objection that, in some aspects, these boundaries leave room for discussion. We are all aware that the 1963 borderlines were accepted and later confirmed in exchange for guarantees protecting of the French-speaking populations who were often a majority in the communes adjacent to Brussels, and on provision that the electoral precinct of Brussels-Hal-Vilvorde was maintained. If the linguistic boundary was transformed into an international frontier, this could justify a request by the Brussels Region to negotiate with the Flemish Region in view, if relevant, of rectifying the borderline in the light of the results of a plebiscite enabling the people of the so-called "municipalities with facilities" to express their wish to join Brussels or Flanders. Indeed *Uti possidetis* is only a "discretionary rule that the States can waive".[31] Although international law does not oblige States to take the will of its inhabitants into account when they trace their frontiers,[32] nothing obviously precludes this possibility. On the contrary, the principle of democratic legitimacy should incite them to do this, given

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[30] M.G. KOHEN, "Le problème des frontières en cas de dissolution et de séparation d'Etats: quelles alternatives?" (The problem of frontiers in cases of dissolution and separation of States: what are the alternatives?), in *R.B.D.I.*, 1998/1, p. 149.

[31] M.G. KOHEN, *op. cit.*, p. 152.

[32] *Ibidem*, p. 148.

that in any case the rules of international law on protection of minorities will have to apply on both sides of the new frontier.

II. The future of Brussels in a confederal framework

We have just shown that the Brussels Region can present a strong case in the hypothesis of an end to the Belgian State. But the points in its favour hinge on quite a few uncertainties, and admittedly a whole series of uncertainties. It is worthwhile discussing them before we go any farther, in order to circumscribe the Region's scope of possibilities as precisely as possible.

The first series concerns the way the Belgian State is transformed, the modus operandi. We have chosen to focus on two hypotheses: unilateral secession by one component and agreed dissolution. Although secession is obviously illicit under constitutional law, it is neither forbidden nor permitted under international law: secession is the result of a purely factual and political process. The other States must respect the principle of non-intervention: they can merely "note the result of the effectivities deployed on the ground".[33] Regardless the result, international human rights law will continue to apply.[34] For any remaining questions, secession is a leap into the unknown.

If the Flemish Region seceded all alone, would this lead to the continuation of the remaining State (if Brussels and Walloon Regions so wished), while the Flemish State applied for international recognition? As we said, the jury is still out on this question.

Secession by the Flemish Community would be more problematical for Brussels if this Community attempted to take up part of the Brussels Region. Brussels would then have to secede from the Flemish Community, by presenting the arguments exposed above on the primacy of the "regional fact" over the "community fact". Or, under another hypothesis, the remaining Belgian State could attempt to oppose the Flemish secession.

But one more secessionist scenario might also be added – where Brussels would declare independence first, ahead of the Flemish Region or Flemish Community. We must admit that this scenario, highly improbable politically, would have the advantage of forcing the Flemish Community finally to make an unambiguous choice: it would either have to oppose this Brussels secession and affirm its attachment to the current Belgian State or else proclaim its own independence but knowing that Brussels would not let itself be absorbed by Flanders.

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[33] O. CORTEN, "Droit des peuples à disposer d'eux-mêmes et *uti possidetis:* deux faces d'une même médaille?" (Right of peoples to self-determination and *uti possidetis*: two sides of the same coin?), in *Démembrements d'Etats et délimitations territoriales*, *op. cit.*, p. 427.

[34] General observation by the United Nations Commission on Human Rights n° 26 (61) of 29 October 1997 regarding questions concerning the continuity of obligations undertaken by the party States by virtue of the International Covenant on Human and Political Rights, *A/53/40*, vol. 1, 1998, p. 91.

As we can see, Brussels would have a say under any hypothesis. Brussels would even be the core of the problem, which could be settled neither without nor against it. Indeed, all these virtual secessions would create conflicts that could be settled in only two ways: by the parties' mutual agreement or by force. Even if we must always fear the second solution, we can hope that the first would be sufficient to stabilise a situation which the other countries would only need to recognise. In the inevitable negotiation leading to this agreement, the Brussels Region is invested with the institutional and political titles required to demand its participation as a full-fledged partner.

This is the case *a fortiori* even if the Belgian State ceased to exist following a concerted and agreed dissolution.

The second series of uncertainties is related to the applicability of *Uti possidetis*. As we said, a large section – albeit in the minority – of legal doctrine argues against its applicability to the internal boundaries of a dismembered State in the case of secession or dissolution. We should also recall the logical difficulty we run into when we decide to apply the rule. Theoretically "*Uti possidetis* only enters into play after the new State is constituted. The aim is to establish the territory of the State not to justify its achieving independence".[35] This new series of uncertainties, however, is not invincible.

In the case at hand, in concrete terms after a secession followed by an agreement or a concerted dissolution, the only collectivities having the right to proclaim independence are the Flemish Region, the Brussels Region, the Walloon Region (possibly without its German-speaking region), and the German-speaking Community. The French and Flemish Communities are less well-placed to claim the quality of a State, as in principle this quality is understood as the exclusive control of a territory of its own. And these two Communities, through some of their powers, share a common territory – that of the bilingual Brussels-Capital Region.

If the three Regions and the German-speaking Community, or one of these entities, tried to proclaim independence and if a conflict arose over the borderlines of the new international frontier separating them, it is hard for us to imagine the negotiating partners not referring to *Uti possidetis* if disagreement persisted.[36] In all cases, and this is the essential point, Brussels has the right at least to demand respect of the integrity of its present territory.

It now remains to review the different statuses the Brussels Region could adopt when it exercised its new sovereignty.

We already pointed out in our introduction that there are numerous scenarios and that it is not the law's task to chose one or the other a priori. From a legal point of

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[35] M.G. COHEN, *op. cit.*, p. 158.

[36] Even N. ANGELET, *op. cit.*, p. 220, acknowledges this.

view, anything can be designed,[37] and Belgian constitutionalists have a truly fertile imagination.

We should first like to summarise the scenarios that are theoretically conceivable or that have been brought up in public debate.[38]

Independence. Brussels and its population decide not play the confederalism game and chose to go it alone.

Merger. Brussels and its population could renounce their independence and ask to be annexed (in a unitary or a federal State) to one partner of the confederation or the other - Flanders[39] or Wallonia. In the second case, the fact that the territory of Brussels and Wallonia do not touch may pose some problems. The main problems, however, should be overcome thanks to the freedom of circulation guaranteed by the European Union.[40]

Participation in the confederation. Brussels and its citizens could also decide to enter into the hypothetical confederal treaty with Wallonia and Flanders and to agree on the common management of some of its powers. But which ones? On this point the law has nothing to impose or exclude: the partners can share whatever they wish. The common powers can be minimalist (defence, some aspects of international relations,...), but nothing precludes a more ambitious bond. One can perfectly imagine that the future confederal treaty would completely replicate the present rules governing the exercise of regional and community powers in Brussels, or else it could expand the facet of joint management over Brussels by Wallonia and Flanders on the model imagined by the authors of Proeve van Vlaamse Grondwet.[41] Or, on the contrary, it could loosen Wallonia's and Flanders's control over the management of Brussels (on the model proposed by the authors of the Brussels Manifes-

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[37] Possibly drawing inspiration, *mutatis mutandis*, from the different statuses of federal capitals. On this subject, see C. VAN WYNSBERGHE, "Les capitales fédérales, une comparaison" (Federal capitals, a comparison), in *Revue internationale de politique comparée*, 2003, vol. 10, n°1.

[38] Seven can be found in A. BINET et J. KOTEK, "Fédéralisme et régionalisme en Europe. Le devenir de Bruxelles" (Federalism and Regionalism in Europe. The future of Brussel.), in *La Belgique et ses nations dans la nouvelle Europe*, (*Belgium and its nations in the new Europe)* J. Lemaire and A. Miroir (dir.), Brussels, Editions de l'Université de Brussels, 1997, p. 93-108.

[39] In this perspective, the PM of the Vlaams Parlement J. Van Hauthem, K. Van Overmeire, G. Van Steenberge, M. Dillen, L. Van Nieuwenhuyzen and F. Dewinter prepared the draft of a Constitution for a unitary Flemish State with Brussels as the capital. See *Vlaams Parlement*, *stuk* 726/1, 2005-2006.

[40] The scenario of a "Federal Belgium Wallonia-Brussels" imagined following a "Flemish secession" was presented by Ch. FRANCK, A.-. P. FROGNIER, B. REMICHE and V. VAGMAN in their *Manifeste Choisir l'avenir (Choose the future manifesto):* See the special issue of *La Revue générale*, January 1997, p. 43-44.

[41] See J. CLEMENT, W. PAS, B. SEUTIN, G. VAN HAEGENDOREN, J. VAN NIEUWENHOVE, *Proeve van Grondwet voor Vlaanderen*, Brugge, Die Keure, 1996. On this subject see "Hoorzittingen over een Vlaamse Grondwet. Een inhoudelijke en rechtsvergelijkende verkenning. De juridische invalshoek van het boek 'Proeve van Vlaamse Grondwet voor Vlaanderen", *Verslag namens de Commissie Vlaamse Grondwet* uitgebracht door C. Berx, *Vlaams Parlement, Stuk* 813/1, 2005-2006.

to[42]). Once again, the law has nothing to exclude. We should note that the last two scenarios mentioned (expanding or loosening co-management) could already be envisaged even if Belgium does not go the confederal route.

We can thus see that confederalism is not necessarily and legally of a nature to upset the way each Region's powers are concretely distributed in Brussels, even if political upsets would be more than probable. The only change that, under law, would likely intervene in the case of a move to confederalism is that Brussels would have the permanent right of consent regarding its own status: the confederal covenant governing this status could not come into being without Brussels's agreement, it could not be amended without its agreement, and Brussels would have the right, at any time, to secede, to "withdraw from the covenant" if it was no longer satisfied with its status. And this is the heart of the distinction between federalism and confederalism.[43]

Confederal district. In his 1955 work on confederations of States, Charles Durand noted that nothing in the legal definition of confederalism precluded a territory being withdrawn from the control of each of the confederations constituent unities in the aim to establish the capital of this confederation, which would be home to its bodies and, if relevant, the seats of the constituent unities' powers[44] In other terms, the "federal district" model, the prime example of which is Washington D.C., [45] could be transposed in the confederal framework:[46] the "confederal district" would thus be administered directly by the confederate bodies. This model could be chosen for Brussels, as long as the people of Brussels agreed. This model is often criticised on the grounds that it relegates its inhabitants to the level of second-class citizens. It is true that the residents of the District of Columbia are not adequately represented in Congress, which nevertheless has authority over the area. The law, however, presents other paths more respectful of the rights of the district's residents: a few examples (although in federal States) are Canberra, Brasilia, or even New Delhi. Under the confederal district hypothesis, the people of Brussels would be deprived of the right to participate in the affairs of a true State, a hardly enviable position for all who are still firm believers in the "citizen's profession".

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[42] The "Manifestobru" association prepared two manifestos along these lines. The first dates from 4 February 2003 and the second, prepared in collaboration with the groups "Aula Magna" and "bruXsel.org", following the appeal *Nous existons, Wij bestaan, We exis*t, dates from 23 May 2007. The texts can be found on www.manifestobru.be. For a synthesis of their thoughts see especially A. MASKENS, "Les Bruxellois doivent abandonner le clivage linguistique" (The people of Brussels must abandon the language split), in *Le Soir*, 10 March 2006.

[43] See Ch. DURAND, *op. cit.*, p. 86-87 et 167.

[44] See *ibidem*, p. 31.

[45] On this model see the above mentioned study by C. VAN WYNSBERGHE.

[46] The Flemish reflection group *In de Warande* suggests drawing from a portion of this model to imagine a status that would place Brussels under the supervision of two independent States, Flanders and Wallonia (*condominium* technique), until the time Brussels becomes the capital of the European: See *Manifeste pour une Flandre indépendante dans l'Europe unie* (Manifesto for an independent Flances in the united Europe), Brussels, Reflection Group "In de Warande", 2006, p. 201-212.

European district. This idea was launched a few years ago:[47] turning Brussels into a European district, directly administered by the European Union. As long as the people of Brussels agree, this solution is perfectly feasible from the legal point of view. But it must also be realistic, and this is grounds for misgivings by the most informed commentators on both sides of the language border. The sovereignty – penal, fiscal or other – that the EU would be asked to exercise over Brussels would require nothing less than the EU itself becoming a full-fledged State. It is hard to imagine the 27 Members States ready to turn the EU's legal status on its head...[48]

As we can see, the scenarios are multiple and this brief summary in no way depletes the legal imagination. Come what may, however, the particularity of these hypotheses lies in the fact that they cannot come about without Brussels's voluntary adhesion. This required consent means that some scenarios are certainly more improbable than others, all the more so that, a priori, we see no motives that would incite a group of citizens to renounce their endowed right to self-determination by placing themselves under the dictate of others.

Conclusions

By taking seriously the hypothesis of a confederal revolution, necessary for this exercise, and by restricting ourselves to strictly legal reasoning, we were defending two ideas, without masking the many uncertainties that surrounded them.

The first: during the procedure to dissolve the Belgian State - a prerequisite for a new confederal form - Brussels and its citizens would conquer the right to decide their fate for themselves. In this area, our analysis, minus the bitter tone, converges with the observation made by Marc Platel in his recent Communautaire geschiedenis van België: "Even in the framework of a confederal model, elaborating a more or less acceptable solution for the capital of Flanders is not necessarily all that easy. And even less so since, even on the Flemish side, there was consent to an evolution whereby the people of Brussels themselves have been given the practically exclusive right decide on their own political organisation."[49]

The second: in law, all options are open regarding the use the people of Brussels would wish to make of their new sovereignty: from independence to consented annexation, with a middle grounds of a hypothetical confederation in a framework to be negotiated with its partner States. With one reservation it is important to highlight: the rights of the Dutch-speaking minority of Brussels obviously must be guaranteed in complete conformity with the international standards in this area.

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[47] In particular by L. TOBBACK in November 1997 .

[48] See Chr. FRANCK et F. DELMARTINO, "Brussels, l'Union européenne et le 'scénario européen'" (Brussels, the European Union and the "European scenario"), in *Brussels et son statut (Brussels and its status)*, E. Witte, A. Alen, H. Dumont, R. Ergec (dir.), Brussels, Larcier, 1999, p. 721-742.

[49] M. PLATEL, *Communautaire geschiedenis van België van 1830 tot vandaag*, Leuven, Davidsfonds, 2004.

Despite the firmness of these two ideas, we should like to again stress the modest, prudent and resolutely conditional tone we wished to adopt regarding all the developments that led us to formulate them. This paper is simply a first attempt in a reflection that well deserves further deepening, continuation, and especially discussion. The primary worth we hope to see acknowledged would be that of contributing to the indispensable debate on the questions it raises, a debate in which the urgent participation is needed not only by constitutional and international law experts, political scientists and economists,[50] but also by the organisations and citizens of Belgian civil society.

For the technical aspects, it is mainly a dialogue with specialists in international law that we would like to encourage, since we are aware of the limits of the constitutional law discipline in matters concerning the dismembering of a State and a possible reforming of its constituent units under a confederal structure which, by definition, is covered by international law.

[50] On this subject we should cite the quality of the journalism done on these questions with the collaboration of several Flemish scholars by *De Standaard* in its edition of 1-2 September 2007.