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Mutual Dissolution of States: A New Form of Self-Determination?

Marko Cirjak

I. INTRODUCTION

- [1] The long walk of human history toward individual autonomy certainly accelerated during the 20th century, and all indications suggest individual choice over our person and life choices will continue to expand. Overlooked by the public is the fundamental relationship between the individual and his or her state. International organizations and the discipline of international law have promoted the individual freedoms enjoyed today, but the ultimate irony is the steadfast holding to the notion that stability and the state are of the utmost importance. Individuals need stability to thrive, but when a people are determined to chart a different course than their current state, there could be a more accepted method of mitigating disturbances to stability and peace while promoting choice. This author believes there is “mutual dissolution,” which shall be defined as an agreement between subunits of a state representing the interests of their respective constituents, in the absence of violent armed conflict to dissolve the state in question, thereby creating two or more new independent states in place of where a single state used to exist.
- [2] This article will show that there are “three factors,” which increases the likelihood that new states may form through mutual dissolution. The first factor is the potential new state in question exists as a subunit within a federal state/federation. Second, the federal subunit in question is a homeland/territory of a distinct people. Third, the state in question has a provision in its constitution permitting secession, and/or there is the practice of democratic governance (representative democracy) in the state in question. In order to explain the applicability of these three factors, the dissolutions of Czechoslovakia and Serbia & Montenegro will illustrate how they have helped to facilitate dissolution. Then the three factors will be applied to the potential scenario of Belgium dissolving into its ethnic/linguistic subunits of Flanders and Wallonia.
- [3] Ultimately, the goal of this article is to explain that there are certain factors, which increase the likelihood of state dissolution while showing that it can occur peacefully. Let’s begin by briefly examining the evolution of the concepts of statehood and personhood to provide proper context for this discussion.

II. INTERNATIONAL LEGAL CONCEPTS RELATED TO STATEHOOD

1. Evolution of the Nation-State

- [4] Even the movement toward the nation-state is rooted in the rejection of the unabridged authority of kings and queens or lords over their feudal servants. So we see that the origin of the modern state dates back to the Peace of Westphalia in the seventeenth century when the theory of the “nation-state” was created. According to this theory, each nationality group should receive its own state. The concept of nationality is inherently tied to individuals expressing their unique traits, which they wish to share or find commonality with others. This theory was applied, rather indiscriminately and with some poor outcomes, in Europe after the end of World War I in 1918 through the doctrine of self-determination of peoples to those nations which were subject to the vanquished German and Austro-Hungarian empires and the fallen Russian empire. As such, the last remnant of the “old way” was removed from Europe. The new way of totalitarian governments replaced the old way and was found to not be particularly better, just as the Baltic states found when they were absorbed by the Soviet Union in 1941.¹
- [5] Exhausted by war and economically destabilized, the imperial powers of Europe turned inward to focus on re-building their countries from the rubble left by World War II. This was an opportunity both for the peoples of the colonies that were abandoned in Africa and Asia² and the doctrine of self-determination. With the administration of these colonies unfeasible there was no systematic handing over of power, and the world has seen the tragic consequences of war, famine and genocide resulting from the forced existence of these cobbled together states and the ambitious actions of power hungry despots. Deliberation and compromise might have created different outcomes for the peoples of these regions who often had their lives impacted by regional wars spanning from the second half of the twentieth century to the present day. Adding another layer to the growing acceptance of self-determination was its codification in the United Nations Charter and elaborated upon in General Assembly conventions, declarations, and resolutions, which gave colonial peoples as well as those peoples subject to racist or oppressive regimes a choice through a vote on their future political status.³ As such, there were now approved documents putting forth the idea that an

¹ See generally John Morris Roberts, *Twentieth Century: The History of the World, 1901 to 2000* (London: Allen Lane, 1999) at 416.

² See generally Clive Ponting, *The Twentieth Century: A World History* (New York: Henry Holt and Company, 1998) at 112, 201-207.

³ *Charter of the United Nations*, 26 June 1945, Can TS 1945 No 7, arts 2, 55 73, 75-76; *United Nations Millennium Declaration*, GA Res 55/2, UNGAOR, 55th Sess, Supp No 49, UN DOC A/RES/55/2 (2000) 4, arts 4, 25 (rededication to the right to self-determination and resolving to strengthen the capacity of all countries to implement democracy); *Declaration on the Inadmissibility of Intervention in the Internal Affairs of States*, GA Res 36/103, UNGAOR, 36th Sess, Supp No 51, UN DOC A/RES/36/103 (1981) 78 (self-determination applies to colonial peoples and those under foreign occupation and racist regimes); *Declaration on Principles of International Law, Friendly Relations and Co-Operation Among States in Accordance with the Charter of the United Nations*, GA Res 2625(XXV), UNGAOR, 25th Sess, Supp No 28 UN Doc A/8028 (1970) 121, Principle 5 (declaring all peoples have the right to freely determine their political status); *Declaration on the Granting of Independence to Colonial Countries and Peoples*, GA Res 1514(XV), UNGAOR, 15th Sess, Supp No 16, UN Doc A/4684 (1960) 66, Preamble, art 2 (declaring all peoples have the right to self-determination thus may determine their political status); *Progressive Development of Trust Territories*, GA Res 226(III), UNGAOR, 3rd Sess, Supp No 13, UN Doc A/PV.160 (1948) 89, Preamble, art 1 (recalling the Trusteeship system is aimed at the progressive development towards self-government or independence; and recommending that measures be taken to improve and promote the political, economic, social and educational advancements); see also Deborah Z Cass, “Re-Thinking Self-Determination: A Critical Analysis of Current International Law Theories” (1992) 18 *Syracuse J Int’l L & Com* 21 at 35 (self-determination is “the process of allowing a group to determine their political future”).

individual would have the ability, collectively with others to choose their political status. It is well established that only a people is entitled to self-determination. The following subsection will briefly explain this concept.

2. What Constitutes a People?

- [6] Presently there is no precise definition of what constitutes a people, but as previously explained, the concept of a people is encompassed within the principle of self-determination. Despite the lack of a precise definition, a people has been described as a group of persons larger than a mere association of individuals who consciously identify themselves as a people, have some means of expressing their common characteristics and identity, and have a legitimate interest that is primarily political.⁴ There is wide acceptance that a people can be described by some or all of the following characteristics/factors: (a) common historical tradition; (b) racial or ethnic identity; (c) cultural homogeneity; (d) linguistic unity; (e) religious or ideological affinity; (f) a connection to a piece of territory; and (g) a common economic life.⁵ With this concept in mind, the following subsection will address statehood. Specifically, it will explain the requirements for achieving statehood.

3. Acquiring Statehood

- [7] In international law, states are the principle actors, and to become a state an entity has to possess the four criteria laid down in article 1 of the *Montevideo Convention*, which are as follows: (a) a permanent population; (b) a defined territory; (c) a government; and (d) the capacity to enter into relations with other states.⁶ Related to the defined territory requirement of the *Montevideo Convention* is the location and extent of state borders/boundaries. In determining the placement of borders, the doctrine of *uti possidetis juris* makes the administrative boundaries that a state existed under its international borders upon acquiring independence.⁷ Now with these concepts in mind, the following subsection will address mutual dissolution of statehood.

III. DISSOLUTION OF STATEHOOD

1. Defining Dissolution

⁴ UNESCO, *International Meeting of Expert on Further Study of the Concept of the Rights of Peoples: Final Report and Recommendations*, UNESCO DOC SHS-89/CONF.602/7 (1990), online: UNESCO <<http://unesdoc.unesco.org>> at 7-8 [UNESCO Report].

⁵ Derege Demissie, "Self-Determination Including Secession vs The Territorial Integrity of Nation-States: A Prima Facie Case for Secession" (1996) 20 Suffolk Transnat'l L Rev 165 at 188-89; Valerie Epps, "The New Dynamics of Self-Determination" (1997) 3 ILSA J Int'l & Comp L 433 at 439-40; Hurst Hannum, "Rethinking Self-Determination" (1993) 34 Va J Int'l L 1 at 36.

⁶ *The Montevideo Convention on the Rights and Duties of States*, 26 December 1933, 165 LNTS 20 (entered into force 26 December 1934), art 1 [Montevideo Convention].

⁷ *Frontier Dispute (Burkina Faso v Republic of Mali)*, Judgment, [1986] ICJ Rep 554 at 566 (*uti possidetis* upgrades former colonial administrative boundaries to international frontiers upon achieving independence); *Conference on Yugoslavia Arbitration Commission: Opinions on Questions Arising From the Dissolution of Yugoslavia* (11 January 1992; 4 July 1992), 31:6 ILM 1488 at 1497-98 ("the right to self-determination must not involve changes to existing frontiers at the time of independence (*uti possidetis juris*)").

- [8] In order to understand how most individuals interpret the word dissolution, this discussion will begin with how it is defined in Webster's Dictionary. Dissolution is defined as the act or process of separating into component parts.⁸ Also, a related word is "disintegrate," which is defined as to break into constituent elements, parts or small particles.⁹
- [9] The concept of mutual dissolution succinctly summarizes this discussion of dissolution when applied to states. It occurs where in the absence of armed conflict, the subunits making up a state agree to dissolve the state they are currently part of, which thus creates two or more independent states in place of where a single state used to be. This concept can be understood when referring to Webster's definition of the word dissolution because the subunits composing a state would be its component parts. If all component parts achieve statehood then the former country that they used to be a part of would cease to exist. Next the specific factors, which may influence mutual dissolution, shall be addressed.

2. Three Factors which may Facilitate Mutual Dissolution

- [10] This subsection will now address the three factors likely to facilitate mutual dissolution. These factors are listed as follows: (1) the potential new state in question exists as a subunit within a federal state/federation; (2) the federal subunit in question is a homeland/territory of a distinct people; and (3) the federal state in question has a provision in its constitution permitting secession, and/or there is a strong practice of democratic governance (representative democracy). The following discussion of these factors will show that mutual dissolution is consistent with the modern application of self-determination.

i. The existence of a federal state/federation

- [11] A federal state/federation is a state composed of two or more constituent subunits, all of which together make up the state in question. Generally, a federation can be identified by many characteristics, several of which are described as follows. First, the federal subunits have a certain degree of political autonomy over local affairs.¹⁰ Such autonomy often includes the power over taxation, education and the enforcement of local laws. Second, there is a division of governing power between the federal subunits and the central government.¹¹ Third, the governing power is equally decentralized among all subunits composing the federation, and no subunit has political authority

⁸*Merriam-Webster, sub verbo* "dissolution"; see also Bryan Schwartz & Susan Waywood, "A Model Declaration on the Right of Secession" (1998) 11 NY Int'l Rev 1 at 14 (dissolution occurs "when participants in a state freely decide to go their separate and sovereign ways."); Michael P Scharf, "Musical Chairs: The Dissolution of State and Membership in the United Nations" (1995) 28 Cornell Int'l LJ 29 at 41 (describing dissolution as the extinction of a state, in no new states represents its continuity).

⁹*Merriam-Webster, sub verbo* "disintegrate".

¹⁰James Crawford, *Creation of States in International Law*, 2nd ed (Oxford: Clarendon Press, 2008) at 483; David Frohnmayer, "A New Look at Federalism: The Theory and Implications of 'Duel Sovereignty'" (1982) 12 Envtl L 903 at 912.

¹¹Crawford, *supra* note 10; See also Robert A. Schapiro, "Federalism as Intersystemic Governance: Legitimacy in a Post-Westphalian World" (2007) 57 Emory LJ 115 at 121; Siegfried Wiessner, "Federalism an Architecture for Freedom" (1993) 1 New Eur L Rev 129 at 132-33.

that is superior to that of other subunits.¹² Fourth, the political autonomy of a federation's subunits and the division of governing power between the former and the central government is enshrined in a national constitution.¹³ With all this in mind, the existence of a federal subunit as a homeland/territory of a distinct people shall be discussed next.

ii. The federal subunit is a homeland/territory of a distinct people

- [12] The second factor of mutual dissolution is that a subunit within a federation is also a homeland/territory of a distinct people. Such subunits allow a sub-national group a means to express their distinct identity within the established legal order of the greater federal state.¹⁴ The existence of this type of subunit provides a means of conflict prevention or reconciliation between groups with different identities by allowing sub-national groups discretion over self-governance.¹⁵ Also relevant to dissolution is that such subunits provide the basis for the fulfillment of the *Montevideo Convention* requirements for achieving statehood. Next, the importance of both a constitutional provision permitting secession and the existence of democratic governance to dissolution shall be explained.

iii. Constitutional provision allowing secession and/or the presence of democratic governance

- [13] The final factor of mutual dissolution contains two non-mutually exclusive sub-factors. First, the constitution of a state has a provision permitting its respective subunits to secede, which could potentially trigger dissolution of an entire country. For example, article 39(1) of the *Constitution of the Federal Democratic Republic of Ethiopia* expressly allows secession.¹⁶ The second sub-factor is the state in question is a democracy, which leaves open the potential for secession or dissolution by the popular will of the people concerned. Generally, democracy is understood as consent by a state's citizenry over who will govern them, evidenced in open, multiparty and secret ballot elections. In other words, democracy involves free and fair elections.
- [14] Beyond the general understanding of democracy, this concept contains many other important features, which may include: (1) an election system which determines the majority party in power also respects the rights of the minority; (2) that all persons have the right to be elected to public office; and (3) the existence of a constitution, which entrenches the right to vote, as well as that of other rights associated with

¹² Edward McWhinney, *Self-Determination of Peoples and Plural-Ethnic States in Contemporary International Law: Failed States, Nation-building and the Alternative, Federal Option* (Leiden, The Netherlands: Koninklijke Brill, 2007) at 71; Yoram Dinstein, "Autonomy Regimes and International Law" (2011) 56 *Vill L Rev* 437 at 437.

¹³ See generally Paul Chen, "Federalism and Rights: A Neglected Relationship" (1999) 40 *S Tex L Rev* 845 at 850; Ronald L Watts, "Forward: States, Provinces, Lander, and Cantons: International Variety Among Subnational Constitutions" (2000) 31 *Rutgers L J* 941 at 949.

¹⁴ *Ibid* at 941-942.

¹⁵ See C Lloyd Brown-John, "Self-Determination, Autonomy and State Secession in Federal Constitutional and International Law" (1999) 40 *S Tex L Rev* 567 at 569-70; Jonathan Marshfield, "Models of Subnational Constitutionalism" (2011) 115 *Penn St L Rev* 1151 at 1163.

¹⁶ *Constitution of the Federal Democratic Republic of Ethiopia*, Proclamation No.1/1995, art 39(1).

democracy.¹⁷ To put this discussion in context, examples of dissolved states containing these three factors shall now be addressed.

3. Examples of States created by “Mutual Dissolution”

[15] The following examples will illustrate how the three factors previously explained influence dissolution. The examples will be addressed in historical chronological order and include both Czechoslovakia and Serbia & Montenegro. It is not necessary that every factor of mutual dissolution be applicable. Some factors may be more influential than others.

i. Czechoslovakia

[16] Czechoslovakia was a communist state for much of the twentieth century,¹⁸ and with this historical context in mind, the applicability of the three factors of mutual dissolution shall now be addressed. The first factor – “the existence of a federal state/federation,” is present. According to the 1968 *Constitutional Law of the Czechoslovak Federation* (“1968 Constitution”), the country was a federation.¹⁹ The second factor – “the federal subunit is a homeland/territory of a distinct people” is present. This is expressed in article 1(1) of the *1968 Constitution*, which states that the country is a federal state of two coequal fraternal nations – the Czechs and Slovaks.²⁰

[17] It is important to note that Czechoslovakia was controlled like a unitary state by the communist party, which inhibited any actual assertion of federalism by retaining authority over all governmental functions both in the two republics and at the federal level.²¹ The loss of political power by the communists essentially made the *1968 Constitution* a de facto legal authority. This occurred after protests in mid-November 1989, which resulted in the elections of non-Communists to power.²²

[18] The third factor, specifically that of the first sub-factor – “a constitutional provision allowing secession” is not present. This is because the *1968 Constitution* contains no such provision. One could argue the right to secession is implied because the *1968*

¹⁷ *International Covenant on Civil and Political Rights*, 19 December 1966, 999 UNTS 171 (entered into force 23 March 1976), art. 25; World Conference on Human Rights, *Vienna Declaration and Programme of Action*, UN Doc A/CONF.157/23 (1993), art 8; Charles E Ehrlich, “Democratic Alternatives to Ethnic Conflict: Consociationalism and Neo-Separatism” (2000) 26 *Brook J Int'l L* 447 at 448; Thomas M Franck, “The Emerging Right to Democratic Governance” (1992) 86 *Am J Int'l L* 46 at 47-48.

¹⁸ Roberts, *supra* note 1 at 265, 292, 294; Otto Ulc, “Czechoslovakia’s Velvet Divorce” (1996) 30 *Eastern Eur Q* 331 at 332.

¹⁹ Viktor Knapp, “Socialist Federation: A Legal Means to the Solution of the Nationality Problem: A Comparative Study” (1984) 82 *Mich L Rev* 1213 at 1217; Lloyd Cutler & Herman Schwartz, “Constitutional Reform in Czechoslovakia: E Duobus Unum?” (1991) 58 *U Chi L Rev* 511 at 519 (explaining that a bicameral legislature was created with membership in one house based on the population of each republic and in the other house each republic was allocated seventy-five seats).

²⁰ See Knapp, *supra* note 19 at 1220.

²¹ Katarina Mathernova, “Federalism that Failed: Reflections on the Disintegration of Czechoslovakia” (1993) 1 *New Eur L Rev* 477 at 481-92; Holly A Osterland, “National Self-Determination and Secession: The Slovak Model” (1993) 25 *Case W Res J Int'l L* 655 at 692 (explaining that the Czechoslovak communist party was not federalized but was unified and retained authority over all government functions both in the two republics and at the federal level); *C.f.* Claudia Saladin, “Self-Determination, Minority Rights, and Constitutional Accommodation: The Example of the Czech and Slovak Federal Republic” (1991) 13 *Mich J Int'l L* 172 at 208 (the 1968 Constitution created parity between the two nationalities in the Constitutional Court which had to be comprised of an equal number of Czechs and Slovaks).

²² Cutler & Schwartz, *supra* note 19 at 521; Saladin, *supra* note 21 at 211.

Constitution states that Czechoslovakia was formed voluntarily by both the Czech and Slovak nations as well as on the right of each nation to self-determination.²³ Although if secession was in fact permitted, one would logically conclude that such a right would conspicuously be stated in a constitutional provision.

- [19] The second sub-factor of the third factor – “the presence of democratic governance,” is present. The practice of democracy and free multiparty elections started in 1989 in Czechoslovakia and developed over three years prior to dissolution.²⁴ Dissolution was achieved when the democratically elected legislatures of both subunits voted to dissolve Czechoslovakia, creating two new states on January 1, 1993.²⁵ Because the country dissolved upon the actions of each republic’s democratically elected representatives, the presence of the second sub-factor is clearly established. Thus, the dissolution of Czechoslovakia fits this article’s definition of mutual dissolution because the country dissolved by agreement and peacefully without violence.

ii. Serbia and Montenegro

- [20] This next example will address the dissolution of Serbia and Montenegro. This country came into existence when the Federal Republic of Yugoslavia was reformed on 4 February 2003.²⁶ The applicability of the three factors of mutual dissolution shall now be explained. The first factor—the existence of a federal state/federation—is present. This is clearly evidenced in article 2 of the *Constitutional Charter of the State Union of Serbia and Montenegro* (“*Constitution of Serbia and Montenegro*”), which states the country is based on the equality of the two member states of Serbia and Montenegro.²⁷ Additionally, article 5 explains that the territory of this country comprises both subunits.²⁸ The second factor of mutual dissolution—the federal subunit is a homeland/territory of a distinct people—is present. This is clearly seen when referring to articles 2 and 5 of the *Constitution of Serbia and Montenegro*.²⁹
- [21] Lastly, both sub-factors of the third factor are present. Regarding the first sub-factor, article 60 of the *Constitution of Serbia and Montenegro* permits any of the two subunits to secede, provided this decision is made by referendum in the member state seeking secession after a period of three years elapses.³⁰ The minimum required

²³ Salvatore Massa, “Secession by Mutual Assent: A comparative Analysis of the Dissolution of Czechoslovakia and the Separatist Movement in Canada” (1995) 14 *Wis Int’l LJ* 183 at 186.

²⁴ Cutler & Schwartz, *supra* note 19 at 521; Saladin, *supra* note 21; Ulc, *supra* note 18 at 342 (Vaclav Klaus formed a center right government in the Czech part of the country after the 1992 elections, and the Slovak electorate voted for a government in their republic which was in favor of gaining independence).

²⁵ Crawford, *supra* note 10 at 402; Donald A Hempson, “Becoming ‘European’: The Diverging Paths of the Czech and Slovak Republics” (2009) 2:11 *Origins* 2 at 4 (non-communist governments in both subunits disagreed over the direction of the future of the Czechoslovak state, with the Slovak government pushing for greater autonomy, which the Czechs were disinterested in addressing); Ulc, *supra* note 18 at 342-44 (after unsuccessful talks over the future of Czechoslovakia failed, the governments of both republics agreed to dissolution).

²⁶ US, Congressional Research Service, *Serbia and Montenegro: Background and Pending Dissolution* (RS21568) (2006) at 1 [CRS].

²⁷ *Constitutional Charter of the State Union of Serbia and Montenegro*, 4 February 2003, art 2 [*Constitution of Serbia & Montenegro*].

²⁸ *Ibid*, art 5.

²⁹ *Ibid*, arts 2, 5; see also Tim Judah, “Divorcing Serbia: The Western Balkans in 2006” (2006) 30:2 *Fletcher F World Aff* 213 at 218 (Serbia & Montenegro was a loose federation with few powers remaining in the central government).

³⁰ *Ibid*, art 60.

threshold for any such referendum to pass was 55%.³¹ When the referendum on Montenegrin independence took place on 21 May 2006, the result was a vote of 55.5% in favor of independence.³² The second sub-factor is present because the success and respect for the results of the referendum strongly shows democratic practice because each individual affected was able to express their choice over their future political status.

- [22] Thus, the dissolution of Serbia and Montenegro fits this article's definition of mutual dissolution. Dissolution was achieved as a result of an agreement between the leaderships of both subunits over how either subunit could acquire independence, and it occurred in the absence of armed conflict. The next section will address the country of Belgium and the possibility of it too dissolving.

IV. CASE STUDY – BELGIUM

1. Background Information

- [23] Belgium is a country with a population of over ten million.³³ It is predominately Catholic, and consists of three different ethno-linguistic groups, the two largest being the Flemish (Dutch-speakers) and the Walloons (French-speakers), and the third is a small German-speaking population.³⁴ In 1830, the country came into existence and became a constitutional monarchy in 1831.³⁵ The following subsection will explain the applicability of the three factors of mutual dissolution to Belgium.

2. Presence of the “Three Factors” of Mutual Dissolution

- [24] The first factor of mutual dissolution—the existence of a federal state/federation—is present. Article 1 of the *Belgian Constitution* states that the country is a federation and is comprised of both “Communities” and “Regions.”³⁶ Article 2 explains that there are three communities, which are the Flemish, French, and German language-speaking communities.³⁷ Since powers allocated to the language communities are not territorial in scope, they need not be discussed further. Article 3 states that the country consists of three regions, which are Flanders, Wallonia and the Brussels Region.³⁸ It should be noted that the German language community largely resides within Wallonia.³⁹ The existence of a federal state can be seen in how the regional governments are structured. Each of the three regional bodies has its own parliament and the laws they pass apply regionally.⁴⁰ The second factor of mutual dissolution—

³¹ CRS, *supra* note 26 at 3.

³² *Ibid.*

³³ Central Intelligence Agency, The World Factbook, <https://www.cia.gov/library/publications/the-world-factbook/geos/be.html> (last visited May 9, 2015).

³⁴ *Ibid.*

³⁵ The Belgian Monarchy, <http://www.monarchie.be/history> (last visited May 9, 2015).

³⁶ *The Belgian Constitution*, 17 February 1994, art 1 [*Belgian Constitution*].

³⁷ *Ibid.*, art 2.

³⁸ *Ibid.*, art 3.

³⁹ *Ibid.*, art 139.

⁴⁰ *Ibid.*, arts 115(2), 43(1).

the federal subunit is a homeland/territory of a distinct people—is present. As was previously explained, the two ethno-linguistic subunits of Belgium are Dutch-speaking Flanders and French-speaking Wallonia.⁴¹

- [25] The first sub-factor of the third factor—a constitutional provision allowing secession—is not present in Belgium’s constitution. The second sub-factor of the third factor—the presence of democratic governance—is present. Historically, Belgium was founded as a constitutional monarchy.⁴² It has provisions in its constitution providing for legislative elections at both the national and regional levels.⁴³ Before addressing the issue of whether Belgium could end up dissolving, a brief historical overview of the friction existing between the Flemings and Walloons must be made.

3. Ethno-National Friction within Belgium

i. A brief historical overview

- [26] In order to understand the circumstances which may lead to the dissolution of Belgium, the history of friction between Belgium’s two main ethno-linguistic groups, the Flemings and Walloons, must be addressed. From the state’s inception the political elites of the country spoke the French language, which was also the language exclusively used in government and the courts.⁴⁴
- [27] In response to the dominance of the Francophone Walloons, the Flemish Movement formed in the nineteenth century and sought to make Belgium bilingual and bicultural.⁴⁵ The realization of substantial differences between the two groups became evident as the nineteenth century progressed into the twentieth.⁴⁶ The Flemish Movement eventually came to espouse the idea of Flemish nationhood and largely focused on Flemish cultural and linguistic issues.⁴⁷ Later it became associated with the Christian Democratic Party.⁴⁸ The Walloons were largely opposed to their goals.⁴⁹ Also during this period, there was social and economic discrimination against those who did not speak French.⁵⁰ For instance, in primary and secondary education, instruction was primarily in the French language, while university education was entirely conducted in French.⁵¹ By the mid-1930s, legislation was passed creating two monolingual regions (Flanders and Wallonia) in which the language used in governmental, educational, and judicial matters was regionally based, while only Brussels was officially bilingual.⁵²

⁴¹ *Ibid*, arts 1, 3.

⁴² Belgium State Department, *supra* note 33.

⁴³ *Belgian Constitution*, *supra* note 36, arts 61, 67 (1), 116(1-2).

⁴⁴ Daniel Béland & André Lecours, *Nationalism and Social Policy: The Politics of Territorial Solidarity* (New York: Oxford University Press, 2008) at 147 [Béland & Lecours, *Social Policy*].

⁴⁵ *Ibid* at 147-48.

⁴⁶ *Ibid* at 147.

⁴⁷ *Ibid*.

⁴⁸ *Ibid*.

⁴⁹ *Ibid* at 149.

⁵⁰ Robert H Mnookin, “Ethnic Conflicts: Flemings & Walloons, Palestinians & Israelis” (2007) 136:1 *Daedalus* 103 at 107.

⁵¹ *Ibid*.

⁵² *Ibid* at 107-8.

- [28] Furthermore, for more than a century after Belgium was formed, Wallonia was wealthier than its counterpart, which due to its coal reserves allowed it to be one of the first parts of Europe to industrialize.⁵³ Flanders, on the other hand, remained largely agricultural with occurrences of crop failure leading to both famine and unemployment.⁵⁴
- [29] Beginning in the 1950s, Flanders was economically catching up with Wallonia, and at some point between 1965 and 1970, it surpassed the latter.⁵⁵ Disagreement between the political leadership of these two groups over the internal structure of Belgium began in 1970.⁵⁶ Flemish leaders desired a dualist system where the regional governments would represent the two main language communities, while Walloon leaders favored a federation consisting of three subunits, which would include these two regions as well as Brussels.⁵⁷ As was previously explained, the latter proposal came into fruition.⁵⁸

ii. Recent events

- [30] After the 10 June 2007 national elections, both Flemish and Walloon political parties became deadlocked in their attempt to form a government, with the former desiring further decentralization of the federation while the latter opposed such action.⁵⁹ Another issue of contention was the resentment felt in Flanders, currently the strongest subunit economically, about providing further economic subsidies to Wallonia, which had an unemployment rate that was double to that of the former.⁶⁰ As a result of this political deadlock, it took more than nine months for a coalition government to form.⁶¹ The next election occurred on 13 June 2010.⁶² This time around it took 18 months for these parties to form a government.⁶³ Like in 2007, both political parties across the linguistic divide were unwilling to compromise.⁶⁴ Also, the goals of both parties remained more or less the same as in 2007, with the Flemish parties desiring further decentralization of the country, and some even outright independence, while the Walloon parties wanted to maintain the status quo.⁶⁵ The

⁵³ *Ibid* at 107.

⁵⁴ *Ibid*.

⁵⁵ Daniel Béland & André Lecours, "Federalism, Nationalism, and Social Policy Decentralization in Canada and Belgium" (2007) 17:4 Reg'l & Fed Studies 405 at 411.

⁵⁶ *Ibid* at 409.

⁵⁷ *Ibid*.

⁵⁸ *Belgian Constitution*, *supra* note 36, art 3; *see also* Donald L Horowitz, "The Many Uses of Federalism" (2007) 55 Drake L Rev 953 at 957 (2007) ("Belgium's federalism was designed to loosen the bonds between Flanders and Wallonia").

⁵⁹ "Belgians angered by political deadlock march to promote national unity", *The New York Times* (18 November 2007), online: The New York Times <<http://www.nytimes.com/2007/11/18/world/europe/18iht-belgium.4.8380552.html>> ["Belgians Political"].

⁶⁰ Elaine Sciolino, "Calls for a Breakup Grow Ever Louder in Belgium", *The New York Times* (21 September 2007), online: The New York Times <<http://www.nytimes.com/2007/09/21/world/europe/21belgium.html>>.

⁶¹ Leo Cendrowicz, "Could Election Spell the End of Belgium?", *Time* (16 June 2010), online: Time <<http://content.time.com/time/world/article/0,8599,1996509,00.html>> [Cendrowicz, "End of Belgium"].

⁶² *Ibid*.

⁶³ Stephen Castle, "18 Months After Vote, Belgium Has a Government", *The New York Times* (1 December 2011), online: The New York Times <<http://www.nytimes.com/2011/12/02/world/europe/belgium-forms-government-with-elio-di-rupe-as-premier.html>>.

⁶⁴ *See generally* Jonas Claes & Valerie Rosoux, "Belgium, from Model to Case Study for Conflict Resolution" (1 February 2011), online: United States Institute of Peace <<http://www.usip.org/publications/belgium-model-case-study-conflict-resolution>>.

⁶⁵ *Ibid*.

Nieuw-Vlaamse Alliantie (“N-VA”), a nationalist party which seeks Flemish independence, won the largest number of seats representing Dutch language speakers, while the Francophone Socialist Party also received an increase in support.⁶⁶ The latter preferred a stronger central government.⁶⁷ The most recent national elections of May 2014 resulted in the N-VA becoming part of the ruling coalition government.⁶⁸ The following sub-section will explain that the Flemings and Walloons each respectively constitute a people.

4. Do the Flemings and Walloons Each Constitute a People?

- [31] As was previously explained, the right to self-determination and independence belongs to a people.⁶⁹ Generally, a people can be described as being a collection of individuals with common characteristics,⁷⁰ which may include language, religion, cultural homogeneity, connection to a piece of territory, a shared history and a common economic life.⁷¹
- [32] Both the Flemings and Walloons can be understood to individually constitute two separate peoples for several reasons. First, for much of Belgium’s history the Walloons were both politically and economically the dominant ethno-linguistic group.⁷² Second, both groups largely identify themselves along linguistic lines, which is the primary factor of group identity in Belgium.⁷³ Third, although members of both groups identify as Catholic, the Flemings embrace it more as part of their identity.⁷⁴ This is evidenced in the political parties representing each group, with the Christian Democrats prior to the emergence of the N-VA largely representing Flemish interests, while the Social Democrats largely represent Walloon interests.⁷⁵ Fourth, both groups largely reside in the federal subunit representing their individual language community.⁷⁶ Lastly, both groups are socially and economically separate, which is evidenced by workplace and residential segregation, with very few individuals commuting across regional borders for employment.⁷⁷ Thus, it can affirmatively be concluded that both the Flemings and Walloons are indeed distinct peoples.

5. Application of the *Montevideo Convention* Requirements

⁶⁶ Cendrowicz, “End of Belgium”, *supra* note 61.

⁶⁷ Leo Cendrowicz, “No Love Lost: Is Belgium About to Break in Two?”, *Time* (30 June 2010), online: [Time <http://content.time.com/time/world/article/0,8599,2000517,00.html>](http://content.time.com/time/world/article/0,8599,2000517,00.html).

⁶⁸ Belgium’s ‘kamikaze coalition’ to be sworn in 138 days after elections”, *The Guardian* (10 October 2014), online: [The Guardian <http://www.theguardian.com/world/2014/oct/10/belgium-coalition-government-charles-michel-flemish-separtist-n-va>](http://www.theguardian.com/world/2014/oct/10/belgium-coalition-government-charles-michel-flemish-separtist-n-va).

⁶⁹ Michael van Walt van Praag “The Implementation of the Right to Self-Determination as a Contribution to Conflict Prevention”, (paper delivered at the International Conference of Experts, Barcelona, 21-27 November 1998) at 13-15, online: <http://www.unpo.org/downloads/THE%20IMPLEMENTATION%20OF%20THE%20RIGHT%20TO%20SELF.pdf> >.

⁷⁰ UNESCO Report, *supra* note 4.

⁷¹ Demissie, *supra* note 5; Epps, *supra* note 5 at 339-40; Hannum, *supra* note 5.

⁷² Béland & Lecours, *Social Policy*, *supra* note 44 at 147-48; Mnookin, *supra* note 50 at 107-08.

⁷³ *Ibid.*

⁷⁴ Neal A Carter, “Complexity as a Shock Absorber: The Belgian Social Cube”, (2002) 8 *ILSA J Int’l & Comp L* at 963, 982.

⁷⁵ Béland & Lecours *Social Policy*, *supra* note 44; Cendrowicz, “End of Belgium”, *supra* note 61.

⁷⁶ Michael Keating, “Federalism and the Balance of Power in European States”, (2007) at 20, online: [Sigma <http://www.sigmaweb.org/publications/37890628.pdf>](http://www.sigmaweb.org/publications/37890628.pdf).

⁷⁷ Robert Mnookin & Alain Verbeke, “Persistent Nonviolent Conflict with No Reconciliation: The Flemish and Walloons in Belgium”, (2009) 72:2 *Law & Contemp Probs* at 151, 184.

- [33] Both Flanders and Wallonia would meet the qualifications for statehood if Belgium ends up dissolving. This potential scenario presents a question over the future status of Brussels, which will be addressed in the following section.
- [34] According to the *Montevideo Convention* an entity achieves statehood if it has a permanent population, defined territory, government and the capacity to enter into relations with other states.⁷⁸ Both Belgian subunits meet these qualifications. First, both subunits each respectively have a permanent population, which is based on the country's linguistic division.⁷⁹ Second, both subunits are defined territories with identifiable borders.⁸⁰ Third, they each have their own individual governments with the power to enact laws, which are regionally applicable.⁸¹ Fourth, both Flanders and Wallonia would have the capacity to enter into relations with other states due to the fact that both subunits have functioning governments and at the national level the political parties representing both ethno-linguistic groups⁸² have a long history of governing Belgium together, despite recent events. Thus, if the country dissolves, both Flanders and Wallonia would qualify for statehood.
- [35] This section has thus established that most of the factors of mutual dissolution are present in Belgium. Due to recent events, these factors may play a role in the potential dissolution of this country. This article shall now conclude by addressing the potential scenario of Belgium dissolving into its constituent subunits, how it could occur, and the possible consequences that may result.

V. CONCLUSION

- [36] At this point the one question that is likely to come to mind is whether or not Belgium will dissolve and cease to exist as an international actor. The presence of the three factors of “mutual dissolution” suggests that such a result may occur. It is evident that governing power over local affairs has been steadily devolving from the central government to the regions. This devolutionary trend of governing authority appears to make the dissolution of Belgium more likely as time goes by.
- [37] Another question is whether or not Belgium should dissolve into its constituent subunits of Flanders and Wallonia. The answer to that question depends on the desire of the individuals that will be most affected by the dissolution of the country, which are its citizens. Pursuant to the second sub-factor of the third factor of mutual dissolution, the free choice of a people over who will govern them and under what laws they will be governed by is the essence of democracy. As such, dissolution can be achieved by means of a referendum on independence in either subunit. In reality any such referendum would likely occur in Flanders because its political leadership has

⁷⁸ *Montevideo Convention*, *supra* note 6.

⁷⁹ *Belgian Constitution*, *supra* note 36, arts 1-2, 139.

⁸⁰ *Ibid*, art 3.

⁸¹ *Ibid*, arts 115(2), 134.

⁸² *Ibid*, art 43(1).

successfully pushed for increased political autonomy. The practice of democracy would require those in the opposition to acquiesce to the potential dissolution of Belgium due to the fact that Flanders and Wallonia are the country's two main subunits. If such a referendum in Flanders succeeds, the government of Wallonia would be acquiescing to the dissolution of the country.

- [38] Dissolution by means of secession can be facilitated in several ways. The Belgian Federal Parliament could approve a referendum on secession by passing a legislative act. The Parliament could, pursuant to article 195 of the *Belgian Constitution*, vote for and approve an amendment permitting a federal subunit to secede.⁸³ In either case, so as to ensure that a majority of Belgian citizens clearly desire independence for their respective subunit, a minimum threshold requirement could be enacted like in the Montenegrin referendum.⁸⁴ Implementing a threshold requirement would show whether or not a clear majority of a subunit's population was committed to preserving the country. Also, putting secession "on the table" as an option would gauge public support for keeping Belgium united as a country. Further support for a referendum can be seen in the recent referendum on Scottish independence, which has ignited enthusiasm in secessionist movements in Belgium and elsewhere. Thus, a referendum on secession would help to affirmatively see if there is enough political support for the preservation of Belgium.
- [39] Another way Belgium could dissolve is if its Federal Parliament follows the example of Czechoslovakia by taking a voting on whether or not to dissolve the country.⁸⁵ Such an action would be in conformity with the democratic process because it would be done through the elected representatives of the Belgian people. A referendum on secession would be preferable because it would give the people concerned a direct say over their future political status. Thus, whether or not Belgium should dissolve can only be answered by its citizens.
- [40] Whichever method is used to justify and implement dissolution or secession, such a method must be consistent with the "social contract" present in modern democratic societies, which respects the results of any election or referendum. This is based on the idea that in a democracy, the decisions of the people at large or their elected representatives are to be respected and implemented. For instance, acceptance of the results of the Montenegrin independence referendum is an example of this. Another example is the failed Scottish referendum on independence, the results of which were accepted by the Scottish people as is evidenced by the absence of unrest, violence and armed conflict in the wake of the referendum's results.
- [41] The potential dissolution of Belgium places the future status of the Brussels region in question. If the country dissolves into its constituent subunits, which new country will it be in, Flanders or Wallonia? Since Belgium is a federation consisting of three

⁸³ *Ibid*, art 195.

⁸⁴ CRS, *supra* note 26 at 5.

⁸⁵ Crawford, *supra* note 10 at 402; Ulc, *supra* note 18 at 342-44.

subunits, the future status of Brussels will likely be a contested issue because it is a Francophone city totally encompassed/surrounded by Flanders.⁸⁶ More than likely, the status of Brussels will be decided by its population through a referendum because allowing the other subunits to decide its fate is not consistent with democratic practice.

- [42] A referendum on the status of Brussels would likely include three possible options, which are joining either the new states of Flanders or Wallonia, or become an independent state. Given its French-speaking majority, the most probable outcome of such a referendum would be that Brussels would join the Walloon state. The fact that Brussels would be detached from Wallonia would not be an issue of concern because there are many countries that have territories which are not connected with the main body of the state. For example, Azerbaijan, the United States, and the United Kingdom all have territories detached from the main body of their respective states.
- [43] The final question that can be asked is what does the discussion of “mutual dissolution” contribute to the field of international law? To bring this article full circle, it began by explaining how the increasing importance of personal choice along with the assertion of group identity often conflicts with the notion of stability of the state. This conflict is currently playing out in the Middle East and Ukraine, which continues to destabilize the states affected. Thus, this discussion of “mutual dissolution” offers an alternative assessment of state creation through peaceful means. By allowing the internal actors of a state and its citizens to have a choice on deciding their future status, it is less likely armed conflict will occur because the views of all interested parties can be addressed.

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⁸⁶ *Belgian Constitution*, *supra* note 36, art 3; Sciolino, *supra* note 60.