

6 Belgium

YVES LEJEUNE

Since 1970 the Kingdom of Belgium has comprised three communities: the French community, encompassing the French-speaking people of Wallonia and Brussels (3.9 million people); the Flemish community, including the Belgian people from Flanders and Brussels who speak Dutch (5.9 million people); and the small German-speaking community, which includes the approximately 66,400 German-speaking Belgians living in the eastern cantons. The Belgian state is also divided into two large regions: the Walloon region, with an area of 16,844 square kilometres, including the area of the German-speaking community (854 square kilometres); and the Flemish region (13,512 square kilometres). All these collectivities are in principle endowed with exclusive powers. There is, furthermore, the region of Brussels-Capital, with nineteen communes (162 square kilometres), and a particular status.

The overlapping of communities and regions, especially in the south of the country, distinguishes Belgium from the classical federations. Belgium also presents some other characteristics unusual in states generally recognized as federal. First, the constituent entities of the Kingdom do not have constitutional autonomy: their organization and their administration are fixed by the Belgian Constitution and by the Acts on institutional reforms of August 1980, December 1983, August 1988, and January 1989. Second, the compartmentalization of the respective powers of the central government, of the communities, and of the regions is more important than in most states where several legislatures co-exist. Also, the communities and regions are only very weakly empowered to participate in the elaboration of national legislation and in the revision of the constitution. Finally, communities and regions are still dependent on the central government, especially in financial matters.

The autonomist aspirations of the component entities of Belgium do not essentially differ from those of their counterparts in truly federal states, nor does the resistance of the centre to such aspirations. This conflict is particularly noticeable in the field of external policy.

THE CONSTITUTIONAL AND INSTITUTIONAL SETTING

The Belgian Constitution, the Special Act on Institutional Reforms of 8 August 1980, as amended by the Special Act of 8 August 1988, and the Act of 31 December 1983 on Institutional Reforms regarding the German-speaking community, and the Special Act on Brussels-Capital Institutions of 12 January 1989, have established five community and regional parliamentary assemblies: a Flemish Council, a Council of the French Community, a Council of the German-speaking Community, a Regional Walloon Council, and a Council of the Brussels-Capital Region. These legislatures, except for the German-speaking Community Council and the Brussels Council, are composed of directly elected members of the national parliament, whose representation is based on their linguistic group and their constituency. The first three have exclusive powers in the fields of international cultural co-operation and international co-operation pertaining to so-called 'person-related matters', such as the delivery of medical care outside hospitals, health education, family policy, and youth welfare. They have been given the power to assent to any treaty to be concluded by Belgium in these matters.¹ The Council of the French Community and the Flemish Council have been the first to make use of this procedure by giving their assent to six bilateral cultural agreements signed before the constitutional revision of 1980.² They have also approved several multilateral treaties, the subjects of which fall only partly in the communities' jurisdiction. The Flemish Council also approved the Dutch-Belgian treaty of 9 September 1980, establishing the Dutch Linguistic Union.

Unlike the assemblies mentioned above, the Brussels Region Council, the Walloon Regional Council, and the Flemish Council, in so far as the latter exercises its regional powers, do not dispose of any explicit powers in the field of international co-operation. This does not preclude their using legislative acts³ applicable in their respective territorial areas to settle external aspects of the matters attributed to their competences. They are also responsible for the

fields of external trade, trade promotion, and market research for foreign investors.⁴

Each Council elects an executive body that elaborates and coordinates the policy of its community or region. There are, consequently, a Flemish Executive, an Executive of the French Community, an Executive of the German-speaking Community, a Walloon Regional Executive, and a Brussels Executive. Before the amendment of Article 59 *bis* of the Belgian Constitution in July 1988, these governmental bodies were not given the right to make treaties concerning community or regional matters. By virtue of Article 68 of the Constitution, the King, that is the central executive authority, remained alone entitled to 'make' treaties in Belgium. Further, Article 81 of the Special Act of 8 August 1980 confirms that 'the King remains the sole interlocutor at the international level in compliance with Article 68'. This article, however, weakens this monopoly over treaty-making power through an obligation that the Executives be associated in international negotiations on matters affecting Councils' powers.

These constitutional and legal provisions seemed to be clear. However, they initiated a major controversy concerning both the division of powers in the matter of concluding treaties and in regard to the form that the participation of Executives in the negotiation of international agreements should take. In a note of May 1983 to the president of each Executive, the Minister of External Relations, L. Tindemans, stated the position of the Belgian government about the conclusion of treaties.⁵ He reminded them of the fact that no rule of Belgian law explicitly conferred to the Community Executives the right to conclude treaties. He also affirmed, less pertinently, that the rules of international law recognize the exclusive competence of the King and the Minister of External Relations in that regard, in part to assure state cohesiveness and to allow the Belgian state to fulfil its obligations to other states. This exclusive competence, according to him, has to be diffused through the participation of Community Executives in the negotiation of treaties pertaining to cultural, 'person-related', or educational matters, in a manner remaining to be specified; however, he continued, the full power needed for signature can only be wielded by the King under the responsibility of the Minister of External Relations. The participation of Regional Executives in international negotiations pertaining to subjects of regional competence follows

the same rules. The government note states that these limitations are valid only for the conclusion of treaties; they cannot prevent the communities—as well as the regions—from developing international activities as public legal entities. The note also alludes to the multiple bonds already existing between communities as well as regions and foreign public legal entities, even states. The note places these bonds outside the international legal order.

The Flemish, Walloon, and French Community Executives opposed this view in June 1983. In reply to the government, they formulated a common note demanding exclusive treaty-making powers for the Community Executives in the fields of education, culture, and 'person-related' matters.⁶ The chief argument put forward was that, in these matters, the amendment of Article 59 *bis* of the Constitution in July 1980 would have implicitly modified Article 68, thus granting the communities the power to conclude treaties. The note asserts that the reference to royal privilege contained in Article 81 of the Special Act would only apply to regional matters, the Regional Executives being the only executives concerned here.

Another argument put forward in the note is that the King could not conclude treaties in cultural, educational, and 'person-related' matters without ministerial counter-signature. But national ministers could not assume this responsibility before the national legislature, because they would be deprived of any competence in these fields. Since the members of Community Executives could neither cover the prerogatives of the King nor be called to account for them before the national legislature, it should be inferred that the responsibility for making treaties should be *de facto* divided between the state, its communities, and its regions in the same way as domestic matters.⁷

The note of June 1983 also asserts that participation by Regional Executives in international negotiations is legally compulsory. Article 81 of the Special Act provides for an active and direct involvement of the Executives in the negotiations, by having some Regional Ministers or officials participate on the Belgian delegation.

In a statement made before the Senate on 28 March 1984, the Minister of External Relations appeared to approve of the thesis put forward by the Executives. He added that it was advisable to find a pragmatic solution since Article 68 of the Constitution had not been amended; either the foreign state concludes a treaty with

Belgium 'in due form', or it concludes an agreement with the communities which does not bind the Belgian state.⁸ In spite of the opinion of some people, this surprising declaration does not constitute an 'acceptance by the central authority of the *jus tractati* of the communities'.⁹ As a matter of fact, Foreign Minister L. Tindemans concurred with the argument of the Executives only in so far as he recognized their right to make 'agreements', the legal nature of which is not specified but which can in no case bind Belgium. Moreover, he has declared on several occasions that these conventions do not literally constitute treaties.¹⁰ On 25 September 1984 he again presented the two theses in a circular letter, no. 94, addressed to Belgian diplomats abroad, strongly maintaining the former position of the Belgian government.

The Belgian Ministry of External Relations further published a notice in the *Moniteur belge* (the Official Gazette of Belgium) on 7 October 1986 that removed 'any uncertainty... that such agreements do not have the nature of international treaties and that they cannot consequently bind the Belgian State, since only the King is entitled to make treaties'. Most authors agree that the institutional reforms undertaken by Belgium in the 1970s have not divided the treaty-making power among the central government, the communities, and the regions.¹¹ Article 59 *bis* of the Constitution empowered the Belgian legislature to grant to the Community Councils the right to approve treaties dealing with community matters, but it did not directly award any international prerogatives to the Executives. Nor does the Special Act contain any disposition granting the Executives the power to make treaties: in Article 78 it even specifies that the Executives do not have powers other than those expressly granted by the Constitution and the constitutionally enacted laws, decrees, and ordinances.

An important development occurred in July 1988. Article 59 *bis* of the Constitution was amended so as to give the Communities the treaty-making power. This new competency cannot be exerted yet, until a Special Act determines the methods of concluding these treaties.

In Belgium then, as in most federal states, the central government alone is entitled to make treaties in the matters that, domestically, belong to the exclusive competence of the constituent units of the state. As a result, the Minister of External Relations (or, alternatively, another member of the Belgian government) legitimately

assumes the responsibility of the King's prerogatives in international matters; he is responsible for these acts before the Belgian Parliament, which is solely competent to hold the government accountable for the conduct of international relations.

The agreements with sovereign states concluded first by the French and later by the Flemish community have the same legal status as those concluded with foreign public collectivities such as regions or federated states. In our opinion, these are public contracts with a binding character based on the laws governing each party's capacity to make contracts; the applicable law being either the *lex contractus*, or the general principles of law, or else the so-called 'international law of contracts'. Belgium remains a third party to the agreement, and its international responsibility will not, in principle, be bound in case of non-execution by the contracting community.¹² In any case, the acceptance of direct conventional relations will certainly not involve *ipso facto* a recognition by the co-contracting state that the communities possess either a limited treaty-making power or an international legal personality. No foreign government has ever qualified as 'treaties' the agreements concluded with either community; neither has the Belgian government shown any disposition to acknowledge this capacity to them.

Even though the central government and the communities have not succeeded in settling their disagreement in this field, the Community Executives have soft-pedalled their international pretensions since the legislative elections of October 1985.¹³

The format of the participation of the Regional Executives (in international negotiations of new bilateral agreements for economic, industrial, and technological co-operation, as well as in the meetings of joint commissions in charge of the application of such agreements) has been the subject of an agreement in principle between the Ministry of External Relations and the Executives. This political consensus has been formalized in the previously mentioned circular letter of 25 September 1984, and in a 'note about the participation of the Regions in foreign market activities', which got the agreement of all parties concerned and was communicated in December 1984 to the head secretaries of the regional ministers in charge of external relations. The participation of the regions is considered an all-important procedure,¹⁴ and its methods, from information and internal consultation preliminary to the participation in the negotiations, to the writing of instructions

meant for the negotiators, are to be determined by common consent.

As for the participation of Community Executives, the Ministry of External Relations agreed in 1983 that negotiations required to establish programmes of implementation arising out of bilateral cultural agreements would be carried on by two delegations, representing the respective communities, which would separately negotiate with third countries. The head of the Belgian diplomatic delegation or the representative of the department would merely register the resulting agreement.

Although Article 81 of the Special Act only deals with the negotiation of international *agreements*, the central government has never objected to consulting the Executives when preparing the documents considered in international meetings. The legal text does not exclude the participation of representatives of the communities and regions in the work of international conferences and organizations through membership in Belgian delegations. The Belgian Minister of External Relations has admitted as much on several occasions; he even proposed that 'the representative of the government might activate the Belgian delegation only on condition that the representatives of the three communities (or of the regions) agree to the matter'.¹⁵ This has happened, primarily in the cultural field, since the General Assembly of Unesco in Mexico in 1982.

Such participation of the communities and regions in international meetings, however, has not been the subject of an agreement in principle between the Ministry of External Relations and the Executives, except in the case of the committees and working groups of the Benelux Economic Union. The regions chiefly interested in the activities of Benelux regret that, according to the *modus vivendi* of 1985, the nomination of the Belgian delegates has to be discussed before each Benelux meeting. They would rather have their right to attend these meetings acknowledged once and for all with respect to all affairs pertaining to their jurisdiction.

Generally speaking, it can be said that the Ministry of External Relations is anxious both to protect its traditional powers and to provide pragmatic responses to the requests of communities and regions, while emphasizing the temporary nature of settlements that can neither bind it for the future nor bring about the final resolution of the matter.

The Belgian Constitution denies the communities and regions the

right to maintain their own diplomatic and consular relations, and reserves for the King the right of appointment in external relations, with some exceptions as established by law. No constitutional provision entitles these entities to enter into relations with the members of the international community.¹⁶ The right of legation that belongs to the Belgian state can consequently be exercised only by the central government. However, the subnational units of the state are not forbidden to open tourist offices or centres of cultural or economic promotion abroad. Furthermore, no provision of Belgian law seems to prohibit the Regional or Community Executives from nominating attachés as part of the staff of Belgian diplomatic missions, especially if these attachés were put under the authority of the head of mission.

FACTORS AND MOTIVES OF INTERNATIONAL ACTIVITIES

The two major communities have argued that they could not survive if withdrawn within themselves, and that they must assert their identity abroad. They have consequently promoted their presence in the world by advertising their political, social, and cultural identity. This aim cannot be dissociated from their will to assert themselves on the Belgian political scene.

The Walloon region has developed external-relations policies meant to ensure its economic recovery and its technological development through the promotion of exports and foreign investment. The Flemish community also gives priority to regional economic expansion and to scientific and technical development. Their Executives have developed different strategies, but they have similar emphasis in one respect: both make efforts to be represented internationally when questions belonging to their jurisdiction are discussed.

The Executive of the French Community first showed its dynamism in the field of conventional relations. It has concluded some agreements with foreign partners because of their language, their size, or their geographic proximity. It has recently shown a propensity to define better the extent and aims of its external relations policy in order to prevent over-extension and to be more attentive about the human-rights record of its partners.¹⁷ It has also established some permanent liaison offices abroad. The Flemish Executive makes greater use of existing diplomatic channels. It

developed intensive linguistic co-operation with the Netherlands and maintains good neighbour relations with adjacent countries. It emphasizes the promotion of export and of foreign investments in Flanders. Most of the time it merely supports the initiatives of powerful associations, such as the Flemish Economic Union, and the Flemish Aerospace Group.

The Executive of the German-speaking Community attempts to develop its relations with German-speaking countries. The present Walloon Regional Executive concentrates its export-promoting activities on Europe, the United States, Japan, Thailand, Latin America, and French-speaking Africa; it gives priority to small- and medium-sized enterprises and to enterprises involved in technological innovation.

The close contacts between the Walloon region and the French community 'facilitate an integrated approach to external relations, highlighting concerted action toward foreign parties and on dealing with economic aspects falling under community jurisdiction'.¹⁸ The strategy developed by the region essentially aims to create relations with foreign partners of similar institutional status that have positive economic and technological repercussions for Walloon enterprises.

The Brussels-Capital region's particular situation prevents it from developing a policy of external relations different from that of the Belgian government. At best, it promotes external commercial relations in close association with the private sector and the national administration.

ADMINISTRATIVE IMPLEMENTATION

French community activism had already commenced before 1980. A decree of 19 December 1979 created a public corporation, the *Commissariat général à la coopération internationale*, which, by a decree of 1 July 1982, became the *Commissariat général aux relations internationales de la Communauté française* (CGRI). The Flemish community created its own general commissariat for international cultural co-operation by a decree of 8 July 1980. It was transformed by the decree of 28 June 1985 into the *Commissariaat generaal voor de internationale samenwerking* (CGIS).

Before 1 October 1980¹⁹ the communities had neither an Executive nor an administration. Cultural relations with foreign countries were administered by several national government de-

partments. The decree of 19 December 1979 gave the French community the opportunity to dissociate the French-speaking administration for international cultural relations from the central administration, and to associate culturally representative groups to the new regional organism. In this manner the same decree granted to the community an administration in charge of organizing international co-operation to execute the attendant tasks. The Flemish community followed this model when setting up its Commissariat. Since then, each community has had an executive body and the national administrative departments that dealt with cultural or 'person-related' matters in the international relations field have been put under their exclusive authority. In this way the political and technical reasons that had worked in favour of the creation of commissariats ceased being relevant. The commissariats have, however, been maintained. The reason for this is not quite clear. The greater flexibility of action enjoyed by these autonomous public organisms in relation to the traditional administrations is usually put forward as a reason for this persistence.

The CGRI is solely in charge of the external relations of the French community. It is headed by a member of the Executive in charge of international relations.²⁰ The CGIS is under the authority of the President of the Flemish Executive.²¹ It has responsibility for devising and co-ordinating the external policy of Flanders, both in community and regional matters. Each department of the ministry of the Flemish community manages the international aspects of its own tasks.

In order to attract foreign investment, the Flemish Executive has established a specialized office, the Flanders Investment Opportunities Council (FIOC), whose secretariat is established in Brussels. The FIOC co-ordinates the activities of three investment agents working in the United States, and Japan. The European countries are the responsibility of the Brussels office.

In the Walloon Regional Executive there is a member in charge of the conduct of external relations.²² Some forty agents of the ministry are grouped into a *Direction générale des relations extérieures* (DGRE).

In the Brussels Executive the external relations are dealt with by the Minister of Finance of the Brussels region.²³ The Brussels ministerial department comprises an office of foreign investments and external business, with one sole agent.

The German-speaking community has a small administration. Its

director is in charge of all external relations, under the authority of the President of the Executive. However, the two other ministers manage external relations in the special fields of their competence.²⁴

There are a variety of forms of political and administrative co-operation between the Walloon Regional Executive and the Executive of the French Community. Working groups bring together members of the different cabinets and administrations in charge of external relations. These groups allow for information exchange and examine the various means of co-ordinating or harmonizing the projects of the community and of the region. Joint meetings of the Executives are held from time to time; these have already led to decisions on the installation of a 'common integrated structure' for both Executives in matters of external relations, in the form of 'common services',²⁵ bringing together in the same building agents of the CGRI and the DGRE. They have also resulted in the elaboration of a common policy of representation at the international level through the establishment abroad of common administrative units, as well as joint representation at some international meetings.

There is no general co-operation between the Walloon region and the German-speaking community, but the latter co-operates with the CGRI and the CGIS in the cultural field.²⁶

THE EXTERNAL RELATIONS OF THE COMMUNITIES AND REGIONS

In their external activities the two large communities wanted, first, to secure a permanent presence abroad by opening cultural centres in foreign capitals. In September 1979 the French community installed in Paris a Centre Wallonie-Bruxelles, previously known as the Centre de la Communauté française de Belgique à Paris. Two years later, the Flemish community established a cultural Centre of the Flemish Community in Amsterdam.

Since 1975 a Belgian Institute of Cultural Exchanges, 'Pro Musica', has existed in Osaka, Japan. This institute is under the administrative supervision of the CGIS and has been renamed 'Centre of the Flemish Community'. The Executive of the French Community established a Centre Wallonie-Bruxelles in Kinshasa in August 1985.

The legal status of these cultural centres is far from uniform. The building in which the Centre of the French Community in Paris is

located belongs to the Belgian state and is managed by a non-profit association established under Belgian law in June 1976.²⁷ The manager of the centre and his assistant are deemed to be Belgian diplomatic agents. The Flemish Cultural Centre in Amsterdam is an administration ruled by a decree of 30 June 1982 and is under the control of the CGIS. The Flemish Centre in Osaka is an 'établissement d'utilité publique' under Belgian law, officially acknowledged by the local Prefecture in 1975. The Centre Wallonie-Bruxelles in Kinshasa is managed by an agent appointed by the CGRI.

The regions have wanted to establish in certain countries a small permanent infrastructure, to be put at the disposal of their export-oriented enterprises. Since the establishment of a true network of regional offices abroad would have been much too expensive, the regions have left export promotion to private initiative or have made use of existing cultural offices. The Belgian Bio-Industries Association, created by five enterprises at the instigation of the Walloon Regional Executive, has a permanent attaché in Tokyo whose role is to establish contacts with possible business partners and to gather information likely to develop scientific relations between Wallonia and Japan. Since 1 October 1986 an investment officer has been attached to the Flemish Community Centre in Osaka; the establishment of a local secretariat for Flemish export industry is also being contemplated there.

At another level, the French community and the Walloon region have wanted to create permanent missions abroad entitled to engage full time in official representation. First came the establishment in 1982 of a 'Delegation Wallonia-Brussels in Quebec', in the form of an association established under private law. It is comprised of a permanent delegate for the community and a permanent delegate for the region. Then, in 1985, a General Delegation Wallonia-Brussels was established in Paris, headed by a general delegate of the French community for francophone multilateral matters under the direction of the CGRI. Since December 1985 there has also been a contractual delegate of the French community to the international organizations in Geneva, without office, however.

The communities and regions also wish to be able to establish a liaison officer in some principal diplomatic posts.²⁸ On 25 July 1988 the Minister of International Relations of the French community and the Walloon regional minister of External Relations

concluded an agreement on that subject with the Belgian Minister of External Relations. According to this understanding, the French community and, after the projected amendment of Article 68 of the Constitution, the Walloon region will appoint their representatives abroad and will announce their place of residence and the countries under their jurisdiction. These representatives, who will constitute part of the staff of the Belgian diplomatic missions in their capacity as 'attachés for the French Community and/or for the Walloon Region', will work under the authority of the ambassador of Belgium. They will, however, receive instructions only from the Executives. Their remuneration and the expenditures incurred by their mission will be borne by the community or the region. The Flemish community concluded a similar agreement with the Belgian Minister of External Relations on 18 December 1986.

In October 1986 the Executive of the French Community and the Walloon Regional Executive held a joint session to determine where their joint units connected with Belgian diplomatic missions and consular posts would be set up. The choice of Paris and Quebec was confirmed. Since then new establishments in Dakar, Algiers, Tunis, Rio de Janeiro, and Rome have been considered.

Finally, the regions would like to be directly represented in the Permanent Representation of Belgium to the EC. So far this has not been realized. Under the agreement of 25 July 1988 the French community has assigned one official to Belgium's Permanent Representation to the EC to provide a liaison with Walloon authorities.

Most of the cultural treaty obligations now maintained by the communities were established by the Belgian government before the movement towards federalization began. They were established through treaties, or 'cultural agreements', containing very broad commitments that are periodically fleshed out through working programmes established by permanent joint commissions.²⁹ Since 1983 the Belgian Foreign Office has agreed, as a temporary *modus vivendi*, that the negotiations necessary for the establishment of these programmes should be headed by two Belgian delegations, composed of agents of CGRI or CGIS, representing their respective communities, and separately negotiating with third countries. The head of the Belgian diplomatic mission or the representative of the department takes note of the undertakings made by each community.

Of the forty-six countries which have concluded cultural agreements with Belgium, some (e.g. Romania) have rejected the new process, proposed by the Belgian Ministry of External Relations, which takes into account the new division of responsibilities in Belgium. As a consequence there is an absence of cultural relations between these countries and Belgium.

Since 1985 the German-speaking community has taken part in the meetings of the joint commissions charged with the implementation of the cultural treaties concluded with the German-speaking countries and with the states adjacent to Belgium. As for the implementation of other cultural agreements, it co-operates with the CGRI and the CGIS: its officials attend the preliminary meetings of the French and Flemish delegations but do not negotiate a separate working programme.

The communities have developed their own networks of conventional relations by themselves concluding new agreements dealing with cultural and 'person-related' matters. The Executive of the French community, anxious to advance its claims to the exercise of real treaty-making powers, has been the most enterprising. On 27 April 1982 the Minister-President of the French community and the Mayor of Rome signed a 'cultural act' in the Eternal City in which they solemnly expressed their desire to co-operate and to foster reciprocal understanding. In Lille on 27 October 1984 a co-operation agreement was concluded with the French border region Nord-Pas de Calais. These agreements cannot, of course, be compared to treaties concluded between nations. They are, however, not much different from the conventional relations established under public law with other legally constituted political authorities such as the subnational governments of federated states.

Three agreements belong to a distinct second category, in that they all derive from an obvious preoccupation with francophone solidarity: the general agreement between the Executive of the French Community and the Government of Quebec, signed in Quebec on 3 November 1982, was followed by an agreement between the same authorities concerning the establishment of a Quebec/Wallonia-Brussels Youth Office, signed in Quebec on 31 May 1984. The co-operation agreement between the Government of Louisiana and the Executive of the French Community, signed in Brussels on 23 January 1984, has allowed for improvements in the

programmes for teaching French as a second language in Louisiana. Another co-operation agreement was reached in Brussels on 21 December 1988 between the 'République et Canton du Jura' and the French community.

Three conventions concluded with independent states attest to the French community's interest in French-speaking Africa: the Cultural Agreement of 7 February 1984, with the Government of Benin; the Convention of 17 February 1984, with the Ministry of the Plan of the Congo; and the Convention of 10 April 1985, with the Ministry of Public Health of Tunisia.³⁰ The French community has also continued a policy of developing bilateral relations with Latin-American countries which do not have a cultural agreement with Belgium. A convention concluded on 4 October 1984 with the Ministry of National Education of Colombia approves the contents of agreements passed with four Colombian institutes active in the fields of culture, education, and scientific research. The Ministries of Culture of Nicaragua and Cuba agreed to sign a 'convention' or an 'understanding' with the Executive of the French community on 4 October 1984 and 9 June 1985, respectively. All these agreements, signed as they were with sovereign states, have not been welcomed by the Ministry of External Relations. Hence, the ambassador of Colombia in Brussels, summoned by the Ministry, received a verbal note communicating the position of the Belgian government in the following terms: 'The Department thinks it advisable to remind that this agreement can in no case bind the Belgian State.'³¹

Comparable activities by Flanders have been less ambitious. On 24 September 1985 the Flemish Executive concluded an agreement concerning scientific and technological co-operation with Quebec. On 10 April 1985 it signed a protocol of co-operation with the Government of Senegal.

The German-speaking community, the most recent community to be granted legislative and governmental autonomy, has so far signed no arrangement with foreign states or territorial collectivities.

The new conventions concluded by the French and Flemish communities are very similar to the cultural co-operation treaties concluded by the Belgian government and are implemented by the two general commissariats for their respective communities. In most cases, they also establish permanent joint commissions in

charge of the organization of exchanges, not only in the traditional fields of training, education, and culture, but also in the health field, especially in the sector of preventive medicine, and in the field of welfare, particularly in the sectors of family policy and youth protection.

The agreement establishing the Quebec/Wallonia-Brussels Youth Office creates a 'permanent organization fostering closer ties between young people from Quebec and young Belgian francophones'. Unlike the Office Franco-Québécois for Youth, the Agency has not been legally incorporated and does not have managerial and administrative autonomy.

The Community Councils also maintain regular relations with a number of foreign parliaments. As early as 1979 the Council for the French Community created joint interparliamentary co-operation committees with the National Assembly of Quebec, and did the same with the legislature of the Swiss canton of Jura and with the National Assembly of Senegal, respectively in 1984 and 1987. The task of these committees is to exchange information about the organization of parliamentary work and to advise the authorities about any measures suited to developing a co-operation policy. An addition made to the agreement with the National Assembly of Quebec on 25 February 1985 is meant to diversify activities of the joint committee: it entitles it to establish biennial programmes of interparliamentary exchanges, and appoints parliamentary general secretaries and administrative secretaries to take charge of the management of these programmes. The Flemish Council and the Netherlands States-General have also established an interparliamentary commission in the framework of the Belgian-Dutch Treaty of Linguistic Union.

The Walloon regional authorities operate under the principle that, though the region does not have formal jurisdiction over international economic affairs, it can still maintain direct relations with other regions. Links abroad have consequently been created at that level.

Linguistic affinities and cultural similarities made Quebec the first partner of the Walloon region. In December 1980, at the end of the official visit by Quebec's Premier, René Lévesque, to the Walloon Regional Executive, headed by J. M. Dehousse, a common Quebec-Wallonia Declaration was issued creating a joint working group to organize economic co-operation between the two parties.

At a meeting in Quebec in September 1981, this group decided to establish the Quebec-Wallonia Committee. At its third meeting in Quebec in August 1984 the permanent Committee set up an Orientation Group to deal with economic co-operation projects between meetings and with the introduction of new technology or industrial projects. The efforts of Walloon and Quebec authorities have led to a substantial increase in commercial activities between the two regions. To extend these economic relations, the Walloon Regional Executive and the Government of Quebec strove to increase their co-operation on environmental and energy policies. Subsequent agreements on technology transfer and reciprocal access to data banks were also signed.

In November 1986 the Walloon region also concluded two co-operation agreements with the Chinese building industry and the Chinese province of Henan. In June 1986 an agreement was signed with the Centre for Industrial Development (established by the Third Lomé Convention) to foster technological aid to commercial farms in the African, Asian, and Pacific countries.

Finally, the Regional Council of Nord-Pas de Calais and the Walloon Regional Executive on 1 October 1985 adopted a common declaration to deal with the communication and employment problems related to the border character of the two regions. A permanent Wallonia-Nord-Pas de Calais Commission has been created to formalize their co-operation.

The Brussels-Capital region cannot be said to have developed much international activity. In 1986 Brussels signed an agreement with Washington, DC, to create economic and commercial links.

The Regional Executives and the Flemish Executive are also involved in the implementation of a number of bilateral agreements concluded by Belgium in economic and scientific matters. The subject of such agreements in part impinges on the regional powers. As a result, the relevant joint commissions include representatives of the regions as well as those of the national ministries concerned and delegates of professional federations. Regional delegates are selected by the regional ministers of external relations and their nomination announced to the national department concerned. In practically all cases, the Belgian delegation is presided over by a representative of the central government.

The communities and regions are represented in a number of

interregional and international forums. The Walloon region participated in the founding of the Assembly of European Regions (a private law corporation established under the Alsatian local Civil Code), which comprises a number of interregional organizations and 'regions'³² belonging to the EC member-countries and to the Council of Europe. The new association, the rules of which were adopted at Louvain-la-Neuve (Belgium) by the General Constitutive Assembly of 14 June 1985, has its seat in Strasbourg. Its purpose is to organize the interactions among these groups, as well as their interactions with European institutions. On 18 March 1986 the Flemish Executive decided to join the Assembly.

In addition, the Walloon region is a member of the European Centre of Regional Development, another local non-profit association under the Alsatian Civil Code, constituted on 19 January 1985 in Strasbourg, and having its headquarters there. It is also a member of the Association of European Border Regions (*Arbeitsgemeinschaft Europäischer Grenzregionen*), with headquarters in Bonn. Recently, the region joined another founder organization of the Assembly of European Regions, the Working Community of Regions of Industrial Tradition. Neither the French community, nor the German-speaking community, nor the Brussels-Capital region is a member of these associations that seek to create links of bilateral co-operation between foreign regions.

Communities and regions are not members of any international organization; they have never been asked to participate in their own right in any diplomatic conferences. However, whenever these meetings deal with matters falling partly or entirely under community or regional powers, the communities or regions are allowed to send representatives to the Belgian delegation, or even to represent Belgium themselves. The latter approach is taken when conferences and organizations discuss matters in principle exclusively within community jurisdiction. The Conference of the Ministers of Youth and Sports of French-speaking Countries, to which a member of the Executive of the French Community is a party, is one such organization. Others include the Agency of Cultural and Technical Co-operation of the French-speaking countries (in which the Executive of the French Community was unable to attain the status of 'participating government' accorded to Quebec and to New Brunswick³³) and the Dutch Linguistic Union, with its general secretariat in The Hague. The Belgian con-

tribution to these three organizations comes from the budgets of the participating communities.

Community ministers or the General Commissar of International Relations regularly attend the general conferences of Unesco and other conferences held by this organization, the interministerial conferences called by the Agency of Cultural and Technical Cooperation; and some conferences of the Ministers of the Council of Europe (those dealing with culture, sports, youth, family matters, mass media) and the Council of Ministers of Culture of the EC.³⁴ The same held true for the World Conference on Population, organized by the United Nations in Mexico in August 1984.³⁵

In all these circumstances, the 'Mexico Protocol' that had determined the working-process of the Belgian delegation to the General Assembly of Unesco in 1982 applies in spirit, if not in letter: Belgium is represented by the competent members of the Community Executives; should they disagree (and this has not so far occurred) the Belgian delegation abstains from voting. The views of the delegation are expressed by an official representing the national government, who is the delegation's spokesman. When a question raises 'political' issues, as happens even in international cultural relations, the matter is submitted to the representative of the central government.

On other matters the communities and regions are part of the Belgian delegation only if the agenda of the international meeting requires their presence. When representatives of communities or regions participate in delegations, it is only the representatives commissioned by the King who have the right to speak for Belgium *vis-à-vis* third parties. The representatives of communities or regions do not dispose of autonomous voting rights, but the head of the delegation acts only in full agreement with them.

Another approach was developed by the French community in connection with the First Conference of the Heads of State and Government of the Francophone Countries. The first summit, held in Paris from 17 to 19 February 1986, not only received a Belgian delegation headed by Prime Minister W. Martens, but also a delegation of the French community headed by Minister-President P. Monfils — just as there were both Canadian and Quebec delegations.

Even though their international activity at the highest ministerial level still creates difficulties, community and regional participation in the numerous working groups, technical committees, and con-

sultative organisms functioning in connection with intergovernmental organizations is smooth and extensive. The Executives of communities or regions³⁶ see to it that they are represented on various OECD and Benelux commissions, on numerous 'steering committees' of the Council of Europe, on the WHO regional committee for Europe, and on the regional policy and management committees of the EC Fund for regional development. Since December 1985 the delegate of the French community in Geneva assures its representation to the ILO.

Delegations of Community or Regional Executives, often led by ministers, occasionally go abroad. These delegations take the form of economic missions; protocol visits of a commercial, cultural, or touristic nature; travel to negotiate or sign an agreement or to participate in an international meeting; or even an official visit made at the invitation of foreign authorities. In all these circumstances the community and regional ministers, who possess diplomatic passports, can rely, in principle, on collaboration and logistic aid from the diplomatic and consular Belgian posts, but the expenses are to be paid by the visitors. It has, nevertheless, sometimes occurred that Belgian representatives abroad have shown some reluctance to receive community or regional officials travelling abroad on business or to make necessary arrangements in the host state.³⁷ The Belgian ambassador takes precedence in protocol in his jurisdiction over the regional or community ministers, since he represents the King.

As the result of a tacit agreement with the national government, the Belgian Ministry of External Relations is informed prior to a visit abroad of any member of an Executive. If necessary the Ministry advises the Executive regarding the political appropriateness of the planned visit. Although the community and regional authorities do not seem to have the right of maintaining direct relations with foreign diplomatic missions,³⁸ they frequently contact these missions. Occasions such as visits of protocol, official receptions, and galas provide such opportunities.

The official visits of foreign representatives to the Community or Regional Executives are permitted as long as invitations have been announced beforehand to the Ministry of External Relations. In this manner, in December 1980 the Premier of Quebec was a guest of the Executives, and similarly, in October 1984, the French Minister of Culture paid an official visit to the French and Flemish

communities of Belgium. The first meeting was the occasion of the signature of a 'common Quebec-Wallonia declaration'; the second resulted in the signature of a 'joint statement' by Ministers Jack Lang and Philippe Moureaux.

Occasionally there are difficulties in the relations between the communities or regions and the Belgian diplomatic or consular posts abroad. The decree of 1 July 1982 authorizes the CGRI of the French community to request the support of these posts and to correspond directly with them (Article 10, Paragraph 2). But the Ministry of External Relations requires that the diplomatic and consular posts correspond with them only. Foreign Minister Tindemans has subsequently agreed that telexes addressed to his department and, more generally, messages with contents pertaining to the communities and regions, be redirected to them without delay.

COLLABORATION AND CO-ORDINATION

As in all federal or quasi-federal states, the component units of Belgium co-operate with the central government in the management of Belgium's international relations. 'Concertation' (i.e. concerted action) is the most utilized method: communities and regions participate in the determination of the official Belgian position on a specific question; or, alternatively, co-ordinating mechanisms are instituted which facilitate general foreign-policy co-operation.

Association of the Regional and Community Executives in negotiations dealing with domestic matters under their jurisdiction is an all-important method of procedure. The presidents of the Executives concerned are entitled to complain about the non-observance of this formality to the 'Concertation Committee', empowered to settle the conflicts of interest between the state, the communities, and the regions. The negotiation or the conclusion of a treaty must then be held in abeyance, during 120 days at the longest, until the Committee establishes that the requirements have been formally fulfilled.³⁹

Association of the Executives in negotiation of international agreements assumes different forms. In addition to their participation in Belgian delegations to certain bilateral and multilateral negotiations — and even in the signing of international acts, though

such signings are extremely rare⁴⁰ — the Executives are also associated in the preparation of instructions to the diplomatic service, in the formulation of Belgian positions, and even in the ratification of undertakings made in the name of Belgium.

When the Ministry of External Relations prepares material for international meetings for the negotiation of treaties dealing with matters relating to the domestic powers of regions or communities, it organizes co-ordinating meetings in which representatives of the Executives are asked to participate.⁴¹ This procedure, regularly applied with respect to Flanders and the Walloon region, has recently been applied to the French community and the German-speaking community. The Executives also relay to the national government their opinions about matters regarding international institutions, or about drafts of international agreements in so far as these documents have been officially transmitted to them.

The Belgian Ministry of External Relations institutionalizes co-ordination on EC questions by organizing the meetings of 'Co-ordination Europe', which involves representatives of ministerial cabinets, higher officials of national ministries, and representatives of the communities and regions. Political and institutional aspects are highlighted in this context. The group also deals with the activities of 'European Political Co-operation', of the West European Union, of the Council of Europe, and of the Benelux.

The implementation of directives, regulations, decisions, and recommendations of the Council of Ministers of the EC or of the Commission of the EC is the responsibility of the Interministerial Economic Committee, headed by the Permanent Secretary of the Ministry for Economic Affairs.⁴² This Committee has created an EC subcommittee, and representatives of the communities or regions are invited to attend whenever the examination of a question concerning them appears on the Committee's agenda.

Since 1988 the communities and the regions are entitled to conclude agreements with one another or with the state to co-operate in certain fields.⁴³ This faculty could be used for the joint management of Belgium's international relations.

The Executives are legally entitled to work together with national administrative organisms in fields of international economic co-operation. Each Regional Executive is represented by two persons on the Board of Directors of the Belgian Office for Foreign Markets, a legal entity whose task is to promote all aspects of the commercial

relations of Belgium.⁴⁴ Some regional members attend the meetings of the committee, which prepares the agenda to be submitted to the Board of Directors. Each Regional Executive also has two representatives on the Commission of the Foreign Market Fund, responsible for vetting requests for loans or subsidies and for transmitting a justified opinion to the national minister competent in the matter.⁴⁵

There is also an Interministerial Commission for Scientific Policy under whose auspices the national minister and the presidents of the Walloon and Flemish Executives meet in order to discuss Belgian participation in the 'Eureka' programme. At the administrative level, there is a working team bringing together official representatives of the Ministry of External Relations and the Community and Regional Executives.

There are several other contexts in which the national government, the communities, and the regions try to solve the problems of general co-ordination arising from the international activities of the component units of Belgium. Note, for example, how several meetings of the Belgian Minister of Foreign Affairs and his community or regional counterparts in charge of external relations, institutionalized under the name 'Ministerial Co-ordinating Committee External Relations/Communities/Regions',⁴⁶ have led to the following results:

1. acceptance of the principle that quasi-regular meetings, at the ministerial level, between the Ministry of External Relations and the Executives, should take place;
2. agreement on the establishment of a committee of permanent representatives of those ministers who are members of the Co-ordinating Committee;
3. reorganization of joint commissions entrusted with the implementation of cultural agreements;
4. writing of circular letter, No. 94, meant to inform diplomatic and consular posts about the effect of constitutional reform on the powers and responsibilities of the Ministry of External Relations;
5. providing legal status to community representation in certain Belgian diplomatic missions;
6. giving community and regional officials access to the meetings

preparing the work of Belgian delegations to Unesco, ILO, WHO, and the Council of Europe, as well as to the other co-ordination meetings dealing with problems wholly or partly in community or regional jurisdiction;

7. discussion of the rules governing the relations between Executives and Belgian diplomatic and consular posts;
8. presence of Belgium at Summits of French-speaking countries under the name 'Belgique' and 'Belgique-Communauté française'.

The existence of the Co-ordinating Committee arises from pragmatic needs; it has no legal basis. Its usefulness is beyond doubt, even if its 'decisions' are not always made very efficiently. The committee of permanent representatives of those ministers who are members of the Co-ordinating Committee, mentioned above, does not appear to sit very often. On 12 December 1984 it composed a note about the participation of regions in international trade that got the agreement of regional authorities.⁴⁷

The Belgian Ministry of External Relations has created a section directed by an ambassador within the General Direction of Policy. This section is specially entrusted with maintaining good relations between the department and the Executives of communities and regions as well as their respective administrations.⁴⁸ An administrative 'concertation' group acts in this framework; it met regularly until autumn 1985.

In a certain way, communities and regions dispose of means suitable to instigate the central power, quasi-exclusive holder of the levers of foreign policy, to grant to their interests the consideration deserved. The Belgian government can, of course, legally establish new international relations without participation by the Executives, but the separation of international prerogatives from internal powers allows each order of government to frustrate the other, thus compelling them to work in concert.⁴⁹

The Belgian government can conclude treaties on all subjects, irrespective of the domestic distribution of powers. No constitutional or legal disposition compels it to refrain from negotiating with other states or with international organizations, even if the Executives refuse to participate in the preparation of instructions for the Belgian delegation. No rule compels the government to

obtain the assent of the Community Councils or the opinion of the Regional Executives before ratifying the treaty it has signed.

Nevertheless, it has become customary that the final consent which binds Belgium to a treaty—whether the subject affects matters under national jurisdiction or community powers, or both—is deemed obtained only after the assent of the national legislature or of the Community Councils concerned, to avoid the state's international liability should assent be refused. As a matter of fact, should assent not be given, the affected treaty would not be applicable in Belgian law or within the legal orders of the affected communities.⁵⁰

It was for this reason that the agreement instituting a European Foundation with cultural aims, signed in Brussels on 29 March 1982, was submitted for the assent not only of the national parliament but also of the three Community Councils. The Executives, which had not been associated with the negotiations, brought in enabling legislation only after having been assured by the Belgian Ministry of External Relations that the appointment of the two Belgian members of the Foundation Board would result only from a consensus between the national authorities and the communities. Foreign Minister Leo Tindemans agreed, in addition, that 'ratification would only take place after approval of the Community Councils'.⁵¹

The ratification of the Lomé III Convention before the Councils had all given their assent to its cultural provisions contradicts the outlined procedure in appearance only: it had been determined beforehand that the three Councils would not refuse to approve the Convention. Moreover, Belgium had been the last member-state of the EC to present its instrument of ratification, and it was no longer really possible to wait any longer, since the coming into effect of the Convention depended on ratification by all the member-states.

The extensive influence exerted by communities and regions on the conduct of Belgian external relations is also demonstrated in the implementation of international norms. If these norms are not self-executing, communities and regions asked to implement them in their areas of jurisdiction may refuse to do so by pointing out that they have not taken part in their establishment. Once again the national government would risk having its international obligations unfulfilled. It is sometimes argued that the national government has the power to ensure the full execution of international law, even if

this involved the national government and parliament taking action in fields where they have lost their domestic powers to the regions. Actual practice does not confirm this legally questionable proposition. The proper implementation of numerous European directives, in the field of environmental protection, for instance, depends in great measure on the goodwill of the regions.

Belgium has, unfortunately, acquired a somewhat tainted reputation in these matters, which has resulted in the unpleasant consequences of its being subject to infringement procedures undertaken by the Commission at the Court of Justice of the EC. On 2 February 1982 the Court found Belgium in default of the implementation of six directives.⁵² The Belgian government in its defence asserted that the incomplete implementation of the directives was due to legal uncertainty as to how the devolution of powers to the regions would apply to environmental matters. The Court stated that these circumstances did not justify the infringement, for a member-state is not allowed to plead that provisions, practices, or special circumstances of its internal legal system excuse failure to comply with its obligations under Community directives.

On 9 May 1986 the Belgian government invited the departments concerned as well as the regions to take the steps necessary for the implementation of European law within the time required and according to the prescribed procedures. The government decided that, every two months, the Concertation Committee would be informed of any problems associated with the execution of European law by the communities or regions. After due deliberation, the Executives decided that there could no longer be any question of holding up the enforcement of European law. This regional goodwill enabled Belgium to comply with its European responsibilities. Therefore Belgium will very probably take into more effective consideration the regional dimension when new European directives are drafted.

SETTLEMENT OF DISPUTES

There is in Belgian legislation no legal mechanism allowing national authorities unilaterally to implement Belgian international obligations that regions or communities refuse to implement. In the absence of such federal coercive power, the methods for peaceful

settlement of disputes between the two levels of government take on a crucial importance.

Meetings of the Concertation Committee, already mentioned above, offer the senior officials of the state, the communities, and the regions the opportunity to discuss political controversies separating them. Created by the Ordinary Act on Institutional Reforms (Article 31), it is composed 'in order to respect linguistic parity', of the Premier, of five members of the national government appointed by royal order in council, of the President and one Member of the Flemish Executive, of the President of the Executive of the French Community, of the President of the Walloon Regional Executive and of the President and one Member of the Brussels Executive. The President of the Executive of the German-speaking Community attends and has a vote whenever this community is affected by matters dealt with by the Committee.

Established to settle 'conflicts of interest', the Concertation Committee works to a *consensus*, which can mean essentially deciding on the measure recommended by the Premier without one dissentient voice. Questioned about appeals introduced by the Walloon Regional Executive against certain European legal measures whose implementation it considered detrimental to Wallonia, the Committee could not reach a consensus. In other circumstances it has been able to contribute to the political settlement of tensions arising between the national government and component units in the field of external relations. The Committee — and not the Co-ordinating Committee created by the Belgian Foreign Office — decided the participation of Regional Executives in the signing, on 12 September 1986, of the Benelux Convention on Transfrontier Co-operation between Territorial Collectivities or Authorities. Hereafter the Committee shall be able to set up 'inter-ministerial conferences', composed of members of the national government and of the Executives, with a view to promoting co-operation between the state and its subnational units.⁵³ It may, however, be noted that, though the Concertation Committee has a certain role to play, it too often gives way to a dialogue of the deaf, based on misunderstandings sometimes intentionally fostered. The future of the institution will depend on the development of a spirit of tolerance, collaboration, and solidarity between the diverse components of the Belgian state.⁵⁴

The Belgian Constitution (Article 107 *ter*, Paragraph 1) has

entrusted to the national legislature the organization of procedures tending to prevent jurisdictional conflicts between the national government, the communities, and the regions. The legislature refers to the advisory subdivision of the Council of State to determine the constitutionality of bills of the Government, of the Executives, or of private members; or of drafts of regulations. When the opinion concerns a draft legislative text, and the Council of State decides that the draft is *ultra vires*, it is directed to the Concertation Committee. The latter merely formulates amendment proposals which lack any suspensive effect; the failure of this process to generate a consensus does not prevent the adoption of the disputed provision.

The Council of State is always consulted on bills giving parliamentary assent to treaties, as well as on the legislative or statutory drafts meant to ensure their implementation. This advice is purely legal and, though often of outstanding value, does not have any compulsory character.

The Court of Arbitration, the Belgian state's highest jurisdictional instance, annuls Belgian laws and community or regional decrees and ordinances transgressing the 'rules established by the Constitution or in pursuance of the Constitution to determine the respective powers of the state, of the communities and of the regions',⁵⁵ or violating the constitutional provisions about equal footing, non-discrimination, and education.⁵⁶ Appeals to annul a law or decree by which a treaty receives assent are admissible only when presented within sixty days following the publication of the law or decree (Court of Arbitration Act, Article 3, Paragraph 2). In other cases, the period of appeal is six months. The Court also rules on preliminary questions of this nature submitted by the courts or by the jurisdictional subdivision of the Council of State (Court of Arbitration Act, Article 26). The Court is, consequently, in a position to settle conflicts of jurisdiction that arise between the national government, the communities and/or the regions on international matters. As for those conflicts of jurisdiction instigated by regulations, they can be resolved by the ordinary courts and the jurisdictional subdivision of the Council of State. The former can refuse to apply regulations vitiated by infringements of the division of powers; the latter cancels them upon application made by any person concerned within sixty days of their publication.

According to some writers, the Belgian government could bring

an action of annulment before the Court of Arbitration against a community or a region that through its legislation violated European law, on the grounds that by so doing the community or the region encroached upon the exclusive foreign-relations power of the central government. It would, after all, be 'meaningless to make the latter responsible within the European legal order if it cannot live up to that responsibility domestically'.⁵⁷ In our opinion this analysis is inaccurate. No rule assigning powers in the Belgian legal system gives the duty of fulfilling the state's international obligations to the national government exclusively. So far, no court has been called upon to settle a conflict of jurisdiction that opposed the national government to the communities or to the regions in the field of external relations.

APPRAISAL

The most remarkable characteristic of the international activities of communities and regions is undoubtedly their diversity and the diversity of actor strategies. The Flemish Executive appears to adopt a more pragmatic approach than the Executives of the southern part of the country. The latter become involved in rather more political undertakings, even if economic realism subsequently tends to take precedence over ideology. The Flemish Executive often limits itself to accompanying or backing up initiatives of its dynamic private sector; the Executive of the French Community and the Walloon Regional Executive give priority to 'institutional' relations with public partners.

The effectiveness of the policies developed by the Belgian sub-national units has never been as great as their ambitions. One may thus wonder whether the CGRI and CGIS constitute the most suitable instruments for managing the diversity of conventional relations that the communities wish to establish. These administrative organisms seek to establish relations of co-operation in 'person-related' matters or in economic matters, but they have never had sufficiently qualified staff for their management and, in any case, the powers possessed by the communities in these matters are closely connected with national powers. Any decision to co-operate with the national government in these fields necessarily depends solely on the Executives. On the other hand, as far as the French community and the Walloon region are concerned,

maintaining distinct external relations detrimentally affects the international public image of French-speaking Belgium.

It must also be noted that no agreements concluded by the communities or regions contain provisions that are self-executing in Belgian law. It could not be otherwise, since such conventions are not law-making treaties. Should the Executives intend to conclude an agreement directly modifying community or regional legislation, the measures negotiated in this fashion can, in our opinion, be enforced in Belgian law only through passage of an incorporating decree transforming the contents of the agreement into a decree. It is in this way that Quebec has been able to ensure the enforcement of the agreement it had passed with France on mutual judicial aid in civil, commercial, and administrative matters.⁵⁸

If the coherence of Belgian foreign policy does not appear to have been destroyed by the multiplicity of governmental authorities anxious to assert their presence on the international scene, it is true that the initiatives and claims of these authorities have compelled the Belgian government to modify its usual approach to certain foreign partners to ensure that legal and political disputes over the international status of communities and regions are not exported.

The empirical solutions to the controversy concerning the treaty-making power of the communities are, unfortunately, dangerously ambiguous. The national authorities have agreed that the implementing programmes of the cultural agreements presently in force should henceforth be negotiated in a totally autonomous way for each community, without requiring harmonization or co-ordination between Flemish and French-speaking delegates. The fact that new cultural agreements have not been concluded by the national government since 1981 reinforces the impression of a 'silent' or 'creeping' communitarization of the international cultural relations of Belgium.

The Belgian Ministry of External Relations, which prefers to regard these developments as temporary, decided to temporize. However, it is not certain that time plays in favour of the theses defended by the central government. The apparent inertia of the latter has already led the communities to make agreements with sovereign states. Had the national government been more receptive to the concerns of each community, it would have been able systematically to involve them in the negotiation and internal execution of new treaties, thus keeping the international prerogative of

the King intact. The Executives, for their part, have thought they might reinforce their political position towards the central government by defending particularly audacious theses about the respective powers of communities and regions in the international arena. This, in our opinion, constitutes an error in judgement: the elaboration of coherent formulae ensuring the participation of communities in non-cultural aspects of Belgian foreign relations has been delayed for several years; the regions have also been induced to refrain from any transnational relations with sovereign states.

On the other hand, the success of the initiatives of the Regional Executives in the field of new technologies and of the canvassing for investors was sufficient to make the conclusion of new bilateral treaties in these matters unnecessary. On the whole, there has been a fragmentation of the policy of economic co-operation with foreign countries. As a result, this policy has been carried on at a level other than the international legal order. So-called 'person-related' matters partly escape this phenomenon, probably owing to their close connection with national powers.

It seems now that the state and its constituent units are aware of the necessity of jointly managing the external relations of matters whose domestic aspects are under community or regional jurisdiction. The Executives have understood that they need the very widely developed network of Belgian diplomatic and consular relations. They have understood that they better ensure the defence of their interests by collaborating with the national government than by opting for rivalry and confrontation. The Belgian Ministry of External Relations, for its part, has realized that the Executives do not mean to interact with foreign governments as competitors of the Belgian government. It has also understood that the onerous burden of co-ordinating the external policy of an officially federal state cannot be carried out as directly as the management of foreign affairs in a unitary state.

The domestic co-ordination of external policies is essential to the credibility of the state at the international level. However, it is obvious that this co-ordination must be the result of a minimal consensus among equal, autonomous, but interdependent partners. It is to be hoped that the spirit of collaboration will wax, and the harmonization of foreign policies will no longer be an empty promise in Belgium.

NOTES

1. Art. 16, §1, of the Special Act of 8 Aug. 1980, which is applicable to the German-speaking Community Council under Article 5 of the Act of 31 Dec. 1983, provides that 'the assent to any treaty or agreement relating to co-operation in the matters affected by Art. 59 *bis*, §2, 1° and 2°, and §2 *bis*, of the Constitution and by Art. 4 and 5 of this Act is given either by the French Community Council, or by the Flemish Council or by both of them if both are concerned'.
2. Cultural co-operation agreements between Belgium and People's Republic of China, Republic of Korea, GDR, Ireland, Finland, and Syria (see French community decree of 8 June 1982, *Moniteur belge* (MB) 15 Oct. 1982; Flemish decrees of 30 June 1982, MB 27 Nov. 1982, 11 Jan. 1983).
3. The Brussels Region Council passes ordinances of a quasi-legislative nature, while the other community or regional councils legislate by decrees which have the force of law.
4. Art. 6, §1, VI, 3°, of the Special Act of 8 Aug. 1980, as amended by the Special Act of 8 Aug. 1988.
5. Government's note with regard to communities' and regions' competence in the field of international relations, 6 May 1983 (House of Representatives, doc. 4-VIII [1983-1984], No. 3, 8th. Schedule, *Documents juridiques internationaux* (DJI), 2 (1983), 416-27.
6. 'The Competences of Communities and Regions in the Field of International Relations—Legal Setting', *DJI*, 3 (1984), 166-72 (in French).
7. This ingenious approach was defended for the first time in November 1982 by the principal private secretary of the Flemish Minister of Health's Policy. See J. Ceuleers and D. Vandermaelen, 'International Legal Personality and Treaty-making Power of the Communities in Cultural and "Person-related" Matters', *Rechtskundig Weekblad* (1982-3), 817-26 (in Dutch).
8. *Annales parlementaires* (*Ann. parl.*; parliamentary record), Senate, 28 Mar. 1984, p. 2038.
9. R. Ergéc, 'De quelques avatars des compétences internationales des communautés et des régions belges', *Revue belge de droit international* (RBDI), 18 (1984-5), 543.
10. See, e.g., *Ann. parl.*, Chamber of Representatives, 2 June 1983, pp. 2446, 2448.
11. See the authors quoted by Ergéc, 'De quelques avatars', p. 538 n. 40. See also F. Delpérée, 'Le Roi fait les traités', *évolution constitutionnelle en Belgique et relations internationales* (Hommage à Paul De Visscher; Paris, 1984), 64, and Y. Lejeune, 'Communauté française de Belgique et relations internationales: Aspects juridiques', *Cahiers du CACEF*, 81 (Nov. 1980), 19-20; 'Les communautés et les régions belges dans les relations internationales', *RBDI* 16 (1981-2), 55, 62; 'La Nature juridique de l'Accord de coopération entre le Québec et la Communauté française de Belgique', *Revue québécoise de droit international*, 1 (1984), 79-92, at 84-5.
12. See on this point Lejeune, 'La Nature juridique', *passim*.
13. During the legislature of 1981-5 the political composition of the Belgian government and that of the Executives were very different. This incontestably kept the controversy alive.
14. The Council of State has noted this feature in its advisory opinion of 31 May/6 June 1979 (*RBDI* 17 (1983), 541). See Y. Lejeune, 'Rapport belge au colloque sur les États fédéraux dans les relations internationales', *RBDI* 17 (1983), at 53.
15. *Ann. parl.*, Senate, 4 July 1984, p. 2762. The topic was the Belgian representation in the European Council on Cultural Affairs.

16. Such a legal permission is required. See Y. Lejeune, *Le Statut international des collectivités fédérées à la lumière de l'expérience suisse* (Paris, 1984), 261.
17. Compte rendu intégral [Record], French Community Council, 13 Jan. 1986, schedule, p. 10. See also the Minister-President's statement in French Community Council, doc. 4-III (1985-6), No. 2, pp. 8 ff., 24.
18. P. Suinen, 'La Communauté française de Belgique Wallonie-Bruxelles au carrefour de l'Europe', *Cahiers du CACEF*, 124-5 (1986), 14-17, at 14.
19. Date of the Special Act's coming into force.
20. For the present French Community Executive, see Executive Order (arrêté de l'Exécutif) of 17 May 1988, Art. 2 (MB 22 June 1988).
21. From Dec. 1985 to Feb. 1988 there was in the Flemish Executive a Community Minister of External Relations. See Executive Order of 11 Dec. 1985, Art. 10 (MB 14 Dec. 1985). For the present Flemish Executive, see Executive Order of 24 Oct. 1988, Art. 3 (MB 27 Oct. 1988).
22. Executive Order of 11 May 1988, Art. 6 (MB 29 July 1988).
23. For the present Brussels Executive, see Order of 12 July 1989, Art. 3 (MB 22 Aug. 1989).
24. For the present German-speaking Executive, see Executive Order of 3 Dec. 1986, Art. 2 (MB 28 Jan. 1987).
25. As provided for under Art. 77 of the Special Act of 8 Aug. 1980.
26. See the co-operation agreement, signed at Eupen on 21 June 1984 (MB 22 June and 20 July 1985), Art. 46-8.
27. Since 1 Jan. 1987 the CGRI has received the Centre's direct administration.
28. The Belgian Minister of External Relations previously entrusted diplomatic agents with the office of cultural attachés.
29. See P. Gautier, 'La Pratique belge relative aux accords bilatéraux de coopération au développement', *RBDI* 19 (1986), 235-72, at 243-4.
30. *DJI* 4 (1985), 342. It is the only agreement which the Minister-President did not sign on behalf of the French Community Executive.
31. This note is reproduced by Ergec, 'De quelques avatars', p. 555.
32. The term 'regions' is used to designate 'entities immediately situated under the central State's level, endowed with political representative character secured by the existence of a regional elected-council or, in absence of such a council, by an association or a body formed on regional level by collectivities of immediate lower rank'.
33. On this subject, see, e.g., Lejeune, *Le Statut international*, pp. 58 ff.
34. The Belgian Minister of External Relations, who had accepted the autonomous participation of members of Community Executives in informal meetings of the EC's Ministers of Culture, subsequently demanded for himself or another member of the national government the leadership of the Belgian delegation at official sessions of the European Council on Cultural Affairs (Mr Tindeman's statement, *Ann. parl.*, Senate, 4 July 1984, pp. 2762 ff.) The Executives dismissed this claim, and a compromise was reached in November 1984 'as a trial measure': Belgium's representation is henceforth entrusted to the Minister of External Relations of Belgium and to those of each Community Executive. The various members of the Belgian delegation begin to speak when matters within their respective provinces are discussed; the representative of the national government does not preside over the delegation.
35. At this juncture the legal bureau of the UN admitted that the Belgian delegation might include communities' representatives.
36. With the exception of the Brussels region.
37. See, e.g., A. Méan, 'Le Rocambolesque voyage du ministre Ducarme au Zaïre', *La Libre Belgique*, 20 June 1986.

38. See indeed the Vienna Convention of 18 April 1961 on Diplomatic Relations, Art. 41, §2.
39. Ordinary Act of 9 Aug. 1980 on Institutional Reforms, Art. 33, as amended by the Act of 16 June 1989. On the Concertation Committee see below.
40. Once only it occurred that the Belgian Premier invited the Minister-President of the Walloon Regional Executive to sign an international document. The matter was a joint declaration for a 'common centre of development' in the Athus-Longwy-Rodange frontier area, signed by the Belgian ambassador in Luxembourg and the Minister-President J. M. Dehousse on behalf of Belgium, on 19 July 1985. Moreover the members of the Walloon and Flemish Executives in charge of external relations, which had obtained the right to be 'associated in signing the Benelux Convention on transfrontier co-operation between territorial communities or authorities', solely attended the signing of this agreement on 12 Sept. 1986 by the Belgian Minister of External Relations.
41. Mr Tindemans' statements (Senate, *Questions and Answers*, No. 31 (1985-6), p. 1771; House, *ibid.* No. 12 (1985-6), p. 1100).
42. Order-in-Council of 14 Aug. 1947 amending the legal position of the Economic Interministerial Committee established by Order-in-Council of 26 Aug. 1938.
43. Special Act of 8 Aug. 1980, as amended by the Special Act of 8 Aug. 1988, Art. 92 *bis*.
44. Act of 16 July 1948, as amended *inter alia* by Order-in-Council No. 116 of 23 Dec. 1982.
45. Act of 24 March 1984, as amended *inter alia* by Order-in-Council No. 117 of 23 Dec. 1982.
46. Sittings took place on 11 Apr. 1984, 14 Nov. 1984, and 22 Jan. 1986.
47. Mr Tindemans' statement (Senate, *Questions and Answers*, No. 31 (1985-6), p. 1771).
48. See Mr Tindeman's statement (*Ann. Parl.*, Senate, 28 Mar. 1984, p. 2038; Senate, *Questions and Answers*, No. 31 (1985-6), p. 1771).
49. Like the legislative and executive powers, according to Montesquieu. See P. De Visscher, 'La Constitution belge et le droit international', *RBDI* 19 (1986), 5-58, at 57.
50. The assent of both Houses is intended to give the treaties legal effect in Belgian municipal law. So it is, likewise, with the assent by Community Councils.
51. Mr Tindemans' statement (House, *Questions and Answers*, No. 19 (1985-6), p. 1904).
52. Cases 68/81, 69/81, 70/81, 71/81, 72/81, 73/81, *European Court Reports*, 153 (1982), with findings of F. Capotorti.
53. Ordinary Act of 9 Aug. 1980, Art. 31 *bis* introduced by the Institutional Reforms Act of 16 June 1989.
54. See, on this subject, Y. Lejeune and D. Delahaut-Monseur, 'Réformer le Comité de concertation?', *Cahiers constitutionnels*, 2 (1984), 75.
55. Special Act on the *Court of Arbitration* of 6 Jan. 1989, Art. 1, 1°. See also Art. 107 *ter*, §2, of the Belgian Constitution.
56. Special Act of 6 Jan. 1989, Art. 1, 2°.
57. See K. Lenaerts, 'The Application of Community Law in Belgium', *Common Market Law Review*, 23 (1986), 253-86, at pp. 259 and 270.
58. See 'Loi assurant l'application de l'entente sur l'entraide judiciaire entre la France et le Québec', *Loi du Québec* (1978), c. 20.