

Chapter 8

The International Relations of Minority Nations:

Is Identity Paradiplomacy the Only Way to Go?

Stéphane Paquin

École nationale d'administration publique

Canada research Chair in international and comparative economy

Canada

Marine Kravagna

Université de Liège

Belgium

Min Reuchamps

Université catholique de Louvain

Belgium

Today, few people still deny the existence of regional sub-state diplomacy (Criekemans 2010). But there is still no common agreement on the regions' right to do so and above all on their scope of actions. This question goes indeed against – what used to be – the dominant approach in international relations, the state-centric approach that leads to the logic of *speaking with one voice*. Increasingly a multi-level governance approach has contested this state-centric view and proposes an alternative logic of multiple actors *speaking with their voice*, nuancing strongly the seminal distinction between “sovereignty-bound” and “sovereignty-free” actors (Rosenau 1990). From the 1970's, the world has indeed seen the growing presence of sovereignty-free actors in

international relations. Among these actors, non-central, or better substate, governments of federal states have developed intensive foreign relations. These governments are using a various range of techniques: from shaping the federal government's foreign policy to establishing themselves directly in the international arena (Blatter et al. 2008). For minority nations governments this is particularly a challenge, as they have to act internally – where they have developed full-fledged legislative powers within a multinational federation – and externally – where international and national laws are often still reluctant to recognize their right of actions (Lejeune 2003).

Yet some minority nations have thrived in developing their own international relations. Bavaria, Catalonia, Flanders, Quebec, Scotland and Wallonia are often seen as successful international players even if they are not fully sovereignty-bound (Michelmann 2009, Criekemans 2010). The international actions of these minority nations have been characterised under the umbrella of “identity paradiplomacy” (Paquin 2003), that is a willingness to use international relations to foster a nation-building process within a multinational state. This observation was particularly prevalent for minority nations strongly in competition with the federal government about their nation-building process, albeit for different reasons, namely Flanders, Quebec and Scotland (Paquin 2004). The case of Wallonia seems to fits less well into the identity paradiplomacy framework, which therefore raises the question of alternative roads to international relations. This is the core question of this chapter: is identity paradiplomacy the only way to go – international – for minority nations?

Quebec and Wallonia are both well known for their active foreign relations. They also share this common feature of being a demographic minority in their federation. But as we move into the question of the nature of the relationship between their minority status and their diplomacy, we ought to qualify the two cases under study, since this is key to understand their international

relations. The qualification for the case of Quebec is fairly straightforward. Quebec is the province of Quebec and therefore its government *sensu lato* and in particular what is today's known as the *Ministère des Relations internationales du Québec et de la Francophonie* (Ministry of Quebec's international relations and of the Francophonie) that was created in 1965 and whose name and scope changed over time.

By contrast, the definition of the case of Wallonia in the purpose of this chapter is much more of a challenge. If the previous chapters of this book could refer to Wallonia as the Walloon Region, in the field of international relations a more complex qualification is needed as both the community and the regional dimensions are intertwined. This goes back not only to the twofold structure of the Belgian federation that is made of Communities and Regions (Bursens and Massart-Piérard 2009) but also, as reminded by Caron in this volume, to the very question of the nature of the Walloon/Francophone identity. As a consequence, the study of Walloon/Francophone international relations has to take into account the institutional architecture they rely on: mainly the French-speaking Community (which has recently been politically but not constitutionally renamed Walloon-Brussels Federation) and the Walloon Region and, to a lesser extent, the Brussels-Capital Region because of the close connexion with the French-speaking Community, the French-speaking Community Commission (Cocof), which is the body of the French-speaking Community in Brussels, and the German-speaking Community, whose territory for regional matters is part of the Walloon Region (Reuchamps and Onclin 2009).

On this background, this chapter seeks to capture their foreign relations and how they undertake them. To this end, we look more specifically at two dimensions: the *ius tractati* – the right to conclude treaties – and the *ius legationis* – the right to be represented on the international scene, both abroad and within international or subnational organisations. In order to set the stage to this

comparative endeavour, we first present the theoretical framework usually used to study the foreign relations of non-central governments which typically refers to paradiplomacy and in particular identity paradiplomacy.

1. The Foreign Relations of Non-central Governments

With the increasing activities on the international scene of non-central governments in the 1970's, Duchacek followed by Michelmann and Soldatos started an effort of conceptualization in the 1980's around the concept of *paradiplomacy* (Duchacek 1984, 1986, Michelmann and Soldatos 1990). Paradiplomacy is about “political contacts with distant nations that bring non-central governments into contact not only with trade, industrial, or cultural centres on other continents... but also with the various branches or agencies of foreign national governments” (Duchacek 1986, 246-247). In other words, paradiplomacy consists in foreign relations that are distinct from those of the central government; it is thus a “parallel” diplomacy (Paquin 2004).

The question of paradiplomacy is more acute in multinational federations where the minority nations may be willing to use – their – foreign relations to foster a nation-building process within a multinational country. This intense phenomenon has been labelled “identity paradiplomacy” (Paquin 2003). Substate governments with a minority status tend to develop their foreign relations in order to get resources and support that are lacking at the domestic level. This is even more so in federations where the federal government is antagonistic to their claims as it is striking in the case of Catalonia in Spain, Flanders in Belgium and Quebec in Canada. Nonetheless, comparative politics literature does not provide a one-fits-all explanation: from one country to another, “identity diplomacy may complete, support, extend, affect or threaten the state foreign policy. It might promote cooperation as well as conflicts” (Paquin 2004, 207, our translation).

This question raises the chief issue in international relations of the sovereignty, or the lack thereof, of non-central governments, and more specifically of substate governments in multinational federations. International law sets the principle of the unity of the federations and thus stresses the need for a coherent foreign policy as well as the responsibility of federations, and therefore of the federal government in particular, to fulfil their international obligations whatever their internal institutional set-up (Lejeune 2003). While federal governments are typically “sovereignty-bound” actors (Rosenau 1990, 36), substate governments have an ambiguous status which is both “sovereignty-bound” and “sovereignty-free”.

On the one hand, their sovereignty-bound status within sovereign countries allows them to have access to the country’s foreign policy decision-making. Thus, unlike NGOs and other civil society actors, substate governments enjoy a privileged access to the diplomatic networks, international organisations, and negotiating forums available only to sovereign states. It is now common for officials of substate governments to attend international forums, or to participate in the drafting of international agreements when the object falls within their constitutional jurisdiction (Paquin 2005).

On the other hand, these actors also enjoy a sovereignty-free status in international relations, which brings both positive and negative effects. On the positive side, Rosenau contends that actors who lack sovereignty are not constrained by responsibilities and obligations that are imposed on sovereignty-bound actors and they can therefore exercise the full measure of their resources to specific goals, which can increase their actions’ effectiveness (1990, 36). But on the negative side, substate governments also face a number of constraints since they are not always recognized as legitimate actors under international law. As a consequence, substate governments have to negotiate with their federal government the terms and the scope of their international relations, such as official missions to foreign countries or to international organisations. This

important consequence of their sovereignty-free status is also highly dependent of the federation's internal institutional design and substate governments' positions, to which we turn now for Belgium and Canada.

2. The International Relations of Substate Governments in Belgium and in Canada

Belgium and Canada provide two interesting cases of study for their institutional design in terms of international relations that are quite different, even though they face a similar demand from their constituent units for more international autonomy. The former is remarkable not because of its double structure with Regions and Communities but also because these substate governments enjoy full foreign relations power for the policy fields they govern domestically (Bursens and Massart-Piérard 2009). Each constituent unit of federal Belgium may act, on its own, in the international area within the remit of its competences. This is the case for Flanders whose foreign relations is led by the Flemish government and its agencies but also for the French-speaking substate governments, whose foreign relations are however more fragmented. Out of this fragmentation emerged initially three distinct administrative structures in charge of foreign relations: the community-based *Commissariat général des relations internationales* (General commissariat to international relations, CGRI) and the two region-based *Direction des relations internationales* (Direction of the international relations, DRI) and *Agence wallonne à l'exportation et aux investissements étrangers* (Walloon agency for exportation and foreign investments, AWEX). In 2009, the CGRI and DRI merged into one single structure *Wallonie-Bruxelles International* (Wallonia-Brussels international, WBI), while the AWEX remained in charge of external trade and foreign investments.

In Canada, the province of Quebec, as well as the nine other provinces, do not benefit from the principle of *in foro interno, in foro externo* that is prevalent in Belgium. Nonetheless, the government

of Quebec has been active on the international scene since the 19th century. But it was after the 1960's and the Quiet Revolution that the government of Quebec became increasingly internationally active. One major reason for this is the will to foster Quebec's identity both on the domestic and the international levels. In addition to this nation-building process, the increasing internationalisation of politics and policies also urged the government of Quebec to have a say in the international relations of Canada. In the 1960's, the government of Quebec started complaining that international treaties had a growing effect in provincial fields of jurisdiction. The government of Quebec wanted to have a voice. The next sections of this chapter will investigate how it managed to do so, in comparison with the Walloon/Francophone substate governments in Belgium. But in the latter case, there is an important extra independent variable: the European Union (EU). As one of the founding members, Belgium had to adapt its institutional and administrative structure to the European construction that shaped both internal and external politics and policies (Beyers and Bursens 2006, 2013).

To understand these dynamics, formal rules and constitutional assignments of competences are an integral part of the study of power shifts within political-administrative systems. They give two kinds of information. Firstly, "they determine to what extent the national executives hold a 'gate-keeper' position within the multi-level government system which gives them the opportunity of exploiting information asymmetries within both the international and the domestic arena" and secondly, "they are also strong symbolic representations of the dominant perspective on the appropriate distribution of tasks between the layers of government" (Blatter et al. 2008, 466). For both cases we therefore analyse the *ius tractati* – the right to conclude treaties – and the *ius legationis* – the right to be represented on the international scene –, which will enable us to discuss afterwards the politics of international relations before concluding this chapter.

3. Quebec's International Relations within the Canadian Federation

The Constitution Act or the British North America Act (BNA) of 1867 gives little mention to international negotiations. While many federal constitutions assign exclusive power over foreign affairs to the central government, the BNA Act passed by the British Parliament in 1867 was silent on the question. The provisions of the BNA Act enumerating the division of powers – Sections 91 and 92 – did not explicitly assign jurisdiction in foreign affairs to either the federal or provincial levels. Nor, importantly, did the BNA Act deny the provinces the possibility of an international role as other federal constitutions tend to do. The silence was entirely understandable since such an explicit allocation of powers was, in the circumstances, unnecessary. Those who framed Canada’s original constitution did not conceive that the new Dominion (Canada) might eventually enjoy the same autonomy in foreign policy as it was receiving in domestic affairs. Certainly as a member of the British Empire, Canada could have no independent international personality. Instead, other states would continue to recognize only one sovereign entity, the British Empire. Correspondingly, the rights and responsibilities of sovereign statehood would be vested in, and exercised by, the Imperial government in London. The constitution was thus framed accordingly.

3.1. Ius Tractati

The only part of the BNA Act concerned with international law is section 132, which deals with imperial treaties. It specifies: “The Parliament and Government of Canada shall have all Powers necessary or proper for performing the Obligations of Canada or of any Province thereof, as Part of the British Empire, towards Foreign Countries, arising under Treaties between the Empire and such Foreign Countries”. Under this provision, while the federal government could not conclude international treaties, it had the capacity to implement imperial treaties, even in provincial fields of jurisdiction. However, with the Statute of Westminster of 1931 and the acquisition of

sovereignty in all areas of policy including foreign policy (except for the amendment of the Canadian constitution) the question was rapidly raised in the context of Canadian federalism: does the federal government have the power to force the provinces to implement treaties even when those treaties deal with subjects that fall exclusively within provincial jurisdiction? It was the provincial government of Ontario in the *Labour Conventions* case that challenged the ability of the federal government to legislate in provincial fields of jurisdiction in order to implement international agreements (Patry 1980, 155).

After the 1930 elections, the Conservative government of R. B. Bennett ratified three International Labour Organization conventions. By implementing these conventions, the federal government intruded on the provincial right to legislate in the area of labour (exclusive provincial jurisdiction). The Judicial Committee of the Privy Council in London, (which was still Canada's court of final appeal until 1949), rendered its judgment in 1937. This ruling is of fundamental importance for the legal capacity of the federal government and the rights of the provinces in international relations. The judges recalled that federalism constitutes the foundation of Canada. Furthermore, the principle of the sovereignty of Parliament means that the legislature is not obliged to pass measures that might be necessary to implement a treaty concluded by the federal executive. In this case then, it is up to the provinces, where the same principle of parliamentary sovereignty applies to provincial legislatures, to amend their respective laws and regulations to give effect to the said treaty in domestic law. In Canada the power to implement treaties thus follows the distribution of powers. According to Richard, the impact of the *Labour Conventions* case "denies Ottawa plenary power in matters relating to treaties. Thus, to the extent the federal government pursues international economic strategies that involve treaty arrangements, there is a possibility that it will be frustrated by an inability to fully perform its obligation" (Richard 1991, 58-59).

The Labour Conventions case was thus extremely important and would lead to the formulation of the Gérin-Lajoie doctrine in 1965 by the government of Quebec. As the government of Ontario had done in the 1930's, the government of Quebec in 1965 expressed its concern over the effects of internationalization on provincial jurisdictions. In a speech in 1965, Quebec Deputy Premier and Minister of Education, Paul Gérin-Lajoie, enunciated what would later become known as the "Gérin-Lajoie Doctrine of the international extension of Quebec's domestic jurisdictions" (Paquin 2006). The doctrine asserts that Quebec itself must conclude any conventions in its fields of jurisdiction. Gérin-Lajoie declared:

There is not, I repeat, any reason for the right to apply an international convention to be separated from the right to conclude the convention. These are two essential stages of a single operation. Nor is it any longer acceptable that the federal state be able to exercise a sort of supervision or control over Quebec's international relations. [Translated from French]

Gérin-Lajoie suggested overturning the approach then generally taken so that Quebec should itself negotiate and implement international agreements in its areas of jurisdiction. This doctrine is still topical. In 2002 Quebec's National Assembly unanimously adopted an amendment to the *Act Respecting the Ministère des Relations internationales* requiring National Assembly approval for any important international agreement entered into by Canada that concerns Quebec's fields of jurisdiction. The National Assembly has thus become the first parliament of the British model to be so closely involved in the process by which a central government undertakes international commitments. Quebec is the only province in this situation and since then has set a number of precedents (Paquin 2006, 2010).

Since the Labour Conventions case of 1937, international treaty making in Canada follows two distinct phases: 1) the conclusion of the treaty, that is, its negotiation, signature and ratification; and then 2) its implementation. The first stage of the operation is the prerogative of the federal executive (a monopoly which has nonetheless been contested by the government of Quebec since the 1965 Gérin-Lajoie doctrine) (Paquin 2006, 2010). The second stage, the passage of the necessary legislation to enforce the treaty, is the prerogative of the legislative branch, federal and provincial. It is therefore necessary to incorporate treaties as a matter of domestic law by legislative action at the appropriate federal or provincial level (Arbour 1997, 160).

In Canada, the *ius tractati* thus remains under the jurisdiction of the federal government but, because the second phase follows the internal distribution of powers, the voice of Quebec isn't ignored at the first one. The importance of international treaties, including trade agreements, and the formulation of the Gerin-Lajoie doctrine in 1965, forced the federal government to consult with the provinces where international treaties affected their jurisdiction, because otherwise it risked being denounced. Because the federal government was aware of its limitations, several mechanisms of consultation between the federal government and the provinces have also been established (Zeigel 1988, Turp 2002, Paquin 2006).

However, there is no overall framework agreement in Canada on consultations between the federal government and the provinces in relation to international treaty making and there is very little consistency in approaches (Van Duzer 2013, de Mestral 2005, 319-322). Intergovernmental agreements relating international treaty on education, private international law or human rights are more institutionalized than environmental or trade negotiations, for example, but overall, these mechanisms do not concern all international treaties that fall within provincial jurisdiction. Rather sectoral federal-provincial agreements. In other words, the mechanisms do not cover all international negotiations that affect areas of provincial jurisdiction. In addition, they are weakly

institutionalized, not binding for the federal government and they leave too much room for federal arbitrary.

On top of that, since 1965, the government of Quebec has concluded “on its own” more than 700 international agreements (“*ententes*” in French) with sovereign or federated states in close to 80 different countries. Many of these “*ententes*” were concluded with sovereign states and in some cases with no intervention of the Canadian government. A significant element should be noted: the international agreements concluded by Quebec itself are not called treaty but “entente” (understanding, mutual agreement), which shows the sensitiveness of the national government to the word “treaty” on behalf of Quebec.

3.2. Ius Legationis

Section 92.4 of the BNA Act gives provinces authority over the “Establishment and Tenure of Provincial Offices”. This permits Quebec and other provinces to establish provincial offices abroad if they wish. It is difficult to argue that the opening by Lower Canada (modern day Quebec) of a representation within the British Empire in 1816 was an international action since Canada was part of the British Empire. The same is true for when Quebec posted an immigration officer in London in 1869 or opened a delegation in the heart of the British Empire in 1911. The first “real” international delegation was opened in Paris in 1882 when Hector Fabre became a general agent of Quebec. This representation was closed in 1910. It should be noted that this representation was opened even before Canada had the right to send representatives abroad. This right would be formally recognized with the Statute of Westminster of 1931. We should also mention that in 1883, the federal government would also appoint Hector Fabre as Canada's Commissioner General in Paris. In 1914, the Quebec government opened an office in Brussels. Importantly, the government of Quebec was not the only one to do so. The government of

Ontario, for example, also sent an immigration officer to Britain in 1869 and opened a delegation in London in 1908 (Dyment 2001, 56 and 62).

But this early activity was relatively short-lived. Quebec closed its agency in Paris in 1912, because the French business community was so uninterested in Quebec. Both the missions in Brussels and London were closed in the early 1930's in an effort to trim provincial expenditures. When the *Union nationale* under Maurice Duplessis came to power in 1936, all of Quebec's agencies abroad were abolished by law. When the Liberals under Adélard Godbout came to power in the 1939 provincial elections, this law was repealed, and legislation authorizing the government to appoint agents-general was introduced: Quebec offices were then opened in New York and in Ottawa. Duplessis and the *Union nationale* were returned to power in 1944; the two offices were left in place, although the budget of the New York office was cut so much that the agent general could do virtually nothing.

It was only after the 1960's that the government of Quebec started to open (and sometimes close and reopen again) international delegations: in Paris (1961), London (1962), Rome and Milan (1965), Chicago (1969), Boston, Lafayette, Dallas and Los Angeles (1970), Munich and Berlin (1971) Brussels (1972), Atlanta (1977), Washington (1978), Mexico and Tokyo (1980), Beijing and Santiago (1998), Shanghai and Barcelona (1999), Mumbai (2007), Sao Paulo (2008) and Moscow (2012).

The right to be represented in international and supranational organizations is typically reserved to the national state. However, Quebec enjoys a particular right of representation in two international organizations: these are the UNESCO and *La Francophonie*. In 2006, after years of demands on behalf of Quebec, the national Canadian government recognised officially that "Quebec's peculiarity brings it to play a specific role at the international level". The same

agreement also grants Quebec a formal role in the UNESCO: it is now officially present in the Canadian permanent representation next to the UNESCO and has the right to express its interests. The government of Quebec appoints its permanent representative next to the UNESCO who is physically integrated to the Canadian permanent representation and guarantees Quebec an immediate access to all official documents and information of the institution. Moreover, this agreement provides that the Canadian and the Quebec governments have to coordinate their positions before every vote, resolution, negotiation or draft international instrument that happens or is adopted in the framework of the UNESCO (Ministère des Relations internationales et de la Francophonie, 2013a). This agreement was a huge step for Quebec: the recognition of its role on the international scene as well as its direct access to the UNESCO decision-making process legitimate Quebec's external actions and grant it a direct access to the issues addressed by the UNESCO. *La Francophonie* is even more particular: it is the only multilateral governmental organization in which Quebec is a fully-fledged member. The Quebec has seized this opportunity to assert its external aspects (Ministère des Relations internationales et de la Francophonie, 2013b).

4. Substates' International Relations in the Belgian Federation

In Belgium, the dominant perspective on the international relations of subnational governments is not the state-centric approach that would lead to the logic of *speaking with one voice* but rather the multi-level governance approach that leads to the *recognition of the parallel between one entity's internal and external powers*. Such an approach recognizes the right of a substate government to express itself on the international scene and sign treaties falling within its domestic competences (Bursens and Massart-Piérard 2009). It thus prevents the federal government from legislating in subnational entities' areas of competences by means of concluding international agreements in those domestic policy areas (Lejeune 2003). In the Belgian federation, subnational entities do

have the right to conduct autonomous foreign relations. This was constitutionalized in 1993 with the guiding principle of *in foro interno, in foro externo*, aligning the exercise of external competences with the one of internal competences. This principle mirrors the Belgian internal dual federal system on the international level: each constituent entity has exclusive administrative and legislative powers within its jurisdiction both on the domestic and international level. Thus, unlike Canada, each constituent unit of Belgium must both make and implement international policies falling within their jurisdiction.

4.1. *Ius Tractati*

The acquisition of treaty-making powers by the subnational entities follows the main dynamics of the state reforms in Belgium that stress the autonomy of the Regions and Communities and the non-hierarchical nature of the system (Jans and Stouthuysen 2007). This right was constitutionally recognised in 1993 for both types of constituent unit but its establishment has been gradual and first intended to the Communities which actually acquired it for cultural matters in 1988. Before this date, even if the federal government had full jurisdiction to conduct international relations, the Belgian constituents units were involved in some aspects of foreign affairs through different mechanisms of cooperative federalism. For instance, since 1978 Cultural Council had to give their consent to treaties dealing with cultural cooperation and the special law of institutional reforms adopted in 1980 provided that the substates' government had to take part in the negotiation of the treaties (Lejeune 1981). These mechanisms combining the autonomy of the substates with the monopoly of the – federal – state over external relations can be considered the very outset of the actual Belgian system.

Title VI “On international relations” of the Belgian Constitution, introduced in 1993, defines precisely who does what in international relations in this country. Article 167§1 states “The King

directs international relations, *notwithstanding* the competence of Communities and Regions to regulate international cooperation, including the concluding of treaties, for those matters that fall within their competences in pursuance of or by virtue of the Constitution” (our emphasis). What’s more, the treaties take effect only after they have received the approval of the Parliament or the Parliaments, depending of whose order of government has the competences. The following articles (168, 168bis and 169) delineate the different scenarios in treaty conclusion.

First of all, there are treaties that fall exclusively within the competences of the substate governments. Therefore, Regions and Communities have total freedom in conducting their international activities. Nevertheless, the special law on international reforms of 8 August 1980 was adapted after 1993 to include an obligation for the substate governments to inform the federal government of their intention to start a negotiation as well as of any legal act that they are willing to perform in order to conclude a treaty (article 81). Even though the possibility exists for the federal government to request the suspension of the negotiations, such mechanism has never been applied hitherto. Yet, treaties falling exclusively within substates’ competences are quite rare because international treaties do not take into account the internal distribution of competences and because their interpretation is restrictive.

Therefore the vast majorities of treaties are mixed treaties, that is to say dealing with both federal competences and regional and/or community competences. A cooperation agreement had to be concluded between the federal government and the subnational government in order to set the boundaries for such cases. This cooperation agreement was concluded on 8 March 1994 between the federal, regional and community authorities and approved by the law of 20 August 1996. It requires the use of the Inter-ministerial Conference on Foreign Policy (CIPE) where the Belgian governments (both federal and substate) meet and negotiate on equal footing, under the coordination of the federal minister of foreign affairs. Its decisions are adopted by consensus;

that is each constituent unit has a veto right: the mechanism of the CIPE thus prevents from the primacy of the federal entity (Bursens and Massart-Piérard 2009).

When the federal government wants to conclude a mixed treaty or upon request by a substate government, it has to hold the conference and to inform the members that it wishes to open bilateral or multilateral negotiations for this purpose. The CIPE decides whether it will enter into international negotiations and it can decide to do so even if one of the substate does not plan to take part. On this basis, the composition of the Belgian delegation is decided: it comprises representatives of both federal and substate governments. The federal foreign minister or the relevant ambassador exerts a “coordinating leadership” but all parties are on equal footing (Lejeune 2003). If an agreement is reached, the minister of foreign affairs signs the treaty and each competent parliament has to vote the act of assent. The final step of ratifying the treaty is ultimately reserved to the King, i.e. the federal government. If the CIPE cannot reach a consensus, a Consultation Committee, whose composition respects linguistic parity and equality between the federal and the subnational governments is called on in order to solve the problem by consensus. The procedure introduced by the cooperation agreement of 8 March 1994 prevents the federal government from impinging on the exclusive jurisdiction of the substates through the conclusion of international agreements. The use of the CIPE is therefore a pragmatic solution to ensure the consistency of the Belgian foreign policy as well as the distribution of competences between the federal and the substate governments (Bursens and Massart-Piérard 2009).

In this interconnected multi-level operating system, the federal government holds a gate-keeper position in the articulation between domestic and international law. This gate-keeper position gives the federal government three means of action: right to be informed and to suspend the concluding procedure of a treaty dealing exclusively with subnational competences, possibility to denounce treaties concluded before 1993 with the agreement of all concerned governments

(article 167§5 of the Constitution), and a substitution right in the event of non-respect of supranational or international obligations by a substate government and of its condemnation by an international or supranational jurisdiction (article 169 of the Constitution). This latter mechanism, as well as the first one, has never been used. Bursens and Massart-Piréard (2009) argue that it is even less likely to be used in time of incongruent coalitions: being overruled by a federal government (partly) composed of different political parties would be politically unacceptable for a regional government.

Compared to other federal countries, Belgian federalism has gone one step further in terms of treaty making. Constituent units enjoy fully legitimate and direct legal access to the international stage within the limit of their competences, but with a series of mechanisms designed to ensure the coherence of Belgium's overall foreign policy. At the end of the year 2012, WBI managed no fewer than 145 bilateral agreements (respectively 71 for the French-speaking Community, 58 for the Walloon Region and 16 for the French-speaking Community Commission) and was part of over 400 mixed treaties. While treaty making powers are significant, the international relations of Wallonia go much beyond, as much has to do with political and economic representation.

4.2. *Ius Legationis*

The institutional division of powers within Belgium is a pure domestic concern; nevertheless the implementation of the *in foro interno in foro externo* principle has to comply with international law. Even though the principle of the unity of the state does not prevent the development of external relations specific to the substates, it does require federations to fulfil all their international obligations and to ensure the coherence of their foreign policy (Lejeune 2003, Massart-Piréard 2005). Belgium must therefore always have a single international position, even if substates have

the right to decide upon this position. The Belgian federation met these requirements through the conclusion of some cooperation agreements between its constituent units.

One of the first of these cooperation agreements was signed on 8 March 1994 on the important question of Belgium's representation within the Council of the European Union, which is the institution representing the member states' governments. EU requires its member states to act as unitary international actors, but article 16.2 of the Treaty on the European Union allows substates' minister to represent its state within the Council if this minister is empowered to bind its whole state. Introduced in 1992, on demand of Belgium and Germany, this legal provision has enabled Belgium to transpose its internal institutional system to the European level (Lejeune 2003) but it has also forced the federal government to set coordination mechanisms in order to decide on a single national position to be defended in the Council.

The cooperation agreement of 8 March 1994 organises the representation within the Council around three principles: prior internal coordination with a veto right for each government, categories of Council's configurations determine who holds the seat whether it is a federal minister or a substate minister, and rota system between the substate governments on a six-monthly basis when substate ministers have to represent Belgium (Elola Calderon and Van den Abeele 2010). When no agreement can be achieved on the position to be defended in the Council, Belgium must abstain. However, most of the time, internal – which is also largely informal – coordination works well and consensus is reached.

The procedure and principles set in the cooperation agreement offer the Communities and the Regions a strong influence on Belgian European policy (Massart-Piérard 2006): the Belgian substate governments are the only ones being completely integrated to the elaboration of the common position of a member state of the EU within the Council (Elola Calderon and Van den

Abeele 2010). They make the most of this situation and they also take the lead in promoting a Europe of Regions by being very active in formal and informal networks: they take part in interregional, transnational and cross-border cooperation as well as in European bodies representing regional interests such the Committee of the Regions (Bursens and Massart-Piérard 2009).

While European affairs constitute a large part of the substate governments' international activity (Borghetto and Franchino 2010), it is not limited to them. Within international organisations that conduct activities their fields of competences, the Regions and Communities do have some rights to represent their interests in such organisations (Massart-Piérard 1999) and they do so by acting within the Belgian representation. In order to ensure the single international position of Belgium, a cooperation agreement concluded on 30 June 1994 has set a permanent structure of dialogue between the Belgian governments. In short, before any ministerial meeting of an international organisation, the CIPE has to systematically organise a general information and consultation between the Belgian governments in order to determine Belgium's position. In other words, the federal and the substate governments have to reach by consensus a position that will then be defended as Belgium's position by the Belgian delegation. If no consensus is reached, the same rule applies, like for the Council of the EU, the Belgian representative has to abstain.

What's more, when the issue falls mostly within the substates' competences, Belgium is represented by a minister from a substate government. Substates are thus involved both in the preliminary policy making and in representing Belgium within international conferences and organisations whose activities concern areas that partly fall under their jurisdiction such as UNESCO, OECD, FAO and WTO (Lejeune 2003). It can even go further for some specific international organisations. For instance, the representation to *La Francophonie* is a particular case where WBI is engaged utmost: it has its own seat and so does the Belgian federation. The two

delegations operate jointly on the basis of a distribution of tasks: the federal delegation is working on global political issue while WBI deals with international cooperation issues (Massart-Piérard 2009).

Next to this, the cooperation agreement of 18 May 1995 between all Belgian governments organises the possibility for Regions and Communities to appoint representatives (*délégués* or *attachés* in French) in diplomatic or consular posts to foreign states or to international organisations. Physically integrated to the Belgian post, these representatives are subject to the same rights and duties as their federal colleagues and exert their activities under the diplomatic authority of the head of mission, but they receive their directions from their own authorities even if they have to inform the head of post of their activities (Lejeune 2003). Instead of depriving the national state of its means of actions, this system has the benefit of stimulating contacts and mutual knowledge between the Belgian constituent units.

More specifically for commercial and economic matters, a cooperation agreement was concluded on 17 June 1994 between the federal and the substate governments. It rules the establishment of regional economic and commercial bureaus within the Belgian consular or diplomatic posts, or even in cities where there is no embassy or consulate. The Regions can appoint economic and commercial *attachés* and entrust them with specific tasks and missions. In Wallonia, the regional agency AWEX is in charge of external trade and foreign investments since 2004. In their contacts with economic partners, its regional *attachés* are completely autonomous. However, they have to work under the “diplomatic” authority of the head of mission (a federal representative) in all their contacts with the officials of the hosting state. This emphasizes a balance between the respect of the exclusive jurisdiction of the Belgian Regions and the search for a coherent foreign policy for federal Belgium.

Before the conclusion of this cooperation agreement, there were already similar practices following the signature in 1986 of some protocols between the minister of foreign relations and the constituent units granting them the right to appoint *attachés*, integrated to the Belgian representation, to represent them abroad and in international organisations. However, the Walloon Region could not make use of this right because all the conditions were not met (Massart-Piérard 2005). Therefore, the French-speaking Community and the Walloon Region decided to work in tandem. The French-speaking Community appointed, on the one hand, *attachés* in charge of her representation and, on the other hand, *attachés* in charge of the Walloon Region's representation. It was also agreed that the *attachés* that had to represent the French-speaking Community could also perform activities on behalf of the Walloon Region (Massart-Piérard 2005, Crikemans and Lanneau 2011).

This cooperative practice between the French-speaking subnational entities has become increasingly pregnant and politically the designation of one single minister in charge of the foreign relations for both the Region and the Community states this close relationship. Together they act through a network of 17 external delegations, i.e. embassies, with diplomatic status and 107 delegates worldwide of whom 73 are in charge of economic representation (WBI, 2012). Altogether the Walloon Region and the French-speaking community are thus among the substates entities with the highest numbers of Trade Offices per capita around the world (Paquin 2013).

5. The Politics of International Relations

Making the most of their both sovereignty-bound and sovereignty-free status, Quebec and the French-speaking constituent unites of Belgium have gradually increased their presence on the international level as well as their influence on the conduct of national foreign policy. But the

roads they have used are different. While the former actively designed an identity paradiplomacy in order to make its voice heard, the latter enjoyed an institutional setting exceptionally prone to foster substates' international relations. In our comparative endeavour we now need, after having discussed the formal rules and constitutional assignments, to discuss the political dynamics that both shape and are shaped by this institutional setting.

To be sure the institutional setting of Canada was and is much less open to Quebec's international activities than the Belgian system. The nation-building process of Quebec' minority nation and its opposition to the federal level fostered the establishment of such international activities that were justified on the ground of the principle of the doctrine Gérin-Lajoie and the provinces' right to implement or not treaties concluded by Canada (Michaud and Ramet 2004). Seeking for support and resources lacking at the domestic level, Quebec made use of identity paradiplomacy to affirm its identity on the international scene and on the same time strengthen its internal position. These efforts and claims to the rights stated by Gérin-Lajoie in 1965 were in the beginning contested by the Canadian government and the period that follows matches with the development of international relations rather than to the formulation of a real foreign policy. The identity and cultural variables were prominent and the immediate needs took precedence over a view of an overall consistency (Michaud and Ramet 2004).

From the mid-1980's, integrated political guidelines were phased in: Quebec's external actions became increasingly strategy-driven and its paradiplomacy more bureaucratized, meaning planning, optimization and allocation of resources. As it was argued above, the internationalization factor also played a major role in the growing international existence of Quebec: as a small, non-sovereign actor, Quebec benefits from the permeation of the domestic and international fields and its effects on nation-state system. However, internationalization also redefined its goals and priorities: the necessity to grasp and control its environment broadened

the scope of external actions from cultural interests to economic competitiveness, foreign investment, energy, labour force mobility, to name but a few fields of actions (Michaud 2006). While some particular foreign policy fields remain exclusively under the jurisdiction of the federal government, Quebec has gone over simple international exchanges and managed to affirm itself on the international scene as a well-established actor with its own foreign policy. In the case of Quebec, identity paradiplomacy has been the way to go.

Belgian substate governments are more sovereignty-bound than sovereignty-free actors. This very specific status can be explained by the evolution of Belgium itself that transformed from a unitary state to a federal, and even confederal, state in less than 40 years. This radical shift is the result of internal pressures for more autonomy. While the initial demands for devolution came from both sides of the linguistic border (Reuchamps 2013), the more recent state reforms were especially pushed by the Flemish political actors, in the wake of an internal and external identity paradiplomacy. In this centrifugal federalism, substate actors demanded the international extension of their internal powers, as a consequence of their increasing jurisdiction. This makes Belgium more confederal than federal (Philippart 1997) as substates have the right to conclude international treaties, to defend and represent their interests within international organisations and within Belgian diplomatic representations, and to set up their own international networks. In the case of Belgium, even the concept of paradiplomacy seems odd (Massart-Piérard 2009), as it is in fact to a large extent real diplomacy.

However, in order to guarantee cohesion, an inter-ministerial conference on foreign affairs and a consultation committee intended to prevent problems that could arise between the federal and substate governments. While the *in foro interno, in foro externo* principle is basically the pure application of dual federalism on foreign relations, some cooperative features were introduced in order to meet the requirement of the international system. This highlights the defining

characteristics of the Belgian federal order: autonomous entities, cooperative practices and institutionalised cooperation mechanisms (Beyers and Bursens 2013). The low rate of conflicts can also be explained by the fact that the substate governments are involved in both the negotiations and the implementation of the Belgian foreign policy and by the threat of abstention in no consensus is reached. However, the assessment of this system is not entirely positive. It is indeed quite weighty; it requires the involvement of many actors in a back and forth process, which unavoidably multiplies the number of challenging preferences that have to be aggregated (Borghetto and Franchino 2010), and it suffers from a lack of leadership. When a compromise is reached, it may often affect legal clarity.

Political dynamics not only shape federal-substate relations but also intra-substate relations. While there are many demonstrations of cooperative and reciprocal practices between the French-speaking Community and the Walloon Region, their degree of closeness varied over time and in function of the political actors. A significant indicator for this is the appointment – or not – of the same minister for international relations in the two governments (Crickemans and Lanneau 2011), which is now the case since 2004 and reflects a joint will to increase international visibility and attractiveness that also led to the creation of one single structure, WBI. Nonetheless, their interests and visions are neither necessarily the same nor systematically congruent. In the second half of the 1990's, i.e. in the beginning of their joint activities, the emphasis was on French-speaking areas and it was clear that the French-speaking Community prevailed (Crickemans and Lanneau 2011). However, the Walloon Region has gradually asserted its concerns for economic and commercial matters but also for international research. Seeking to promote its trade and foreign investments, it established external relations with close countries and took part in interregional, transnational and cross-border cooperation. The Region also gave priority to the European process. If the economic reasons are obvious, this engagement for Europe is also based on political grounds: the will to foster the recognition of the regional fact

both in Europe and within Belgium. The situation of 1995 is now partly inverted: even if the protection of the French language does remain an important dimension (mainly because of internal political reasons), regional priorities have largely come to the forefront.

6. Conclusion

Substate governments, despite their sovereignty-free status – at least theoretically –, are now active international players. Their international activities have clearly challenged the federal governments' so called “monopoly” over foreign policy. But this is not limited to federal states. Any states today face the opening of international relations to several new sovereignty-free actors: from single individuals to large multinational companies. What is peculiar with substate governments is their mixed sovereignty-bound and sovereignty-free nature. This is especially the case for minority nations who may be willing to use international relations to foster their position both internally and externally.

The comparison of Quebec and Wallonia, and in this case the Walloon Region and the French-speaking Community, highlight several common features but also different roads to achieve an international existence, which are largely shaped by the domestic and supra-regional contexts in which they are acting. On the one hand, in the context of a growing globalization and of an “antagonistic” national state, the minority nation of Quebec developed an identity paradiplomacy that has gradually evolved into a real foreign policy. On the other hand, in Belgium, a state facing a centrifugal federalism where the equipollency of the norms combined with a shared treaty-making power rather refers to confederalism and acting within the European context, the Regions and Communities actually support the cooperative dynamic and make a major use of internal coordination mechanisms.

This account raises several questions. The current negotiations around the Comprehensive Economic and Trade Agreement (CETA) shed light on questions regarding the involvement of the Canadian provinces and territories in the ratification of any final agreement. For instance, do all the provinces and territories need to agree before we have a deal? Does Alberta have a veto? Or Quebec? And what about the territories? There are precedents with human rights treaties where a treaty was signed and ratified by the federal government even if only a small number of provinces agreed to comply with the treaty. Can it be the same for such an important trade treaty and, above all, for treaties in more conflict-ridden issues such as climate change?

In Belgium, the questions that remain are not much on legal ground but rather on practical and political grounds. The implementation of the *in foro interno, in foro externo* principle has led to an interdependency system, based on cooperative features such as permanent consultation and coordination, which actually works in practice, partly thanks to the many informal contacts and coordination meetings next to those required by the law, and in which the federal government holds a gate-keeping and coordinating position. But is this viable on the longer run, especially now that Regions and Communities have received even more autonomy? We have in this chapter focus mainly on the two main groups – Dutch speakers and French-speakers – but the smaller partners of the Belgian federation are also willing to exist internationally and perhaps as consequence foster their internal position. The question of (para)diplomacy of substate governments has therefore not come to an answer yet, quite the contrary indeed.

References

Arbour, Jean-Maurice. 1997. *Droit international public*. Cowansville: Éditions Yvon Blais.

Beyers, Jan, and Peter Bursens. 2006. "The European Rescue of the Federal State: How Europeanization Shapes the Belgian State." *West European Politics* no. 29 (5):1057-1078.

- Beyers, Jan, and Peter Bursens. 2013. "How Europe Shapes the Nature of the Belgian Federation: Differentiated EU Impact Triggers Both Co-operation and Decentralization." *Regional & Federal Studies* no. 23 (3):271-291.
- Blatter, Joachim, Matthias Kreutzer, Michaela Rentl, and Jan Thiele. 2008. "The Foreign Relations of European Regions: Competences and Strategies." *West European Politics* no. 31 (3):464-490.
- Borghetto, Enrico, and Fabio Franchino. 2010. "The role of subnational authorities in the implementation of EU directives." *Journal of European Public Policy* no. 17 (6):759-780.
- Bursens, Peter, and Françoise Massart-Piérard. 2009. "Kingdom of Belgium." In *Foreign Relations in Federal Countries*, edited by Hans Michelmann, 91-113. Montreal & Ithaca: McGill-Queen's University Press.
- Criekemans, David. 2010. "Regional Sub-State Diplomacy From A Comparative Perspective: Quebec, Scotland, Bavaria, Catalonia, Wallonia And Flanders." In *Regional Sub-State Diplomacy Today*, edited by David Criekemans, 37-64. Leiden: Martinus Nijhoff Publishers.
- Criekemans, David, and Catherine Lanneau. 2011. "Les relations extérieures de la Flandre, de la Communauté française, de la Région wallonne et de la Région de Bruxelles-Capitale." In *D'une Belgique unitaire à une Belgique fédérale. 40 ans d'évolution politique des communautés et des régions (1971-2011)*, edited by Mark Van den Wijngaert, 201-220. Bruxelles: ASP.
- Duchacek, Ivo D. 1984. "The International Dimension of Subnational Self-Government." *Publius: The Journal of Federalism* no. 14 (4):5-31.
- Duchacek, Ivo D. 1986. *The Territorial Dimensions of Politics: Within, Among, and Across Nations*. Boulder & London: Westview Press.
- Elola Calderon, Teresa, and Eric Van den Abeele. 2010. "La présidence belge de l'Union européenne : organisation et priorités." *Courrier hebdomadaire du CRISP* (2072):5-42.
- Jans, Maarten Theo, and Patrick Stouthuysen. 2007. "Federal Regions and External Relations: The Belgian Case." *International Spectator* no. 42 (2):209-220.

- Lejeune, Yves. 1981. "Les Communautés et Régions belges dans les relations internationales." *Revue belge de droit international* no. 1 (14):53-80.
- Lejeune, Yves. 2003. "Participation of Sub-national Units in the Foreign Policy of the Federation." In *Federalism in a Changing World. Learning from Each Other, Scientific Background, Proceedings and Plenary Speeches of the International Conference on Federalism*, edited by Raoul Blindenbacher and Arnold Koller, 97-114. McGill-Queen's University Press: Montreal & Kingston.
- Massart-Piérard, Françoise. 1999. "Les entités fédérées de Belgique, acteurs décisionnels au sein de l'Union européenne." *Politique et Sociétés* no. 18 (1):3-40.
- Massart-Piérard, Françoise. 2005. "Une étude comparée des relations entre entités fédérées au sein du système de politique extérieure en Belgique francophone." *Revue internationale de politique comparée* no. 12 (2):191-205.
- Massart-Piérard, Françoise. 2006. "La Belgique, un modèle évolutif et inédit de gestion des relations internationales." In *Les relations internationales du Québec depuis la Doctrine Gérin-Lajoie (1965-2005)*, edited by Stéphane Paquin, 232-250. Québec: Les Presses de l'Université Laval.
- Massart-Piérard, Françoise. 2009. "Les entités fédérées belges : des relations internationales peu « paradiplomatiques »." In *Le fédéralisme en Belgique et au Canada. Comparaison sociopolitique*, edited by Bernard Fournier and Min Reuchamps, 173-183. Bruxelles: De Boeck Université.
- Michaud, Nelson. 2006. "Canada and Quebec on the World Stage: Defining New Rules?" In *Canada Among Nations*, edited by Andrew F. Cooper and Dane Rowlands, 232-250. Montreal: McGill's-Queen University Press.
- Michaud, Nelson, and Isabelle Ramet. 2004. "Québec et politique étrangère : contradiction ou réalité ?" *International Journal* no. 59 (2):303-324.

- Michelmann, Hans. 2009. *Foreign Relations in Federal Countries, A Global Dialogue on Federalism*. Montréal ; Ithaca: McGill-Queen's University Press.
- Michelmann, Hans, and Panayotis Soldatos. 1990. *Federalism and International Relations: The Role of Subnational Units*. Oxford: Clarendon Press.
- Paquin, Stéphane. 2003. "Paradiplomatie identitaire et diplomatie en Belgique fédérale: le cas de la Flandre." *Canadian Journal of Political Science/Revue canadienne de science politique* no. 36 (3):621-642.
- Paquin, Stéphane. 2004. "La paradiplomatie identitaire : Le Québec, la Catalogne et la Flandre en relations internationales." *Politique et Sociétés* no. 23 (2-3):203-237.
- Paquin, Stéphane. 2005. "Les actions extérieures des entités subétatiques : quelle signification pour la politique comparée et la théorie des relations internationales ?" *Revue internationale de politique comparée* no. 12 (2):129-142.
- Paquin, Stéphane. 2006. *Les relations internationales du Québec depuis la Doctrine Gérin-Lajoie (1965-2005)*, *Prisme*. Québec: Les Presses de l'Université Laval.
- Paquin, Stéphane. 2010. "Federalism and Compliance with International Agreements: Belgium and Canada Compared." *The Hague Journal of Diplomacy* no. 5 (1-2):173-197.
- Paquin, Stéphane. 2013. "La politique internationale du Québec." In *Les défis Québécois : conjonctures et transitions*, edited by Robert Bernier, 439-458. Québec: Presses de l'Université du Québec.
- Patry, André. 1980. *Le Québec dans le monde*. Montréal: Leméac.
- Philippart, Eric. 1997. "Le Comité des Régions confronté à la "paradiplomatie" des régions de l'Union européenne." In *Le Comité des Régions de l'Union européenne*, edited by Jacques Bourrinet, 6-13. Paris: Editions economica.
- Reuchamps, Min. 2013. "The Current Challenges on the Belgian Federalism and the Sixth Reform of the State." In *The Ways of Federalism in Western Countries and the Horizons of*

Territorial Autonomy in Spain, edited by Alberto Lopez Basaguren and Leire Escajedo San-Epifanio, 375-392. Berlin: Springer-Verlag.

Reuchamps, Min, and François Onclin. 2009. "La fédération belge." In *Le fédéralisme en Belgique et au Canada. Comparaison sociopolitique*, edited by Bernard Fournier and Min Reuchamps, 21-40. Bruxelles: De Boeck Université.

Rosenau, James N. 1990. *Turbulence in World Politics: A Theory of Change and Continuity*. Princeton: Princeton University Press.

Official Documents

Ministère des Relations internationales et de la Francophonie. 2013a. *Rapport annuel de gestion 2012-2013 : Une expertise, un réseau pour le développement du Québec*. <http://www.mrifce.gouv.qc.ca/content/documents/fr/rapportannuel.pdf> (accessed March 1, 2014).

Ministère des Relations internationales et de la Francophonie. 2013b. *Organisation internationale de la francophonie*. <http://www.mrifce.gouv.qc.ca/fr/francophonie> (accessed March 1, 2014).

Wallonie-Bruxelles international. 2012. *Rapport d'activités 2012*. http://www.wbi.be/sites/default/files/attachments/publication/rapport_activite_wbi_2012.pdf (accessed March 1, 2014).