

THE ROLE OF PARLIAMENTS IN THE CONCLUSION OF THE GLOBAL COMPACT FOR SAFE, ORDERLY AND REGULAR MIGRATION

Céline Romainville and Sofia Vandenbosch

INTRODUCTION

The UN strategy for the negotiation of the Global Compact for Safe, Orderly and Regular Migration was designed to be as inclusive as possible, particularly towards parliaments. The UN modalities, which were prepared in February and adopted at the General Assembly in April 2017, refer to parliaments as *interested parties* and highlight the importance of their effective participation in intergovernmental negotiations.¹

How precisely did parliaments answer this broad United Nations call? Through a multi-level analysis, this paper assesses the extent to which parliaments were involved in the process leading to the Global Compact for Safe, Orderly and Regular Migration (hereafter, the Compact). The first part of this paper will assess the role played by the Belgian House of Representatives. The second part will analyse the involvement of the European Parliament. This paper describes and explains how M(E)Ps used parliamentary instruments during the political crisis surrounding the Compact. M(E)Ps used parliamentary instruments during the political crisis surrounding the Compact. Through an analytical approach, it highlights the concrete means of control at M(E)Ps' disposal in foreign affairs and studies how these instruments function in practice.²

Regarding the Belgian House of Representatives, research shows that MPs used the tools at their disposal when negotiations were already well underway and the Compact had become a controversial matter of internal politics. Consequently, the House of Representatives could not have influenced the Belgian position on the Compact in the previous crucial stages of the negotiation (I). Conversely, the European Parliament took the UN call for parliaments to actively participate in the negotiations as an opportunity to voice its opinion on the international stage. It had a proactive approach towards the Compact as early as the first phase of the negotiations. However, the extent to which the EU can act remains uncertain. Furthermore, no particular role is devoted to the European Parliament regarding non-legally binding international agreements under EU law (II).

1 Resolution 71/280 (6 April 2017) "Modalities for the intergovernmental negotiations of the global compact for safe, orderly and regular migration", UN Doc. A/RES/71/280, §6. Consequently, Parliaments were invited to "contribute views, in particular through informal dialogues" (see §8). The President of the General Assembly was tasked with organising a series of informal thematic sessions, regional consultations and stakeholder consultations where parliaments were heard, as part of the preparatory process for the intergovernmental conference (see §30). These meetings took place between April 2017 and June 2018, see *Work Plan for the Preparatory Process leading to the Adoption of the Global Compact for Migration* https://refugeesmigrants.un.org/sites/default/files/work_plan_gcm.pdf accessed October 2019; see also <https://refugeesmigrants.un.org/consultation-phase>. The summary of the hearings had to be published as an input for the intergovernmental negotiations (see §30).

2 For a theoretical debate on executive-legislative relations in the field of foreign affairs see Tapio Raunio and Wolfgang Wagner, 'Towards Parliamentarisation of Foreign and Security Policy?' [2017] 40 *West European Politics* 1.

I. PARLIAMENTARY INVOLVEMENT AT NATIONAL LEVEL: THE BELGIAN CASE

The Compact case illustrates how the most important parliamentary tools are used when dealing with a specific foreign affairs issue. In this section, this paper will examine how the House of Representatives used these tools. First, this paper focuses on the right to assent to treaties, which is the only specific power given to parliaments in the context of external relations (1). Second, this paper studies the traditional legal instruments at MPs' disposal: the right to be informed (2); the right to question ministers (3); the right to issue political preferences through resolutions (4), and the right of interpellation or to vote on a motion of no-confidence (5). Finally, this paper assesses the involvement of the House of Representatives in the case of the Compact (6).

A. A specific tool in external affairs: the right to assent to treaties

Under Belgian constitutional law, external action is the King's exclusive prerogative. This means that, as the executive, he alone is able to negotiate and conclude treaties, establish international contacts with foreign counterparts through embassies, send State representatives to join international organisations, and conclude non-binding agreements or introduce any other public international law instruments.³ According to Article 167(2) of the Belgian Constitution, MPs have a single prerogative when carrying out external action which is to assent to treaties and give them legal effect in the Belgian legal order. This prerogative does not allow MPs to issue binding negotiation directives or to force the government to conclude a treaty or non-binding agreement.⁴

As a federal state, Belgium has several parliaments. According to the Fourth State Reform (1993), community and regional parliaments can also assent to a treaty if it deals with a topic in which they are competent.⁵ Consequently, their involvement depends on the internal allocation of competences. It is often the case that treaties deal with legal areas relevant to the federal authority, the communities and/or the regions. This results from the fact that international affairs operate differently to the Belgian federal system and its division of competences. This is especially true for multilateral negotiations such as the Compact. Despite the fact that it deals with migration, which is a residual competence of the federal state, some competences regarding policies on migrants' training and employment fall within the remit of federal entities.⁶ Although these entities deal with these issues, we will not examine the role played by the community and regional parliaments.

It has been repeatedly argued that the Compact is not legally binding, which means that it is not a treaty and it does not need parliamentary assent.⁷ This is logical since, beyond

³ Jan Velaers, *De Grondwet : Een Artikelsgewijze Commentaar*, vol 3 (die Keure 2019) 373–389.

⁴ Council of State, Legislation Section, advisory opinion n° 59.812/4 (19 September 2016), 4; advisory opinion n° 59.822/4 (19 September 2016), p. 7; advisory opinion n° 59.824/4 (19 September 2016), 7, see Marc Joassart and others, 'Le Conseil d'Etat. Chronique de Légisprudence 2016' [2018] RBDC 363.

⁵ See Jan Velaers, "In Foro Interno et in Foro Externo" : De Internationale Bevoegdheden van Gemeenschappen En Gewesten in Frank Judo and Godfried Geudens, *Internationale betrekkingen Vlaamse juristenvereniging Staatsrechtconferentie 2005* (Larcier 2006); Roger Moerenhout, 'De Instemming Met Verdragen Na de Vierde Staatshervorming' [1995] TBP 411; Frank Ingelaere, 'De Internationale Betrekkingen' in Geert Van Haegendoren and Bruno Seutin, *De transversale bevoegdheden in het federale België* (die Keure 2017).

⁶ Karel Reybrouck and Stefan Sottiaux, *De Federale Bevoegdheden* (Intersentia, 2019) 535.

⁷ A treaty is "any agreement of wills between two or more States (subjects of international law) provided that they have intended to be bound legally", Joe Verhoeven, *Droit International Public* (Larcier 2000) 365.

the political commitment to meet the requirements of the Compact, the Compact has no legal effect in the Belgian legal system. Therefore, parliamentary assent would be meaningless. The executive had the ability to engage Belgium in the Compact without parliamentary involvement.

However, this does not mean that the government can carry out external action without any form of parliamentary control. Although the Constitution does not cover non-legally binding instruments, the House of Representatives was not powerless regarding the Compact. On the contrary, it had, and still has, the power to control the government when it acts at international level. Indeed, the fundamental principles of a parliamentary regime still apply with regard to external action. The core of every parliamentary system is the government's collective accountability before an elected assembly.⁸ This offers governmental legitimization through parliament and ensures "a unity of purposes between parliament and government", whether on the national or international stage.⁹ This means that there is also political accountability regarding international relations. MPs can use every traditional instrument at their disposal to challenge the executive. While the parliament's ability to legislate is virtually non-existent in foreign affairs, its ability to exert control is important. The Compact demonstrates this, although it also shows that the use of control instruments in the field of foreign affairs should not be overestimated. In no respect could it allow parliament to have the same position externally as it does internally.¹⁰

B. The right to be informed

MPs must have access to information if they want to make the principle of political accountability of government effective.¹¹ However, except in the case of EU treaties, there is no duty to inform the House of Representatives of the entry into treaty negotiations.¹² Indeed, there are no legal rules that address the information gap between government and parliament in the field of external relations.¹³ The House of Representatives is a fortiori not systematically updated on non-legally binding instrument negotiations. In

8 For a political science perspective, see WC Müller, T Bergman and K Strom, 'Parliamentary Democracy: Promise and Problems' in WC Müller, T Bergman and K Strom, *Delegation and Accountability in Parliamentary Democracies* (OUP 2003) 12–13; M Soberg Shugart, 'Comparative Executive-Legislative Relations' in RAW Rhodes, SA Binder and BA Rockman (eds), *Oxford Handbook of Political Institutions* (OUP 2006) 348; JA Cheibub, *Presidentialism, Parliamentarism and Democracy* (CUP, 2006) 34. From a constitutional point of view, see P Lauvaux and A Le Divellec, *Les Grandes Démocraties Contemporaines* (4th edn, PUF 2015) 199; D Baranger and C Murray, 'Systems of Government' in M Tushet, T Fleiner and C Saunders, *Routledge Handbook of Constitutional Law* (Routledge 2015) 76–77. The later authors add: "Nothing else is needed to join the club of parliamentary governments, not even some other common features such as separate head of state (sometimes a monarch) and head of government, or the executive's power to dissolve Parliament".

9 Denis Baranger and Armel Le Divellec, 'Régime Parlementaire' in M Troper and D Chagnollaud, *Traité international de droit constitutionnel*, vol 2 (Daloz 2012) 172.

10 N Bernard and S Vandenbosch, 'Quelques Propositions Pour Une Remise Au Goût Du Jour de l'article 167 de La Constitution' (forthcoming) CDPK.

11 Massimo Luciani, 'L'effet de La Supranationalité Sur La Séparation Des Pouvoirs' in Hartmut Bauer and Antonio d'Arena (eds), *L'effet de la supranationalité sur la séparation des pouvoirs* (Bruylant, Ant N Sakkoulas, Berliner Wissenschafts-Verlag 2007) 17. See also Toon Moonen, 'Mag de Regering Geheimen Hebben Voor Het Parlement 2' in Charlotte Declercq, Petra Foubert and Anne Ooms (eds), *Geheimen in het recht* (Intersentia 2011) 5–27 and Mirdin Gnägi, 'Informational Power and Informationism' (2018) 11.

12 Article 168 Constitution and Article 16, §2, second sentence, Special Law on Institutional Reforms (Belgian official gazette, 15 August 1980).

13 This gap can negatively affect decision making, see Russell Golman and George Loewenstein, 'Information Gaps: A Theory of Preferences Regarding the Presence and Absence of Information' (2018) 5 Decision 143.

the case of the Compact, the most relevant legal text is Article 2 of the framework cooperation agreement of 30 June 1994 between the Federal State, the communities and the regions.¹⁴ Dealing specifically with the spread of information from the UN, it states that:

“The federal authority representing Belgium before an international organisation or, where appropriate, the Permanent Representation, shall ensure, in consultation with the other federal, community or regional authorities, wide and rapid dissemination of information to all parties concerned. This information includes, in addition to meeting invitations with dates, agendas and related documentation, substantive documents relating to the activities of the international organisation in general, the implementation of projects or programmes or other varied initiatives of interest to the parties concerned, without prejudice to the specific rules of each international organisation concerning the protection of documents.” (Authors’ translation).

The text does not specify which institutions are entitled to be informed. In practice, information is disseminated through the executive, at either administrative or government level. Parliaments do not benefit from this text.

The fact that the government has no legal obligation to inform other bodies does not prevent it from informing the parliament of developments in specific areas. Under certain circumstances, the executive deliberately seeks parliamentary constraints for its action. Evidence from abroad shows that this is the case when a foreign affairs issue creates controversy or when government members cannot reach a consensus.¹⁵ Due to the highly controversial nature of migration policy in Belgium during the last legislative period, one could have expected the government to have notified MPs of the negotiations. However, this was not the case. There is no mention of the Compact in the general policy notes for the years 2016 to 2019 issued by the Foreign Affairs Minister and the State Secretary for Asylum and Migration.¹⁶

Another opportunity to inform the parliament would have been when seeking approval for the budget. In the Belgian parliamentary system, the government has to seek parliamentary approval for its planned expenses, which allows MPs to monitor government policies. In the External Relations Committee budgetary reports for 2016 to 2019, there was only one mention of the Compact in the discussion regarding the budget for 2019. This discussion took place on 4 December 2018.¹⁷ At first sight, this timing seems implausible since the Compact negotiations ended on 13 July 2018. The content of the agreement had been settled months earlier and final approval of the text had to be given during an international conference organised in Marrakesh on 10 and 11 December 2018, a couple of days after the budget discussion. The explanation lies in the fact that

¹⁴ Article 2 of the framework cooperation agreement of 30 June 1994 between the Federal State, the Communities and the Regions on the representation of the Kingdom of Belgium in international organisations pursuing activities falling within mixed competences (Belgian official gazette 19 November 1994).

¹⁵ See Juliet Karboo, *Coalition Politics and Cabinet Decision Making: A Comparative Analysis of Foreign Policy Choices* (University of Michigan press 2013) 109.

¹⁶ A single quote was found in a note from 17 October 2017. Incidentally, the Compact is mentioned: “In cooperation with two UN organisations (IOM and UN-Habitat), our country is organising a conference on “Cities and migration” in November 2017. Its aim is to give an opportunity for cities worldwide to make their voices heard in the making of the Global Compact for Migration, which will be at the top of the international agenda next year” (authors’ translation), see Parl. Doc, *House*, 2017-2018, n° 2708/3, 5-6. On the practice of general policy notes in Belgium, see Marc Van der Hulst and Koen Muyllé, *Het Federale Parlement: Samenstelling, Organisatie En Werking* (INNI Publishers 2017) 407-411.

¹⁷ Parl. Doc., *House*, 2018-2019, n° 3294/9, 38.

one of the majority parties (N-VA) had made it clear that it wished to discard the Compact. Owing to the rules of consensus and collegiality that govern the decision-making process within the government, the government could potentially resign.¹⁸ This is the reason why the Compact suddenly caught MPs attention.

MPs are, however, not required to wait until the government informs them. They can actively seek information (even though this is complicated due to the fact that MPs are not aware of the government's foreign affairs agenda). Regarding the Compact, experts provided a significant part of the information that the parliaments obtained during External Relations Committee sessions.

On 4 December 2018, MPs from the External Relations Committee met to deal with the N-VA's intention to veto the Compact in the Council of Ministers. Every political group in the Committee invited an expert (generally an academic) of their choice to discuss the Compact.¹⁹ This "emergency meeting", where MPs were briefed about some fundamental aspects of the Compact after negotiations had ended, reveals how poorly informed MPs were at the time.

Furthermore, during the same Committee session, the Special Envoy for Migration and Asylum provided technical data about the negotiation process from a UN and Belgian perspective. The Special Envoy is responsible for managing Belgian asylum and migration policy at international level. He is the civil servant in charge of UN negotiations on behalf of Belgium. He also organises meetings between Belgian partners to set out a coherent international migration policy. These informal coordination mechanisms are also known as CoorAM (Coordination Asylum and Migration).²⁰

The Special Envoy's explanations were undoubtedly a valuable insight for the parliament. However, MPs could not take this cooperation for granted. Since civil servants are under the minister's hierarchical authority, they need the minister's permission to be heard by a parliamentary committee.²¹ The Council of State (legislation section) stated that:

"In the exercise of their (preparatory) oversight function, [ordinary parliamentary committees] are confronted with one or more ministers when it comes to obtaining information or clarification about government positions and initiatives. ***They shall only enter into direct contact with officials with the agreement of the competent minister and, in any event, under the latter's responsibility.*** Articles 64 and 88 of the Constitu-

18 See Dries Van Eeckhoutte's contribution in the present volume.

19 Parl. Doc., *House*, External Relations Committee, 2018-2019, 4 December 2018, CRABV 54 COM 1006, 2. From a legal point of view, the legal regime that allows MPs to hear experts is rather complex: No less than three different procedures dedicated to hearings and interviews coexist in the parliamentary rules of procedure (See Articles 28, 28.2 and 32 of the House of Representatives' Rules of Procedure (30 June 2019)). In the present case, the hearings were organised under the procedure set out in Article 28.1 (Parl. doc., *House*, 2018-2019, n° 3385/5, 3). At first sight, such a legal basis is surprising since it deals with legislative work. However, in casu, a resolution was at stake, which does not have legal force and does not fall within the legislative framework. Consequently, perhaps the procedure under Article 32 would have been more appropriate, see Van der Hulst and Muylle (n 17) 142-144.

20 See the answer the Minister of Development Cooperation, Alexander de Croo, gave in the External Relations Committee, Parl. Doc., *House*, External Relations Committee, 2018-2019, 13 November 2018, CRABV 54 COM 998, 20-21.

21 Van der Hulst and Muylle (n 17) 144.

tion [...] [establish] *control through an intermediary*. [Control] is not exercised directly on officers and services; it necessarily involves the minister.” (Authors’ translation).²²

These limits to MPs access to information exist due to the principle of the separation of powers. Similarly, MPs cannot visit administrative offices or access administrative work and documents without the minister’s permission. The minister does not have to explain why s/he refuses to give MPs access to information.²³ However, s/he runs a political risk if the majority of MPs deem the refusal illegitimate.

In this particular case, the Minister of Foreign Affairs accepted the presence of the Special Envoy for Migration and Asylum at a parliamentary hearing in March 2018.²⁴ The External Relations Committee invited him to a meeting nine months later.

C. The right to question ministers

When the parliament wants to hear the opinion of members of government, the control is much more direct. Members of parliament can question ministers directly. It is part of the power dedicated to the parliament under Article 101(1) (ministerial accountability) and Article 100(2) (right to request ministers’ presence) of the Belgian Constitution. Every MP has the right to question ministers and ministers are required to answer, since they are politically accountable before the House.²⁵

Parliamentary questions are an important tool to access information. For a long time their purpose has been controversial. Are they designed to obtain information or to challenge a minister’s political accountability? Today, it is accepted that in most cases written questions have a merely informative purpose.²⁶ Indeed, answers given by a minister are not supposed to result in his or her resignation or the resignation of the government.²⁷

There are several types of written or verbal questions presented in a committee or in a plenary session.²⁸ How did MPs use them regarding the Compact? We checked plenary session parliamentary reports from September 2016, when negotiations began, to the end of December 2018 and reviewed External Relations Committee reports and Internal and General Affairs Committee reports (which deal with migration) for the same period. The results are the following.

22 Council of State, Legislation Section, advisory opinion L. 18.508/2 (8 June 1988), 4; Council of State, Legislation Section, advisory opinion n° L. 19.181/8 (13 February 1990), 16-17.

23 In most cases however the Minister justifies his or her decision on the grounds of the law of 11 April 1994 on the publicity of the Administration, (*Belgian official gazette*, 30 July 1994) see Van der Hulst and Muylle (n 17) 473.

24 Parl. Doc., *House*, External Relations Committee, 2017-2018, 7 March 2018, CRABV 54 COM 838, 9.

25 Van der Hulst and Muylle (n 17) 446. This means that an MP who is not part of a parliamentary group can also question ministers, see House of Representatives, Legal Affairs and Parliamentary Documentation Service, *Les moyens d'action du membre de la chambre en questions*, June 2019, 42 <www.dekamer.be/kvvcr/pdf_sections/jurid/actionF.pdf> accessed October 2019.

26 *ibid.*, 443.

27 *ibid.*, 436.

28 *ibid.*

1. Written questions

Written questions allow MPs to request information about non-urgent topics. The minister has 20 days to send his or her answer, which will be published in the *Questions & Answers Bulletin*.²⁹ The minister's answer is not subject to discussion (see Article 123, §7, of the Rules of Procedure).

Members of the opposition have submitted two written questions about the Compact. The first question was asked in November 2016 at an early stage of the negotiation process and addressed to the Minister for Foreign Affairs.³⁰ It was broad in scope and contained seven sub-questions. Amongst other things, the Minister for Foreign Affairs was asked which position Belgium would adopt during the negotiations and whether he supported binding agreements and control mechanisms. The government was also questioned about its intention to keep the parliament informed about the Belgian position. The answer given was rather short and did not cover the whole point.³¹

The second written question was asked in a very different context.³² A prominent opposition figure submitted it at the end of November 2018 when the N-VA had already made its wish to discard the Compact public. The MP asked the Prime Minister what would the Belgian position be during the intergovernmental conference set to take place in Morocco.³³ He answered after the conference when Belgium had already expressed its support for the Compact.

2. Oral questions

Oral questions are dedicated to topical issues. They are informative in purpose. The ministers to whom they are addressed are required to be physically present in the House of Representatives in order to answer them. Only the MP who authored the question and the minister can take the floor. The former has the last word since he can reply to the minister. Oral questions can be submitted either during the committee meeting (a) or during the plenary session (b). Overall, 29 questions about the Compact have been submitted orally. They are published in the minutes of the meeting (in either the full report or the summary report).

29 House of Representatives, Legal Affairs and Parliamentary Documentation Service (n 26), 51. However, this time slot is rarely respected, see Nicolas Lagasse, Koen Muylle and Marc Van der Hulst. *Les Actes Non Législatifs d'un Parlement : Sources de Hard Law et de Soft Law* in Isabelle Hachez and others (eds), *Les sources du droit revisitées Normes internes infraconstitutionnelles*, vol 2 (Presses de l'Université Saint-Louis 2012) 267.

30 See question n° 846 (4 November 2016) from Mr Dirk Van der Maelen (SPA) to the Minister of Foreign Affairs, Parl. Doc., *House*, Written Questions and Answers, 2016-2017, 23 November 2016, QRVA 54 096, 134-136.

31 The question's timing might provide an explanation. The question mainly dealt with the UN High-level Summit organized on 19 September 2016 but it was surprisingly submitted after it.

32 See question n° 353 (20 November 2018) from Mr Elio Di Rupo (PS) to the Prime Minister, Parl. Doc., *House*, Written Questions and answers, 2018-2019, 21 December 2018, QRVA 54 177, 3.

33 Note that the Prime Minister was questioned directly about the issue and not his ministers.

a. Oral questions in Committee

Only four questions were raised during Committee meetings. Three of them were submitted in March and April 2018 before the Compact became a source of controversy.³⁴ The informal part of the negotiation process was over and the intergovernmental negotiations had started in early February. This means that, unlike the EP, the Belgian House of Representatives did not seek to participate directly in the informal part of the negotiation process, or show political preference to the UN facilitators.³⁵ In any case, this would not have been allowed under Belgian constitutional law since foreign relations are in the hands of the executive.³⁶

The purpose of parliamentary control is more traditional. It intends to oversee government action and not to intervene directly on the international stage. In that regard, the questions were put forward correctly. The government expressed its political position during the negotiations and the parliament could evaluate it before Belgium had to give its support for the Compact. In terms of their content, the questions were more detailed and technical than those issued during the plenary session.

The first two questions were dealt with jointly during the External Relations Committee session that took place on 7 March 2018.³⁷ They raised three sub-questions: How are the negotiations on the Compact progressing so far? What position will Belgium defend in the upcoming negotiations? Will parliament be involved in this process? The Minister of Foreign affairs gave a detailed answer. Regarding parliamentary involvement, he affirmed that the Special Envoy for Asylum and Migration was willing to explain the negotiation process to the Foreign Relations Committee. The MPs who asked the question welcomed this statement.³⁸

On 25 April 2018, another parliamentary question was submitted to the Secretary of State for Asylum and Migration in the Internal and General Affairs Committee.³⁹ This is usually the place where migration issues are discussed. The MP asked about the negotiation schedule and the composition of the Belgian delegation. He wondered whether a consultation within the executive had taken place to shape the Belgian position. The answers given by the Secretary of State were complete and detailed. The MP who asked the questions seemed satisfied. However, he intended to “hear [the Secretary of State] again on this subject and to hear the Belgian Special Envoy”.⁴⁰ We have not found any record of a follow-up to this statement in the parliamentary documents.

The last oral question submitted in a committee session was asked on 13 November 2018 when the Compact had become a source of controversy.⁴¹ The question concerned

34 Oral questions can be submitted at a committee meeting only since a 1993 reform, see Van der Hulst and Muylle (n 17) 453.

35 For the role played by the European Parliament, see below chapter II.

36 See above, section A.

37 Joined questions over the UN Global Compact for Migration from Mrs Fatma Pehlivan (SPA) and from Mrs Sabien Lahaye-Battheu (OpenVLD) to the Minister of Foreign Affairs (n° 23093 and n° 24162), Parl. Doc., *House*, External Relations Committee, 2017-2018, 7 March 2018, CRABV 54 COM 838.

38 On the control on civil servants through an intermediary, see above, section 2.

39 Mr Stéphane Crusnière (PS) raised the question, see Parl. Doc., *House*, Internal and General Affairs Committee, 2017-2018, 25 April 2018, CRIV 54 COM 877, 1-3.

40 *ibid.*, 3.

41 Mr Dirk Van der Maelen (SPA) addressed the question (n° 27607) to the Minister of Development Cooperation, see Parl. Doc., *House*, External relations Committee, 2018-2019, 13 November 2018, CRIV 54 COM 998, 20-21.

the Secretary of State for Asylum and Migration's (N-VA) involvement in the negotiation process. The MP tried to track the N-VA's responsibility in its change mind regarding the pact. Was the Secretary of State for Asylum and Migration aware of Belgium's position? Should he have known more about it? Interestingly, this question was not addressed to the Minister of Foreign Affairs but to the Minister of Development Cooperation.⁴² The answer he gave was well informed. It set out in detail the role of the Secretary of State and of his team in the Belgian coordination process.

b. Oral questions in plenary session

Twenty-six questions were submitted during the plenary session in November 2018 once the negotiation process was over and after the N-VA had announced its opposition to the Compact.⁴³ In a very short period of time, MPs from every political group, except the N-VA, submitted oral questions to the Prime Minister.

The rationale behind oral questions explains why none of them had been submitted during the plenary session before that critical turning point. In order to be discussed, oral questions must be up to date. They also need to serve the general interest. In November 2018, discussions about the Compact met both requirements. First, a high-level international conference was about to be held in Marrakesh on 10 and 11 December 2018, where states were invited to show their support for the Compact. Second, since the N-VA was reluctant to support the Compact, the issue went beyond foreign policy. Indeed, it threatened government unity and could lead to the resignation of the government. This explains why it suddenly caught MPs' attention. However, an alternative reading is also possible. Before the N-VA statement, there was a general consensus about the Belgian position towards the Compact. Consequently, MPs found there was nothing to discuss as the position of the government met their expectations and coincided with their political choices.

D. The adoption of a resolution or the right to issue political preferences

As previously mentioned, the Compact became a source of controversy when the N-VA, a party from the government majority, declared to the press that it did not want Belgium to be part of it.⁴⁴ The vast majority of MPs were in favour of it. However, the government takes decisions regarding Belgian external action alone and no parliamentary assent is needed, except in the case of treaties. As a result, MPs could not vote on the Compact and, from a legal perspective, the large parliamentary support for the Compact was irrelevant. The fact that the Compact was a non-binding international agreement did not change anything. If it had been a treaty, MPs would have had to assent to it and they could have vetoed it. However, the right to assent to a treaty does not allow MPs to demand that the government ratify it.⁴⁵

⁴² The addressee could not be the Secretary of State for Asylum and Migration since the question was submitted in the External Relations Committee.

⁴³ Nine questions were submitted on 14 November 2018. The President of the parliamentary group Groen asked whether a question time could be organised instead but this request was refused (Article 125, §1 Rule of Procedure), see Parl. Doc., *House*, Plenary session, 2018-2019, 14 November 2018, CRIV 54 PLEN 254, 1-2.

⁴⁴ *ibid.*, 1.

⁴⁵ Parl. Doc., *Senate*, 1977, n° 96/2. See also Ferdinand Muûls, 'Le Traité International et La Constitution Belge' [1934] RDILC 19.

Since the Belgian government makes decisions through consensus, the opposition of a single party from the government majority could prevent Belgium from supporting the Compact. Therefore, the risk that the government would act in opposition to the parliament's will was high. In order to influence the process, MPs decided to adopt a resolution.

This parliamentary tool allows parliament to make political recommendations on issues outside of its competence.⁴⁶ Resolutions are not legally binding and the parliament cannot demand the government to meet its request. If the government decides not to follow the House's resolution, which is often the case, MPs have no power except the right to hold the government politically accountable. Therefore, parliamentary resolutions can be described as soft control instruments.⁴⁷

Two resolution proposals were submitted at the end of November 2018. They were discussed in the External Relations Committee shortly afterwards and the Committee adopted one of them.⁴⁸ Then, a large majority of MPs gave their support to the resolution in a plenary session on 6 December 2018.⁴⁹ Considering "the very active involvement of Belgium throughout the negotiations and the agreement reached between Belgian stakeholders on the final text", the resolution expressed full parliamentary support for the Compact and required the government to conclude the Compact.⁵⁰

One could describe this resolution as "suggested law" because it invites the competent power (in this case, the government) to support an international, non-binding agreement.⁵¹ It is not unusual for the House to suggest that the executive act in a certain way at international level.⁵² In a parliamentary report from 1977, the Foreign Relations Committee made clear that MPs could not issue a bill providing for Belgium's accession to an international agreement.⁵³ Consequently, resolutions are the only way for MPs to express their political preferences in international affairs. In the case of the Compact, the parliamentary invitation was politically sensitive because it could lead to the government's collapse, which is what eventually happened. The voting pattern in the House indicated that this would occur since it did not follow the traditional majority-opposition pattern.⁵⁴

E. The right of interpellation and the motion of no confidence

The right of interpellation and the motion of no confidence are the most powerful tools at MPs' disposal. Their effects go beyond the other parliamentary instruments since they can lead to a government's resignation. This is the reason why they are used carefully and as a last resort.

46 Van der Hulst and Muylle (n 17) 459 and Council of State, Legislation Section, advisory opinion n° 48.754-5/AG (15 December 2010), 24.

47 *ibid.*, 460.

48 Parl. Doc., *House*, 2018-2019, n° 3386/1 and Parl. Doc., *House*, 2018-2019, n° 3385/1.

49 The resolution was adopted during the plenary session with 107 votes in favour and 36 against. The MPs who opposed were members of NV-A, VB, Vuye&Wouters and PP, see Parl. Doc., *House*, Plenary session, 2018-2019, 6 December 2018, CRIV 54 PLEN 258, 52.

50 Parl. Doc., *House*, 2018-2019, n° 54 3385/8, 3 (authors' translation).

51 Lagasse, Muylle and Van der Hulst (n 30) 259.

52 The use of resolutions is rather popular in the field of foreign affairs due to the Parliament's lack of legislative power. For an overview, see Eric David and others, 'La Pratique Du Pouvoir Exécutif et Le Contrôle Des Chambres Législatives En Matière de Droit International (2011-2014)' [2014] RBDI 549.

53 Parl. Doc., *Senate*, 1977, 96/2, 3.

54 See footnote 51.

The right of interpellation is set out in Article 101(1) and 100(2) of the Constitution and every MP can make use of it. Formally, an interpellation looks like an oral question. An MP questions a minister on a specific topic or on a point of his or her policy. The minister answers and then the MP who asked the question and three other MPs can reply. The major difference between parliamentary questions and interpellations is that before the end of the discussion, MPs can submit a motion (Article 140(1)(3) Rules of Procedure). There are three types of motion. First, the parliament can adopt a motion of no confidence if it is not convinced by the minister's explanation. Second, the parliament can adopt a motion of recommendation through which it asks the government to act in a certain way. Third, the motion can express support for the government's policy.⁵⁵ If no motion is submitted, the incident is closed.

In the case of the Compact, an interpellation was submitted but it was withdrawn immediately.⁵⁶ A motion of no confidence was not submitted, which is unsurprising since it is such a powerful tool that it is hardly ever used.⁵⁷ Nevertheless, the threat of a motion of no confidence can be very effective. As the resignation of Charles Michel's government illustrates, the threat that such a motion could be adopted can be enough for a government to resign.⁵⁸ Let us recall the facts.⁵⁹ The N-VA's opposition to the Compact caused conflict within the government. On 10 December 2018, the Prime Minister, backed by a large majority in the parliament, supported the Compact in Marrakesh, in stark opposition with the N-VA's will. This left the N-VA with a choice: it could either support the government or leave it. On 9 December, the N-VA chose to leave, which meant that there was no longer a parliamentary majority. On 18 December 2019, the Prime Minister failed to gain a majority in the House to support his strategy, which would allow his minority government to remain in charge and try to gain enough support on a case-by-case basis. Consequently, the opposition leader asked for a suspension of the plenary meeting, invoking a motion of no confidence. Owing to the imminent motion of no confidence, the Prime Minister announced his intention to present his government's resignation to the King.⁶⁰

F. How to assess Belgian parliamentary involvement in the case of the Compact?

Parliamentary involvement in the Compact negotiations is hard to assess with certainty. At best, MPs fully exercised their control because they acted when the government risked relaying a different opinion on the international stage to that of the parliamentary majority. This interpretation shows respect for the idea that in a parliamentary regime, government rests on the majority in parliament. At worst, the Compact case demonstrates how poorly informed MPs are in external affairs and how they only deal with international issues when they have become matters of national controversy. This second interpretation is evidenced by the fact that MPs complained that they learnt

55 House of Representatives, Legal Affairs and Parliamentary Documentation Service (n 26), 53-70.

56 Mr F Dewinter (Vlaams Belang) issued a motion of interpellation against the Secretary of State for Asylum and Migration, see Parl. Doc., *House*, Plenary session, 2018-2019, 14 November 2018, CRIV 54 PLEN254/ANNEXE, 5.

57 Note that a Minister's or government's interpellation is not the only opportunity for MPs to submit a motion of no confidence.

58 Parl. Doc., *House*, Plenary session, 2018-2019, CRABV PLEN 263, 37-38. On 21 December 2019, the King accepted the Prime Minister's resignation.

59 For a detailed account, see the contribution of Toon Moonen, Ellen Desmet and Tom Ruys in the present volume.

60 Mathias El Berhoumi, 'Chronique de Crise: La Chute Du Gouvernement Michel' [2019] JT 273, 279.

from the press that the Minister of Foreign Affairs gave official instructions to Belgian diplomats to support the Compact and that the N-VA finally decided to oppose it.⁶¹

It is certain that MPs did not try to influence directly the course of the negotiations. This is in line with the doctrine of the separation of powers that underpins the Belgian Constitution. Under Article 167, the King and his government have the power to act internationally, not the parliament. Therefore, the declaration that the Prime Minister made at a press conference on 4 December 2018 when the political crisis was at its peak was dubious from a legal point of view.⁶² He declared that he intended to express the parliamentary position to the high-level international conference which was to take place in Marrakesh on 10 and 11 December 2018. However, from a constitutional point of view, the parliament is not able to express the view of the State on international affairs. Furthermore, according to international law, the Prime Minister is in charge of committing the State as a whole rather than a single branch of it.⁶³

Overall, MPs made extensive use of the parliamentary tools at their disposal to ensure that Belgium supported the Compact. In that sense, the Compact case is exceptional and is not illustrative of the way the Belgian House of Representatives usually carries out its watchdog duties in external affairs. Academic Literature tends to deplore the lack of interest Belgian MPs show in the field of international relations.⁶⁴ Indeed, the Constitution allows MPs to control the government's international action but there is no obligation for them to use the procedural rules at their disposal. In other words, the existence of parliamentary control instruments, however robust they may be in theory, does not guarantee that they are effective in practice. Further empirical research on a case-by case basis should be conducted to reveal the level of control actually exercised.

There have been significant attempts to enhance the House of Representatives' involvement in foreign affairs over the last decades with limited success in comparison to other states.⁶⁵ In that respect, access to information remains a major concern. As the Compact case demonstrates, essential information was not communicated between the parliament and the government. This information power gap raises concern about the effectiveness of the control MPs are able to exercise when the government acts internationally.⁶⁶

II. PARLIAMENTARY INVOLVEMENT AT THE EUROPEAN LEVEL

To understand the European Parliament's role in the case of the Compact and to contrast it with the role of the Belgian House of Representatives, one must understand the division of powers between the European Union and its Member States in external migration affairs (A). This paper will study the distribution of powers between the European institutions (B) and present findings related to the European Parliament's involvement in the Compact negotiation process (C). Then, it will assess the European Parliament's role (D).

61 Parl. doc., *House*, Plenary session, 2018-2019, 6 December 2018, CRIV 54 PLEN 258, 4.

62 'Pacte Migratoire de l'ONU: Charles Michel Renvoie La Balle Au Parlement' (4 December 2018) <www.rtbf.be/info/belgique/detail_crise-politique-la-conference-de-presse-de-charles-michel-en-direct?id=10089623>. Accessed October 2019.

63 El Berhoumi (n 61) 274-275.

64 Raunio and Wagner (n 3) 4-5.

65 Bernard and Vandenbosch (n 11).

66 See Gnägi (n 12) and Golman and Loewenstein (n 14).

A. Division of powers between the EU and its member states in the field of external migration law

The Compact sets out commitments to improve cooperation on international migration.⁶⁷ According to Melin, a clear link between migration and development results from the text and the origins of the Compact.⁶⁸ Development cooperation is a parallel competence (Article 4(4) TFEU). And migration policy “correspond[s] to a complex intertwining of powers between the Union and its Member States”.⁶⁹ As a result, the Compact relates to both EU and Member States’ competences and is referred to as an “informal mixed agreement”.⁷⁰

The EU could create a unified approach that the European delegation could communicate during the UN meeting sessions. However, the EU is not a UN member and, as such, cannot actively participate in UN work. As a result, it was granted special status to be involved in the negotiations for the Compact.⁷¹ During the informal part of the negotiations, the EU acted on behalf of its Member States, which implies that they had reached a common position (1). However, not long after the intergovernmental part of the negotiations began, some Member States started to voice strong disagreement with the Compact (2).

1. Initial internal consensus on the Compact

It is unclear how Member States and European institutions worked together during the informal part of the negotiation. However, when the intergovernmental part of it started, some Member States expressed their opposition to the Compact. This has led to a debate about whether there was a common position between the EU and the Member States, and whether Member States had an obligation to sincerely cooperate.⁷² When a common position exists, Member States are prohibited “from making statements that are contradictory with the ones presented by the Union”.⁷³ This results from the

67 Final Draft of the Global Compact for Safe, Orderly and Regular Migration, 11 July 2018 <https://refugees-migrants.un.org/sites/default/files/180711_final_draft_o.pdf> accessed October 2019.

68 Pauline Melin, ‘The Global Compact for Migration: Lessons for the Unity of EU Representation’ (2019) 21 *European Journal of Migration and Law* 194, 212.

69 Paula García Andrade, ‘External Competence and Representation of the EU and Its Member States in the Area of Migration and Asylum’ (*EU Immigration and Asylum Law and Policy*, January 2018) <<https://eumigrationlawblog.eu/>> accessed October 2019. For a more detailed analysis on EU competences in the field of migration: Paula García Andrade, ‘EU External Competences in the Field of Migration: How to Act Externally When Thinking Internally’ (2018) 55 *Common Market Law Review* 157.

70 Paula García Andrade, ‘EU External Competences on Migration: Which Role for Mixed Agreements’ in Sergio Carrera, Juan Santos Vara and Tineke Strik (eds), *Constitutionalising the External Dimensions of EU Migration Policies in Times of Crisis* (Edward Elgar, 2019) 52.

71 See Resolution 72/244 (24 December 2017), “Modalities for the Intergovernmental Conference to Adopt the Global Compact for Safe, Orderly and Regular Migration”, UN Doc. A/RES/72/244; Resolution 72/308 (6 August 2018), “Modalities for the Intergovernmental Conference to Adopt the Global Compact for Safe, Orderly and Regular Migration”, UN Doc. A/RES/72/308.

72 According to Gatti, a consensus was found and Member States breached it, see Mauro Gatti, ‘EU States’ Exit from the Global Compact on Migration: A Breach of Loyalty’ (*EU Immigration and Asylum Law and Policy*, 14 December 2018) <<https://eumigrationlawblog.eu/eu-states-exit-from-the-global-compact-on-migration-a-breach-of-loyalty/>> accessed 23 October 2019. According to Melin, a common position was not attested with certainty, see Pauline Melin, ‘The Global Compact for Migration: Cracks in Unity of EU Representation’ (*EU Law Analysis*, 11 December 2018) <<http://eulawanalysis.blogspot.com/2018/12/the-global-compact-for-migration-cracks.html>> accessed 23 October 2019.

73 Melin (n 69) 207.

principle of sincere cooperation and the requirement of unity in the international representation of the European Union.⁷⁴ Since the Perfluorooctane Sulfonates (PFOS) case, “the principle of sincere cooperation whereby the Member States should support the position expressed by the EU or, at least, abstain from contradicting it starts from the moment there is an established common position”.⁷⁵ This involves determining *when* a common position is reached. According to the same case law, the Commission’s submission of a Council proposal to authorise the start of the negotiation of a multilateral agreement, or any evidence in compliance with the requisite legal standards that shows that an internal discussion led to a consensus on a common position can be used to determine this. What would be that evidence in the case of the Compact? The answer is far from obvious.

On 23 May 2016, a few months before the first round of UN negotiations, the Council adopted its *Conclusions on External Aspects of Migrations* which expressed the willingness of the EU and its Member States to engage in international negotiations.⁷⁶ In the conclusions, “the Council underline[d] the importance of the global events related to migratory movements and the refugee crisis, such as [...] the high-level events taking place at the margins of the UN General Assembly in September 2016”.⁷⁷ The Council further emphasised that “at these events, the EU and its Member States [were] ready to actively engage towards an equitable and balanced responsibility-sharing within the international community”.⁷⁸ In February 2018, the Presidency of the Council issued a *Draft EU Framework Document for the negotiation of a Global Compact for Safe, Orderly and Regular Migrations*.⁷⁹ Aside from these documents, and in the absence of a clear legal framework regarding the negotiations of soft law international agreements, the Council did not adopt any formal decision authorising the Commission to start the negotiations.⁸⁰

Other elements suggest that a common position existed. From September 2016 to March 2018, an EU delegation delivered numerous “EU coordinated statements”, expressing opinions “on behalf of the EU and its Member States” or “in the name of all EU Member States”.⁸¹ According to Gatti, the fact that the EU delegation acted in this way indicates that a common position had been reached in the United Nations Working Party CONUN.⁸² An analysis of the Council documents and those issued by the CONUN and High-Level Working Group on Asylum and Migration (HLWG) supports this assumption.

74 See articles 32 and 34(1) TEU. In the field of joint competences, see Opinion 2/91 *ILO Convention 170*, ECLI:EU:C:1993:106.

75 Case C-246/07 *Commission v Sweden*, ECLI:EU:C:2010:203, para. 91, see *ibid.*, 208 and Gatti (n 72).

76 See Council of the European Union, “External aspects of migration - Council Conclusions of 23 May 2016”, Adopted by the Council at its 3466th meeting held on 23 May 2016, n°9111/16.

77 *ibid.*, point 15.

78 *ibid.*

79 Draft EU Framework Document for the negotiation of a Global Compact for Safe, Orderly and Regular Migration, 27 February 2018, 6192/1/18, <https://data.consilium.europa.eu/doc/document/ST-6192-2018-REV-1/en/pdf>, accessed July 2020. This document was prepared with input from the EEAS and the Commission. It emphasised that the goal of the EU and its Member States was to achieve “a Global Compact for Migration as consistent as possible with their policy and approach”.

80 See below.

81 Gatti (n 73).

82 The United Nations Working Party (CONUN) is the preparatory body that develops the policy of the Council of the EU on UN issues. See Council, *General Arrangements on EU Statements in Multilateral Organisations*, Brussels, 24 October 2011, 15901/11, 3, <<http://data.consilium.europa.eu/doc/document/ST-15901-2011-INIT/en/pdf>> accessed 31 October 2019. Mauro Gatti, ‘Too Much Unity in the European Union’s External Migration Policy?’ (*EU Immigration and Asylum Law and Policy*, 20 July 2018) <<http://eumigrationlawblog.eu/too-much-unity-in-the-european-unions-external-migration-policy/>> accessed October 2019.

Indeed, the delegates of Member States were systematically invited to the CONUN,⁸³ where the Compact was repeatedly scheduled on the agenda.⁸⁴ Therefore, broad discussions on the Compact took place between CONUN delegates and within other working groups.⁸⁵ Furthermore, the delegates of Member States were given access to the working documents and to documents that set out the EU priorities for the Compact.⁸⁶ Each Member State was invited to discuss the documents and send its comments. Consequently, it is quite clear that they were able to express their opinion on the EU positions taken on their behalf. They could have suggested alternative approaches if they had wanted to.

Could it be inferred from the Council Conclusions on Migration, the draft EU Framework for the negotiation of the Compact, the CONUN and HLWG documents and working methods that a common position existed “by default”? It seems that Member States could have voiced their dissent on a number of occasions. Therefore, a common position might have existed, at least implicitly. However, the fact that a non-binding agreement was at stake implied that no formal procedure was followed.⁸⁷ Consequently, no document can provide evidence of the agreed common position. No mandate or negotiation guidelines were published. This raises major concerns regarding the principle of sincere cooperation for future negotiation on non-legally binding mixed agreements.⁸⁸ On 21 March 2018, it seems that the Commission noticed its uncomfortable situation when it finally submitted a proposal for a Council decision authorising the Commission to approve the Compact on behalf of the Union.⁸⁹ By then, this formality was too late because Hungary had already rejected the Compact.

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- 83 See Communication of the General Secretariat of the Council n° CM 4286/16, 26 October 2016, <<http://data.consilium.europa.eu/doc/document/CM-4286-2016-INIT/en/pdf>> accessed July 2020 ; n° CM 1953/17, 8 March 2017, <<http://data.consilium.europa.eu/doc/document/CM-1953-2017-INIT/en/pdf>> accessed October 2019; n° CM 3804/17, 8 August 2017 <http://data.consilium.europa.eu/doc/document/CM-3804-2017-INIT/en/pdf> accessed July 2020 ; n° CM 1715/18, 23 February 2018, <http://data.consilium.europa.eu/doc/document/CM-1715-2018-INIT/en/pdf> accessed July 2020.
- 84 See Communication of the General Secretariat of the Council n° CM 1464/17, 3 February 2017, <http://data.consilium.europa.eu/doc/document/CM-1464-2017-INIT/en/pdf> accessed October 2019. For example, on 13 February 2017, a meeting of the CONUN was dedicated to the Compact. It developed the process to be followed, and stated that all Member States and the EU supported the two year project and considered that the coordination between Member States and the EU was to be based on the joint work of the CONUN and the HLWG, see Working paper of the General Secretariat of the Council on the process for the Global Compact on Migration, 13 February 2017, WK 1598/2017 INIT, unpublished.
- 85 For instance, CONUN invited delegates of the Working Party on Human Rights, JAI Counsellors and the delegates of the High Level Working Group on Asylum and Migration to join a meeting organised on 22 March to discuss the Compact, see Communication of the General Secretariat of the Council n° CM 1953/17, 8 March 2017, (n. 84).
- 86 For instance, the General Secretariat of the Council sent to every Delegation the *EU priorities at the United Nations and the 71st United Nations General Assembly (September 2016 – September 2017)*, Outcome of proceedings of the Council of the EU n° 11201/16, 18 July 2016, <http://data.consilium.europa.eu/doc/document/ST-11201-2016-INIT/en/pdf>, accessed July 2020. For another example, see Working paper of the General Secretariat of the Council on the process for the Global Compact on Migration, 13 February 2017, WK 1598/2017 INIT, unpublished. In this document, the draft EU Guidelines for the informal thematic session on Human rights of all migrants where disseminated to member states' delegations.
- 87 The treaty making procedure, as set out in Article 218 TFUE, was not applicable.
- 88 From a legal point of view, it is clear that the principle of sincere cooperation applies to mixed agreements, see Christophe Hillion, ‘Mixity and Coherence in EU External Relations: The Significance of the “Duty of Cooperation”’ in Christophe Hillion and Panos Koutrakos (eds), *Mixed Agreements Revisited The EU and its Member States in the World* (Hart Publishing 2010).
- 89 Commission Proposal for a Council Decision authorising the Commission to approve, on behalf of the Union, the Global Compact for Safe, Orderly and Regular Migration in the area of immigration policy, COM/2018/168 final. For a critic analysis thereof, Melin (n 69) 211–213.

2. Eventual lack of European consensus

Intergovernmental negotiations started in February 2018, on the basis of a zero draft text inspired from informal debates.⁹⁰ As early as 2 March 2018, Hungary issued its twelve-point statement *Security First. Proposals by Hungary to the UN's Global Compact on Migration*.⁹¹ This document expressed strong disagreement with the Compact, in stark contrast with the EU declarations issued earlier. From that moment on, the statements from the EU delegation were published on behalf of the EU and 27 Member States, excluding Hungary.⁹²

However, Hungary was not the only State to view the Compact with growing scepticism. In some other Member States, the debate became highly polarised, provoking sudden opposition to the Compact. While the date of the formal vote on the Compact approached, some governments appeared to have more and more problems with the common European position. Hungary officially left the negotiation process in July 2018 and Austria, the Czech Republic, Poland, Bulgaria, Slovakia, Estonia, Latvia and Italy followed its example.

Since the EU could not build on a common position anymore, Member States took back their prerogative to express a national opinion on the Compact. Overall, nine Member States did not support it.⁹³ At the UN General Assembly of 18 December 2018, Hungary, the Czech Republic and Poland voted against the Compact. Austria, Bulgaria, Italy, Latvia and Romania abstained. Slovakia did not participate in the vote and numerous European States issued an explanatory position.⁹⁴

B. Institutional uncertainties regarding the European Parliament's role in the negotiation of non-binding international agreements

The division of competences between the EU and its Member States is not the only thorny legal issue in the field of external migration law. The division of power between EU institutions regarding external action through non-binding instruments remains unclear. Article 218 TFEU develops a symmetry between EU legislation-making and treaty-making.⁹⁵ However, it applies only to legally binding agreements and excludes non-legally binding instruments.⁹⁶ The EU treaties do not deal with the procedural

90 The text of the zero draft is available at https://refugeesmigrants.un.org/sites/default/files/180205_gcm_zero_draft_final.pdf (accessed 23 October 2019).

91 Security First Proposals by Hungary to the UN's Global Compact on Migration <https://ensz-newyork.mfa.gov.hu/assets/91/89/30/afcdcd20c5314d7d87fd4f3874e36932e7bbo16f.pdf> (accessed 23 October 2019).

92 See for instance EU delegation at the UN, *EU statement "on behalf of the 27 Member States"*, 15 May 2018, https://refugeesmigrants.un.org/sites/default/files/eu_proposal_on_international_cooperation.pdf, accessed October 2020, https://refugeesmigrants.un.org/sites/default/files/eu_proposal_on_international_cooperation.pdf (accessed 23 October 2019).

93 Intergovernmental Conference to Adopt the Global Compact for Safe, Orderly and Regular Migration, "Report of the Credentials Committee", UN Doc. A/CONF.231/5, §9.

94 Denmark, Malta, the Netherlands and the United Kingdom, see Melin (n 69) 204.

95 See Andrea Ott, 'The European Parliament's Role in EU Treaty-Making' [2016] *Maastricht Journal of European and Comparative Law* 1009.

96 C-233/02, 23 March 2004, *France v Commission*, ECLI:EU:C:2004:173. According to Article 218(6)(a) TFEU, the European Parliament has to give its consent to the following international agreements: association agreements, agreement on Union accession to the ECHR, agreements establishing a specific institutional framework by organising cooperation procedures, agreements with important budgetary implications for the Union, agreements covering fields to which either the ordinary legislative procedure applies, or the special legislative procedure.

aspects for the adoption of non-legally binding instruments. No specific role is dedicated to the European Parliament or to any other institution.⁹⁷

European Court of Justice (ECJ) case law deals with the gaps in the treaties. In *France v Commission*,⁹⁸ the ECJ stated that “the division of powers and institutional balance [between European institutions must] be duly taken into account” when it comes to non-binding agreements.⁹⁹ Similarly, in *Council of the EU v Commission*, also known as the Swiss MoU case, the ECJ ruled that “the Treaties set up a system allocating powers among the EU institutions, assigning to each institution its own role in the institutional structure of the Union and the accomplishment of the tasks entrusted to the Union. Accordingly, [...] each institution is to act within the limits of the powers conferred on it in the Treaties, and in conformity with the procedures, conditions and objectives set out therein”.¹⁰⁰ As a result, the Council’s prerogatives derived from Article 16(1) and from the third subparagraph of Article 16(6) TEU have to be respected, *regardless of whether the international agreement at stake was legally binding or not*.¹⁰¹ In this particular case, this means that the Commission needed a Council decision to approve a non-binding instrument that the Commission had negotiated on behalf of the European Union.¹⁰²

These decisions make clear that the internal balance for legally binding international agreements does not disappear when dealing with non-legally binding international agreements. Even if the ECJ does not refer to the European Parliament specifically, we believe that this case law can apply to it by analogy.¹⁰³ Consequently, Article 14(1) TUE acts as a general principle to the same extent as Article 15 acts as a general principle for the European Council, Article 16 for the Council or Article 17 for the Commission.

How would that principle affect the European Parliament’s role in the negotiation of soft international agreements? This question remains unanswered. The Swiss MoU case establishes that the European Parliament’s role should not be exactly the same as for treaty-making procedures.¹⁰⁴ One can see from the practice of mobility partnerships that, excepting the European Parliament’s contribution, the procedure to reach soft law agreements is similar to the procedure for mixed legally binding agreements.¹⁰⁵ According to García Andrade, these agreements “are negotiated, on the basis of political guide-

dure where consent by the European Parliament is required. For other agreements, the European Parliament has to deliver an opinion, according to Article 218(6)(b) TFEU.

97 Elspeth Guild and Stephanie Grant, ‘What Role for the EU in the UN Negotiations on a Global Compact on Migration?’ [2017] CEPS Research Report 19.

98 C-233/02, 23 March 2004, *France v Commission*, ECLI:EU:C:2004:173.

99 *ibid.*, §40. In this case, the Court considered that, contrary to the Council, the Commission had no power to conclude a non-binding instrument with the United States.

100 C-660/13, 28 July 2016, *Council of the EU v Commission*, ECLI:EU:C:2016:616, §31-32.

101 C-233/02, 23 March 2004, *France v Commission*, ECLI:EU:C:2004:173, §40.

102 C-660/13, 28 July 2016, *Council of the EU v Commission*, ECLI:EU:C:2016:616.

103 See also Juan Santos Vara, ‘Soft International Agreements on Migration Cooperation with Third Countries: A Challenge to Democratic and Judicial Controls in the EU’ in Sergio Carrera, Juan Santos Vara and Tineke Strik (eds), *Constitutionalising the External Dimensions of EU Migration Policies in Times of Crisis* (Edward Elgar 2019) 30–31.

104 C-660/13, 28 July 2016, *Council of the EU v Commission*, ECLI:EU:C:2016:616.

105 The EU mobility partnerships are soft law international agreements that “provide the overall framework for managing various forms of legal movement between the EU and third countries. Such partnerships [are] agreed with those third countries committed to fighting illegal immigration and that have effective mechanisms for readmission”, see Communication from the commission to the European parliament, the Council, the European economic and social committee and the committee of the regions Applying the Global Approach to Migration to the Eastern and South-Eastern Regions Neighbouring the European Union, 16 May 2007, COM(2007) 247 final, 19.

lines of the Council, by the Commission, together with the presidency of the Council, representatives of interested Member States and the third country, and the resulting text is signed by the previous authorities”.¹⁰⁶ In other words, what differs from legally binding agreements is “the lack of EU and national ratification and the absence of the European Parliament involvement”.¹⁰⁷ There is no need to say that this is not satisfactory from a democratic perspective.

As explained by Santos Varas, “the increasing use of non-binding agreements raises serious challenges for democratic scrutiny in the EU. As regards the role conferred on the EP by the treaties, non-binding agreements deprive the EP of its role to exercise political control and to fulfil its legislative functions”.¹⁰⁸ The relevance of non-binding agreements in both EU law and international law is not new. What is new, however, is the *increasing use* of these instruments in areas of EU external action, particularly in the field of migration.¹⁰⁹ The fact that the Compact is a soft law instrument demonstrates “a reluctance by states to engage in binding commitments even at a global level”.¹¹⁰ However, in contrast with other informal instruments that bypass procedural rules in the field of migration, the EU is not responsible for the preference of a non-legally binding instrument in the Compact case.¹¹¹ As this is a UN initiative, the EU institutions could not easily transform it into a legally binding instrument, even if they had had the political will to do so. Consequently, even though it seems vital for the EU to conclude legal acts (rather than informal agreements) in cases involving external migration policy, this would have been particularly complicated in the case of the Compact.

In our view, the EU should deal with these non-binding agreements by introducing internal rules dedicated to them.¹¹² These rules would allow the European Parliament to have its say on soft law instruments, and bolster the EU external relations democratisation process that took place through the Lisbon Treaty. They would also ensure greater respect for ECJ case law, according to which institutional balance and the division of power should also be upheld for non-binding agreements.

C. The European Parliament's involvement in supporting the Compact

Within this complex political and institutional framework, the European Parliament took different measures to voice its opinion and to weigh in on the EU position.

¹⁰⁶ García Andrade, ‘EU External Competences on Migration: Which Role for Mixed Agreements’ (n 71) 52.

¹⁰⁷ *ibid.*

¹⁰⁸ Santos Vara (n 104) 37.

¹⁰⁹ *ibid.*, 21–23.

¹¹⁰ Elaine Fahey, ‘Hyper-Legalisation and de-Legalisation in the AFSJ : On Contradictions in EU External Migration Law’, in Sergio Carrera, Juan Santos Vara & Tineke Strik, *Constitutionalizing the External Dimensions of EU Migration Policies in Time of Crisis* (Edward Elgar 2019) 131–132.

¹¹¹ One of the most discussed examples is the EU-Turkey Statement. It was allegedly adopted jointly by the Member States, and not by European institutions, although it engages EU funds. See, T-192/16, *N.F. v European Council*, 28 February 2017, ECLI:EU:T:2017:128 and C-208/17 P to C-210/17 P, 12 September 2018, *NF, GM and NM v European Council*, ECLI:EU:C:2018:705.

¹¹² Santos Vara argues for the adoption of an interinstitutional agreement that would clarify the role of the different institutions and set up a clear procedure dedicated to non-binding international instruments, see Santos Vara (n 104) 37.

Evidence shows that during the early stages of the negotiation process, the European Parliament played a proactive role, which had some impact on the content of the Compact. The most significant steps the European Parliament took include its representation on the international stage (1), the adoption of a resolution (2), the consultation it led with high-level officials in charge of the Compact negotiations (3) and the interparliamentary cooperation the European Parliament engaged with its national counterparts (4).

1. Representation

The European Commission has been given the task of EU representation except for CFSP matters, for which the High Representative of the Union for Foreign Affairs and Security Policy is responsible (Article 17(1) TUE).¹¹³ Unsurprisingly, the Commission headed the EU delegation for the Compact, despite its non-legally binding nature.¹¹⁴

In addition to the EU representation led by the Commission, an *ad hoc* delegation representing the European Parliament was sent to the UN General Assembly High Level Summit on Refugees and Migrants held in September 2016, when the New York Declaration for Refugees and Migrants was adopted. This delegation consisted of three MEPs, all of whom were members of the Committee for Civil Liberties, Justice and Home Affairs (hereafter, the LIBE Committee). According to the Head of the European Parliament mission, the delegation “actively participated in the round tables”, presenting “the views of the institution”.¹¹⁵

The EP sent another delegation to the Intergovernmental Conference in Marrakesh, which was held on 9 to 11 December 2018. Nine MEPs attended the high-level conference as part of the largest EU delegation. They reaffirmed the EP unequivocal support for the Compact and regretted the misinformation campaign that had taken place as well as the withdrawal of some EU Member States. The delegation recommended that the European Parliament continue to work on the Compact and its implementation.¹¹⁶ It stated that “the parliament could ensure that both documents [the Compacts on Migration and on Refugees] remain as reference for future legislative and non-legislative work, including the negotiation of financing instruments in the context of the 2021-2027 Multiannual Financial Framework”.¹¹⁷ More broadly, the delegation empha-

113 Pieter Jan Kuijper and others, *The Law of EU External Relations Cases, Materials, and Commentary on the EU as an International Legal Actor* (OUP, 2013) 28–29.

114 It is noteworthy that the presidency of the Commission also took the lead of the EU external representation in the dialogues with third countries on asylum and migration, see Paula García Andrade, “Who is in charge? The external representation of the EU on dialogues on immigration and asylum with third countries” 1, (*EU Immigration and Asylum Law and Policy*, January 2016), <www.eumigrationlawblog.eu> accessed October 2019). The author highlights the legal controversies pertaining to the Commission and the Council’s responsibilities to launch and manage migration dialogues with third countries. She concludes “[...] it is of paramount importance to have certainty about who is in charge of doing what in order to guarantee unity in the international representation of the EU” (p. 5).

115 European Parliament, Committee on Civil Liberties, Justice and Home Affairs, 2014-2019, 7 February 2017, “Mission Report following the Ad-hoc delegation to the UNGA High-Level Summit on Refugees and Migrants”, <www.europarl.europa.eu/cmsdata/121381/1116780EN-final.pdf> accessed October 2019.

116 European Parliament, Committee on Development, Committee for Civil Liberties, Justice and Home Affairs, Subcommittee on Human Rights, 2014-2019, 21 February 2019, “Mission report following the ad-hoc delegation to the Intergovernmental Conference for adopting the Global Compact for Safe, Orderly and Regular Migration”, 5 <www.europarl.europa.eu/meetdocs/2014_2019/plmrep/COMMITTEES/LIBE/DV/2019/02-25/MissionReport_EP_Delegation_GMC_Marrakesh_Dec_2018_EN.pdf> accessed October 2019.

117 *ibid.*

sised the need for “a strengthened parliamentary dimension” which is “key to ensure accountability and serve as a bridge towards a broader dialogue on migration that leads to evidence-based policies and political narratives that counteract xenophobia and recognise the need for international cooperation on migration to ensure the benefit of all parties involved”.¹¹⁸

One can view these initiatives as direct parliamentary diplomacy. It is important to note that they took place at the very beginning of the procedure and at the end. However, European Parliament involvement in the Compact was not limited to these representation missions.

2. *The European Parliament expressed its political will through a resolution*

On 18 April 2018, following a debate on a statement delivered by the Commissioner for Migration on behalf of the High Representative, the European Parliament adopted a resolution on the progress on the UN Global Compacts for Safe, Orderly and Regular Migration and on Refugees, under Article 132(2) Rules of procedure of the European Parliament (previously 123(2)).¹¹⁹ Four parties submitted a proposition for a resolution,¹²⁰ while another submitted a counterproposition that insisted on national sovereignty.¹²¹ A large majority supported the former, which was adopted in a single reading with 516 votes in favour, 137 votes against and 43 abstentions.

The resolution welcomed the process for developing a global governance regime and the objectives of the New York Declaration.¹²² While it recognised the strong engagement of the EU and its Member States in the preparatory process,¹²³ it called “on the EU Member States to unite behind a single EU position” in this more critical phase. Finally, the European Parliament drew attention to the fact that the negotiation should involve all stakeholders, despite its intergovernmental nature. More specifically, the role of parliaments should be enhanced and the parliamentary dimension of the EU’s position should be strengthened. The European Parliament issued some diplomatic recommendations directly to Member States.¹²⁴ It also expressed a well-informed and detailed opinion about the Compact, which showed an in-depth knowledge of the issue. Such knowledge resulted from the large and frequent consultations the European Parliament carried out from the start of the negotiations in September 2016.

118 ‘MEPs Strongly Welcome the Global Compact on Migration’ (10 December 2018) <www.europarl.europa.eu/news/en/press-room/20181210IPR21430/meps-strongly-welcome-the-global-compact-on-migration> accessed 23 October 2019.

119 For a transcript of the debates, see *Debates*, Tuesday, 17 April 2018, CRE 17/04/2018 – 11 www.europarl.europa.eu/doceo/document/CRE-8-2018-04-17-ITM-011_FR.html (accessed 23 October 2019).

120 The Group of the European People’s Party (EPP), the Group of the Alliance of Liberals and Democrats for Europe (ALDE), the Group of the Greens/European Free Alliance (Greens/EFA), and the Confederal Group of the European United Left – Nordic Green Left (GUE/NGL). See *Minutes*, Wednesday, 18 April 2018, B8-0185/2018 www.europarl.europa.eu/doceo/document/B-8-2018-0185_EN.html (accessed 23 October 2019).

121 The Europe of Nations and Freedom (ENF), *ibid.*

122 European Parliament resolution P8_TA(2018)0118 of 18 April 2014 on progress on UN Global compacts on safe, orderly and regular migration and on refugees, point 1.

123 *ibid.*, point E.

124 See for example *ibid.*, points 7 and 8.

3. Consultation

The European Parliament held several consultations with the EU officials in charge of the Compact negotiation as well as with UN officials.

Most of the consultations took place in committee sessions. The LIBE Committee, in charge of questions related to migration and asylum, had been particularly involved in the Compact since the beginning of the negotiations in 2016.¹²⁵ The Committee on Development (DEVE) and the Committee on Foreign Affairs (AFET) also showed particular interest in the Compact. Some officials also came during the European Parliament plenary sessions.

On 1 February 2017, the LIBE committee met the top IOM official tasked with following up on the development of the Compact negotiation process. The UN Special Representative of the Secretary-General for International Migration also met MEPs. On 22 June 2017, she appeared at the DEVE Committee to deliver a follow-up to the New York Declaration.¹²⁶ On 19 March 2018, she was invited to a joint committee meeting of LIBE, AFET and DEVE.¹²⁷

Commissioners met MEPs several times in plenary and committee sessions. In November 2018, when the Compact was challenged in several Member States, two meetings were organised.¹²⁸ During the second meeting on 29 November 2018, the High Representative, Mrs Federica Mogherini, explained that the Commission “regret[ed] the decision by some European Union Member States not to join or to support the Global Compact”. She emphasised the crucial role that national parliaments as well as the European Parliament had played in the process. She closed her speech with the following words: “I very much appreciate the European Parliament’s strong interest and engagement and confirm our full commitment to work very closely with you in this joint endeavour”.¹²⁹ Interestingly, the High representative welcomed parliamentary commitment in a field where its involvement is not taken for granted.

4. *The dialogue between the European Parliament and national parliaments*

From the very beginning, the European Parliament championed parliamentary empowerment in the negotiation process. On several occasions, it emphasised that discussions on the Compact should be as transparent as possible, enhancing the participation of national parliaments. To match its words with actions, the European Parliament convened an interparliamentary meeting on 27 February 2018 to maximise the involvement of national

125 Relying on its previous work on migration (and notably on multiple reports on the European migration policy), it planned a set of actions to engage in the negotiation of the Compact, see < www.europarl.europa.eu/cmsdata/136742/libe-set-of-actions-23-1-18.pdf > accessed October 2019.

126 European Parliament, Committee on Civil Liberties, Justice and Home Affairs, 2014-2019, “Draft agenda Meeting Wednesday 21 June 2017 and Thursday 22 June 2017”, LIBE/8/09862 <www.europarl.europa.eu/meetdocs/2014_2019/plmrep/COMMITTEES/LIBE/OJ/2017/06-21/1128351EN.pdf> accessed 31 October 2019.

127 European Parliament, Committee on Development, 2014-2019, “Draft agenda Meeting Monday 19 March 2018 Tuesday 20 March 2018”, DEVE/8/12447 <www.europarl.europa.eu/meetdocs/2014_2019/plmrep/COMMITTEES/DEVE/OJ/2018/03-19/1148443EN.pdf> accessed 31 October 2019.

128 The first meeting was organised on 13 November 2018. The Commissioner for Humanitarian Aid and Crisis Management, delivered a speech on behalf of the High Representative of the Union for Foreign and Security Policy.

129 The speech is available at <https://eeas.europa.eu/headquarters/headquarters-homepage/54642/speech-high-representativevice-president-federica-mogherini-plenary-session-european_en> accessed October 2019.

parliaments and the European Parliament. This is not the only initiative of this kind. Over the years, there has been interparliamentary cooperation on matters relating to the internal and external dimensions of migration at EU level in several occasions.¹³⁰ Interestingly, in the case of the Compact, this means that the European Parliament took national parliaments as valid interlocutors in the negotiation process of an international, non-legally binding agreement without concern for their role under constitutional law.

Overall, twenty-four delegations answered the European Parliament call.¹³¹ The four-hour interparliamentary meeting was dedicated to the role of parliaments in the Compact. From an EU perspective, this meeting provided an opportunity to hear domestic opinions on the Compact from a parliamentary point of view, while the main national voices heard so far were those of the executive. The European Parliament reflected the meeting outcomes in its resolution. As a result, its position also reflected the concerns of national parliaments. From a national parliament perspective, this meeting allowed MPs to obtain information that they could not access at home. Indeed, some leading international actors were present and discussed the state of the negotiations.¹³² In addition, national MPs who attended the meeting got first-hand access to information pertaining to the EU position on the Compact.

D. How to assess the European Parliament's involvement in the case of the Compact?

The European Parliament was actively involved in the Compact negotiation process. Its different committees (particularly the LIBE Committee) allocated a great deal of time and resources to the Compact. Although the European treaties do not provide for any parliamentary involvement in non-binding agreements, the European Parliament took a proactive role in the negotiation on behalf of the EU through close follow-up, lobbying and parliamentary diplomacy. In its rhetoric, the European Parliament constantly recalled the crucial role multilateral cooperation should play in solving migration issues. It emphasised the European Parliament's commitment in strengthening the external dimension of migration policies. In its actions, the European Parliament organised plenty of informal meetings, invited high-profile UN and EU civil servants, sent EP delegations to the UN, and so on. Other European institutions supported these parliamentary initiatives, which created a favourable political context.

MEPs also advocated for general parliamentary involvement in the Compact negotiation and they organised interparliamentary meetings to allow national MPs to express their voice. This strategy was supposed to strengthen general support for the Compact but it was unsuccessful since not all national parliaments were in favour of it.

¹³⁰ For other interparliamentary initiatives dealing with the external dimension of migration, see European Parliament, Directorate for Relations with National Parliaments, "Relations between the European Parliament and national parliaments, Annual Report", 2017, 14-15 <www.epgencms.europarl.europa.eu/cmsdata/upload/42e58dd9-e162-481b-8e29-4759ca4ef437/Annual_Report_2017_Relations_with_national_Parliaments-web-EN.pdf> accessed October 2019.

¹³¹ One Belgian MP attended the meeting. For the list of participant MPs, see European Parliament, LIBE, "Interparliamentary Committee Meeting The UN Global Compacts on refugees and migrants and the role of Parliaments List of Participants" <<https://secure.ipex.eu/IPEXL-WEB/calendarEventDetail.do?calendarEventId=o82dbc-c55fd6ba6e015fd900035801b3>> accessed October 2019.

¹³² See European Parliament, LIBE & AFET, "Draft Programme Interparliamentary Committee Meeting The UN Global Compacts on refugees and migrants and the role of Parliaments", PE618.128v01-00 <<https://secure.ipex.eu/IPEXL-WEB/calendarEventDetail.do?calendarEventId=o82dbc-c55fd6ba6e015fd900035801b3>> accessed October 2019.

However, European Parliament involvement in the Compact case should not be overestimated. First, the Compact remains a missed opportunity for the EU. No common position was agreed upon. Consequently, the EU was not able to act with a single voice throughout the negotiation process. Second, the Compact case is not illustrative of the role MEPs ordinarily play in the field of EU external migration policy. On the contrary, there is a trend towards “deparliamentarisation” in the field of migration at European level. This is a direct consequence of the deformalisation of the external dimension of EU migration policies through the conclusion of non-binding agreements with third States.¹³³ The EP has criticised these practices vigorously, as the resolution of 5 April 2017 demonstrates. In this resolution, it “deeply regrets [that] in the EU migration policy framework and refugee movements response, the EU and its Member States have opted for the conclusion of agreements with third countries, which avoid the parliamentary scrutiny attached to the Community method”¹³⁴.

CONCLUSION

This contribution was dedicated to the role of parliaments in the negotiation of the Global Compact for Safe, Orderly and Regular Migration. Pursuing a multilevel analysis, this paper started with the UN invitation for parliamentary involvement and participation in the Compact negotiation process. It then examined the response of the Belgian and European parliaments to this call.

Studying the role played by both parliaments has two advantages. First, it provides a comprehensive insight into how Belgian citizens were represented on this key policy issue.¹³⁵ Second, it allows for a comparison between the European Parliament and Belgian House of Representatives. The strategies they followed differed dramatically. This conclusion delivers the main results obtained.

At some point, the Belgian and European parliaments faced the same problem. During the main part of the negotiations, the Compact reached consensus but this changed suddenly during the final stages. However, this change did not have the same consequences in each legal system. Due to the lack of an EU common position, European institutions were no longer able to speak with one voice on behalf of the Member States. Consequently, they took back control and expressed national positions. In Belgium, it also appeared that no unified position existed anymore, which led to government division and ultimately, to the resignation of the government.

How did parliaments react to this turn of events? The Belgian House of Representatives is weak regarding external affairs, especially with regards to non-binding agreements. However, when cracks between parties from the majority threatened the Belgian position on the Compact, MPs actively used the parliamentary tools at their disposal to convey their political opinions. Paradoxically, whereas MPs showed little interest in the Compact throughout the negotiations, when it came to its endorsement, they became politically proactive and they threatened to engage the government responsibility through the vote of a motion of no confidence. Contrastingly, the European Parliament

¹³³ Santos Vara (n 104).

¹³⁴ European Parliament resolution P8_TA(2017)0124 of 5 April 2017 on addressing refugee and migrant movements: the role of EU External Action, §70.

¹³⁵ Further research is needed on the role played by Belgian Region and Community Parliaments in the Compact negotiation process.

dedicated much more attention to the Compact from the very beginning of the negotiation. It sent a parliamentary delegation to the United Nations twice. It invited prominent officials and commissioners to keep it constantly informed. MEPs were keen to defend the role of national parliaments in discussions about the Compact and they organised an interparliamentary meeting to bring parliaments together in the fight to have their say. Similarly, they frequently published documents to make their positions known. Given the European institutional architecture, the European Parliament could not hold other institutions politically accountable. However, what prevented the EU from presenting a united position was not disagreements between institutions. Rather, it was the lack of support from its 28 Member States. As a result, the European Parliament and the European Union as a whole failed to have as much of an impact as they wished on the Compact.

Overall, the results of parliamentary action at both the Belgian and European levels were mixed. On the one hand, parliaments did matter. Owing to the non-legally binding character of the Compact, parliaments could not rely on formal procedures. However, the European Parliament developed strategies to act like a diplomatic agent and the Belgian House of Representatives played its role as government gatekeeper. Their actions were, to some extent, complementary. However, the Compact case cannot exemplify parliamentary involvement in external affairs, even less so if external affairs are formalised. First, the UN showed willingness to involve parliaments as well as EU institutions in the negotiations, which is not always the case. Second, the executive also supported parliamentary involvement in the Compact negotiation process, both at the Belgian and the EU level. However, when the executive is reluctant to strengthen parliament in foreign affairs, relying on political goodwill is naïve. In such a case, only a clear procedure to deal with non-binding agreements could enhance parliamentary scrutiny. Third, in the case of the Compact, the majority opinion within the Belgian House of Representatives and within the European Parliament coincided. When parliamentary majorities do not overlap, the parliaments' parallel involvement could be counteractive. Parliamentary action on one level can ruin the results obtained through parliamentary action at another level, as the CETA case demonstrates.