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## Foreign policy of constituents units at the beginning of 21<sup>st</sup> century



Generalitat de Catalunya  
Departament d'Interior,  
Relacions Institucionals i Participació  
**Institut d'Estudis Autònoms**

**FOREIGN POLICY OF CONSTITUENTS UNITS  
AT THE BEGINNING OF 21<sup>ST</sup> CENTURY**

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# FOREIGN POLICY OF CONSTITUENTS UNITS AT THE BEGINNING OF 21<sup>ST</sup> CENTURY

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## PRESENTATION

With regard to the work carried out by the Patronat Catalunya Món to establish the Foreign Affairs Action Plan of the Government of Catalonia, and observing the project entrusted by the Commission of Foreign Affairs and International Cooperation, we gave great consideration to the growing emergency of sub-state entities in society and contemporary international relations. In fact, the undercurrent of our discussion was centred on the diversity and complexity of the globalised world in which the concurrence of very diverse actors, both public and private, requires much more proactive international relations, which due to their paradiplomatic and multilevel nature often overrun the traditional forms of state diplomacy and open a wide margin of action for sub-state entities with legislative power, and particularly those with their own distinguished identity.

These issues led us to organise the international workshop called «Comparative Foreign Policies of Sub-state entities» which was hosted by the Parliament of Catalonia on 22 April 2009 with speeches made by different international experts on federalism and self-government: Mr. John Kincaid, director of the Robert. B. & Helen S. Meyner Center for the Study of State and Local Government, Lafayette College (USA); Prof. André Lecours, associate professor in the Department of Political Science at Concordia University (Quebec, Canada); Dr. David Criekemans, lecturer at the Department of Political Science at Antwerp University (Flanders, Belgium); Prof. Klaus-Jürgen Nagal, associate professor of Political Science and Administration at Pompeu Fabra University; Prof. Thomas Fleiner, Institute of Federalism, University of Fribourg (Switzerland); Prof. Charlie Jeffery, Professor of Politics and International Relations in the School of Social and Political Science, Edinburgh University (Scotland, UK); Prof. Stéphane Paquin, associate professor at the School of Applied Politics at Sherbrooke University (Canada), and the coordination of Mr. Ferran Requejo, professor of Political Science at Pompeu Fabra University.

This publication is the result of the debates and observations made by the participants during the workshop in relation to the experiences in Quebec, Flanders,

Scotland, federalism in the USA, in Germany and Switzerland, and it is the combined effort of the Patronat Catalunya Món and the Institut d'Estudis

Autonòmics. I am convinced that it will be a useful tool for researchers and specialists in this subject and that it will contribute to filling the major doctrinal void in this area of increasing interest in international politics, while making a valuable contribution to the debate on the role of sub-state entities in contemporary international relations marked by the major interdependence of actors and multiple dimensions of the international globalisation process.

ROSER CLAVELL

*General Secretary of the Patronat Catalunya Món*

## FOREIGN POLICY OF CONSTITUENTS UNITS IN A GLOBALISED WORLD

FERRAN REQUEJO

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Economic and technological globalization represents a new scenario for the foreign policies of the constituent or sub-state entities of liberal democracies. This globalization encourages self-governing territorial entities to implement specific policies in order to defend and promote their interests, values and identities, as well as promoting global objectives such as solidarity, peace, development or cultural pluralism. Among these constituent entities, those which are endowed with national characteristics (Scotland, Quebec, Catalonia, etc.) have on their foreign agendas an additional sphere for promoting nation-building policies. Nevertheless, comparative politics shows that the foreign policies of constituent units preceded the present-day globalization process, which only reinforces a previous tendency dating back to the middle of the 20<sup>th</sup> century.

The factors which seem to most satisfactorily explain the improvement of foreign policies of federated states, länder, provinces, etc. in the last three decades are the degree of democratization and federalization, the degree of socio-economic development, and the increasing internationalization of markets. Especially in more developed states we can see that these entities must look beyond their borders in order to implement their powers (this is particularly true of Australia, Belgium, Canada and Switzerland, less so for Argentina and to an even lesser degree for India, South Africa or Malaysia).

Comparative politics also shows that constituent entities endowed with a national character implement a more active foreign policy. For example, they show a clear will to establish international treaties with several actors, such as the Swiss and Belgian entities or the increasing importance of delegation and offices abroad (Quebec, Flanders). In this case, foreign policies display unavoidable competitive features with the foreign policy of the state of which these units are a part. Moreover, language matters. We can observe the importance of transnational linguistic communities such as the Francophonie for Quebec and Wallonia or the relationship between Flanders



and the Netherlands. This trend is also present in the more intense relationship between the Argentinean units and Spanish-speaking South American states than with Brazil. However, in most cases, there are procedural rules for resolving potential conflicts without resorting to judicial conflicts.

Broadly speaking, we can identify three basic models of foreign policy in federal and regional states: 1) dualist models, 2) models with a hegemonic central power (in different degrees), and 3) cooperative models. However, in most of these states, foreign policies take into account the institutional structure of the territorial division of powers. For example, the commitments made by Canada and the United States in the framework of the World Trade Organization or the policies implemented by Argentina and Brazil in their processes of regional integration.

Regarding institutional factors, comparative politics shows that the existence of a symmetric position between the two chambers of the central parliament (with an upper chamber of a territorial nature) as well the existence of different party systems in the two levels of government are elements which, in general terms, reinforce the intensity of the foreign policies of the constituent entities.

The European situation is a bit different because the legal norms establish duties for all levels of government of the member states. However, the multi-level nature of the state is also reflected in the international sphere. In the Belgian case, the regions and linguistic communities ratify the international agreements signed by the federation and, in the German case, the upper chamber (Bundesrat) plays an important international role. Moreover, it is in Europe where there are the most regional organizations devoted to more abstract issues than those of a more traditional nature in the field of foreign policy.

We can also observe the existence of significant differences in the legal frameworks that regulate the foreign policies of constituent units: some are more formal and rigid constitutionally (Germany) and others are more informal and include many ad hoc procedures (UK). There is also a wide variety in the foreign powers of these entities in relation to their internal powers: some of them are responsible for the foreign policies of all their internal powers (Belgian entities) while the situation of others is more ambiguous (Quebec).

On the other hand, the inter-governmental relations of multi-level democracies can be analysed focusing on three opposing variables: a) competitive or cooperative relations; b) formal or informal relations; and c) per-

manent or temporary relations. So, for example, Canada and Quebec maintain competitive, formal and permanent relations, while those between the United Kingdom and Scotland are cooperative, informal and temporary.

The increasing importance of the foreign policy of the constituent units is visible in the growing number of representative offices abroad, the increase in the budget in this area and the greater number of actions implemented with organizations from civil society.

From an analytical perspective we can affirm that there is a lack of detailed knowledge of the foreign policies implemented by constituent units. It would be advisable to establish models with more precise comparative indicators, as well as more elaborate evaluative procedures in order to compare the objectives of governments and the results they finally achieve.

To sum up, the intersection of economic and technological globalization, the increasing importance of multi-level governance institutions, the results of comparative politics and the historical will of Catalonia to establish international links and policies promote participation in international institutions and representative and policy networks in the field of foreign policy by public and private actors of Catalan society. What is at stake is the protection and promotion of the values, interests and identity of Catalonia in an increasingly global and interconnected world.

What follows is a brief description of the foreign policies of five political units which are specially relevant to the Catalan case: Scotland, Flanders and Wallonia, Quebec, Bavaria and Anhalt, and Switzerland, as well as two overviews of a comparative nature regarding the foreign politics of constituent entities. This is the outcome of the International Workshop held in the Catalan Parliament (April 2009) organized by the Patronat CatalunyaMón and coordinated by myself. All participants who focus on case studies answered the questionnaire included in the Annex at the end of this publication.

Barcelona, June 2009

# COMPARATIVE OBSERVATIONS ON THE INTERNATIONAL ACTIVITIES OF CONSTITUENT GOVERNMENTS

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A notable international trend of the late twentieth century was the rise of constituent diplomacy, that is, international activities of a foreign-policy character undertaken by the constituent governments (e.g., states, provinces, cantons, and *Länder*) and local governments (mostly municipalities) of federal countries and decentralized unitary states, as well as by citizen organizations and non-governmental organizations. The term “constituent diplomacy” is used here instead of such terms as paradiplomacy, sub-state diplomacy, or sub-national diplomacy because the latter terms imply inferiority and subordination (Kincaid 1990). Although the constituent governments of nation-states cannot operate in the international arena on the same legal plane as nation-states, their international presence is no less important to them and their citizens than is the international presence of the nation-state.

## **1 • Democracy and Market Liberalization as Causal Factors**

The rise of constituent diplomacy is often attributed to globalization, which now affects every policy field of interest to governments, but constituent diplomacy emerged before the current era of globalization and existed in various forms before the centralization of the modern nation-state. Hence, for some constituent political communities, contemporary constituent diplomacy is a recovery of prerogatives deemed to be ancient. Globalization is more of an enabling factor than a causal factor insofar as global networks, communications, transportation, and institutions enhance the ability of constituent governments to engage the world in more diverse and intense ways than was possible in the past. Globalization also does not explain

the variations in constituent diplomacy evident across countries, nor does it explain the absence of constituent diplomacy in most countries.

The principal causal factor for constituent diplomacy is the freedom of action produced by democratization and market liberalization. Where democratization and market liberalization are absent or restrained, there is little or no constituent diplomacy, no matter what the level of globalization. This is very evident in Spain where manifestations of constituent diplomacy were suppressed under Francisco Franco's authoritarian regime, which did not collapse until Franco's death in 1975, although elements of constituent diplomacy existed among exile communities of historically national regions such as Catalonia and the Basque Country. By contrast, constituent diplomacy was far advanced in Canada, the United States, and some other democratic countries by 1975.

Democratization and market liberalization also create incentives and even imperatives for self-government not only for individuals and private enterprises but also for local and regional governments. Generally, democratization and market liberalization have also produced administrative and governmental decentralization within nation-states. Consequently, constituent diplomacy is more common in countries that have a market-based economy, a democratically elected national government, elected regional and local government officials, competing national and/or regional political parties, and protections of human rights, including property rights.

## **2 • Developmental Variations**

Constituent diplomacy is more prevalent in developed countries and developed constituent jurisdictions, although there are variations shaped by internal political conditions. For example, economically developed provinces in China have a limited international presence compared to their counterparts in developed democratic countries. In Mexico, the poorest state, Chiapas (2007 GDP per capita of \$3,657 U.S.), has an office dedicated to international relations and has established contacts with more than 40 countries, as well as with the European Union, World Bank, United Nations Development Program, and other institutions, primarily because of the actions of the Zapatista Army of National Liberation and the 32 Rebel Autonomous Zapatista Municipalities operating in Chiapas. The state has been governed by the leftist opposition *Partido de la Revolución Demo-*

*crática*, moreover, and has a large indigenous population, many of whom are of Mayan descent and do not speak Spanish. At the same time, the more affluent states—Distrito Federal (2007 GDP per capita of \$23,130) and Nuevo León (\$16,342)—have reached out internationally, and in 2005, *fDi Magazine* rated these states as Mexico's most globally connected and cosmopolitan states. Slightly less affluent states, such as Baja California (\$11,365) and Jalisco (\$8,631), also have been very active internationally. Both of these states have been governed by the *Partido Acción Nacional* (PAN)—a somewhat rightist party that supports market liberalization and smaller government. (In 2004, *fDi Magazine* rated Barcelona as its European City of the Future because of its “above-average economic growth, skilled multilingual workforce and competitive costs.”)

### **3 • Multinational Variations and Aspirations**

Constituent diplomacy also is more prevalent where one or more constituent governments have a distinct national identity and national aspirations based on historic claims of nationality, race, language, religion, or other cultural anchor. These constituent governments wish to differentiate their culture and/or language from those of the nation-state of which they are a part. The leading example from the late twentieth century is Quebec, whose international outreach has been a model for other such cultural jurisdictions. Here also, however, there are political and socio-economic variations among countries. While many Canadian provinces and Swiss cantons are active internationally, such activities are less prevalent in the less developed, less economically liberal, and less democratic multinational states of Ethiopia, India, and Nigeria.

Having a distinct cultural identity usually generates a desire to forge an international presence because such a presence is the principal way in which the constituent political community can manifest itself as a distinct people among the peoples of the world. Having an international presence and, thereby, also international recognition is an important, even necessary, part of its identity. Not having an international presence would be tantamount to hiding its distinct cultural light under the bushel of its nation-state. Having an international presence also places the constituent political community on at least a symbolic equal footing with the nation-state and national political community of which it is a part. This seems to be especially impor-

tant in Europe, the historic home of the modern nation-state, where many nations do not possess their own state. Consequently, the international activities of the constituent governments of Canada, Belgium, Switzerland, and the United Kingdom are of more interest to Catalans than are the international activities of Australian and U.S. states.

For constituent political communities having national aspirations, representation in international institutions is usually an important priority. Such representation is less important for constituent political communities that have no such national aspirations, although they might have an interest in representation in international economic institutions, in regional institutions that have economic implications for them, and in local arrangements with neighboring constituent governments and national governments.

Constituent governments that have national aspirations are likely to desire some type of formal treaty-making power linked to their domestic competences. All constituent governments that engage in international activities want authority to make agreements, but constituent political communities with national aspirations tend to want agreement-making to be elevated, at least symbolically, to the level of treaty-making (as in Belgium and Switzerland, for example). Such a power, combined with representation in international organizations, moves the constituent political community toward, though not fully into, state-to-state relations. In turn, domestically, constituent governments that have national aspirations are likely to desire a significant voice in, perhaps even a veto power over, the ratification of treaties concluded by their nation-state government because treaties can reduce their political and cultural autonomy.

Consequently, international activities that are connected to national aspirations are more likely to produce conflict with the nation-state government than are activities connected to the promotion of constituent economic interests. The latter might produce economic competition among constituent governments, but not necessarily divisive political conflict. The international activities of constituent governments having national aspirations might increase conflict within the constituent political community, as well, because not all citizens and residents of the constituent community believe in the national aspirations being expressed in the government's international activities. Furthermore, nationalist parties within these political communities are not always in the majority; they face competition from parties less interested in the community's national aspirations. Even in Quebec, the *Parti Québécois*, the province's most nationalist party, has been a minority party since

2003, and while most of the residents of Quebec share a general Francophone national identity, they are divided over the nature and degree of that identity. By contrast, a focus on promoting the constituent political community's economic interests internationally is likely to be more unifying domestically and less likely to create conflict with the nation-state government.

#### **4 • Constitutional Variations**

Another characteristic of constituent diplomacy is that it occurs whether or not the nation-state's constitution assigns any foreign affairs powers to the constituent governments.

The first modern federal constitution, the United States Constitution of 1788 (Article I, Section 10), does allow the constituent states to enter into "agreements" and "compacts" with foreign states with the consent of the U.S. Congress. However, the states have made very little use of this power in a formal way, probably because agreements or compacts that involve congressional approval are complex, legalistic, rigid, and difficult to negotiate. Instead, the states usually prefer informal agreements that do not trigger congressional scrutiny unless they pose a threat to U.S. sovereignty or law. The states have more than 6,000 agreements with Canadian provinces, for example. Only a few of these agreements are formal compacts, which tend to be needed only for certain transportation systems (e.g., bridges), law-enforcement activities, and other matters of enduring legal or fiscal significance. This informal agreement-making was vastly facilitated by the fact that until 11 September 2001, the Canada-U.S. border was a very open, porous, undefended border where neighboring communities and states and provinces forged their own agreements to manage common housekeeping matters along the border with little interference from Ottawa or Washington, D.C. There have been, however, far fewer agreements along the U.S.-Mexico border because of the language barrier, the vastly different levels of development in the two countries, and highly centralized governance in Mexico that was maintained by the *Partido Revolucionario Institucional* for more than 70 years.

In Europe, there has been a trend since the 1980s to give the constituent governments of federal countries some foreign-affairs powers, particularly agreement- or treaty-making powers as in Belgium, Germany, and Switzerland. This trend is largely a byproduct of the growth of the European Union,

which led the constituent governments of federal countries to demand a direct voice in EU decision-making affecting their constitutionally protected powers as well as concurrent authority to enter into their own international, especially cross-border, arrangements. Although Switzerland is not a member of the EU, it has many bilateral agreements with the EU, and the Swiss cantons face many actual and potential encroachments upon their powers by the EU and other international institutions.

Such constituent-government treaty-making powers are usually limited in one or two ways, however. One limit is that treaties concluded by constituent governments may be subject to consent, review, or abrogation by their nation-state government. Second, the treaty-making power is ordinarily limited to subjects that fall within the constitutionally demarcated domestic competence of the constituent governments.

The most effective institutions for giving voice to constituent governments in international affairs are not necessarily those specified in the nation-state's constitution. For example, upper houses in federal countries, such as the Senate in the United States, are not always effective in representing or protecting the interests of the federation's constituent political communities. In the United States, only the Senate, the states' house, can ratify treaties, and it must do so by a two-thirds vote. This constitutional arrangement was established to ensure that (a) the national government could not bargain away the states' powers through treaties and (b) the more populous and industrial northern states would not force through Congress treaties detrimental to the southern states. Since World War II, however, this arrangement has been less protective of the states. Furthermore, President Bill Clinton secured U.S. participation in the North American Free Trade Agreement (NAFTA) and the World Trade Organization (WTO) by circumventing the treaty process because neither NAFTA nor WTO would have won a two-thirds vote in the Senate. Instead, bills were introduced in both houses of Congress merely to implement these two trade "agreements" negotiated by the president. As such, only a majority vote was needed in each house of Congress. On average, the political leverage over treaties and other international matters available to constituent political communities may be greater where the constituent governments are directly represented in the upper house, as in Austria, Germany, and South Africa, although various political factors may reduce their effectiveness, such as the dominance of the centralized African National Congress party in South Africa.



Having a voice in their nation-state's foreign affairs is especially important for constituent governments when the nation-state concludes treaties and agreements. The constituent governments usually want at least a voice in negotiations if not also formal representation in the negotiation process and even, ultimately, a veto power. Achieving the latter, however, is likely to be impossible because it would nullify the sovereignty of the nation-state. Additionally, the constituent governments might want power over the implementation of treaties or other international agreements that affect them. Where constituent governments have domestic powers that make them the primary implementers of treaties, they are likely to wield this power during treaty negotiations, thereby using the threat of non-implementation as a hammer over prospective treaty provisions they do not like.

## **5 · Variations of Patterns of Intergovernmental Relations**

Due to the various factors cited above, countries vary significantly in their patterns of constituent diplomacy and domestic intergovernmental relations associated with constituent diplomacy (Michelmann 2009). Tentatively, four patterns seem to be evident.

One is a pattern of dualism with some intergovernmental relations, which is evident in the United States. The states and the federal government pursue their separate foreign-policy interests independently in accordance with their respective constitutional powers. Intergovernmental relations are activated when the states need assistance from the federal government or the federal government needs assistance from the states and when federal policies encroach upon state powers or generate citizen concerns that are then expressed to the federal government through state and local governments.

A second pattern is one in which the nation-state government is dominant, as in Argentina, India, Malaysia, and Russia where the constituent governments are very limited in their authority and ability to engage the international arena.

A third pattern is one in which the nation-state government is a leader but there is more parity and a better balance of power between the nation-state and the constituent governments, as appears to be the case in Australia and Canada, both of which are parliamentary federations in the Westminster tradition.

A fourth pattern is one in which the nation-state is somewhat limited by the national constitution and/or statutes, and the constituent governments

have limited foreign-affairs powers and are important partners in nation-state foreign-policy-making through institutionalized intergovernmental structures. This pattern appears to be characteristic of Austria, Belgium, Germany, and Switzerland.

## **6 • Establishing Institutional and Policy Priorities for Constituent Diplomacy**

Constituent governments entering the international arena must establish priorities so that they can create institutions, allocate funds, and hire personnel appropriate to achieving their policy priorities.

*Ministry of Foreign Affairs:* One institutional choice is whether to establish a ministry, department, or bureau of foreign affairs that will have overall responsibility for implementing the constituent government's foreign policies. If the constituent government creates such an agency, then another choice is how this agency will relate to the foreign activities likely to be carried out by other ministries or departments, such as culture, environment, education, health, and transportation. Will the ministry of foreign affairs have supervisory authority over the foreign activities of these other ministries, will it perform, instead, a coordinating role with these other ministries, or will the ministry of foreign affairs have a distinct role separate from these other ministries?

*The Constituent Government and Its Local Governments:* Another institutional question involves the international activities of the constituent government's local governments. Will the constituent government exercise close supervision of the foreign activities of its local governments or will it allow them to engage in their own foreign activities? How will the constituent government cooperate and coordinate with its local governments? Will the constituent government and its local governments be rivals or partners in foreign affairs? These questions are likely to be especially important where a constituent government has one or more large cities housing many of the citizens of the constituent political community. For example, Greater Montreal houses 48.1 percent of the population of Quebec, and New York City (excluding its metropolitan area) houses 42.5 percent of the population of New York state. The growth of metropolitan areas in today's world also poses issues about the equitable treatment of urban and rural interests in the constituent government's foreign activities.

*Public and Private Institutions:* Another important issue is the coordination and division of labor between the public government sector and the private sector or civil society in representing and carrying out the interests of the constituent political community in the international arena. It is not necessary for the constituent government to monopolize the foreign affairs of the constituent political community or to rely entirely on tax revenue to fund its foreign activities. These responsibilities and costs can be shared, voluntarily, by the private sector and civil society. Furthermore, many corporations, non-governmental organizations, and other civil-society institutions have their own international engagements, some of which can supplement, complement, and be coordinated with the foreign activities of the constituent government.

*The EU versus the World:* One policy choice in Europe is whether to include relations with the European Union and the rest of the world in the same category or to treat them separately. In some European countries, constituent governments regard EU affairs and other foreign affairs as being interrelated closely. An argument might be made, however, for separating EU affairs institutionally and operationally from other foreign affairs because the EU is increasingly taking on the characteristics of a federal polity and thereby acquiring the characteristics of domestic rather than international politics and governance. Furthermore, constituent governments in the EU are obligated to comply with a growing body of Community law, and EU policies have deep and pervasive impacts on the constituent governments of the EU's member states. In principal, moreover, constituent governments can make a more persuasive argument for having a partnership role alongside their national government in EU affairs than in foreign affairs more generally.

*International Partners:* Another policy choice is whether the constituent government wishes to establish relations primarily with other equivalent constituent governments or with nation-state governments around the world. Establishing relations with nation-states is likely to be the most difficult and controversial. The constituent government's own nation-state government is likely resist such relations. Many other nation-states are likely to resist as well because they will not want to antagonize the home nation-state or give their own constituent governments implicit rationales to establish their own relations with other nation-states. All nation-states have a self-interest in maintaining their sovereignty and territorial integrity and, thus, in resisting diplomatic developments that appear to promote centrifugal tendencies within nation-states.

*Status of Representatives:* Another issue, which might not be a choice for constituent governments, is whether representatives of the constituent government serving abroad have some type of diplomatic accreditation.

*Foreign Offices:* Another choice for constituent governments is whether to establish their own offices in other countries, contract with representatives in other countries, or place their own representatives in the embassies, consulates, and other foreign offices of their home nation-state. If the constituent government establishes its own offices abroad, then what is their legal and diplomatic status? Quite often, constituent governments do all three, that is, open their own offices in countries deemed to be important to them and contract with agents in some other countries while also placing representatives in their home country's embassies and consulates.

*Relationship Priorities:* Given that there are about 200 nation-states in the world, plus many more constituent governments, a very important choice is selecting the governments with which to establish relations, and with what degrees of intensity. This selection is likely to be influenced by the nature of the constituent government and its political community and by the roles the constituent government wishes to play on the world stage. For example, participation in *La Francophonie* is important to Wallonia and Quebec. Even the U.S. state of Louisiana has participated in *La Francophonie* as an observer through its Council for the Development of French in Louisiana.

*Cultural and Economic Objectives:* Generally, constituent diplomacy has been dominated by two objectives: (1) promoting the culture and "national" interests of the constituent political community and (2) promoting the economic interests of the constituent political community. These objectives are not mutually exclusive because a distinct culture can be an economic asset that attracts tourists or certain types of business, and a community's cultural distinctiveness can be deployed internationally as a brand, so to speak, that can have economic as well as cultural value. For the most part, however, the promotion of economic interests and the promotion of cultural or national interests are distinct and separate and are not always compatible.

## **7 • Foreign Affairs Roles for Constituent Governments**

The extant behaviors of constituent governments suggest ten possible foreign affairs roles for constituent governments (see also Kincaid 1999). Those roles are:

1. *Promoters of Community Interests*: Constituent governments promote the economic and cultural interests of their community in the international arena.

A. In promoting their community's economic interests, constituent governments most often seek to (1) attract foreign investment, (2) promote exports of products from the community, and (3) attract foreign tourists to the community. Promotion activities include, for example, advertising, participating in trade shows, conducting trade missions to other countries, offering incentives to investors, and helping farmers and small and medium-sized businesses to export their products. Some constituent governments, especially in poor constituent political communities, seek to build relationships with their former citizens who have emigrated to other countries for economic opportunity and who may have been successful enough to repatriate money to families and institutions in their former home community, to invest in their former home community, or even to return to their former community as part-time or full-time residents. For these reasons, for example, some Mexican states try to maintain relations with former residents who emigrated to the United States.

B. In promoting their national or cultural interests, constituent governments most often seek to (1) project their national or cultural identity onto the world stage, (2) establish exchanges and other relations with kindred political communities elsewhere in the world, (3) foster education abroad about their culture and language, and (4) promote governmental and non-governmental organizations abroad to carry out indigenous education activities that promote the national or cultural interests of the constituent political community.

Constituent governments seeking to promote national or cultural interests also are likely to forge relations with their diaspora. Communities of nationals who emigrated abroad can be valuable partners in promoting the national, cultural, political, and economic interests of their home political community. In some cases, emigrants might need economic or political aid from their home political community.

2. *Partners in Foreign Policy Development*: Constituent governments with international interests seek to establish themselves as partners with their nation-state government in developing national foreign policies by using available constitutional and institutional mechanisms and by also seeking constitutional, statutory, and institutional changes that will give them a larger role in their nation-state's foreign policy-making. Con-

stituent governments also can be partners in implementing some foreign policies, especially those involving aid to other countries whereby constituent governments can offer expertise and experience.

3. *Pressure Points in Foreign Policy-Making*: Regardless of the constitutional and institutional mechanisms available to them, constituent governments lobby their nation-state government, use the political party system, and recruit corporate and non-governmental partners to help them put pressure on the nation-state government to pursue foreign policies desired by the constituent government.

4. *Self-Governing Political Communities*: Constituent governments can perform vital tasks that coordinate and integrate international and domestic forces so as to ensure that international events, actors, and forces and the local mediation of global forces enhance the economy, human capital, and quality of life of the constituent political community. In this role, it is important for constituent governments to review and monitor the ways in which their fiscal and regulatory policies affect and are affected by international forces. Some constituent governments also play important roles in internationally relevant law enforcement. Generally, the greater the autonomy of the constituent political community, the greater the impact of its policies on international forces affecting it.

One policy field of great importance to constituent governments seeking to promote their national or cultural interests is immigration policy because immigration can clash with and undermine a political community's culture and language. Consequently, constituent governments concerned about cultural maintenance usually seek some degree of authority over the numbers, country origins, language requirements, and domestic integration of immigrants. However, domestic policies affecting immigrants can also have positive and negative foreign policy ramifications. For example, a Christian constituent political community's policies concerning the construction of mosques with minarets have significant impacts on relations with Muslim countries.

A long-term threat to self-governance is the gradually expanding international effort to reduce non-tariff barriers to trade. Many fiscal and regulatory policies enacted by autonomous constituent governments and local governments could be subject to challenge in courts and international forums as non-tariff trade barriers.

5. *Parties to Agreements*: Constituent governments enter into many treaties or agreements, both formal and informal, with many constituent

governments in other nation-states as well as with some nation-states. Where a constituent government shares a border with one or more foreign countries, it is especially important to forge housekeeping agreements to manage commuting, transportation, health, environmental protection, law enforcement, and many other matters. The legal status and enforceability of such agreements are sometimes ambiguous and fraught with uncertainty, but these problems can be abated by appropriate constitutional or statutory measures instituted by the nation-states of the participating constituent governments.

6. *Proxies for the Nation-State*: Occasionally, a constituent government can serve as a proxy for the nation-state by initiating a policy, providing aid, or conducting negotiations in situations where it would be politically embarrassing, diplomatically awkward, or legally impossible for the nation-state government to do so.

7. *Problem-solvers in the World*: There are many ways in which constituent governments can provide technical assistance, education, and even economic development aid to help solve problems in other countries and regions. Constituent governments also can coordinate and cooperate with national and international institutions on such matters as environmental protection, climate change, poverty alleviation, refugee relief, crime, drug trafficking, and terrorism. This role also can overlap with the proxy role because constituent governments can often act without the political and ideological encumbrances attached to national governments.

8. *Patrons of Democracy*: Constituent governments in democratic countries are perhaps better suited than their nation-state governments to promote and strengthen democracy abroad because constituent governments and their local governments are democratic forums which are located close to citizens and which have many direct service responsibilities to citizens. Trends toward decentralization and federalism in today's world also heighten the relevance of established constituent governments for cultivating democracy in emerging constituent political communities.

9. *Public Opinion and Education Forums*: Constituent governments can play important roles in helping to educate citizens about international affairs, internationalize constituent political communities, and mobilize public opinion on foreign policy issues. Such education can occur not only formally through schools but also informally through debates in the constituent government's legislature and the legislatures of local governments. This type of activity emerged as a foreign policy role for U.S. states

and localities during the 1960s, for example, when the Vietnam War (1959-75) generated tremendous public debate and controversy.

10. *Practitioners of Goodwill*: Constituent governments also are well suited to promote goodwill abroad through small-scale projects, people-to-people diplomacy, cultural activities, and sports competition, especially non-professional sports activities. This role also allows for substantial participation by civil-society institutions.

## 8 • Evaluation

Of all the facets of constituent diplomacy, the least information is available about evaluation. Constituent governments around the world are engaged in a large number of international activities; yet, evaluations of those activities are virtually non-existent. However, evaluation is very important if constituent diplomacy is to be effective and if taxpayers' money is to be spent efficiently. Performance objectives should be established for each institution engaged in foreign affairs and for each international activity, and periodic evaluations should be made of the extent to which the constituent government has achieved the performance objectives. It is particularly important to evaluate the benefits of constituent diplomacy for the mass citizenry of the constituent political community in contrast to elites. Attracting foreign investment, for example, can benefit some sectors of the political community and harm other sectors. In addition, constituent diplomacy sometimes satisfies the needs and fascination of political and cultural elites more than it satisfies the needs of the general population.

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# CANADIAN FEDERALISM AND FOREIGN RELATIONS: QUEBEC AND ALBERTA

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## 1 • Historical Introduction

The international role of provinces is an important question in Canada because the country has always been very active internationally. Until the 1930s Canada's international action was bound by its dominion status in the British Empire, which meant that the country's foreign policy needed to follow that of the United Kingdom. When Canada became a fully sovereign international actor, its foreign policy and international involvement made it a classic middle power. Canadian governments have been quite active in world diplomacy, putting to good use a positive international reputation and strong relationships with the major powers to exercise an influence disproportionate to its size and military capabilities. At the centre of this positive reputation is the role played by Canada in establishing United Nations (UN) peacekeeping missions and in participating in several of these missions thereafter. Also, Canada's French and British heritage means that the country is a member of both the Commonwealth of Nations and La Francophonie.

Canada's most important foreign relationship is with its southern neighbour, the United States. This relationship has been peaceful for almost two centuries, and there are connections of all types between the two countries. From a political perspective, sharing a long border necessarily involves some degree of cooperation between the two countries. For example, after the attacks of 11 September 2001 in New York City and Washington, DC, the Bush administration made border control a high priority and put pressure on Canada to monitor transborder movement more closely than ever. Border control is mostly the exclusive purview of the federal government, but Canadian provinces have a major stake in many transborder issues. This

is the case for environment and resource management, where provincial voices are being heard.

The international action of Canadian provinces is not new, and its development is closely linked to changes in federalism. During the first decades following Canada's foundation, provincial governments sought, with some success, to decentralize the federal system. During that time, Quebec sent its first representative to Paris. Offices were subsequently opened in Belgium, the United Kingdom, and the United States. When national leadership was needed in the context of the First World War, the financial crisis of the 1930s, and then the Second World War, the federal government re-established its prominence vis-à-vis the provinces. Quebec's Belgian and British offices were closed during the Great Depression, in 1933 and 1935 respectively. The next thirty years or so were the heyday of the federal government, as the construction of the Canadian welfare-state through various national social programs consolidated its dominant role within the federal system. In this period, Quebec virtually stopped its international efforts, while the other provinces had yet to develop an international presence. In the 1960s the Quiet Revolution in Quebec led to the formation of Parti libéral du Québec (PLQ) governments that looked to decentralize Canadian federalism and secure the formal recognition of the province's distinctiveness. The Parti québécois (PQ), created in 1968, sought Quebec's independence. In this strongly nationalist context, the Quebec government developed clear international ambitions. It specified, through a 1961 law, the responsibilities of foreign representatives sent to Paris, London, Brussels, New York, Tokyo, and Mexico City. A 1967 law established a department of intergovernmental affairs whose activities included the coordination of the province's international activities.

The development of international action by Alberta in the late 1970s centred on the United States and was spurred by its conflictual relationship with the federal government, particularly over energy. In the context of price control under the National Energy Program, the Alberta government felt that Ottawa did not defend the province's interests in a satisfactory manner and that it therefore needed to have its voice heard in the United States, primarily to communicate that Alberta was dissociating itself from the federal approach to energy. Alberta also invested significantly in developing a presence in Asia, most notably through "twinning" programs with regional governments in Hokkaido (Japan), Kangwon-do (South Korea), and Heilongjiang (China).

## 2 • Constitutional Framework

Contrary to the constitutional documents of most federations, the British North America (BNA) Act of 1867 did not specifically assign power over international relations to the federal government. Only Section 132 touched on this issue. It specified that Parliament and the Government of Canada were empowered to perform “the Obligations of Canada or any Province thereof, as part of the British Empire, towards Foreign Countries, arising under Treaties between the Empire and such Foreign Countries.” This section, however, has fallen into disuse since the 1931 Statute of Westminster gave the dominions formal legislative independence from the United Kingdom and enabled Canada to sign treaties of its own. Power over defence, however, constitutionally rests with the federal government in virtue of Section 91(7). Constitutional changes, including the major reform of 1982, have not altered jurisdiction over international relations. In short, there is nothing in the Canadian Constitution empowering provinces in international relations, nor is there anything preventing them from developing international activities such as striking agreements with foreign governments on matters falling within their own jurisdiction.

In the context of such a silence, courts have been instrumental in specifying the constitutional setting for international relations, at least with respect to the implementation of treaties. After Canada formally acquired its international personality in the 1930s, the federal government assumed the treaty-making powers formerly exercised by the British government. The extent to which Canada’s division of power presented a limit on the federal government’s ability to implement treaties was tackled in three judgments from the Judicial Committee of the Privy Council (JCPC) in London (the ultimate court of appeal for Canada until this responsibility was given to the Canadian Supreme Court in 1949).

In the 1937 *Labour Conventions* case, the Privy Council, speaking through Lord Atkin, judged that the federal government alone could not enact the labour conventions stemming from Canada’s membership in the International Labour Organization (ILO). Lord Atkin found that treaty implementation was not a new matter but that it was tied to Sections 91 and 92, which operate the division of power between the federal government and the provinces. Consequently, the logic of the judgment was that if a “treaty dealt with a subject that was normally under section 92, then legislation giving effect to it could be enacted only by the provincial legislatures.”

The Labour Conventions reference is still the dominant jurisprudence on treaty implementation in Canada. Provinces, particularly Quebec, still refer to the 1937 case to defend the constitutionality of their role in treaty implementation. In fact, Quebec's politicians typically argue that the constitutional division of power should apply not only to the implementation of treaties but also to their negotiation and even their making. This argument is not reflected in current jurisprudence, and most constitutional experts do not find it convincing. Moreover, in international law, responsibility for implementing a treaty falls to the federal government because it is the only government in Canada endowed with an international legal personality.

### 3 • Quebec

#### *Section 1*

1.1 and 1.2. (Sections refer to the questionnaire of Foreign Politics/Policies. See Annex at the end of this volume). Ever since the Quiet Revolution, Quebec governments have argued that the province's constitutionally specified powers should extend to the international area (the so-called Gérin-Lajoie doctrine). Of foremost concern to these governments has been the promotion of the French language and culture. In turn, this emphasis determines the types of international partners favoured by Quebec. In bilateral relations, France is the province's crucial partner, while a great number of cooperation agreements with developing countries have been signed with French-speaking Africa.

1.3. There is not much cooperation between Quebec and other provinces when it comes to foreign affairs, although Quebec and some other provinces sometimes participate in the same forums (for example, the Conference of the New England Governors and the Eastern Canadian Premiers).

1.4. From a multilateral perspective, Quebec focuses its efforts on La Francophonie, an international organization whose members share a connection to the French language. The Quebec government has been able to participate in La Francophonie because the organization accepts membership from constituent-unit governments. As a result, Canada, Quebec, and New Brunswick are all members. For the Quebec government, this arrangement represents a source of inspiration for negotiating a distinct autonomous status among all provinces in the area of international relations.

1.5 and 1.6. Institutionally, Quebec's international activities are crafted and supervised by a government department dedicated to international rela-

tions, the Ministère des relations internationales (MRI), which has a budget of US\$95,217,018 (0.2% of the province's total budget). It employs 642 people.

1.7, 1.8, 1.9 and 1.10. Current Liberal premier Jean Charest has repeatedly signalled his desire for a formalization and expansion of Quebec's autonomy on aspects of international relations touching upon the province's domestic powers. He called for an asymmetrical arrangement with Ottawa. A document signed by Quebec Minister of International Relations Monique Gagnon-Tremblay and issued in October 2005 formally stated that Quebec "intends to claim its full constitutional rights on the international stage as a logical extension of its initiatives within the Canadian federation, while fully respecting Canada's foreign policy." The document concludes by summarizing Quebec's claims for an increased role in foreign affairs in five points: (1) full membership in Canadian delegations with the right to appoint its representatives, (2) access to all information and a role in defining the Canadian position prior to international negotiations, (3) the right to speak at international organizations and conferences on matters falling within Quebec's jurisdiction, (4) recognition of a right of Quebec to consent before Canada signs a treaty in such matters, and (5) the right to present its position when Canada appears before international arbitration bodies if Quebec considers its interests to be at stake.

As a response, Prime Minister Stephen Harper made good on an election promise by specifying a role for Quebec with respect to UNESCO activities, placing the agreement explicitly within the perspective of an "open" and "asymmetrical" federalism. Further accommodation is unlikely, however, since federal politicians and bureaucrats are worried about the coherence of Canada abroad if there is a formalization of Quebec's international role and about the message it would send about the nature of the country.

## *Section 2*

2.1. Quebec has an extremely well-developed international network. It has international representation in more than twenty-five countries: it boasts seven "general delegations" (Brussels, London, Paris, Mexico City, Munich, New York City, and Tokyo), five "delegations" (Boston, Chicago, Atlanta, Los Angeles, and Rome), as well as more than a dozen smaller units, including immigration and tourism offices. In 2006 Quebec announced it was opening offices in India and Brazil, bolstering its presence in Japan and China, and upgrading its Washington, DC, tourist office to a more political role. All in all, Quebec posts more than 250 people abroad.

2.2. Quebec has considerable autonomy to sign political, economic and cultural agreements with foreign actors. Quebec governments have argued the notion that domestic powers should be extended onto the international scene, including in the act of treaty making. This forms the basis of Quebec's political claims for an increased international role as represented by the so-called Gérin-Lajoie doctrine. In a 1965 speech, then Quebec education minister Paul Gérin-Lajoie suggested there was "no reason for separating the implementation of an international treaty from its making. These are simply two steps of one process."

2.3. Quebec is extremely active when it comes to signing international agreements, making visits abroad, etc.. For example, Quebec governments have signed several hundred international agreements since 1964 with both states and regional governments from every continent. These agreements cover virtually all the fields in which the Quebec government is involved domestically: agriculture, economic development, culture, social services, transportation, and so on.

2.4. Economic, technological and technical cooperation with developing countries is an important part of Quebec's foreign action, but from an economic perspective the relationship with American states, a presence in developed countries and 'missions' abroad (trips that include top political leaders and business interests) are more important.

2.5. At a political level, Quebec likes to conduct its foreign affairs independently of the federal government. At the bureaucratic level, however, there are lots of contacts between federal and provincial officials.

2.6. There is a dense web of relationships between the federal and Quebec governments on foreign affairs. At the political level, this relationship is often competitive while at the bureaucratic level, there is often a reluctance on the part of federal officials to make arrangements to accommodate Quebec (and other provinces) on foreign affairs.

2.7. There really is not any substantial formal coordination, or even cooperation, between provinces when it comes to foreign affairs.

2.8. There are no formal disciplinary measures exercised by the federal government towards a province that would take an initiative internationally that would displease the Government of Canada. The Government of Canada can express its disapproval, most often informally first and then (but only rarely) publicly. Overall, negotiations at the bureaucratic level tend to ease the relationship.

2.9. Quebec clearly stands out for the extent and the scope of its international action as well as for the resources allocated to this action by the provin-

cial government. Perhaps most significantly, Quebec's international activities have a definite political dimension insofar as the development of international agency represents for Quebec's political leaders a way to make a statement about the existence of a nation and the power of its government. Claims for a voice in international conferences and organizations are less present in the other provinces (including Alberta), whose international relations focus on trade and the management of common issues with adjacent American states.

2.10. There is no real tendency for a re-‘symmetrization’ of the system in Canada, but there is little willingness from the Canadian government, at this point, to go further in formalizing the role of provinces internationally.

#### **4 • Alberta**

Next to Quebec, Alberta is the most active province in international relations. In Alberta responsibility for foreign affairs lies with an international relations unit nested within the government's Department of International and Intergovernmental Relations. This unit has a budget of US\$1,540,425, which is 0.009% of the provincial budget. It employs 167 people, 88 of whom focus on international relations. Whereas identity, culture, and language are central to Quebec's rationale for developing an international presence, Alberta's international relations unit presents its international role as one of defending the province's interests abroad. Alberta views its relationship with the United States as the most vital. The United States is Alberta's most important foreign market (90% of its exports abroad go there), and it accounts for two-thirds of foreign investment in the province and for 60% of foreign tourists. There are also historical ties to the United States stemming from emigration to the province. The result is strong bilateral relationships with close to a half-dozen American states and the presence of an Alberta office in Washington, DC. The establishment in March 2005 of this three-person office, located in the Canadian embassy, reflected the growing importance for Alberta of continental issues such as energy and cattle trade. In addition to this heavy investment in the relationship with the United States, Alberta looks strongly toward the Asia-Pacific region, primarily for economic opportunities. From a more cultural perspective, the province has built a special relationship with Ukraine (over 250,000 Albertans have a Ukrainian heritage) and an Advisory Council on Alberta-Ukraine Relations exists to support the government's action in this respect.

## **Other relevant spheres**

In the case of Alberta, an issue of foremost importance for its foreign affairs is energy. This involves a particular focus on the United States. For example, then Alberta Premier Ralph Klein made high-profile visits to Washington, DC, in 2001 and 2004 to discuss energy issues with the George W. Bush administration. In 2009, a devastating article in *National Geographic* on the environmental consequences of Alberta's tar sands has led the province to deploy damage-control efforts in the United States.

## **5 • A quick look at other provinces**

Another active province internationally is New Brunswick. Similar to Alberta, this Atlantic province features a Department of International and Intergovernmental Relations and explicitly signals its desire to be an international actor. In 2003 New Brunswick released its first-ever international relations plan, entitled *Prospering in a Global Community: New Brunswick's International Strategy*, which was followed by a progress report issued in January 2006. New Brunswick's international action follows seven strategic sectors: investment and trade, aimed at boosting job creation and economic growth; immigration, where the objective is to attract people to New Brunswick and facilitate their integration; innovation and education, which involves bolstering the number of foreign students in New Brunswick's universities; international development; international environmental stewardship; image and reputation, with a focus on promoting the province's business-friendly environment; and international competencies — that is, sensitizing New Brunswickers to global realities. New Brunswick has been very aggressive in seeking foreign investment, as it must compete with wealthier states and provinces. The province's linguistic duality is central to its international strategy; for example, New Brunswick seeks to open business opportunities in, and attract immigrants from, francophone countries. Moreover, the province has a formal *Franophonie Action Plan*, “which outlines New Brunswick's interests and potential for growth as a partner in this important multilateral organization.”

After Quebec, Alberta and New Brunswick, the importance of foreign affairs in Canada's provinces goes down one notch. Ontario, although Canada's biggest province, has developed only a modest international pres-



ence, which is primarily driven by economic interests. By the early 1990s Ontario boasted seventeen international offices, but these were closed in 1993 for financial reasons. Three “International Marketing Centres” were opened in 2003 (Shanghai, Munich, and New York) and then four more in 2005 (Tokyo, London, Los Angeles, and New Dehli). In a pattern similar to Alberta and New Brunswick but different from Quebec, Ontario explicitly seeks the collaboration of the federal government when it comes to its foreign representation — for example, in physically placing its centres within Canadian embassies and in hoping to cash in on the Canada “brand.” The bureaucratic unit responsible for overseeing Ontario’s international relations is the Office of International Relations and Protocol, which is part of the Ministry of Intergovernmental Affairs. The Ministry of Economic Development and Trade also assumes a function of “marketing Ontario to the world as a preferred business location.”

In British Columbia an International Relations Section within the Intergovernmental Relations Secretariat is responsible for the province’s foreign affairs. British Columbia’s international relations are less developed than Ontario’s, focusing primarily on bilateral relationships and multilateral forums with north-western US states. However, the British Columbia government was a vocal opponent of Canada’s participation in two major international schemes: continental free trade and the Multilateral Agreement on Investment (MAI). There is also a strong Asian dimension to the province’s international interests, as demonstrated by a formal Asia-Pacific initiative, overseen by the minister of economic development.

The remaining provinces have very modest international relations. In Manitoba there is a small unit for Canada-US and International Relations within the Department of Intergovernmental Affairs and Trade. In Saskatchewan there is an International Relations Branch within the Department of Government Relations, whose budget in 2005 was US\$723,330, or 0.01% of the province’s total budget. In both provinces, cross-border relations represent the bulk of international action. Saskatchewan once had offices abroad (London, New York, Minneapolis, and Hong Kong), but these were closed in the 1990s. The province’s energy reserves have sparked some interest from the United States; in February 2005 Premier Lorne Calvert met with the US vice president, Dick Cheney, to discuss oil, gas, and uranium opportunities in the province. For Nova Scotia, Newfoundland, and Prince Edward Island, foreign affairs are understood primarily as contacts with New England states through bilateral relationships and multilateral fo-

runs such as the Conference of New England Governors and Eastern Canadian Premiers. Collective efforts at fostering business opportunities in New England also feature trade missions conducted by Team Canada Atlantic, a 1998 initiative supported by a permanent secretariat established in Moncton, New Brunswick. The institutional situation of foreign affairs in these three Atlantic provinces is indicative of its minor political importance, as the relationship with New England states is an extension of intergovernmental relations. In Newfoundland responsibility for this relationship is assumed by an intergovernmental affairs secretariat, with no specific foreign affairs section, nested within the Executive Council. The structure is similar in Prince Edward Island, where this responsibility is exercised by an Intergovernmental Affairs Division within the Executive Council Office. In Nova Scotia there is a Regional Relations Division within the Department of Intergovernmental Relations that coordinates the province's relationship with both Atlantic Canada and New England.

## **6 • Future perspectives**

Foreign policy and international relations in Canada's federal context faces at least two serious questions.

First, what should be the extent of the formalization of the mechanisms for provincial consultation prior to the federal government taking a position internationally in areas of provincial jurisdiction? Such formalization is most important in the area of human rights, where provinces have input in the drafting of the Canadian position and are asked for their consent before signing and ratification. Some would argue that Canada has much to gain from keeping the provinces happy when it negotiates and signs international agreements in areas of provincial jurisdiction because it makes implementation much less problematic. In the case of Kyoto, for example, provincial opposition to the protocol means that implementation is difficult and conflictual. Others would say that formalized and binding consultation mechanisms might take away from the ability of the federal government to adjust its position as negotiations unfold.

Second, what should be the federal government's response to Quebec's claims for a greater role in foreign affairs? These claims are far-reaching, ranging from a right to speak at conferences on topics that affect Quebec's constitutionally specified powers to the opportunity to appear before in-

ternational arbitration bodies to present its position. Such claims also seem to enjoy strong support among the Quebec population. The potential upside for the federal government reacting positively to at least some of these claims is larger than the substance of these questions. The role that Quebec could play in international relations has become a major issue in the province over the past few years, with the PQ arguing that only independence will allow Quebec to defend its interests and promote its identity abroad. In this context, some think that an accommodation of Quebec's claims in this area could weaken an argument for independence. Such accommodation, however, will not be easy because many view it as a threat to national unity, arguing that it represents a slippery slope toward independence. Moreover, several politicians and commentators are worried about the coherence of Canada abroad if there is a formalization of Quebec's international role.

Thus the issue of provincial involvement in international relations goes beyond the crafting of intergovernmental relations and institutional arrangements. Rather, it plays into the connection between federalism and national unity and how the former can be conceived to secure the latter. Because notions of federalism and nationhood are always evolving and questioned in Canada, it is unlikely that a definitive solution could be found. It is more probable that the issues stemming from the connection between federalism and international relations will require continuing management by federal and provincial politicians and civil servants.

## **7 • Conclusions**

Federalism shapes Canada's interactions with the outside world in many different ways. Perhaps most important, the federal government is required to secure the consent of the provinces for the implementation of international treaties whose subject matter falls within provincial jurisdiction (e.g., CUSTA and Kyoto). This means that the federal government has a strong incentive to consult provincial governments before signing such treaties, especially if its provisions are expected to affect the provinces significantly. Even in cases of international negotiations not directed toward the signing of a treaty (e.g., Canada-US negotiations over softwood lumber), provincial governments are likely to attempt to shape Canada's position if they feel their interests are at stake.

The impact of federalism on Canada's international presence is also felt through the international action of provinces. The extent of this action is uneven, although at a minimum all provinces have developed relations with neighbouring US states to manage common resources and problems as well as to boost economic exchanges and attract investment. Alberta has been a particularly noticeable provincial player in the relationship with the United States, having a special interest in issues high on the American agenda such as oil. This being said, the province with the most developed international relations is Quebec. Through its Ministère des relations internationales, Quebec has signed hundreds of agreements with foreign governments in addition to having established a formal presence in several countries. Nationalism in Quebec means that the provincial government is continually seeking to develop its role as the primary agent of foreign representation for Quebec society and to establish itself as the main promoter of its interests abroad.

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# THE FOREIGN POLICY AND DIPLOMATIC REPRESENTATION OF THE BELGIAN REGIONS: FLANDERS AND WALLONIA COMPARED

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This paper reports on some of our findings in a recently concluded research project at the University of Antwerp & Flemish Centre for International Policy (FCIP), Belgium (Promotor: Prof. dr. Jan Melissen, Research team: Manuel Duran and Dr. David Crieke-mans). The principal objective of this project was to clarify the specific character of the phenomena of paradiplomacy and small state diplomacy, both in a bilateral and in a multilateral context. The purpose was to achieve a better insight in the perception of priorities, the main objectives and tools of the foreign policy of some regions with legislative power and small states. It was also studied how these entities organise themselves internally so as to develop and support an external relations on a day-to-day basis. This research project resulted in a policy-relevant report with specific policy recommendations for the further consolidation and development of Flemish foreign policy. However, many of our findings are also important for other regions. The main question in this research project was a policy-relevant one; *“when compared with other regions and small states, which best practices and innovations can be detected?”* The following regions with legislative power formed a part of our study; Flanders, Québec, Catalonia, Bavaria, Scotland and Wallonia. We also compared with two small states; Luxembourg and Slovenia.

From a historical point of view, one could state that currently a “third wave” is developing in sub-state diplomacy, especially in Europe (Crieke-mans, Duran & Melissen, 2008: 389). The *first wave* manifested itself from the 1980s onwards: a growing number of non-central governments tried to attract foreign direct investment through own initiatives or to use culture and identity as a lever to place oneself on the international map. Such initiatives often were of an ad-hoc nature, there was only a minor

integration of all the external activities that were generated. The *second wave* in the 1990s was characterized by the creation, within the sub-state entities of certain (European) countries, of a judicially grounded set of instruments for their own (parallel as well as complementary) diplomatic activities. These instruments were supplemented by the gradual development of a “separate” foreign policy-apparatus (administration or policy-body) which started to horizontally coordinate the external activities of the different administrations in certain regions. The current *third wave* is characterized by steps in the direction of a ‘verticalization’ of the organisational structure of the administration or department of external/foreign affairs, a strategic reorientation of the geopolitical and functional priorities and attempts to integrate the external instruments for a sub-state foreign policy into a well performing whole. The current exercise of the Catalan government may well be interpreted in that ‘third wave’ context.

In this paper, we will compare Flanders and Wallonia with regard to their foreign policy and diplomatic representation. The following aspects are tackled: 1. General aspects (history, constitutional framework, content of foreign policy and organisation of diplomatic activities – bilateral, European and multilateral); 2. Three spheres of foreign policy: politics, economics, culture; 3. Other relevant spheres: environment, energy, agriculture and fisheries, services; 4. Future Perspectives; 5. Conclusions.

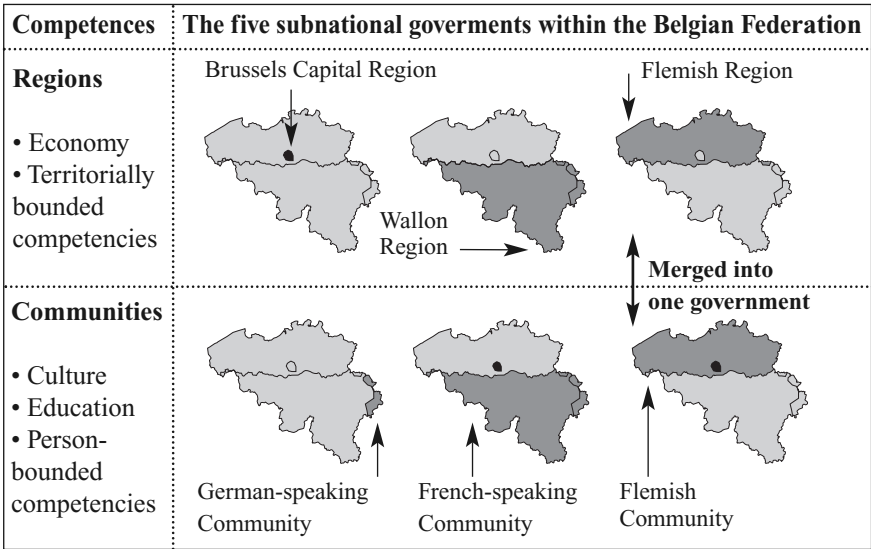
## **1 • General aspects**

### **Historical introduction of the case studies ‘Flanders’ and ‘Wallonia’ with regard to foreign politics/policies**

The Belgian federation has a complex structure, based on so-called Communities and Regions. This is a result of history. From the 1960s onwards, the Flemish economy in the northern part of the country developed quite rapidly, whereas at the same time the economy in Wallonia (southern part of the country) was in crisis (it was mainly based on a so-called ‘heavy industry’). This element formed the first impetus for Wallonia to aspire to get political control over the economical policy-instruments, so as to be able to shape its own future with tailor-made policy-tools. Flan-

ders initially developed another reasoning; it wanted in first instance to protect its own language and culture (Dutch). Thus, the Flemish political elite initially aspired to get political control over the culture-based policy-instruments in the country. These dual aspirations led to the development of the so-called Belgian Regions and Communities, which overlap territorially – as shown by the diagram below.

**The complex Belgian ‘solution’ in general**



The Belgian Communities ‘manage’ the so-called ‘person-bounded competences’ such as language policy, cultural policy, education, welfare, preventive health care, etc. The Belgian Regions ‘manage’ the so-called ‘territorially-bounded competences’ such as economy, environment, employment, infrastructure, environmental planning, etc. There does exist however an important difference in the northern and the southern part of the country. The competences of the Flemish Community and Flemish Region have in practice been ‘fused together’ – they are being managed by *one* Flemish Government and monitored by *one* Flemish Parliament. In the southern part of the country, there are still two different governments; the Walloon Regional Government and the French-speaking Community



Government. As a result of this, the Belgian federal model has often been labelled an “a-symmetric model”.<sup>1</sup>

Before 1993, the Flemish and French-speaking communities already conducted a ‘foreign policy’ in the area of international cultural affairs. For instance, in 1980 in Flanders, the initiative was taken to install a Flemish ‘*Committee-General for the International Cultural Relations*’, which became operational from 1982 onwards (Hendrickx 2004: 22). The concept ‘culture’ was being interpreted more broadly as time went by, gradually also including education, sport, etc. The bilateral cultural treaties which the central government had signed with third parties were ‘regionalised’; in the working programmes, the Flemish and Walloon Communities each made separate agreements with third parties. Also each of the Communities laid separate accents; Flanders looked at the Netherlands and South Africa (similar language), the French Community tried to link up with (the countries of) the *Francophonie*.

Since 1993 (the moment when the Belgian Regions and Communities received international treaty making-power on all their exclusive ‘internal’ competences, not just ‘culture’), Flanders has gradually moved away from concluding traditional international cultural treaties, which are a quite formal instrument to conduct an external cultural policy. To a certain extent, these were incorporated within more broader ‘exclusive’ treaties with e.g. the Netherlands, South Africa, and many of the Central- and East-European countries. To another extent, international cultural treaties were deemed too ‘rigid’ an instrument. The Flemish Community thus also resorted to more flexible instruments (e.g. via joint policy-declarations, but also other means) so as to better react to certain evolutions on the international scene.

Both Flanders and Wallonia now conduct a foreign policy which ranges across all their (internal) policy domains (see *infra*; the principle ‘*in foro interno, in foro externo*’). Nevertheless, in Wallonia, the cultural

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1 The “fusion” which has been realized in the northern part of the country (Flanders), has in practice led to the realisation of important synergies on leaning policy-areas. The last years however, steps have been taken in the southern part of the country to mimic the Flemish organizational structure; in 2007, the socialist Demotte became the first minister-president of both the Walloon Region and French-speaking Community. There are also other indications that a fusion of both regional tiers of governments in the south is being considered. Since the beginning of 2009, Wallonia is trying to develop a more integrated foreign policy; the two respective administrations for external relations of the Walloon Region and the French-speaking Community were *fused together* into one single foreign policy-body.

and educational aspects are much more stressed in their foreign policy as compared to the situation in Flanders. One of the many recommendations of our comparative study at the Flemish Centre for International Policy to the Flemish Government was that it should also devote enough attention to ‘international cultural policy’ and ‘public diplomacy’ as explicit components in Flemish foreign policy. Hence, Flanders can thus learn from Wallonia. But also Wallonia can learn from Flanders, for instance in the way the Flemish Government strategically links competences of the region and community into a consistent policy whole, in the way in which a ‘concentration policy’ is developed instead of having as much partners as possible, etc.

### **Brief description of the constitutional framework of Belgium regarding foreign politics/policies**

Since 1993, two principles are central in what I would like to call the “Belgian solution regarding foreign policy”. *First*, the so-called principle “*in foro externo, in foro externo*”, and *second* the idea of the *fundamental equality* of all the Belgian governments (“no hierarchy of norms”).

—The principle “*in foro interno, in foro externo*”

The principle “*in foro interno, in foro externo*” refers to the *convergence between the internal, material and the external competences of the federated entities* (Ingelaere 1994).<sup>2</sup> This principle entails that the Belgian “federated entities” or “regions” have to manage their (still growing number of) competences — not only in day-to-day domestic policy, but also on a permanent basis in the foreign policy-dossiers which touch upon their ‘internal’ material competences (see also: Lagasse, Ch.-E. 1997; Lagasse, N. 2002; Senelle 1999).

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2 Since the Belgian constitutional revision of 1993, the division of labour between the federal and the regional governments in foreign policy was written down in the articles 167, 168 and 169 of the coordinated Constitution. Art. 167, § 1, section 1 states: “*The King (read: the federal Government) has the lead over the foreign relations without prejudice to the competence of the Communities and Regions to regulate the international cooperation, including making a treaty, or in the affairs for which they are competent by virtue of the Constitution.*” (Senelle 1999: 211).

*First*, the Belgian “federated entities” have been granted the right to conclude or make treaties with third parties (e.g. sovereign states, regions with a degree of autonomy, international organisations, etc.). As regards this ‘*ius tractati*’, this has the immediate result that a foreign state or third party can *no longer* conclude a treaty with the Belgian federal government on matters which fall within the realm of exclusive competences of the Belgian Regions and Communities (Kovziridze 2001: 25).<sup>3</sup> Only they have the authority to decide upon possible external cooperation.

*Second*, the Belgian “federated entities” have been granted the right to send their own representatives to bilateral posts, to other regions/areas, and to international organisations (e.g. the European Union or intergovernmental multilateral organisations). As regards this external representation of Belgium (‘*ius legationis*’), the Belgian Communities and Regions can appoint their own ‘diplomatic’ representatives abroad autonomously, with one restriction. From 1993 onwards, they were granted the opportunity to appoint their own “attachés” (today upgraded to the higher position of “conseiller”), which would be placed on the diplomatic list of the Belgian embassies, consulates or permanent representations *by the Belgian federal Minister of Foreign Affairs* (Senelle 1999: 212).

The representation of Belgium within intergovernmental or (semi-) supranational multilateral organisations underwent two changes as a result of the principle “*in foro interno, in foro externo*”. First, from 1993 onwards, the six Belgian governments had to reach an agreement regarding the composition of the Belgian ‘multilateral’ negotiation delegations. Second, the Belgian federated entities would from 1993 onwards also formally participate in the process of formulating the substance of the foreign policy-position of the Belgian federation, namely on those material competences for which they were internally authorized (see also: Salomonson & Crieckemans 2001). From 1993 onwards, foreign policy thus had become an issue to be dealt with on a daily basis by the *whole* of the Belgian federation.

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3 Regarding the making of treaties which touch upon the competences of both the federal level & the Communities/Regions (so-called “*mixed treaties*”) the six Belgian governments (federal and federated) signed a *Cooperation Agreement* on March, 8<sup>th</sup> 1994. This agreement also created a Working Group for Mixed Treaties within the framework of the Interministerial Conference for Foreign Policy (ICFP) (see *infra*; diagram 2).

—Fundamental equality of the Belgian governments (“no hierarchy of norms”)

The *second principle* which guides the “Belgian solution” is the idea of the *fundamental equality* among all the Belgian governments, be they federal or federated (“no hierarchy of norms”). This means in practice that the internal legislation generated by the ‘federated entities’ has equal power to that of the ‘federal level’. In foreign policy matters, this thus means that all Belgian governments are responsible to give substance to & decide upon the foreign policy of the federation. If they are not able to find a ‘common ground’, there is in practice no Belgian position. A substantive number of consultative bodies have been created to develop a common position in foreign policy issues between the federal & five federated governments. Diagram 2 offers a concise overview of the most important consultative bodies created to develop a “foreign policy of the Belgian federation”.

**Diagram 2. Overview of the consultative bodies for foreign policy-making within the Belgian federation**



*What can we deduce from all this?* One can safely state that the ‘Belgian solution regarding foreign policy’ grants a considerable amount of autonomy to the Belgian Regions and Communities to conduct their own foreign policy. The idea that the King (read: the Belgian federal government) has the lead over the foreign relations of the Belgian federation stands potentially *in direct confrontation* to the idea embedded within the Belgian federal model that the Regions and Communities enjoy *autonomy* in foreign policy matters, be it in making treaties with third parties or in sending their own representatives abroad. The solution developed for this potential conflict is as follows; the Belgian Regions and Communities do enjoy maximal autonomy *so long as* the coherence of the foreign policy of the federation does not come in jeopardy.<sup>4</sup>

The combination of the principle “*in foro interno, in foro externo*” together with that of the *fundamental equality of all Belgian governments* is without precedence in the foreign policy of federal states. This is an exceptionally original solution which offers the Belgian Communities and Regions the possibility to develop both their own geopolitical priorities & their own functional interests and accents in foreign policy, as long as the coherence of the foreign policy of the federation is not threatened. Consultation and coordination thus become a key part of the daily management of the diplomatic network and optimising value of the external relations of the Belgian federation.

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4 The federated governments are for instance obliged to inform the Belgian federal government of their intention to conclude treaties (on the basis of their ‘exclusive’ competences) with third parties. The federal government has to be informed of every step in the procedure which a federated entity undertakes to conclude such a treaty. The federal government has the authority to object. In such a case, the procedure to conclude a treaty will be suspended, and the Interministerial Conference for Foreign Policy (ICFP) will decide by consensus. When a consensus cannot be reached, the federal government can obstruct the further conclusion of the treaty in only four cases: (1°) the foreign partner has not been recognized by Belgium, (2°) Belgium does not maintain any diplomatic relations with the third partner, (3°) one can deduce from a decision or act of the federal government that the relations between Belgium and the third partner have been broken off, are suspended, or are seriously disrupted, or, (4) the treaty which currently is being written, could contradict or violate obligations which the Belgian federation has earlier agreed to in its international or supranational obligations (XXX 2001: 2).

**The processes of globalization and national pluralism represent new challenges for liberal democracies in the field of foreign politics/policies. They affect the fields of jurisdiction of “federated” units (and also those of central governments). This is a topic which is in need of a new evaluation:**

For each of the cases of Flanders and Wallonia, we will tackle the following questions;

1.1 With which of the following main actors does your specific case study maintain an active foreign policy (in a broad sense of the word, including media, sporting events, etc)?

a) other “regions”

b) other states

c) supranational organizations (European Union, NAFTA, Commonwealth, etc)

d) international or global institutions (UN, etc)

e) private actors ?

1.2 What are the leading values/objectives and institutional principles of the foreign policies of your case study?

1.3 Is the foreign policy implemented by the federated unit alone; together with other units of the state; or together with units of other states?

1.4 In what international networks does the federated unit participate?

1.5 Is there a specific “ministry” (or similar) which is responsible for the foreign policy of the federated unit? Is foreign policy an interdepartmental matter?

1.6 How many employees work in the administration of the foreign policy of the federated unit?. What is the budget for foreign policy?

1.7 In your case study, has there been a new “paradiplomatic” policy and any change of priorities by the federated unit since the year 2000 (in comparison with the period 1970-2000)?

1.8 If so, what kind of reactions has this provoked from the central power?

1.9 What are the main spheres of action regarding the foreign policies?

1.10 Can we talk of a new relationship between the constituent units and central government in relation to foreign politics/policies in the last decade? (new institutions, redefinition of action of the two levels of government, new political actors, new intergovernmental relations, etc).

## 1.1 · Active foreign policy vis-à-vis what actors?

Flanders and Wallonia conduct a foreign policy vis-à-vis a variety of actors and fora; other “regions”, other states, supranational organizations (more in particular the European Union), international global institutions (UN), and towards multilateral organisations such as UNESCO, the ILO, the EBRD, the OECD, the WHO, the WTO, etc. Only in very limited ways do they engage with private actors.

### 1.1.1 · Basic dimensions in the foreign policy of Flanders

#### FLEMISH BILATERAL POLICY

In his *“Policy Letter 1995 – Flemish foreign policy”*, minister-president Luc Van den Brande wrote that due to its limited resources, Flanders could never be prominently present in all countries. It would thus become crucial for Flanders to determine certain priorities among the potential countries and regions with which the Flemish Government could establish relations (Van den Brande 1995: 14). In order to develop such an exercise, nine criteria were formulated which could serve as an instrument to develop a so-called “concentration-policy” (in order to focus the limited Flemish resources abroad). The decision to incorporate a certain country or area into the Flemish concentration policy could thus best be taken by “testing out” these territories based upon the following nine criteria:<sup>5</sup>

1. common language, culture and history;
2. geographic proximity;
3. (potential) intensity of economic and trade relations;
4. parallel vision on and involvement in the construction of the European integration project;
5. similarity of state structure (federalism);
6. attachment to democracy and human rights;

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5 The Flemish idea behind formulating these ‘nine criteria’ was as follows: “*the higher a certain country or region ‘scores’ on as many of these criteria as possible, the higher the priority for Flanders to engage into formal relations with that specific country or region*”. However, the Policy Letter rightly warned that these nine criteria cannot and may not be applied in a purely mathematical fashion.

7. (the need for support and cooperation, and) the possibility for Flanders to develop solidarity actions in a meaningful way;
8. strategic location and international impact;
9. willingness to recognize Flanders as a (full-fledged) partner.

Although the nine criteria today are no longer explicitly mentioned in current Flemish policy letters, it appears that they are still *implicitly* used as a beacon and policy-tool to guide the political choices. As a result of this exercise, a number of bilateral priorities became apparent; *the neighbouring countries* (with the Netherlands as most important due to the language similarity and e.g. the importance of the deepening of the Scheldt-river for the Flemish economy), *the young democracies in Central- & Eastern Europe*, *Québec*, *Southern Africa* (again apparently because of the language similarity), and *Chile* in Southern America:

— In June 1989, an “Entente” was signed with Québec to establish a co-operation on such issues as economy, education, health and the environment. At that time, Flanders did not yet have international treaty-making power. It shows however that the Flemish Executive was very much interested in cooperation with like-minded regions in the world. In 2002, this relationship was extended to almost all Flemish competences (also culture, science, etc.).

— The countries in Central and Eastern Europe would soon follow. It is interesting to note that already in April 1992 (also *before* Flanders officially became an international actor with treaty making-power), the Flemish Government had decided to make relations with Central and Eastern Europe a priority. A new policy-instrument was created for this; the “*Programme Central and Eastern Europe*”. In 1992, 10.68 million euros were earmarked in order to support the transition process in Central and Eastern Europe, and the development of strong and healthy market economies (Vanden Berghe & Van Alstein 2004: 2). With this annual budget (which gradually decreased over the course of the 1990s), projects were financed in such areas as economy, environment, infrastructure, education, vocational training, socio-economic matters and judicial assistance. In this way, the Flemish ‘know-how’ could be used to bring these countries up to Western European specs. At the same time, these projects would bring Flemish and Central-European specialists together on a wide variety of dossiers. Also important to note is that in this way, certain (aspects of) the Flemish (socio-)



economic, ecological and societal model could be ‘exported’ to the ‘East’. In the medium term, Flemish officials also hoped to bring about joint ‘spin offs’. The final goal of this Programme was however political in nature; to bring the countries of Central and Eastern Europe in contact with Flanders, an equally young but reliable foreign partner (Crickemans 2005). Soon after the moment when the Flemish Government received treaty making-power, a number of agreements were signed with Poland (June 1994), Hungary (October 1994) and the three Baltic states (1996). In the years to come, all the other Central and Eastern European countries followed [those which now have become EU-members, but also Romania (1997) and Bulgaria (2001)];

— The first “exclusive treaties” which the Flemish Government concluded, were with the Netherlands, regarding the deepening of the Scheldt-river (which partly flows across Dutch territory) & also regarding cooperation in such areas as culture, education, sciences, welfare, etc.;

— In October 1995, the Flemish Government also concluded a treaty with Chile. Initially, the relationship with this country was mainly focused on development policy. However, the character of the cooperation changed over the years. Today, Flanders approaches Chile as a bilateral partner in its own right. The choice for Chile as a ‘bridge head’ into Latin America is however quite peculiar. Some observers question whether the “nine criteria” had anything to do with Chile becoming an important Flemish partner. There are those that point to more personal and political explanatory variables; e.g. the relationship between some Flemish and Chilean christian-democrats (Hendrickx 2004: 31). This somewhat puts the “nine criteria” into perspective; they were certainly not the *only* guiding mechanisms by which Flemish foreign policy got its orientation. Another –more official– factor which influenced the choice for Chile was the Chilean diaspora in Flanders (as a result of the coup in 1973); Flanders thus had links with the country, and wanted to make a contribution to the renewed process of democratization (Vlaamse Administratie Buitenlands Beleid 2005).

— On the African continent, South Africa was chosen as a partner. Via transnational contracts with the South African Housing Company, Flanders for instance financed shelter for families. In October 1996, a co-operation agreement was signed in the areas of culture, education, science, technology and sport, which would in later years be broadened to cover more policy-areas. These agreements formed the basis for a much

larger Flemish policy vis-à-vis the Southern African area (to include Lesotho, Botswana and Mozambique, Malawi). Since the beginning of the new century, Flanders has focused more and more on the battle against HIV/AIDS. The Flemish Government for instance gives money to the UN-AIDS-programme (which was led between 1994 and 2008 by the Flemish/Belgian Dr. Peter Piot), to be earmarked for usage in projects in the Southern African area.

If one takes the *international treaty making-power* as an indicator for Flemish paradiplomacy, one can conclude that Flanders has used this new policy-instrument quite intensively, both in an active and in a passive way. Flanders has actively concluded 33 “exclusive” treaties (25 bilateral ones, and 8 multilateral). Clearly, Flanders has today entered a new phase in the sense that a further exponential growth of its “exclusive” treaties could result into “inflation”. Treaty making-power contributes to the international recognition which Flanders has been able to build up until now, and is a clear indicator of the *geopolitical priorities* which Flemish foreign policy has formulated; a strong commitment to the (future) EU-countries, and a spearhead policy towards the larger Southern African region and Latin America (Chile). However, founding one’s foreign policy too much upon the formal instrument of a treaty could potentially “formalize” (para)diplo-macy up to a point when one can no longer be flexible to respond to new challenges which present themselves within society or on the international scene. It appears as though Flemish policy-officials have understood this; they also often use less formal instruments for international cooperation such as transnational contracts and joint policy declarations. A potential disadvantage of such an approach is of course the non-binding nature of such policy-instruments. Nevertheless, they can be used successfully to give substance to cooperation.

#### FLEMISH EUROPEAN POLICY

The EU-policy of Flanders is probably one of the most important components of Flemish foreign policy. The choices which were made are a direct result of both the institutional position of Flanders within Europe and its competences.

*From an institutional point of view*, a recurring theme in Flemish foreign policy is the regional dimension within the European Union. In December 1992, the then Flemish minister-president Luc Van den Brande officially launched the *Charter of ‘Europe of the Regions’* in Edinburgh. This Char-

ter involved an informal network of like-minded people who believed that Europe should be built on cultural diversity – the Europe of the Cultures (Claerhout 1999: 1). According to Van den Brande *“such a Europe would welcome the cultural identities of regions and member-states not as an obstacle to integration, but as a stimulus to its development”* (Van den Brande 1998). In this context, the international Foundation *“Europe of the Cultures 2002”* was created, via which Flanders was placed centre-stage in the debate on the European regions (Criekemans & Salomonson 2000). The Foundation does not exist anymore today, but over the years other networks and institutions have been created in which Flanders plays a prominent role. In this context, one should mention that the Flemish region has played an important part in the REGLEG-network,<sup>6</sup> the Group of Regions with Legislative Powers made up of EU regions that have responsibility for implementing – and in many cases transposing– European legislation. Over seventy regions with legislative powers within the European Union have directly elected parliaments and governments. The Group helped e.g. to achieve significant steps forward for regional involvement in the EU through the draft EU Constitutional Treaty. REGLEG also has become a network for strategic coordination and a forum for exchange of “best practices”.

*From the point of view of competences*, one can determine that a lot of the competences which the Belgian regions and communities have received over the years, are actually issues in which the European Union is quite active; education, agriculture, aspects of economic policy, etc. Some scholars claim that the Belgian federated entities are to a certain extent *frustrated* by this; they have discovered that their autonomy is limited by other policy-levels such as the European Union (Vos 1999). Hence, participation in the European policy-framework is being perceived as crucial – not only in the implementation-phase, but also (and more importantly) in the decision-making-phase (or even before; e.g. when the European Commission floats a Green Paper in which new policy ideas for the future

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6 REGLEG has its roots in the regional cooperation to prepare the discussions within the Intergovernmental Conference (IGC) in 2000. The regions with legislative powers wanted to have a say in this context, which predicted a fascinating period for the institutional system of the Union. In 2001, these regions wished to respond to the demand for a broader and further-reaching debate on the future of the EU as formulated in a declaration annexed to the Treaty of Nice. Their initiatives resulted in the recognition of the concept of a *“region with legislative powers”* in the so-called ‘Declaration of Laeken’ (see the network’s website: <http://www.regleg.org>).

are being “tested out”). On March 8<sup>th</sup>, 1994 a Cooperation Agreement was signed between the federal government & Regions/Communities regarding the representation of Belgium within the Council of Ministers of the European Union, an agreement which was recently updated. The situation varies in each policy-domain, but there are cases (e.g. culture, education, sport) in which Belgium as a whole will be represented by a Minister from the Communities, who will speak on behalf of the whole of the Belgian federation. In more “mixed” policy-domains, the team leader will e.g. be someone from the federal government, accompanied by a representative of the Region/Community, or vice versa. This all means in practice that the traditional distinction between domestic policy and international (‘EU’)-policy is less clear; both are intermingled. In practice, all the Belgian governments have to try to work together via the DG-E-consultation process. No “parallel foreign policy” there. However, some argue that if the federated entities are not able to find a common position, they should be given the chance to each vote separately in the EU-Council of Ministers (the so called ‘split vote’). However, such a radical idea will probably not find supporters in Europe anytime soon...

### FLEMISH MULTILATERAL POLICY

Soon after the Flemish Government received its international competences, Flanders developed an interest to collaborate with and within multilateral organisations on concrete issues of policy (Crikemans, 2007a).<sup>7</sup> Flanders developed its first initial multilateral steps vis-à-vis the International Labour Organisation (ILO), UNESCO and the European Bank for Reconstruction and Development (EBRD). It contributed also financially to certain projects of these organisations. Some interviewees underline that at that time –during the 1990s– the Belgian federal government had to cut back its participation in some of these projects (e.g. within UNESCO). Flanders thus seized the opportunity which presented itself to enter the multilateral stage (see also: Vanden Berghe & Crikemans 2002). Later on, the Flemish Government broadened its multilateral ‘scope’. Its competency with regard to preventive health care led to an interest into the work of the World Health Organisation (WHO) &

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7 Before 1993, Flanders already contributed to the Belgian multilateral position on its ‘classical’ Community-competences such as language, culture & education within organisations as UNESCO & the Council of Europe.

UNAIDS. Because of its educational and cultural work, also the Council of Europe was selected. Within the OECD, Flanders promoted the development of more ‘regional’ statistical data and studies. Also the WTO has become an important organisation for Flemish foreign policy, certainly regarding the negotiations in the liberalization of services (the Flemish economy is mainly services-based). Flanders thus contributes to the Belgian/European position in these matters (e.g. via the concept of “cultural diversity”). In other words, one can detect a wide dispersal of Flemish multilateral activities; from a limited number of organisations and programmes into a much more wider spectrum, in which all Flemish administrations are involved. Coordinating this effort therefore becomes a much more daunting task. Flanders finds itself today in a process in which the original project-based approach is less prominent, in favour of the development of a much more ‘structural approach’ (see also: Vanden Berghe, Salomonson & Crikemans 2001). In the last couple of years, Québec and later Catalonia seem to have developed an interest in the way in which Flanders advanced its “multilateral position”. The debate within UNESCO about the *Convention on Cultural Diversity*<sup>8</sup> also foster a co-operation among different regions (see: Crikemans, 2006). As regards the possibility of becoming ‘associate member’ of a multilateral organisation, only Flanders is in this position; in the World Tourism Organisation (UNWTO).<sup>9</sup> No other region is associate member of a traditional multilateral organisation.

### *1.1.2 • Basic dimensions in the foreign policy of Wallonia*

#### WALLOON BILATERAL POLICY

Typical for the foreign policy of the Walloon Region-French-speaking Community is the clear “division in two” of their geopolitical focus. All ex-

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8 The “*Convention for the Protection & Promotion of the Diversity of Cultural Expressions*” (or: ‘*Convention on Cultural Diversity*’) was approved on October 20th, 2005. 148 countries voted in favour, the USA and Israel opposed.

9 As a result of Flanders’ associate membership in the World Tourism Organisation (UNWTO), the federal Belgian level retreated. According to some interviewees this has created problems in the sense that sometimes the Flemish government can no longer achieve the necessary access to the highest political bodies in the organisation.

ternal cooperation is clustered in two programmes: the “*Programmes Nord*” & “*Programmes Sud*”.

This dual system finds its origin in the finality of the Walloon foreign policy.

The *Programmes Nord* focus on cooperation in the area of education, economy and culture with the developed countries and with countries in transition. The “northern” countries with which Wallonia has relations, can be divided between the European countries and the new EU-border countries; North-America; Brazil, Israel and Japan, and also the rising economies such as China, Chile, Cuba, Lebanon and Tunis. Wallonia has a BRIC-strategy, something which Flanders does not yet have (but is planning to do so).

The *Programmes Sud* aim for a different kind of cooperation in the area of education, knowledge and solidarity in and with the developing countries. The “southern” countries with which Wallonia has relations, are some Maghreb countries (in particular Algeria, Tunisia and Morocco), some Central African countries (RDC, Rwanda, Burundi), some West African countries (Burkina Faso, Benin, Senegal), some Latin American countries with lower levels of economic development such as Bolivia and Haiti, and then also South Africa, Palestine and Vietnam.

The level of (economic) development determines the ‘statute’ of the third partner within Walloon foreign policy. One could say that in *Programmes Nord* the central question guiding the external actions is this one; what is in the interest of Wallonia?, whereas the central question in the *Programmes Sud* is; *what is useful for the southern partner?*

Not only in terms of programmes, but also in organisational terms can this division be detected. The direction bilateral affairs is also divided in “northern” and “southern” countries. Interesting in Walloon bilateral policy is that they share some geopolitical priorities with the Belgian federal government, especially in Central-Africa (DRC, Rwanda, Burundi). In this way, Wallonia is able to develop their foreign policy “in the slip-stream” of the federal foreign policy.

Another striking aspect in Walloon foreign policy, is the sheer number of external partners, which is quite high. Below a table how this translates in budgetary terms:

## Walloon Bilateral Spending (in 1000 €)

	2003	2004	2005	2006	2007
CGRI <sup>10</sup>	4.502	5.195	5.271	5.756	5.793
Number of partner-countries CGRI	52	52	53	53	54
Average for each country CGRI	86,5	99,9	99,4	108,6	107,2
DRI <sup>11</sup>	3.578	4.055	4.043	4.155	4.684
Number of partner-countries DRI	30	28	32	33	35
Average for each country DRI	119,2	144,8	126,3	125,9	133,8
COCOF <sup>12</sup>	139	299	230	442	570
Number of partner-countries COCOF	14	14	12	12	12
Average for each country COCOF	9,1	19,2	16,8	33,4	39,7

## WALLOON EUROPEAN POLICY

Just like Flanders, Wallonia is active in EU-affairs. The ambitions of Wallonia in Europe should not be underestimated. In 2000, the then Walloon minister-president stated that he considered the importance of regions in Europe in a globalizing world much higher than those of conventional states such as Belgium (Massart-Piérard 2003: 90).

Especially important for Wallonia is *Interreg*. This is a cooperation-programme, financed by the EU, which fosters cooperation among adjacent European regions. For the moment, *Interreg IV* (2007-2013) is running. This entails on the one hand cross-border projects (IV-A), transnational projects (IV-B) and inter-regional project (IV-C). These projects are especially aimed

<sup>10</sup> CGRI is the 'Commissariat général aux relations internationales' of the French-speaking Community.

<sup>11</sup> DRI is the 'Division Relations Internationales' of the Walloon Region.

<sup>12</sup> The COCOF or 'Commission communautaire française' within Brussels can also conduct external relations.

a public actors. Nevertheless, also private actors can make proposals within the boundaries of the programme area.

For Wallonia, within IV-A, the area of "*La Grande Région*" is important. This entails the German regions Saarland, Rhineland and Lotharingen, the state of Luxemburg, and for Belgium; the Walloon Region, the French-speaking Community and the German-speaking Community. This "*Grande Région*" can in place of three *Interreg III* programmes, namely Saarland-Moesel-Rhineland, Waloonia-Lotharingen-Luxemburg, Germany-Luxemburg-German-speaking Community). One of the topics is the mobility of labor within this region, an important indication of the success of the cross-border work of the *Grande Région*.

Next to this, Wallonia also is partner in an important cooperation in the framework of the *Interreg IV-C*-programme. This cooperation between France, Wallonia and Flanders deals with a wide range of subjects, from economy and demography to culture and spatial planning. These themes were also already developed under *Interreg III*.

The cross-border activities of the Walloon Region can be considered as bench-marking examples with international standards. Rumanian, Estonian, Latvian and Lithuanian delegations have studied *la Grande Région* and *Interreg III* as a *benchmark* of cross-border activities.

Another important European forum for the Walloon Region is REGLEG, the informal cooperation amongst different European Regions with constitutional powers. Also Wallonia participates in the annual conferences of the governmental heads of the REGLEG-regions.

## WALLOON MULTILATERAL POLICY

The *Francophonie* can be considered as an important multilateral forum for the foreign policy of Wallonia. Since March 1980, the French Community is a member of the OIF. Next to the French-speaking community, also Belgium is a member of the OIF. In this capacity, it participates in many different gatherings and meetings. This situation more or less represents the dual nature of the organisation. On the one hand countries where French is the official language are members, but on the other land also subnational actors are members; regions and in this case the French-speaking Community. The fact that the French-speaking Community is a separate member of the OIF, reflects the possibilities there are for federated entities to play a larger role internationally than is the case within other organisations.



Within Walloon foreign policy, and especially in its multilateral policy, the *Francophonie* plays a role in different ways; (1°) the substantial budgets allocated to Francophone countries and regions, (2°) the ‘jump start-potential’ which is attributed to these countries; common language and culture are seen as factors which smoothe a spill over-effect into other policy domains, (3°) the international platform of the *Francophonie* is also considered to be a good basis upon which to achieve other goals such as sustainable development, democracy, etc. Some important committees which Wallonia finds important; *Assemblée parlementaire de la Francophonie* (APF), *Agence universitaire de la Francophonie*, CONFEMEN (*Conférence des Ministres de l’Education Nationale*) en de CONFEJES (*Conférence des Ministres de la Jeunesse et des Sports*). Wallonia thus utilizes the Francophonie both as a network and forum.

Next to the *Francophonie* and the European Union, there are also other multilateral organisations and projects in which CGRI-DRI actively participates.

In first instance, the activities of a number of organisations within the UN family are followed. Within the WTO, especially the dossiers of cultural diversity and educational services are closely monitored. The French-speaking Community is very apprehensive for too commercial policies in this domain. Also the debates within the ILO are followed by the representation of the French Community in Geneva. The Walloon region subsidises the international training centre of the ILO in Turin, and more in particular the training activities in the Third World (for example; the education of administrative governmental officials in Congo) (to compare; Flanders also gives money to the international training centre of the ILO in Turin; projects in Central-Europe). In this context, the delegation of CGRI-DRI in Geneva is important. Since 2005, the Walloon representative in Geneva is also a member of the *Bureau du Groupe des Ambassadeurs Francophones*. In this way, he actively participates in the co-ordination of the position of the French-speaking governments in different international organisations. Via this Bureau, the CGRI-DRI is indirectly involved in the Human Rights Council of the UN, the World Health Council of the WHO, and the WTO. Via the delegation in Geneva, the Walloon Region can thus try to make the vision of his government clear within the Group of French-speaking ambassadors (CGRI-DRI 2007). From the point of view of the analyst, it remains nevertheless difficult to ‘measure’ the exact impact of the Walloon diplomatic representation in Geneva. Within the Human Rights

Council, especially the dossiers on weapons exports are important for the Walloon Region (cf. the interests of the Walloon weapons industry). The representative in Geneva makes, together with the direction Multilateral Policy, the analytical fiches of the possible partners, based upon the dossiers of the Human Rights Council.

The Belgian diplomatic representation to the multilateral organisations operates in more or less the same way where the CGRI-DRI cannot participate (e.g. in Councils of ministers). In those cases, CGRI-DRI coordinates with the other Belgian governments in order to reach a common position. In this way, Wallonia tries to defend its interests via the Belgian federation.

On the other hand, CGRI-DRI is in certain cases accredited within the Belgian representation vis-à-vis certain organisations. This is the case in Paris. The representative over there is also accredited to UNESCO and the OECD. The work of UNESCO is extremely important for CGRI-DRI, especially as regards the convention on cultural diversity.

Next to this, Wallonia is still a member of the Association of Regions in Europe, ARE, but the importance of this forum has diminished after the Treaty of Maastricht. Wallonia is also an active member of REGLEG.

## **1.2 · What are the leading values/objectives and institutional principles of the foreign policies?**

Objectives which are frequently mentioned, for both Flanders and Wallonia;

- strengthening their own autonomy by optimally using the possibilities and contacts offered by the international community
- trying to make a recognizable contribution, and to further develop the international legal personality of the region
- having more access to policy solutions which are developed internationally
- developing its own identity and image, via public diplomacy and cultural diplomacy, also via tourism
- taking up ‘a rightful place’ in the international community
- developing their own foreign trade, and trying to attract foreign direct investments

- making a contribution to international solidarity via initiatives in the area of development cooperation
- etc.

Depending on the political constellation at the time, different accents are made (e.g. the liberals often give priority to foreign trade and FDI-attraction, the nationalists often give priority to identity via public diplomacy, etc.). In Wallonia, the economic aspects are also underlined, and linked up with the ‘Marshall Plan’ of the Walloon Region.

### **1.3 · Is the foreign policy implemented by the federated unit alone; together with other units of the state; or together with units of other states?**

The foreign policy of the Belgian federated entities is implemented by the entities themselves. All federated entities together with the federal government conduct a “foreign policy of the Belgian federation”. However, many problems remain with regard to the realisation of such a “foreign policy of the Belgian federation”:

- There is no document in which the federal government together with the federated entities explain the goals which they together want to achieve in international relations
- The federated and federal governments do not always keep each other apprised of the initiatives they take. Only in treaty making does there exist an obligatory rule for the federated entities to inform the federal government of their intention to conduct a treaty with a third party, but this obligation does not exist for the federal government vis-à-vis the federated entities
- The absence of homogeneous packages of competences between the federal government and the federated entities creates a situation whereby there sometimes exists a confusion over which government is competent.

### **1.4 · In what international networks does the federated unit participate?**

See also above.

Flanders is active in a wide range of other policy networks such as REGLEG, the 'District of Creativity-network' or 'DC network',<sup>13</sup> specific policy-networks, etc.

The most important channels for the networking of Walloon foreign policy are the *Francophonie* (cf. supra) and the network of the Belgian federal foreign policy. Wallonia has consciously aimed at the same countries and regions which are on the list of the geopolitical focus of the Belgian federal government, especially in Africa. In this way, "*Wallonia can in its foreign policy saw in the furrows that were previously ploughed by the Belgian federal government*".

During our extensive comparative study, many interviewees stressed the importance of the diplomatic network for maintaining the networks of Walloon foreign policy. Not only the political representatives, but also the 78 lecturers, tutors and language assistants, both cultural centres in Paris and Kinshasa, and the multilateral representations in Paris and in Geneva all have their role to play in this. They are the first term of address for the foreign partners, the Walloon companies, the French-speaking cultural actors, the French-speaking educational institutions, but also for the Belgian federal government and for the governments of the other federated entities of Belgium.

The regional organisations AER and REGLEG play an important, but slowly less prominent role in the Walloon strategy vis-à-vis international networks. On the other hand, the importance of the *Francophonie* remains very substantial for maintaining the network of the EIWB. Both the institutionalised cooperation in the framework of the OIF, as the individual contacts between the representatives of the different French-speaking actors world wide stand central to this.

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13 The regions which are participating to the 'DC-network', are; Québec, Oklahoma, Scotland, Nord-Pas de Calais, Catalonia, Rhône-Alpes, Lombardia, Baden-Württemberg, Karnataka, Qingdao, Shanghai & Flanders. These DC-regions exchange experiences and work together on issues of creativity, in three ways: (1°) the annual Creativity World Forum, where entrepreneurs, policy-makers and researchers from over the whole world get the opportunity to exchange ideas and 'get inspired', (2°) the participation of the DC-regions to European projects aimed at the promotion of innovation, the entrepreneurial spirit and business creativity, (3°) developing exclusive DC-projects, such as exchange programmes in the area of innovation and creativity (see: <http://www.flandersdc.be> ).

## 1.5 · The ‘ministry’ for foreign affairs

### 1.5.1 · *A quick comparison of the Flemish and Walloon ‘ministries’ for foreign affairs*

— Rough overview of the way in which ‘foreign policy’ is defined by Flanders and Wallonia

	<b>Flanders</b>	<b>Wallonia</b>
Coordination of external activities	x	x
International Trade & Investment	Loose link with FP; since July ‘09: same minister, which might produce a stronger link with FP in time	link with FP
International cultural policy	Almost fully separate from FP	Very close link with FP
International educational activities	Almost fully separate from FP	Very close link with FP
Tourism	Link with FP (same minister), since July ‘09: separate minister <sup>14</sup>	Separate from FP
Development cooperation	Link with FP (same minister)	Close link with FP

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<sup>14</sup> Between 2004 and 2008 the function of Foreign Affairs-minister was separate from the position of Minister-President. Since September 2008, it is again the Flemish Minister-President who is responsible for the coordination of all external activities conducted by the Flemish Government. With this change, Flanders has returned to the situation in the 1990s, under Luc Van den Brande and his successor Patrick Dewael. A totally different debate which we do not study in the context of this article is whether or not this change constitutes an “upgrade” in term of the political importance devoted to ‘foreign policy’ by the Flemish Government. One could also argue the reverse position, namely that Foreign Policy then becomes only one topic in an already overcrowded political agenda of the Minister-President. These two competing hypotheses deserve more in depth study in a future research project.

— Flanders and Wallonia: two diverse ‘models’ with regard to the way in which foreign policy is defined

	<b>Flanders</b>	<b>Vallònia</b>
Policy accents within the external relations	All policy domains have international dimension Recent; interest in public diplomacy	Strong attention to the role of culture and education Also activities in wider policy-areas
Type of coordination	Rather vertical than horizontal	Both vertical & horizontal
Frequency of coordination	Structural and daily	Orderly and where required
Organisational structure	Rather verticalized structure	Matrix-like structure
Level of integration of foreign policy dossiers	Integrated (with some exceptions)	Quite integrated
Key principle	Coherence & refinement	Adaptation

### ***1.5.2 • The ‘Flemish Department of Foreign Affairs’***

The Flemish foreign policy-apparatus has been under constant reorganisation. In 1980, the idea was set in motion to establish a Flemish ‘*Committee-General for the International Cultural Relations*’, which became operational in 1982. The concept ‘culture’ was being interpreted more broadly as time went by, gradually also including education, sport, etc. This led in 1986 to a new name; ‘*Committee-General for the International Cooperation*’, and an adapted organisational structure. In 1991, a Flemish ministry took shape, which combined the administrative capacity of both the Flemish Community and Region. Within this ministry, a new ‘*Administration for External Relations*’ was created. This was a so-called ‘horizontal department’, in the sense that it coordinated all the external activities of the internal administrative policy-domains. The

acquisition, in 1993, of the international treaty-making power & external representation led in 1994 to the re-naming into '*Administration for Foreign Policy*', which underlined the idea that all external activities of the Flemish Government should be streamlined by political priorities. This situation remained for the rest of the decade. Gradually however, the organisational structure came under strain, mostly because the Flemish administration was being asked to follow up on a growing number of new competences.

In the Hermes-agreement of April 5<sup>th</sup> 2000, the federal government agreed in principle with the federated entities to devolve 'agriculture' and 'foreign trade' to the Belgian Regions. This intention was formalized in the Lambertmont-agreement of July, 13<sup>th</sup> 2001. An extra area which the Belgian governments agreed to 'devolve' was 'development cooperation'. However, up until today this last area has not been devolved in practice; a study group has not reached any conclusions on how to realize this (De Volder 2005). The Flemish Government wants the Belgian personnel and financial means that accompany them to be transferred to the Communities. For evident reasons, this element still remains a subject of discussion. In 2003, the competency of the 'export licences for weapons' also was devolved from the federal government to the Regions. Not Flanders but Wallonia had asked for this. This impressive list of new material competences resulted in a situation in which the structure of the Flemish Administration for Foreign Policy was no longer in alignment with its new tasks and responsibilities. This had already provoked an 'internal exercise' in 2001; the Policy Support Division of the Flemish Administration for Foreign Policy was given the assignment to start a benchmarking research project of several Ministries for Foreign Affairs. Special attention was given to the following bench-marks; the organisational structure of the Ministry, the relation between foreign policy, international trade and development cooperation, the structure and operation of advisory committees, the management of the network of representatives abroad, the relation between 'administration' and 'politics', the way in which priorities are determined, etc. After an initial 'scanning', the MFAs of the following countries were selected; Canada, Denmark, Germany, Finland, the Netherlands, Norway, the United Kingdom (Vlaamse Administratie Buitenlands Beleid 2001).

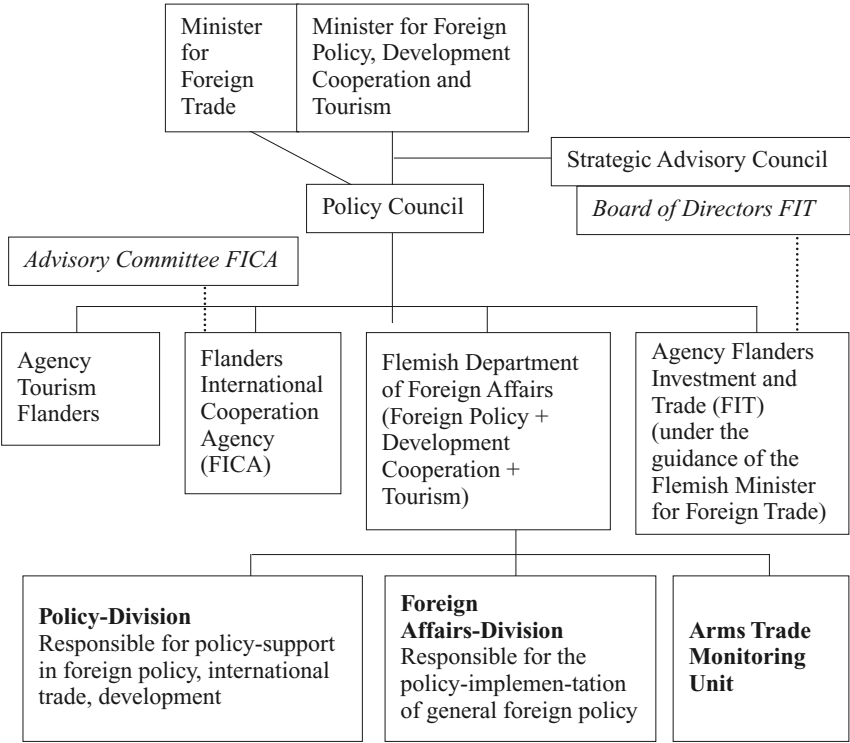
The exercise started by the Policy Support Division was not completed due to a change in priorities and lack of time. The team did nevertheless

collect information, but they were never used in an actual bench-mark study. The main reason for this change of priorities was that at that time, the Flemish Government had launched a new project '*Better Governmental Policy*', an effort to structure the competences which the Flemish Region and Community had accumulated since 1991. However, the elements which had been gathered in the preliminary research for the benchmarking study were perhaps implicitly used in the process to implement '*Better Governmental Policy*'? The initial idea was to 'verticalize' the former 'horizontal' Flemish Administration for Foreign Policy into a full-fledged MFA. This meant bringing general foreign policy, development cooperation and tourism together, under one responsible Minister. The idea was that this could improve the coherence and decisiveness of Flemish foreign policy, which would in turn have a positive spin over-effect into the external perception of Flanders as an international actor. The organisational structure which was chosen is dynamic; it should be able to adapt in more flexible ways to the continuously changing international environment. The reorganisation is not only limited to redesigning structures, but also involves new means for developing the MFA further in terms of human resources. The MFA-officials are given the opportunity to follow training and/or be seconded to an international organisation, so as to become a 'learning organisation'. New is also the creation of a Strategic Advisory Board, composed of people from civil society, the academic world, etc.

On April 1<sup>st</sup>, 2006, the new Flemish MFA was declared operational. Originally, the title assigned to the Flemish MFA was '*Ministry for Foreign Policy, Foreign Trade, Development Cooperation and Tourism*'. This title was deemed too long, therefore the ministry was called '*Flanders International*' (in Dutch: "Internationaal Vlaanderen"), which entails both a Department and an agency for development cooperation. This title is somewhat strange, especially also in the sense that the former title 'foreign affairs' has been deleted in favour of a much more vague one. In the meantime however, a practice has developed whereby the Flemish MFA uses for its Department a different title in all external communications in English, so as to avoid misunderstandings: '*Flemish Department of Foreign Affairs*' (in Dutch it is still called 'Departement Internationaal Vlaanderen').



The new organisational structure is as follows: <sup>15</sup>



*The new organisational structure of Flemish foreign policy since April 1st, 2006*

In the new organisational structure, the Flemish Department of Foreign Affairs will be responsible for the coordination and integration of the foreign

<sup>15</sup> As was mentioned earlier, the new Flemish Government since July 2009 has somewhat reorganised the competences among ministers relating to external relations. Foreign policy is again (as was the case before 1999) within the portfolio of the Minister-President, Kris Peeters. He is also minister of Foreign Trade and Development Cooperation. On the other hand, tourism has now been separated, and granted to Minister Geert Bourgeois. However, in the last Flemish Government, Bourgeois was Minister of Foreign Affairs between 2004 and 2008. Thus, it can be expected that there will remain a link between Tourism and Foreign Affairs, but less institutionalized as was the case in the preceding Flemish Government.

policy of the Flemish Government. It does a follow-up on both the 'content' and the 'logistical support' of the foreign policy developed by the Minister-President, the Minister responsible for Foreign Policy, Development Cooperation and Tourism, and the international policy-activities of all other Flemish ministers. *On the one hand*, the Flemish Department of Foreign Affairs is responsible for the communication between the Flemish ministry, the federal Public Service Foreign Policy, and the foreign policy-institutions of all other Belgian governments. *On the other hand*, it also follows up on all foreign partners of the Flemish Government. The organisation of the official international representation of Flanders abroad constitutes also one of the permanent assignments of the Flemish Department of Foreign Affairs.

New in the organisational structure is the clear division between 'policy support' and 'policy implementation'. The *policy-supporting entity* ("Policy Division") advises the Minister regarding strategic planning, policy-preparation, the policy-steering of the implementation process and the policy evaluation. The *policy-implementing entity* ("Foreign Affairs Division") looks after all implementation tasks for the domain 'foreign policy'; the bilateral and multilateral relations, the implementation of all exclusive treaties and the Programme Central and Eastern Europe, the Flemish representation abroad & the coordination of all Flemish decision-making regarding EU-dossiers. *Both entities* are an integral part of the Department. Some related domains such as foreign trade, development cooperation and tourism will however be implemented within externally or internally emancipated agencies. A third division is the '*Arms Trade Monitoring Unit*', which advises the minister on all export licences regarding the import, export and transit of weapons and military technology.

A '*Policy Council*' serves as the forum where all the relevant ministers can discuss policy together with the managers of all relevant departments and agencies. With this new organisational structure, all policy-fields which relate to the international activities of Flanders are being brought together under one policy domain. In theory, this should radically augment the coherence of the international actions which the Flemish Government undertakes (Bourgeois 2005: 44-45). Today, three years after this major reform, one can state that it has created a cross-fertilization between the policy-fields which Flanders now has under its responsibility, so as to better position the region in Europe and the world. However, the work is never finished since both society and the international environment changes, as well as the balance with the other governments within the Belgian federation. This is

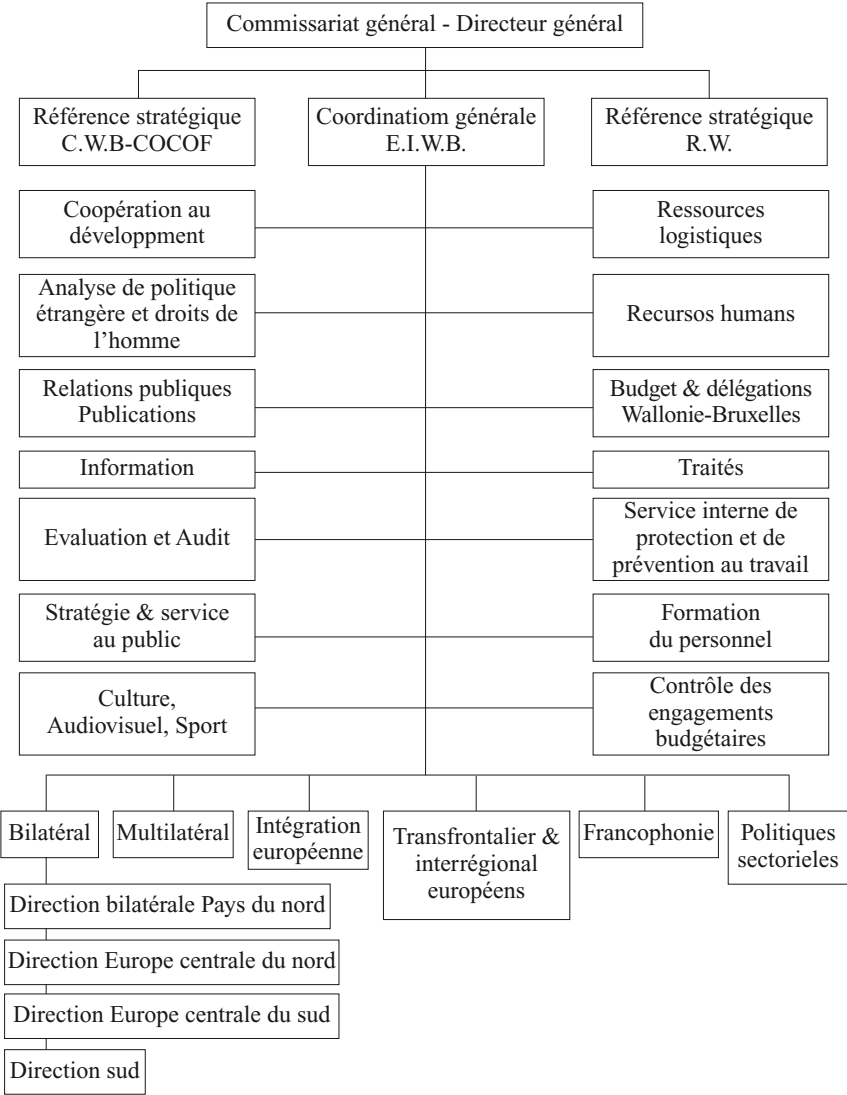
why Flanders will probably “fine-tune” the current organisational structure further in the years to come.

### **1.5.3 · The ‘CGRI-DRI’, transformed into ‘Wallonie-Bruxelles International’ (WBI)**

For the moment, the structure of the foreign policy of the French-speaking Community and the Walloon region is still composed of two parts, but this is rapidly changing. Originally, there existed a CGRI (= *Commissariat Général des Relations Internationales*). This was a semi-governmental body which looked after the international affairs on ‘community matters’. On the other hand, there was the DRI (Division des Relations Internationales). This was a service within the Ministry of Foreign Affairs of the Walloon Region. The minister in charge is Marie Dominique Simonet (CdH), *Ministre de l’Enseignement supérieur, de la Recherche scientifique et des Relations Internationales*, which translates itself in a structural link between foreign policy and international educational policy.

Five years ago, it was decided that both entities would be fused together. A long process of “fusion” was started. From January 2009 onwards, this “fusion” was established by law as a result of an agreement between the three governments (Walloon Region, French-speaking Community and the French-speaking Community-commission within Brussels). Today there are still some technical aspects hindering this fusion, but it can be expected that this will become fully operational over the course of 2009. With regard to the budgetary dimension, this fusion was completed on January 1st, 2009. The new foreign service ministry will be called WBI (*Wallonie – Bruxelles Internationales*). This fusion constitutes a unique development in the Walloon political landscape. In all other internal policy-matters, the French-speaking Community and the Walloon Region remain separated, although both governmental tiers since two years have the same minister-president. The EIWB (*Espace International Wallonie-Bruxelles*) groups the Administrations of the international relations (CGRI (community)-DRI (region), APEFE (*Association pour la formation et l’éducation à l’étranger*), AWEX (*Agence Wallone à l’Exportation*) and the foreign network abroad (representatives, economic and trade attachés and coordinators APEFE). Together with the Ministry of the French-speaking Community, a number of specialised agencies are jointly managed: WBIimages (Wallonie-Bruxelles Images), WBM (Wallonie-

Bruxelles Musiques), WBT (Wallonie-Bruxelles Théâtre), BIJ (Bureau International de la Jeunesse) en WBDM (Wallonie-Bruxelles Design Mode).  
 The organisational chart of CGRI-DRI:



The organisational chart shows a high complexity in the foreign policy of the CGRI-DRI. Moreover, one can detect many of the same staff members behind the ‘label’ of different departments. On the other hand, this organisational chart, and thus also the structure of CGRI-DRI, via the site of CGRI-DRI, is clearly communicated to the broader public. In this way, one not only gets a more clear insight into the structure of the administration, but also the administration is much more accessible for the public.

Some other important aspects:

— A sectoral integration at the management level: the director-general of CGRI-DRI is now also director of AWEX and APEFE

— Strong integration of foreign policy: international trade, international cultural policy, international educational policy, development cooperation in one administration

## 1.6 • Employees at work in the administration of the foreign policy of the federated unit & the budget

### 1.6.1 • General number of employees

	<b>Flanders<sup>16</sup></b>	<b>Wallonia<sup>17</sup></b>
Estimated total amount of personnel engaged in external affairs	94 p. <sup>18</sup> 82,2 FTE	207 p. <sup>19</sup>

It is no coincidence that the most advanced foreign affairs-departments in terms of competences and organisational structure, also have the most

<sup>16</sup> Based upon data in ‘*Annual Review 2007 International Flanders*’ (Flemish Department of Foreign Affairs, 2008).

<sup>17</sup> Based upon data in ‘*Wallonie-Bruxelles et la Francophonie*’ (Wallonie-Bruxelles Relations Internationales, 2007).

<sup>18</sup> Based upon the data provided by the Flemish Department of Foreign Affairs to our questionnaire. By contrast, 95 people work in the representations abroad (of which 44 in the domain of ‘foreign policy’ [about 15 people of the 44 have a diplomatic statute], 19 in foreign trade, 3 in development cooperation, no one in culture, 26 in tourism and 3 in agricultural affairs)

<sup>19</sup> By contrast, 152 people work in the Walloon representations abroad (of which 24 have a ‘diplomatic statute’).

people working internally. Flanders and Wallonia are both examples of this phenomenon. Nevertheless, the data show some interesting differences. Although Flanders and Wallonia have exactly the same competences, the amount of personnel working in the Walloon foreign policy (CGRI-DRI) is more than double that of Flanders. The expenditures on personnel are also in line with this finding.

Wallonia spends more of its money of personnel, both in relation to other budget posts as in general.

### ***1.6.2 • Budget***

The budget of the foreign policy of WBI is much greater than that of Flemish foreign policy. When we make an extrapolation of the policy credits for which CGRI and DRI are together responsible (foreign policy, international cultural policy, international educational policy, development cooperation) and compare to the Flemish case, then we see the following picture for 2006: 65.934.034 € for WBI instead of 55.470.000 for Flanders, which moreover has to assemble these policy credits from different administrations. Thus, the assessment can be made that Wallonia with its 3,5 million inhabitants invests stronger in the development of its foreign policy compared to Flanders. Striking is the large budget which Wallonia invests in cultural exchanges. The substantial increase in this budget can be explained by the institution of a ‘single counter’ (*guichet unique*), which gave international cultural policy an impressive stimulus. The same analysis can be made as concerns the personnel strength of the policy domain ‘foreign policy’. In 2006, CGRI and DRI had 443 personnel, there were Flanders had 162 people for the same policy domains (the Flemish Department for Foreign Affairs and the Flanders International Cooperation Agency, FICA).

The Flemish budget in more detail:

- Fluctuating budget and new annual growth of 10% each year since 2004
- Foreign policy : 15,8 million €
- Development Cooperation : 27 million €
- Tourism : 60 million €
- Foreign Trade : 52 million €
- Budgets of other sectoral departements (e.g. environment, energy, education, etc.)

## The Walloon CGRI-DRI-budget :

Topic	2006	2007
<b>CGRI</b>		
Wages	12.543.874	12.657.084
Payments to third parties	3.191.279	3.060.097
Publications	714.483	684.823
Representations	6.910.299	6.417.186
Multilateral contributions	3.345.445	3.477.502
Programmes - multilateral	3.871.949	4.099.448
Bilateral relations	9.456.202	8.198.585
Cultural exchange	2.886.049	4.266.432
Patrimonium	1.139.824	594.066
Others	3.449.630	2.200.206
<b>Total CGRI</b>	<b>47.509.034</b>	<b>45.655.429</b>

Topic	2006	2007
<b>DRI</b>		
Representation	3.830.000	3.887.000
Bilateral North	265.000	265.000
Bilateral South	720.000	670.000
Rent Abroad	500.000	550.000
Cross-border promotion	635.000	928.000
Cross-border action	559.000	723.000
Subsidies bilateral cooperation South	2.198.000	2.543.000
Subsidies bilateral cooperation North	550.000	472.000
Subsidies Development cooperation	1.240.000	1.240.000
Development cooperation	2.850.000	2.972.000
Other	5.078.000	5.220.000
<b>Total DRI</b>	<b>18.425.000</b>	<b>18.920.000</b>
<b>Total CGRI-DRI</b>	<b>65.934.034</b>	<b>64.575.429</b>

### **1.7 · In your case study, has there been a new “paradiplomatic” policy and any change of priorities by the federated unit since the year 2000 (in comparison with the period 1970-2000)?**

Not really. In its essence, we see for both Flanders and Wallonia a lot of continuity in the foreign policy. International treaties are signed, although the last years we see a slow down since both Flanders and Wallonia have now established their most important partnerships in Europe and around the world. We also see a policy whereby both regions further develop their international representation abroad.

Flanders is a bit lagging behind Wallonia, that is why recently Flanders opened new posts in Warsaw, Madrid and New York. The former Flemish government (1999-2004) devoted more attention to international trade. However, the current Flemish government (2004-2009) has again placed “political dossiers” central. There is also continuity in Flanders to further augment the money being spent to ‘development cooperation’. It is quite likely that this trend will continue during the new legislature of the next Flemish government (2009-2014); in that case ‘development cooperation’ could very well become one of the most important domains within Flemish foreign policy.

In Wallonia, we see similar trends. There is a lot of continuity in the foreign policy of the Walloon regional government and the French-speaking community government. For the Walloon regional government, priorities lie with the new ‘Marshall plan’ to jump-start the economy, and to bring foreign direct investments to Wallonia. For the French-speaking community government, the relations with the countries of the *Francophonie* remain absolutely central; a wide variety of cultural and educational programmes are managed with an impressive array of countries around the world. Critics sometimes state that Wallonia just has too many international partners, and that it therefore ‘waters down’ the potential impact of its international initiatives.

### **1.8 · If so, what kind of reactions has this provoked from the central power?**

None whatsoever. The federal government accepts that the regions in Belgium develop their own foreign policies, their own geopolitical and functional priorities in external relations.



### **1.9 · What are the main spheres of action regarding the foreign policies?**

For both Flanders and Wallonia;

- establishing political relations; developing bilateral relations, contributing to the Belgian EU-position, and multilateral policies
- intensifying economic contacts, external trade relations and foreign direct investments

Flanders also develops external relations on environment and energy matters. Flanders is less active in domains such as culture.

Wallonia has much more experience in cultural diplomacy, and in external programmes on education and science, it also has an active public diplomacy

### **1.10 · Can we talk of a new relationship between the constituent units and central government in relation to foreign politics/policies in the last decade?**

During the past decade and a half, the Belgian federal diplomatic ‘apparatus’ has adapted itself to the new situation which was created as a result of the constitutional revision of 1993. Whereas the central government used to enjoy a monopoly in the management of the international affairs of the country, it is now *only one* of the players. However, it has successfully transformed itself into a coordination centre which guides all external contacts under an atmosphere of ‘federal loyalty’. Within the Belgian federation, one can even detect a remarkable realignment. The external contacts of Belgium have become more diverse and a kind of ‘informal division of tasks’ seems to have taken place in the external relations among the different governments within the federation.

The federal government is for the most part a loyal partner vis-à-vis the regions, both work actively together on an institutionalized, daily basis. However, problems remain, mostly as a result of unclear delineations of material competency areas, or because international politics sometimes has become a ‘real time event’, so that it is much more difficult for governments to co-ordinate.

## **2 · Three spheres of foreign policy: politics, economics, culture**

This second section focus on the role played by the unit at the international level in these three spheres of government

(Note: Degrees measured in qualitative and international comparative terms: high – medium – low)

2.1 Degree of representation abroad (very well developed network vs none).

2.2 Degree of autonomy of the federated unit in promoting its political/economic/cultural interests (need or not for an agreement with the central government for establishing formal treaties or other kinds of covenants with foreign partners in each of the three spheres of government , etc).

2.3 Degree of activity of the federated unit: number of treaties or similar agreements with foreign political actors; official visits abroad by presidents and ministers; etc.

2.4 In the economic sphere, is the policy of cooperation with undeveloped countries the main activity of the federated unit?

2.5 Degree of cooperation with the central government (access to decision-makers at federal level, role of the upper chamber, etc).

2.6 Type of intergovernmental relations regarding political issues: competitive-cooperative; formal-informal; trust-distrust.

2.7 Degree of coordination/cooperation with other federated units.

2.8 What “disciplinary” measures does the central government possess if it does not agree with the foreign policy implemented by the federated unit?

2.9 Are there any asymmetries in the foreign policy of federated units regarding the matters mentioned above?

2.10 If there are any asymmetries, are there also tendencies towards a re-symmetrization of the “federal” system?

## 2.1 · Degree of representation abroad

### 2.1.1 · In general

**Rough overview of the representations abroad of some regions with legislative powers, broken up by mission statement**

	<b>Flanders</b>	<b>Wallonia</b>
Political	10 + UE	15 + UE
Economical (foreign trade & investments)	89 in 68 countries <sup>20</sup>	107 in 73 countries
Cultural	3	(via Francophonie)
Tourism	12	—
Educational	—	12
Immigration	—	—
«Antena»	—	—

From the data summarized in the above table, certain patterns can be distinguished. First, it is clear that the political representation of regions abroad represents often only a fraction of the total “outward” representation. The economic representation is also very important. All regions with legislative powers have set up their own agencies for foreign trade and investment. These are very active. There also exists a correlation with the *degree of openness* of the respective economies of the regions; in Flanders more than 80% of the GDP is generated by exports, thus it is imperative to have a strong economic representation abroad.<sup>21</sup> Interestingly, in the cases of

<sup>20</sup> The data which one sometimes finds in other publications regarding the number of Belgian regional “economic representations” abroad, are sometimes exaggerated (compare with: Blatter, Kreutzer, Rentl & Thiele, 2008).

<sup>21</sup> Moreover, the Flemish & Walloon regional export agencies (FIT; *Flanders Investment & Trade* / AWEX; *Agence Wallonne à l'Exportation et aux Investissements Etrangers*) have signed an agreement which states that if/when one of the Belgian regions is not represented in a country, a region may be asked to defend the economic trade and/or investment interests of the other region. This is an interesting example of ‘cooperative federalism’.

Flanders and Wallonia, the economic network is between 6 and 7 times larger than the political one. This gives an idea about the choices that are made. For Flanders, the cultural representation abroad is rather limited.<sup>22</sup> Looking at the more specific choices made by certain regions, one detects an importance being given by Flanders to attracting more tourism. Wallonia is very much engaged in having representatives abroad who foster co-operation and exchange programmes in the area of education.

### 2.1.2 · More specific: Flanders

	Responsible service	Number of representatives
Political / Paradiplomatic	<p><i>Flemish Department of Foreign Affairs</i></p> <p>operational since April 1<sup>st</sup>, 2006</p> <p>formerly known as:</p> <p>the '<i>Administration for Foreign Policy</i>' since 1994</p> <p>or</p> <p>the '<i>Administration External Relations</i>' between 1991-1994</p> <p>94 personnel internally</p>	<p><i>11 Representatives of the Flemish Government</i></p> <p>- Brussels: Flemish Permanent Representation accredited to the EU (one Representative of the Flemish Government (RFG) heads a team of Flemish attachés for different EU-policy-areas such as education, environment, energy, ...);</p> <p>- Geneva (based in Brussels): one Representative (RFG) responsible for following dossiers in WTO, UNAIDS, ILO, WHO .</p> <p>- the creation of five "Flemish Houses" in The Hague, Vienna, Berlin,<sup>23</sup> Paris, London (one Representative of the Flemish Government (RFG) heads the "mission" to which in some cases</p>

<sup>22</sup> In fact, Flanders does not have any official cultural representative abroad. It does however have three "cultural houses"; 'De Brakke Grond' in Amsterdam (the Netherlands), a centre in Osaka (Japan) and one in New York.

<sup>23</sup> Berlin is not a "real" Flemish House in the sense that Flanders rents a floor within the Belgian embassy. The title 'Flemish House' is given when the Flemish 'mission' is located in another building than 'Belgium'.

	Responsible service	Number of representatives
		<p>economic representatives and people from 'Tourism Flanders' are also assigned). These 'Flemish Houses' operate complementary to the existing Belgian embassies, and each have their own role to play. The Paris RFG is also accredited to the OECD and UNESCO in Paris &amp; to the Council of Europe in Strasbourg. Recently, the diplomatic teams in The Hague, Paris and Berlin were strengthened. The Vienna RFG is not only accredited to Austria, but also to the Czech Republic, Hungary, and Slovenia;</p> <ul style="list-style-type: none"> <li>- Flemish House in New York ( a public-private partnership ), since 2009 headed by a Flemish diplomat</li> <li>- Pretoria, Madrid, Warsaw: one Representative of the Flemish Government or 'Flemish diplomat' at each post</li> </ul>
Economical	<p><i>Flanders Investment &amp; Trade</i></p> <p>190 personnel internally</p>	<p><i>60 Flemish economic representatives</i></p> <p><i>17 trade secretaries</i></p>
Cultural	<p><i>Department Culture</i></p>	<p><i>No real network of cultural attachés, but a few cultural houses; "De Brakke Grond" (Amsterdam), "Belgian Flanders Exchange Centre" (Osaka), "De Buren" in Brussels (together with the</i></p>

	Responsible service	Number of representatives
		Netherlands, so as to jointly present the Dutch-speaking community towards the EU-countries)
Touristic	<i>Tourism Flanders</i> +/- 127 personnel internally	<i>11 representatives</i> ; in The Hague, Copenhagen, Prague, Paris, London, Milan, Cologne, Vienna, Barcelona, Tokyo & New York.
Agricultural	<i>Centre for the Promotion of Agriculture and Fisheries</i> +/- 70 personnel internally  <i>Department Agriculture</i>	<i>2 representatives</i> ; in Paris, Cologne   <i>5 to 10 attachés for agricultural affairs</i> ; the Hague (for the Netherlands), <i>Paris</i> (for France & Spain), <i>Berlin</i> (for Germany & Poland) and <i>Vienna</i> (for Austria, the Czech Republic, Slovakia, Slovenia & Hungary) & several which operate from Brussels as a ‘home base’ (see also: Hendrickx 2004: 66).
Development Cooperation	<i>Flanders International Cooperation Agency</i>  Created out of the remnants of the former ‘ <i>Flemish Association for Development Cooperation and Technical Assistance</i> ’	South-Africa & Mozambique   (the personnel of the Flemish Agency for International Cooperation should not be seen as ‘representatives’, but as experts of the Agency abroad)

*What can we deduce from the diagram above?* During the past decade and a half, Flanders has gradually built a relatively wide international network; 450 people working in Flanders itself, and 280 people which represent Flanders all over the world (not counting the ‘support staff’). This is quite impressive for a small region. However, it is still ‘peanuts’ when compared to the network of the Belgian federal MFA; they have over 3.200 employees and collaborators, of which two thirds are located abroad.<sup>24</sup> Of the Flemish network, only a limited number of people actually work in the area of ‘Flemish foreign policy’. Flanders has only eleven ‘*Representatives of the Flemish Government*’, which actually enjoy diplomatic status.<sup>25</sup> In comparison, the diplomatic personnel of the Belgian federal government still amounts up to 420 (not counting the people that serve within the so-called ‘internal career’). The 11 ‘*Representatives of the Flemish Government*’ try to establish the necessary contacts abroad on all the competency-areas of the Flemish Region and Community (both on an official level as within civil society). They also have a mission to gather insights and knowledge on socio-cultural, political and economic domains, and have to report on these matters to the ‘home front’. Last but not least, they also have a mission to promote Flanders abroad, and are under standing orders to play into the opportunities which present themselves.

### **2.1.3 · More specific: Wallonia**

The network of foreign representation of EIWB shows a number of similarities compared with that of Flanders. The network consists on the one hand of political representatives of CGRI-DRI, and on the other hand of a number of sectoral representations from, among others, AWEX and APEFE. Next to the diplomatic representations, there also exist “bureaus”. These offer a presence on the terrain without a representative with a diplomatic statute. One can opt for the opening of a bureau, when there exists for instance certain sensitivities in the host country.

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<sup>24</sup> See the website of the Belgian federal “Policy Service Foreign Policy”; <http://www.diplomatie.be/nl/FOD/organisationDetails.asp?TEXTID=16839>

<sup>25</sup> Recently, the posts of Paris and The Hague have been strengthened by a second ‘attaché’, a number two diplomatic representative. A similar post will be created at the post of London in the second half of 2009.

In detail, the network consists of:

- 15 delegations
- 2 cultural centres (Paris and Kinshasa)
- 1 “bureau pédagogique” in Louisiana
- 12 coordination posts of APEFE, of which 7 bureaux Wallonie-Bruxelles
- 78 lectors, teachers and language assistants
- 20 teachers of French in Louisiana

The delegations with a diplomatic statute are:

	<b>Bilateral</b>	<b>Bi- and multilateral</b>
Delegations	Québec	Geneva
	Warsaw	Paris
	Bucharest	
	Prague	Brussels
	Hanoi	
	Tunis	
	Rabat	
	Dakar	
	Algiers	
	Kinshasa	

A number of delegations are also accredited to other countries:

- “Warsaw” is also accredited to Estonia, Latvia and Lithuania
- “Bucharest” is also accredited to Bulgaria and Moldova
- “Prague” is also accredited to Slovakia, Hungary and Slovenia
- “Geneva” looks after the bilateral relations with Switzerland, but is also accredited to the international organisations in Geneva and Italy
- “Paris” looks after the bilateral relations with France, and is also accredited to the OECD, UNESCO and the OIF
- “Dakar” is also accredited to Benin, Guinea and Burkina Faso
- “Kinshasa” is also accredited to Congo Brazzaville



CGRI-DRI has a number of delegations in countries where Flanders is not present (for the moment). There does not exist a cooperation agreement between both governments to utilize the services of the other in such cases. Only in trade dossiers does there exist such a cooperation agreement between the Flemish institution 'FIT' and the Walloon institution 'AWEX'.

The Walloon diplomats change posts every four years. Each four years, they send a list with four posts of preference to the central administration. After evaluation and advice of the direction committee, a ranking is made. The rotation system works as follows: 4 mandates of 4 year in a post abroad, followed by 4 years in Belgium. This year, there are two diplomats which have concluded their 4 x 4 tour of duty, and 4 diplomats will retire. Since 2009, Flanders has installed a similar system.

There also exists an intensive collaboration with specialised agencies such as *Wallonie-Bruxelles Images WBI*, *Wallonie-Bruxelles Musiques WBM*, *Wallonie-Bruxelles Théâtre WBT*, *Bureau International de la Jeunesse BIJ*; further development of the international network via the *Francofonie*.

Next to the representation of the CGRI-DRI, there is also the external Walloon trade network of AWEX. In total, this agency has 107 representatives in 73 different countries. Often these are one or two Walloon economical and commercial attachés who are working within the Belgian embassy. In some countries AWEX has even several representatives based in different cities. This is the case in China, France, Germany and the United States of America (AWEX 2008). AWEX focuses on the relations with companies and investors abroad. In this way, the Walloon interests in trade and foreign direct investment are managed.

Next to this, also an important cooperation agreement is concluded in 2005 between AWEX, FIT (*Flanders Investment & Trade*) and Brussels Export. In the countries or regions in which one of the three does not have its own representative, the others can ask for representation. In 2006, 24 posts of AWEX and Brussels Export also looked after the interests of FIT, and 27 posts of FIT did the same for AWEX and Brussels Export (Moerman 2006). APEFE does not have representatives abroad in the strict meaning of the word. However, there exist co-ordinators for the missions in the different countries. In a number of the 15 countries in which it is active, APEFE has a separate co-ordination bureau. In the other cases, this is looked after by a APEFE-co-ordinator from the bureau of CGRI-DRI, such as in Vietnam, Morocco and Algeria (APEFE 2007). Among themselves, they also cooperate and co-ordinate at the level of the host country (e.g. about actions and

projects, and about exchange of information between the different delegations and representatives.

The criteria used to contemplate whether to open a delegation abroad were in a *first phase* linked to the *Francophonie*. The first Walloon delegations were opened in countries with which there existed an important collaboration within the *Francophonie*: France (Paris) and Québec. After this, a presence in Africa followed, in first instance in Kinshasa, where the French-speaking community decided to link themselves to the already existing Belgian presence over there. Later, the opening of other representations followed, still linked to the *Francophonie* (Genève, Algiers).

In a *second phase*, also the enlargement of the European Union played an important role in the further development of the Walloon diplomatic network, like had been the case in Flanders. Soon, representations were established in Prague, Warsaw, and Bucharest.

In a *third phase* also a number of new countries were signalled out: Vietnam and Chili.

Many critics think that the absence of a delegation of CGRI-DRI in the Anglo-Saxon world can be considered as a real short-coming. Until 2004, the network has been further enlarged, but since then it has shrunk again. Two sectoral offices were closed; the representation 'human rights' and the representation 'international audiovisual aspects'. The diplomatic delegation in Prague no longer has 'diplomatic' status, and has been '*downsized*' to a "bureau". Also, the office in Rio de Janeiro has been closed. These closures were in first instance the result of budgetary reasons, after an internal evaluation had produced a negative cost-benefit-analysis for these posts.

By analogy with the "Flemish Houses", the network of EIWB also is further developed in a way so as to come to "integrated delegations" in which representatives are housed of EIWB, AWEX, APEFE, as well as tourist attachés and the agricultural attachés of the Walloon Region.

The central coordination of the network of EIWB is done from Brussels by the *Service Représentation à l'Etranger* (7 personnel). This service is also responsible for the human resources of EIWB, from the logic that the most important task of this service is in first place the statute of the diplomats and the policy vis-à-vis the locally recruited personnel. With regard to the recruitment and appointment of the diplomats of CGRI-DRI, there will be an important change during the course of 2009. At this moment, the selection procedure is composed of either an internal promotion of the officials CGRI-DRI of level 1 (academic level) or by a public call, in which an

academic diploma is required and minimally 5 years of experience in foreign relations and in the policy domains of the Walloon Region and French-speaking Community. The candidates are screened based upon their dossier. The foundation of WBI will change this procedure. By analogy to the diplomatic career at the Belgian federal Foreign Service, a similar Walloon diplomatic career will be installed. By this same logic, also a real internship for beginning diplomats will be developed, instead of the *on the job* training which now is the case. Wallonia is a front runner with regard to changes in the further development of such a “regional” diplomatic career.

### 2.2 · Degree of autonomy of the federated unit in promoting its political/economic/cultural interests

Within the Belgian federation, the degree of autonomy of the federated unit in promoting its own political, economic and cultural interests is maximal, and perhaps even the most advanced of all existing cases of sub-state diplomacy in the world. This is the direct result of the two central principles which guide sub-state diplomacy in Belgium; (1°) *foro interno, foro externo*, and (2°) the *fundamental equality of all policy-levels*, including federal and regional.

### 2.3 · Degree of activity of the federated unit

The ‘footprint’ of the Flemish & Walloon employment of its available ‘diplomatic instruments’

	Flanders	Wallonia
Ius tractandi: concluding of ‘ententes’ and formal ‘treaties’		
Ententes	with Québec	with Québec
‘Exclusive’ Treaties	33 excl. treaties (27 bilateral and 6 multilateral)	Walloon Région: 67 ; French-speaking Community: 51 ; COCOF: 13
‘Mixed’ Treaties	more than 345	more than 345

	<b>Flanders</b>	<b>Wallonia</b>
Other agreements of a certain formalised nature		
Declarations of intent or coope-ration agreements	73 declarations of intent	agreements with 54 administrations (5 continents)
Transnational contracts	52	No data available
Cultural agreements & partnerships	9 treaties + 15 moderate & 17 intensive partnerships	many treaties + 33 moderate & 19 intensive partnerships
Development of own programmes of assistance and sharing of know-how		
Bilateral + Cross-Boundary	European countries & Southern Africa + e.g. Euro-regions with the Netherlands, and with France	Francophone countries + la 'Grande Region' - Wallonia, Luxemburg, Lorraine & Saarland
European (parallel to EU-framework)	Programme of assistance to Central & Eastern Europe since 1991	In relative terms less focus upon European countries
Multilateral	Yes, substantial and still growing both in quantity and intensity	Yes, mostly embedded within the <i>Francophonie</i>
Other forms of participation in multilateral frameworks and organisations		
Observing in (technical) committees	Yes; in UNESCO General Confer. & Executive Board	Yes; in UNESCO General Conference, etc.
Participating in (technical) committees	Yes, UNESCO, but also many other (technical) committees/fora	Yes, UNESCO, but also other (technical) committees/fora
Creation of / participation to funds within multilateral organisations	Yes, funds within UNESCO, EBRD, World Bank, UNU, also active within ILO (Turin)	Yes, funds within UNESCO and in some other organisations
Associate member of multilateral organisations	World Tourism Organisation	Is thinking of following the Flemish example

	<b>Flanders</b>	<b>Wallonia</b>
Detachment		
European	Yes	Yes
Multilateral	Yes	Yes
Participation in other formal or informal networks		
REGLEG	Yes, very active	Yes
Others	Yes;	
e.g. Flanders DC	<i>Francophonie</i>	
Public diplomacy-efforts		
Domestic	Initial steps	Developing
Abroad	Initial steps	Developing
Sub-contracting		
To associations, non-profit societies or third parties	Yes, e.g. in matters on the United Nations Today with Assoc. <i>"Flemish Abroad"</i>	Yes, but no data offered yet (consultancy?)
"Political statements"		
Vis-à-vis central government	"Off the record" some statements	"Off the record" some statements
About 'current affairs'	Yes, on nuclear proliferation & human rights	Yes, about the situation in Sub-Sahara-Africa
Ministerial visits ("going abroad")		
Frequency	Very active	Very active

## 2.4 · In the economic sphere, is the policy of cooperation with undeveloped countries the main activity of the federated unit?

No, but development policy is clearly becoming more and more important for both Wallonia and Flanders. Wallonia invests more, relatively speaking (see 1.).

2.5 · Degree of cooperation with the central government

The cooperation with the central government and the other federated entities has been institutionalized (see 1.). On a day to day basis, officials from different governments and administrations meet together to develop a common foreign policy of the Belgian federation. This institutionalization has ‘pacified’ the relations among the different governments. They understand that they have to work together in order to achieve certain goals in foreign policy. Only in a very limited number of cases is there tension. This often has to do with cases where diplomacy becomes a ‘real time event’, and when it is difficult to coordinate. Nevertheless, also at the level of the different posts abroad, there is a coordination taking place.

2.6 · Type of intergovernmental relations

Exploring the conflictual—cooperational relationship between some regions with legislative powers & central governments: overall picture & possible explanation

	Flanders	Wallonia
General nature of the discourse by the PM/MP <sup>26</sup> or the MFA <sup>27</sup>	Although the former MFA (Geert Bourgeois) was a nationalist, he remains reserved. Off the record, he suggested Belgium will ‘evaporate’. The current MFA-MP (Kris Peeters) does not comment on this, and rather aims for pragmatic working relations with all Belgian governments, also in foreign affairs	Both the MP and the MFA fully embed their policies within “federal Belgium”

26 PM/MP = Prime Minister (PM) or Minister-President (MP) of the respective region with legislative powers

27 MFA = Minister for Foreign Affairs

	<b>Flanders</b>	<b>Wallonia</b>
Cross-boundary policies	Fully complementary because of functional ‘division of competences’ between the central and federated level	Fully complementary because of functional ‘division of competences’ between the central and federated level
Bilateral policies	<p>Flanders has its own geopolitical accents: for the most part ‘Europe’ (EU) and the region of southern Africa</p> <p>These separate geopolitical accents are considered by all other Belgian governments as a “surplus value” for the federation</p>	<p>Wallonia has its own geopolitical accents: mostly the Francophone countries and regions throughout the world.</p> <p>These separate geopolitical accents are considered by all other Belgian governments as a “surplus value” for the federation</p>
EU policies	Non-conflictual; Flanders develops its own accents, but all EU-policies are coordinated with the other Belgian governments	Non-conflictual; Wallonia develops its own accents, but all EU-policies are coordinated with the other Belgian governments
Multilateral policies	Complementary, only conflictual vis-à-vis Wallonia in cases of ‘minority issues’ (Council of Europe)	Complementary and embedded within a Belgian “federal logic”
Political majorities in central government VERSUS in regional government	Both coalition governments; several parties are represented both at the federal and regional level. The nationalists (cf. the MFA) only regionally.	Both are coalition governments; several parties are represented both at the federal and regional level.

	<b>Flanders</b>	<b>Wallonia</b>
Movement for independence?	Limited. Overestimated by many	Marginal at best
Strength of the regional economy compared to rest of country	Quite strong (e.g. 80% of the Belgian exports are Flemish in nature). However, the ‘motor’ is buckling the last years	Relatively weak, although some economic progress is visible thanks to the ‘Marshall Plan’ of the Walloon Region
Institutional agreements among governments	Many cooperation agreements & much consultation between Belgian governments	Many cooperation agreements & much consultation between Belgian governments

## **2.7 · Degree of coordination/cooperation with other federated units**

The degree of coordinaton/cooperation among the federated units in Belgium could be better. It is strange that, while there is such a good coordination with the federal level, these federated units do not directly cooperate with one another, certainly in dossiers which are “exclusive” (thus where the federal government no longer has any material competences left). In our interviews and talks, we also sometimes detect some opposition among officials for a more direct cooperation between Flanders and Wallonia. However, on the other hand there are also indications that on the political level some initiatives are made to foster a more direct cooperation between Flanders and Wallonia. This would certainly strengthen the foreign policies of both entities, and of the federation as a whole.

## **2.8 · What “disciplinary” measures does the central government possess if it does not agree with the foreign policy implemented by the federated unit?**

Technically speaking there exists a “substitution clause” within the Belgian federation whereby the federal government can implement certain international clauses in the place of the federated entity in the case that last



one acts in ways contradictory to the international engagements of the Belgian federation.

However, this clause has NEVER been used by the federal government. Specialists also claim that this clause is in direct opposition to the principle “in foro interno, in foro externo”. Possibly in fear of judicial procedures at the Belgian Constitutional Court, the “substitution clause” has never been invoked by the federal government. It rather tries to solve problems via the concertation mechanisms that have been installed especially for tackling such problems.

## **2.9 · Are there any asymmetries in the foreign policy of federated units regarding the matters mentioned above?**

None, certainly not in Belgium as in the case in Spain, where every region has negotiated its competences with Madrid, and where there is a difference among the regions.

## **3 · Other relevant spheres: environment, energy, agriculture and fisheries, services**

— *First*, it is interesting that there often seems to be an *evolution through time* in the way in which regions focus on certain aspects of their international activities. In Flanders and Wallonia, the ‘regional foreign policy’ which was conducted before 1993 was mainly focused on international cultural activities and some initiatives regarding cooperation in the educational field. In the Saint Michaels Agreement of 1993, the external activities of the Belgian regions were broadened to all their internal competences (ranging from ‘hard’ competences such as economy and the environment to ‘soft’ policy areas such as youth policy and preventive health care). Yet, in the period 1995-99, the Flemish government still defined its ‘foreign policy’ very much in terms of ‘image building’ and public relations.<sup>28</sup> Today, after 15

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<sup>28</sup> In his ‘Policy Letter Flanders International 1995-1999’, the then minister-president Luc Van den Brande—who was responsible for the external relations of the Flemish government—wrote that “*the diplomacy [of Flanders] entails in fact the public relations, the foreign relations of a federated entity.*” To a certain extent, this strong focus upon PR is understandable; Flanders

years of official competences in the international sphere, its ‘foreign policy’ has become much more complex, and has many facets.

— Also in *Environment* both Flanders and Wallonia are quite active. Both foreign policies in this regard focus a lot on the implementation of the commitments that their governments make in the European framework; e.g. less CO<sub>2</sub>-emissions.

— In *Energy*, the regions are fully competent in renewable energy & in energy efficiency. This makes the regions very important actors in today’s topical international debates. For the Flemish government, the Flemish Centre for International Policy recently finalised a study on the topic of “Geopolitics of Energy and the Role of Russia in Global Power Shifts”. The last part of this study investigates how ‘energy’ affects the foreign policy of the Belgian federation, both at the federal level and at the level of the Regions. In Belgium, the policy areas of ‘energy efficiency’ and ‘renewable energy’ are exclusive competences of the Regions. Only the Regions can also conduct a foreign policy in these areas, not the federal level. Hence, 25 recommendations are made to further enhance the strategic link between ‘energy’ and ‘foreign policy’, both institutionally and with regard to the policy content. Special attention is being given to recommendations for the benefit of the consolidation and further enhancement of the foreign policy of the Regional Government of Flanders. A last part in the study also formulates recommendations on the way in which Flanders could contribute directly, via the Belgian federation and via the European Union to the bilateral relation with Russia. More than 80% of the trade between Belgium and Russia is actually between Flanders and Russia. Based upon this and other data, the authors argue that also on a political level, the Region of Flanders could further augment its cooperation with (its counterparts in) the Russian federation, within such domains as culture, education, trade, etc. With regard to energy, ‘*energy efficiency*’ could be an interesting domain within which regional governments in Europe could start a cooperation with their counterparts in Russia. In this context, the case of Bavaria is signalled out as an example.

— Also *Agriculture and Fisheries* are competences of Flanders and Wallonia. These are important competences, also in their international aspects.

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had to make its existence as a (modest) “international player” clear to the world. In terms of policy-making the vision was held that a substantive foreign policy is only possible when one has an ‘image’.

In Fisheries, Flanders can act alone and does not have to consult any other government.

In *Services*, Flanders is active in following up on the international debates on further trade liberalisation. Flanders and Wallonia also supported the convention on cultural diversity, which was developed by UNESCO (with Catalonia and Québec).

## 4 • Future perspectives

What are the main tendencies for the coming years? (more or less foreign policies; more or less cooperation with the center; etc).

It can be expected that the tendencies since 1993 will further develop in the years to come; both Flanders and Wallonia will further develop their respective foreign policies. Already now are they carefully developing their ministries and diplomatic representations abroad. This will mean that increasingly the foreign policy of the Belgian federation will be the conglomerate of all the external initiatives of the different governments. The federal government will retain its foreign policy position with regard to such 'high politics-dossiers' on peace and security, and justice and police cooperation. But on all the other policy domains, the Belgian regions and communities will probably even further strengthen their positions.

One could ask the question whether *de facto* the Belgian federation is not already developing itself in the direction of a CONfederation. But this will entail new challenges. One for example is that Flanders and Wallonia should learn to cooperate directly with one another, certainly in those policy areas where the Belgian federal government is no longer competent.

Another challenge facing the Belgian federation is that there is still a rather confusion division of competences between the federal government, the regions and the communities. Whereas 'economics' is mostly a regional matter, some aspects are still federal. The same is true for 'energy' and 'environment', and in fact even for most policy-domains. Taking into account the principle "*in foro interno, in foro externo*" this often creates rather complicated situations. Because then you need almost all governments together if you are to make decisions in internal and in external affairs. The fact that there are also different political majorities in all of these governments then creates a situation where it is very difficult to make any decisions anyway. In Belgium, there is a lot of talk about a major 'state reform' since 2007. In

fact, one could state that there now exists a consensus, both in Flanders and in Wallonia, that the current situation is no longer tenable, and that something should be done to create a much more clearer system of a 'division of competences' among the federal government, the regions, and communities.

In June 2009, there were regional elections. Some predicted that after the formation of the new regional governments, a process would start to 'overhaul' the Belgian division of competences. This process has not yet started, mainly because of the fierce impact of the economic crisis upon all Belgian governments and their respective budgets. However, it is also this crisis which aggravates the financial position of most governments, federal or federated. Hence, a debate about a re-division of competences is also linked to a more fundamental debate about the financial and fiscal competences of all Belgian governments.

According to the current federal Prime Minister Van Rompuy, the process of overhauling the Belgian federation will start in early 2010. After a political stalemate lasting several years, it could then be the case that Belgium will again have a new 'revolution' in its state reform, comparable to 1993. One of the aims is to create more homogeneity in the competences which are awarded to each policy-level, and also in the financial and fiscal responsibility of each Belgian government. Of course, because of the 'in foro interno, in foro externo' principle, every change in the internal competencies of Belgium will also generate an effect upon the external relations of Belgium, Flanders and Wallonia.

## 5 • Conclusions

What can we learn from the Belgian/Flemish/Walloon case? The conclusions and some further remarks are organised under three headings; 'the Belgian federation as a whole', 'Flanders' and Wallonia:

### *1) Regarding the belgian federation as a whole:*

— Belgium is a unique example among the countries which have given international responsibilities to their component states. The combination of the principle "*in foro interno, in foro externo*" together with that of the *fundamental equality of all Belgian governments* is without precedence in the foreign policy of federal states. The *autonomy* given to the Belgian Regions and Communities is far-reaching, and the instruments with which the *co-*

herence of the foreign policy of the federation are guaranteed, have been filled in only in a limited way compared to most other countries;

— During the past decade and a half, the Belgian federal diplomatic ‘apparatus’ has adapted itself to the new situation which was created as a result of the constitutional revision of 1993. Whereas the central government used to enjoy a monopoly in the management of the international affairs of the country, it is now *only one* of the players. However, it has successfully transformed itself into a coordination centre which guides all external contacts under an atmosphere of ‘federal loyalty’. Within the Belgian federation, one can even detect a remarkable realignment. The external contacts of Belgium have become more diverse and a kind of ‘informal division of tasks’ seems to have taken place in the external relations among the different governments within the federation.

## 2) Regarding *flanders*:

— Flanders has made active use of its international treaty-making power. The way in which it selected its partners does suggest that the six governments within the Belgian federation work on a fairly complementary basis, both in geopolitical as in functional terms;

— The Belgian Regions and Communities continue to receive more and more competences, and –by consequence– will have more to say in the foreign policy of the federation. This is also the reason why the Flemish Government continuously had/has to adapt its structural organization. As a result of the rapidly changing institutional ‘architecture’ within the Belgian federation, much attention has been placed during the past years to competences and decision-making-structures. One of the main challenges with which Flemish foreign policy is being confronted today is public diplomacy; *internally* vis-à-vis its own population, and *externally* vis-à-vis its potential international partners.

— However, the case of Flemish paradiplomacy shows that it *is* possible for a region within a federation to develop its own foreign policy-accent, even with limited resources. The Flemish foreign policy-apparatus has sought ways to adapt in more flexible ways to both new competences and novel challenges within society or on the international scene. It also has made use of the opportunities for networking and new partnerships which presented themselves at certain junctures in time. To conclude, one must indeed acknowledge the general remark made by some scholars (see Introduction); Flemish foreign policy operates often not “parallel” to the

foreign policy of the Belgian central government, but is part of a *multi-layered process* within and without the Belgian federation. The consultation procedures which have been developed over the years can perhaps serve as some inspiration to other countries which are looking to reconcile ‘globalization’ & ‘localization’. One does however have to bear in mind that a ‘blind transposition’ of the “Belgian solution” is not to be recommended; each solution which tries to give more international authority to the component states within a federation should be attuned to the needs of each political system & specificity of its ‘component units’.

3) *Regarding wallonia:*

— Wallonia also has made active use of its international treaty-making power. Even more so than Flanders. But perhaps it suffers under the fact that it has too many international partners, some critics state.

— Wallonia’s geopolitical interests coincide with those of the Belgian federal government. In this way, Wallonia can in its foreign policy saw in the furrows that were previously ploughed by the Belgian federal government.

— Wallonia has a further advantage in the sense that it can use the *Francophonie* as an important network to punch its weight on the international scene, and to be an actor early on, where dossiers are coordinated among the diplomacies of the countries who speak French. However, it is not always clear how to “measure” the impact of the French-speaking Community government.

— More so than in Flanders does Wallonia focus on cultural diplomacy and public diplomacy as components in its foreign policy.

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# SCOTLAND'S EUROPEAN AND INTERNATIONAL POLICY

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## Historical Introduction

The Scottish Parliament was convened for the first time on 12 May 1999. At one level there is therefore not much 'history' to refer to regarding Scotland's external policies. The decade of history that we have presents a generally positive story. The UK central government has been, in comparative terms, unusually open from the outset to the devolved institutions in Scotland (and in Wales and Northern Ireland) having a high degree of participation in UK policymaking for the European Union, and a high degree of autonomy in wider forms of international engagement. There have been no equivalents of the tensions and disagreements seen in other European states where regional<sup>1</sup> governments have sought to play roles in EU and international policy.

The unusually smooth adaptation of the UK to multi-level government in EU and international policy does have, at a different level, a historical explanation. Devolution in 1999 was not a 'year zero'. Devolution adapted long-standing – in the Scottish case centuries-long – institutional traditions of territorial accommodation to new circumstances. Essentially it made subject to democratic process, through elections to the new Scottish Parliament, the functions carried out before 1999 by the Scottish Office. The Scottish Office was (and in modified form remains as) a cabinet-ranking Department of the UK Government. Before 1999 it was responsible for administering UK Government policy in Scotland, in large part through distinctive Scottish legislation. Its functions extended across most fields of domestic policy.

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<sup>1</sup> The terminology of 'region' is not widely used to describe Scotland, which is commonly and uncontroversially termed a 'nation'. I use 'region' here, as does most comparative research, as a shorthand for the various forms and designations of sub-state government below the level of the state and above the level of local government.

Many of these functions – for example agriculture or regional economic development – were ones in which the EU played a significant role, or which fell in part under wider UK foreign policy (for example trade promotion and inward investment). The Scottish Office worked with other UK Government Departments (e.g. Agriculture, or Trade and Industry) to identify and secure Scottish territorial interests in UK EU and foreign policy. The principle was established that where EU or wider foreign policy touched on Scottish Office responsibilities, then the Scottish Office became involved in policy formulation.

This system for accommodation of Scottish territorial interests in UK external policies was adapted after 1999 to shape the relationships of the UK and Scottish Governments in external policy. The constitutional framework for that relationship (discussed below) did little more than articulate more explicitly what had been the working relationships for accommodation of Scottish interests before 1999. This institutional continuity explains both the extensive roles the Scottish Government has in external policy, and the smooth relationship it has had with the UK Government in carrying out those roles. [There exist equivalent continuities in the Welsh and Northern Irish cases too; there is no devolved government for England, which continues to be governed in centralized manner by UK central government.]

There is of course a fundamental change amid this continuity. What used to be an intra-governmental process of territorial accommodation within UK Government has become an inter-governmental process between governments formed after different UK-wide and Scotland-only elections. Elections introduce party politics into the process of territorial accommodation. There was only a limited partisan element to intergovernmental co-operation from 1999-2007 because the Labour Party led a single-party majority government at the UK level and was the dominant partner in coalitions with the Liberal Democrats in Scotland.

That situation changed when the Scottish National party emerged as the largest party in the 2007 Scottish election, forming a single-party minority government. This introduced for the first time party-political ‘incongruence’ between Scotland and the UK, in principle complicating the process of accommodating Scottish interests in UK external policies. It did so all the more because the SNP is a pro-independence party committed to establishing Scotland as an independent state within the EU. Yet the election of the SNP has made – for reasons explained below – surprisingly little difference in the practice of Scottish external policies and their coordination with UK policies.

## 1 • The Constitutional Framework

The UK constitution is idiosyncratic. It is not codified in a single document. There is no separate category of constitutional law requiring special legislative procedures; ordinary statutes – for example that establishing the Scottish Parliament – can have constitutional status. And much of the constitution is ‘customary’, operating by generally agreed convention rather than justiciable norms.

The powers of the Scottish Parliament are implied by the Scotland Act 1998. This ‘reserves’ a number of fields to the UK Parliament (in other words codifies exclusive legislative responsibilities at the UK level), including citizenship, currency, the macroeconomy, national defence, and foreign policy, including the EU. The residual power – that is, everything else – is an exclusive legislative responsibility of the Scottish Parliament, including (most aspects of) health, education, local government, policing and criminal justice, the regional economy, land-use planning, agriculture, fisheries and important parts of other fields such as transport and the environment.

There is in principle a neat separation of UK and Scottish powers, though of course there are in practice many intersections between them and other UK-wide issues that require coordination. Intergovernmental coordination in the UK is done in the main bilaterally through UK-Scottish (and UK-Welsh and UK-Northern Irish) relationships, rather than on a multilateral basis involving all the devolved institutions. Intergovernmental coordination is also weakly institutionalized, with little reliance on formal or routinised meetings, and working mainly on an ad hoc and informal basis between officials at either level of government.

The apparently neat constitutional division of powers is – as everywhere with a significant tier of regional government – immediately compromised in the fields of external policy. Agriculture may be a Scottish responsibility, but is fundamentally shaped by EU law, to which the UK contributes via the foreign policy power of the UK Government. Developing the Scottish economy is a Scottish responsibility, but trade promotion that might benefit Scotland falls under UK foreign policy.

These inevitable overlaps of Scottish and UK responsibilities were recognized from the outset (because they had been in pre-1999 practice) in the devolution ‘constitution’. The procedures for managing these overlaps were not set out in law, but in a ‘Memorandum of Understanding’ (MoU) and a num-

ber of associated ‘Concordats’.<sup>2</sup> Three separate ‘Concordats’ were drawn up for UK-devolved coordination in EU policy to regulate the bilateral relationships with the three devolved nations (though their content is almost identical in each case). Three other bilateral Concordats were drawn up for ‘International Relations’. The UK – as is common elsewhere – thus distinguishes between the UK’s relationship with the EU and wider international relations. This paper reproduces this distinction between EU and international policies.

The MoU and the Concordats can be seen as part of the UK’s customary constitution. They restate pre-devolution practices as inter-governmental agreements or, to be more precise ‘understandings’. They in no sense provide a legal framework. The MoU ‘is a statement of political intent, and should not be interpreted as a binding agreement. It does not create legal obligations between the parties. It is intended to be binding in honour only’ [my emphasis].<sup>3</sup> One might note that ‘honour’ is not always an accurate description of how politics is conducted, and political differences resolved. These arrangements might be seen in that sense to be fragile and vulnerable; a UK-level government could lawfully act in ‘dishonour’ and use its constitutional prerogatives in EU and international policy to ignore or refuse the claims of a Scottish government. I return to this point in the conclusion.

The central principle of the MoU and Concordats has been described as one of ‘no surprises’. The MoU and Concordats commit the UK Government to provide full information to the Scottish Government on EU and international policy developments, and the Scottish Government to treat that information with due confidentiality. They set out commitments and mechanisms for participation in the formulation of UK policy, including opportunities for Scottish ministers and officials to join UK negotiating teams (but be bound by an agreed, single UK position). And they set out roles and responsibilities in implementation, including the distribution of penalties for non-compliance.

In general these provisions on information, policy formulation, negotiation, and implementation are set out bilaterally. The exception is the Joint Ministerial Committee (JMC) described in the MoU which can be convened at the level of heads of government or sectorally to bring together ministers with equivalent responsibilities in the UK and the three devolved governments to pursue common interests or resolve differences. In practice the

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2 At <http://www.scotland.gov.uk/Publications/1999/10/MofU>.

3 Ibid, p. 5.

JMC has never been convened regularly except in its EU policy guise of JMC (Europe). The exceptional use of the JMC (Europe) as a multilateral body reflects the need, caused by external obligations, for the UK to present a single position in EU forums.

### Who Does Scotland Work With?

There has been a partial shift in the target of Scottish external policy since the SNP came to power in 2007. The primary relationships are and remain in EU policy, with some direct engagement with the Commission and MEPs and the obligatory representative office in Brussels, but with much of the engagement routed through cooperation with the UK government both in London and in Brussels. Pre- and post-2007 there have been a range of activities focused on the USA and Canada, which are seen as important partner markets for trade promotion, and in which there is a large Scottish diaspora which successive governments have sought to mobilize (in part through cultural celebrations of Scottish heritage, but ultimately to support economic aims of trade promotion, inward investment and tourism). A less fully developed target has been China, both before and since 2007, prompted very strongly by economic considerations.

The most significant change has been in the European context. Prior to 2007 Scotland was active among the networks of 'legislative' regions, both collectively through the RegLeg organization and through individual relationships with Catalonia, Flanders, Bavaria and North Rhine-Westphalia. The emphasis on inter-regional cooperation has been significantly downgraded since 2007 as a new emphasis on building cooperation with small states has emerged. Some of this change of emphasis was captured in the notion of Scotland joining an 'arc of prosperity' in northern Europe extending from Scandinavia, through Iceland to Ireland, though this has been downplayed since the onset of economic crisis. Another change of emphasis has been in extending the group of countries with which Scotland is developing relationships in development policy from (just) Malawi also to Zambia, Tanzania, Rwanda and Darfur in Sudan.

## 1.1 • Objectives

The pattern of general continuity with some shifts of emphasis in the targets of external policy is reflected in the objectives of policy before and

after 2007. At the risk of over-simplification there were two broad objectives for policy before 2007:

- To ensure that Scotland's distinctive territorial interests were recognized and pursued in EU policy matters
- To promote the development of the Scottish economy

Both objectives continue to have priority also under the SNP. But a third broad objective has now been added: to demonstrate Scotland's readiness for statehood. This is not articulated in such a direct way in formal documents, though one of the three aims set out in the SNP Government's International Framework points in this direction; the aim is to manage 'Scotland's reputation as a distinctive global identity, and independent-minded and responsible nation at home and abroad and confident of its place in the world'.<sup>4</sup> This coded message of independent-mindedness and identity as a nation correlates with the shift in emphasis away from cooperation with 'regions'. The widening out of Scottish development aid has a related rationale focused on demonstrating Scotland's fitness to be a responsible member of the international community: 'Our development work is important in articulating our vision of Scotland's place in the world as a responsible nation'.<sup>5</sup>

## 1.2 · EU and International Policy in Practice

The 'no surprises' principle leaves a wide leeway for autonomous action in 'international' policy, that is the non-EU aspects of internal policy. The Scottish government is free to pursue its priorities as it wants as long as it tells the UK government what it is doing, and as long as Scottish policy does not conflict with that of the UK government; the latter point explains why the current government's commitment to Scottish independence has to be expressed in an indirect way in international policy activities. But broadly speaking the Scottish government's objectives – with their strong focus on economic development – are not ones likely to conflict with UK policy.

The UK government offers explicit support to Scottish policies by opening up the UK diplomatic service to support Scottish aims, for ex-

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<sup>4</sup> <http://www.scotland.gov.uk/Publications/2008/04/23150847/0>, p. 1.

<sup>5</sup> *Ibid.*, p. 6.

ample in including Scottish sections in UK embassies (as is the case in the UK Embassy in the US) and providing support for visits overseas by Scottish Ministers, members of the Scottish Parliament, and Scottish Government officials. The reciprocal service is offered for visits to Scotland by overseas guests. None of these arrangements have been challenged or changed since the SNP came to power.

Scottish EU policy is carried out primarily through the UK government. Though ministers and officials do engage directly with Commissioners and MEPs, the logic of a Union built on member states has led successive Scottish Governments – including the SNP – to prioritise working with and through the UK Government. They have high levels of access to routine UK policy formulation, including the JMC (Europe) mechanism, but also the weekly meetings in London at which priorities for the coming week are discussed with the UK Permanent Representative. The Scottish Government's Office in Brussels is also centrally engaged with the UK Permanent Representation, and its senior officials are accorded the same diplomatic status of officials of the UK Permanent Representation.

Scottish ministers regularly attend and sometimes represent the UK in some Council formations. In 2008 Scottish ministers attended fourteen Councils (Agriculture, Fisheries and Justice and Home Affairs). Nine Councils were attended in 2007, nine in 2006, fourteen in 2005, eleven in 2004, and thirteen in 2003. Other Council formations where Scottish ministers have attended include Environment, Education, Youth and Culture, Transport, Telecommunications and Energy, and Competitiveness.<sup>6</sup> Where Scottish ministers do attend and speak, though, they are bound to pursue an agreed UK line and have no autonomy to pursue separate Scottish priorities (though of course more informally, in the fringes of meetings, they are able to articulate distinctive Scottish interests).

There have been some concerns that the UK Government does not always follow the spirit of the MoU and Concordat in EU policy. These were expressed most dramatically in a paper by the then head of the Scottish Government's Brussels Office in a briefing to ministers which was leaked to the Scottish press. This briefing<sup>7</sup> suggested, *inter alia*, that:

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6 <http://www.scotland.gov.uk/Topics/Government/International-Relations/Europe/Current-European-Affairs/EUCouncilsVisits>.

7 See "Scotland 'finding itself frozen out of Brussels'", *The Herald*, 22 January 2007 at <http://www.theherald.co.uk/politics/news/display.var.1137459.0.0.php>.

— Scottish officials and ministers were sometimes informed too late of impending EU issues by UK Government Departments to be able to attend meetings

— The UK government at times does not take the views of the Scottish Government on board in defining the UK line

— The UK government sometimes deliberately excludes the Scottish Government from discussion of matters of special interest to Scotland.

This briefing produced something of a furore at the time. But it probably does not indicate a systematic pattern of neglect of Scottish views in UK Government, but rather the periodic failure of particular UK Government departments or officials to recognize the implications of devolution in EU policy. There is a counterview that Scotland is, in the round, better-placed than perhaps any other European region to have its interests reflected in UK policy. This is because Scotland's relationships with the UK Government are bilateral. There is no need or practice of agreeing multi-lateral positions with Wales and Northern Ireland, as would be the case in regional engagement in EU policy in other member states with legislative regions. Additionally, because of the legacies from the period before devolution, there is a clear tradition in areas where Scotland has a particular territorial interest of the UK government accommodating that interest: in agriculture, reflecting Scotland's topography; in fisheries, in which field Scotland has the dominant share of the UK catch; and in justice and home affairs, where Scotland's distinctive system of criminal justice requires differentiated consideration). Possible confirmation of this in principle highly advantageous situation is given by the absence of complaint since 2007 that the UK Government excludes the Scottish Government from its areas of interest in the EU.

### **1.3 · International Networks**

Scotland has scaled back its involvement in inter-regional networks, even before, but especially since the SNP came to power. A general concern about the relationship of cost and benefit in network membership has now been overlain by the SNP's concern to present Scotland as an aspirant state rather than a 'region'. Perhaps the most significant network membership has been that of the Regions With Legislative Power. The Labour Scottish



First Minister, Jack McConnell, held the Presidency of RegLeg in 2003-4, and was active in using RegLeg as a platform for influencing the debates at the European Convention. Since 2007 Scotland appears no longer to be among the (always relatively few) active members of RegLeg.

There are no obvious networks for an aspirant state, but current region to work through. An attempt to create such a network was made by Flanders in the late 1990s under the heading 'Europe of the Cultures'. This was not successful.

## **1.4 • Ministry**

European and International Policy is administratively located in the Office of the First Minister. The current Minister for External Affairs is Michael Russell, whose responsibilities also cover Culture and the Constitution. The location of External Affairs in the First Minister's Office gives a perspective and scope for coordination across the government. Most EU matters are though dealt with by sectoral policy departments, notably Rural Affairs and the Environment (covering agriculture and fisheries) and the Lord Advocate's office (covering justice and home affairs).

## **1.5 • Employees and Budget**

The focus on coordination rather than a centralized policy-defining role is confirmed in the data available on staffing and budget, both of which appear, in comparative terms, small. Within the Scottish Government there are currently nineteen officials working on EU policy, split between the Brussels Office and Edinburgh. In addition there are ten working on development policy, five on North American (US and Canada) activities and four on China. There is a separate organization focused on trade and inward investment – Scottish Development International – which has nineteen (small-scale) offices worldwide.

The budget attributed to EU and International Policy (excluding Scottish Development International) is GBP 15.2 million in 2008-9, with projections of GBP 14.8 million in 2009-10 and GBP 17.3 million in 2010-11.

## 1.6 · Change since 2007

Given that the Scottish Parliament was established only in 1999 we have only a small period of time over which to gauge change. The obvious catalyst for change is the election of the SNP government in 2007. There is very little evidence of any significant change in policy substance. The key areas of engagement in EU policy remain the same, and are pursued in the same ways. Similarly wider international policy continues to have a central emphasis on measures to promote the Scottish economy. The change that has been registered since 2007 is one largely of symbolism. The Labour-led administrations from 1999-2007, especially under Jack McConnell (First Minister from 2002-7) sought to position and present Scotland as ‘one of the leading legislative regions’ and a ‘major regional player’ in the EU.<sup>8</sup> In international policy its aim was ‘make a much bigger impression on the rest of the world’ and to show that ‘devolved region and nations can contribute to meeting the shared responsibilities of the international community’.<sup>9</sup>

The SNP administration has foregrounded instead its vision of the ‘aspirant state’. EU engagement is to ‘lay the foundations for achieving our future ambition: Scotland as a full member state of the EU’; Scotland ‘would be comfortable sitting alongside other small, successful member states like Ireland, Denmark and Finland within the EU’. And internationally, as we have seen, the focus is on showing a nation ‘confident in its place in the world’, and keen to take on the responsibilities of a member of the global community of nations. These adjustments have had little, if any, discernible impact on the concrete policy goals Scotland pursues.

## 1.7 · UK-Level Reactions and Relationships

They have also had little discernible impact on Scottish-UK relations. The symbolism is recognized as part of the contemporary narrative of Scottish politics, but where possible ignored. They have not been the source of significant disagreement. In fact the UK government showed rather more sensitivity to Scotland’s international, and especially EU engagement, in

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8 <http://www.scotland.gov.uk/Publications/2004/01/18759/31718>.

9 <http://www.scotland.gov.uk/Publications/2004/10/20045/44612>.

the early days of devolution, when Labour led the government in Scotland. There were some concerns that engagement in the RegLeg grouping, and signing up for its periodic declarations, posed a problem for the UK's evolving position in the EU constitutional debate of the early 2000s.<sup>10</sup>

Such concerns were temporary and exceptional, and were in any case always moderated in two ways: first the UK Foreign and Commonwealth Office, as the lead department in EU matters, was from the outset open and positive about the EU engagement of the new devolved governments. To quote a (Welsh) civil servant:

The FCO have been very good. They couldn't have been more helpful. We have had problems with other departments, but the FCO itself – you would expect it to be the bastion of the British establishment, but it hasn't been at all you know. It has been very positive, it has welcomed devolution, it has embraced us, it has worked with us to try and help us establish links.<sup>11</sup>

The second source of an accommodating attitude on the part of the UK Government was the presence of the SNP in Scotland, even when it was in opposition. A UK Labour Government was keen to not give the SNP opposition in Scotland ammunition to attach the Labour-led Government in Scotland by being seen to exclude or ignore Scotland in EU policy.

The same logic now applies with the SNP government in Scotland: the UK Government does not wish to risk strengthening the SNP (at Scottish Labour's expense) by appearing to harm Scottish interests. But the calculation is also mutual. The SNP, though it has a long-term ambition of independence, is pragmatic in the short term, and in the short term the platform of the UK Government is the most influential route into shaping EU policy for Scotland, and the good offices of the UK Government offer real support in pursuing wider international policy goals. As the SNP Government's International Framework puts it: 'While we represent Scotland through a lens of independent thought, we must make full use of the UK resources at our disposal'.<sup>12</sup> The marriage may be one of convenience but it has firm foundations.

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10 Jeffery, C. and Palmer, R. (2003) 'Stepping (Softly) onto the International Stage: The External Relations of Scotland and Wales, in R. Hrbek (ed.), *Außenbeziehungen von Regionen in Europa und der Welt* (Baden-Baden: Nomos).

11 Ibid.

12 <http://www.scotland.gov.uk/Publications/2008/04/23150847/0>.

## 1.8 · Main Spheres of Action

The briefing note on which this report is based identified three ‘spheres of foreign policy’: politics, economic and culture. The political sphere for Scotland includes, centrally, the pursuit of Scottish interests in the EU. It also includes, though generally at a symbolic level, with few practical policy ramifications, the aspiration to independent statehood promoted by the SNP.

Within EU policy and in broader international policy economics is a paramount concern (both under the SNP and its predecessor administrations). There is a very strong interest on trade promotion, in particular connecting Scottish business to worldwide markets, and on creating the conditions for inward investment to Scotland. There has been an ensuring interest in attracting talented people to Scotland; until recently Scotland’s population was in decline. Successive Scottish Governments have worked to persuade the UK Government to adapt UK immigration rules to allow well-qualified people – and/or international students wanting to study in Scottish higher education – to enter and stay in Scotland. One of the central themes in the Scottish Government’s China Strategy is to use higher education, and research and student exchange with China, as a lever for economic advantage through spin-off technology and migration.<sup>13</sup>

It is doubtful that ‘culture’ provides a third and distinctive sphere of policy. There are certainly strong elements of cultural promotion, not least in a high-profile annual ‘Scotland Week’ in North America,<sup>14</sup> and in the 2009 initiative of ‘Homecoming Scotland’,<sup>15</sup> which aims at re-connecting the Scottish diaspora (largely in North America) with Scotland. Both are celebrations of Scottish culture and heritage – but both are also firmly fixed on economic considerations: marketing Scottish products; marketing Scotland as a place to do business; and marketing Scotland as a destination for leisure and tourism.

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<sup>13</sup> <http://www.scotland.gov.uk/Publications/2008/05/07115514/0>.

<sup>14</sup> <http://www.scotland.gov.uk/Topics/Government/International-Relations/north-america/scotland-week>.

<sup>15</sup> <http://www.homecomingscotland2009.com/default.aspx>.

## **2 · Three Spheres of Foreign Policy: Politics, Economics, Culture**

### **2.1 · Degree of Representation Abroad**

Scotland has a well-established representative office in Brussels, representative offices also in the USA and China, and a network of nineteen Scottish Development International offices in three macro-regions: the Asia-Pacific; Europe, Middle East and Africa; and North America.

Scotland also has access to the UK's diplomatic service, adding capacity to external representation, but within the UK umbrella. Other UK organizations with external roles, like the British Council in the field of public diplomacy, also offer facilities and support to the Scottish Government.

Scotland can also draw on Edinburgh's status as a major consular centre, with currently 40 consulates providing Scotland's capital city with global connections.

These various forms of representative link suggest Scotland has highly developed networks for representation across the spheres of foreign policy.

### **2.2 · Degree of Autonomy in Promoting Interests**

The degree of autonomy is high in international policy, assuming the policies pursued do not conflict with UK policy (NB this does not mean policies have to conform to any UK template).

The degree of autonomy is much lower in EU policy because the most significant opportunities for influence are through the UK state. This does not mean Scottish influence is low; as suggested above, there is cause to suggest that Scotland is the most influential sub-state government in EU matters.

### **2.3 · Degree of Activity in Promoting Interests**

Though Scotland may not conclude treaties under international law (which is reserved to the UK government), Scotland may conclude agreements with whichever other parties it chooses, including regions and states.

But it now has just one agreement, with the Chinese Province of Shandong.<sup>16</sup> Other cooperation agreements with European regions (Bavaria, Catalonia, North Rhine Westphalia, Tuscany) have been allowed to lapse, following the decision not to profile Scotland as a 'region'. This does not mean that inter-regional cooperation has been wholly abandoned, but is no longer sought through catch-all agreements, but rather more focused, ad hoc cooperation, including that with Catalonia.<sup>17</sup>

Scottish Ministers are very active in pursuing interests through overseas visits. In 2007-8 there were some 41 overseas visits undertaken by Scottish Ministers. Eighteen of these were for purposes of EU business, thirteen to other European destinations (often connected to EU business), six to North America, once to China, one to Malawi and two others connected with Scotland's (in the end successful) application to host the Commonwealth Games in 2014.

This pattern suggests a high degree of activity in both the political and economic/cultural spheres.

## **2.4 · Development Cooperation**

Development cooperation does not appear driven by economic ambitions. There is a long-standing focus in Scottish development policy on Malawi (which has historic links to Scotland), which was extended after 2007 to a number of other African countries. Both before and after 2007 development policy appears driven by the aim of demonstrating Scotland's sense of responsibility within the international community.

## **2.5 · Degree of Cooperation with Central Government**

There is a medium level of cooperation with UK Government in international policy, reflecting the 'no surprises' information policy and the use by Scotland of the UK diplomatic service. There are also extensive autonomous platforms for Scottish policy, especially its network of represen-

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<sup>16</sup> <http://www.scotland.gov.uk/News/News-Extras/shandongprovince>.

<sup>17</sup> <http://www.scotland.gov.uk/News/Releases/2008/12/15170722>.

tative and trade development offices. Access to decision-makers at central level is good, though ad hoc.

Access in EU policy is high and much more structured by the demands of EU business. EU policy engagement with central government is highly routinised through the JMC (Europe), through the weekly meetings to instruct the UK Permanent Representative, and through less formal but routinised coordination meetings in policy fields where EU and Scottish competences overlap strongly, such as agriculture and fisheries.

## **2.6 · Type of Intergovernmental Relations**

Intergovernmental relations tend generally to be cooperative. In international policy they are highly informal and ad hoc. In EU policy they are more formalized (though lack legal underpinnings). In all areas relations generally have been trustful, including after the SNP government was established in Scotland in 2007.

## **2.7 · Degree of Cooperation with Wales and Northern Ireland**

The UK's constitutional structure and approach to intergovernmental relations is bilateral. There are as a result few multilateral forums (excepting around EU policy). 'Horizontal' relationships between Scotland, Wales and Northern Ireland are ad hoc and infrequent and have not been mobilized as a means of engagement with central government.

## **2.8 · Disciplinary Measures**

None of the devolved governments has rights of access and engagement in EU and international policy. The UK Government is bound 'in honour only' to include them. It could unilaterally renounce the practice of cooperation that has been built up since devolution, though no doubt this would be politically difficult. At a less severe level the UK Government can ignore and exclude devolved governments from discussion on particular measures, and it is clear that it has from time to time done so, though not as a strategy coordinated across central government (see 1.3 above).

## **2.9 • Asymmetries**

Though there are separate Concordats on EU matters and on International Policy for Scotland, Wales and Northern Ireland, their content is almost identical. They are separate only because of the tradition of bilateral relationships. The opportunities available to each devolved government in EU and international policy are identical.

There are though significant asymmetries in international engagement. Northern Ireland has much less developed external policies, reflecting the long periods during which devolution was suspended (including the whole period 2002-7). Wales is much less active in International Policy, but has a 'medium' profile in EU matters, where it continues to play an active role in inter-regional networks.

## **2.10 • Resymmetrisation**

Not applicable.

## **3 • Future Perspectives and Conclusion**

One point raised earlier (under 1. Constitutional Framework and again in 2.8) is that the basis on which Scotland engages in EU and International Policy is not legally guaranteed and could be renounced or ignored by a UK central government which retains formal constitutional responsibility for foreign policy. Scotland could, within the law, be shut out of EU and International Policy or have its influence curtailed significantly.

This does not appear likely as part of any process of constitutional retrenchment designed to re-centralise the UK state. All significant political parties now fully accept devolution.

But some version of exclusion/loss of influence may appear possible should the EU policy aims of the Scottish and UK Governments become incompatible. This has so far not (or at worst very rarely) been the case. Most Scottish objectives do not conflict with UK objectives, but appear more likely as different priorities depending on whether London or Edinburgh is the vantage point.

However, there is a prospect of a Conservative UK Government fol-



lowing the next UK election which is strongly Eurosceptic in tone and, perhaps, policy. The Conservative Party appears to be positioning itself outside of the European mainstream following its withdrawal from the European People's Party. And whereas when it was last in government, before 1997, it was deeply split on the issue of European integration, it appears now that Euroscepticism is the mainstream and majority position. Of course this position may be modified by the practicalities of office. But the possibility remains that a Euro-engaged Scottish Government may need to work with a Eurosceptic UK Government. It may be much less possible in those circumstance to make a system based on convention rather than law to work as well as it has in Scotland's favour.

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# FOREIGN POLICY: THE CASE OF THE GERMAN LÄNDER

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## 1 · Historical introduction

German federal history arguably started with the Holy Roman Empire. Since the 19<sup>th</sup> century, the trend went from Confederation to Federation, and, in general to an “ever closer union”. German Confederations and Federations continued the history of the existing member states, but after the second world war, Prussia was divided by the allied forces, and the pieces were joint with formerly existing small states in order to form new, artificially created entities, Länder, often with hyphenated names impossible to sing, for example, in a state anthem. Bavaria, the first postwar state to be accepted by the American occupying forces, was an exception to this rule. Saxony-Anhalt, a typical example, was created in 1946 under Russian occupation out of Prussian territories and formerly autonomous states, only to survive until 1952, when all the Länder of the GDR were abolished under communist centralism.

After the second world war, the main purpose of federalism in Germany was no longer to guarantee historical diversities, but to deliver common standards of services by cooperation between the Länder, or between the Länder and the federation.

After the totalitarian dictatorship, in the part of Germany occupied by the western allies, federalism became mandatory. However, the constitution committed itself to “uniformity of living conditions” (afterwards downgraded to “equivalence”), also because the society preferred this. The importance of regional dialects and specific religious features had diminished by the mixing of the population during the second world war. After the defeat, more than 10 million of displaced ethnic Germans came from territories not or not longer belonging to a German state. As the population preferred homogeneity, most non state wide parties waned away and slowly disappeared from the scene. During the sixties, reforms strengthened the cooperative elements

of German federalism still more, introducing joint tasks, joint financing, and in general entangling administrations. The decision-making autonomy of the Länder was reduced to education, media, culture, police and the internal organization of their states including their municipal regime, as well as some regulatory policies concerning economy and public administration. Länder often coordinated their policies voluntarily.

The two main events that have influenced the German polity before the end of the century, that is, European integration and German unification, in the first place, strengthened these tendencies toward more unification. The traditional trade off with the Länder renouncing autonomy for getting a higher share in the co-government of the federation, seemed to continue. In 1990, unification extended the patterns of German federalism to the east, although the new states had only been reestablished after the unification treaty and became heavily dependent on federal funding. The Maastricht treaty and its follow ups extended the patterns of German cooperative federalism to the European level. European integration continuously reduced Länder autonomy; the reaction of the Länder was to assure some right of co-operation in Europe.

But both central events, European integration and unification, also brought more divergence of interests. A new social base for a more competitive type of federalism emerged, at least in some of the states in the German south and west. Pressures to stop the weakening of Länder self rule and to redress the entanglements of cooperative federalism became stronger. Since the nineties, policy differences have grown. De-solidarization tendencies appeared. Some states claimed their competences back (Jeffery 1999: 333), while the east and some states in the north insist to continue with cooperative federalism and are not interested in subsidiarity formulas that remit them to their own, meager resources. Congruence between the electoral rules, party systems, and coalition patterns has weakened. Several states proclaimed what Jeffery has called the Sinatra doctrine: they want to do it their way. The federal reform of 2006 is an interesting, although somewhat half hearted attempt to reduce entanglement, favoring autonomy of the federal government and of the Länder alike.

Bavaria and Saxony-Anhalt represent two opposed situations and strategies. Bavaria is one of the few German states where prewar traditions of statehood continue. Proud of a history of thousand years, its political culture is still shaped by Catholicism and the (catholic) thought of subsidiarity. Bavaria's leading party, the regional but not regionalist CSU, has

governed the country with absolute and sometimes two third majorities from 1962 to 2008. It has been successful in strengthening a Bavarian identity that prevails over the preexisting regional identities of Franconia, Swabia and others. Bavaria is the only state that has changed its status in the system of financial equalization, starting as a poor receiver and ending as a rich donor. Bavaria represents 14.4% of Germany's population (2004). Its per capita GDP equals to 125% of Germany's (2005).

Saxony-Anhalt is the only state of the federation where leading politicians (like Jens Bullerjahn, SPD, the current minister of finance in a grand coalition) have talked positively about dissolving their own state, because of its lack of viability. Its territory could be divided between Thuringia, and Saxony. Its population equals 3.6% of the federation. Per capita GDP is only 58.3% of the average German one (2005), although the gap has been reduced by about 5% between 2000 and 2005. Usually, the Land has the highest quota of workless of the federation, and the highest rates of xenophobic incidents per capita. Formal political participation is especially low even for East German standards, where electoral volatility uses to be high. Christian democrats and social democrats have to govern in coalition in order to maintain the more radical alternatives at bay. It was in Saxony-Anhalt where the PDS, the successor party of East German communism, had its first experience with (indirectly) co-governing a Land, when it tolerated a minority government of socialists and Greens. The PDS, now The Left, is strong as usual in east Germany, but has also a federal agenda and cannot be termed as a regionalist party of the east, although in Saxony-Anhalt it comes in second.

Saxony-Anhalt has yearly budgets of about 10 thousand millions of Euros. But its debts double this figure, and its yearly GDP only equals to some 50 thousand millions, while Bavaria has the lowest per capita debts of Germany and can spend nearly the amount of the whole GDP of Saxony-Anhalt in a year.

## **2 • Constitutional framework regarding foreign policies**

Under the 1871 constitution of the Reich, foreign relations had been a matter of both Reich and member states. Article 11 of the Constitution did not grant the Reich an exclusive competence of conducting foreign affairs. The states, and in the first place the formerly independent states of the

South, continued to maintain active and passive diplomatic relations with foreign powers. Many consulates remained in cities such as Munich, and the Württemberg king continued to receive visits of foreign monarchs like Austrian Emperor.

Under the Weimar Republic, foreign affairs became an exclusive competence of the Reich, but with the reservation that the Länder could make treaties in matters that lay within their own, now restricted, fields of legislative power. But the Länder, now, had to ask the consent of the Reich (Article 78 of the Weimar constitution).

German law theorists have traditionally insisted that to have exclusive power for foreign relations makes the difference between a federation – that speaks, internationally, with only one voice – and a Confederation. According to the 1948 Grundgesetz, maintaining relations with foreign states is a power of the federation. The federation is represented by the President in international law, concludes the treaties with foreign states, and receives and sends envoys. Even in issues that internally are reserved matters for the member states, the Federation may conclude international treaties.

The Federation also has an exclusive legislative competence in commercial and navigation treaties, and to rule the traffic of goods or money with foreign countries. The residence of foreigners is a concurrent legislative competence of the federation and the Länder. The foreign service is a federal administration. If a treaty affects the particular situation of a Land, however, the Land has to be consulted in time. In 1957, in Lindau, the federation and the Länder agreed that the federation is indeed entitled to conclude treaties concerning matters exclusively belonging to the legislative competence of the Länder (for example, on matters of culture), but if such treaties entail obligations, the consent of the Länder has to be sought before concluding them. The agreement particularly recognized that the federation may make treaties with clauses concerning matters within the exclusive competence of the Länder, if such clauses are typical and usual for such treaties, or if they are only subordinate elements of them; but the federation agreed to let the Länder participate in the preparation of such treaties as early as possible and certainly before the final determination of the text of the treaty. A permanent committee of representatives of the Länder was set up to assist the federation in negotiating such treaties. It is still in existence and highly valued by all partners.

The Länder are bound by federal treaties and have to take all measures necessary for their application. The executive power of the Länder in Ger-

many is far more important than their legislative power. If a Land fails to take such measures, it may be subject to federal constraint (Bundeszwang).

In matters belonging to their own legislative competence, the Länder may make international treaties with foreign states, too, subject to the consent of the Federal Government. Such treaties and agreements have been concluded with countries like Austria, Belgium, France, Liberia, the Netherlands and so on, as well as with Swiss cantons, for example. They concern matters such as environmental protection, fishing, and water policy, particular bridges and hydro-electric exploitation of frontier waters, sometimes also establishing public companies owned by different administrations, university research institutes, hospitals in frontier zones, and bodies of development cooperation. Additionally, the Länder may also conclude executive agreements with foreign counterparts, without the consent of the federation. They may do so if the matters belong to their list of legislative competences, but only when they do not need legislative implementation.

The Länder do not have any participation or representation in the federal foreign service. They do not have or receive diplomatic or consular representatives. Initially, it was also understood that the Länder cannot be part of any international or supranational organization. But now, the Länder are usually represented directly in bodies or agencies that deal with frontier relations of local interest, for example the protection of lake Constance.

With the founding of the EEC, the federation started to transfer Länder competences to Brussels, where the federation, but not the Länder, co-decide. This became known as the “open flank” of German federalism. Until 1986 these transfers remained possible, and the Federation only had to inform the Länder about them.

The Single European Act (1987) and the Maastricht Treaty (1992) brought cooperative federalism into the realm of European politics. According to the new article 23 of the Grundgesetz, new European treaties need a 2/3 majority in the Bundesrat for approval. The Federation can still transfer sovereignty rights to the EU, but only with the assent of the Bundesrat. Länder started to cooperate via Bundesrat in EU issues, according to the distribution of legislative competences in Germany. If interests of the Länder are touched, their position has to be considered by the federal government. But their influence can only be decisive where the EU measures touch their legislative competences, or their institutions or administrative procedures. When some of the few exclusive legislative competences of the Länder is under discussion, the government has to pass the leadership in

the correspondent negotiations in the Council of Ministers to a representative of a Land. In this case, it will be his duty to represent the Federal Republic. These representatives are named by the Bundesrat.

A new constitutional prescription now authorizes the Länder to pass sovereignty rights to transborder institutions, but only with the consent of the Federation. However, the united front of the Länder that has forced the Federation to accept these new constitutional rules does not exist any longer; in Amsterdam and Nice, the Länder already were more divided. The federal reforms of 2006, reduced Länder participation in Councils to issues dealing with education, culture and broadcasting. On the other hand, their presence is now a "must" and no longer a "can".

### **3 · Towards paradiplomacy?**

New terms like paradiplomacy, perforated sovereignties, intermestic – international plus domestic- policies, and others have been coined during the two last decades to characterize the growing foreign activities of federated states and regions. As well as in other federal countries, and now more than ever, Länder are external actors of some kind. They set up representation offices nicknamed "embassies". They pursue external policies supporting their economical interests, they cooperate with developing countries, they make treaties and agreements concerning cultural policy. In Germany, their space of action has increasingly been recognized, but also fixed in constitutional amendments, laws and agreements, particularly in the area of European policy. As has happened in internal affairs, the parliaments of the Länder have lost influence, while the executives have profited from these new chances.

When both tiers pursue foreign policies, four ideal types of the relations may occur:

- 1) dominance of the federation, not much autonomy in external affairs for the member states.
- 2) cooperation between the two levels, coordinated procedures of decision in order to make possible common or at least co-decided activities.
- 3) moderate competition with parallel activities, where each tier informs the other and they normally complete each other, but each level is driven by specific interests of its own.



4) conflict, where the parallel activities do not complete each other, but where interests are contradictory.

In the German case, the first fact to be mentioned is the enormous increase of foreign activities of the Länder. In 1997, the German embassies all over the world already had to deal with a total of 584 trips of members of German Länder executives and parliaments (Fischer 2000: 355). By that time, a total of 130 representations and offices of all German Länder existed abroad. Their principal tasks are promotion of inward investments and tourism; they help to sell Länder products. 21 of these offices were situated in the US. But Europe, and above all the European Union was the main field of action. The integration process after Maastricht asked for new instruments of coordination. In the first place, this strengthened cooperative federalism.

### **3.1 • The participation in Councils of Ministers and the Bundesrat procedure**

The EU Committee of the Bundesrat was set up as a consequence of the new procedure of cooperation described above. It should accelerate decisions, but in fact it rarely meets. Between 1998 and 2002, only in 28 cases did the Bundesrat ask the federal government to follow a common Länder position; only in 17 cases did the government really comply. However, in no case did the Bundesrat ask for constitutional review. From 2002 to 2006 (both included), the Bundesrat claimed in 44 cases that the Federal government should take its position bindingly into account. These cases may generate conflicts, particularly because they demonstrated a growing lack of trust. It should be noted that the Federation still denies Länder participation in COREPER and integration in the national permanent representation. However, for all the Council sessions where Länder are not representing the Federation, there is the presence of an observer of the Länder financed by them; this institution was renewed by an agreement between the Länder in 1996.

In the same line of cooperative federalism, but with a veto right for each and every Land, a Permanent Conference of Ministers for European Affairs was established as a new institution of coordination between the Länder. This is a well known, habitually used channel to coordinate positions. This Conference acts in addition to the conferences of resort ministers and of

Minister Presidents. All these cooperation procedures are slow, and they are clumsy. Germany is one of the most outvoted countries in those Council decisions that are taken by majority vote. This has often been criticized by the federal government and by the media alike, and German federalism has often been held accountable for what is known in Brussels as the “German vote” (often an abstention because of lack of unity, slowness of decisions, less flexibility in negotiation).<sup>1</sup> These critical voices in the public opinion continue, in spite of the reduction of the number of Councils with presence of the Länder by the federal reform in 2006.<sup>2</sup> However, political scientists often also hint to coordination problems between federal Ministers of Economy, Foreign Affairs and the Chancellors Office, posts normally held by different parties (Grosse Hüttmann 2007: 41, 43). According to some observers, and instead of using the Bundesrat or the Conference for coordination of positions, a junior minister in the Chancellor’s office should be in charge of coordination, substituting horizontal cooperation without federal presence by horizontal cooperation.

### **3.2 · The nomination of Ministers for European Affairs in the Länder**

In order to coordinate their positions, all Länder found it necessary to name a minister. Often, this task is associated to the Prime minister’s office. The Hessian case, where the task was passed, in a few years, from the Minister of Science to the Home Office to the Ministry for Economy to the Ministry for Justice, probably will not be repeated now,<sup>3</sup> but coalition agreements are still important for the division of the tasks of European Affairs, External Economic Affairs, and other foreign relations. All Länder parliaments established European Committees, but these are far from being the most important committees in the Landtage. Länder staff was asked to join Commission committees (some 450 posts); only big Länder could detach enough staff, small ones had to content themselves with their presence in

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- 1 Even a Minister President like Peer Steinbrück, SPD, when in charge of the government of Northrhine-Westfalia, shared some of these critical positions. See SZ 15.5.2005.
  - 2 See Heribert Prantl in SZ 1.7.2006, who even speaks of Germany as a sandwich-Republic, with its government oppressed from above and below.
  - 3 See Besser Wanderpokal als heiße Kartoffel (better a challenge trophy than a hot potatoe), Frankfurter Rundschau 28.4.1995.

their niche interests. Only numerous civil services can cope with the increasing flow of information coming down from the Commission.

Between 1985 and 1989, all Länder established information offices in Brussels. After unification, they were joint by the five Länder of the East that shared the former GDR embassy in Brussels. Finally, they established themselves in independent offices, although two Länder still share a representation, and others live together with other lobbyists in the same buildings. During the 90s, offices and staff grew. In 1993, these liaison offices were based on a law. In 1995, federal government irritations grew when six Länder of the West started to name their offices “Vertretungen” (representations), but in official correspondence, were still addressed as “offices” by the Permanent Representative. Towards the change of the century, the combined staff of all Länder representations in Brussels outnumbered the staff of the German Representation (140:112, 90:60 high rankers) (see Fischer 2000: 368). The pronounced concurrence sometimes derived into conflict. In 2004 and according to *Die Zeit* (23.9.2004), the combined manpower of the representations reached 250, against 160 or 170 working for the Permanent Representation of Germany (*Der Spiegel* 8.11.2004). The late Red and Green coalition and particularly Green Minister Renate Kühnast claimed that the representation of Germany should be only in the hand of the Federal Government. When Bavaria opened its new representation office in Brussels in September 2004, the Presidents of the European Commission, of the Parliament, of the Committee of the Regions, and of the Social and Economic Committee attended the ceremony, and so did four members of the Commission, nine Directors General, and representatives of several member states, while the German high representative excused himself with agenda problems. The price of the Bavarian office was 29-30 million €; shortly before, Baden-Württemberg had spent 20 million, and Lower Saxony nearly 9 Million for new representation offices.<sup>4</sup>

Transborder cooperation with neighbor states was pushed in 1992 with the possibility to transfer Land sovereignty, with the consent of the Federation, to collective bodies. In general, activities that may be termed “parallel” have become more important in fields of “low politics” like transborder and interregional cooperation in Europe, regional economic policy, development cooperation, culture, and professional formation. Although these

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4 See Matthias Krupa: Schloss Neu-Wahnstein, *Die Zeit* 23.9.2004.

activities may have relieved the federation from some overcharge, conflicts on how far the federation comes into the agreements with neighbor countries on municipal and regional transborder cooperation have arisen (agreements with different neighbor states in Isselburg-Anholt 1991, Bayonne 1995, Mainz and Karlsruhe 1996). Solutions did not break with the cooperative patterns of German federalism, though. In some cases, the federation finally took part in the agreements, establishing in some cases what seems to be mixed administrations of transborder issues, a practice that is problematic under the German constitution.

These examples show the contradicting trends. Cooperation is still the dominant feature, but concurrence also occurs. Straightforward conflict is the exception. In the discussion on federal reform in 2006, both the federal government and Baden-Württemberg proposed to disentangle European politics. The Federation tried to abolish cooperation in the Council, in order to strengthen the German influence. Baden-Württemberg tried to disentangle, too, but according to the Belgian model. As a compromise, the Grundgesetz was only slightly amended, and the cooperation rules continue, in spite of their problems. It should be remembered that Länder are strong in the formation of the federal will in regards to European issues, but only when acting united. Their increasing differences hinder them to use the possibilities of the system of cooperative federalism (Fischer 2000: 363), while “I do it my way” can only be afforded by states like Bavaria that depend less on using the entangled channels of federal decision mechanisms. During the last years, Länder have grouped more or less according to common interest. Divisions like the west against the east, the three big ones (Bavaria, Baden-Württemberg and Northrhine-Westfalia) against the rest, became more common. There is not much coordination of Committee of the Region activities between members of different groups, and in the Bundesrat and the Conference of the Ministers for European Affairs, majorities and unanimity are more difficult to obtain.

Contrasting Bavaria and Saxony-Anhalt seems a good idea to visualize these trends.<sup>5</sup> In small and poor Saxony-Anhalt, the Minister of the Chancellery, Rainer Bobra, under Minister President Böhmer, concentrates most of the executive functions in European and Foreign Affairs. He is one of

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5 See <http://www.bayern.de/Einfluss-Bayerns-.1189.22798/druckansicht.htm> (20.04. 2009); [http://www.sachsen-anhalt.de/LPSA/index.php?print=1&no\\_cache=1&id=4832](http://www.sachsen-anhalt.de/LPSA/index.php?print=1&no_cache=1&id=4832) (26/02/2009).

nine ministers in the Government. The budget of his department, in 2007, was 18 million €; but Bobra is also responsible for media contacts, the introduction of e-government, the representation of the Land before the Federation and particularly in the Bundesrat, he acts as chef de protocole, and he is also in charge of the relations between the government and the parliament. Part of his money is spent for the Agency for Political Information. This means that he can only dedicate a part of his time and his budget to foreign and European activities like partnership with other regions, coordination with the Commissioner for relations with France, representation of the Land in international conferences, contacts with actors in development cooperation, municipal partnerships, economic relations to foreign countries, representation of the Land in the Committee of the Regions, in the Conference of Ministers for European Affairs, in the Congress of Regional and Local Authorities of the Council of Europe etc. Most of his budget is reserved for the financing of the staff, the Representation Office of the Land before the federation, and the agency for political information.

In Bavaria, a Land that always remembers that it would be the ninth state of the EU according to its population, competences for Foreign and European Affairs are also concentrated mostly in the department of the Minister of the Chancellery, Siegfried Schneider, acting under Minister President Horst Seehofer. But in his case, he has a junior minister at his side, Emilia Müller, who deals only with Federal and European Affairs. Both form part of a 18 member cabinet. The Bavarian Staatskanzlei has also coordinating functions. In foreign relations, it is responsible for treaties and agreements, the relation to the Federation and to the other Länder, and also for external relations and in particular foreign visits. But in Bavaria, the Agency for Political Information is administered by the Department of Culture. Tourism is a competence of the Minister for the Economy, who is as well responsible for the marketing of the location and external economy in general. Out of a general budget of 41 million € in 2009, Bavaria will spent some 2.8 million in representation, 1.3 million in its Brussels Office (700000 for the building), and 2.7 million for European Affairs and relations with other regions. Out of these 2.7 million, some 161 thousand will be dedicated to regional conferences (RegLeg, Committee of the Regions), 445000 for regional partnerships, some 370000 for the representation office in Quebec, some 90000 for the observer of the Länder. A further 1.6 million will go for different activities subsidizing foreign states and regions.

According to Hans Mayer (2005: 588), Bavaria's main objectives in external policies are contacts with neighboring states and regions, to defend the interests of Bavaria in the political, economic and cultural fields, and to promote its ideas on subsidiarity and federalism. He clearly confirms that Bavaria's foreign policy is not meant to be in concurrence to the federal one, but to unburden and to add value to the federal policy.

Saxony-Anhalt has to concentrate on specific partners and policy fields. European Policy is of outstanding importance, as the Land depends heavily on European funds (it enjoys the highest category of funding, and it is targeted to receive 3.4 thousands of million € until 2013). Saxony-Anhalt set up its representation office in 1992; the building was restored in 2004-6. The building is shared with other parties. Its information centre received more than 20000 visitors since restoration. Its costs in 2007 summed 776200 €, but most of this money had to go to the financing of the staff and the renting of the building (some 400000 and 150000 € respectively). According to Bavarian government sources, in 2005, the office of Saxony-Anhalt had 11 persons on staff (other sources give 13 for February 2009, including two assistants), and Saxony-Anhalt spent only 157000€ on it (excluding rentals), while Bavaria had 29 persons staff, and the costs amounted to 1200000 €, also excluding the costs for the building (Sturm et al.). But Bavaria's Oktoberfest seems to be an important meeting point of Brussels politicians and lobbyists.

Another objective of Saxony-Anhalt is to defend the interests of its chemical industry. The Land is proud to lead the network of chemistry regions it has founded. This particular strength apart, Saxony-Anhalt has to deal mainly with the output side of European politics, and it is particularly occupied with improving the euro-fitness of its administration. It is not necessarily interested in enlarging its responsibilities in Brussels, as this may mean to have to spend more money. According to its website and the flyers its European Representation office distributes, Saxony-Anhalt is interested in the process of Treaty reform, structural policy, agrarian policy, and EU enlargement, the Lisbon strategy, and a sustainable energy policy and climate protection, while in practice, it rarely leads initiatives or presents papers dealing with these issues. It actively participates in the Committee of the Regions, an institution many German states treat with a certain disdain (Jeffery 1998: 41). As other European Länder, its EU interests concentrate on subsidies, defending the concentration of the subsidies on the poorer regions, but avoid the statistical effects of enlargement; on the maintaining the

power of regional policy in the hand of the Commission, and avoid re-nationalization; on defending the Länder and not their subunits as receivers of European money, in a situation of monopoly for reception, if possible; and to shorten or at least maintain the quota of structural funds money that the Commission destines to special Commission programs.

While Saxony-Anhalt defends a Europe with the regions; Bavaria may prefer a Europe of the Regions. Jeffery more or less summed up the difference as follows (1998: 63 and 68): While Bavaria wants to have its competences back, Saxony-Anhalt claims not to touch its subsidies. Not in vain structural funds allocation for Bavaria totals 1.19 billion € (2007-2023), while much smaller Saxony-Anhalt receives 2.67. While Bavaria's subsidies for regional development during the years 2006-2010 will be financed by Land itself (52.5%) or via a federal-Land common task (47.5%), European ERDF structural funds is absent. Not so in Saxony-Anhalt, where 34.3% comes from ERDF, 65.7% from the common task, and nothing is provided for by the Land alone (Sturm/Renzsch et al. 2007).

Bavaria actively defends a European Policy of its own, tries to influence agendas and to press the federal government. The Land does not shy away from giving its opinion about essential questions for the future of the Union like the accessions of Croatia (yes) or Turkey (no). It asks for penalties on Rumania and Bulgaria when they fail to adapt to the *acquis communautaire*. It defends the stability of the Euro and a restrictive EU budget, but Bavaria claims more funding for the regions on the frontiers between the old and the new member states and a broad national margin for funding and subsidizing national industries. Although structural funds are not as relevant as for Saxony-Anhalt, Bavaria receives some 1.3 thousand of million € a year in agrarian funds. According to the Bavarian government, Europe should only have a limited and clearly defined catalogue of competences, and should be unable to widen this scope in the usual *taciturn* way claiming to be acting in favor of non transparent objectives. The method of "open coordination" and the now typical "benchmarking", "best practice" and "peer review" talking, are motive of Bavarian scorn. On many occasions, Bavaria rejected to convert the EU into a Federation. It should continue to be a Union of European States and Regions: "Europe, wherever necessary".

On the other hand, Bavaria is in favor of more majority voting and advocates a strengthening of the common foreign and military policy, for example. In its publications and websites, Bavaria proudly pretends to have played a decisive role in the setting up of the Committee of the Regions, or

the movement of the Länder that lead to the new article 23 of the Grundgesetz in 1992. The Bavarian government, sometimes with euro-skeptical overtones, often favors national autonomy, and tries to restrict the scope of European actions, in order to maintain its own autonomy and the possibility of formulating policies of its own.

Saxony-Anhalt maintains only a limited network of regional partnerships. As it has no common frontiers with non-German regions, it concentrates on three partnerships: with the capital region of Mazowiecki in Poland, Centre in France, and with the Plovdiv region in Bulgaria. These agreements concentrate on economic, academic, educational and environmental cooperation. Cooperation with foreign states is rare, but there is a common declaration with the French embassy in Germany dating from 2003 relating to cultural relations France. Municipal partnerships concentrate on this country (36), Poland (22), and the Czech Republic (11). In development cooperation, the economic interest of the Land is seen to be as important as the development goals (see: *Leitlinien zur Entwicklungszusammenarbeit des Landes Sachsen-Anhalt*). Programs deal with the formation of skilled workers and directives, humanitarian aid, and the propagating of cooperation in Saxony-Anhalt itself, among others. Cooperation with far away regions is rare, however, the Land maintains three contact offices in Hanoi (Vietnam), Shanghai, and Plovdiv, always inside a collective institutional setting (in Asia, with the contact offices of the German economy, in Plovdiv, with a foundation of the German-Bulgarian Friendship society).

Bavaria does not refrain from cooperating with foreign states, mostly, but not exclusively, with its neighbors. The agreements deal with police cooperation, environment, and infrastructure. Particular importance is given to the Agreement with the Czech Republic dating from 1991. Munich is the seat of 108 consulates (2005). Bavarian regional partnerships are numerous, too. Common task groups of civil servants exist with Tirol (1969), Salzburg (1971), Vorarlberg (1972) and Upper Austria (1973).

Bavaria also set up common governmental commissions with the inclusion of economic actors (generally the chambers of industry and trade) with the following countries: Serbia 1970, Croatia 1972, Slovenia 1975, Hungary 1991, Slovakia 1991, Ukraine 1991, Bulgaria 1995, Poland 1996, Rumania 2000, Former Yugoslav Republic of Macedonia 2000, and the town of Moscow 2000. In these agreements, economy is paramount, and visits of the Minister of Economy are numerous, but not limited to those countries. Partnership agreements exist with regions, too: Friulia Venetia



Julia 1961, Trento 1987, South Tyrol 1994, Languedoc-Roussillon 1996, Midi-Pyrénées 1996, the PACA 1996, Limousin 2000, Scotland 2003. The ARGE ALP network was set up in 1972, the International Conference on Lake Constance in 1978 (with 10 regions from 4 states), the ARGE ALPEN ADRIA in 1978 (including 2 sovereign states), the ARGE Donauländer (1990 including 23 regions from 11 states), the Kleiner Donaugipfel (small Danuvian summit) with Baden-Württemberg, Hungary and Austria in 2001. The summits bring the Austrian and Hungarian chancellor or Prime Minister to Munich and deal mainly with traffic infrastructure. According to Hans Mayer, one of the architects of these schemes, Bavaria's relations with some of the member states of former Yugoslavia, accompanied this country on its way to democracy and free market, and also to the independence of the republics. Bavaria, it has to be said, was a destiny of many Yugoslav immigrants already during the communist dictatorship, and the agreements with Bavaria often deal with their problems (mother tongue education, for example). While Bavaria clearly concentrates on neighbor states and regions, and is engaged upon transborder Euregios with neighboring Czech Republic and Austria, economical partnership agreements also exist with California, Quebec (where Bavaria maintains a representation office), Sao Paulo, and the Chinese provinces of Shandong and Guandong. Since 2002, the Regional Leaders Conference brings together Bavaria, Upper Austria, Quebec, Sao Paulo, Shandong and Western Cape as the so called network of power regions. These agreements also include questions of research, technology, environmental protection, and professional formation.

In a generally symmetric system like Germany, and it is still a symmetric one, tendencies to asymmetry are growing. Initially, the Länder claimed "let us in" into Brussels (Committee of the Regions), and in Germany, too (Bundesrat procedure).

But a collective influence can only be exercised if cooperating. And divergent interests render cooperation increasingly difficult. As a result, concurrence is growing. However, with too much of it, the possibilities of the system of cooperative federalism can no longer be used (Fischer 2000: 363). "I do it my way" or "leave us alone" can only be an alternative option where dependency on the entangled channels of federal decision mechanisms is low. It should be noted that while the interests of the Federation and of the Länder diverge, the gap is still bigger between the different groups of Länder. Their possibilities of successful cooperation in the Conference of Ministers for Europe or the Bundesrat are much lower now.

After 1992, collaboration with the federation normally was maintained, in spite of the conflicts about the supposed paradiplomacy of the Länderbüros. The changes of the Basic Law (1992) are now well assumed by all partners, but the federation remains skeptical about the Länder activities.

#### **4 • Some remarks on economical and cultural cooperation**

Next only to transborder cooperation, or even first, the most important field of Länder external activities is economy. Constitutionally speaking, regional economic structure is an issue of Länder competence. The federation is only “in”, if competences have clearly been passed to it. Traditionally important activities of all Länder include the favoring of regional exports by guarantees, the sending of (often numerous) delegations, some with more than 80 participants) lead by the competent Länder ministers, and even economic representation offices.

Länder have also founded agencies to further their economy outside their frontiers, like Bayern International, with offices in Japan, Russia, Singapore, Taiwan, South Korea, Ukraine, Hungary, USA, Canada and China (Peoples Republic). A country like Bavaria that is proud of its high export rates and its status as a high technology country, also looked for economic partner regions: Shandong 1987; Québec 1989; Western Cape (South Africa) 1995; Gauteng (South Africa) 1995; Sao Paulo 1997; California 1998; Guangdong 2004; Karnataka (India) 2007.

All these processes sharpen competition also inside Germany, and desolidarisation. In regards to subsidies, divergence prevails, too. Saxony-Anhalt advocates a strong cohesion policy and the control of subsidizing as well as a European competition policy. Bavarian actors defend subsidiarity, even in favor of the national state when competing with Europe. The East feels menaced by the loss of European money. While “leave us aloners” develop more activities as singles or in small groups or with their offices, “let us inners” act collectively, or with the help of institutions like the Committee of the Regions. This does not exclude special interests like those of Bavaria in agricultural policy, Hessen in air transport, Brandenburg in transborder cooperation with Poland... Bavarian lobbyism may nevertheless profit from the fact that high tech exporters like Siemens or BMW have their seat in Munich.

In regards to cooperation with developing countries, it should be said that these activities are parallel to those of the federation. However, both

tiers often cooperate. From the 60s onwards Länder governments have always underlined that their activities are only of additional character. Normally, established programs reflect where Länder competences are strong: Formation of skilled workers, information and education policies. The style is very cooperative, Bund-Länder Committees for economic cooperation and development cooperation exist. Conflicts are rare, but there are now some examples, for example when a federal conservative government restricted cooperation with a leftist Nicaragua, social-democratic Länder governments intensified their cooperation (Fischer 2000: 374).

In cultural relations, cooperation between the levels is perhaps even stronger. Here the Lindau agreement develops its efficiency. It is true that this is precisely the field where Länder competences are strongest, but the initiatives in external cultural policy are often taken by the Federation. The management of German schools abroad, the Academic Exchange Programs, the formation of foreign students and/or the Goethe institutes are examples in this respect. But there are some independent programs of single Länder that function without cooperation, particularly in transborder activities. For example, Austria, Bavaria, Baden-Württemberg are co-financing the Gyula Andrassy University in Budapest, a German speaking academy, and the German School of Budapest is financed by Baden-Württemberg. However, generally speaking, the Länder may be confident that the cultural agenda is set by private actors.

In Brussels, the representation of the Länder in Councils dealing with cultural and broadcasting issues was the most problematic. Bavaria heavily protested against European directives targeting the public broadcasting system in Germany. The presentation of the Commission agenda of culture under globalisation was claimed to be a matter of Länder presence in the Council, but the Federation rejected on grounds that this was no legislative measure, and therefore no Länder cooperation provided.

Former minister Michael Naumann heavily protested against the reservation of Länder representation in the Council of Ministers on culture in Brussels, a result of the reforms of 2006, because those representatives would not be able to threaten the closing of the financing, and therefore, Germany would be at a disadvantage, and again, other would get the Lion's share (France alone received 30% of subventions for films, for example).<sup>6</sup>

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6 Michael Naumann: Kuhschnappel in Brüssel. Der Bund wird entmachtet, *Die Zeit* 6.4.2006. As German minister, Naumann strengthened the role of the federation in cultural politics, against Länder protest.

## 5 • Perspectives and Conclusions

Let us finally sum up the main findings of our paper that may be useful for comparison:

1. The Länder governments have become more active in external policy, and these new activities may be traced back to the 1990, and in some cases, started even earlier. The east lagged back. But foreign visits, treaties, agreements, partnerships, networks, and agencies proliferated in all Länder albeit to a different degree. The bigger and the more southern, the more active. This is not to say that Länder that concentrated on well chosen niches may not be as effective as the others.

2. These activities took place with foreign regions and states, and even involved private actors. In Europe and in some cases of transborder cooperation and cultural and economical representation abroad, the cooperation with the federation was paramount, but began to be more concurrent during the nineties and the start of the new century. While Bavaria, for example, freely cooperated also with states, particularly neighbors, other Länder like Saxony-Anhalt preferred regions as partners.

3. The activities were not meant initially to concur or conflict with the federation, but they started to get more concurrent and even in some exceptional cases conflictive during the nineties. Divergences rose, not only between the tiers, but also, and perhaps more important, between the Länder, particularly after unification.

4. European policy was paramount in external affairs. While initially “let us in” strategies were nearly the only ones pursued, and were even partially successful (in Europe, but above all in Germany itself), upon time, leave me alone strategies began to get more important. Insistence on subsidiarity in relation to the EU, early warning systems and definitive competence catalogues in the European Constitution became more important, particularly for catholic Bavaria, but much less for protestant or non-religious Saxony-Anhalt. But they often failed, too. Inside Germany, cooperation also prevailed, but some examples of veto playing exist (preferring the Conference of Ministers for European Affairs to Bundesrat coordination with majority decision may be such an example). The Länder are stronger in Germany than they are on the European level, therefore their European policy passes by Berlin, but German cooperative federalism does not really give them a chance to pursue autonomous policies; this is a problem for the states in the south of Germany,

with better resources for competing, those that may “go it alone” in some issues, if not bound by the rules of the German cooperative federalism.

5. Some well known consequences of cooperative federalism affect foreign policies as well. In itself, cooperative federalism German style (with a Bundesrat representing Länder governments), has tended to favour the Länder executives, to the disadvantage of the Länder parliaments. In foreign policy, always a domain of the executive, this tendency can be found, too. The weakening of the parliaments is sometimes incremented by the use of public-private partnerships that still have to demonstrate in how far they are strengthening civil society and pluralism.

6. Even in the fields of transborder relations, external economy, and development cooperation some tensions have arisen between the federation and the member states, although the dominating feature is still cooperation and complementarity, and not concurrence or conflict.

7. A final remark: it should not be forgotten that external affairs also is a field of self representation and, among other things, more or less useful for election campaigns. Some external activities may be traced to internal origins of this kind. If tensions have existed in foreign affairs, so have they in internal affairs. Party competition is growing in Germany’s new five party system. External policies are affected: the new party system may endanger the cooperative setting. Up to now, the growth of parallel, non complementary activities has not really questioned the cooperative setting, but this may change in future.

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# FOREIGN POLITICS/POLICIES, NATIONAL PLURALISM AND GLOBALIZATION IN THE FIRST DECADE OF THE 21<sup>ST</sup> CENTURY. THE CASE OF SWITZERLAND

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With regard to foreign policy of the Swiss Confederation one has to be aware of four different issues which have a main impact on the Swiss foreign policy: Neutrality, diversity of Switzerland, direct Democracy and inner-cantonal diversity.

## —Neutrality

Neutrality in principle is the denial of any political strategy of the neutral country. The Swiss neutrality goes back to the 17<sup>th</sup> century and was the only possibility of the religiously divided country to survive in the religious conflicts of this century. The fact that for a very long history Switzerland has never had a real strategy in international politics is most probably also one of the reasons, why the federal units of Switzerland have at least in the 20<sup>th</sup> century never had a strategic interest in foreign policy.

## —Diversity

Diversity with regard to economy (rural vs. town) religion, and language overlaps with the border lines of the federal units. Thus although the regions of Switzerland are linguistically (not religiously) linked with neighbor countries the inner diversity had as main consequence rather the internal cooperation among the different federal units than the international cooperation although there are since the 18<sup>th</sup> century many treaties of federal units with foreign countries still in force.

## —Direct Democracy

Switzerland has never had a monarch. Traditionally the country did never want to participate in important foreign strategy. Napoleon who invited the Swiss to be part of the big nation did complain for this and blamed the Swiss



to remain marginal and small. Direct democracy does structurally influence the country to remain introverted and to become internationally isolated.

#### —Inner cantonal Diversity

The fact that cantonal border lines overlap with religion and language did force the cantons to look for an external policy which is mainly focused on relationship and treaty making with other cantons. In addition one has to be aware of the big differences among the cantons. The canton of Appenzell interior with 13'000 inhabitants has the same constitutional powers as the canton of Zurich with almost one million inhabitants. The geographic size of the canton of Zug is smaller than the territory of Bagnes in the canton of Valais.

Thus, I will in this paper not only explain the foreign policy of the federal units towards the international scene but also to the internal Swiss necessities. In fact there are per canton at least 10% of the inner norms which is based on a treaty between one, several or all cantons. The fact that cantons had the power to elaborate inter-cantonal treaties was often used in order to avoid more centralization.

With regard to cantonal treaties with foreign countries I will put in the annex of this paper a table of most of the treaties among one or several cantons with foreign countries which are actually in force.

## 1 • General aspects

### 1.1 • Historical introduction<sup>1</sup>

The actual federal structure of Switzerland with regard to the competence of the cantons has originally been designed in 1848 after a civil war

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<sup>1</sup> All the relevant articles of the former Constitution with regard to foreign policy: Article 7 [Treaties between Cantons]

(1) All separate alliances and all treaties of a political nature between Cantons are prohibited.

(2) The Cantons may, however, conclude agreements among themselves concerning matters of legislation, justice and administration, provided they bring such agreements to the notice of the federal authority, which is entitled to prevent the execution of the agreements if they contain anything contrary to the Confederation or to the rights of other Cantons. If this is not the case, the contracting Cantons may request the cooperation of the federal authorities for the execution of such agreements.

between the mainly Catholics and Protestants cantons. The reason for this civil war was partly the foreign relationships of the Catholic cantons of the confederation which with a special treaty among those cantons and their relationship to the Catholic conservative monarchies did de facto split up the old confederation of Switzerland.

As a consequence the Constitution, which was made after the victory of the Protestant and liberal cantons against the Catholic and conservative cantons did explicitly prohibit political alliances among the cantons. In addition political alliances and treaties of cantons with foreign states were prohibited because the confederation was given in article 8 of the constitution the exclusive power to make political and commercial treaties with foreign states. However article 9 of the constitution provided an exceptional power of the cantons in foreign affairs. They could conclude treaties with foreign states in all “matters of public economy, neighbourly relations and police”. In order to control the foreign affairs relations of the cantons they were obliged to have relations with foreign governments only through the federal agencies. (art. 10 par 1) With subordinate authorities of other countries however they could have direct relationships. The published data’s of cantonal treaties of the cantons with their neighbour countries or regions uncloses that many treaties of the cantons have been concluded and are still in force in the time during the old alliance of the cantons before the new federal constitution of 1848. Many treaties concerning concrete issues of borderline co-operations of the cantons however have been concluded during this period.

One has also to acknowledge that the constitution of 1848 did put an end to all cantonal initiatives to defend their interests within the Swiss confederation by some kind of special alliance with other countries. The prohibition of political treaties and alliances with other countries was thus very successful.

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Article 8 [War and Foreign Affairs]

The Confederation alone has the right to declare war and to make peace, as well as to conclude alliances and treaties, especially customs and commercial treaties, with foreign states.

Article 9 [Cantonal Treaties]

Exceptionally, the Cantons retain the right to conclude treaties with foreign states concerning matters of public economy, neighborly relations and police provided such treaties contain nothing contrary to the Confederation or to the rights of other Cantons.

Article 10 [Cantonal Foreign Affairs]

(1) All official intercourse between the Cantons and foreign governments or their representatives shall take place through the agency of the Federal Council.

(2) The Cantons may, however, correspond directly with subordinate authorities and officials of a foreign state with respect to the matters mentioned in Article 9.

On the other hand one has to admit that with regard to foreign policy Switzerland has developed towards a much more centralistic power-division than in internal politics. In theory and practice the federal government has been considered competent to conclude treaties such as double taxation treaties although it has only a very limited competence with regard to taxes. In Canada however the federal government was only competent to conclude treaties in matters it was also internally competent.

Neither cantons nor the federation have a historical monarchical tradition. In other countries the Monarch was the sovereign to represent his own country and to ratify the treaties of his country. As neutral country Switzerland lacks in fact any kind of foreign policy. This is mainly also due to the Swiss diversity. Any foreign policy with its neighbors could always be considered a biased for some German, French, Italian speaking regions or for the Catholics or the Protestants.

The struggle between parliament and the federal council has continued also when the new constitution was drafted. With regard to the cantonal competences in foreign affairs the new constitution has renounced its former prohibition of political alliances. In fact there is no canton which would have any interest to conclude any alliance with a foreign country.

## **1.2 · Description of the constitutional framework of Switzerland regarding foreign policies according to the New Constitution**

The new Constitution in force since January 1<sup>st</sup> 2000 has considerably changed at least on paper the order of competences. In Article 54 the Constitution confers all matters with regard to international relations clearly to the federal council. It thus enshrines in the constitution the former practice.<sup>2</sup> With regard to the foreign policy of the federal government according to article 55 the Cantons participate in the preparation of foreign policy which

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**2** Art. 54

1 Foreign Relations are a federal matter.

2 The Confederation shall strive to preserve the independence of Switzerland and its welfare; it shall, in particular, contribute to alleviate need and poverty in the world, and to promote respect for human rights, democracy, the peaceful coexistence of nations, and the preservation of natural resources.

3 It shall take into consideration the powers of the Cantons, and shall protect their Interests

concerns their powers and essential interests. According to par. 3 the position of the cantons shall have particular weight when their powers are concerned. In these cases the cantons participate in International negotiations.<sup>3</sup>

These new developments are part of the general federal development of Switzerland. The cantons have lost some of their powers for self rule but in order to keep the balance they got more possibilities of participation that is more shared rule.

With regard to the competence of the cantons to conclude treaties with regard to other states this issue is regulated in article 56 of the actual constitution. According to this prescription the Cantons have a general competence to conclude international treaties with foreign countries in all matters which are within the scope of their powers. In order to have some control over cantonal treaties the cantons have to inform the federal government with regard to the treaties they are about to ratify. With regard to the relationship to other countries the content of the old constitution has not changed. Accordingly cantons can have direct relationship to lower authorities of other countries. Relationships to the higher authorities have to be conducted by the Confederation.<sup>4</sup>

With regard to the actual situation one has also to mention two important international treaties which provide for international relations of cantons and even municipalities. According to article 1 of the European outline convention on trans-frontier co-operation between territorial communities concluded in Madrid in 1980 the contracting parties "shall endeavour to promote the conclusion of any agreements and arrangements that may prove

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3 Art. 55 Participation of the Cantons in Decisions of Foreign Policy

1 The Cantons shall participate in the preparation of decisions of foreign policy which concern their powers or their essential interests.

2 The Confederation shall inform the Cantons timely and fully, and consult them.

3 The position of the Cantons shall have particular weight when their powers are concerned. In these cases, the Cantons shall participate in international negotiations as appropriate.

4 Art. 56 Relations between the Cantons and Foreign Countries

1 The Cantons may conclude treaties with foreign countries within the scope of their powers.

2 These treaties may not be contrary to the law nor to the interests of the Confederation nor to the laws of other Cantons. Before concluding a treaty, the Cantons must inform the Confederation.

3 The Cantons may deal directly with lower ranking foreign authorities; in other cases, the relations of the Cantons with foreign countries shall be conducted by the Confederation acting on their behalf.

necessary for this purpose". With regard to Spain which has also ratified the convention one has to mention that it has made the reservation that only based on a concrete treaty concluded by Spain such co-operation may take place. Based on this treaty Switzerland has concluded a convention between France and Germany with regard to the trans-frontier co-operation on the upper Rhine area of Basel.

In this context one has also to mention the convention of Karlsruhe between Germany, France and Luxemburg of 1996 in order to promote the trans-frontier co-operation of public territories. This treaty has been concluded by the federal council not on behalf of Switzerland but on behalf of some of the Cantons close to the border. Some other cantons did later join this treaty with a special convention based on their competence. Article 3 of this convention transfers to the local authorities mentioned in the treaty to conclude treaties with other local authorities of the other country party with regard to trans-frontier matters of common concern.

Concluding the actual situation one has to consider the far reaching powers to the cantons with regard to foreign according to the new constitution. They have self-rule to conclude international treaties with regard to all matters of their constitutional powers given to them by the Swiss constitution. In addition based on the Outline Convention of Madrid and the Convention of Karlsruhe local authorities as cantons and municipalities have powers to co-operate with other similar bodies based on international law.

## **2 · The processes of globalization and the jurisdiction of "federated" units**

There is no doubt that globalization and in particular the European Integration had and still has a big impact on foreign affairs of the cantons. The process of integration in Switzerland has led to new foundation of the general conference of the presidents of all cantonal governments, which is no explicitly mentioned in the federal constitution as partner body of the federal council. It has also influenced the new constitutional principle which requires the federal council to protect and promote cantonal interests as part of its international political strategy. Since the beginning of the Swiss process of European Integration the cantons have their office in Brussels in order to defend their proper interests and to get direct information from their representatives at the European Union.

The main actors of the different cantons are internal actors. The new development has had an important effect on new treaties among the cantons (e.g. harmonization of primary school) and among cantons and the confederation (university). A part from education there are also other fields of co-operation such as police planning and zoning as well as waste and water-pollution. With regard to foreign partners one has to mention the European Assembly of Regions in which all cantons take part. In this assembly the cantons become aware that with regard to their geographical size they are just small mice's but with regard to their constitutional power they are in fact elephants.

Many borders of Switzerland are based on lakes and/or rivers. There is a most important regional co-operation around the Lake of Constance among some Swiss cantons and some federal units of Germany and Austria. The so called Conference of the Bodensee provides within its statute even a proper identity of all local authorities around this lake. One the main goals of this conference are the cultural, economic and cultural promotion of this region as home for many peoples and the strengthening of the coherence of the population. In the Charter of this region they even claim to promote their proper identity. In the region of Basel there has been created a council of the upper Rhine, which is today the legal bases for a far reaching co-operation in the fields of universities, environment, traffic and planning. For the Lake of Lausanne there is the Conference also provided a conference for the interests of France and the borderline cantons Valais, Vaud and Geneva. In addition there is also the Conférence TransJurassienne for the interest of the population living in this borderline area.

With regard to media one has in particular to mention the international cooperation in the field of cinema promoting. Swiss producers and artists are promoted based on co-operation treaties in these fields concluded by the federal council. The Swiss television is also part of the Euro vision, the French and the German speaking television are themselves integrated within the special international French speaking and German speaking channels (Sat III and France 5).

The leading values and objectives including the institutional principles are certainly promotion of the cantonal interest, peaceful cooperation for the interest of the inhabitants of the canton, protection promotion of the cantonal identity, of the rule of law and democratic accountability. With regard to the last value one has certainly to be aware that the more international cooperation takes place the less will it be possible to have democratic control of the

co-operation. Co-operation in all these fields is strongly focused to strengthen the executive to the detriment of parliament and peoples democratic rights.

According to the federal Constitution foreign policy as such is within the power of the federal state. Cantons can only deal with concrete matters of their proper constitutional power. Thus they have no real foreign policy except for issues with regard to their proper competences. One can however mention in this context that the office in Brussels at the European Union does defend also cantonal foreign policy to a certain extent.

The most important network the cantons do participate is by no means the European Union. The conference of the presidents of the cantonal governments has a special representative in Brussels to defend their interests with regard to the EU. Other Network is the Assembly of European Regions in which all 22 of the 26 cantons of Switzerland are represented. Other important networks are mainly regional linked to common interests of the population living close to the borderline of some cantons.

A part from the international networks one has to mention the innumerable institutionalized or even informal networks among the cantons and their administration within Switzerland. For each important sector of the cantonal governments there exists a conference of the respective members of the cantonal governments. In addition there exists many informal conferences of cantonal administrations working together either multilaterally with regard to all cantons or limited to the geographic region or to the language.

With regard to their external affairs there are many important differences among the cantons. Some cantons have no specific institution dealing with foreign affairs. Some cantons confer the issue to the secretariat of the government which is called chancellery. The canton of Vaud has integrated this institution into the department of finances and foreign affairs. It is the only canton which provides on the level of the government of the canton foreign affairs as a responsibility of a minister.

In the beginning of the federal state of Switzerland foreign policy was within the responsibility of the every year changing president of the federal council. Now foreign policy is a special ministry on the federal level. However on the federal and on the cantonal level almost all matters concerning international or inter-cantonal relations are usually within the responsibility of the specific department or ministry of the executive. As all major decision of the executive are taken by the college of the council important international and inter-cantonal matters are of the responsibility of

the entire government. As a consequence there is no ministry except may be for the canton of Vaud which would initiate as a motor specific activities on the international or inter-cantonal level.

With regard to the relationships of federal units in Switzerland in particular with regard to a para-diplomatic policy there have not been real changes since 2000 in comparison to the period of 1970 to 2000. In fact the federal constitution does only allow cantons to have direct contacts to lower authorities of other countries. Any high level contact has to go through the normal diplomatic services of the foreign office. As Switzerland has achieved through the co-existence of all different diversity a high degree of acceptance and credibility with regard to the different communities there has since the civil war of 1847 and some later minor clashes namely in the Italian speaking canton of Ticino never been a real attempt to question the leadership of the federal government in all important issues of foreign policy.

However in comparison to the time before 2000 one can certainly observe a new development and a strengthening of foreign policy interests of at least some of the federal units. The new constitution which did change the balance for more participation of the cantons in issues of foreign politics and which did abolish the previous prohibition for cantons to create political alliances among them and with other countries is a clear signal for the fact that federal units in Switzerland are much more engaged in foreign policy. The most important part of the foreign policy of the cantons however, is mainly restricted to inter-cantonal relations rather than to international relations.

The new institution of the conference of the presidents of cantonal governments is probably the most important and most innovative institutional foundation. To a certain extent this new conference competes with our second chamber composed of elected representatives of the cantons. Here again one can observe an important shift of democratically accountable parliaments to inter-cantonal institutions with much less accountability. There have been attempts to institutionalize also democratic control in inter-cantonal institutions. However up to now all such tendencies were never successful.

### **3 · Three spheres of foreign policy: politics, economics, culture**

If one analyzes the fields of external affairs of the cantonal Governments one can discern mainly the following important governmental



spheres: Education, zoning and environment, traffic, energy, police and security. Most of these issues however are issues of inter-cantonal rather than international level.

For cantons with external borders however the international trans-frontier cooperation with neighbor countries, federal units and municipalities this cooperation has strongly increased. It involves economy, culture (common identity), labor, and security (police control of lakes and rivers). But also with regard to these issues there is no real foreign policy of those cantons to be detected. The cantons have namely at their border specific interests which the federal government does not care for. Thus, they are obliged to pursue their interests in direct co-operation with their neighbors.

Individual cantons do not have any representation abroad. The only representation abroad is the representative of the conference of the presidents of the cantonal governments in Brussels. Each of the 26 cantons including Zurich or Berne is too small to have a special representative abroad. The cantons in general would also trust the foreign office of the federal governments and its diplomats to represent their interest in case needed. With regard to foreign policy there is also no contradictory political interest between the federal government and the cantons.

Thus e.g. the French speaking cantons are represented in the francophone network through the federal government. Similar situation can be observed for the German speaking cantons represented by the government in the network of the German speaking countries. There are no communities as in Belgium which would consider the federal government to have legitimacy in defending their proper interest abroad.

As already mentioned the cantons have full autonomy with regard to their treaty making power in all issues in which they have autonomous powers. With regard to all these cantonal powers cantons can conclude any treaty with foreign countries; this is part of their self rule. The federal government has no power to intervene. The only constitutional obligation provided is the information of the federal government concerning those treaties. Compared to other federal units the powers of the cantons are considerable. Often cantons have to acknowledge that the lower territorial units even of federal neighbors have much less powers in comparison to the powers of the cantons. One has also to take into account that in Switzerland two thirds of the income and expenditures are managed by the cantons and their municipalities. The cantons and the municipalities have even the power to make debts

in order to finance specific tasks also with regard to foreign country. Thus the fact that the Swiss cantons have not much international relations may also be due to the fact that they have usually partners with much less international powers.

With regard to developing countries there are cantonal contacts to those countries but most of those contacts are dealt with by the agency for developing and cooperation (SDC) integrated into the foreign affairs department. In the time after the transition in Eastern Europe there were much more contacts of cantonal governments and administrations with countries in Eastern Europe.

Cantons and also municipalities close to the borders have many informal contacts with lower authorities. This is more the case of the German speaking cantons probably because the lower authorities in Germany and Austria have more powers and more autonomy than their counterparts in France.

There are many possibilities of cantons to have access to the central government. The often mentioned conference of the presidents of the cantonal Governments has a direct representative within the federal administration. The cantons are the constituencies not only for the representatives in the upper chamber but also for those in the lower chamber. Thus, many cantons discuss issues of cantonal concern with members of the parliament before they have their regular session. Cantons have their networks with regard to health, justice, police, social security, economy, finances, zoning etc. In many of those conferences a federal minister or a high representative of the federal administration takes part and can be addressed by the members of the conference. These are only but some examples of possible contacts of the cantons with the federal government.

The degree of co-operation of cantonal and federal government and administration is very high. There are many additional informal contacts even on the level of the administration. Since the end of the 19<sup>th</sup> century the cantonal agent responsible for the food control and thus implementation of the federal standards with regard to the quality of food have founded a private association where they meet regularly. This association takes also care for continuous training of those agents. In general the assembly invites also the federal agent for food control to these meetings.

As the constitution clearly prohibits direct contacts of the cantons on the high diplomatic level with other countries, there is now direct official contact to other countries. However there is a tradition of cantonal govern-

ments to invite officially foreign ambassadors and to inform those representatives of the concern and the pride of the canton. Through these contacts cantons can always have informal contacts with the diplomatic representatives of other countries.

The Swiss federalism is con-federal when it has to deal with enforced implementation of federal policy with regard to the cantons. In fact unlike in Germany there is no real constitutional power of the federal government to use any kind of disciplinary measures against cantonal governments. Cantonal governments are elected by the people of the canton and they are accountable to their cantonal parliament. In some cantons the people can revoke by popular referendum its government. The federation however has no disciplinary power with regard to either cantonal Governments nor to the civil servants employed by the cantonal government.

With regard to asymmetries one has to acknowledge that although constitutionally all cantons are considered as equally sovereign. Only with regard to their voting powers the so called 6 half cantons have only one vote against two votes for other cantons in the upper chamber and only half a vote when in the constitutional referendum the vote of the cantons counted a part from the vote of the people. In fact however, there are important asymmetries based on the existing diversity with regard to language, territory, religion and geographic situation in the middle of Switzerland or close to the borders.

Those given facts can not be changed. However e.g. in the Bodensee Assembly even cantons without access to this lake take part in the official assembly. Such kind of accommodations are often provided based on the comity and friendly relationship existing among the different cantons.

## **4 • Conclusions**

Since the foundation of Switzerland the relationship among the different cantons, their relationship to foreign countries and to the federal government has always been adapted to the necessities of the concrete political, economical and cultural situation. There is no doubt that the actual challenges of globalization and European integration may have important impacts with regard to the Swiss federalism. Federalism all over the world however is much more flexible and adaptable to new situations and needs.

Thus one may hope that Switzerland will be able to adapt its federal system to the new developments. These developments will certainly give the cantons more powers and more possibilities for international cooperation. It would therefore be most important that all major cantons would provide on the level of their government a responsibility for external affairs with regard to other cantons and with regard to the countries of the EU. (max 400 words)

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## Annex 1. Treaties signed by the cantons and currently in force

Canton	Counterpart	Subject	Year
Basel	Government of Baden	Irrigation	1895 (1756)
Geneva	King of France	Several French town councils near Geneva	1749
Basel (Major and Town Council)	Count Karl Friedrich of Baden	Use of waters	1756
Solothurn	France	Territorial demarcation	1813
Geneva	Congress of Vienna	Territories ceded to Geneva	1815
Geneva	Congress of Vienna	Neutrality of Chablais and Faucigny	1815
Geneva	France	Territorial demarcation	1825
Basel	The Vatican	Appointment of bishops	1828
Majority of cantons	The Vatican	Reorganization of the Diocese of Basel	1828
Aargau	The Vatican	The taking of possession of the Bishop of Basel	1828
Thurgau	The Vatican	The taking of possession of the Bishop of Basel	1829
Thurgau	Grand Duchy of Baden	Boundary agreement	1831
Majority of cantons	Kingdom de Bavaria	Mutual bankruptcy recognition	1834
Geneva	Sardinia	Distribution of community property	1834

<b>Canton</b>	<b>Counterpart</b>	<b>Subject</b>	<b>Year</b>
Geneva	Sardinia	Distribution of community property	1834
Majority of cantons	Kingdom of Saxony	Mutual bankruptcy recognition	1837
Majority of cantons	Kingdom of Saxony	Mutual bankruptcy recognition	1837
St. Gallen	The Vatican	Reorganization of the Diocese	1847
Basel-Stadt	Government of Baden	Railway construction in Basel-Stadt	1853
Bern	The Vatican	The taking of possession of the Bishop of Basel	1864
Basel-Stadt	Grand Duchy of Baden-Trade Ministry	Railway enlargements	1870
Schaffhausen and Thurgau	Grand Duchy of Baden-Government	Water channelling	1878
Ticino	The Vatican	Appointment of a canonical administrator in Ticino	1884
Basel-Stadt	Grand Duchy of Baden	Railway works in Basel	1900
Schaffhausen	Grand Duchy of Baden-Government	Electrical conductions	1909
Basel	City of Lörrach	Water channelling	1912
Basel (Swiss federal railways)	German Government	Railway works	1923
Graubünden	Principality of Liechtenstein	Inheritance and sales taxes	1957
St.Gallen	Principality of Liechtenstein	Inheritance and sales taxes	1957

<b>Canton</b>	<b>Counterpart</b>	<b>Subject</b>	<b>Year</b>
Solothurn	France	Cross-border working force	1960 (repealed)
St.Gallen	Principality of Liechtenstein	Liechtenstein patients' attention at St.Gallen's hospital	1965
Graubünden	Germany	Inheritance and sales taxes	1975
St.Gallen, Graubünden i Liechtenstein	Vorarlberg	Buchs's High Technical School	1977
Schaffhausen	Baden Württemberg	Sewage disposal of given river waters	1977
St.Gallen	Principality of Liechtenstein	Vocational training	1978 (repealed)
St.Gallen	Principality of Liechtenstein	Teacher training	1981
Fribourg	The Vatican	Faculty of Theology	1985
St.Gallen	Principality of Liechtenstein	Sargans's school visit	1985
Fribourg	The Vatican	Faculty of Theology	1985
Basel	Haut-Rhin (France)	Mutual information on dangers and accidents	1987
St.Gallen	Principality of Liechtenstein	St.Gallen's pupils' training	1988
St.Gallen	Principality of Liechtenstein	School visits to Luxembourg	1988
Basel	Wieseverband	Sewage disposal	1996
Fribourg	Principality of Liechtenstein	Inheritance and sales taxes	1996

<b>Canton</b>	<b>Counterpart</b>	<b>Subject</b>	<b>Year</b>
Basel-Stadt, Basel-Land, Aargau, Jura, Solothurn	Elsass, Baden Württemberg, Rheinland-Pflaz	Constitution of the Oberrhein's Council	1997
Solothurn, Basel-Stadt, Basel-Landschaft, Aargau, Jura, via the Swiss Bundesrat	France, Germany, Grand Duchy of Luxemburg	Cross-border cooperation	1997
Ticino	Italy	Campione Town Council	1998
St. Gallen	Niederösterreich	Hunting licences' recognition	1999
Bern, Vaud, Neuchatel, Jura, represented by the Swiss Federal Council	France	Constitution of the Transjurasian Conference	2003
Bern	France, Germany, Grand Duchy of Luxemburg	Accession to Karlsruhe Convention	2005



# FEDERALISM AND MULTI-LEVEL GOVERNANCE IN FOREIGN AFFAIRS: A COMPARISON OF CANADA AND BELGIUM

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## 1 • Introduction

The issue of sub-federal entities in the foreign policy of federal states leads to the fundamental question in contemporary political science: who governs?<sup>1</sup> How are decisions concerning foreign affairs taken and implemented when the respective fields of endeavour of federal states are implicated? What is the role of federal states in the conclusion (negotiation, signature and ratification) and the implementation (or application) of international treaties when those treaties affect their respective competences?

Today virtually all government activity enters into the field of competence of at least one intergovernmental organization, and frequently many more.<sup>2</sup> In this way, in the context of international organizations and international conferences, themes are dealt with that relate to education, public health, cultural diversity, the environment, business subsidies, the treatment accorded to investors, the removal of non-tariff barriers, barriers to agriculture, to services and so forth.

The enlargement of the stakes on the international scene means that at the level of taking decisions concerning foreign policy, all ministries, from the least to the most important, have at least part of their activities that are internationalized. This implies that ministries of foreign affairs no longer

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- 1 R. Dahl, *Who Governs? Democracy and Power in the American City* (New Haven: Yale University Press, 1961).
  - 2 M. Karns & K. Mingst, *International Organizations: The Politics and Processes of Global Governance* (Boulder: Lynne Rienner, 2004); M.-C. Smouts, "Que reste-t-il de la politique étrangère" (1999) 88 *Pouvoirs* 11-29.

have the ability to centralize decision-making, representation and control functions concerning foreign affairs.

In this context, federal states are more aware that their political power and their sovereignty, or, in other words, their ability to formulate and implement policy, are subject to negotiation in multilateral fora. This phenomenon is magnified in Europe by the process of European integration and in North America by the North American Free Trade Agreement (NAFTA). Thus, since the 1960s, there has been a noticeable increase in the number of federal states that are interested, and participate actively in, international questions. In the United States, for instance, only four states had representative offices in other countries in 1970 versus 42 states with 233 representative offices in 30 countries in 2001.<sup>3</sup> In Germany, the states (Länder) have set up some 130 representative offices since 1970, of which 21 are located in the United States.<sup>4</sup> Quebec, one of the pioneers in the field, has some 30 representative offices around the world.<sup>5</sup> In Spain, the autonomous region of Catalonia operates some 50 representative offices abroad, and the Flemish government opened its 100<sup>th</sup> representative office in September 2004.<sup>6</sup> This phenomenon of sub-national representation is also evident in Japan and many other countries.<sup>7</sup>

- 3 E.H. Fry, *The Expanding Role of State and Local Governments in U.S. Foreign Affairs* (New York: Council on Foreign Relations Press, 1998); E.H. Fry, "Sub-State Strategies in an Era of Globalization and the Information Technology Revolution", in G. Lachapelle & S. Paquin, eds., *Mastering Globalization: New Sub-States' Governance and Strategies* (London: Routledge, 2005) 116-123.
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- 5 S. Paquin & L. Beaudoin, eds., *Histoire des relations internationales du Québec* (Montréal: VLB éditeur, 2006).
- 6 S. Paquin, *Paradiplomatie identitaire en Catalogne* (Québec: Les Presses de l'Université Laval, 2003); S. Paquin, "Les actions extérieures des entités subétatiques: quelle signification pour la politique comparée et la théorie des relations internationales?" in (2005) 12:2 *Rev. internationale de politique comparée* 129-142; S. Paquin, "La paradiplomatie identitaire: Le Québec, la Flandre et la Catalogne en relations internationales", research note in (2005) 23:3 *Politique et Sociétés* 203-237; S. Paquin, "Paradiplomatie identitaire et la diplomatie en Belgique. Le cas de la Flandre" (2003) 33:3 *Can. J. Pol. Sci.* 643-556; S. Paquin, "Globalization, European Integration and the Rise of Neo-Nationalism in Scotland" (2002) 8:1 *Nationalism and Ethnic Politics* 55-80.
- 7 P. Jain, *Japan's Subnational Governments in International Affairs* (New York: Routledge, 2005); N. Cornago, "Exploring the global dimensions of paradiplomacy. Functional and normative dynamics in the global spreading of subnational involvement in international affairs", Workshop on Constituent Units in International Affairs, Hanover, Germany (October 2000) [unpublished].

In Canada, following Belgium, Germany, Austria, Switzerland and Spain, the role of sub-national entities in foreign policy has arisen as an election issue. During the federal elections of 2006 in Canada, the leader of the Conservative Party, Stephen Harper, confirmed that he was inspired by the agreement concerning Quebec's participation at the Francophone Summit in making arrangements to allow Quebec to participate at meetings of UNESCO. Since then, agreement has been reached on the role of Quebec within the Canadian delegation to UNESCO and a matter has been referred to the Council of the Federation to ascertain how Canadian provinces can play a more significant role in Canadian foreign policy when their subjects of jurisdiction arise. The question of research is therefore not simply theoretic.

This question generates great debate in Canada and is subject to two opposing positions. The first, asserted by the Quebec's Government, seeks a significant role for the provinces in all phases of the conclusion of treaties through the agency of the Council of the Federation. It would amount to giving a role of co-decision to the provinces as well as a place at the negotiating table for their representatives. The second, maintained, among others, by the Liberal Party of Canada, asserts that international relations must remain the monopoly of the federal government to ensure the coherence and efficiency of Canada's foreign policy.

At the level of theory concerning federalism and international affairs the two conceptions also enter into conflict: the centralizing school and the school devoted to multi-level governance. At the level of the centralizing approach, one of the leading theoreticians of federalism, Prof. Kenneth Wheare, has asserted that a monopoly of foreign affairs is a "minimum power" of all federal governments.<sup>8</sup> In his landmark study, Wheare highlighted the negative consequences of an unbundling of central control over foreign affairs for the national interest and for the functioning of the international system. In the same vein Robert Davis has maintained that questions concerning international relations are at the heart of federal regimes.<sup>9</sup> Centralization of the foreign affairs power is a requirement of international law according to Bertrand Badie and Marie-Claude Smouts, because a centralized political system is a necessary condition for states to be able to play the role they are assigned in international law and practice. In essence, with-

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8 K.C. Wheare, *Federal Government* (Oxford: Oxford University Press, 1967).

9 R. Davis, "The Federal Principle Reconsidered" in A. Wildavsky, ed., *American Federalism in Perspective* (Boston: Little Brown, 1967).

out the existence of a central government which has a plenary authority on its territory in relation to foreign affairs and the ability to participate in international relations and to enforce international obligations in the domestic order, inter-state relations can only be seriously compromised.<sup>10</sup> If a power of co-decision is granted in federal states regarding foreign affairs, this risks paralyzing a state's foreign affairs and harming the state's image in the international arena.<sup>11</sup> In Canada many foreign affairs specialists have underlined the constitutional difficulties for the federal government of negotiating and implementing international agreements when these involve provincial subjects of jurisdiction.<sup>12</sup>

Supporters of the concept of multi-level governance take a different view.<sup>13</sup> According to Brian Hocking, diplomacy or foreign policy cannot be considered a monopoly of the central government.<sup>14</sup> Federal states will always have an important role, even if it is only for the purposes of implementing international agreements concluded by the state. In addition, giving a monopoly over foreign affairs to central governments in federal regimes risks putting in danger the distribution of powers between the different orders of government for the benefit of central authorities. According to Hocking, there are many examples of federal states that must operate with important constitutional limitations on their powers.

According to Hocking, foreign policy should be thought of as a complex system where different actors at the heart of a federal state structure tangle with each other. Specialists in favour of multi-level governance thus main-

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10 B. Badie & M.-C. Smouts, *Le retournement du monde, Sociologie de la scène internationale*, 3d ed., rev'd (Paris: PNFSP et Dalloz, 1999).

11 F. Scharpf, "The Joint-Decision Trap: Lessons from the German Federalism and European Integration" (1988) 66(3) Pub. Admin. 239-278.

12 D.M. Brown & E.H. Fry, eds., *States and Provinces in the International Economy* (Berkeley: Institute of Governmental Studies Press, 1993); G. Skogstad, "International Trade Policy and Canadian Federalism: A Constructive Tension" in H. Bakvis & G. Skogstad, eds., *Canadian Federalism: Performance, Effectiveness and Legitimacy* (Toronto: Oxford University Press, 2001).

13 I. Bache & M. Flinders, eds., *Multi-Level Governance* (Oxford: Oxford University Press, 2004); L. Hooghe, ed., *Cohesion Policy and European Integration: Building Multi-Level Governance* (Oxford: Oxford University Press, 1996); L. Hooghe & G. Marks, "Europe with the Regions: Channels of Regional Representation in the European Union" (1996) 26:1 Publius 73; L. Hooghe & G. Marks, "Unraveling the Central State, But How? Types of Multi-Level Governance" (2003) 97:2 Am. Pol. Sci. Rev. 233; C. Jeffery, "Sub-National Mobilization and European Integration: Does it Make Any Difference?" (2000) 38:1 J. Common Market Studies 1.

14 B. Hocking, *Localizing Foreign Policy: Non-Central Governments and Multilayered Diplomacy* (London: St.Martin's Press, 1993).

tain that there are “obligations of cooperation” that exist between central governments and federal states. In order to put into practice a coherent foreign policy, it is important to consult, and indeed accord, an important role for federal states by means of intergovernmental mechanisms, so that they can participate actively in the country’s foreign policy. Regional integration, the growth of multilateralism and globalization have thus rendered centralist theses obsolete.

The requirements of cooperation between the different orders of government are more and more important and it is for this reason that one notices a considerable increase in executive federalism or intergovernmental relations in respect of the conclusion of international treaties in federal regimes.<sup>15</sup> In this respect, Canada exhibits this tendency even if temptation to govern from the centre remains dominant.<sup>16</sup> According to Richard Simeon, intergovernmental relations is the weakest link of Canadian federalism.<sup>17</sup> According to a number of experts (Smiley, Watts, Simeon, Gagnon, Rocher, Brown), the culture of intergovernmentalism in Canada is largely informal, intergovernmental arrangements are rarely constraining and work instead by “soft” consensus.

Hence, the question for research: is the fact that we give an important role to federal states in the foreign policy of a country by means of institutionalized intergovernmental mechanisms something that affects negatively or positively the foreign policy of a state? And is this a positive- or a negative-sum game at the level of the conclusion and implementation of treaties?

The more specific object of this article is to assess the efficiency of the two systems of governance with respect to foreign policy. The proposed research will allow us to evaluate the performance of the two contrasting systems: the Canadian system, where the decision-making process is more centralized and where intergovernmental mechanisms are poorly institutionalized, and the Belgian system, where federal states have a role of co-decision and where intergovernmental mechanisms are highly institutionalized. In comparing the performance of these two systems, we are going to be in a position to assess the validity of those who advocate a centralist position versus those who advocate a multi-level governance view.

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15 J.P. Meekison, ed., *Relations intergouvernementales dans les pays fédérés. Une série d’essais sur la pratique de la gouvernance fédérale* (Ottawa: Forum des Fédérations) 105-123 [Meekison].

16 D.J. Savoie, “Power at the Apex: Executive Dominance” in J. Bickerton & A.-G. Gagnon, eds., *Canadian Politics*, 4th ed. (New York: Broadview Press, 2004) 145-163.

17 R. Simeon, “Conclusion” in Meekison, *supra*, note 16.

The methodology employed here is comparative. The two cases under examination are very similar, except with respect to the level of the object of study. We therefore have to compare two contrasting cases which we can submit to the same research questions. At the level of political systems, the two cases being compared share considerable resemblances given that they involve decentralized federal regimes, two multicultural and pluri-ethnic countries and two industrialized democracies that have a liberal conception of relations between state and citizen. But the cases of Canada and Belgium remain cases that are fundamentally distinct, where it matters, that is to say, at the level of their system of governance in matters of foreign policy. It is indeed in the Belgian federation that the sub-state actors have the most important role to play within the foreign policy processes of the nation-state.

This chapter is divided into three parts. Following the introduction, the second part deals with the Canadian case and the third with the Belgian case. We will then offer a comparative analysis centered on the Canadian case. The conclusion is that, on a preliminary view, the Belgian system seems to be more efficient but other in-depth studies are required to form definite conclusions.

## **2 • Federalism and International Relations in Canada**

In Canada the role of provinces in Canada's foreign policy has become an issue in electoral debate. Following the election in April 2003 of the Liberal Party in Quebec led by Jean Charest, the Quebec government claimed, as an important matter in intergovernmental relations, the place of Quebec (and that of Canada's other provinces) in the international organizations and negotiations of Canada.

In Canada the issue is particularly important because since 2002 Quebec's National Assembly has adopted by unanimity a law that requires the National Assembly's approval of all international agreements concluded by Canada where they involve Quebec's matters of competence. With such a law, the National Assembly of Quebec has become the first British-style legislature to be closely associated with the process of concluding international undertakings by the central government.<sup>18</sup>

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<sup>18</sup> Bill 52, *An Act to amend the Act respecting the Ministère des Relations internationales and other legislative provisions*, 2nd Sess., 36<sup>th</sup> Leg., Quebec, 2002 (entered into force 8 June 2002).

In June 2004, for example, the National Assembly approved two international agreements that Ottawa concluded, with Chile – despite the fact that it had already been in force for seven years – and with Costa Rica, which had been in force since 2001. While the Liberals voted to approve these treaties, the Parti Québécois voted against.<sup>19</sup> The Parti Québécois justified its refusal by referring to the fact that the two treaties included measures comparable to those in the much-criticized NAFTA Ch. 11. In 2005 the Quebec National Assembly became the first parliament in the world - even before the Parliament of Canada – to approve the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions.

Many commentators on Canadian current events have not understood the importance of what is at stake when the Quebec government demands a place in Canada's international organizations and negotiations when its fields of competence are in play. Many have linked this reaction to Quebec nationalism, suggesting that this question is linked more to whim than reason.

Thus, one could see at this time on The Globe and Mail editorial page the statement that:

Even the most decentralized federations reserve one power for the central government: the power to represent the country abroad. In foreign affairs, a nation must speak with one voice...<sup>20</sup>

To give a role to the provinces with respect to international affairs “is a recipe for diplomatic disaster.”<sup>21</sup> The Ottawa Citizen added:

The idea is ridiculous. Operating on the international stage – at the United Nations, signing treaties, declaring and ending wars – is one of the core functions of a national government.<sup>22</sup>

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<sup>19</sup> É. Desrosier, “Les temps changent” *Le Devoir* (5 June 2004) C3.

<sup>20</sup> “Why Canada Speaks for Quebec Abroad,” Editorial, *The Globe and Mail* (5 October 2005) A22.

<sup>21</sup> *Ibid.*

<sup>22</sup> “One Country, One Voice,” Editorial, *The Ottawa Citizen* (5 October 2005) online: The Ottawa Citizen <<http://www.canada.com/ottawacitizen/index.html>>.

The same sentiments were expressed by the National Post:

For a nation to be well-represented abroad, it must speak with one voice. If Quebec gets its wish to have standing at international negotiations relevant to areas of provincial jurisdiction – UNESCO, which deals with education and cultural affairs, is one of its preferred examples – Canada’s official position will become incomprehensible on any issue on which the federal government and the province are not in full agreement.<sup>23</sup>

This kind of reaction was not restricted to Anglophone Canada. In Canada, the Editorial Page Editor of the daily *La Presse*, André Pratte, wrote on November 17, 2004 that “The Quebecois have no reason to complain about the manner in which the government of Canada is defending their interests in the world.” He maintained, moreover, that “international relations belong to federal jurisdiction.”<sup>24</sup> The first assertion has to be demonstrated, the second is plainly wrong.

Despite much evidence to the contrary, federal government representatives continue to maintain that the government of Canada possesses an exclusive monopoly with respect to international relations, meaning that federalism has no real impact on the conduct of international relations by the federal government. In fact, in Canada there exists no constitutional acknowledgement of an exclusive federal power in international relations. Federalism and provincial rights have had important effects on the conduct of international relations. The imperative to cooperate is important and greatly under-estimated by federal and provincial representatives. Canada even has a number of characteristics of systems of multi-level governance.

The Constitution Act of 1867 does not deal much with the question of international relations. In fact, there is no attribution by the Constitution of the exclusive power of foreign affairs. This state of affairs is not unusual since in 1867 Canada did not become a sovereign government, but a dominion at the heart of the British Empire.

Thus, responsibility for foreign affairs rested not with the Canadian government, but rather with London. The only article of the Constitution Act of

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23 “Let Canada Speak with One Voice,” Editorial, *The National Post* (2 September 2005) online: The National Post <<http://www.nationalpost.com/>>.

24 A. Pratte, “La place du Québec” *La Presse* (17 November 2004), online: Cyberpresse <<http://www.cyberpresse.ca/>>.



1867 that dealt with international law was Article 132 concerning imperial treaties. This article specified that: "The Parliament and the Government of Canada shall have all of the powers necessary to fulfill Canada's obligations, or those of its provinces, as part of the British Empire, towards foreign countries, arising from treaties concluded between the empire and those foreign countries." In sum, the federal government could not conclude treaties but had the capacity to implement empire treaties even within the provinces' fields of power.

It was only with the Statute of Westminster of 1931 that Canada acquired its sovereignty in matters of foreign affairs. The question was then raised rapidly 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 within the exclusive jurisdiction of the provinces according to the constitution? It was the Ontario government, in the Labour Conventions case, that challenged the ability of the Canadian government to legislate in provincial fields of jurisdiction in order to implement international engagements.<sup>25</sup> Following his election in 1930, the Prime Minister of Canada, R. B. Bennett, ratified three ILO Conventions: one applicable to hours of work, one on the weekly period of rest, and one on the establishment of a minimum wage. In implementing these conventions for the provinces, the government of Canada interfered in the field of labour which involves provincial jurisdiction.

The Judicial Committee of the Privy Council in London - at that time Canada's final court of appeal - gave its judgment in 1937. The judgment is of fundamental importance regarding the powers of the Government of Canada and the rights of provinces with respect to international relations. The judges observed that federalism is the foundation of Canada and that by virtue of the principle of Parliamentary sovereignty, the provinces are not obliged to undertake legislative measures in order to implement a treaty concluded by the executive branch of the federal government.

Since then the conclusion of treaties follows two fundamental steps: 1) the conclusion of the treaty, that is, its negotiation, signature and ratification, and 2) its implementation. The first step belongs exclusively to the federal government. The second step, that is, the adoption of the

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<sup>25</sup> A. Patry, *Le Québec dans le monde* (Montréal: Leméac, 1980) 155.

legislative measures necessary in order to apply a treaty as a matter of domestic law, belongs exclusively to the federal and provincial governments. It is therefore necessary to incorporate treaties as a matter of domestic law by legislative action at the appropriate level. In Canada, a treaty does not apply apart from applicable law. Judges judge the law and not treaties.

For example, the 1958 United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards was concluded by the federal government (step 1) but was implemented (step 2) by the two levels of government, federal and provincial. The Hague Convention on Civil Aspects of the Abduction of Children was concluded by the federal government (step 1) but implemented exclusively by the provinces (step 2).

This constitutional situation poses a sizeable problem for Canada: provincial collaboration is inevitable when the provincial fields of power are affected by a treaty or international convention. This problem is even more obvious when it is a question of Canada's involvement in the work of international organizations that affect provincial areas of competence, such as UNESCO, the World Health Organization or even the International Labour Organization (ILO). To avoid being denounced, the federal government has historically adopted three strategies: 1) refusal to participate or to engage, 2) use of the federal clause, and; 3) the creation of formal consultative mechanisms with the provinces' mechanisms of multi-level governance.

### **3 • Refusal to Participate or Engage**

Refusal to participate or to engage means that the government of Canada will abstain from participating in a final vote when a treaty affects the provincial spheres of competence, or it will simply refuse to participate in the work of an international organization. Since 1938, for instance, a semi-official but very detailed procedure has been put in place to define Canada's participation in the ILO, since work is a matter of provincial jurisdiction. When a draft Convention was under consideration, the Canadian delegation had to vote in favour of taking the matter into consideration but had to abstain from the final vote if the draft Convention applied to a matter of provincial jurisdiction, unless the "provinces had provided proof of sufficient support in order for reasonable hope that it would be effectively

adopted in Canada”.<sup>26</sup> In the contrary case, the federal government had to find ways to limit the extent of the Convention to matters falling under federal jurisdiction. For example, the Canadian delegation at the San Francisco Convention of 1945 objected to the U.N. Charter’s making reference to full employment among the aims of the United Nations because labour is a matter of provincial jurisdiction.<sup>27</sup>

In other instances, the Canadian government has refused to participate in the work of certain international organizations. It declined on several occasions the invitations to participate in the Hague Conference on Private International Law. It was not among the founders in 1955 and did not become a member until 1968.

Federalism and provincial rights with respect to foreign affairs in Canada have a direct quantitative impact, in the sense that the federal government has ratified fewer international treaties than countries with a unitary structure. Prior to 1961 Canada had ratified only 18 of the 111 conventions adopted by the ILO.<sup>28</sup> With respect to Conventions concerning human rights, Canada had ratified only 6 of 18 by 1969 whereas the average among countries of a unitary structure was ten.<sup>29</sup>

#### 4 • Use of the Federal Clause

This provision implies that Canada has no requirement to ascertain the application of an international treaty coming from an international organization if it affects the jurisdiction of a province. This compromises Canada’s image, but equally its ability to influence international relations. The most recent solution is to have recourse to federal-state clauses. When an international negotiation affects a field of provincial jurisdiction, Canada will support the process but secure the addition of a federal clause in the final text. The federal clause (sometimes referred to as the “Canada Clause”)

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26 “Some proposals concerning Canada and the International Labour Organization”, a memorandum of the Permanent Delegate of Canada to the League of Nations, Nov. 30, 1938, cited by R. Dehousse, *Fédéralisme et relations internationales* (Brussels: Bruylant, 1991) 191 [Dehousse].

27 J. Eayrs, “Canadian Federalism and the United Nations” (1950) 16 Canadian Journal of Political Science 175.

28 Dehousse, *supra* note 27 at 181.

29 *Ibid.*

subjects the treaty's implementation to Canada's constitutional requirements and confirms that the federal government undertakes to observe the treaty only within the limits of its constitutional competencies.<sup>30</sup>

Canada has frequent recourse to such clauses because this permits it to avoid the question of jurisdiction with the provinces. Countries with unitary structures will contest such clauses since they signify that Canada is bound only to the extent of its powers, which is not the case with a country like France. In addition, there is no obligation of result for Canada. The question is therefore posed: is the Canadian government seeking to meaningfully involve the provinces in the process?

## **5 • The Creation of Formal Mechanisms of Consultation with the Provinces: Towards Multi-Level Governance**

Federal-state clauses evolved and, most notably in commercial agreements, began to impose obligations so that federal states could seek to make their provinces adopt international agreements. This transformation of federal clauses and the formulation of the Gérin-Lajoie Doctrine in Quebec in 1965, whereby Quebec affirmed the right to represent itself when its fields of competence are involved, forced the federal government to consult the provinces when international treaties affect their fields of power since, if not, they risk being denounced.<sup>31</sup> Because the federal government is conscious of its limits, many consultative mechanisms between the federal government and the provinces have been put forward.<sup>32</sup>

The first federal-provincial understanding, in 1974, dealt with the Hague Conference on Private International Law. With respect to treaties adopted at the Hague Conference, the federal Minister of Justice created a consultative group composed of civil servants of provincial ministries of

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30 A. Patry, *La compétence internationale des provinces canadiennes* (Montréal: André R. Dorais éditeur, 2003) 6.

31 S. Paquin, ed., *Les relations internationales du Québec depuis la doctrine Gérin-Lajoie (1965-2005)* (Ste-Foy: Presses de l'Université Laval, 2006).

32 J. Zeigel, "Treaty Making and Implementation Powers in Canada: The Continuing Dilemma", in B. Cheng & E.D. Brown, eds., *Contemporary Problems of International Law: Essays in Honour of Georg Schwarzenberger on his Eightieth Birthday* (Agincourt: Carswell, 1988); D. Turp, *Pour une intensification des relations du Québec avec les institutions internationales* (Québec: Ministère des Relations internationales, Nov. 1, 2002).

justice representing four regions of Canada. This consultative group is replaced every four years and is tasked with giving advice to the Minister of Justice on questions of private international law. Following the recommendations of this group, the provincial ministers are consulted in order to specify Canada's negotiating position and to determine questions of implementation. Moreover, provincial representatives can form part of the Canadian delegation to sessions of the Hague Conference. Afterwards, the Uniform Law Conference of Canada prepares model laws that the provinces may adopt if they wish.<sup>33</sup>

Other consultative mechanisms have come into being, such as the federal-provincial Conference on ministers responsible for human rights issues. The Conference meets biennially and gathers a standing committee which includes representatives of the federal government, the provinces and territories. The Committee is tasked with the job of proceeding to consultations and providing liaison between the different orders of government. The specific functions of the Committee: include serving as a consultation mechanism on the ratification of international human rights conventions; encouraging information exchange among governments in Canada with respect to the interpretation and implementation of international human rights instruments and related matters; facilitating the preparation of reports on conventions that have been ratified, as well as other reports on human rights requested by the United Nations or other organizations; encouraging information exchanges and research on human rights matters of common interest to all jurisdictions; providing views with respect to the development of Canada's positions on international human rights issues; and organizing and providing follow-up to ministerial conferences on human rights.<sup>34</sup>

Decisions on ratification and implementation of conventions concerning human rights are taken in the framework of these conferences.

In the field of education, in 1977 the Canadian Ministry of Foreign Affairs concluded an understanding with the Canadian Council of Ministers of Education (CCME) that foresaw that for all international matters involving questions related to education, the CCME would recommend the composi-

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33 A.C. Belluscio, "La conclusion et la mise en œuvre de traités dans les États unitaires et fédérés" [unpublished].

34 See the Heritage Canada site online <[www.pch.gc.ca/progs/pdp-hrp/docs/core\\_e.cfm](http://www.pch.gc.ca/progs/pdp-hrp/docs/core_e.cfm)>.

tion of the Canadian delegation and designate the head of mission that would negotiate on behalf of the provinces. This understanding, agreed to by all provinces including Quebec, has since regulated Canada's international relations in the field of education.<sup>35</sup>

In the economic field, the federal government also instituted different consultative mechanisms with the provinces. Since the beginning of the Tokyo Round, the government of Canada has developed consultative mechanisms on federal initiatives related to international trade.<sup>36</sup> These mechanisms were required due to the fact that the Tokyo Round negotiations began to touch upon matters clearly within provincial jurisdiction. Since the subsequent rounds have also involved provincial jurisdiction, the mechanisms have remained in place.<sup>37</sup> These consultations have increased in importance since international negotiations increasingly deal with domestic policy concerning subsidies to business or provincial or local regulations that have the effect of creating distortions or obstructing international trade.

These practices of intergovernmental negotiations will continue in a number of fora including e-trade. The Committee brings together every three months federal, provincial and territorial civil servants in order to exchange information and to identify a Canadian position on a range of questions related to commercial policy, including negotiations.<sup>38</sup>

The federal government must thus consult the provinces to obtain technical opinions and to develop the arguments of negotiation. Nevertheless, these mechanisms do not signify that the federal government recognizes a role for the provinces with respect to international relations. The Minister of Foreign Affairs frequently recalls that the steps taken to conclude a treaty arise from the federal government's discretionary power and that Canada should speak with a single voice on the international scene.

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35 Y. Dussault, "Les négociations interaméricaines en matière d'éducation: le rôle des acteurs fédérés canadiens" (2004) [unpublished].

36 I. Bernier, "La Constitution canadienne et la réglementation des relations économiques internationales au sortir du 'Tokyo Round'" (1979) 20 *Cahiers de Droit* 673ff.

37 H.S. Fairley, "Jurisdictional Limits on National Purpose: Ottawa, The Provinces and Free Trade with the United States" in M. Gold & D. Leyton-Brown, eds., *Trade-Offs on Free Trade: the Canada-US Free Trade Agreement* (Toronto: Carswell, 1988).

38 S. de Boer, "Canadian Provinces, US States and North American Integration: Bench Warmers or Key Players?" *Choices IRPP* 8:4 (2002) 4 [de Boer].

## 6 • Federalism and International Relations in Belgium

Since 1993 Belgium is, according to the first article of its Constitution, “a federal state composed of communities and regions.” Belgian federalism has consequences for the conduct of international relations. The constitutional revision of 1993, which sought to end debate about the division of powers between the federal states, the communities and regions, permits the regions and communities to become real international actors, something which includes the power of representation and to sign treaties with sovereign states.

The Belgian sovereign, who previously had exclusive power over international relations, continues to do so at present, “without prejudice to the power of communities and regions to regulate international cooperation, including the conclusion of treaties, concerning subjects arising from their powers under the Constitution or by virtue of it.”<sup>39</sup> The powers of communities in international relations are “cooperation among communities, as well as international cooperation, including the conclusion of treaties for subjects foreseen in paras. 1 and 2 [cultural matters, education (with exceptions)].”<sup>40</sup>

Since the revision of the Constitution in 1993, the organization of Belgium’s international relations is fundamentally adapted to the federal state structure. The autonomy of the Belgian federal states with regard to external policy is unique in the world. Its exceptional nature arises from recognized constitutional principle of “in foro interno, in foro externo”, which implies an absence of hierarchy between different levels of administration.

In essence, in conformity with Article 167 of the Belgian Constitution, international cooperation is from now on in the hands of the federal government, the communities and regions, each of which operates within the limits of its respective powers, including with respect to the conclusion of treaties. In sum, the Constitution recognizes that the federal states of Belgium (including communities and regions, but which in the case of Flanders

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39 É. Philippart, “Gouvernance à niveau multiple et relations extérieures: le développement de la ‘paradiplomatie’ au sein de l’Union européenne et la nouvelle donne belge” XXIX:3 *Etudes internationales* (1998) 632.

40 See Art. 127 of the Constitution of the Kingdom of Belgium, cited in A. Alen & R. Ergec, *La Belgique fédérale après la quatrième réforme de l’État de 1993*, 2<sup>e</sup> ed. (Bruxelles: Ministère des Affaires étrangères de Belgique, 1998) 57 [Alen].

have merged together) are sovereign within their fields of competence and this arrangement applies to international relations. This provision rests on the idea of equally applying the principle of exclusivity of powers of federal states observed in the internal order to the field of international relations. For this reason, the Belgian federal states possess a true international legal personality and, in practice, this means that foreign countries and international organizations must accept the idea that they are negotiating and concluding treaties with the federating states of a federal state. Sub-federal units' treaties with foreign states are considered *sui generis* in Belgium in terms of their status in international law.

Since the revision of the Constitution in 1993, there are three categories of treaty in Belgium: 1) treaties that exclusively involve the powers of the federal government and which are concluded and ratified by this same federal government; 2) treaties related exclusively to community or regional powers and which are concluded and ratified by communities and regions; and finally; 3) mixed treaties. When an agreement involves federal powers and either community or regional powers at the same time, the treaty is concluded according to a special procedure convened among the different orders of government. It must also be approved by all of the parliaments involved.<sup>41</sup>

Thus, in Belgium, the substates actors enjoy greater autonomy concerning foreign policy than all other regions in the world. Quebec, which is often cited as a leader in regional autonomy, is relatively behind when compared with Belgium's regions and communities. The new system of multi-level governance allows regions to become true international actors, which includes the power to sign actual treaties with sovereign states.

They also possess the right of representation, that is, the right to open "mini-embassies". The communities and regions of Belgium have the option of designating their own representatives abroad, whether as part of, or separately from, the diplomatic and consular posts of the Belgian state.<sup>42</sup> Flanders has 100 "quasi-embassies" around the world. Within Europe, the Flemish have generally preferred to maintain representatives outside Belgian embassies whereas elsewhere in the world, they have generally sought the opposite. The status and exercise of the functions of these representatives is fixed by virtue of a cooperation agreement concluded in 1995 between

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<sup>41</sup> *Ibid.*

<sup>42</sup> Interview of Herbert Tombeur of the Flemish Ministry for Administrative Affairs, Foreign Policy, Media and Tourism (July 2001) Brussels.



federal authorities and the federative states. The Belgian ambassador has no superior hierarchical authority over the representatives of federated entities.<sup>43</sup> As one Flemish civil servant has observed, with respect to many matters, “there is nothing more useless than a Belgian ambassador.”<sup>44</sup>

With the Lambermont Accords of June 29, 2001, which are accords of a constitutional character, even power over foreign trade has been regionalized. Flanders is probably the most globalized region in the world: it exports 89% of its GNP. No country is as decentralized as Belgium when it comes to international relations.

## **7 · How are Decisions Taken in this System of Multi-Level Governance?**

In order to avoid conflicts and ensure coherence in Belgian foreign policy, an Interministerial Committee on Foreign Policy (ICFP) has been created. The Committee brings together the representatives of different authorities at the highest political and administrative level and has been conceived of as an institution of permanent dialogue to avoid conflicts.<sup>45</sup> The Committee shelters many sectoral interministerial conferences. The ICFP is an organism for the exchange of information and dialogue where decisions are taken by consensus. If consensus is not achieved, Belgium abstains from taking a position, although this is a positive abstention which signifies that Belgium does not block the decision-making process. This method of proceeding puts considerable pressure on those involved to arrive at a joint position.

The ICFP Secretariat is maintained by the “Foreign Service in charge of Relations with Communities and Regions”. This Service looks after both the organization and management of working groups and committees that are active in the context of the ICFP.<sup>46</sup> It is via this system that mixed treaties are concluded, as are positions taken by Belgium in intergovernmental organizations.

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<sup>43</sup> *Alen*, *supra*, note 41 at 57ff.

<sup>44</sup> Interview with an anonymous Flemish civil servant (July 2001).

<sup>45</sup> C.-E. Lagasse, “Le système des relations internationales dans la Belgique fédérale” (1997) *Courrier Hebdomadaire* 1549-1550, at p. 10.

<sup>46</sup> B. Kerremans, “Determining a European Policy in a Multi-Level Setting: The Case of Specialized Co-ordination in Belgium” (2000) 10:1 *Regional and Federal Studies* at 42-44.

On June 30, 1994 a Framework Agreement was promulgated concerning the participation of Belgium and its federative entities in international organizations. The Framework Agreement imposes a requirement of systematic and horizontal dialogue, which is a precondition of each ministerial meeting of an international organization.

Representatives of Belgium's Prime Minister, other federal ministries and community and regional representatives responsible at a technical level or responsible for external relations are invited to all dialogue meetings. Under the terms of Article 7 of the Cooperation Agreement, a working group on the representation of the Kingdom of Belgium to international organizations ensures follow-up and general coordination. The Working Group is required to meet at regular intervals within the framework of the ICFP. Due to the absence of hierarchy among federal, community and regional authorities, the proper functioning of the system depends entirely upon the good faith of the different authorities. Federal diplomats involved with the process assert that the system of cooperation is a kind of appeal system, with a Dialogue Committee at its head.

However, the situation is different at the level of working groups within the ICFP. Cabinet and administrative delegates sit on working groups. In parallel, two working groups have been created under the ICFP. A number of formal and informal mechanisms have been created under cooperation agreements at this level. In practice, the common external policy of the Belgian federation is maintained above all by working groups.<sup>47</sup>

The Belgian federative states also have the right to directly formulate policy in the multilateral sphere, that is, within intergovernmental organizations.<sup>48</sup> For the last few years the federative states are represented within the Belgian delegation to international organizations such as the European Union and the WTO. It is important to emphasize that they do not occupy a separate seat in these organizations but the seat of Belgium. In the case of certain organizations which deal with matters that are exclusively communitarian or regional, Belgium is represented only by ministries of the federated states. At UNESCO, this means that for most of the time there is no representative of the Belgian state, since the organization's mandate is largely outside of federal Belgian jurisdiction. If, however, UNESCO

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<sup>47</sup> *Ibid.* at 44.

<sup>48</sup> F. Massart-Piérard, "Politique des relations extérieures et identité politique: la stratégie des entités fédérées de Belgique" *Études internationales* XXX:4 (1999) 714 [Massart-Piérard].

wanted to accept a new member like Palestine (or Quebec...) it would be a representative of Belgium that would occupy the Belgian seat. With respect to la Francophonie, the French Community of Belgium is a member state and is not placed alongside the Kingdom of Belgium. By comparison, Quebec has the status of a participating government and goes by the designation of "Canada-Quebec" in the organization.

Since hierarchic principles do not apply, sub-state entities in Belgium play a more important role than an ambassador named by the federal government in Belgium. When there is a question of content, such as in the case of a provisional agreement, it is the Flemish and Walloon representatives that will have a say. At the moment, there appear to be few conflicts between the two communities in this regard.<sup>49</sup>

In sum, in Belgium different levels of government have concluded a series of cooperation agreements with respect to the representation of Belgium among international and supranational organizations. The most important agreement involves Belgium's participation in the EU Council of Ministers, where ministers of the federative states can represent Belgium and conclude agreements in its name.<sup>50</sup>

The Belgian position in the EU Council of Ministers is discussed in a special coordinating section within the Ministry of Foreign Affairs between all the orders of government. In some instances, account has to be taken of the existence of levels of power and non-hierarchical juridical order. As Eric Philippart states:

In many cases, Belgium can no longer participate in the work of the EU Council without the adoption of common provisional position by the different levels of power concerned.<sup>51</sup> This situation has only occurred four times in 15 years. A rotation system has been initiated among the communities and regions so that Belgium is only represented in each ministerial council by a single minister. At the time of the last Belgian presidency

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49 Interview of Herbert Tombeur of the Flemish Ministry for Administrative Affairs, Foreign Policy, Media and Tourism (July 2001) Brussels.

50 F. Massart-Piérard, "Les entités fédérées de Belgique. Acteurs décisionnels au sein de l'Union européenne" (1999) 18:1 *Politique et Sociétés* 25.

51 É. Philippart, "Gouvernance à niveau multiple et relations extérieures : le développement de la 'paradiplomatie' au sein de l'Union européenne et la nouvelle donne belge" (1998) XXIX:3 *Etudes internationales* 639.

of the EU, a first in EU history occurred since the ministers of the federative states officially presided over the EU. Thus, on the basis of intra-Belgian accords, the Flemish Ministers of Education, Youth and Tourism presided over the EU Council of Ministers while the Flemish Minister of Culture organized an informal ministerial council on culture.

## 8 • Comparative Analysis

Belgium's recent experience is ambiguous. It is true that sub-national Belgian entities enjoy more autonomy than all other subnational entities concerning paradiplomacy. The new Belgian system of international relations allows regions to become true international actors which includes the power to sign treaties with sovereign states. As a result of the Lambertmont Accords of June 29, 2001, even international trade has been regionalized. The Belgian federal states are the most vigorous subfederal actors on the international stage.

Even if, a decade after the St. Michel Agreements, there is little evidence of conflict between Flemish, Walloon and federal representatives, the new system of international relations in Belgium, which can be regarded as a response to previous problems, could prove to be a new source of tension in a country that has difficulty forming coalition governments. As Eric Philippart observes:

The system has become harder to manage because it presupposes a number of vertical and horizontal actions. It is thus more diffuse, lacking in leadership and centers of gravity.<sup>52</sup>

Will the Belgian foreign policy system survive the next constitutional crisis that is, it seems, inevitable?

In addition, according to Françoise Massart-Piérard, "the protection of territorial integrity appears to be something that is becoming an important part of the Flemish national interest. It dictates Flanders' international behaviour."<sup>53</sup> For instance, Flanders is opposed to the idea of a Framework

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<sup>52</sup> *Ibid.* at 640.

<sup>53</sup> *Massart-Piérard, supra* note 49 at 710.

Convention on the Protection of National Minorities put forward by the Council of Europe in October 1993. According to Flemish authorities, the Framework Convention would endanger the Flemish language regime by granting additional rights to Francophones in the areas surrounding Brussels. The Flemish community therefore sought to introduce a reservation by which Belgium would not be held to have any national minorities. Thus, Belgium had to abstain from signing the Convention. As Françoise Massart-Piérard emphasizes:

In this case, where matters vital to its interests were involved, the Flemish community blocked Belgium's accession to this international agreement.<sup>54</sup>

Despite this experience, the fact remains that in practice there are fewer conflicts between federal and central governments concerning foreign affairs in Belgium than there are in Canada. One possible explanation for this arises from the fact that federal states participate in the decision-making process and therefore are more likely to make the necessary legal changes to do so. In addition, in cases of inaction by the sub-federal state on the subject of an international agreement, the federal state can substitute for the sub-federal state, something which puts significant pressure on sub-federal states.

In Canada, contrary to received ideas, the Canadian government has been required to share parts of its foreign affairs powers with the provinces because its constitutional powers are limited. Federalism and the negotiation of international agreements have necessitated ever closer federal-provincial cooperation since the 1970s.

The analysis of different federal-provincial mechanisms reveals that the provinces have a limited role in intergovernmental mechanisms. Given the importance of the provincial role in the implementation of treaties that affect their spheres of jurisdiction, one might have hoped for more institutional settings that are not simply discussion fora. It should be normal to hope for institutions where decisions are taken jointly and where the federal government is obliged to take into account the views of provinces, as is the case in Belgium.

Existing mechanisms remain insufficient and are the cause of numerous conflicts. For instance, it is difficult to assess in advance how Canada's ob-

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<sup>54</sup> *Ibid.*

ligations under existing and projected free-trade agreements will evolve. This poses problems of scale for all levels of government but is exacerbated at the provincial level for many reasons. According to Stephen de Boer, a former Ontario senior civil servant, it is already the case that federal government representatives have negotiated very significant undertakings that have important and irreversible effects on provincial fields of competence without consultation.<sup>55</sup> This is the case in relation to NAFTA Ch. 11, which involves the protection of foreign investors and their investments. According to de Boer, the failure of federal negotiators to give meaning to provincial laws on expropriation caused a number of foreseeable legal problems. The presence of a provincial negotiator at the table could have drawn the attention of federal negotiators to this issue. The same happens with respect to international negotiations that are ongoing in international organizations. One can look to the example of the negotiations of the Multilateral Agreement on Investment (MAI) which, if it had been ratified and implemented, would have placed in jeopardy a considerable part of Quebec's model of development.

Another problem linked to Canada's international obligations arises from the fact that the provinces are not at the negotiating table before, during and after the conclusion of a treaty. As a result, provinces do not always have a good idea of their obligations. Until recently – and it is still the case for many provinces, particularly the smaller ones – the provinces followed only from a distance the negotiations concerning international agreements that affected their interests. The result of this approach was foreseeable: there was a great risk that the provinces would introduce legislation that would be incompatible with Canada's international obligations.

Furthermore, it is not clear that the political decisions taken in the course of important bilateral and multilateral meetings on the means of liberalizing exchanges, of which the federal government is a participant, take account of the difficulties of implementation at the provincial level. The question is, do politicians and senior civil servants, in the process of policy formulation, consider the sometimes considerable difficulties of implementation at the provincial level? Since the provinces are often poorly

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<sup>55</sup> *de Boer, supra* note 39 at 7. At the time this text was drafted de Boer was Senior Policy Advisor and Team Leader, Trade and International Policy Branch, Ministry of Enterprise, Opportunity and Innovation, Government of Ontario. Today he is a federal civil servant.

informed about the extent of international obligations that have been negotiated or are under negotiation by the federal government, there inevitably follow inquiries from foreign governments that point out the inconsistency of provincial government policies with Canada's international obligations. For example, if a province grants a subsidy that violates one of Canada's obligations and a foreign government challenges Canada over this, who should pay compensation in the case of a successful claim? The province which has not participated in the process of negotiation or the federal government which has not made known to the province Canada's international obligations?

In Canada there is no general legal norm which regulates the responsibility of the Canadian state with respect to international law if a province does not fulfill obligations flowing from a treaty related to its sphere of competence. The federal government has had recourse to indemnification agreements concluded with a province when Canada was held to be responsible towards a foreign state for the failure of a province to fulfill an international obligation of Canada. However, this method is not always relevant since the failure to fulfill international obligations does not always involve a financial loss. Nevertheless, Christiane Verdon emphasizes that as a general rule:

... the juridical status of a federal-provincial agreement by which the provinces agree to implement a treaty by putting in place implementing legislation is not well-defined. Does it involve an agreement that creates rights and obligations whereby the penalty for failure to fulfill would be recognized by a court or does it more likely involve a political agreement that is not obligatory in law?<sup>56</sup>

This situation risks creating multiple problems in the future. Would it not be better to reconsider the distribution of roles in the field of international relations? In case of a conflict, the federal government and concerned provincial governments would therefore be required to work together to defend Canada's position. This would include provincial participation in WTO dispute settlement hearings. Intergovernmental cooperation in Canada in

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56 C. Verdon, "La conclusion et la mise en œuvre des traités dans les États fédérés et unitaires", Académie internationale de droit comparé, XIIe Congrès, (Montréal, 1990) at 17.

this respect is not formalized. It is odd that the provinces do not have a more important role because when a foreign government challenges a policy or law of a provincial government, it is the province that will have the best arguments and legal opinions to defend its position. The province in question should have the right to defend its position directly, even if only within the Canadian delegation.

## **9 • Conclusions**

Today, it is rare that Canadian federal government representatives do not consult their provincial counterparts on international matters when matters involving the powers of the provinces are affected. The problem arises instead from the fact that intergovernmental mechanisms do not cover the totality of negotiations and international organizations and that the majority of these mechanisms are poorly institutionalized. The absence of clear, consistent and foreseeable rules is the source of many intergovernmental conflicts.

In conclusion, to improve the Canadian model of managing foreign relations by adopting a multi-level governance structure, here are elements from the Belgian model that could be adopted:

1. Canada's provinces should contemplate giving a more important - if not central – role to the Council of the Federation so that the Council can transform itself into a forum for discussion and coordination concerning the provinces' international policies, somewhat like the model of the Canadian Council of Ministers of Education described above. The Council of the Federation would be the institution where provincial policy concerning universal international organizations would be decided as well as provincial positions concerning bilateral and multilateral trade negotiations when their fields of competence are affected. It is in this institutional setting that the Belgian example of a “constructive abstention” could come into play. If the provinces cannot arrive at a consensus, Canada could abstain from taking a position that would affect provincial jurisdiction, something that would allow the negotiations to continue. Canada's abstention would not block the negotiations. This mechanism would put strong pressure on the provinces to adopt a common position accepted by all. This idea of constructive abstention would make it easier to reconcile provincial interests that can diverge.



Creation of such a mechanism would allow another problem to be resolved, that of the lack of representation of smaller provinces in the process of treaty negotiation by the federal government. In Canada many provinces do not have the resources or sufficiently clear interest in the course of commercial negotiations to implement agreements concluded by Ottawa and any successor arrangements. The problem of resources has been accentuated by the crisis in public finance, fiscal imbalance and many budgetary cutbacks in the 1990s. A foreseeable consequence of this is that a number of concerns that affect certain provinces are not transmitted to the federal level and vice versa.

The proposed change would allow the provinces to have better understanding of matters arising from treaties ratified by Canada that affect provincial fields of competence. With such a process, the federal government would be less vulnerable to international claims that involve provincial policies.

2. The Council of the Federation could also appoint representatives who would negotiate on behalf of the provinces as part of Canada's representation at international meetings. It would not be unthinkable for the federal government to negotiate an international agreement that would not apply to all provinces. In that case, it would not be a precedent. The treaty could equally include asymmetric measures among the provinces. Again, there are precedents for this sort of agreement. For instance, during ratification by the federal government of the Convention providing a Uniform Law on the Form of an International Will, the government specified that the Convention only applied to Manitoba and Newfoundland. A few months later, the Convention's application was extended to Ontario and Alberta. Another example is the fact that in 1983 the federal government approved the Hague Convention on the Civil Aspects of International Child Abduction. At the time of its ratification, the Hague Convention only applied to four provinces. Thereafter, the Convention's application was progressively extended to other provinces and today is in force throughout Canada.

3. The third mechanism that could be adopted would be a guarantee on the part of the federal government for provincial participation in Canadian delegations on Canadian bilateral and multilateral policy that affects provincial fields of competence. In exchange, the provinces would undertake to ratify federally negotiated treaties within a reasonable time. The limitation

of Ottawa's exercise of powers on this question would allow for a diminution of conflicts.

4. The final proposal concerns the reciprocal requirement of information, which should be central. The federal government and the provinces should employ the mechanism of federal-provincial sectoral conferences on foreign policy. When certain matters would only interest one province, as was the case with the UNESCO Convention on Cultural Diversity for Quebec, it would be worthwhile to create, either on an ad hoc or permanent basis, a Quebec-Ottawa committee, to determine Canada's position in the organization.

5. The federal government should recognize the right of provinces to conclude binding international agreements within their fields of competence, with certain limitations. This practice is commonplace in Canada – Quebec has concluded some 550 international agreements – and abroad. This would remove an important source of problems.

# ANNEX

## QUESTIONNAIRE ON FOREIGN POLITICS/POLICIES, NATIONAL PLURALISM AND GLOBALIZATION IN THE FIRST DECADE OF THE 21<sup>ST</sup> CENTURY

FERRAN REQUEJO

*Universitat Pompeu Fabra, Barcelona*

### 1 • General aspects

Historical introduction to your case study regarding foreign politics/policies (max. 500 words)

Brief description of the constitutional framework of the state (Belgium, Canada, Germany, Switzerland or UK) regarding foreign politics/policies (max. 500 words)

The processes of globalization and national pluralism represent new challenges for liberal democracies in the field of foreign politics/policies. They affect the fields of jurisdiction of “federated” units (and also those of central governments). This is a topic which is in need of a new evaluation (all sections: max 1000 words):

1.1 With which of the following main actors does your specific case study maintain an active foreign policy (in a broad sense of the word, including media, sporting events, etc)?

a) other “regions”

b) other states

c) supranational organizations (European Union, NAFTA, Commonwealth, etc)

d) international or global institutions (UN, etc)

e) private actors ?

1.2 What are the leading values/objectives and institutional principles of the foreign policies of your case study?

1.3 Is the foreign policy implemented by the federated unit alone; together with other units of the state; or together with units of other states?

1.4 In what international networks does the federated unit participate?

1.5 Is there a specific “ministry” (or similar) which is responsible for the foreign policy of the federated unit? Is foreign policy an interdepartmental matter?

1.6 How many employees work in the administration of the foreign policy of the federated unit?. What is the budget for foreign policy?

1.7 In your case study, has there been a new “paradiplomatic” policy and any change of priorities by the federated unit since the year 2000 (in comparison with the period 1970-2000)?

1.8 If so, what kind of reactions has this provoked from the central power?

1.9 What are the main spheres of action regarding the foreign policies?

1.10 Can we talk of a new relationship between the constituent units and central government in relation to foreign politics/policies in the last decade? (new institutions, redefinition of action of the two levels of government, new political actors, new intergovernmental relations, etc).

## **2 • Three spheres of foreign policy: politics, economics, culture (max 1500 words)**

This second section focus on the role played by the unit at the international level in these three spheres of government

(Note: Degrees measured in qualitative and international comparative terms: high – medium – low)

2.1 Degree of representation abroad (very well developed network vs none).

2.2 Degree of autonomy of the federated unit in promoting its political/economic/cultural interests (need or not for an agreement with the central government for establishing formal treaties or other kinds of covenants with foreign partners in each of the three spheres of government , etc).

2.3 Degree of activity of the federated unit: number of treaties or similar agreements with foreign political actors; official visits abroad by presidents and ministers; etc.

2.4 In the economic sphere, is the policy of cooperation with undeveloped countries the main activity of the federated unit?

2.5 Degree of cooperation with the central government (access to decision-makers at federal level, role of the upper chamber, etc).

2.6 Type of intergovernmental relations regarding political issues: competitive-cooperative; formal-informal; trust-distrust.

2.7 Degree of coordination/cooperation with other federated units.

2.8 What “disciplinary” measures does the central government possess if it does not agree with the foreign policy implemented by the federated unit?

2.9 Are there any asymmetries in the foreign policy of federated units regarding the matters mentioned above?

2.10 If there are any asymmetries, are there also tendencies towards a re-symmetrization of the “federal” system?

**3 • Please mention other relevant spheres, if any, in your specific case (environment, energy, etc)**

**4 • Additional information and comments. Please add what you consider relevant in your specific case that has not been mentioned in the previous sections**

**5 • Future perspectives**

What are the main tendencies for the coming years? (more or less foreign policies; more or less cooperation with the center; etc).

(max 400 words)

**6 • Conclusions**

(max 400 words)

**Selected bibliography (between 10 and 20 “major references” – written on a separate page)**

Economic and technological globalizations, as well as the increasing importance of multilevel institutions of government, constitute a new scenario for the foreign policies implemented by sub-state entities in liberal democracies. These processes encourage self-governed territories to implement specific foreign policies in order, on the one hand, to defend and promote their interests, values and identities and, on the other hand, to promote a number of global objectives, such as peace, development or respect for internal national and cultural pluralism. Comparative politics shows that territories endowed with national characteristics (Scotland, Quebec, Catalonia, etc.) are entities that play an active role in the field of foreign policy. Catalonia has historically displayed a clear will to establish a set of international relations and policies in order to improve the participation of its public and private actors in different international institutions and networks. This volume analyses, from a comparative perspective, the main features of the foreign policies implemented by sub-state territories with national characteristics which have a clear interest for Catalan politics: Scotland, Quebec, Flanders and Wallonia, the German länder and the Swiss cantons.

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