

The Role of the National and Regional Governments in the Multi-Level Climate Politics of Belgium



Grégoire GAYARD

Centre Thucydide – Analyse et recherche en relations internationales
Université Panthéon-Assas (Paris 2)

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Abstract :

This paper examines the way the Belgian regions and federal government are working together to elaborate and express the country's foreign policy on climate change. It focuses on the intergovernmental cooperation mechanisms that allow the regions to contribute to shape the positions Belgium will defend on the international stage. The paper discusses the role played by the central government in this process, and shows how the characteristics and dynamics of Belgian federalism influence these intergovernmental cooperation mechanisms.

In Belgium, the regions have been able to directly contribute to the definition and the defense of their country's positions on climate change on the international scene through formalized and institutionalized mechanisms of intergovernmental coordination. These mechanisms are consistent with more general trends and dynamics observed in Belgian federalism. The absence of a hierarchy between the various levels of government and their full autonomy in their fields of competence have created a need for cooperation, especially when an issue touches on regional or shared competences. Furthermore, the existence of the EU forces Belgium to state its policy positions regularly, thus pressuring the various levels of government to continually cooperate with one another. In this system, the federal government still plays an important two-fold role: on the one hand, the central government participates in the elaboration and the defense of Belgian positions, along with the regions. On the other hand, the central government is a facilitator of this intergovernmental coordination. This role is largely the product of the historic evolution of the federation.

Introduction

It is often said that the global scale of climate change makes it an issue that requires action by multiple levels of governments. Indeed, the constitutional or legal responsibilities, the expertise, the policy levers necessary to tackle climate change very rarely reside in a single level of government. In federal countries especially, sub-state governments often have very important constitutional competences relevant to climate politics. Energy, environment, transport, and agriculture are domains where various levels of government usually have constitutional competences. Moreover, regional governments are routinely in charge of implementing policies to comply with targets agreed upon on the international stage.

So far, international discussions on climate change have largely been controlled by individual sovereign states. This is especially true in the main international climate change discussion arena, the United Nations Framework Convention on Climate Change (UNFCCC). Whereas recognition of the importance of sub-state government action to tackle climate change might be gradually increasing¹, their means of making their individual voices heard on the global stage remain limited.

The role allocated to subnational units in the definition and defense of the international positions of their country on climate change is therefore an interesting question, especially in federal countries, where subnational governments often enjoy large responsibilities in environmental matters. The case of Belgium is particularly interesting in that regard. Belgian regions, which have large environmental responsibilities, have been able to directly contribute to the definition and the defense of their country's positions on climate change on the international scene through formalized and institutionalized mechanisms of intergovernmental coordination. This situation is rather unique among federations, and is permitted by the large international responsibilities allowed to the regions in the Belgian Constitution.

In this system, it is interesting to examine the role played by the federal government. Since regions have no direct access to most international discussions, the federal level acts as the interface between them and the international scene. How does the central government play this role, and what does it entail? What mechanisms ensure the participation of both the central and the regional levels in the determination and the subsequent defense of Belgium's positions? And finally, does the federal government actively play the role of a “facilitator”, enabling the regions to gain access to the international scene, or is its position simply a symptom of its progressive weakening within the Belgian federation?

Rather than just describing the mechanisms and functioning of the collaboration procedures organizing the participation of regional governments in Belgium's international climate policy, we shall try to understand why those particular solutions were adopted. To do so, we will focus on the factors that can explain the emergence of this particular set of coordination mechanisms. As we will see, the exceptional extent of Belgium's regions involvement in its international climate policy and the role of the federal government can be better understood by taking a look at two sets of factors: elements that are internal to Belgium, and external factors.

On the internal side, it is useful to take a closer look at some specifics of this federation. Intergovernmental relations, defined here as the relationships between various levels of government

¹ See, for instance : Ibon GALARRAGA, Mikel GONZALEZ-EGUINO et Anil MARKANDYA, « The Role of Regional Governments in Climate Change Policy », *Environmental Policy and Governance*, vol. 21, n° 3, 2011, p. 164-182.

within a federation, have been shaped by the political and institutional features of Belgium, inherited from the progressive transformation of Belgium from a unitary state to a federation, and by the dynamics of that federation. In the same way, the distribution of responsibilities in the conduct of foreign relations among the federal government and the subnational units in Belgium can be seen as the result of a specific historical evolution. Those elements have shaped the way federated units and the federal government work together to determine and defend Belgium's positions abroad.

On the external side, the European Union has had a major influence on Belgian policy-making. Furthermore, the specificities of climate change issues and the way those are dealt with on the international stage also influenced the functioning of intergovernmental coordination within Belgium on those topics.

This paper will proceed as follows. First, we will examine the place allocated to Belgian regions and to the federal government in the international climate policy of Belgium. We will then present the internal and external factors which can account for the emergence of this system, before we present our conclusions on the place of the federal state in this field.

This research is based on a study of the available academic literature and official documents, complemented by several interviews with policy officials from various levels of government in Belgium, realized between 2007 and 2013.

I. General features of the Belgian federation and foreign policy organization

Belgium is often presented as a unique federation. Indeed, the small kingdom has some very specific features that make it an interesting case of highly decentralized federation. To begin with, Belgium combines two different types of federated governments: three regions (Flanders, Wallonia and Brussels) and three communities (Flemish, French² and the German-speaking.) These structures overlap with each other.

There are four geographically delimited linguistic areas in Belgium: the Dutch language area, the Bilingual Brussels-Capital area, the French language area and the German language area. These help to determine the areas where the communities are competent. The French community is competent in the French speaking area and in the bilingual Brussels-Capital area. The Flemish community is competent in the Dutch speaking area and in the bilingual Brussels-Capital area. The German-speaking community is competent within the German speaking area. Each regional government is responsible within the limits of its region. Therefore, the areas covered by the regions and the communities do not coincide but overlap each other.

This setup is the result of a series of constitutional reforms (in 1970, 1980, 1988-1989, 1993, 2001 and 2011) which have transformed the formerly unitary country into a federation with a particularly complex architecture. It reflects the various compromises that have been reached at each step of this process. The creation in 1970 of both communities and regions reflected a balance between the Flemish push for cultural autonomy and the Walloon demand for greater socio-economic autonomy.

² Since 2011, the French community officially calls itself Fédération Wallonie-Bruxelles, but its constitutional name remains unchanged. In this paper, we will refer to it as the French community for clarity.

Another feature of the federalism in Belgium is its very high degree of decentralization. Both regions and communities have been entrusted with more and more responsibilities with each constitutional reform. The Constitution also organizes a strict distribution of the competencies between the various levels of government. Each government is therefore exclusively competent in the matters included in its jurisdiction. This principle is reinforced by the fact that the decrees voted by the regions and communities' respective parliaments³ have the same value as federal laws voted by the Belgian Parliament.

Furthermore, since 1993, the regions and communities are responsible for the international dimension of their competencies, applying the principle “*in foro interno, in foro externo*”. Regions and communities already enjoyed limited international powers since the 1980s⁴, but this principle is now fully recognized constitutionally. According to the Constitution⁵, regions and communities are responsible for the conduct of foreign policy in the matters falling within their competencies, including the conclusion of treaties. As Jans and Stouthuysen write, “the acquisition of treaty-making powers by the regions and communities was generally viewed as a logical corollary of the spirit of the Belgian federal reform, which emphasized autonomy and the absence of hierarchy in federal-regional interactions⁶.”

Not only are regions and communities the only competent authorities on the international scene in their exclusive fields, they also must be associated with the conclusion of any treaty involving “mixed competencies”, i.e. those who concern both federal and federated competences, and they participate in the international organizations involving mixed competences.

To make sure these principles wouldn't lead to a weakening of the Belgian diplomacy's coherence, an elaborate set of cooperation mechanisms were rapidly put in place. The May 5, 1993 special law on international relations of communities and regions set the principles guiding this coordination. A series of cooperation accords passed between the federal government and the federated entities finalized the details of the various aspects of the conduct of foreign policy⁷. Those agreements notably organize the way regions or communities are able to represent the Belgian positions within the Council of the European Union when their exclusive competencies are concerned⁸. They also cover the treaty-making process when a treaty touches upon mixed competencies.

³ The legislative texts voted in Brussels-Capital (by the Brussels-Capital region and by the communities) are called ordinances but have the same legal value as decrees and federal laws.

⁴ For an overview of the evolution of the subnational entities international competencies, see : Françoise MASSART-PIÉRARD, « La Belgique, un modèle évolutif et inédit de gestion des relations internationales », in Stéphane PAQUIN (ed.), *Les relations internationales du Québec depuis la doctrine Gérin-Lajoie*, Québec, Presses de l'Université Laval, 2006, p. 233-250.

⁵ Article 167

⁶ Theo M. JANS and Patrick STOUTHUYSEN, « Federal Regions and External Relations: The Belgian Case », *The International Spectator*, vol. 42, n° 2, 2007, p. 214.

⁷ Accord de coopération du 8 mars 1994 entre l'État fédéral, les Communautés et les Régions, relatif à la représentation du Royaume de Belgique au sein du Conseil de Ministres de l'Union européenne (M.B. 17.11.1994) modifié par l'accord de coopération du 13 février 2003 (M.B. 25.02.2003) ; Accord de coopération du 8 mars 1994 entre l'État fédéral, les Communautés et les Régions, relatif aux modalités de conclusion des traités mixtes (M.B. 19.07.1996) ; Accord-cadre de coopération du 30 juin 1994 entre l'État fédéral, les Communautés et les Régions portant sur la représentation du Royaume de Belgique auprès des organisations internationales poursuivant des activités relevant de compétences mixtes (M.B. 19.11.1994) ; Accord de coopération du 11 juillet 1994 entre l'État fédéral, les Communautés et les Régions concernant les modalités suivant lesquelles des actions sont intentées devant une juridiction internationale ou supranationale suite à un différend mixte (M.B. 01.12.1994)

⁸ See Theo M. JANS and Patrick STOUTHUYSEN, « Federal Regions and External Relations », *op. cit.*, p. 215-217.

The main coordination body in the Belgian political system is the Concertation committee, where the prime ministers from the federal government, the regions and the communities gather to solve political conflicts between the various levels of governments. Within this Concertation committee are hosted several interministerial conferences, among which is the Interministerial Conference for Foreign Policy (ICFP). The ICFP, which reunites the ministers responsible for foreign affairs in every government (the federal government, the three regions, and the three communities) is the main foreign policy coordination arena in Belgium. It makes its decisions by consensus, and its secretariat is under the responsibility of the federal foreign affairs administration, the Federal Public Service Foreign Affairs (FPSFA)⁹.

Moreover, the international responsibilities accorded to the federated units have pushed them to develop their own foreign affairs administrations. Each level of government in Belgium now has a foreign affairs minister and a devoted administration. It must be noted here that some of the federated units have decided to join their forces together. Since 1980, the Flemish region has been absorbed *de facto* by the Flemish community. Both entities have the same government and assembly. This has not been the case for the French community and the Walloon region, because of the willingness to maintain a distinction between Brussels and Wallonia. But since 2009, Wallonia, the French community and the French community commission (the French branch of the community institutions in Brussels) have joined their foreign affairs administrations into the same agency, named Wallonie-Bruxelles International (WBI).

II. Role of the regions and federal government in the international climate policy

Considering their international responsibilities, it is logical that the federated entities play a major role in the Belgian international climate policy. The constitutional division of powers in environmental matters in Belgium favours the regions, but leaves a role for the federal government¹⁰. Both the regions and the federal level also have some responsibilities in the fields of energy and transportation. Therefore, the international discussions on climate change clearly touch both federal and regional competencies.

Regions are therefore deeply involved in the preparation and the defense of the Belgian positions on climate on the international stage, both within the European Union and in multilateral discussions. We can usefully distinguish the elaboration of the Belgian positions, and their representation abroad.

Regarding the elaboration of the Belgian positions, a complex system of coordination has been put in place through the conclusion of cooperation agreements, to ensure that the regions and the federal government cooperation would result in an accepted and coherent Belgian position on any specific climate issue.

⁹ Peter BURSENS and Françoise MASSART-PIÉRARD, « Kingdom of Belgium », in Hans MICHELMANN (ed.), *Foreign Relations in Federal Countries*, Montréal, International Association of Centers for Federal Studies; Forum des fédérations, McGill-Queen's University Press, coll.« Global Dialogue on Federalism », n° 5, 2009, p. 102.

¹⁰ See : Jean-François NEURAY, « La répartition des compétences environnementales en droit belge (principes directeurs) », *Revue de droit de l'ULB*, vol. 39, 2009, p. 87-120.

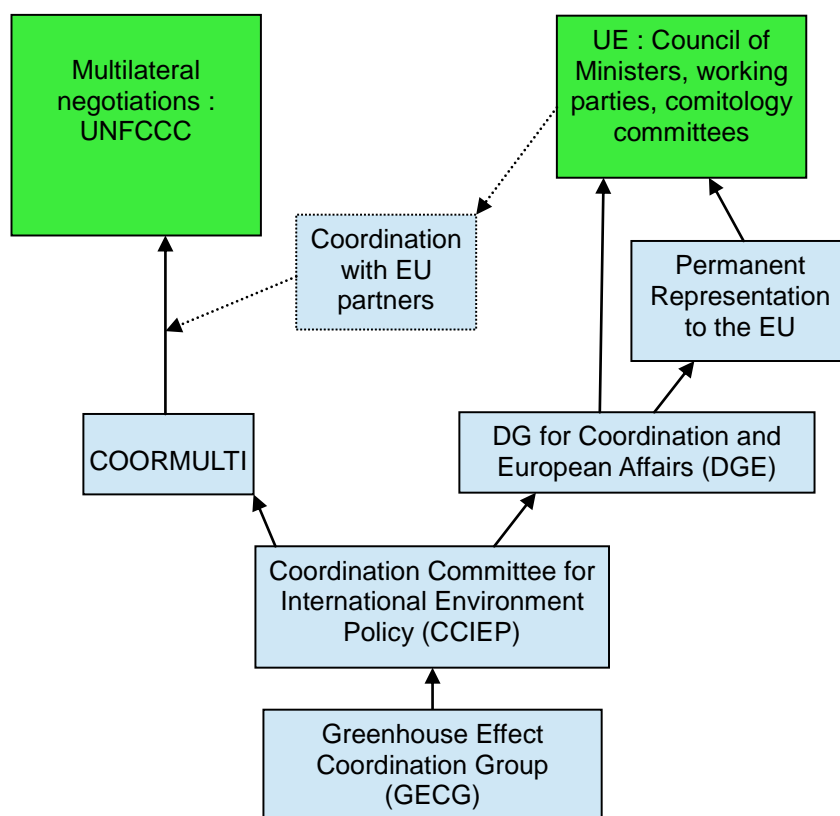


Figure 1. Elaboration of the Belgian positions on climate change defended on the European and the International stage¹¹.

This coordination architecture is summarized in Figure 1. The system works as follows: the Interministerial Conference on the Environment (ICE) is one of the interministerial conferences set up within the Concertation Committee. It is normally composed of the federal and subnational Environment ministers. When it discusses climate change, it is extended to include the federal and subnational Prime Ministers, the federal Budget minister, the subnational Economy ministers, and all ministers responsible for Energy, Transport, Taxes and Development Cooperation. This extended ICE is tasked with the definition of the international climate positions of Belgium that will be defended both within the EU and directly on the international stage. The ICE, which only meets a few times every year, delegates the coordination necessary to reach a Belgian position to the Coordination Committee for International Environment Policy (CCIEP), an administrative level body. The CCIEP gathers delegates of the various environment public services (at the federal and regional levels), as well as delegates of the FPSFA and the permanent representation of Belgium to the EU¹². The CCIEP meets every month. Those meetings are presided over by the delegate from the federal environment public service. The CCIEP has several working groups on different topics.

¹¹ This chart was elaborated on the basis of material collected during interviews. It is partly inspired by a chart designed in 2011 by Dominique Perrin, an adviser within the cabinet of the Walloon Environment Minister. It also includes information from a similar chart from Sander HAPPAERTS, Simon SCHUNZ and Hans BRUYNINCKX, « Federalism and Intergovernmental Relations: The Multi-Level Politics of Climate Change Policy in Belgium », *Journal of Contemporary European Studies*, vol. 20, n° 4, december 2012, p. 447. This figure ignores other elements designed to coordinate the Belgian *domestic* climate policy, such as the Climate National Commission.

¹² Accord de coopération du 5 avril 1995 entre l'État fédéral, la Région flamande, la Région wallonne et la Région de Bruxelles-Capitale relatif à la politique internationale de l'environnement (M.B. 13.12.1995), art. 2 §1.

Among them, the Greenhouse Effect Coordination Group (GECG) is responsible for coordinating the Belgian positions on climate change. The GECG is where most of the coordination actually takes place, as long as no real political difficulties arise. It is made up of representatives and experts from all the relevant federal and regional administrations and cabinets.

Every time a Belgian position needs to be articulated on a specific issue on climate change, the CCIEP names a pilot, “a federal or subnational official who is made responsible for the internal Belgian supervision of an individual dossier and who can only be appointed for those thematic issues that belong to the responsibilities of his or her government¹³.” Whether the pilot is a federal, Flemish or Walloon official depends on “the political importance of the issue for a particular government and on the expertise and resources available within an administration¹⁴.” The experts named by the various administrations expose the parties' respective positions. The pilot is in charge of leading the discussions to reach an agreement between those positions.

Two different procedures exist for the next level of coordination, depending on whether the position has been prepared to be defended within the EU or in multilateral discussions. If the Belgian position is to be defended within the EU¹⁵, the positions coordinated by the pilot have to be reviewed during coordination meetings organized by the Directorate-General for Coordination and European Affairs (DGE) of the federal ministry of Foreign Affairs. These coordination meetings gather representatives of the other ministries potentially concerned by the issues at stake (budget, agriculture, transport, industry...). The DGE plays a crucial role in Belgium's European policy coordination¹⁶. Only once a definitive Belgium position has been established after the DGE coordination meeting, can it be defended on the European scene.

If the Belgian position is to be presented during multilateral discussions, the CCIPIE is responsible for its coordination. Once the pilot has reached a position, it is submitted through a COORMULTI review. COORMULTI meetings involve representatives of the various ministries (federal and regional) potentially concerned by the issue, experts, and of representatives of non-governmental stakeholders¹⁷.

The precise relations of the various coordination groups and the role of the pilots are detailed in two vademecums published in 2004 and 2005¹⁸. The 2004 vademecum also clarifies the decision-making process and the conflict resolution mechanisms within the CCIEP: The CCIEP and the ICE

¹³ Karoline Van den BRANDE, Sander HAPPAERTS and Hans BRUYNINCKX, « Multi-level interactions in a sustainable development context: different routes for Flanders to decision-making in the UN commission on sustainable development », *Environmental Policy and Governance*, vol. 21, n° 1, 2011, p. 76.

¹⁴ Peter BURSENS and Kristof GEERAERTS, « EU Environmental Policy-Making in Belgium: Who Keeps the Gate? », *Journal of European Integration*, vol. 28, n° 2, 2006, p. 169.

¹⁵ Belgium defends its climate positions in the EU through several channels : It states its positions during the Council of ministers ; it also collaborates to the Council working parties : the Working Party on the Environment (WP Env) and the Working Party on International Environment Issues (WPIEI) and takes part in the Commission's comitology committees, and the Commission's experts groups.

¹⁶ Luc LAVRYSEN, « Climate Law. Belgian Report », Paper presented at the International Academy of Comparative Law Conference, Washington DC, 2010, 25p., p.14.

¹⁷ Karoline Van den BRANDE, Sander HAPPAERTS and Hans BRUYNINCKX, « Multi-level interactions in a sustainable development context », *op. cit.*, p. 79.

¹⁸ ICE, « Vademecum – négociations de dossiers environnement européens et multilatéraux et rôle des pilotes et experts », 2004, and CCIEP, « Vademecum des négociations dans les comités de comitologie et du rôle du représentant officiel et des experts », 2005.

work on the basis of consensus. If no consensus can be found on a politically sensitive issue several solutions are advocated: The pilot can call a meeting between the Belgium permanent representation to the EU and all the cabinets and experts concerned. If this isn't enough to reach an agreement, the cabinet of the (regional or federal) minister in charge of representing the Belgian position abroad on this particular issue (within the Council or in a multilateral discussion) can call for an inter-cabinet meeting with the other interested parties, or for an ad-hoc DGE meeting. If those attempts remain unfruitful, the issue moves to the ICE. If the disagreement persists, the issue finally moves to the ICFP and the Concertation committee, at the highest level of the state. This process is visualized in figure 2. In practice, most issues never reach this final stage.

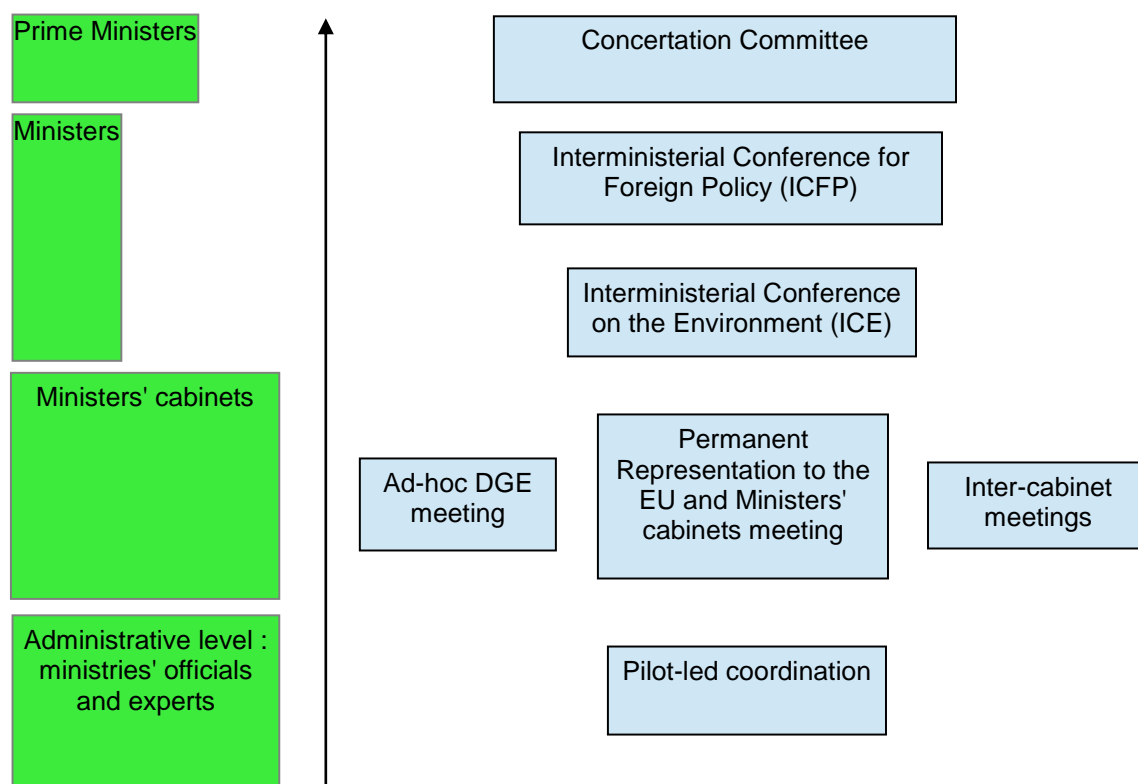


Figure 2. Conflict-resolution steps in the elaboration of a Belgian position¹⁹.

The second important aspect of the Belgian coordination concerns the representation of the Belgian positions abroad, whether it is within the EU or directly on the global stage. In the EU, the main relevant decision-making institution regarding climate change is the Environment Council. The Belgian representation in this Council is organized by the 8 March 1994 cooperation agreement, updated in 2004²⁰. Belgium is represented by a regional environment minister, assisted by the federal environment minister. A six-month rotation is organized between the ministers from Flanders, Wallonia and Brussels-Capital. The representation of a member state in the Council by a subnational government's minister was made possible by the introduction by the 1992 Maastricht Treaty of an amendment to art. 203 Treaty of the European Communities (TEC), on the request of

¹⁹ This chart is based on the two vademecums, on interviews, and on a chart designed in 2011 by Dominique Perrin, an adviser within the cabinet of the Walloon Environment Minister.

²⁰ Sander HAPPAERTS, Simon SCHUNZ and Hans BRUYNINCKX, « Federalism and Intergovernmental Relations », *op. cit.*, p. 453.

Belgium and Germany²¹. In the Working parties of the Council, Belgium is represented by its permanent representation, made up of federal officials, on the basis of the positions defined by the coordination process supervised by the pilots²². In the comitology committees of the EU Commission, Belgium is represented by experts from the regional or federal governments²³. Finally, in the European Council, who “has, since the mid-2000s, regularly served as the final political instance for endorsing EU climate change policies”, Belgium is represented by its federal Prime Minister.

In multilateral discussions, Belgium is represented by a delegation, whose composition is agreed upon in the CCIEP. The head of the Belgian delegation is also named in the CCIEP. On certain occasions, the distribution of responsibilities within the delegation can cause difficulties, as was the case before the 2010 COP in Cancun²⁴.

Whatever the authority representing Belgian positions on the international scene, those positions are strictly defined by the coordination process described above. In some cases (as in the Council), the exact wording of the Belgian position is agreed upon in a speaking note. The various representatives of Belgium have therefore no freedom to stray from this mandate.

It is very important to note that the European Union is clearly the main arena through which Belgium defends its international positions on climate change²⁵. The EU's influence on its members' climate policies works on two levels. On the intra-European level, the large competences of the EU in the environmental domain have furthered a high level of harmonization between the member states. On the global level, the EU has managed to reach a high degree of unity among its members during international climate change negotiations. During multilateral negotiations on climate change, the EU states organize two-hour long coordination meetings every morning. This European coordination, and the level of cohesion between the member states, have meant that it would now be “unacceptable” for an individual State to undermine the European consensus by speaking for itself²⁶. Therefore, most of the Belgian efforts to defend its positions on climate change take place at the European level. Belgium does send delegations at the multilateral discussions on climate change, but once there, Belgium, like the other member states, mainly defends its positions during the European coordination meetings.

In practice, Belgium's climate policy coordination mechanisms give a large place to the regions. Even though the federal government is responsible for organizing the coordination mechanisms, regions have a leading role in the CCIEP. This is due to the fact that the environmental competencies are mostly regional. Therefore, the pilots very often come from the regional level²⁷. Another important feature of the coordination mechanism is the tendency of the minister's cabinets

²¹ Theo M. JANS and Patrick STOUTHUYSEN, « Federal Regions and External Relations », *op. cit.*, p. 216.

²² Vademecum – négociations de dossiers environnement européens et multilatéraux... *op. cit.*, 2004

²³ Vademecum des négociations dans les comités de comitologie... *op. cit.*, 2005

²⁴ Sander HAPPAERTS, Simon SCHUNZ and Hans BRUYNINCKX, « Federalism and Intergovernmental Relations », *op. cit.*, p. 453-454.

²⁵ *Ibid.*, p. 451.

²⁶ Louise VAN SCHAIK, « The Sustainability of the EU's Model for Climate Diplomacy », in Sebastian OBERTHÜR et Marc PALLEMAERTS (eds.), *The New Climate Policies of the European Union: Internal Legislation and Climate Diplomacy*, Brussels, VUB Press, 2010, p. 267.

²⁷ Peter BURSENS and Kristof GEERAERTS, « EU Environmental Policy-Making in Belgium », *op. cit.*, p. 170.

to play an important role in the position formation process. Interviews with experts and members of ministers' cabinets at both the federal and regional level showed that representatives of the ministers' cabinets have an input at every level of the coordination. Even at the administrative level of the GECG, experts from the various governments are in constant contact with their minister's cabinet. Members from these cabinets also have informal relations with the pilots. These contacts increase when an issue is politically sensitive. Also, as soon as a disagreement occurs, the issue is usually discussed in informal inter-cabinet meetings between the various governments. These findings are confirmed by the observations made by various authors who conducted the same type of interviews²⁸.

To summarize, we can identify four main characteristics of the system we have just described.

First, the coordination mechanisms allowing regions to be deeply involved in the international climate policy of Belgium are highly institutionalized. The coordination architecture includes many committees, working groups, and conferences, whose relations to each other are defined by written mechanisms. The role, the composition, and the decision mechanisms of each cog in the coordination machinery are defined by cooperation agreements, and even individual committees such as the CCIEP have their own set of rules and regulations. The complexity of this architecture is described by the participants as a necessary evil. Many interviewees declared they were aware that the coordination process often delays the definition of an international policy, but that this was the necessary price to pay to make sure that the Belgian position would be coherent and adhered to by all parties.

Second, the architecture allows every concerned level of government to have an input in the policies that are defended by Belgium. The fact that the whole process is based on a consensus decision-making system ensures that each participant has the power to veto a position or a decision. This does increase the risk of policy failure, in the sense that if an agreement is ultimately impossible to find between the various components of Belgium, the country will not be in a position to express itself on the international stage.

Third, the mechanisms ensure that the large involvement of the regions will not weaken the coherence of the country's positions on the international stage. The system is remarkably efficient in this regard, in the sense that while it allows for a large input from the regions, it still permits the formulation of a coherent policy which is expressed through a single voice. This is confirmed when we examine the strategies favored by the regions to defend their positions on the international stage. Rather than expressing themselves directly on the international stage to defend their individual interests, the regions have mostly opted to channel their voices through the Belgian positions. Van Den Brande, Happaerts and Bruyninckx have shown that Flanders most extensively used "intra-state routes" to get involved in the global sustainable development debate, because of the opportunities offered by the intra-Belgian arrangements²⁹.

Finally, along the regions, the federal government is still a relevant actor. Regarding the elaboration of the Belgian positions, the federal government is both the organizer of the intergovernmental collaboration, and a participant in the discussions leading to the definition of Belgium's positions.

²⁸ *Ibid.*, p. 169-170 ; Sander HAPPAERTS, Simon SCHUNZ and Hans BRUYNINCKX, « Federalism and Intergovernmental Relations », *op. cit.*, p. 455.

²⁹ Karoline Van den BRANDE, Sander HAPPAERTS and Hans BRUYNINCKX, « Multi-level interactions in a sustainable development context », *op. cit.*, p. 79-80.

The federal government is in charge of formally organizing the collaboration, but in this collaboration process, it doesn't dominate the regions. The federal government does not simply aggregate the regions' positions and use them to formulate a Belgian policy autonomously. During the elaboration of the policies, the federal government is just one player among others³⁰. Regarding the expression of the Belgian positions on the international scene, the federal government plays the role of a gatekeeper: it allows the regions to directly defend the Belgian positions at times and there again, offers its logistics and diplomatic resources. As we just noted, these elements push regions to favor “intra-state routes” when it comes to defend their interests on climate change.

The high involvement of the regions in the definition and the conduct of Belgium's international climate policy and the patterns of the coordination mechanisms that we described can be better understood by looking at internal and external factors.

III. Internal factors: congruence with observed specificities of the Belgian federation

On the internal side, the situation we observed seems consistent with some specificities of the Belgian federal system.

To make those specificities apparent and better characterize the Belgian federation, it is helpful to start with the classical idea expressed in France by Georges Scelle that federalism is a combination of superposition, autonomy and participation. In federal systems, the superposition of various levels of governments is accompanied by a degree of constitutionally guaranteed autonomy for the federated entities, and mechanisms ensuring their participation in the federal legislation. The balance between autonomy and participation is a central feature of federal regimes, and each federation strikes its own equilibrium between those two elements: in some cases, the center of gravity balances towards the autonomy of each government, and in other cases, it balances towards the collaboration between levels of government.

This brings us to the distinction between *inter-state* and *intra-state* federalism³¹. Inter-state federalism refers to the situations where the federal government and the subnational governments act in relative independence from each other. It is therefore a model where the emphasis is put on self rule, rather than shared rule. In this model, the powers and responsibilities are strictly delimited between the various levels of government by the constitution. Each government enjoys a large autonomy in its fields of competences. In the intra-state variant of federalism, on the other hand, the onus is put on shared rule. As Cairns writes, “*territorial particularisms are given an outlet not only by the control of a government at the state or provincial level, but also in the key policy-making institutions of the central government*”³². The interests of the component units of the federation are thus usually represented within the institutions of the federal government through institutionalized means, such as a second chamber. In this model, the various levels of governments are expected to cooperate closely, sometimes to the point of creating a system of joint decision making.

³⁰ Peter BURSENS and Kristof GEERAERTS, « EU Environmental Policy-Making in Belgium », *op. cit.*, p. 173.

³¹ These concepts were notably used by Canadian politists such as Donald Smiley since the 1970s. See : Donald SMILEY, « The structural problem of Canadian federalism », *Canadian Public Administration*, vol. 14, n° 3, 1971, p. 326-343 ; Donald V. SMILEY and Ronald L. WATTS, *Intrastate Federalism in Canada*, Toronto, University of Toronto Press, 1985 ; Donald SMILEY, *Federal Condition in Canada*, Toronto, McGraw-Hill Ryerson, 1987 ; Alan C CAIRNS, *From Interstate to Intrastate Federalism in Canada*, Kingston, Ontario, Institute of Intergovernmental Relations, Queen's University, 1979.

³² Alan C CAIRNS, *From Interstate to Intrastate Federalism in Canada*, *op. cit.*, p. 4.

Those two models should be seen as ideals, and they are better understood as the two extremes of a continuum. The real-life federations usually feature mechanisms inspired by both of those models. It is therefore possible to characterize federations based on their position on the inter-state/intra-state federalism axis. To do this, we can follow Jörg Broschek, who suggests focusing on three institutional dimensions “to uncover how inter- and intrainstitutional mechanisms variously underpin the architecture of federal systems³³” These three institutional dimensions are the allocation of competences, the constituent units’ participation in federal legislation, and the system of intergovernmental relations.

Examining those elements will allow us to see that some of the features of the Belgian federalism, inherited by the political history of the kingdom, are useful to explain the features of the Belgian international climate policy system we just examined.

In the case of Belgium, the allocation of competences is clearly dualistic, and not integrated. At first glance, this seems to place Belgium on the inter-state side of the axis regarding this institutional dimension. The federalization of Belgium was progressive, with more and more competencies taken away from the center and transferred to the communities and the regions. The result of this process is a federal system where the competences are sharply divided, in order to avoid as much as possible the need for common decisions³⁴. This is reinforced by the absence of hierarchy between the federal, regional and community laws and decrees, and by the application of the *in foro interno, in foro externo* principle³⁵. These elements seem to put Belgium on the dualist side of this institutional dimension: as competences are neatly divided, each government should be able to act autonomously in its domain. Yet in practice, the complexity of most issues requires governments to cooperate. Very few issues only touch the competencies of one government. As Swenden writes, “federal and regional governments cannot operate in completely watertight zones if their policies intend to generate real impact³⁶.” Therefore, while Belgium is a purely dualist federation in theory, in practice, it is not. This is consistent with what we observed in the climate change domain, where the competences are mostly regional, but where the federal government nevertheless has an important role to play. As we’ve seen, this situation forces the governments to cooperate to define coherent international positions.

Regarding the participation of the constituent units in the federal legislation, there again, Belgium seems to fall on the inter-state federalism side. Given its composition and its role, the second federal chamber, the Senate, doesn't really provide a mean for the regions or communities' interests to be directly represented within the central institutions³⁷. However, in the case of Belgium, this situation

³³ Jörg BROSCHEK, « Historical Institutionalism and the Varieties of Federalism in Germany and Canada », *Publius: The Journal of Federalism*, vol. 42, n° 4, 1 octobre 2012, p. 667.

³⁴ Wilfried SWENDEN and Theo M. JANS, « ‘Will it stay or will it go?’: Federalism and the sustainability of Belgium », *West European Politics*, vol. 29, n° 5, November 2006, p. 886 ; Johanne POIRIER, « Les fédérations belge et canadienne : essai de comparaison synthétique et systématique », *Revue de droit de l’ULB*, vol. 39, 2009, p. 23.

³⁵ Sander HAPPAERTS, Simon SCHUNZ and Hans BRUYNINCKX, « Federalism and Intergovernmental Relations », *op. cit.*, p. 443.

³⁶ Wilfried SWENDEN and Theo M. JANS, « ‘Will it stay or will it go?’: Federalism and the sustainability of Belgium », *op. cit.*, p. 886.

³⁷ Johanne POIRIER, « Les fédérations belge et canadienne : essai de comparaison synthétique et systématique », *op. cit.*, p. 23.

is tempered by two crucial elements. First are the existence of consociational mechanisms and a tradition of compromise between the political elites. The concept of consociationalism was forged in the 1960s by researchers such as Lijphart, who tried to explain the “paradox of strong social fragmentation combined with political efficiency and stability”³⁸ in a number of European countries such as Austria, Belgium, the Netherlands and Switzerland. According to Lijphart, the variable accounting for the stability of consociational democracies is the attitude of its political elites, who make “deliberate efforts to counteract the immobilizing and unstabilizing effects of cultural fragmentation”³⁹ Belgium has often been presented as a foremost example of consociational democracy. It should be noted that the social fragmentation observed in Belgium by the initial thinkers of consociationalism referred not to the linguistic divide between French and Dutch speakers, but to the traditional segmentation of Belgium into three main pillars (Catholic, Liberal and Socialist)⁴⁰. The tradition of compromise between Belgian political elites is sometimes traced back to the very first years of Belgium, when the Catholics and the Liberals formed a Unionist alliance against King William I of the United Kingdom of the Netherlands⁴¹. As the linguistic cleavage rose to prominence and progressively transcended the classical tripartite cleavage, this consociational tradition facilitated the creation of institutional mechanisms designed to strengthen compromise between the two main linguistic groups⁴². Among those mechanisms, we can cite the requirement that the federal cabinet must be composed of an equal number of French and Dutch-speaking ministers, and the 'alarm bell procedure' introduced in the Constitution in 1970, designed to protect the interests of a government if it feels the actions of another component of the federation threaten it. Those consociational mechanisms help to make sure the interests of the two main linguistic groups are represented within the central state. In the field of climate change, this aspect is reflected by the fact that the decisions taken by the various coordination institutions are based on consensus, thereby making sure that every participant's interests are taken into account. If no consensus is reached on a particular issue, the discussions go all the way to the heads of the involved governments.

The second crucial element tempering the weak representation of the federated interests by the Senate is the role of the parties. Belgium has sometimes been described as a partyocracy, to underline the power of political parties. The proportional voting system and the splitting of every political family (Catholic, Liberal, Socialist and Green) into independent Dutch and French speaking parties have provoked an important fragmentation of the political scene. The central government and the federated units are all led by coalitions. Moreover, the same parties are present at all the levels of power: municipal, provincial, regional, federal and European. Because of this, politicians navigate very easily and often between the various levels of government during their career⁴³. A second effect of this situation is that the same parties can sometimes be part of the governing coalitions at

³⁸ Kenneth Douglas McRAE, « Introduction », in Kenneth Douglas McRAE (ed.), *Consociational Democracy: Political Accommodation in Segmented Societies*, Toronto, McClelland and Stewart, 1974, p. 3.

³⁹ Arend LIJPHART, « Consociational Democracy », in Kenneth Douglas McRAE (ed.), *Consociational Democracy: Political Accommodation in Segmented Societies*, Toronto, McClelland and Stewart, 1974, p. 79.

⁴⁰ Kenneth Douglas McRAE, « Introduction », *op. cit.*, p. 6.

⁴¹ *Ibid.*, p. 19.

⁴² Dave SINARDET, « Le fédéralisme consociatif belge : vecteur d'instabilité ? », *Pouvoirs*, vol. 136, n° 1, December 2010, p. 26.

⁴³ André LETON, « Le partage des compétences et les relations intergouvernementales : la situation en Belgique », in Bernard FOURNIER et Min REUCHAMPS (eds.), *Le fédéralisme en Belgique et au Canada : comparaison sociopolitique*, Brussels, De Boeck supérieur, 2009, p. 99.

several levels at the same time. This “porosity” between levels of governments⁴⁴ can either facilitate or complicate intergovernmental relations, depending on whether the same parties are in power or not. In any case, political parties are an important way through which the two linguistic groups' interests are channeled to the central institutions. This is something we observed in the case of climate change, in the way political difficulties in the elaboration of the Belgian positions are often solved via inter-cabinet meetings. This political involvement starts at a low level in the decision making process.

Finally, the third institutional dimension identified by Broschek, the system of intergovernmental relations, is strongly institutionalized in Belgium. This is usually not a feature of inter-state federalism. With the Belgian federation being the result of a dissociation process, there was a strong incentive to elaborate mechanisms to ensure smooth cooperation between the various levels of governments⁴⁵. Poirier notes that “several crucial institutions are built on the principle of linguistic parity”, and that the successive constitutional reforms introduced hundreds of “compulsory cooperative measures”, “most of them [being] of a procedural nature”⁴⁶. The institutionalization of the intergovernmental relations can also be noted through the importance of the cooperation agreements concluded between the various levels of governments. Those agreements, as we observed in the case of climate change, are a crucial element to clarify the working of the relationships between governments.

According to Poirier, the high degree of institutionalization of the intergovernmental relations can be partly explained by the Belgian “strong preference for legal instruments as opposed to mere political agreements”, and the “particularly antagonistic nature of Belgian politics”⁴⁷.

The legal tradition in Belgium might play an important part in the preference for enforceable written arrangements. Belgium has a civil law system, and a legal centralist tradition. These elements are usually associated with a stronger reliance on written law. As Poirier points out, the legal status of the intergovernmental agreements in Belgium is also influenced by this culture: in federations with a civil law tradition, intergovernmental agreements are usually more binding than in common law countries⁴⁸.

In the case of Belgium, this is reinforced by the “lack of trust”⁴⁹ between the components of the federation. The mutual suspicion among governmental partners is a reason why the progressive transfer of powers from the centre to the communities and regions was accompanied by the establishment of mechanisms of cooperation, in the form either of specific institutions, or of procedural rules. These rules derive either from the law, or very often, from cooperation agreements directly negotiated between the governments. This lack of trust and the ensuing constitutional and legislative entrenchment of the various coordination mechanisms and intergovernmental agreements

⁴⁴ *Ibid.* p.100

⁴⁵ Johanne POIRIER, « Formal Mechanisms of Intergovernmental Relations in Belgium », *Regional & Federal Studies*, vol. 12, n° 3, 2002, p. 31.

⁴⁶ *Ibid.*, pp.31-32.

⁴⁷ *Ibid.*, p.25.

⁴⁸ Johanne POIRIER, « Les ententes intergouvernementales et la gouvernance fédérale : aux confins du droit et du non-droit », in Jean-François GAUDREAUULT-DESBIEENS and Fabien GELINAS (eds.), *Le fédéralisme dans tous ses états. Gouvernance, identité et méthodologie*, Cowansville, Editions Yvon Blais, 2005, p. 465-467.

⁴⁹ Johanne POIRIER, « Formal Mechanisms of Intergovernmental Relations in Belgium », *op. cit.*, p. 31.

can be linked to the trajectory and the dynamics of the Belgian federalism. Behind the constant changing evolution of the Belgian federalism, which seems to be stuck in a perpetual reform movement, lies a fundamental ambiguity, noted by many observers. Swenden, for instance, evokes the lack of a “Master plan” behind the continuing evolution from a unitary country to a federation⁵⁰. The coexistence of both communities and regions, which is the result of a historic compromise, blurred the nature of the federation. The dual nature of the federation is masked behind the existence of three communities and three regions. This ambiguity on the nature of the federation (either based on cultural or regional lines) stems from a lack of consensus “on what constitutes the sub-state nations within the Belgian state (and nation)⁵¹.” This makes a formal recognition of Belgium as a multinational country difficult. The historical construction of the federation, through a series of compromises negotiated between parties, has failed to address this fundamental ambiguity⁵².

This absence of a “Master plan” fuels the distrust between the components of Belgium. Whereas the Flemish nationalists feel that the French minority is resisting and slowing down legitimate reforms, the francophones feel that the Flemish are not negotiating in good faith when they put new demands on the table after each new constitutional compromise. This pushes both sides to write down and institutionalize the compromises reached after each round of negotiations.

These elements help to explain the degree of formalism we observed in the organization of the cooperation between the various levels of government in the field of climate change.

The analysis of the three institutional dimensions identified by Broschek therefore places Belgium on the side of inter-state federalism, but several crucial features of the political system introduce a significant part of intra-institutional mechanisms in the Belgian federation. This peculiar positioning of the Belgian federation on the inter- intra-state federalism axis is, as we've seen, the result of its particular history. This history produced institutional features which shape the intergovernmental coordination mechanisms in the climate change domain. But those mechanisms are also affected by external factors.

IV. External factors: participation in the EU and specificities of the climate change issue

Specifically, two external factors notably shape the way regions and the federal government work together to defend Belgium's interests on climate change. First we need to consider the role of the EU, and secondly we will examine how some of the specificities of the climate change issues affect the way Belgian defines and defends its positions.

The participation of Belgium in the EU has a major impact on the way it conducts its foreign policy. As we've seen in the field of climate change, Belgium gears the definition and the defense of its positions mostly towards the European arena. Belgian positions are mainly expressed and defended at the European level, when Belgium takes part in the definition of European positions which will then be defended in common with other member states during multilateral discussions. Generally

⁵⁰ Wilfried SWENDEN, « Conclusion: The Future of Belgian Federalism—Between Reform and Swansong? », *Regional & Federal Studies*, vol. 23, n° 3, 2013, p. 374.

⁵¹ *Ibid.*

⁵² Jan ERK, « ‘Two Souls, Alas, Reside in my Chest’: The Constitutional Foundations of Belgium between a Popular Democracy and a Multination Federation », *The Political Quarterly*, vol. 84, n° 2, 2013, p. 286.

speaking, the EU acts as a powerful incentive, often the most important one, for the various Belgian levels of government to sit around the table and elaborate common positions. Indeed, in many areas the EU regularly requires Belgium to state its positions or to produce reports, thereby forcing internal cooperation between the regions and the central government to formulate those positions. Beyer and Bursens have shown how Europeanization “encourages the federal level, the regions and the communities to install cooperation mechanisms within the margins of the constitutional provisions of Belgian dual federalism⁵³.” The rotating presidency of the council of the EU also pushes in this direction. Belgium held the presidency in 2001 and in 2010. On both occasions, it was crucial for the country to make sure that the channels of cooperation between various governments were running efficiently. Those experiences helped to refine the day to day functioning of those cooperation mechanisms⁵⁴.

The second external factor affecting the multi-level politics of climate change in Belgium are the specificities of this field. Environmental matters, including climate change issues, are characterized by the fact that they touch upon competencies that are shared between the regional and the federal level. As we have noted, those competencies are mostly regional, but the federal level does have relevant responsibilities as well. This is not an obstacle to cooperation. As Beyer and Bursens noted, “especially extensive (not minor) regional capabilities coincide with high (not low) levels of cooperative behaviour within Belgium⁵⁵.”

Moreover, the issue of climate change has a significant place on the international and on the European agenda. This forces Belgium to state its positions relatively frequently. The pace of the international discussions and their technical nature pushed Belgium to create and maintain a formalized coordination system. Previous research by Kerremans showed that “the higher the number of international negotiations and agreements on the issues, the more formalized is the specialized co-ordination system in Belgium.(...) This allows Belgium, as a representative of its several governments, to intervene quickly at all stages (from initiation by the Commission to the adoption of the decision by the Council) in EU decision-making or in decision-making in international negotiations outside the EU⁵⁶.” Therefore, the incentive provided by the EU to the Belgian regional and federal governments to cooperate is particularly strong in the environmental domain, where competencies are mostly regional, but where the central state has a role to play, and where the EU has large competencies⁵⁷.

Those elements help to explain the formal nature of the cooperation system we described. They also help to understand the particular role of the federal state in this system.

Conclusion

⁵³ Jan BEYERS and Peter BURSENS, « The European rescue of the federal state: How Europeanisation shapes the Belgian state », *West European Politics*, vol. 29, n° 5, 2006, p. 1075.

⁵⁴ This was made evident in interviews with various officials from the federal and regional governments.

⁵⁵ Jan BEYERS and Peter BURSENS, « The European rescue of the federal state », *op. cit.*, p. 1074.

⁵⁶ Bart KERREMANS and Jan BEYERS, « The Belgian sub-national entities in the European union: Second or third level players? », *Regional & Federal Studies*, vol. 6, n° 2, 1996, p. 54.

⁵⁷ Jan BEYERS and Peter BURSENS, « How Europe Shapes the Nature of the Belgian Federation: Differentiated EU Impact Triggers Both Co-operation and Decentralization », *Regional & Federal Studies*, vol. 23, n° 3, 2013, p. 276. See also : Sander HAPPAERTS, Simon SCHUNZ and Hans BRUYNINCKX, « Federalism and Intergovernmental Relations », *op. cit.*, p. 445.

As we've seen, the deep involvement of federated entities in the elaboration and defense of Belgian positions on climate change are the corollary to the large competencies of regions and communities in foreign policy, following the application of the *in foro interno, in foro externo* principle.

In practice, this deep involvement is made possible by a complex set of coordination mechanisms associating the regions and the federal government. This coordination allows the regions to have a large input in the formulation of Belgian positions and in their subsequent expression abroad.

Even though climate change related responsibilities are largely in the hands of the regional governments, the federal government has not been made irrelevant in this cooperation system. Regarding the elaboration of Belgian positions, the central government plays a major role in the organization of the intra-Belgian coordination, and a somewhat lesser role in the actual discussions. This lesser role is due to the fact that regions have often larger competencies in the topics relevant to climate change.

The federal government does not aggregate regional inputs to formulate Belgian positions. It doesn't dominate the discussions and is just one actor among others in the elaboration of those positions. In fact, its role is largely determined by institutional rules. The specificities of these coordination institutions and rules, as we've seen, are largely the result of the particular history of Belgium. The federal government's role in this process is therefore largely a product of its progressive weakening within the Belgian federation.

Regarding the expression of the Belgian positions abroad, the federal government keeps a crucial position, being the interface between regions and the international scene. In most arenas on the international stage, the federal government is the only interlocutor considered by foreign authorities or international organizations. It therefore seems that those international constraints undermine the international capabilities of the regions, and enhance the role of the federal government. As Happaerts, Schunz and Bruyninckx put it, “although [the Belgian regions] probably have the highest degree of autonomy of all subnational governments in Europe, certainly with regard to international decision making, they are to a large extent confined to intergovernmental relations if they want to exert that autonomy. In many cases, the federal government is the coordinating partner in those intergovernmental relations. That is mostly true when external relations are concerned, since the federal government remains the main contact point for international organizations⁵⁸.”

On the other hand, though, once again, those circumstances forced Belgium to organize a set of mechanisms allowing regional governments (and communities, when they are affected) to speak on behalf of the whole country. This set of rules and procedures are once again the result of the historical federalization of Belgium, and a manifestation of the weakening of the federal government within the federation.

In the end, it seems that the central government's role in the definition and defense of Belgian positions on climate change is twofold. Firstly, as the depositary of a certain set of competencies that are relevant to the issue of climate change, the federal government is a participant in the elaboration and in the defense of Belgian positions abroad, on an equal footing with regions, as far as their competencies are concerned. Secondly, the central government plays the role of a facilitator

⁵⁸ Sander HAPPAERTS, Simon SCHUNZ and Hans BRUYNINCKX, « Federalism and Intergovernmental Relations », *op. cit.*, p. 445.

both in the organization of the intergovernmental coordination needed to elaborate Belgian policies, and then in the process of expressing those positions abroad. There, the federal government facilitates the access of regional governments to the international stage, through a set of cooperation agreements with the regions.

This facilitator role, though, is the result of the political and institutional evolution of Belgium, more than a political choice made by the federal government. The role played by the federal government in this process is therefore mostly determined by institutions and rules inherited from the Belgian federal history and intergovernmental dynamics. These elements have contributed to shape intergovernmental relations in Belgium. Notably, these relations are highly institutionalized and formalized. These features have been clearly observed in the field of climate change. We have seen that the coordination mechanisms clarifying the role of the regions in the international climate policy are very complex and detailed. They stem from written agreements between the various levels of governments. They allow Belgium to develop a unified position on climate change.

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