How Regions Contribute to Belgium's International Climate Policy: 
A Comparison of Belgian and Canadian Multi-Level Climate Politics

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ABSTRACT:

This paper examines the way Belgian regions are contributing to the multilateral discussions on climate change. It focuses on the intergovernmental cooperation mechanisms that allow the regions to shape the positions Belgium will defend on the international stage. The paper discusses how the characteristics and dynamics of Belgian federalism influence these intergovernmental mechanisms. To illustrate these points, the paper will contrast the Belgian case with the situation of Canadian provinces, with a focus on Quebec.

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.

This stands in sharp contrast to the situation in Canada, where few formal mechanisms of intergovernmental cooperation exist in the realm of international environmental politics. In the absence of a consensus on the role of provinces with regards to Canadian foreign policy, the federal government is de facto responsible for the elaboration and the formulation of the Canadian positions on international matters. The provinces are only involved in the foreign policy-making process on an ad hoc basis and the intergovernmental consultation mechanisms are largely informal. In this context, the province of Quebec has relied on paradiplomacy to promote its views on climate change.
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, 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.

This stands in sharp contrast with the situation prevailing in other federations, notably Canada. Even though they also have large constitutional competencies on environmental matters, Canadian provinces are largely left out from the elaboration and defense of Canada's international positions on climate change. Their role in this process is purely consultative and determined on an ad-hoc basis by the federal government.

The exceptional extent of Belgium's regions involvement in its international climate policy can be better understood by taking a closer look at some specificities of this federation. Intergovernmental relations, defined here as the relationships between various levels of government 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.

Contrasting the case of Belgium with a similar analysis of the Canadian case allows us to observe congruence between some general features of federalism in those two countries and the way federated regions are associated to the conduct of foreign policy in the field of climate change.

To distinguish those two cases and characterize some of their respective features, it is useful to start with the classical distinction between inter-state and intra-state federalism. 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.” 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.

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. We can therefore attempt to differentiate federations based on their respective positions on the inter-state/intra-state federalism axis. To do this, we will use the framework described by Jörg Broschek, who suggests focusing on three institutional dimensions “to uncover how inter- and intrainstitutional mechanisms variously underpin the architecture of federal systems”. These three institutional dimensions are the allocation of competences, the constituent units’ participation in federal legislation and the system of intergovernmental relations. We will therefore examine those three features in the cases of Belgium and Canada.

This paper will proceed as follow. Firstly, we will examine some general features of the Belgian federalism, and show the congruence between those features and the place allocated to Belgian regions in the international climate policy of Belgium. In a second part, we will contrast this with a presentation of the situation in Canada, using the same method.

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 both Belgium and Canada, realized between 2007 and 2013.

I. Belgium

A. General features and role of the federated units in foreign policy

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, French and the German-speaking.) Those 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 demand of Walloons for greater socio-economic autonomy.

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 parliaments have the same legal 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 1980s, but this principle is now fully recognized constitutionally. According to the Constitution, 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 interactions.”

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

5 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.


7 Article 167

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 policy. 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 concerned. They also cover the treaty-making process when a treaty touches upon mixed competencies.

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).

Moreover, the international responsibilities accorded to the federated units have pushed them to develop their own foreign affairs administrations. Each 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 de facto absorbed 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).

B. Role of the regions in the international climate policy

Considering their international responsibilities, it is logical to see the federated entities play a major role in the Belgian international climate policy. The constitutional division of powers in

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environmental matters in Belgium favours the regions, but leaves a role for the federal government. 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.

![Diagram of Belgian positions on climate change](image)

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

This coordination architecture are summarized in Figure 1. The system works as follows. The


13 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 HAPPAERTS Sander, SCHUNZ Simon and BRUYNINCKX Hans, « Federalism and Intergovernmental Relations: The Multi-Level Politics of Climate Change Policy in Belgium », Journal of Contemporary European Studies, vol. 20 no.4, December 2012, pp.441-458, p. 447. This figure ignores other elements designed to coordinate the Belgian domestic climate policy, such as the Climate National Commission.

6
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 EU\textsuperscript{14}. The CCIEP meets every month. Those meetings are presided by the delegate from the federal environment public service. The CCIEP has several working groups on different topics. 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 government\textsuperscript{15}.” 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 administration\textsuperscript{16}.” 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 EU\textsuperscript{17}, 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 coordination\textsuperscript{18}. Only once a definitive Belgium position has been established after the DGE coordination meeting, can it be defended on the European scene.

\textsuperscript{14} 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.

\textsuperscript{15} VAN DEN BRANDE Karoline, HAPPAERTS Sander and BRUYNINCKX Hans, « Multi-Level Interactions in a Sustainable Development Context: Different Routes for Flanders to Decision-Making in the UN Commission on Sustainable Development », \textit{Environmental Policy and Governance}, Vol. 21, Issue 1, 2011, pp.70–82, p.76.


\textsuperscript{17} 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.

If the Belgian position is to be presented during multilateral discussions, the CCPIE 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 stakeholders.\(^{19}\)

The precise relations of the various coordination groups and the role of the pilots are detailed in two vademecums published in 2004 and 2005.\(^{20}\) The 2004 vademecum also clarifies the decision-making process and the conflict resolution mechanisms within the CCIEP: The CCIEP and the ICE 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.

![Diagram of coordination groups and conflict resolution steps](chart.png)

**Figure 2.** Conflict-resolution steps in the elaboration of a Belgian position.\(^{21}\)

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\(^{19}\) VAN DEN BRANDE Karoline, HAPPAERTS Sander and BRUYNINCKX Hans, « Multi-Level Interactions in a Sustainable Development Context... » *op. cit.*, p.79.

\(^{20}\) Vademecum – négociations de dossiers environnement européens et multilatéraux et rôle des pilotes et experts, ICE, 2004; and Vademecum des négociations dans les comités de comitologie et du rôle du représentant officiel et des experts, CCIEP, 2005.

\(^{21}\) 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.
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 2004\(^22\). 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 Belgium and Germany\(^23\). 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 pilots\(^24\). In the comitology committees of the EU Commission, Belgium is represented by experts from the regional or federal governments\(^25\). 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 Cancun\(^26\).

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 change\(^27\). 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 the multilateral negotiations on climate change, the EU states organise 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 itself\(^28\). Therefore, most of the Belgian efforts to defend its positions on climate change take place at

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\(^22\) HAPPAERTS Sander, SCHUNZ Simon and BRUYNINCKX Hans, « Federalism and Intergovernmental Relations... » \textit{op. cit.}, p.453.


\(^24\) Vademecum – négociations de dossiers environnement européens et multilatéraux... \textit{op. cit.}, 2004

\(^25\) Vademecum des négociations dans les comités de comitologie... \textit{op. cit.}, 2005

\(^26\) HAPPAERTS Sander, SCHUNZ Simon and BRUYNINCKX Hans, « Federalism and Intergovernmental Relations... » \textit{op. cit.}, pp.453-454.

\(^27\) HAPPAERTS Sander, SCHUNZ Simon and BRUYNINCKX Hans, « Federalism and Intergovernmental Relations... » \textit{op. cit.}, p.451.

\(^28\) VAN SCHAIK Louise, « The Sustainability of the EU's Model for Climate Diplomacy », In OBERTHÜR Sebastian and PALLEMAERTS Marc (Eds), \textit{The New Climate Policies of the European Union: Internal Legislation and
the European level. Belgium does send delegations at the multilateral discussions on climate change, but 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 level. Another important feature of the coordination mechanism is the tendency of the minister's cabinets 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 interviews.

To summarize, we can identify three 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.

Finally, 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

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

30 BURSENS Peter and GEERAERTS Kristof, « EU Environmental Policy-Making in Belgium... op. cit.», pp.169-170; HAPPAERTS Sander, SCHUNZ Simon and BRUYNINCKX Hans, « Federalism and Intergovernmental Relations... » op. cit., p.455.
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 arrangements\(^{31}\).

C. Congruence with observed specificities of the Belgian federation

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, seem consistent with some specificities of the Belgian federal system.

We shall examine the three institutional dimensions identified by Broschek to see where Belgium stands on the inter-state/intra-state federalism axis. These three institutional dimensions are the allocation of competences; the constituent units’ participation in federal legislation; and the system of intergovernmental relations\(^{32}\).

In the case of Belgium, the allocation of competences is clearly dualistic, and not integrated. 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 decisions\(^{33}\). This is reinforced by the absence of hierarchy between the federal, regional and community laws and decrees, and by the application of the \textit{in foro interno, in foro externo} principle\(^{34}\). 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 impact\(^{35}\).” 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 institutions\(^{36}\). However, in the case of Belgium, this situation

\(^{31}\) VAN DEN BRANDE Karoline, HAPPAERTS Sander and BRUYNINCKX Hans, « Multi-Level Interactions in a Sustainable Development Context... », \textit{op. cit.}, pp.79-80.

\(^{32}\) BROSCHEK Jörg, « Historical Institutionalism and the Varieties of Federalism in Germany and Canada », \textit{op. cit.}, p.667.


\(^{34}\) HAPPAERTS Sander, SCHUNZ Simon and BRUYNINCKX Hans, « Federalism and Intergovernmental Relations... » \textit{op. cit.}, p.443.

\(^{35}\) SWENDEN Wilfried and JANS Theo, « ‘Will it stay or will it go?’... » \textit{op. cit.}, p.886.

is tempered by two crucial elements. First is the existence of consociational mechanisms and a tradition of compromise between the political elites. The concept of consocialism 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” 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”. 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). 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 Netherlands. As the linguistic cleavage rose to prominence and progressively supplanted the classical tripartite cleavage, this consociational tradition facilitated the creation of institutional mechanisms designed to strengthen compromise between the two main linguistic groups. 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. 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 particracy, 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 career. A second effect of this situation is that the same parties can sometimes be part of the governing coalitions at several levels at the same time. This “porosity” between levels of governments can either facilitate or complicate intergovernmental relations, depending on whether the same parties are in power or

43 Ibid. p.100
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 governments. 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”. 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.”

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 countries.

In the case of Belgium, this is reinforced by the “lack of trust” 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 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 federation.

The coexistence of both communities and regions, which is the result of a historic compromise,

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45 Ibid., pp.31-32.
46 Ibid., p.25.
48 Ibid., p.31.
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)”. 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 ambiguity.

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.

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. We've seen that these features affect the intergovernmental coordination mechanisms in the climate change domain.

A last but extremely important element also affects the involvement of the regions in the Belgian international climate policy: the presence of the EU. As we've seen, Belgium gears the definition and the defense of its climate positions mainly towards the European arena. The EU acts as an powerful incitative for the various Belgian levels of government to sit around the table and elaborate a common position. In many cases, the EU forces Belgium to state its positions or to produce reports, thereby forcing cooperation between the regions and the central government. This situation is obviously not limited to the climate change domain. 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 federalism.” This effect is nevertheless 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 competencies. The EU is therefore a key cog in the system, since it delivers the main incentive for Belgian governments to cooperate in order to elaborate and defend common positions on climate change.

50 SWENDEN Wilfried, « Conclusion: The Future of Belgian Federalism... » op. cit., p.374
II. Canada

A. General features of the Federation and allocation of foreign policy responsibilities

The Canadian federation was formed in 1867, through the adoption of the British North America Act (BNA Act). The federation slowly expanded to its current ten provinces and three territories. The provinces derive their powers directly from the Constitution, whereas the territories received their powers directly from the federal government, which created territorial governments to oversee local matters.

Canada is generally considered a decentralized federation where the provinces enjoy large responsibilities. The division of powers between federal and provincial governments is detailed in the BNA Act. This distribution of powers has not fundamentally changed since the 19th century, even though the balance of power between the central state and the provinces has greatly varied since 1867, notably due to historical circumstances and the interpretation of the constitutional texts by the Supreme Court54. Many areas of competences are not clearly attributed to either level of government by the Constitution, because they were unforeseen in the late 19th century.

This is notably the case in foreign relations. The 1867 BNA Act doesn't mention foreign relations, since Canada was at the time part of the British Empire, and was therefore not in charge of its own foreign policy. This void has largely been filled by the federal government while Canada gradually gained its independence from London55. The federal government therefore de facto controlled the traditional dimensions of foreign policy: jus tractatum, jus legationis and jus belli. In the 1930s, the provinces grew worried of the potential interferences by the federal government in their constitutional responsibilities. At the time, the federal government's power was increasing within Canada, as Ottawa attempted to launch active policies to challenge the economic crisis. The provinces contested the right of the federal Parliament to pass laws to apply international treaties touching provincial matters. An important 1937 decision from the Judicial Committee of the Privy Council (JCPC) sided with the provinces56. Since then, the provinces are responsible for adopting the laws to implement treaties in their fields of competences.

Since the 1960s, one of the ten provinces, Quebec, has developed the argument that since it is responsible for implementing the treaties falling under its jurisdiction, it should also be able to conclude treaties in those matters. The province which was in the midst of the “Révolution tranquille”, a major process of social and political change, greatly modernized and developed its bureaucracy and aggressively defended its constitutional competences against any perceived encroachment from Ottawa. In this context, Quebec developed the Gérin-Lajoie doctrine, named after the minister who first enunciated it in 1965. This doctrine advocates for the application of the in foro interno, in foro externo principle in Canada57. According to this vision, Quebec should be able

54 Until 1949, the Judicial Committee of the Privy Council (JCPC) in London, was the court of last resort in Canada. Its decisions have often been viewed as favorable to the provinces, and have been criticized for altering the federal balance in their favour. See CAIRNS Alan C., « The Judicial Committee and its Critics », Canadian Journal of Political Science, vol. 4 n°3, 1971, pp.301-345.
56 JCPC, Canada (Attorney General) v. Ontario (Attorney General), [1937] A.C. 326
to conclude its own treaties, to have independent relations with foreign governments, to send representatives abroad, and to participate in international discussions, as far as its constitutional responsibilities are concerned. Quebec maintains that these claims are simply based on the interpretation of the Constitution, and are not a demand for new constitutional rights. This position has never been accepted by the federal government, which articulated its own views in two white papers published in 1968\(^{58}\). In these white papers, the federal government maintains the position that it is the only authority responsible for the international relations of Canada. The federal government nevertheless stressed that it was open to “facilitate the participation of provincial governments in Canadian delegations to international organizations, conferences, and negotiations dealing with matters falling within provincial jurisdiction, as well as to facilitate the representation of provincial governments abroad\(^{59}\).” Also, the federal government refuses the claim that provinces have the right to conclude their own treaties, but admits that they can negotiate administrative level memorandum of understanding, or “ententes” with foreign partners, as long as they fall under the umbrella of previous framework agreement between Canada and the relevant foreign country\(^{60}\).

This disagreement on the international role of the provinces persists to this day. The Gérin-Lajoie doctrine has been used by every subsequent Québec government (sovereignist or federalist) to legitimize its international activities, including the conclusion of hundreds of *ententes internationales* with foreign partners. The exact legal value of these ententes is still debated. Largely because of this persisting disagreement between Quebec and Ottawa on the role of the provinces in the Canadian foreign policy, there is no institutional arrangement to provide for rules or procedures of cooperation between the federal government and the provinces in the matter of international relations. Nevertheless, a *modus vivendi* progressively emerged, which left some room for the provinces (and most notably Quebec) to develop their international activities in parallel of the Canadian foreign policy, controlled by the federal government\(^{61}\). This *modus vivendi*, requiring a pragmatic use of a certain degree of ambiguity, has allowed both the federal and the provincial governments to develop their policies without hurting their respective claims, and without solving their differences.

### B. The *de facto* exclusion of the provinces from the international climate policy

In the field of climate change, the lack of formal rules organizing cooperation between the two levels of government has largely meant that the definition and the defense of the Canadian international positions has been the prerogative of the federal government.

Constitutionally, environmental matters don't neatly fall into either the federal or the provincial jurisdiction, a fact that was noted in a 1992 decision of the Canadian Supreme Court\(^{62}\). The provinces do have large environmental competences\(^{63}\), which means they have a crucial role to play in the implementation of any international environmental treaty. On the other hand, the federal

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60 Ibid.

61 DE MESTRAL Armand, « The Provinces and International Relations In Canada », *op. cit.*, p.325.


63 Those competencies are based on the provincial ownership of natural resources, and on their authority on crown land, property and civil rights, municipal institutions, and matters of a local or private nature.
government also enjoys some responsibilities that are relevant to climate change.\(^{64}\)

In the climate change field, as in other fields, the absence of any institutionalized coordination mechanisms means that it is the federal level that controls the process of foreign policy-making. Provinces can be consulted, on an ad-hoc basis, to assist in the preparation of the Canadian positions before international discussions. But these consultations are optional, and they are not bound by any procedural rules. Historically, the main forum where provinces can make their voices heard on climate change has been the Canadian Council of Ministers of the Environment (CCME). The CCME is the only formal intergovernmental institution in the matter of environment (and climate change). This group meets annually, and makes its decisions based on consensus. Its role in the definition of the Canadian international positions is nevertheless purely consultative. This was made very clear by the attitude of the federal government during the negotiations leading to the Kyoto protocol and its subsequent ratification process. The federal government unilaterally accepted ambitious reductions target in Kyoto only weeks after a meeting with the provinces in Regina, where it was agreed that Canada would negotiate for a stabilization of the 1990 GES emission levels by 2010.\(^{65}\) In the same way, Canada's Prime Minister Jean Chrétien unilaterally announced in 2002 his intention to ratify the protocol, without first consulting the provinces.\(^{66}\)

No formal coordination mechanisms were put in place after these events, in spite of the demands of some provinces. The provinces are also usually invited to send officials to become part of the Canadian delegation during the international negotiations. But the composition of the delegation remains controlled by the federal level, and within the delegation, provincial representatives mostly have an observatory role, and in any case, they are not allowed to publicly defend their own provincial positions or interests.

For the federal government, according a larger role to the provinces in the definition and the defense of Canada's international climate policy is complicated by the lack of consensus among the governments on the issue of climate change. Since Stephen Harper and the Conservative Party came to power in 2006, Canada gave up on its Kyoto commitments, and expressed its reluctance to see a new mandatory emissions reductions regime adopted after 2012. These positions are opposite to those of certain provinces, such as Quebec. Since the early 2000s, Quebec has been vocal in its support for more ambitious climate change policies in Canada and on the international scene. Yet the positions of Quebec have largely failed to affect or curb the positions defended on the international stage by the federal government.

In summary, the participation of the provinces to the definition and the defense of the Canadian positions on climate change on the international scene has been minimal. The federal government only leaves the provinces a consultative role, on an ad-hoc and informal basis, in the absence of any formal coordination mechanism.

This situation has pushed the province of Quebec to develop its own climate change policies, and to defend its own positions on the international change through paradiplomacy.\(^{67}\) Notably, the province

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\(^{66}\) Ibid, p.1

\(^{67}\) GAYARD Grégoire, Les efforts internationaux du Québec pour une meilleure prise en compte du rôle des régions dans la lutte contre le changement climatique, paper presented at the 2011 conference of the Société Québécoise de
is involved in a series of networks and initiatives associating regions and local governments, such as the Network of Regional Governments for Sustainable Development (nrg4SD), the Regional Greenhouse Gas Initiative (RGGI), the Western Climate Initiative (WCI), the Climate Registry, the International Carbon Action Partnership (ICAP), the Climate Group and the Conference of the New England Governors and Eastern Canadian Premiers (CNEG/ECP)\textsuperscript{68}. This allows the Quebec government to try to give some visibility to its own positions, and to showcase its policies and expertise on climate change.

C. Congruence with observed specificities of the Canadian federation

The quasi-exclusion of the provinces from the definition of the Canadian policies on climate change and the absence of coordination mechanisms allowing them to express their positions on this issue are congruent with other features of the Canadian federalism.

Using the same criteria we used to analyse the Belgian federation, we can see Canada is closer to the ideal inter-state model of federalism.

Regarding the distribution of responsibilities, Canada clearly uses a dual system. The 1867 BNA Act lists in two articles the exclusive fields of jurisdiction of the federal and provincial parliaments. This list is meant to be exhaustive and exclusive. In reality, as was the case in Belgium, many issues require the intervention of both levels of government. This is something we observed in the case of climate change. Moreover, the division of responsibilities is largely outdated, and has evolved in practice through judiciary interpretation. Whereas the federal balance seemed initially to favour the central government, Canadian history has been marked by a cyclical evolution of the federal dynamic between centralisation and decentralisation\textsuperscript{69}. This cyclical evolution is the product of political factors and the evolution of the interpretation of the Constitution by the JCPC and the Supreme Court. In any case, it does not refute the inter-state nature of the division of powers.

Concerning the participation of the constituent units in the federal legislation, and the representation of their interests within the central government's institutions, Canada again leans towards the inter-state model of federalism. The Canadian Senate does not represent the provincial interests in Ottawa\textsuperscript{70}. Its members are appointed by the Governor General on the recommendation of the Prime Minister. There is a geographic distribution of the seats, which is not purely based on population, but is meant to provide an equilibrium between the various informal regions of the country. The designation of the Senators and the role played by the Senate in the Parliament mean that it doesn't provide a way of representing the provincial interests in Ottawa. The federal cabinet traditionally includes at least one member from each province. But this does little to actually represent the provincial interests, since the cabinet has usually many more than 10 members. Moreover, the voting system makes coalitions a rarity in Canada, which means the members of the cabinet are all members of the same political party, limiting the relevance of their geographic origin. Therefore, most of the intergovernmental relations in Canada have taken the form of executive federalism.

The executive federalism concept is used to describe a situation where the combination of federalism and Westminster-style parliamentary system lead to a dominance of the executives on

\footnotesize{\textsuperscript{68} Ibid.}

\footnotesize{\textsuperscript{69} BROSCHEK Jörg, « Historical Institutionalism and the Varieties of Federalism in Germany and Canada », \textit{op.cit.}, p.678}

\footnotesize{\textsuperscript{70} POIRIER Johanne, « Les fédérations belge et canadienne : essai de comparaison synthétique et systématique », \textit{op.cit.}, p.23.}
the intergovernmental relations. In this situation, the intergovernmental relations are mainly assumed by the executives of each level of government. This places Canada on the side of the inter-state model of federalism. In the Canadian case, and contrary to the Belgian situation, this situation is not mitigated by the role of the political parties. The provincial and federal political parties are separated and independent from each other in Canada. There is for instance no particular solidarity between the federal liberal party and the Parti libéral du Québec. This is in contrast to Belgium, where the same political parties are active at various levels of government.

Finally, the third institutional dimension identified by Broschek, the system of intergovernmental relations, is almost not institutionalized in Canada. In Canada, intergovernmental relations mainly take place through interministerial meetings. Among those meetings, the First Ministers’ Conferences (FMC) are the most important. Nevertheless, these meetings do not occur on a regular basis and the FMCs have been rare over the last few years. Most of the relations therefore take place at the ministerial or administrative level. In certain areas, such as the environment, the relations are more routinized, but even there, they are weakly institutionalized. The informal nature of the Canadian intergovernmental relations also means there are no clear rules to solve conflicts. It also means intergovernmental agreements, rarely written, have a very variable legal value that is difficult to assess. The Council of Federation, established in 2003, was supposed to transform this situation. But it is a purely interprovincial institution, and its rules of decision-making and lack of a Constitutional status made it relatively marginal. On this basis, we must, again, place the Canadian federation clearly on the side of inter-state federalism.

Looking at the history and the dynamics of the federation help to explain the informal nature of intergovernmental relations in Canada. Their weak institutionalization introduces a dose of ambiguity and flexibility that can have positive effects on the functioning of the federation. In the Canadian case, ambiguity and flexibility can be seen as an answer to the absence of consensus on the origins and meaning of the federation. In Canada, a disagreement persists on the very nature of the federation: whereas most francophone Quebecers view the federation as a compact between two nations, in the rest of Canada it is usually seen as a union between ten provinces. As in Belgium, a profound disagreement remains on the nature of federalism. This disagreement dates back to the very creation of the federation. As Erk and Gagnon argue, the original federal compromise reflects this ambiguity: “When parties to the federal compact could not agree on the

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71 WATTS Ronald L., Executive Federalism : A Comparative Analysis, Research notes, Institute of Intergovernmental Relations, Queen's University, 1989, 24p., pp.3-4. See also: SMILEY Donald, The federal condition in Canada, op.cit.

72 BAKVIS Herman, BAIER Gerald et BROWN Douglas, Contested Federalism : certainty and ambiguity in the Canadian federation, Don Mills, Ontario, Oxford University Press Canada, 2009, 304p., p.49


exact terms of the union, they left the question about the political nature of the community unclear. Despite considerable efforts, it has proven virtually impossible to alter the Canadian constitution to accommodate the demands of Quebec for recognition of its special status in the federation. This is largely because this would conflict with the view of the federation held in the rest of Canada. In this context, the informal nature of intergovernmental relations has helped maintain the federation functional by allowing for some flexibility. In many cases, ambiguity has allowed Canada to find pragmatic solutions to contentious issues. For instance, in the case of foreign relations, we saw how the persistence of certain ambiguity has led the federal and Quebec governments to develop a *modus vivendi*, allowing them to maintain their respective claims and to develop their own policies.

The preference for unwritten agreements and the reluctance to clarify legally the intergovernmental arrangements can also be linked to the legal tradition of Canada. In contrast with Belgium, Canada has a common law tradition, except for Quebec where the French civil law system has had an important influence.

The examination of the three criterions used by Broschek therefore leads us to place Canada further on the side of inter-state federalism than Belgium. Whereas in Belgium, some of the inter-federal tendencies were mitigated by features such as consocialist mechanisms, the role of the political parties, and the European integration, those elements are absent in the Canadian case. In Canada though, a dose of flexibility is introduced in the system by the lack of formalism of intergovernmental relations.

In Canada, the lack of consensus on the participation of the provinces in the conduct of foreign policy reflects the larger lack of consensus on the nature of the federation. This disagreement, combined with the features of intergovernmental relations that we identified, explain why the provinces have only marginally been associated to the definition of the Canadian international positions on climate change. This has pushed Quebec to develop its own policies and to defend its positions directly on the international scene. This attitude is consistent with the ambitions of the province to develop its own international relations, as far as its competences are concerned.

**Conclusion**

A link can be made between these features of the federations of both Canada and Belgium and the way their component units are involved in the definition and defense of the international climate change policy. In the case of Belgium, the inter-state nature of federalism is mitigated by the presence of other elements such as the existence of consociational mechanisms, the important role of political parties and the European integration process. Those elements, associated with the specific dynamic of the Belgian federalism, have contributed to shape intergovernmental relations in Belgium. Notably, these relations are highly institutionalized and formalised. 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. This coordination process is the route favoured by the regions to defend their own interests on the international scene.

By contrast, Canada is closer to the ideal type of inter-state federalism. The relations between governments are characterized by a lack of formalism. This weak institutionalization of the

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77 GAGNON Alain-G. and ERK Can, « Legitimacy, Effectiveness, and Federalism... » *op.cit.*, p.324.
intergovernmental relations and their ambiguity reflect deeper divisions within the Canadian federation. This lack of formalism is reflected in the way provinces are involved in the Canadian foreign policy. A persistent disagreement on their role has led to a de facto control of the foreign relations by the central government. This is consistent with what we observed in the case of climate change. In this situation, the province of Quebec, disagreeing with the positions defended by Ottawa and unable to alter them, has favoured the paradiplomacy route to defend its views on climate change on the international stage.

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