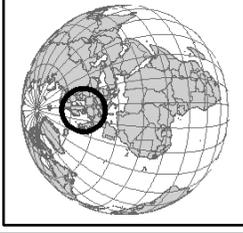


Belgium

Capital: Bruxelles (Brussels)
Population: 10.3 million (2003 est.)



Source: CIA World Factbook
EFH Ltd. UN Cartography Department



Kingdom of Belgium

PETER BURSENS AND FRANÇOISE
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Belgium was created in 1830 as a unitary state when the southern part of the United Kingdom of the Low Countries (Verenigd Koninkrijk der Nederlanden) seceded from the northern part. Substantial federalization began only in 1970 and culminated in the 1993 Constitution, which officially declared Belgium a federal state. The country's short federal history means that foreign policy up to 1993 was almost exclusively a policy of the national government.

This chapter will discuss the national and international settings of the Belgian federation's foreign relations, as well as its constitutional and political features. It is followed by an examination of Belgium's bilateral and multilateral relations. The ensuing discussion of the constitutional setting of Belgian foreign relations argues that the evolution of Belgium's foreign policymaking was predominantly domestically driven and resulted in a competitive form of federalism. However, intergovernmental relations among the constituent units and the federal government suggest that despite the very strong competences accorded the Communities and Regions, the concrete implementation of foreign relations is of a cooperative kind and approached cautiously. The penultimate section discusses the means used by Belgium's constituent units to represent their interests abroad.

Belgium is a relatively small but densely populated country. Its 10.5 million inhabitants are unequally distributed throughout the country's three Regions. Almost 60% live in Flanders, approximately 30% live in Wallonia, and approximately 10% live in the Capital Region of Brussels (Région de Bruxelles-Capitale or Brussels Hoofdstedelijk Gewest). Exact figures on language use in the various parts of Belgium are unavailable because such questions cannot be asked in censuses. However, estimates are that linguistic composition follows the distribution of the population throughout the Regions quite closely: 60% of Belgians are Dutch-speaking and 40% are

French-speaking, while over 90% of inhabitants of the Capital Region are French-speaking.¹ In addition, about 1% of Belgians speak German as their mother tongue. German speakers are concentrated in the country's east near the German border.

Article 1 of the 1993 Constitution states, "Belgium is a federal State composed of Communities and Regions." It is composed of six different constituent units. According to Articles 2 and 3, these entities are the French Community (*Communauté française de Belgique*), the Flemish Community (*Vlaamse Gemeenschap*), the German Community (*Deutschsprachige Gemeinschaft*), the Walloon Region (*Région wallonne*), the Flemish Region (*Vlaams Gewest*), and the Capital Region of Brussels. Thus Belgium has a double federal structure comprised of two types of constituent units. Regions, created for economic reasons because of demands by Wallonia, were granted competences tied directly to territorial space. These include transport, road works, employment policy, industrial policy (economic development), environmental policy, spatial and structural planning, agriculture, housing policy, and trade. Communities, demanded by Flanders for linguistic and cultural reasons, are responsible for education, personalized services, preventive healthcare, culture, media, and use of language ("les matières personnalisables"). The divergent Walloon and Flemish concerns were reconciled through this compromise of establishing the two types of constituent units.

Today, these two types each manage their own sphere of competences and coexist on the same territory. In addition, Communities do not have a fixed territorial base, meaning that Community authorities have jurisdiction in more than one Region. An obvious example is the organization and financing of Dutch-speaking activities and initiatives in the Capital Region of Brussels.² In the Flemish part of the country, Community and Region were fused. According to Article 137 of the 1993 Constitution, the Flemish Region's competences are exercised by the council (later called parliament) and the government of the Flemish Community. However, the organization of foreign relations is what makes Belgian federalism most remarkable, as Regions and Communities enjoy full foreign relations powers for the sectors they govern domestically.

THE REGIONAL AND GLOBAL CONTEXT OF BELGIAN FOREIGN RELATIONS

Belgium borders on the Netherlands to the north, Germany to the east, and Luxembourg and France to the south. Regions and Communities have close ties with neighbouring countries whose inhabitants speak the same languages. The resulting cooperation agreements nevertheless diverge depending on the initiating constituent unit and the willingness of international

partners to do business with it. The most noteworthy example is Flanders, which enjoys a language union (*Taalunie*) with the Netherlands as well as with Suriname. (South Africa has associate status.)³ While the *Taalunie* is relevant only for Dutch-speaking Flanders, the treaty itself was concluded by the Kingdom of Belgium because it stems from 1980, well before the birth of the new federal Constitution and the accompanying regionalization of foreign relations competences. The *Taalunie* fosters the development of common dictionaries and rules of grammar but leaves both parties discretion over their own linguistic, cultural, and educational policies. Although the *Taalunie* serves as a major example of the external activities of Flanders, it does not play a role in the broader institutional discussion. For its part, the German Community prefers international contacts with German-speaking constituent units such as the German and Austrian *Länder*. Overall, these positive relationships between Belgian constituent units and neighbouring states reflect the friendly ties between those states and the Belgian federation as a whole.

The French Community of Belgium concentrates its bilateral and multilateral relations on the Francophonie as an international organization and on its member states. It is one of the principal contributors to this organization. Belgium does not participate in the funding of the Organisation internationale de la Francophonie (OIF), even though it is a member of the Conference at the Summit of Chiefs of States and Governments, which comprises countries that share the French language.⁴

Belgium has always been an enthusiastic supporter of international cooperation and regional integration, even long before external relations became a concurrent power. Two major examples are the Benelux and the European Union. The Benelux is a regional cooperation framework involving Belgium, the Netherlands, and Luxembourg. Still existing today, it began in 1944 and can be considered a forerunner or even laboratory for the later process of European integration. In 1952 Belgium became a founding member of the European Coal and Steel Community (ECSC). From that point on, Belgium has been one of the most prominent supporters of European integration, often initiating – and without exception joining – the consecutive European treaties: the Treaties of Rome, the Single European Act, and the consecutive Treaties of Maastricht, of Amsterdam, and of Nice. It also subscribed early to EU-related policy coordination such as the Schengen Agreements on the free movement of citizens between EU members. In addition, Belgium enjoys no opt-outs, meaning that it participates fully in all EU policy areas. It was a founding member of the Economic and Monetary Union (EMU) and also ratified the draft of the – later rejected – European Constitution in 2005.

While international cooperation within its regional sphere is undoubtedly at the heart of Belgium's foreign policy, cooperation on a wider scale – including the global – has always been part of its external relations. A list

of international memberships makes this clear. In addition to its Benelux and EU memberships, Belgium is a member of numerous international organizations, such as the Organization for Economic Cooperation and Development (OECD), World Trade Organization (WTO), United Nations (UN) and its specialized agencies, International Labour Organization (ILO), International Monetary Fund (IMF), and International Organization for Migration (IOM). In addition, Belgium is a member of regional and global security organizations, such as the North Atlantic Treaty Organization (NATO), Interpol, and the Organization for Security and Cooperation in Europe (OSCE).⁵

Not only the federal government but also the constituent units themselves ratify and honour treaties or agreements of international organizations on matters falling within the domestic competences of the constituent units. The basic treaties of the European Union (e.g., Maastricht, Amsterdam, and Nice) are major examples of such “mixed” treaties. The constituent units, while striving to work in concert with the federation as a whole, demand substantial impact on the formation of Belgian preferences in international organizations covering policies that fall within their powers. In some cases, Regions and Communities can even be associate or full members of organizations. One example is the World Tourist Organization; membership of Belgium’s constituent units is only logical here, tourism being an exclusively regional competence. In most international organizations that make decisions touching on (nonexclusive) regional competences, Regions and Communities are not formally represented but are required to work through the Belgian delegation. An example is the World Health Organization (WHO), which deals with issues that sometimes fall under the jurisdiction of both the federal and the constituent governments. In addition, Regions from time to time finance projects and programs of UN agencies and global and regional organizations such as the WTO, the OECD, and the Council of Europe. Some organizations are very relevant for Belgium’s constituent units. UN institutions such as the ILO, WHO, UNAIDS, and some environmental agencies are a few examples. The OECD and the Council of Europe are also significant partners. Through sponsorship of particular programs, constituent units gain international influence by “buying themselves in.” Examples include explicit Flemish sponsorship of certain operational programs of UNAIDS and the WHO. Finally, it should be repeated that, for the French Community of Belgium, the OIF (called La Francophonie since 2005) is a very important multilateral partner.

THE CONSTITUTIONAL SETTING

Article 167 of the Constitution (as amended in 1993) introduced the principle of alignment between internal and external competences. This allowed Hugues Dumont to write, “Belgian constituent units have received

treaty-making power in matters under their exclusive jurisdiction.”⁶ Indeed, according to Article 167, the king (i.e., the federal government) conducts Belgium’s international relations “without prejudicing the competency of the Communities and the Regions to deal with international cooperation, including the conclusion of treaties, for the fields that fall within their competences in conformity with the Constitution or by virtue of the latter.” The same article also stipulates that “the governments of the Communities and the Regions as defined in Article 121 each conclude, for those areas that concern them, the treaties that fall within the realm of their Council’s [i.e., Parliament’s] competency.” Hence, as is the case, of course, for treaties concluded by the federal government alone, these treaties will take effect only after they have received the approval of the parliament concerned. This provision clearly goes beyond what can be found in other federal countries. In Belgium, the federal government cannot override competences that belong to the constituent units.⁷

From a comparative perspective, this feature makes the Belgian organization of jurisdictions unique. Constituent units are sovereign within the limits of their competences. They are under no form of political tutelage by the federal government in jurisdictions belonging to them alone, including the international aspects of those jurisdictions. At the same time, however, Article 167 is accompanied by a series of mechanisms providing for information, cooperation, and substitution to ensure the coherence of Belgium’s overall foreign policy. These accompanying measures are not redundant because competences – and therefore also their international elements – are shared by the constituent units and the federal government. The federal government is exclusively responsible for defence and security policy, whereas trade policy is partly federal and partly regional. Constituent units and the federal government also share development policy, although this is slated to become a regional matter (a plan that is still contested). Furthermore, most EU policies fall under both federal and regional jurisdiction in the Belgian federation.

The constitutional reform of 1988 introduced the *in foro interno, in foro externo* principle for Community competences, which refers to the right of the constituent Communities to create foreign policy for those competences that they have been constitutionally granted domestically,⁸ including such policy matters as language, culture, and education. The 1993 constitutional reform expanded this principle to apply to the competences of the constituent Regions. This principle follows from the crucial feature of Belgian federalism: the absence of a hierarchy of legal norms, meaning that federal laws and regional decrees stand on an equal footing and cannot overrule each other. The lack of a hierarchy of norms between the federal and constituent units implies – at least theoretically – that each order must both make and implement international policies falling within its jurisdiction.

Currently, residual powers belong to the federal government. However, it is envisaged by the Constitution that they will be transferred to the constituent units once the competences of the federal government are clearly and restrictively listed in the Constitution and the “special law” – Article 35(2) of the *loi speciale*.⁹ By opting for such a solution, the Belgian federation commits itself to the federal philosophy of subsidiarity.¹⁰ This not only brings legal certainty and security into the system but also enables each constituent unit to deal with those fields of international relations for which it has received exclusive domestic competency. Concretely, the federal government lost the privilege of exclusively representing constituent units abroad with respect to a substantial number of policy fields. There are, for example, no longer federal culture or education ministers. Consequently, unlike most other federal governments, the Belgian federal government cannot always play the role of gatekeeper between domestic and international political arenas. On the contrary, Belgian constituent units enjoy fully legitimate and legal direct access to the international stage.

INTERGOVERNMENTAL RELATIONS

Although the *in foro interno, in foro externo* principle looks very simple in theory, its implementation is quite complex. First, international partners need to be informed of the peculiarities of the Belgian system. Above all, they need to be persuaded that international agreements in policy domains such as education and the environment must also be concluded with several constituent governments rather than with the Belgian federal government alone. Second, distinctions must be made to identify policy issues that fall exclusively within the jurisdiction of the constituent units, of the federal government, or of both concurrently. Culture, for example, falls exclusively in the jurisdiction of the Communities, whereas some parts of environmental policy are a federal matter and other parts are a matter of the Regions. Exclusive domestic powers lead to exclusive international competences. The Flemish and the French Communities, for instance, can conclude cultural agreements with other states in their own right. But competences are not clearly divided for the negotiation of many treaties, as well as for representation in most multilateral organizations. As the example of EU policy coordination below illustrates, extensive mechanisms and arrangements with respect to representation had to be installed to ensure that the federation could come up with one representative and a single position.

The authors of the Constitution were already aware of potential coordination problems. The 1993 Constitution therefore lists three limitations to the *in foro interno, in foro externo* principle. The first is the substitution mechanism described in Article 169. This stipulates that if a Region or a Community does not live up to an international or EU commitment and is

convicted by an international court such as the European Court of Justice, the federal government can act as a substitute for the constituent unit (but not the other way around) in order to comply with that commitment. The substitution mechanism has never been used; hence the necessary accompanying executive measures have not yet been established. Those opposed to the mechanism argue that it contravenes the absence of a hierarchy of norms. In times of incongruent coalitions (different political parties in power nationally and in one or more constituent units), the chances that the substitution principle will ever be used are even slimmer. It is politically unacceptable for a regional government to be overruled by a federal government (partly) composed of different political parties.

The second constitutional limitation is the provision that regional foreign policy cannot contradict the broad orientations of the commonly agreed foreign policy of the Belgian federation. When, for instance, the federation takes part in an international embargo against a particular state, a Region government – even though chiefly responsible for trade policy – will not export weapons or even dual-use goods (i.e., goods that have both military and civilian application, such as computer components) to that state. Finally, Regions and Communities are obliged to inform federal officials of any foreign agreements and activities. The Flemish government, for instance, must report to the federal government agreements on education made with the Netherlands.

Despite these limitations, the foreign relations aspirations of Belgium's regions paved the way for a heightened involvement of regional authorities in multilateral organizations. The European Union is the most obvious institution. Belgian Regions and Communities take the lead in promoting a "Europe of the Regions." They are very active both in informal networks and in formal European bodies representing regional interests.¹¹ Belgium's constituent-unit prime ministers, for instance, have a seat in the EU's Committee of the Regions. Other organizations dealing with issues that often fall within regional jurisdictions soon followed suit. These include the United Nations Educational, Scientific and Cultural Organization's (UNESCO) International Convention against Doping in Sport and its Convention on the Protection and Promotion of the Diversity of Cultural Expressions; the French Community of the Belgium delegation within the Belgian Representation was actively involved in the genesis of both. This illustrates that the external affairs component of Belgian federalism has set new procedural standards for the multilateral involvement of constituent units, and it has also created international attention for issues playing out on the subnational level.

Nonetheless, constitutional provisions caused a major institutional misfit in relations between Belgium and the European Union. The absence of a hierarchy of legal norms created a situation in which Belgium's constituent

units would be individually responsible for implementing and applying EU legislation without having been extensively involved in the EU's legislative process. This was unacceptable to the constituent units. Yet the solution chosen was not to change the Constitution but to develop a strategy to introduce some changes to the Treaty Establishing the European Union (TEU, or Treaty of Maastricht).

Before 1992, Article 146 of the Treaty on the European Community stipulated that the Council of Ministers of the European Community could be composed solely of national government representatives. Anxious to secure their domestic constitutional prerogatives, constituent units from Germany and Belgium mobilized during the 1991 Intergovernmental Conference (IGC) to change this rule to their advantage. During the IGC, these constituent units forced the Belgian and German delegations to obtain a revision of the disputed article. However, they succeeded only partly. In return for the right to have regional representatives in the Council of Ministers, the French delegation demanded and obtained the guarantee that each representative, setting aside any domestic affiliations, would have to bind the entire member state and not only one part of it. The main significance of the new Article 203 of the TEU lies, therefore, in the access to the Council of Ministers meetings it has created for constituent-unit ministers. In this sense, the article is innovative; it acknowledges that federal executives of member states are not necessarily the most competent negotiating partners in the European arena. Nevertheless, each member-state representative in the Council of Ministers is still considered a unitary actor in the sense of representing a single, united policy position of the member state as a whole – regardless of the constitutional status enjoyed by the representative domestically. In this respect, the European institutional order affirms a traditional principle of international law by requiring that member states act as unitary actors internationally.

At the same time, Article 203 of the TEU generated substantial consequences for the domestic organization of EU policymaking in federal states. It forced national governments to instal coordination mechanisms that would ensure elaboration of a single national position to be negotiated in the Council of Ministers. In this regard, the European level defines European competences as ones shared by federal and constituent units within the domestic constellations. The challenge to comply with this definition is of course much bigger for federal than for unitary member states. For Belgium, it required reconciliation between the domestic *in foro interno*, *in foro externo* logic and the European rationale of dealing formally only with the member state as a whole. In 1994 this balancing exercise resulted in the conclusion of a cooperation agreement on EU policymaking, which was amended following the recent state reform of 2003. This cooperation agreement describes (1) how Belgium organizes its internal coordination in

order to secure the articulation of a single position in the European arena and (2) how the Belgian representative is appointed to European bodies.

Turning to the details of the agreement, the most important body in the coordination process is the Directorate of European Affairs (DEA) within the Federal Public Service Foreign Affairs. This unit organizes coordination meetings with representatives of a wide range of federal and regional executive agencies. Crucially, this federal body needs to reach a consensus in order to back specific negotiation positions. If no consensus is reached, a similar exercise occurs at the Inter-Ministerial Conference for Foreign Policy (CIPE), composed of the ministers themselves; if necessary, it occurs again in the Concertation Committee (CC), composed of the government leaders. In practice, however, consensus is nearly always reached at the sectoral, or DEA, level; only a handful of cases have been discussed at interministerial meetings, and almost no cases have been discussed at the highest political level. Recent exceptions include the EU's Financial Perspectives 2007–2013 and the EU's Services Directive. The 1994–2003 cooperation agreement also makes the Federal Public Service Foreign Affairs a crucial player because it hosts the coordination meetings. Meetings are prepared and chaired by federal administrative and political officials. Despite the *in foro interno, in foro externo* principle, then, the federal government's role in European policy-making remains fairly substantial – although its nature has changed considerably. By incorporating representatives from the Regions and Communities and granting them the same formal position, the Directorate of European Affairs is no longer exclusively a body of the national government; it has become a cooperative intergovernmental agency set within a constitutionally established competitive federal system.¹²

Beyond establishing a coordination mechanism through which to define a joint position, the 1994 cooperation agreement also outlines a system for determining who will represent this position in the European arena. When the Council of Ministers discusses matters belonging exclusively to the Belgian national government, the Belgian delegation is composed solely of representatives from the federal government. When it discusses issues involving the competences of constituent units, Belgium is represented by a delegation led by one of the Regions or Communities (following a rotation system). When the Council of Ministers deals with competences shared by the federal and constituent governments, the delegation is also mixed but is led by the level holding the greatest share of the competences.

To summarize, Belgium has experienced two evolutions over the past decades. On the one hand, a large number of competences have been transferred to the EU; on the other, reform of the Belgian state has led to constituent units gaining a substantial portfolio of policy competences, including foreign relations. Few other states have undergone such extensive reforms. Within a relatively short time, Belgium was transformed from a

unitary state into a full-fledged federation – a process that can be seen as an attempt better to reflect Belgium's political and cultural heterogeneity. Yet at the same time, Belgium became intensively involved in and supportive of the process of European integration. Today, it participates fully in all policy areas, including the Monetary Union and the emerging common security and defence policy. Belgium's integration into the EU can be considered an attempt to create policymaking venues that increase the territorial scope of market exchange. In sum, this combination of federalization and European integration has resulted in a far-reaching, complex system of multilevel governance that satisfies two seemingly contradictory considerations: coping with internal heterogeneity on the one hand and reaping the benefits of an expanded economic market on the other.

Somewhat different coordinating mechanisms and arrangements have been established in other policy sectors. As there is no hierarchy in relations between the federal government, the Communities, and the Regions, coordination structures have been put in place to ensure that foreign policy remains coherent. First among these has been a Concertation Committee, established to bring together the senior prime ministers of the federal, Region, and Community governments. The aim of the Concertation Committee is to avert political conflicts and, when necessary, to resolve them. It hosts some fifteen interministerial conferences, including the Inter-Ministerial Conference on Foreign Policy – the sole conference for which there is a legal provision.¹³ The CIPE adopts its decisions by consensus, meaning that each party has the right of veto. The CIPE's secretariat is run by Services for Relations with the Federated Authorities, within the the Federal Public Service Foreign Affairs.¹⁴ To ensure that Belgian foreign policy remains coherent, a pragmatic solution has been adopted; it consists of cooperation agreements between the federal government and the constituent units. These cooperation agreements broadly frame the application of Belgium's external relations by involving the various bodies concerned. Belgian foreign affairs are regulated by several cooperation agreements and practices.

Constitutionally empowering its constituent units with a foreign policy power, the Belgian federal government has little choice but to authorize or even encourage its constituent units to adopt cooperation agreements among themselves. Sometimes the federal government is not even involved; the cooperation agreement on regional commercial attachés concluded on 31 December 1993 by the Flemish Region, the Walloon Region, and the Brussels Capital Region is a clear case in which the federal government is left out completely. Despite this, regional commercial attachés and delegates are to be located, wherever possible, in Belgium's consulates and diplomatic representations abroad. According to the December 1993 agreement, "The Belgian Regions undertake to provide for collaboration

with the assistance of their commercial attachés in countries or groups of countries where a Region does not have its own attaché.” The agreement even stipulates that commercial attachés operating in a country or group of countries where the other two Regions involved are not represented must spend at least 25% of their available work time benefiting those two Regions. Thus the organization of external trade not only forced the three Regions to cooperate in day-to-day commercial representation abroad; it also triggered a profound integration of the Communities’ and Regions’ international relations services.

Other features also make a cooperative setting necessary. For instance, one finds hardly any place in Belgium where citizens from all three Communities come together. Very relevant in this respect is the absence of political parties organized at the federal level, although power in Belgium is reputed to be party-based. Above all, the international – and especially European Union – requirement to speak with a single voice steers Belgium in the direction of cooperative federalism.

Despite – or some would say because of – the centrifugal nature of Belgian federalism, the principles outlined above require a counterbalance to ensure that the constitutional requirement for a coherent foreign policy is met. It can be argued, especially in foreign relations, that the practical organization of Belgian federalism exemplifies cooperative federalism of a special kind, a kind not always applied to the same degree in practice, often depending on whether the foreign relations at stake are bilateral or multilateral. Where multilateral relations are concerned, the constituent units’ autonomy appears to be reduced due to the more official nature of multilateral relations. This makes the federal government more intent on staying in charge, which leads to a more difficult organization within the federal system. Multilateral relations require the various orders of government to coordinate their views in order to determine a single Belgian position. They also require the foreign partners involved to accept the domestic organization of international relations. In addition, the approach differs depending on whether the negotiations involve the European Union or other multilateral international organizations. For the EU, all policies are coordinated by the Federal Public Service Foreign Affairs; all levels concerned assemble to establish Belgium’s position before going to the EU’s Council of Ministers.

For other international organizations, there is no specific structure that prepares negotiations within the Federal Public Service Foreign Affairs. The presence of Belgium’s constituent units on the multilateral stage is of particular interest because it is exceptional. Arrangements for representation in organizations such as UNESCO, the OECD, and the Council of Europe were drawn up between the constituent units and the federal government.¹⁶ Constituent units also take part in the work of the WTO in

the fields of agriculture and services and in monitoring the different agreements. An item of particular interest is the OIF, where the diplomatic authority of Belgium's French Community is engaged to the maximum. For the summit meetings of heads of state and government held since 1986, Belgium's French Community, which includes representatives of the Walloon Region, sends its own delegation and has its own seat, while the Belgian federation also has its own representative. This is a case not of joint but of double representation. The two delegations, however, operate jointly based on a distribution of tasks. The federal delegation intervenes with respect to global political issues, while the delegation of the French Community deals with issues of international cooperation falling within its internal competences.

The alignment of internal and external competences can function only because other principles of Belgian federalism support this feature, as do both external and domestic developments. On the one hand, there is an increase in international activity; on the other, there is the ongoing political decentralization in Belgium. The very extensive powers attributed to the constituent units demand that they participate actively in national reforms and in negotiating international agreements that directly concern them.

The application of the principle of the alignment of competences guarantees the constituent units substantial powers. As Renaud Dehousse has rightly stated, "accepting the claims of the federal level with respect to exclusive external competences for the federal level would for the constituent units come down to the acceptance of federal interference in their own exclusive competences."¹⁶ This would endanger the very existence of the constituent units and, *by extension*, of the Belgian federal system and impede the efficient conduct of international relations by the constituent units. At the same time, the Belgian organization of foreign relations also quite clearly demonstrates that alignment of external and internal competences requires a substantial degree of federal comity (or *Bundestreue*; that is, a commitment by both parties to cooperate) to make Belgian foreign relations effective and credible. The Belgian organization of foreign relations grants the constituent units more foreign competences than are granted their counterparts in any other federation. In Belgium constituent units are involved not only in the implementation of treaties and agreements but in their negotiation as well.

Yet there are limits to the application of the *in foro interno, in foro externo* principle. Constituent units do not participate in foreign security policy-making. International diplomacy also involves the *ius tractatis* (the right to conclude treaties) and the *ius legationis* (the right to be represented abroad). These limit the foreign relations of constituent units.

In 1993 the constituent units obtained an "exclusive" right, by virtue of the constitutional revision, to conclude treaties (*ius tractatis*). The special

law of 5 May 1993 establishes the rules of negotiating, concluding, accepting, and ratifying treaties falling within the exclusive competences of the federated entities. These rules are also relevant for mixed treaties, namely agreements covering competences that are shared by the federal and constituent-unit governments. Such treaties are subject to a ratification procedure in all parliaments. In this respect, as Eric Philippart has argued, constituent units have the capacity to exercise a right of refusal; that is, they enjoy the right of veto even respecting a treaty that only partially involves their own powers.¹⁷ Thus constituent units sometimes take on the role of veto players, disputing issues that might damage their interests or threaten their values. One prominent example was the Flemish refusal to ratify the draft treaty establishing a European constitution as long as there was no agreement on how to involve regional parliaments in the envisaged system of *ex ante* scrutiny of EU laws by national parliaments.

Diverging preferences make it difficult to define the “Belgian” national interest that lies at the heart of any foreign policy decision. They may also stimulate centrifugal tendencies arising from the frustration of those who feel badly represented by the federation. They could induce constituent units to seek alternative, direct channels to defend their interests internationally, thereby bypassing the federal government. The federal government, however, does well to take into account the interests and sensibilities of constituent units and to establish coordination mechanisms that allow constituent units to join in the policymaking process. One example is the Coordination Committee on International and European Environmental Policy. Because the regional and federal governments share environmental powers, this coordination body seeks to involve all governments in the policymaking process leading up to European and other multilateral negotiations in this field.

Despite the substantial powers of the constituent units, the *ius legationis* is the responsibility of the Belgian federation, thus ensuring the coherence of Belgian representation abroad. However, the constituent units enjoy at least some diplomatic representation as a result of what has become known as the principle of “the unity of the diplomatic post.” As far as possible, delegates of the constituent units are invited to participate in Belgian diplomatic missions, which are the responsibility of the federal government. Regional representatives, called attachés, are instructed by their Region or Community authorities but are placed under the diplomatic – not functional – authority of the heads of missions, including both embassies and permanent representations to multilateral organizations with diplomatic status. In 2006 the missions of Wallonia-Brussels were located in France, Switzerland, the EU, the Czech Republic, Quebec, Tunisia, Senegal, the Democratic Republic of Congo, Vietnam, Germany, Morocco, Poland, Romania, Algeria, and Chili. These missions are mostly also accredited with neighbouring countries and

international organizations. For example, the mission in Warsaw has also received accreditation from Estonia, Latvia, and Lithuania, while the mission in France has also received accreditation from the OECD, UNESCO, and the Organisation internationale de la Francophonie.¹⁸

A comprehensive cooperation agreement between the federal government and the Communities and Regions establishes how the constituent units are represented externally. There are plans to review this cooperation agreement in order to allow constituent units to participate in international negotiations on issues for which they have exclusive or partial competences; such a review, however, would not change the practice that they act under the authority of the ambassador or permanent representative. The agreement on representation of the Kingdom of Belgium at the EU Council of Ministers will probably serve as the template for arrangements governing the participation of constituent units' representatives in diplomatic meetings abroad. In addition, the idea of establishing "common delegations" – as is already the case with the Belgian delegation to UNESCO – is also gaining support. Such a system would have mutual advantages. The federal diplomacy would be put at the service of constituent units to defend their interests, while the latter would provide federal diplomats with knowledge of regional issues.

Despite the many efforts to ensure that regional representation in foreign policymaking functions smoothly, some deficiencies have already appeared in practice in four different cases. First, the Flemish Community opposes application of the Convention of the Council of Europe on the Rights of Minorities because it believes that this agreement directly affects its interests and its very identity. Although Belgium signed the convention because its contents affect federal as well as Community competences, it cannot be ratified unless all Communities assent. Second, some political parties resist implementing the transfer of development-cooperation policy to the Communities and Regions because it is considered to be a component of foreign affairs. Third, differing views on the export of arms forced the federal Parliament to pass a 2003 law regionalizing control over the import, export, and transit of arms. Granting the Regions power over arms-trade policies was the only way out of severe differences of opinion within the federal government. Whereas Walloon parties supported the largely Walloon-based arms industry, Flemish parties in the federal government coalition refused to approve arms-export licences for countries involved in armed conflicts. Despite this solution, disputes still occur, particularly when a Region's decisions regarding the arms trade conflict with the overall foreign policy interests of the Belgian federation. A final example involved a foreign affairs minister who condemned a decision made by a constituent unit (within its own jurisdiction) because it was contrary to Belgian foreign policy on the weapons trade.

It is important to note that the overall process of granting the regions more powers has been driven almost exclusively by the domestic political agendas of the major political parties and the two major language communities. The formation of the Belgian federal state reflects the political, cultural, and economic diversity of the Belgian polity rather than a response to European or broader international pressures. Consecutive Belgian state reforms granted competences to Regions and Communities because this fits with the overall logic of state reform – not because European integration had prompted it.

That said, two crucial remarks should be added. First, although the principle of granting Regions and Communities more competences was domestically driven, the European context sometimes provided additional arguments for this transfer of powers. The almost complete regionalization of agriculture policy, for instance, was motivated in part by the changing nature of the European Common Agriculture Policy. It was argued that the European shift to more attention for rural development, animal welfare, and environmental aspects of agriculture policy supported a domestic transfer of powers to the Regions because these were already responsible for spatial planning and environmental regulation. Second, the practical organization of the external and European dimensions of internal policies had to be implemented against the background of EU requirements. Procedures of preference formation and representation rules could not be elaborated without taking into account the European principle requiring a unitary position from member states on the one hand and the opportunities for regional representation on the other. In short, although the formal, autonomous status of Regions and Communities has predominantly been the result of a domestic agenda, it was to some extent reinforced and shaped by European integration.

Overall, the organization of external relations in the Belgian federation is built upon an inductive, pragmatic approach leading to a dynamic elaboration of the system. Many features are built on real situations and formalized by legal arrangements afterwards. This also explains why the external powers of constituent units have evolved progressively – an observation that applies to all dimensions of foreign policy, including the transfer of treaty-making and representational powers. Because the law follows the facts, legal arrangements constantly adapt both to the daily evolving situations and to the demands of those seeking in general more regional autonomy and in particular more autonomy in external relations. In addition, changes to the statutes and regulations of international organizations can trigger new arrangements with respect to the rules governing internal Belgian foreign policy agreements. The new powers of Regions and Communities are reflected in their new, autonomous conduct on the international scene and in international organizations.

COMMUNITIES AND REGIONS ABROAD:
DOMESTIC AND INTERNATIONAL MANIFESTATIONS

In general, the external relations of Belgium's constituent units have developed along two lines. First, since 1970 and especially since 1993, foreign partners have become more numerous and diverse. Belgian Regions and Communities now have partners on all continents; they have targeted many regions, formed interregional associations, and engaged themselves directly with sovereign states as well as with intergovernmental and supranational organizations. Second, Belgian Regions and Communities have dramatically expanded the scope of their foreign actions. These now cover policy areas such as foreign trade and foreign cultural relations – areas that once had been managed solely by the national government.

Flemish foreign relations are directed by a single minister, a single administration (Internationaal Vlaanderen), and a small number of agencies dealing with international cooperation (Vlaams Agentschap voor Internationale Samenwerking), tourism (Toerisme Vlaanderen), and trade (Flanders Investment and Trade, or FIT). In 2007 a total of 495 full-time equivalent (FTE) people were employed in the foreign services of Flanders (as part of the approximately 40,000 civil servants of the Flemish administration).¹⁹ In 2007 the total Flemish budget for external relations was US\$219,788,352, or €163,533,000, 0.74% of the total budget of the Flemish Community. In more detail, US\$10,277,568 (€7,647,000) was spent on promotion (tourism marketing) and US\$29,033,088 (€21,602,000) on support for foreign economic investment in Flanders.²⁰ Administrative and executive actions are scrutinized by a single parliamentary assembly (Vlaams Parlement) in its committee on foreign relations, European affairs, international cooperation, and tourism.

Flanders is represented abroad by nine official representatives of the Flemish government (in Berlin, Geneva, the Hague, London, Paris, Pretoria, Vienna, Warsaw, and Washington, DC). The Belgian Permanent Representation to the EU hosts ten *attachés* of the Flemish Community, who cover nearly all EU policies that touch upon Flemish competences. These representatives are perceived as an important tool for Flemish external relations. In recent years, their number has steadily increased, and their activities figure prominently in the policy programs of the Flemish foreign affairs minister.²¹ In addition, Flanders Investment and Trade has envoys in more than eighty locations worldwide, and Tourism Flanders has eleven foreign offices.²² Six agricultural and fisheries envoys also promote Flemish products abroad. Further, Flanders engages in technical assistance programs (i.e., financial support for infrastructure projects and scholarships in developing countries), support for democratization and peace-building

programs, initiatives of organizations such as the Council of Europe, and emergency and humanitarian aid in cases of natural disasters.

The French-speaking part of Belgium waited until 1996 to pass a cooperation agreement between the French Community of Belgium and the Walloon Region. This reform, which came into effect only in 1998, is limited to closer ties in international relations between the Commissariat général aux Relations internationales de la Communauté Française (CGRI) and the Direction générale des Relations internationales de la Région Wallonie (DRI). Since 1996 four additional cooperation agreements have been signed by the French Community, the Walloon Region, and the Brussels Capital Region's French Community Commission (Commission communautaire française de la Région de Bruxelles-Capitale, or COCOF). These agreements have reorganized international relations to ensure optimal visibility of the Wallonia-Brussels Community (L'entité administrative dénommée Espace international Wallonie-Bruxelles) internationally. This latter body brings together the international relations services (CGRI-DRI), the Association for the Promotion of Educational Training Abroad (Association pour la promotion de l'éducation et de la formation à l'étranger, or APEFE), and the Walloon Agency for Export and Foreign Investment (Agence wallonne à l'Exportation et aux Investissements étrangers, or AWEX). The efforts of the different entities, however, are still directed in a different manner toward different countries. The French Community has, for example, concluded more bilateral agreements with countries of northern, central, and eastern Europe than with Arab countries and other countries of the South. In contrast, the Walloon Region has turned more toward countries of the South and countries of central and eastern Europe.

The CGRI-DRI on a daily basis administers the different agreements signed by the three governments (French Community, Walloon Region, and Brussels Capital Region's French Community Commission). Many of these agreements are co-signed; some involve only one of these three bodies. In 2004 the number of bilateral agreements administered by the CGRI-DRI amounted to 67 for the French Community, 50 for the Walloon Region, and 12 in the case of the Brussels Capital Region's French Community Commission, or 129 agreements in total.²³ The total budget allocated to international relations in 2003 differed slightly for the constituent units: 0.33% for the French Community, 0.3% for the Brussels Capital Region, and 0.28% for the Walloon Region. This compares to 0.38% for Flanders and 3.1% for the federal government, if we exclude from the total budget the interest on national debt (or 2.05% if it is included). In absolute terms, the CGRI-DRI budget amounts to US\$71.6 million (€61 million), and the APEFE budget is US\$12.4 million (€10.6 million).²⁴

The organization supports a large network of representatives abroad: sixteen Wallonia-Brussels delegations; seven Wallonia-Brussels offices in

southern countries managed jointly with the APEFE; a representation office in Baton Rouge, Louisiana; lecturers and French teachers posted to European states and Israel under CGRI contract; and language lecturers and assistants posted in several bilateral partners within the EU. The CGRI-DRI jointly manages Wallonia-Brussels bilateral relations for the three constituent units of the Walloon Region, the French Community of Belgium, and the Brussels Capital Region's French Community Commission.²⁵

In terms of personnel, the CGRI-DRI administration employs 392 individuals (59 of whom are lecturers and trainers). To this should be added 16 persons employed by the APEFE, as well as the so-called *coopérants*, volunteers sent to countries in the South. The number of shared economic and commercial attachés is quite high: 105 posts (about 30 of whom are shared with the Brussels Capital Region and the Flemish Region). In addition to this, the CGRI-DRI administers 26 diplomatic representatives assigned to 15 posts. Among those are the delegates officially accredited with individual international organizations (such as UNESCO and the OECD in Paris) and those accredited with all the international organizations represented in Geneva. In addition, in Louisiana, two cultural centres have been created as well as an education office.²⁶ Since 2004 the Walloon functions of external trade and attraction of foreign investment – until then managed by distinct departments – have been merged within AWEX. In total, more than 450 individuals (in Belgium as well as abroad) work to promote Walloon exports. When the merger occurred, the economic and commercial attachés were also made responsible for attracting investment. AWEX provides logistic or financial support, subsidizes participation in international trade shows, assists in attracting business from outside of the EU, and provides commercial information. Training activities (for youth and executives) are also supported.²⁷

The consolidation of the administration of francophone Belgium reinforces the bipolar character of the Belgian federation. At the same time, it has caused a certain asymmetry between the North and South in managing foreign relations. Whereas in Flanders foreign relations are dealt with by one department, the situation in the Wallonia-Brussels Community is much more complicated. This asymmetry adds to the complexity of Belgium's federal system and makes it difficult for foreigners to deal with Belgian agencies. The asymmetrical organization of the Communities and Regions in the North and South only adds to the difficulty of grasping how Belgian federalism functions in terms of competences, responsibility, and representation. That is why a new cooperation agreement signed on the 20 March 2008 expects to create a general administration named Wallonie-Bruxelles International (WBI). This concerns the Walloon Region, the French Community of Belgium, and the Brussels Capital Region's French Community Commission.²⁸

Belgium's population is small, and its cities, in international comparative perspective, are even smaller. With about one million inhabitants, Brussels is by far the largest city. Although it cannot be regarded as a major urban setting, Brussels is a very international city. It hosts most European institutions as well as NATO political headquarters, along with numerous permanent missions to these organizations of states from all over the world as well as numerous public and private representatives. The city itself is not an international player. However, as the city (nineteen municipalities) comprises the territory of the Brussels Region, there is, of course, a "Brussels" foreign policy. This Brussels' regional foreign policy aims to safeguard the city's international status. As indicated above, it does so in close cooperation with the Walloon Region and the French Community (also called the "Wallonia-Brussels Community") in order to take best advantage of the resulting synergies.

CONCLUSION

Compared to their counterparts in other federal countries, Belgian constituent units have a high degree of autonomy in their conduct of foreign relations, with some analysts even detecting elements of a confederal relationship between them and the federal government in this policy sector. Whatever the characterization of the relationship, one can argue that it is *sui generis*, combining elements of competition and cooperation that are central features of Belgian federalism. Cooperation is essential both for the daily practice of foreign relations and for guaranteeing the coherence of the Belgian federation's foreign policy. In other words, despite the dualistic nature of Belgian federalism in constitutional terms, the conduct of Belgian foreign relations can be characterized in terms of cooperative federalism because practical arrangements have been devised to ensure that the country's foreign policy remains coherent by virtue of the coordinating role of the federal government. In that light, proposals to transfer additional foreign relations powers to the constituent units have met resistance from the federal government, which argues that substantial areas of foreign relations (such as development cooperation) have traditionally belonged solely to the federal foreign services.

The future formal organization of Belgium's foreign relations will depend on the overall process of institutional reform. Since the latter is a dynamic process, precise predictions are hard to make and can become outdated very quickly. Given that the constituent units already enjoy a high level of constitutional autonomy in foreign relations, one can quite safely say that the limits of regional autonomy have been more or less reached. Except in the contested issue of cooperation with developing countries, the status quo is likely to remain in place. One cannot imagine that matters

of security or defence will become regional competences; rather, they will sooner or later be transferred to the EU. Enlargement of regional foreign competences might occur only with respect to the external aspects of potentially new regional competences, congruent with the *in foro interno, in foro externo* principle. Possible examples include science policy and aspects of the justice portfolio. If such transfers occur, the conduct of foreign relations in these fields will also have to be subject to practical cooperation as in other fields in order to ensure coherent Belgian positions when necessary in both bilateral and multilateral relations.

NOTES

- 1 Edmund A. Aunger, "Regional, National and Official Languages in Belgium," *International Journal of the Sociology of Languages* 104 (1993): 31–48. These figures are also cited in US Central Intelligence Agency (CIA), *World Factbook*, <https://www.cia.gov/library/publications/the-world-factbook/geos/be.html> (accessed 10 April 2008).
- 2 For a more detailed overview, see Kris Deschouwer, "Kingdom of Belgium," in John Kincaid and G. Alan Tarr, eds, *Constitutional Origins, Structure, and Change in Federal Countries*, 48–75 (Montreal and Kingston: McGill-Queen's University Press, 2005); and Hugues Dumont, Nicolas Lagasse, Marc Van Der Hulst, and Sébastien Van Drooghenbroeck, "Kingdom of Belgium," in Akhtar Majeed, Ronald L. Watts, and Douglas M. Brown, eds, *Distribution of Powers and Responsibilities in Federal Countries*, 34–65 (Montreal and Kingston: McGill-Queen's University Press, 2006).
- 3 For details on the Taalunie, see <http://taalunieversum.org/taalunie> (accessed 15 May 2008).
- 4 Organisation internationale de la Francophonie (OIF), *Rapport du Secrétaire général de la Francophonie, De Ouagadougou à Bucarest, 2004–2006*, 128.
- 5 For a full list, see CIA, *World Factbook*, <https://www.cia.gov/library/publications/the-world-factbook> (accessed 10 April 2008).
- 6 Dumont et al., "Kingdom of Belgium," 44–5.
- 7 Godelieve Craenen, "België en de Europese Unie," in Yves Lejeune, ed., *La participation de la Belgique à l'élaboration et à la mise en oeuvre du droit européen*, 39–72 (Brussels: Bruylant, 1999).
- 8 Literally, the *in foro interno, in foro externo* principle means that whatever applies to the internal arena also applies to the external arena.
- 9 A "special law" is a peculiar category of Belgian laws. To adopt or change a special law, a special majority is needed in both chambers. It has been created to deal with sensitive issues in the sphere of relations between the Communities and the Regions.
- 10 Françoise Massart-Piérard, "La Belgique à l'épreuve de l'introduction du principe de subsidiarité au sein de l'Union européenne," *Recherches sociologiques* 31, no. 1 (2000): 67–77.

- 11 Jan Beyers and Peter Bursens, *Europa is geen buitenland: Over de relatie tussen het federale België en de Europese Unie* (Leuven: Acco, 2006); Jan Beyers and Peter Bursens, "The European Rescue of the Federal State," *West European Politics* 29, no. 5 (2006): 1057–78; Peter Bursens and Kristof Geeraerts, "EU Environmental Policy-Making in Belgium: Who Keeps the Gate?" *Journal of European Integration* 28, no. 2 (2006): 159–79. Françoise Massart-Piérard, "Les entités fédérées de Belgique, acteurs décisionnels au sein de l'Union européenne," *Politique et société* 18, no. 1 (1999): 3–40.
- 12 "Cooperation agreement relating to the representation of the Kingdom of Belgium within international organisations pursuing activities falling within the scope of the joint responsibilities of March 8, 1994."
- 13 Article 31bis of the Law of August 8, 1980, on institutional reform. This was later incorporated by the Law of May 5, 1993.
- 14 Charles-Etienne Lagasse, "Le système des relations internationales dans la Belgique fédérale," *CRISP Weekly Courier*, no. 1549/1550 (1997): 10.
- 15 "Cooperation agreement relating to the representation of the Kingdom of Belgium within international organisations pursuing activities falling within the scope of the joint responsibilities of March 8, 1994."
- 16 Renaud Dehousse, *Federalisme et relations internationales* (Brussels: Bruylant, 1991), 108, my translation.
- 17 Eric Philippart, "Le développement de la 'paradiplomatie' au sein de l'Union européenne et la nouvelle donne belge," *Etudes internationales* 39, no. 3 (1998): 631–46.
- 18 CGRI-DRI, *Rapport d'activités 2006*, 118–21.
- 19 E-mail from the communication officer of the Flemish Department of International Relations (Internationaal Vlaanderen), 18 January 2007.
- 20 Ibid.
- 21 For the content of the policy programs, see <http://docs.vlaanderen.be/buitenland/index.htm> (accessed 15 May 2008).
- 22 See the Flemish Statistical Agency's website: <http://aps.vlaanderen.be/statistiek> (accessed 15 May 2008).
- 23 CGRI-DRI, *Rapport d'activités 2004*, 11.
- 24 E-mail from C.-E. Lagasse, directeur général adjoint of the CGRI-DRI, 1 October 2007.
- 25 Françoise Massart-Piérard, "La projection de la Communauté française de Belgique et de la Région wallonne sur la scène internationale: Une étude comparée," *Studia Diplomatica* 54, no. 5/6 (2001): 81–113; Françoise Massart-Piérard, "Une étude comparée des relations entre entités fédérées au sein du système de politique extérieure en Belgique francophone," *Revue internationale de Politique comparée* 12, no. 2 (2005): 191–206.
- 26 E-mail from C.-E. Lagasse, directeur général adjoint of the CGRI-DRI, 1 October 2007.
- 27 AWEX, *Activity Report, 2004*. The obtained results show that federal Belgium remains an exporting country. Wallonia and Flanders sport figures that show dynamic exporting as

well as increasing foreign investments. Belgium as much as its constituent units is obliged to respect the European legislation concerning state support that infringes on competition and could affect trade between member states. Nevertheless, regional aid is sometimes permitted. The policies of commercial promotion by the constituent units should be understood in this light.

28 See *Belgisch Staatsblad – Moniteur Belge*, 23 May 2008, 26.679–26.683, and the website <http://www.wbri.be> (accessed 1 July 2008).