

# Canada's Multiple Voices Diplomacy in Climate Change Negotiations: A Focus on Québec

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## Abstract

This article sheds light on the complexity of international climate change negotiations in a federal country, like Canada, where there is no clear attribution of full power over international negotiation concerning this issue. Climate change is a multi-level and multi-stakeholder issue, one that can only be tackled successfully if all actors, at all levels of government, are involved in the process. In recent years, Canadian provinces, especially Québec, have become intensely involved in climate change paradiplomacy. That situation has led to a Canadian paradox where the Government of Québec worked to respect the Kyoto Protocol and act accordingly, while Canada opted out of the Protocol in 2011.

## Keywords

Climate change negotiations – multi-level governance – federalism – paradiplomacy – Canada – Canadian provinces – Québec

Given the diffuse and pervasive nature of greenhouse gas emissions, the complex task of mitigating them at the global level arguably involves much more than central governments. Like many other environmental problems, climate issues cannot be constrained within national boundaries, as their scope is both international and global, while emission sources are domestic and local. Thus climate change has to be considered a multi-level and multi-stakeholder issue, one that can only be tackled successfully if all actors, at all levels of government, contribute their share using the levers and tools at their disposal.

As a consequence, managing climate change as a policy issue has proven particularly difficult in a federation like Canada, shedding new and acute light on the age-old debate surrounding Canada's ability to negotiate and implement treaties involving provincial jurisdictions (Paquin, 2013; De Mestral & Fox-Decent, 2008). Indeed, according to Stoett, "Climate change is emerging as one of the most potent and divisible political issues in Canada, reflecting [...] the difficulties inherent in developing national policy in a federal political system" (Stoett, 2009: 47).

Canada has so far failed to manage the complex governance challenges posed by climate change, both domestically and internationally. Faced with a dizzying number of competing interests and views across the country, and lacking effective coordination mechanisms among the provinces, the federal government and other stakeholders, Canada's official negotiating positions

have never represented any meaningful consensus as to what an international climate regime should look like and what Canada's contribution should be. Unsurprisingly in this context, Canada has also proven incapable of developing economy-wide comprehensive climate policies that would effectively implement the country's international climate commitments. This article argues that the inability to face climate change from a united, pan-Canadian front has led to the fragmentation of Canada's voice in international forums and disparate domestic greenhouse gas (GHG) mitigation policies, as most Canadian provinces and the federal government today seem to pursue independent diplomacy and policymaking.

First, we will review some of the theoretical underpinnings of the practice of international relations in general and in Canada in particular, and whether multi-level governance is well-suited to manage complex issues that are of both international and domestic concern, such as climate change. We will then illustrate early deadlock and paralysis in the development of a consensus-based Canadian position on climate change among the federal government and the provinces, focusing on burden-sharing, namely, the contribution level that Canada is willing to make to help mitigate global GHG emissions. We will finally highlight the resulting fragmentation of Canada's climate diplomacy and policymaking through the climate policies of Québec, arguably one of the most active provinces and subnational governments on this issue. This leads to a discussion of the role and relevance of provinces as quasi-independent actors within Canada when it comes to seemingly intractable issues such as climate change.

### **International Negotiation and Domestic Implementation of International Treaties in Canada**

For more than fifty years, international negotiation scholars have focused their attention on the impact of domestic institutions over foreign policy. One of the most important contributions was made by Putnam (1989, 1993) who coined the "two-level games" metaphor to capture the dynamic and complex nature of international negotiation. The two-level games metaphor and Putnam's subsequent scholarship on double-edged diplomacy refer to the idea that central government negotiators have to negotiate simultaneously with domestic and international actors to secure agreements.

The politics of many international negotiations can usefully be conceived as a two-level game. At the national level, domestic groups pursue their

interests by pressuring the government to adopt favorable policies, and politicians seek power by constructing coalitions among those groups. At the international level, national governments seek to maximize their own ability to satisfy domestic pressures, while minimizing the adverse consequences of foreign developments. Neither of the two games can be ignored by central decision-makers, so long as their countries remain interdependent, yet sovereign (Putnam 1988: 434).

For Putnam, “each national political leader appears at both game boards.”

Many scholars have considered Putnam’s metaphor. For example, Milner & Rosendorff (1997) argued that the division of power between the executive and legislative branches and elections are more important in an international negotiation than Putnam’s metaphor gives them credit for. Martin (2000) also challenges the theory of executive dominance advocated by many international negotiation theorists, including Putnam. According to Martin, the legislature in democratic regimes has the ability to block the implementation of an international obligation, even when legislative approval is not required. The legislature may establish its influence on budgetary control, control procedures in relation to the executive and the appointment of agents and procedures for the implementation of treaties. Thus, an international commitment negotiated without the participation of the legislature may lack credibility. International agreements gain credibility when the legislative branch is included in the negotiations through an institutionalized mechanism. This situation applies in both presidential and parliamentary systems. Such a method of negotiating reduces uncertainty, because the legislative branch reveals information to national negotiators and to other states. By participating in the negotiations, it can also reveal its societal preferences on what can be implemented. Martin demonstrates that the legislature’s presence in negotiation promotes the implementation of international commitments. It thereby strengthens the credibility of international commitments of states, whether in the U.S. or Europe.

All of these debates are important, but Putnam, Milner, Rosendorff & Martin have not systematically studied the impact of federalism, that is, the division of power between the federal and sub-federal governments, on international negotiation. Nowadays, virtually all government activity affects the jurisdiction of at least one intergovernmental organization and frequently many more. International negotiations handle themes that relate to education, public health, cultural diversity, business subsidies, the treatment of investors, the removal of non-tariff barriers, agriculture, services and environmental and climate change issues.

Likewise, the enlargement of the scope of international issues means that all government departments have activities that are internationalized. In this context, sub-federal governments have become more aware that their political power and their sovereignty – or, in other words, their ability to formulate and implement policy – are subject to negotiation in multilateral forums. Thus, since the 1960s, there has been a noticeable increase in the number of sub-federal governments that are interested in international questions and that participate in them actively. In Canada, as in Belgium, Germany, Austria, Switzerland and Spain, the role of sub-federal governments in international negotiations has become more important.

Despite an increasing role of federated states and other non-central governments in international affairs, little research has been done on their role in international negotiation, with the exception of Paquin (2013) and Kukucha (2013) over trade negotiations, and Chaloux & Séguin (2012) over climate change negotiations. Indeed, few research studies have focused on the relationship between international negotiation and federalism, though there are some case studies (Paquin 2010, 2005; Lantis 2009; Kukucha 2008; Dai 2005; Michelmann 2009).

There are numerous studies on federalism. We may say that there are two markedly different schools of thought among federalism experts: the centralized school and the multi-level governance school. Among the proponents of the centralized approach and one of the first theoreticians of federalism, Wheare (1967: 168) maintained that the monopoly over international relations was a “minimal” power for any federal government. He laid out the negative consequences of breaking down centralized control of foreign policy for the national interest and the operation of the international system. Davis (1967) similarly affirmed that international relations issues lie at the epicenter of federal systems. Centralization of foreign affairs power is also, according to Badie & Smouts (1999), required by international law, because a centralized political system is a necessary condition for a state to fulfill its assigned role in international law and practice. In essence, for the proponents of the centralized school, without the existence of a central government that has a plenary authority over its territory in relation to foreign affairs and the ability to participate in international relations and enforce international obligations in the domestic order, inter-state relations can be seriously compromised (Shaw 2008). Granting power of co-decision would risk paralyzing a state's foreign affairs, because every player would have a veto, harming the state's image in the international arena (Scharpf 1988). In Canada, many foreign affairs specialists have underlined the constitutional difficulties for the central government negotiating and implementing international agreements when they

involve provincial subjects of jurisdiction (Brown & Fry 1993; Harrington 2005; Skogstad 2012).

Thus, since 1968, according to the government of Canada, the conduct of foreign relations and international treaty making is, under international law, the sole responsibility of fully independent members of the international community (Government of Canada 1968a; Paquin 2005). Because Canadian provinces do not meet this criterion, the direction and conduct of foreign relations in federal states should be recognized as belonging to the federal government of Canada. As a result, provinces do not have the autonomous power to conclude treaties, to become full members of international organizations or to accredit and receive diplomatic and consular officers.

This official Canadian government doctrine of “indivisibility of foreign policy” also applies to areas of exclusive provincial jurisdiction, such as education. In those matters, the federal government should be the sole representative of Canada as a whole on the international scene (Government of Canada 1968a, 1968b). According to this doctrine, foreign policy cannot be fragmented. It is indivisible and only the central government has the capacity to conclude legally binding treaties. Further, devolution of federal authority on foreign policy is seen ultimately as the disintegration of Canada.

Legal precedents in Canada complicate the view of the federal government as the exclusive depository of international legitimacy and the sole international representative of the country. Following the adoption of the Statute of Westminster in 1931, the provincial government of Ontario, in the *Labor Conventions Case*, challenged the ability of the federal government to legislate in provincial fields of jurisdiction to implement international agreements (Patry 1980: 155). Indeed, after the 1930 elections, the federal Conservative government of R.B. Bennett ratified three International Labor Organization conventions: one on working hours, a second on weekly rest and a third on minimum wage. By implementing these conventions, the federal government stepped on the provinces' right to legislate in the area of labor, an area of exclusive provincial jurisdiction. Hearing the case brought by Ontario, the Judicial Committee of the Privy Council in London, (which was still Canada's court of final appeal until 1949), rendered its judgment in 1937. This ruling is fundamentally important for the legal capacity of the federal government and the rights of the provinces in international relations. The judges, recalling that federalism constitutes the foundation of Canada, stated that the principle of sovereignty of Parliament means that the provincial legislature is not obligated to pass measures that might be necessary to implement a treaty concluded by the federal executive. In this case, it is up to the provinces, where the same principle of parliamentary sovereignty applies to provincial legislatures, to

amend their respective laws and regulations to give effect to the said treaty in domestic law. The power to implement treaties thus follows the distribution of powers, leading in some cases to an intractable paradox.

Since the legislatures are sovereign in their areas of jurisdiction, they cannot be compelled to give effect to the terms of an otherwise validly made treaty. The conclusion is thus that the provincial state, which in theory lacks any legal capacity to negotiate and conclude a treaty, has the entire authority required to implement a treaty dealing with matters reserved to provincial parliaments, and that the federal state, which possesses all the attributes of a sovereign state with respect to the conclusion of treaties, lacks some of the powers necessary to implement them throughout Canada. Perhaps nowhere more than here has Canadian federalism come up against so fundamental a problem; for it highlights the impediments both parties face in the field of international relations (Arbour 1997: 160–161) [translated from French].

International treaties thus have to be implemented by the federal government, but also by the provinces and municipalities. Because of this situation, Canadian provinces have become more important actors in international negotiations over the last 40 years (Kukucha 2013, 2008; VanDuzer 2013; Fafard & Leblond 2013; Paquin 2013). Skogstad even talks about a “*de facto shared jurisdiction*” (Skogstad 2012: 202). Two reasons explain this situation. First, although the Canadian government can negotiate in the field of jurisdiction of the Canadian provinces, it does not have the power to force the provinces to implement the treaty (Skogstad 2012: 204; VanDuzer 2013; Kukucha 2013, 2009; Cyr 2009; Paquin 2013, 2006). International treaties have to be implemented at the proper level of government through a law of incorporation. This issue is very important since, according to De Mestral & Fox-Decent, “roughly 40 per cent of federal statutes implement international rules in whole or in part” (2008: 578). The second reason is that a fair number of international treaties now deal with both international and domestic issues, and it is becoming harder than ever to determine the boundary between the two. De Mestral & Fox-Decent highlight this “frustrating” situation from the perspective of the federal government which “can commit Canada to a treaty, but [...] cannot guarantee that the treaty will be properly implemented if the subject matter falls within provincial jurisdiction. This fact can be a serious impediment to the rapid consolidation of a treaty relationship with other states” (2008: 590).

Other federal regimes are experiencing the same problems. While, in the Indian and Malaysian cases, the constitutions assign foreign relations explicitly

to the federal governments, this is not the case in Australia where the courts have accorded, like in Canada, a more important role to the provinces. In other countries, like Austria, Germany, Switzerland and Belgium, the constitutions assign the provinces explicit powers over foreign affairs. In the case of Belgium, Germany and Switzerland, the provinces even have been assigned treaty-making powers (Michelmann 2009). Belgium goes the furthest, where regional governments are charged with interpreting the state's constitution. The revision of the Belgian constitution in 1993 created three categories of treaties: 1) those that exclusively involve the powers of the federal government and which are concluded and ratified by the federal government; 2) those related exclusively to community or regional powers and which are concluded and ratified by communities and regions; and 3) mixed treaties (Paquin 2010).

Proponents of the multi-level governance approach have taken stock of the Canadian paradox in international treaty negotiation and implementation and have suggested an alternative to the centralized school (Bache & Flinders 2004; Hocking 1993; Hooghe & Marks 2003; Jeffery 2000). According to Hocking (1993), diplomacy and foreign policy cannot be considered a monopoly of the central state. Federated states always have an important role to play, even if in only implementing international treaties concluded by the central state. Moreover, a central government monopoly over international relations in a federal system risks undermining the distribution of powers between the different orders of government to the benefit of the central authorities. According to these authors, there are many examples of federal states that must operate within constitutional limitations. Other scholars from the multi-level governance school go further in arguing that “[a]s a constitutional theory, federalism affirms that both subnational and national entities constitute the sovereign state. Neither level is super- or subordinate to the other, and both are necessary to constitute the whole” (Piattoni 2010: 207).

Many authors indicate that foreign policy must now be conceived as a complex system in which the actors in a federal state structure are interlinked. They stress the existence of “imperatives of cooperation” between central governments and federated states. Implementation of a coherent foreign policy inevitably, they maintain, entails consulting with – and even according a significant role to – federated states through national intergovernmental mechanisms, so they may be actively involved in the country's foreign policy. Regional integration and the rise of multilateralism and globalization have rendered the theses of the centralized approach obsolete.

In practice, despite the considerable expansion of intergovernmental relations with regard to international treaties (Hocking 1993; Meekison 2004), Canada still often succumbs to the temptation to govern from the center



(Savoie 2004). Simeon (2004) goes further, contending that intergovernmental relations are the weak link in Canadian federalism. The culture of Canadian intergovernmentalism is largely informal, where intergovernmental arrangements are rarely binding and operate by flexible consensus.

Thus, climate change diplomacy and domestic policymaking clearly illustrate the atrophy of intergovernmental coordination in Canada, even though mitigating GHG emissions calls on numerous and diverse policies, controlled centrally and determined and implemented at provincial and local levels.

In Canada, climate change policy cannot be considered an exclusive federal jurisdiction. The Canadian Constitution Act of 1867 does not specify environment as either a federal or provincial jurisdiction. Therefore, environmental issues are tackled within various constitutional jurisdictions at both provincial and federal levels. For instance, provinces have primary jurisdiction over many areas related to climate change, such as natural resources (including energy), municipal institutions (including urban and territorial planning), transportation (including public transit) and so on (Harrison 1996). They also can regulate pollutants from large industrial emitters, including agricultural practices. On the other hand, federal jurisdiction over climate change is more diffuse and general, such as peace, order and good government, criminal law, navigation, taxation and residual powers, as well as shared powers with provinces concerning agriculture and commerce (Dufault 2006; Harrison 1996). Since both levels of government have some part of the responsibility over environmental issues, many authors contend that both levels of governance do not have any choice but to coordinate their actions. On climate change, Macdonald & VanNijnatten call for the provinces “[to] be brought back to the table, by whatever means necessary, since the federal government does not have the jurisdictional mandate to solve the problem alone” (2005: 19).

Canada's constitution poses a crucial problem: provincial collaboration is inevitable when fields of power are affected by a treaty or international convention. But there is no general framework for federal-provincial consultation and very little uniformity of approach (De Mestral 2005: 319–322). While some contend that “generally, the federal government will not ratify a treaty until it is confident that Canada's domestic law [including provincial laws] is consistent with the treaty and that there are sufficient legal powers in place to comply with its obligations” (De Mestral & Fox-Decent 2008: 624), evidence shows that this is far from being systematically true. For example, the Canadian government ratified the two NAFTA side agreements on environmental cooperation and labor – both areas involving provincial oversight – despite disagreement with some provinces (Kukucha 2003: 58–64). Moreover, the strong level of coordination required for an issue such as climate change has

been absent over the last two decades. In fact, the UN Framework Convention on Climate Change (UNFCCC) and the Kyoto Protocol were ratified by the federal government – in 1994 and 2002, respectively – without consensus of the provinces about the implementation of their provisions.

On climate change, inclusion of provinces within an intergovernmental coordination mechanism has proven weak and poorly institutionalized, with their role declining in the last decade. While some of these mechanisms do exist, such as the Canadian Council of Ministers of the Environment (CCME), their influence remains weak over foreign policy issues. Furthermore, since 2006, provinces have been even less involved in the foreign policy process around climate change issues, despite the clearly expressed desire of some provinces to be consulted and to participate actively in the process (Chaloux & Séguin 2012; Vannijnatten & Boardman 2009).

We will now turn to the evolution of climate diplomacy and federal-provincial relations in Canada since 1992, the year of the adoption of the UN Framework Convention on Climate Change in Rio, to understand the dynamic of climate-related intergovernmental relations in Canada.

### **Canadian Climate Change Foreign Policy and Policy Making (1992–2012)**

Canada's foreign policy on climate change, as developed and implemented by the federal government, has evolved considerably since the late 1980s. Although Canada was seen as one of the global leaders pushing for strong international environmental regimes in the lead-up to the Rio Earth Summit of 1992, it experienced many difficulties in developing domestic policies in accordance with its international commitments from the end of the 1990s through the 2000s. Canada's inability to implement some of the main elements of the developing climate regime turned it from a leader into an increasingly reluctant participant, ultimately leading to its defection from the Kyoto Protocol at the end of 2011.

#### *Evolution of Canadian Climate Policy (1992–2012)*

The late 1980s and early 1990s can be considered the apex of Canada's international environmental leadership. In 1988 in Toronto, alongside the World Meteorological Organization (WMO) and the United Nations Environment Program (UNEP), the Canadian government hosted one of the first high-level conferences on climate change. During his opening speech, Prime Minister Brian Mulroney reaffirmed the importance of international law governing

the atmosphere, citing Canada's proactivity on acid rain and ozone depletion (May 2007), which revealed the importance of this emerging international issue for the federal government.

Subsequently, the federal government pledged to reduce Canada's greenhouse gas emissions by 2000 to 1990 levels two years before the negotiations leading to the United Nations Framework Convention on Climate Change (UNFCCC) adopted a similar goal (Windfield & Macdonald 2008). Canada was also among the first countries to ratify the Framework Convention in December 1992.

In the following years, Canada's climate leadership diminished, as a result of internal divisions and the influence of the U.S. economy on the country's international and domestic policies. The federal structure highlighted numerous intergovernmental tensions, exacerbated by overlapping jurisdictions, which led to major conflicts in the establishment of a common Canadian GHG emissions reduction target. The consensual nature of the intergovernmental process further weakened the capacity of the new government led by Prime Minister Jean Chrétien to hammer out an agreement. The interweaving of the Canadian economy with that of the U.S. also increased tensions within Canada, where the federal government wavered between macroeconomic integration of climate-related policies and a more independent policy on global warming (Simpson, Jaccard & Rivers 2008; VanNijnatten 2009).

In the months prior to the Third Conference of the Parties of the UNFCCC (COP-3) in Kyoto and despite these tensions, provincial and federal environment ministers finally agreed on a Canadian position on the burden sharing of necessary GHG emission reductions at the global level. Canada's contribution at Kyoto was a commitment to reduce its emissions to 1990 levels by 2008–2012, a target Québec refused to endorse (SCIC 1997b). The province wanted to adopt far more ambitious reduction targets than the ones agreed to by the other provinces. Despite the quasi-consensus reached with most of the provinces, the federal government finally decided to endorse a more ambitious GHG emissions reduction target of three percent below 1990 levels (Simpson, Jaccard & Rivers 2008; Windfield & Macdonald 2008). At Kyoto, in the heat of the negotiations and influenced by much stronger U.S. and European commitments, Canada's commitments increased to a six per cent reduction of domestic emissions below 1990 levels. The final target for Canada as a whole was well beyond what most provinces originally approved. This generated deep tensions between the federal government and some provinces (Bakvis, Baier & Brown 2009; Simpson, Jaccard & Rivers 2008; VanNijnatten 2009).

Moreover, in the months prior to Canada's ratification of the Kyoto Protocol, the rejection of the Protocol by the new U.S. administration of George W. Bush

put additional pressure on Canada's willingness to regulate GHG emissions. Despite this, and after certain concessions were made by the European Union – on carbon sinks, in particular – Canada finally agreed to ratify the Kyoto Protocol (Bakvis, Baier & Brown 2009; Simpson, Jaccard & Rivers 2008).

The Kyoto Protocol did not come into force until eight years later, in February 2005. During that period, GHG emissions continued to grow throughout the country and the development of domestic public policies to mitigate GHG emissions at the federal level proved difficult to implement. A first climate action plan was submitted in 2002, but was then immediately rejected by several provinces. A new national climate change action plan was then introduced in April 2005, with the objective of reducing Canada's emissions by 270 megatons per year. Not surprisingly, this plan was vague, and simply proposed the establishment of a carbon market for large industrial emitters, called for some voluntary measures and relied on the purchase of international emissions credits to fulfill parts of the stated goals (Harrison 2007). In sum, although Canada did ratify the Protocol in December 2002, it never provided substantive leadership on its implementation. According to some advisers and high-level officials, Canadian authorities knew it would be extremely difficult to meet the country's self-imposed emissions reduction targets in the first commitment period, 2008–2012 (Goldenberg 2006; Simpson, Jaccard & Rivers 2008: 71).

The arrival of a new Conservative government in January 2006 transformed Canada's foreign policy on climate change (Harrison 2007; Macdonald 2009). The ideological position of the Conservative party and its new prime minister, who previously referred to the Kyoto Protocol as a "socialist scheme," clearly set the tone for the way the new government would handle this environmental issue (CBC 2007). Additionally, political convergence between the new government of Canada and the Bush Administration substantially modified Canada's positions on climate issues, as many federal programs related to climate change were cancelled and federal expenditures related to climate change were cut by almost 40 per cent (Bramley & Demerse 2006). A new "made-in-Canada" action plan, produced by the Conservative government in 2007, was much less ambitious than the previous one. The federal government officially rejected the GHG emissions reduction target set for the country by the former Liberal government and replaced it with a much less stringent one, similar to what was adopted by the U.S., and modified the baseline-year of reference (from 1990 to 2006) to allow increased levels of domestic emissions and cutting funding for climate policies (Harrison 2007; Macdonald & VanNijnatten 2010).

Changes were also made to Canada's foreign climate policy. In 2006, at COP12 (Nairobi) federal government representatives, including Conservative Environment Minister Rona Ambrose, adopted a hardline ideological discourse

on climate change, close to the one adopted by the U.S. administration (Macdonald & VanNijnatten 2010). Many analysts also hinted at Canada increasingly trying to obstruct the UN negotiations process (Ott, Sterk & Watanabe 2008; Smith 2008) and undermine some of the international climate regime's principles and language. Indeed, the federal government veered away from some of the key pillars of the UNFCCC regime, such as the principle of common, but differentiated responsibilities and respective capacities. Canada (with other allies such as the U.S.) tried to shift the burden of emissions reduction away from developed nations to emerging economies, a move that was seen as a rejection of the internationalist and consensus-seeking approach that had shaped Canadian climate policy for the last 20 years. The recent withdrawal of Canada from the Kyoto Protocol in December 2011 has to be seen as the culmination of this new foreign policy posture. In sum,

Support to environmental multilateralism has been steadily eroded by factors unrelated to the environment, such as a general disenchantment with UN-style cooperation, the Harper government's preference for consolidating Canada-US ties, the appeal of classical-liberal ideas of the small state and trade liberalization, and competition for priority from energy supply issues and traditional notions of security (Boardman 2009: 138).

Canada's influence has decreased over the years, as many country delegates, international governments and nongovernmental organizations have increasingly viewed Canada as a spoiler on climate change. Since 2006, Canada has accumulated many "Fossil of the Day" awards – a prize given each year by environmental non-governmental organizations (ENGOS) to countries perceived to play an obstructionist role at the UN-led climate negotiations (Climate Action Network International, 2011), in addition to a flood of criticisms from many delegates from developing and developed countries at the Conferences of the Parties (Cardinal 2007a, 2007b; Robitaille 2006). Similarly, the United Nations Development Program (UNDP) also denounced Canada's climate position in its 2007–2008 annual report (UNDP 2007: 118). The leader of the Intergovernmental Panel on Climate Change (IPCC), Rajendra Pachauri, went even further, saying, "[t]his particular government has been a government of skeptics. They do not want to do anything on climate change" (AFP 2007).

#### *Federal-provincial Intergovernmental Process*

While Canada's foreign policy on climate has changed over time, so have federal-provincial consultative processes and mechanisms. Following the Toronto Climate Conference in 1990, provinces became involved in intergovernmental

processes, such as the *Task Force on Energy and the Environment*. They were also consulted in the lead-up to the UNFCCC in 1992 within a *Provincial-Territorial Advisory Committee*, which was designed to keep provinces informed of the negotiations and to provide a forum for their input; provinces could also play an advisory role to the Canadian Delegation during the Intergovernmental Negotiating Committee for the Framework Convention on Climate Change<sup>4</sup> (Smith 1998). Nevertheless, although the consultation process was in place by early 1990, both Dufault and Smith believed that it did not lead to a real “partnership” between the federal and provincial governments on the development of Canada’s international climate policy (Dufault 2006).

Following UNCED [the 1992 Earth Conference in Rio] the domestic institutional structures for discussion pertaining to implementation were established. In 1992 the Canadian Ministers of Energy and Environment approved a new “Comprehensive Air Quality Management Framework for Canada.” The Framework recognizes the need for cooperation between the federal, provincial and territorial governments on air issues. The right of the federal government to negotiate international agreements is protected but there is also a commitment to consult the provinces “including the opportunity where appropriate for the direct provincial/territorial representation on Canadian negotiating teams.” The inclusion of the phrase “where appropriate” is significant because it protects the right of the federal government to function as the sole representative of Canada in international agreements and gives the flexibility to determine when consultation is appropriate (Smith 1998: 8).

Therefore, after Rio, the federal government institutionalized cooperation with provinces through different committees, even setting up a *Joint Ministers Meeting* (which included provincial and federal Energy and Environment ministers) to develop a national position on the fast evolving negotiations on an international climate regime. While these institutionalized interfaces were maintained after the arrival of a new Liberal government in Ottawa in 1993, differences soon appeared over the level of commitment that the country should make to mitigate global GHG emissions. Provinces such as Alberta stated that they did not want any binding emissions reduction commitments and that they much preferred voluntary approaches and policies. Other provinces,

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4 Some provinces such as Alberta (First session, Washington, DC, February 4–14, 1991; Second session, Geneva, June 19–28, 1991) and New Brunswick (Fourth session, December 9–20, 1991) had representative advisors to the Canadian Delegation.

such as Ontario, British Columbia and Québec, wanted regulatory measures as well as a more ambitious commitment (Stilborn, 2003; Macdonald, 2009). A “consensus”<sup>5</sup> finally emerged through the pursuit of the JMM meetings in Regina in November 1997, where provinces agreed to reduce the country’s emissions to 1990 levels by 2010, a few weeks before the third Conference of the Parties (COP3) was held in Kyoto, Japan.

As mentioned earlier, the unilateral decision by the federal government to go beyond the Regina consensus and to offer a 3 per cent reduction in domestic emissions as Canada’s opening negotiation position in Kyoto, to be increased to 6 per cent at the end of the Conference, was met with consternation by many provinces (Harrison 2007; Macdonald & Smith 1999; Stilborn 2003). To ease pressure at the First Ministers’ meeting following the adoption of the Kyoto Protocol, the federal government agreed to establish a process “that will examine the consequences of Kyoto and provide for full participation of the provincial and territorial governments with the federal government in any implementation and management of the Protocol” (SCIC 1997a). While some provinces seemed reassured by the promise of intergovernmental discussions and partnership for the elaboration of an equitable climate change action plan, tensions remained over how to deal with climate change at a national level, as many provinces held diametrically different views.

Until 2002, provincial and federal ministers and high-level civil servants met on a regular basis to try to hammer out a consensus on a national climate change action plan. By November 2002, lack of consensus among provinces led the federal government to unilaterally submit a plan. According to Sheila Copps, former Minister of the Environment: “[t]here was no way that Alberta would agree to *any* reduction in fossil-fuel emissions” (cited in Harrison 2007: 101). Provinces were divided over the federal government’s proposed policy package; Alberta staunchly opposed it while Manitoba and Québec ardently defended the Canadian position adopted in Kyoto, but expressed reservations over the government’s plan.

In the end, and despite intergovernmental coordination and consultation mechanisms, Canada’s official position in Kyoto and the federal government’s climate action plan were imposed unilaterally. The provinces were indeed consulted, but intractable positions led to increased tensions and deep divisions between the federal and provincial governments over the climate change issue (Stilborn 2003). Subsequently, loss of confidence in the consultative process

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5 Except that Québec asked for a more ambitious commitment (see the Press Release of Paul Bégün, Environment Minister, Regina, November 12, 1997).

limited Canada's ability to implement strong measures to achieve the Kyoto Protocol, and progress remained extremely weak (Smith, 2008).

Despite a discourse promoting an open federalism based on multilateralism, the arrival of the Conservatives in 2006 did not favor the development of intergovernmental relations on the issue of climate change. In fact, according to Gauvin, the number of intergovernmental meetings dropped significantly after 2006 (Gauvin 2012), and decisions such as the adoption of an intensity based approach, included in the Conservative government *Turning the Corner* climate change action plan, were rejected by several provinces (Ontario, Québec, British Columbia and Manitoba) (Bramley 2008).

As a national consensus on implementing domestic climate policies became more elusive, the Conservative government changed Canada's international positioning to a more hardline one, mimicking that of the U.S. administration. Many provinces disagreed with this. For example, in 2006, Québec sent its Minister of the Environment to Nairobi (COP-12) to present the province's dissenting voice regarding the federal government's position, which it considered unsatisfactory and not audacious enough (Québec 2006). In the years that followed, Québec asked for an official place within the Canadian delegation, and reiterated that the Canadian position must be the result of intergovernmental cooperation instead of unilateral action (Canadian Press 2009). These positions irritated the government leadership and generated friction, which culminated at COP-15 in Copenhagen, when Premier Jean Charest stated, "in a federal system of government, we [the provinces and the federal government] are equal, we are not a junior government of the federal government [...] there is a sharing of powers between us" (Canadian Press 2009). These statements demonstrate the weaknesses of intergovernmental processes related to climate change policy, and more importantly, that these debates are certainly not over.

It can be said that despite intergovernmental coordination and consultation mechanisms and processes put in place in Canada since the early 1990s, no consensus was ever reached on the most substantive issues, such as the level of Canada's contribution to global emissions reductions or the policy packages that had to be put in place across the country to fulfill our international mitigation commitments. On these two core issues, Liberal and Conservative governments have always acted unilaterally, trying to impose a way forward for the country as a whole. In the end, Canada continues to make increasingly weak international commitments to mitigate GHG emissions that are not supported domestically. These commitments have almost no chance of being met due to a lack of domestic consensus at all levels of government.

This quagmire led many provinces to develop their own climate policies with accompanying international dimensions and extensions. By the



mid-2000s, the majority of Canadian provinces had adopted economy-wide emissions reduction targets along with relevant policy packages in areas of provincial jurisdiction. Alberta developed its own cap-and-trade system for its energy sector, British Columbia introduced the continent's first full-fledged carbon tax and Ontario, pursuing its own energy revolution, was in the process of shutting its polluting coal plants. For years, four provinces, Ontario, Québec, British Columbia and Manitoba, making up 80% of Canada's GDP, had worked with some U.S. states within the Western Climate Initiative (WCI) to develop the continent's first carbon market. In essence, many Canadian provinces had started behaving like quasi-independent actors on the margins of the international climate regime, taking on commitments, implementing policies to reach them, and linking with other provinces, U.S. states or others to adopt regulations and develop partnerships. By the mid-2000s, there was no such thing as a single Canadian voice on climate change, neither internationally, nor domestically. As an international actor, Canada had become a fragmented entity.

### **International Climate Negotiations and Canadian Federalism: The Case of Québec**

Constant tensions over climate change within Canada have prompted most provinces to act independently or even to develop an autonomous foreign policy – a green paradiplomacy – and to distance themselves from policies driven by successive federal governments in this regard (Chaloux & Séguin 2012). While we could have chosen to illustrate this fragmentation using other provinces as case studies, we now briefly turn to Québec – arguably one of the provinces most active on climate change – as such an autonomous actor both within Canada and internationally. We will explore how Québec has tried to shape the federal government's climate policies and international positioning, while also trying to shape rules and norms within the evolving international and regional climate regime.

#### ***Québec, The International Climate Change Negotiations and Paradiplomatic Strategies***

One can trace the roots of Québec's climate diplomacy – or *paradiplomacy*, the diplomatic relations of non-sovereign states – to the *Gérin-Lajoie Doctrine* of the 1960s. Simply put, this doctrine, first formally expressed in 1965, states that Québec has jurisdiction abroad in its areas of exclusive jurisdiction (Paquin 2006: 31–34). As climate change issues bestow many jurisdictional powers on provinces, Québec's interest in climate change developed quite early, and

from the onset it took both an international and a domestic perspective. As far back as 1992, the province sent observers to the United Nations Conference on Environment and Development in Rio de Janeiro (Québec 1995), which gave birth to major international environmental treaties such as the UN Framework Convention on Climate Change (UNFCCC) and the Convention on Biological Diversity (CBD).

This interest continues to this day. Québec continues to develop various strategies in order to ensure its presence in international negotiations on climate change, not only within the Canadian delegation, but also with the goal of developing its own paradiplomatic strategies toward climate change.

As the official UN negotiations cannot allow non-sovereign states to participate directly in the negotiation process (Conferences of the Parties (COP), Meetings of the Parties (MOP)), Québec's participation in international climate negotiations has taken a different route. In fact, several mechanisms allow its representatives to take part indirectly in the process, thus asserting its interests and creating or deepening existing partnerships. Historically, the government of Québec has used intra-channels, such sending delegate representatives to the Canadian diplomatic delegation. Through the Canadian delegation, Québec's representatives have access to the negotiating forums, press conference rooms and side events. This kind of representation allows Québec delegates and delegates from other provinces to negotiate directly with Canadian diplomats and try to influence some of the positions they take on behalf of Canada.<sup>6</sup>

If we look more closely at Québec's green paradiplomacy since 1995 (corresponding to the first Conference of the Parties in Berlin), we note the importance attributed to the international climate negotiations by the government of Québec. Regardless of which federal party forms the government, there is a constant presence of Québec's civil servants at these conferences (20/20).<sup>7</sup>

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6 Québec is not the only subnational actor to be active in climate change negotiations. Other Canadian provinces and American states, such as California, are also working to influence negotiations. In Australia, the states have been active in promoting the emissions trading system due to the Commonwealth's previous refusal to ratify the Kyoto Protocol. Some Australian states like Victoria, New South Wales and South Australia supported the 2005 Federated States and Regional Governments on Climate Change with Bavaria, Scotland, Catalonia, Sao Paolo, California and Québec (Twomey 2009: 55). Other subnational governments are part of international organizations that aim to promote the role of non-sovereign states in the fight against global warming: the Climate Group and the Network of Regional Governments for Sustainable Development (nrg4SD).

7 These data correspond to the number of times each actor attended the COPs and the total number of COPs.

Ministers (13/20) attended a majority of these conferences, and the Premier of Québec chaired the Québec delegation at two recent conferences (2/20). These representatives were included, with some exceptions, in the Canadian diplomatic delegation.

However, Québec's presence goes far beyond its mere participation in the Canadian delegation. Indeed, during the Conferences of the Parties, Québec participated in some forums and side events held in parallel to the negotiations, and organized bilateral or multilateral meetings at all levels, to develop or deepen partnerships, and to promote its major goal – the recognition of the role of non-sovereign states in the regulation of global climate change. In fact, since 2005, the Québec government has also been actively involved in the activities and initiatives undertaken by two international organizations which aim to promote the role of non-sovereign states in the fight against global warming: the Climate Group and the Network of Regional Governments for Sustainable Development (nrg4SD). The Climate Group represents both federated and subnational governments and large multinational businesses that promote the development of green technologies for a “clean revolution” (Climate Group 2013). Québec became a member in 2007, joining many other federated states, regions and businesses sharing compatible and complementary goals. Today, more than 24 federated states or regions, and nearly 40 companies are active within the Climate Group (Climate Group 2013). Québec has remained an active member in this organization, regularly co-chairing (in 2005, 2009 and 2010) the “Climate Leaders Summit,” an event taking place on the margins the Conferences of Parties of the UNFCCC. Québec also recently joined the Network of Regional Governments for Sustainable Development (nrg4SD). This international organization represents subnational and federated states at the UN level on issues related to sustainable development. Established in 2002 at the World Summit of Johannesburg for sustainable development (Rio +10), nrg4SD also seeks to encourage the participation of non-sovereign states in international environmental issues, including climate change and the protection of biodiversity. During COP-16 in Cancun, nrg4SD, also with the Climate Group, made representations for the recognition of subnational governments in negotiating texts (NRG4SD and Climate Group, Proposals to add references to the subnational level of governance in the AWG-LCA negotiating text of 2010 (FCCC/AWGLCA/2010/14), September 2010).

Moreover, other representations are made at every COP by Québec's delegation: bilateral meetings with representatives of sovereign and non-sovereign states, meetings with businesses, organizations and members of civil society, and so on. Thus, Québec's participation in the Conferences of the Parties is undertaken in order to underscore the increasing importance of the meso-level

in the regulation of this global resource problem, and that it is through a multi-level, transnational governance perspective that solutions to the issue of climate change will be found and implemented (Andonova, Betsill & Bulkeley 2009).

This perspective of transnational and multi-level governance promoted by Québec and other subnational entities is not solely limited to the UN negotiations process. In fact, Québec has been involved in several subnational multi-lateral organizations in North America, redefining cross-border relations along the 49th parallel on the climate issue. Through the Conference of New England Governors and Eastern Canadian Premiers, in which Québec is an active member, a regional climate change action plan was adopted in 2001. The American states and Canadian provinces agreed on common measures, such as a regional GHG emissions reduction goal to reduce greenhouse gases to 1990 levels by 2010, reducing GHG emissions by 10 per cent by 2020, and, ultimately, reducing emissions to levels that do not cause a threat to the global climate system (between 75 per cent to 85 per cent below 2001 levels by 2050) (NEG-ECP 2001). Québec, together with California, implemented the first cross-border carbon market in North America, covering a large spectrum of action. According to the organization, the program will be fully implemented in 2015 and will cover nearly 90 per cent of all GHG emissions (WCI 2010).

*International Climate Negotiations and Québec's Other Strategy:  
The Implementation Process*

Finally, in addition to investing in various international and regional forums to defend and promote its interests, Québec has also chosen to implement domestically most provisions of the international climate regime. In doing so, Québec chose to broaden the scope of the *Gérin-Lajoie Doctrine* and argued that it was also responsible for the implementation of the Kyoto Protocol in its own areas of jurisdiction (Chaloux & Séguin 2012). By claiming this responsibility, the province in effect tried to legitimize itself as a full-fledged, autonomous actor on climate change, both internationally and domestically.

In April 2001, Québec's National Assembly adopted a unanimous parliamentary motion of support for the Kyoto Protocol and expressed its willingness "to do its fair share" in the context of a "greenhouse gas emissions reduction strategy in Canada," considering Québec's constitutional jurisdictions (Québec 2001). Then, in 2006, the Québec government went a step further, by adopting the 2006–2012 Climate Change Action Plan. In doing so, the province demonstrated its clear commitment to implement the Kyoto Protocol on its territory. Additionally, in December 2007, the province adopted a decree in which it declared itself bound to the Kyoto Protocol and committed to incorporate the

provisions of the Protocol into domestic laws, through the implementation of its 2006–2012 Climate Change Action Plan (Québec 2007).

The 2006–2012 action plan called for a greenhouse gas emissions reduction target of 6 per cent below 1990 levels by 2012. It implemented a series of targeted measures to achieve this goal. The plan also included some measures focusing on adaptation to climate change impacts. It has been financed by a new levy on hydrocarbons, one of the few carbon taxes on the continent. It is important to note that with this plan, Québec: (1) stopped waiting for the implementation of an elusive federal climate plan, (2) imposed a significant GHG emissions target on all economic sectors in the province (transportation, energy, agriculture, waste management, industries, etc.), and (3) mostly relied on its own financial resources to get the job done (Gouvernement du Québec 2008; Chaloux & Séguin 2012).

Québec also developed additional public policies related to climate change in recent years (a 2006–2015 Energy Strategy and Public Transit Policy, among others). In the lead-up to the 2009 Copenhagen Conference, Québec adopted a new emissions reduction target of 20 per cent below 1990 levels for the year 2020, the same as the European Union's own commitment for the Kyoto Protocol's Second Commitment Period (2013–2020). This reflects Québec's aspiration for strong action at the international level. The goal was confirmed by the adoption of a second climate change action plan for 2013–2020, in which Québec seeks to implement more ambitious actions and where it sets up different instruments for achieving the implementation of a carbon market with California, in the context of the Western Climate Initiative. The latest Parti Québécois government has also pledged to raise the reductions target to 25 per cent below 1990 levels by 2020.

As an industrialized society, Québec seems to have implemented most of the requirements of the United Nations Framework Convention on Climate Change and the First Commitment Period of the Kyoto Protocol, independently from the Canadian federal government. Chaloux & Séguin (2012) identified three main types of commitments under the UNFCCC and the Kyoto Protocol for industrialized countries: (1) commitments to reduce emissions; (2) commitments for transparency and accountability; and (3) commitments to support developing countries. The study leads us to believe that Québec complies autonomously with these requirements, with the notable exception of meaningful support to developing countries, where Québec has yet to invest substantial resources.<sup>8</sup>

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8 One can argue that Quebecers as a whole do contribute by funding part of the Canadian government's support to developing countries through the federal tax system.

In sum, these examples of a province's international activities show the relevance of quasi-independent actors in the management and governance of this global environmental problem. We believe an analysis of other province's climate policies, both internationally and domestically, would have shown similar results. Furthermore, it brought to the forefront the complexity and the inadequacy of a centralized approach in a federal system to deal with a multi-level and multi-stakeholder issue such as climate change.

### Conclusion

In conclusion, the works of Putnam, Milner & Rosendorff, and Martin offer a valuable perspective on the complex political process associated with international negotiation and ratification. These approaches have been used for many years to explain the influence of domestic actors in international negotiations. However, they have completely downplayed the role of sub-federal governments in international negotiations. In our case study, we see that sub-federal governments are becoming more important and cannot be ignored in climate change negotiations. Federalism and inter-governmental negotiations within a federal regime are a key factor in understanding climate change negotiations in a country like Canada.

In this article, we have shed light on the complexity of international climate change negotiations for a federal regime like Canada where there is no clear attribution of power to international negotiation. We have also seen that in recent years, Canadian provinces, but especially Québec, have become intensely involved in climate change paradiplomacy. That situation has led to a Canadian paradox, in that while Canada opted out of the Kyoto Protocol in 2011, the government of Québec claims it respected the protocol and acted accordingly. Canada is not the only state facing this dilemma, even though it is an extreme case.

We have also seen that the current climate negotiations process in Canada is inadequate because it does not allow provinces to intervene effectively in the negotiation and implementation process, despite several constitutional powers attributed to them. The weakness of the intergovernmental process has created new tension, pushed some provinces to overcome the inherent difficulties arising from the nature of Canadian federation, and encouraged the development of international leadership in the management of this global environmental problem.

Furthermore, the particular case of Québec's participation in global climate change governance is a fruitful example of the redefinition of federalism in this global context. The internationalization of its activities over the years

is revealing in this regard, both through the UN process and with its North American partners. According to several authors, it is now inadequate to think of a unique national interest, and hence, it is crucial to redefine the way international negotiation scholars see the regulation of global problems, such as climate change, and to include different kinds of actors in the process.

In sum, the recognition of the relevance of subnational international activity in Canada could be an opportunity for the federal government to really adopt an “open federalism” perspective, to improve its relations with its provincial counterparts, and finally, to demonstrate the good faith of Canada in the international negotiation process and in the regulation of global environmental issues. This situation also applies in other federal countries, like Australia and even the United States.

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