Associate Membership of the EU

An Idea Whose Time Has Come

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Ursula von der Leyen's call, in her recent State of the Union speech, for Canada to become the EU's "first associate member" caught most people by surprise. Almost all the media dismissed the idea, quoting jaded, inferior anonymous diplomats. Clearly neither those journalists nor the officials were moved by von der Leyen's invitation to "reimagine our partnerships". The EU seemed ready to return to its constitutional torpor.

We federalists, however, should thank the Commission President for injecting a refreshing note of realism into EU politics. For one thing, as she must have known, the creation of a new category of associate membership means reopening the EU Treaties – an opening which she underscored in making her additional initiative for the convening of a new Congress of Europe.

So how will associate membership work both legally and politically? This paper suggests how the introduction of a new class of membership can help the Union out of a period of constitutional stagnation and open the way to a successful enlargement. A new article is proposed to be added to the Treaty on European Union, with guidelines by way of a new protocol.

Canada will not be the only candidate for associate membership. Member States should address the design of the new model in a positive manner and agree to depart from the rule of rigid unanimity that so hampers deeper political integration in a larger Union.

Self-Reflection

If the EU were a confident federation of member states, it would be exploring novel solutions to cater for its troubled wider neighbourhood. Evolving federal unions are bound to be open to admitting new members, expanding their orbit, as the early history of the United States of America bears witness. Size and space matters, no less today when Russia, China and America are competing globally in active imperialist mode.

The European Union should become far more self-critical about its own long constitutional stagnation since the Lisbon Treaty was signed in 2007. Brexit has left the EU smaller, weaker and poorer. The narrow European Economic Area arrangement with Iceland, Norway and Liechtenstein, now more than 35 years old, is under increasing strain. The EU's long-term relationship with Switzerland is still unresolved.

Enlargement stopped with Croatia in 2013. Unless Commissioner Marta Kos can persuade the Council to drop its vetoes, war-torn Ukraine's accession to the Union seems effectively stalled. Likewise, progress in the Western Balkans towards the EU offers little encouragement even to frontrunners Montenegro and Albania. Old NATO seems holed beneath the water line by Donald Trump. The more recent, wider conference of the European Political Community is hobbled by the participation of corrupt strongmen from Turkey and Azerbaijan, and delivers little in practice.

Mark Carney

Canada's Prime Minister Mark Carney is articulate in making the case for a deeper partnership with a more integrated EU. For Carney, Canada's existing arrangements with the EU – comprising the Comprehensive Economic and Trade Agreement (CETA), a Strategic Partnership, participation in Horizon, and membership of SAFE – are not enough. His aim is "collective resilience" against hegemonic, predatory powers. He told the European Parliament: "Where our strengths differ, they complement. Where they overlap, they create scale. We should build on each other's strengths

– deliberately, systematically, and rapidly". Canada's future alliance with the EU should be broadened, he said, to include critical minerals, defence industrial capacity, AI, energy security, space, financial and digital services, and youth exchange.

Carney's frustration with the current EU relationship is clear. CETA, whose legal base is Article 217 TFEU, is not yet ratified by ten EU Member States (led by France) after a decade, and is therefore only partially implemented. CETA does not cover foreign policy, security or defence, and any modification in that direction under the terms of Article 218 TFEU requires unanimity in the Council. At the very least, there is a strong case for extending to Ottawa the scope of the EU's mutual defence clause, Article 42(7) TEU, to fill some of the gap left by a wounded NATO. This would require suitably robust joint decision making.

Although Canada is the obvious candidate for associate membership, it may be far from being the only one. The EFTA countries are on the alert and could well alight on the model of associate membership as the best way to upgrade their EU relationships.

London is also watching EU-Canadian developments closely as the real limitations of its own post-Brexit Trade and Cooperation Agreement (2020) become increasingly obvious. The UK will certainly aim to be part of the EU's fast-growing defence structures. In the longer run, having tried all the alternatives and found them wanting, the UK is highly likely to rejoin the Union as a full member state. In the meantime, however, associate membership may prove to be for the British a useful, and less controversial, staging post.

It cannot be excluded that Ukraine and Moldova, which already have EU association agreements of their own, may opt for associate membership in a similar preparatory way, as they wait for obstacles to full accession to pass. Doubtless, there will be complaints from Kyiv about being consigned to a second-class status: but this is Europe, and needs must. There will be worse places to be.

New Model

Why not, then, try something new? A model associate membership must be a distinct improvement on the complex of patchwork relations which the EU has developed with numerous neighbours over many years. It should provide a platform for trustworthy and dynamic collaboration with partners short of full accession as a member state. It would have to protect the Union's *acquis communautaire* while being a viable framework for friendly third countries which choose not to, or cannot yet, become full member states.

The EU's traditional obsession with "no cherry-picking" will have to be modified: in the wider and more diverse European space, one size no longer fits all. The Commission will be bound to adopt a more lenient attitude with countries wishing to move closer to the Union by association than the one it struck with the British when they insisted on leaving.

Associate membership is not exactly a new idea. But how should it look today? In my view, broad, stable, pragmatic and flexible, fit for the future. And associate states must not be suffocated, as is the present EU, by national vetoes. Learning from the constitution of the US, surely the time has come for the EU to release itself from the straitjacket of rigid unanimity when it comes to implementing agreements arrived at, sometimes painfully, by consensus. Indeed, reopening the EU Treaties to cater for Canadian associate membership is the perfect opportunity for the federation to ditch cumbersome confederal methods of government.

A Draft Amendment

So, to a *texte martyre*. Spliced between Article 49 TEU on accession and Article 50 on secession, we may find a new draft Article 49a, followed by a draft Protocol.

Draft Article 49a TEU

> *Any state which respects the values of the Union and is committed to the unification of Europe may apply to become an Associate State.To be eligible for associate membership, the applicant state must have stable institutions which guarantee democ-*

racy, the rule of law, and human rights.The application shall be addressed to the European Council which shall act by four-fifths of its members on a proposal of the Commission and after receiving the consent of the European Parliament, which shall act by a majority of its component members.The conditions of admission to associate membership and the adjustments to the Treaties on which the Union is founded, which such admission entails, shall be the subject of an agreement between the Member States and the applicant state. The Commission shall negotiate the agreement in accordance with the Protocol on Associate Membership.The agreement shall be submitted for ratification by the European Parliament, which shall act by a two-thirds majority of the votes cast representing a majority of its component members, and by all Member States in accordance with their constitutional requirements. The agreement shall enter into force once approved by the European Parliament and by four-fifths of the Member States.

Protocol on Associate Membership

This Protocol lays down guidelines for the negotiation and conclusion of an agreement admitting any state to associate membership of the Union pursuant to Article 49a TEU. The agreement will set out the terms, conditions, scope and limits of associate membership.Purpose The aim of the agreement is to develop a deeper and consistent partnership, to mutual benefit, between the Union and the Associate State.The agreement shall commit the Associate State to respect the values of the Union and to support the European Union institutions and its Member States in pursuit of their overall Treaty objectives. It will honour the principle of sincere cooperation.The parties to the association agreement will work to advance the well-being of their peoples. They shall underpin liberal democratic government, guarantee the rule of law, promote international law, bolster transatlantic security, and respect the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union.Scope The association agreement may adapt or build on existing international agreements between the Union and the Associate State previously undertaken on the basis of the existing EU treaties. The agreement shall specify which of the Union's policies, programmes and functions the Associate State is to participate in, and the terms and conditions, financial and institutional, which shall apply to that participation. Participation by an Associate State in the internal market, in whole or in part, may not risk the integrity and operation of the market.Governance The agreement will provide for structured democratic consultation and administrative coordination between the institutions of the EU and the government and parliament of the Association State. The modalities of the participation of representatives of the Associate State shall be laid down per sector by each institution and by mutual agreement.The Associate State may conclude service agreements with the Commission and agencies of the Union for the delivery of common policy. These arrangements may contain reciprocal rights and obligations as well as the possibility to undertake activities jointly.The Associate State will recognise the jurisdiction of the European Court of Justice in the interpretation of EU law. It may intervene in cases before the Court and may institute third-party proceedings to contest a judgment rendered by the Court without its being heard, where the judgment is prejudicial to its rights. The agreement will include arrangements for the suspension of the association and for the establishment of a dispute mechanism.Duration The association agreement may be of unlimited duration. It shall neither presume nor preclude a subsequent application by any European state to join the Union under the terms of Article 49 TEU. It may be terminated by either party after notice has been given to the Commission after a transition period of one year.

Conclusion

It must be right to respond constructively to Mark Carney's wish to move closer to the European Union. The installation of an associate membership may help the EU manage its relations not only with Canada but also with its wider, and more troubled neighbourhood. One possible approach is suggested here: there will be others. The debate begins and must move at pace if Europe's many present difficulties over its strategy, security, and governance are to be addressed in a timely manner.

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