LEAVE ALLIANCE

Brexit Monograph 9

A European Economic Space

26 August 2016

Introduction

Legal withdrawal from the EU requires the UK to make a formal Article 50 notification, advising the European Council that it has decided to leave. This triggers formal negotiations with the UK in order to conclude an agreement, "setting out the arrangements for its withdrawal, taking account of the framework for its future relationship with the Union".

With the focus on leaving the EU, it is entirely understandable that the debate should concentrate on the mechanics of withdrawal. It is thus easy to lose sight of the fact that, post-Brexit, the UK will continue to work closely with the EU institutions and Member States. Furthermore, it is not unreasonable to argue that the safety and prosperity of Europe as a whole will to a very great extent depend on this future cooperation.[1]

Therefore, it stands to reason that negotiations should not be viewed merely as making arrangements to secure the UK's exit from the EU. Rather, we should be looking at the process in a more positive light, seeking to define the framework for our future relationship with the Union – thus picking up from the wording and intent of Article 50.

If viewed in this light, the negotiations are more likely to be seen in the more positive light of creating a new "framework", the purpose of the framework itself being a construct on which will support further developments, upon which will depend future relationships across a wide range of activities.

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[1] The importance of this is set out in the paper by Tim Oliver on "Europe without Britain. Assessing the Impact on the European Union of a British Withdrawal", published by the German Institute for International and Security Affairs (September 2013). He argues that exit could be traumatic to the EU as well as the UK. http://www.swp-berlin.org/fileadmin/contents/products/research_papers/2013_RP07_olv.pdf

In constructing this framework, the Union itself is obliged to look beyond the confines of "Brexit", taking into account the wider obligations of the treaties. For instance, Articles 3, 8 and 21 (TEU) variously require the Union to "contribute to … free and fair trade" and to "work for a high degree of cooperation in all fields of international relations, in order to … encourage the integration of all countries into the world economy, including through the progressive abolition of restrictions on international trade".

Nevertheless, there will quite obviously be a close relationship between the structures adopted by the UK, in order to manage an orderly withdrawal from the Union, and the way in which the UK and the EU inter-relate in the immediate post-Brexit period. Therefore, the settlement needs to combine Brexit with building for the future.

Such a positive approach would transform Brexit from a confrontational exercise to one of cooperation, aimed at securing an outcome which is to the benefit of all parties. But it would require the talks to embrace ideas of how Europe as a whole could function in a post-Brexit world. For that to happen, the statesmen of Europe will have to decide whether they are salvage merchants or builders.

In this Monograph, we focus initially on this concept and then look at possible framework which could support it, going back into the past to look at the beginnings of the European Economic Area, and how things were structured then. We believe there are important lessons to learn from that period which, if properly applied, could transform the negatively of an exit process into a positive agenda of building new relationships.

A vision for Europe
The essence of a positive agenda can be defined in terms of reconcile the disparate visions for the UK and the EU-27, but also of the rest of continental Europe, including the Efta states, the Ukraine and other Eastern states, the Russian Federation, and the Balkans.

Currently, attempts to define a new "vision for Europe" have been limited to the European Union.[2] There is no evidence of attempts to define an overarching vision for the entire continent. And although one can concede that the very idea of a single vision on Europe has been at the root of many of its problems, this should not inhibit attempts to identify the different visions prevailing for different geographical segments, and then reconciling them in such a way that they are able to co-exist, much in the manner that capitalist and communist societies have learned to live together.

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[2] http://www.theguardian.com/politics/2016/jul/02/brexit-shock-calls-change-eu-european-union

As to the EU, a multiplicity of visions is already embodied in the concept of a Europe of "variable geometries". One thread of this concept is that the EU no longer promotes a single policy but a series of "strengthened co-operations". Member states not signing up to political union should be able to be part of the single market and of individual coalitions of the willing.[3]

Such ideas were current before the UK referendum but had not been developed. Perversely, the referendum has been seen by some as an opportunity for further integration.[4] For instance, Italian Prime Minister Matteo Renzi, immediately after the vote, spoke of a "wake-up call for Italy and the rest of Europe". He called for a stronger and more integrated Europe, making changes to achieve "a more human and just Europe".[5]

Angela Merkel was more realistic. "There is no point beating around the bush", she said. "This is a blow to Europe, a blow to the European process of integration".[6] And indeed it is. The EU is in the process of losing a major member. There is no candidate country of equivalent status that can replace it. In that respect, Brexit represents the high water mark of European political integration – the end of the dream of a United States of Europe, "a dream that has not been able to force its way into the real world".[7]

Even by the second half of August 2016, though, there were no signs that this lesson was fully understood, even when three EU leaders from the original Six, Renzi, Merkel and Hollande, made a symbolic visit to the island of Ventotene, where former Communist Altiero Spinelli, under detention by Mussolini's Fascist government, wrote his 1941 manifesto for a "free and united Europe".[8]

They insisted that Brexit did not spell the beginning of the end for the EU, and pledged to revive it by bolstering security, boosting economic growth and giving the continent's youth a future. "Many thought the EU was finished after Brexit but that is not the case", said Renzi. "We respect the choice made by the citizens of Britain but we want to write a future chapter. Europe after Brexit will re-launch the powerful ideals of unity and peace, freedom and dreams".[9]

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[3] http://www.ecfr.eu/article/commentary_a_new_social_and_political_contract_for_europe_7059
[4] *Sputnik News*,22 August 2016, EU Leaders Supported Brexit to Remove Obstacle to Creating EU Army, http://sputniknews.com/europe/20160822/1044514591/eu-army-uk-brexit.html
[5] http://www.ecfr.eu/article/commentary_rome_a_harsh_wake_up_call_7055
[6] http://www.theaustralian.com.au/news/world/the-times/brexit-hollande-and-merkel-in-despair-over-eus-future/news-story/37d4df777aa8eb7a8479c334af8cfd34
[7] http://www.spiegel.de/international/europe/brexit-presents-europe-with-opportunity-for-improvement-a-1099608.html
[8] http://www.cvce.eu/content/publication/1997/10/13/316aa96c-e7ff-4b9e-b43a-958e96afbecc/publishable_en.pdf
[9] *The Guardian*, 22 August 2016, 'This is the beginning of a new Europe' say Merkel, Renzi and Hollande, http://www.theguardian.com/politics/2016/aug/22/beginning-new-europe-merkel-renzi-hollande

While Merkel was later reported as "seeking a post-Brexit vision", the *Guardian* newspaper decided that the EU was having difficulty connecting "vision and reality".[10,11] *The Daily Mail* reported that: "Instead of such lofty idealism", the leaders of Germany, France and Italy faced the grim reality of a growing backlash to their handling of the migration crisis and terrorism – and disagreements over how to proceed.[12]

Yet, if this is an accurate reflection of the disarray in EU-27, there is no evidence of a coherent post-Brexit policy emerging in the UK. No single theme for an exit strategy has been defined, and there are indications of conflict building within the ruling Conservative Party.[13]

A possible way forward does not lie within the geographical bounds of the EU-28 as it now stands. On a wider front, we see the EU attempting to redefine its neighbourhood policy of which, in due course, the UK may become part.[14] Integrating this policy strand with the exit framework would allow the EU to treat Brexit as part of broader policy initiative. Both the UK and the EU could thus widen their horizons and look to Brexit as an opportunity to carve out a settlement not just for themselves but for continental Europe as a whole.

A European village
In the context of a wider settlement, the UK would no longer be seeking to act independently. As an independent actor, it would have had three broad options, the so-called WTO "unilateral" Option, the Swiss or "bilateral" Option and the Efta/EEA "multilateral" Option, sometimes called the Norway Option.[15] None of these qualify as a final destination for Brexit.

The Swiss Option is regarded as a "broken model", hardly suitable for Switzerland much less for the UK, and the defects of the WTO Option have been well rehearsed.[16,17] As to the Efta/EEA Option, the central defect is the democratic deficit in EEA decision-making, whereby the EU has the monopoly of law-making, which are then imposed on the Efta states. This renders it unsuitable as a long-term solution for the UK.

However, in the plan for the EEA, which was originally framed as a European Economic Space, the idea was for shared decision-making amongst groups of equals. A return to this concept might resolve some of the intractable problems

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[10] https://euobserver.com/political/134731
[11] https://www.theguardian.com/commentisfree/2016/aug/22/the-guardian-view-on-the-eu-struggling-with-the-vision-thing
[12] http://www.dailymail.co.uk/news/article-3753781/Has-Brexit-taught-Europe-s-big-three-leaders-pledge-integration-despite-popular-backlash.html
[13] http://www.politico.eu/article/tory-dream-of-a-short-sharp-brexit-theresa-may-conservative/
[14] http://www.euractiv.com/section/global-europe/news/new-geopolitical-crises-demand-a-more-dynamic-eu-neighbourhood-policy/
[15] http://www.eureferendum.com/Flexcit.aspx
[16] https://www.ft.com/content/a682cf84-6616-11e6-a08a-c7ac04ef00aa
[17] http://www.eureferendum.com/documents/BrexitMonograph002.pdf

related to Brexit, and some of the structural problems affecting the European Union.

The idea of a European Economic Space (EES) emerged as a response to the Efta summit in Vienna on 13 May 1977, to satisfy the need to develop trade and economic co-operation with the EC on a "pragmatic and practical basis".[18,19] Subsequent meetings culminated in the Luxembourg Declaration of 1984, which announced an intent to "broaden and deepen" cooperation between the EC and Efta.[20]

While the Commission responded positively in May 1985, it had reservations on what was to become the core issue, noting that that: "Community integration and the Community's independent powers of decision must under no circumstances be affected".[21] But the need for more cooperation was pressing. A month later, the Commission published its White Paper on the completion of the internal market, which had Efta states worried about marginalisation and trade diversion effects from a more developed EC market.[22]

On 17 January 1989, European Commission President Jacques Delors transformed the situation with a visionary speech to the European Parliament in Strasbourg. First, he referred to "our close EFTA friends", for whom he suggested "a new, more structured partnership with common decision-making and administrative institutions to make our activities more effective and to highlight the political dimension of our cooperation in the economic, social, financial and cultural spheres".[23]

Then, "not forgetting the others who are knocking at our door", he referred to Mikhail Gorbachev's notion of a "common European house", which had been articulated as early as 1987.[24] As an alternative, Delors offered a "European village", in which he saw a house called the "European Community". "We are its sole architects; we are the keepers of its keys", he said, "but we are prepared to open its doors to talk with our neighbours".[25]

This was exactly what the Efta states wanted to hear. On 14-15 March 1989, they responded with the "Oslo Declaration", declaring their readiness "to

[18] European Parliament, Working Papers, Agreement on the European Economic Area, Background and Contents, http://www.europarl.europa.eu/RegData/etudes/etudes/join/1993/457099/EXPO-JOIN_ET%281993%29457099_EN.pdf
[19] http://www.efta.int/sites/default/files/publications/annual-report/efta-annual-report-1976-1977.pdf
[20] http://www.efta.int/sites/default/files/documents/about-efta/EFTA-EC-joint-declaration-1984.pdf
[21] COM(85) 206 final, 13 May 1985, http://aei.pitt.edu/3655/1/3655.pdf
[22] COM(85) 310 final, 14 June 1985, http://europa.eu/documents/comm/white_papers/pdf/com1985_0310_f_en.pdf
[23] http://www.cvce.eu/content/publication/2003/8/22/b9c06b95-db97-4774-a700-e8aea5172233/publishable_en.pdf
[24] http://www.rug.nl/research/portal/files/10431148/03_c3.pdf
[25] Delors, *op cit*.

explore together with the EC ways and means to achieve a more structured partnership". Predictably, they emphasised the need for common decision-making.[26] The houses in the village were to be a community of equals.

An Efta ministerial meeting on 20 March 1989 sought to bring this vision to life, with the establishment of a joint High Level Steering Group, which concluded its meetings in the October. This event was followed by a meeting between the EC and Efta in the December, when ministers decided to open formal negotiations on expanded cooperation in the first half of 1990, with a view to concluding them as rapidly as possible.[27,28]

What broke the consensus though was the cataclysmic and unexpected fall of the Berlin Wall – to be followed by the collapse of the Soviet Union. The newly liberated Soviet satellites of central and eastern Europe were in flux, their relationship with the EU yet to be defined. Former French President Giscard d'Estaing sought to fill the gap, expanding on the Delors vision of a "European village". He suggested it could be made up of five "homes" comprising the Community states (EC), the Efta countries, the East European countries of the Warsaw Pact; the "isolated" countries - Yugoslavia, Albania, Malta - and the European part of the Soviet Union.[29]

Reinforcing this idea, Efta sources wrote enthusiastically about the "new architecture of Europe" for all countries of the continent. They called for the EES to remain an "open concept", allowing the countries of Eastern Europe to join at a later date.[30] The "village" concept was taking shape.

Common decision-making remained on the agenda at the Efta-EC ministerial meeting in Brussels on 19 December 1989 and the mood was optimistic. A high-level examination on common decision-making had finished in the October with an agreement that there was sufficient common ground for negotiations to continue. They were to be based on the idea that common rules and common decision-making were to govern the EES. [31]

At stake, according to Jón Baldvin Hannibalsson, Iceland's foreign minister, was "a genuine participation in a joint EES decision process". This was of "crucial importance" for the political acceptability of an EC/Efta agreement. Jean-Pascal Delamuraz, the Swiss economics minister, was equally firm. "Let us be clear and state openly from the outset", he said, "there will be no new

[26] http://www.efta.int/sites/default/files/publications/annual-report/efta-annual-report-1989.pdf
[27] European Parliament, Working Papers, *op cit*
[28] http://www.cvce.eu/content/publication/2006/4/19/139f4fa6-5229-41f4-b7be-6266e4d0d541/publishable_en.pdf
[29] Cited in http://discovery.ucl.ac.uk/1349617/1/363021.pdf, p.143-144.
[30] http://www.cvce.eu/en/obj/the_ees_a_timely_concept_from_the_efta_bulletin_july_september_1990-en-e6a6e167-70d0-422d-a620-5f346281d175.html
[31] http://www.cvce.eu/content/publication/2006/4/19/139f4fa6-5229-41f4-b7be-6266e4d0d541/publishable_en.pdf

forms of co-operation between the European Community and the Efta States unless there exists the machinery to prepare and take decisions jointly".[32]

Delors, however, had other ideas. He wanted the former Soviet satellites to become full Community members in a "big bang" enlargement which, with Cyprus and Malta, was to add another ten members to what was soon to be the European Union. A European Economic Space, a "village of equals" with common decision-making and full membership of the Single Market would have been more attractive than EU membership.[33]

On 17 January 1990, therefore, exactly a year after he had offered joint decision-making, Delors clawed back his promise. "There will have to be some sort of osmosis between the Community and Efta, to ensure that Efta's interests are taken into account in major Community decisions", he told the European Parliament. "But this process must stop short of joint decision-making".[34,35]

This was not something the Efta Council wanted to hear. In a declaration in Gothenburg on 13–14 June 1990, it reiterated that genuine joint decision-making was "a basic prerequisite for the political acceptability and legal effectiveness of an agreement".[36]

By October, the negotiations had centred on two key issues: a number of permanent derogations from the *acquis communautaire* and, crucially, the reluctance of the Community to enter into substantive talks on decision-making. In Geneva on 23 October, Efta ministers offered a compromise. They would reduce to a minimum the number of derogations called for, in return for "a genuine common decision-making mechanism".[37]

It was not to be. Delors stood his ground and by 19 December 1990, the battle was effectively over. An Efta-EC ministerial meeting in Brussels declared that "the decision-making autonomy of the parties should be fully respected", leaving only a fig-leaf. There were to be "procedures" to ensure that Efta state's views were "taken into account".[38] This was limited to Efta experts being given an equal opportunity of consultation in the preparation of new EC legislation, on matters of relevance to the EEA.[39]

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[32] *Ibid*.

[33] For instance, see Two Tiers Or Two Speeds?: The European Security Order and the Enlargement of the European Union, edited by James Sperling, p 82, *et seq*, (Patrick H. O'Neil), http://tinyurl.com/qjkfp85.

[34] http://europa.eu/rapid/press-release_SPEECH-90-1_en.htm?locale=en

[35] http://aei.pitt.edu/8600/1/8600.pdf

[36] http://www.cvce.eu/content/publication/2006/2/21/2f5acb62-07a3-42e3-af00-095abf20276a/publishable_en.pdf

[37] http://www.efta.int/sites/default/files/publications/annual-report/efta-annual-report-1990.pdf

[38] http://www.cvce.eu/content/publication/2003/3/6/3e9844ad-6b51-404c-969d-bec4cb661274/publishable_en.pdf

[39] European Parliament, Working Papers, *op cit*.

The "surrender" cleared the way for the final agreement in May 1992 with the signing of the European Economic Area Agreement. But that was not the end of it. By way of compensation for the lack of shared decision-making, Efta states insisted on a "general safeguard clause" which could be triggered unilaterally if serious economic, societal, and/or environmental difficulties of a sectoral or regional nature arose.[40,41] In time, it became Article 112 of the EEA Agreement, on which Liechtenstein was able to rely to exempt itself from the free movement provisions.

Despite that, there was no disguising the unsatisfactory nature of the final outcome. But the idea of a European village, with co-equal partners, has never really gone away. Reactivated, it could form the basis of a post-Brexit policy, embracing the entire continent, with the UK becoming one the "houses".

Separating the Single Market
The "European village" concept, with decision-making shared amongst equals, does not sit easily with the idea of a Brussels-centric Europe, where all the decisions made by the EU institutions and handed down to the other "houses". Nor is the idea of a supranational mechanism, with its qualified majority voting and the absence of a veto, acceptable to all parties.

Thus, while respecting the right of the Union to pursue political integration amongst its members, it should be asked to relinquish its grip on the Single Market, and open it up to joint management, allowing it to become a continent-wide property. That would also honour the intent of the UK referendum, separating the management of trade from the EU's political agenda.

Separation of the Single Market from the European Union would then require the relocation of its administrative headquarters. The obvious alternative is Geneva, home of the former League of Nations and currently the base for United Nations offices in Europe, centred on the United Nations Economic Commission for Europe (UNECE).

Closer ties with UNECE would revisit Winston Churchill's vision for a united Europe when in 1948 at The Hague Conference he argued for the United Nations to be the "paramount authority" in world affairs, but with regional bodies as part of the structure. They would be "august but subordinate", becoming "the massive pillars upon which the world organisation would be founded in majesty and calm".[42] UNECE forms part of that hierarchical structure, as one of five UN regional commissions.[43]

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[40] http://www.efta.int/sites/default/files/publications/annual-report/efta-annual-report-1991.pdf
[41] http://www.cvce.eu/content/publication/2003/11/18/37d82b05-cf61-43ee-a844-88becb9a5764/publishable_en.pdf
[42] Speech to the Congress of Europe, The Hague, 7 May 1948. The Churchill Society, http://www.churchill-society-london.org.uk/WSCHague.html
[43] The other four are: United Nations Economic and Social Commission for Asia and the Pacific (UNESCAP), Economic Commission for Latin America (ECLAC), United Nations Economic Commission for Africa (ECA) and United Nations Economic and Social Commission for Western Asia (UNESCWA).

Established in 1947, it reports to the UN Economic and Social Council (ECOSOC). It has 56 members, including most continental European countries, Canada, the Central Asian republics, Israel and the USA. It is now responsible, *inter alia*, for most of the technical standardisation of transport, including docks, railways and road networks. With the UN Environment Programme (UNEP), it administers pollution and climate change issues, and hosts five environmental conventions covering issues ranging from transboundary air pollution to the Aarhus Convention.

The remit of UNECE also includes "sustainable housing" and agricultural quality standards.[44] It is a key body in the development of the global harmonised system (GHS) for the classification and labelling of chemicals and hosts the World Forum for the Harmonisation of Vehicle Regulations (WP.29), establishing a regulatory framework for vehicle safety and environmental impact.[45,46] Importantly, the EU has transferred to it the lead regulatory authority on vehicle standards, allowing that, "only UNECE documents [to] determine the applicable law".[47]

The organisation also takes a lead role in international regulatory cooperation through its Working Party on Regulatory Cooperation and Standardisation Policies (WP.6), giving it a mechanism for framing and managing the type of legislation that comprises the Single Market.

Conclusions

In this Monograph, we take the view that the focus on the mechanics of leaving is negative and overly narrow. Brexit might be better seen as an opportunity to define the framework for a new relationship between the UK and the EU, and a new settlement for continental Europe.

At the core of this settlement might be a radically different neighbourhood policy, crafted jointly by the EU and the EU, using the original model for the EEA as a base, known at the time as the European Economic Space, based on the concept of autonomous "houses" in a "European village".

In terms of detail, this would require revision of the EEA Agreement, permitting entry to nations which are neither Efta nor EU members, opening it up to the UK and any other European nations that wish to join – as was the original intention of the EES. Active attempts, in due course, might be made to

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[44] http://www.unece.org/fileadmin/DAM/highlights/what_ECE_does/English/0721866_ECE_Brochure_ENG_General.pdf - for a more detailed history, see here: http://www.unece.org/fileadmin/DAM/publications/oes/LookingBackPeeringForward_1947-2007.pdf

[45] http://www.unece.org/trans/danger/publi/ghs/ghs_welcome_e.html

[46] http://www.unece.org/trans/main/welcwp29.html

[47] European Commission website: Reference documents - Application of UNECE Regulations: http://ec.europa.eu/enterprise/sectors/automotive/documents/unece/application/

recruit additional members, and the option of membership should be kept open for EU Member States which might wish to leave.

Reverting to its original name of the European Economic Space, its institutions (currently the EEA Council, Joint Committee and the EEA Joint Parliamentary Committee) might be invited to relocate to Geneva and establish formal relations with UNECE.

Then, on the same basis that it is transferring originating authority for vehicle standards and agricultural quality standards, the EU might pass additional legislative chapters to UNECE until it is responsible for the entire EEA *aquis*. This, under current provisions, does not require EU treaty change, although the EEA Agreement (Chapter 2 – Decision-making procedure) would need to be revised, relieving non-EU states of the requirement to adopt Community legislation.

Given that the UK and other EES members will already be UNECE members with full voting rights, this transfer of legislative responsibility will have the effect of introducing common decision-making to the *acquis*, on the lines pursued by Efta states during the EES/EEA negotiations.

From the perspective of the EU, these changes might seem counter-intuitive, calling as they do for a reversal of the integration process. But the rationale is to relieve it of the burden of managing the Single Market, allowing it to concentrate on its self-declared objective of pursuing political integration amongst its willing members. Then building on the concept of a Europe of "variable geometries", those members that do not want political union should be encouraged to transfer to the EES, enabling them to remain in the European village.

Overall, this is the sort of radical surgery that might be needed to re-energise the continent of Europe and to restore the European Union to health, correcting the damage caused by the reckless enlargement of the past, trimming it to a more manageable size, based on members fully committed to political integration.

Going full circle, Brexit is as much a problem for the EU as it is for the UK, but it also presents opportunities for both. Delors's instinct for the creation of a European village, with separate, autonomous "houses" comprising a European Economic Space, was right. Brexit could be the means by which that "vision for Europe" is brought to fruition.

ends.