



Robert Schuman

*Searching for a Counterweight -
Canada and the European Union*

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These monographic papers address issues relevant to the ongoing European Convention which concluded in the Summer of 2003. The purpose of this Convention was to submit proposals for a new framework and process of restructuring the European Union. While the European Union has been successful in many areas of integration for over fifty years, the European Union must take more modern challenges and concerns into consideration in an effort to continue to meet its objectives at home and abroad. The main issues of this Convention were Europe's role in the international community, the concerns of the European citizens, and the impending enlargement process. In order for efficiency and progress to prevail, the institutions and decision-making processes must be revamped without jeopardizing the founding principles of this organization. As the member states negotiate the details of the draft constitutional treaty, the Jean Monnet/Robert Schuman Papers will attempt to provide not only concrete information on current Convention issues but also analyze various aspects of and actors involved in this unprecedented event.

The following is a list of tentative topics for this series:

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2. How did the member states figure in the framework of the Convention?
3. The necessity to maintain a community method in a wider Europe.
4. Is it possible for the member states to jeopardize the results of the Convention?
5. The member states against Europe: the pressures on and warnings to the Convention by the European capitals.
6. Is it possible that the Convention will be a failure? The effects on European integration.
7. Similarities and differences between the European Convention and the Philadelphia Convention of 1787.
8. The role of a politically and economically integrated Europe in the governance of the world.
9. How important is European integration to the United States today?
10. The failure of a necessary partnership? Do the United States and the European Union necessarily have to understand each other? Under what conditions?
11. Is it possible to conceive a strategic partnership between the United States, the European Union and Russia?
12. Russia: a member of the European Union? Who would be interested in this association?

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**Searching for a Counterweight -
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Searching for a Counterweight – Canada and the European Union

Introduction

The history of Canadian-European Union (EU) relations is neither a dense nor a linear or coherent continuum of interactions but consists primarily of some sporadic overtures made by Canada. Such initiatives, moreover, have often led nowhere, either because of a change in objectives - often ill-defined to begin with - on the part of Canadian governments or because of a lack of interest on the part of the European Union. This is not surprising since, despite the assumptions of the realist school, international relations do not necessarily conform to the billiard ball principle, according to which to each action there is a correspondent reaction. Rather, as is often the case in the field of love relations, advances can often be met with indifference.

This chapter outlines, in a rather synthetic fashion, three periods in the history of relations between Canada and the European Union: the phase of indifference, that of advances, and finally that of tensions. Canada's initiatives towards the European Union are best understood when seen within the context of its evolving relations with its giant neighbor to the south, the United States. The only exception among the events analyzed here is the fishery dispute.

The Phase of Indifference

Since the beginnings of European integration in the early 1950s and until the development of what came to be known as the 'third option' (or 'option Europe') at the beginning of the 1970s, Canada maintained, both at the level of political and economic elites and at that of the public, an attitude later described as wavering between "indifference and selective attention with a phase of concern, if not outright irritation".¹ A poll taken in 1961 showed that less than half of Canadians (40%) had heard of the European 'common market'. In 1976, i.e. fifteen years later, barely a majority of Canadians (57%) had encountered the term in newspapers or magazines while 70% had heard it on television. Knowledge of the European integration process remained nevertheless rather superficial. Only 2% of Canadians, for instance, could identify Ireland and Denmark as members of the European Community. This is not surprising if one considers that an analysis of the index of the Canadian press reveals that the Community received the most attention - and it amounted only to about sixty articles - at the time of the first application of Great Britain.²

¹ Panayotis Soldatos, 'Les relations du Canada avec les communautés européennes: un processus de diversification' in Paul Painchaud (eds.), *De Mackenzie King à Pierre Trudeau. Quarante ans de diplomatie canadienne*, Québec: Les Presses de l'Université Laval, 1989, p. 275.

² For more details, see Edelgard E. Mahant, 'Canada and the European Community: The First Twenty Years', *Journal of European Integration / Revue d'intégration européenne*, 4, 1981: 263-279.

During this period, the only initiatives taken by the Canadian government were to accredit its ambassador in Brussels to the Community and to negotiate compensatory measures to which GATT members had a right when some other members decided to form a customs union. During these negotiations the Canadian government was careful to coordinate its position with that of the United States. Unease manifested itself primarily at the moment of the first application of Great Britain while irritations surfaced when the Community decided to adopt a protectionist common agricultural policy.

The Phase of Advances

One of the central concerns of Canadian foreign policy since the end of the 1960s has been to find a counterweight to American influence. For a long time Great Britain and the Commonwealth countries represented this counterweight. In 1948, for instance, Great Britain still absorbed 22% of Canadian exports while the United States received 38%. In the same year, British direct investments represented about 25% of total foreign direct investments in Canada. Towards the end of the 1960s, however, Canada's position in international trade had become more vulnerable. About 70% of Canadian exports went to its southern neighbor while only 7% went to Great Britain and another 6% to the six countries then forming the Community. In this same period American direct investments in Canada had become five times greater than those coming from Europe.³ This situation led many Canadians to become worried about the very independence of the country.⁴

Upon taking office in 1968, the Liberal government of Pierre Trudeau, under the pressure also of the New Democratic Party, launched a review of Canadian foreign policy. Concerning relations with the United States, the Canadian government had long believed that a 'special relationship' existed between the two countries. In Trudeau's own words, however, 'when one is a mouse and sleeps with an elephant, even if the elephant is a friend, one runs the risk of being smashed'.⁵ The need for a review was reinforced in August 1971 by the realization of the limits of the 'special relationship'. When President Nixon announced the non-convertibility of the American dollar in gold, he also took a series of measures aimed at improving the American trade balance. The most important among them was the imposition of a 10% surcharge on imports (i.e. existing tariffs were raised by 10%). Since by then about 80% of Canadian exports were going to the United States, it is easy to understand the apprehension with which the announcement of this decision was received in Ottawa. A delegation of ministers and high civil servants immediately went to Washington to argue that such a surcharge should not apply to Canadian imports given the 'special relationship

³ Charles Pentland, 'L'option européenne du Canada dans les années 80', *Études internationales*, 14, 1983: 41 (note 2) and D. Lasok, 'Involvement with the European Economic Community: some Canadian considerations', *McGill Law Journal*, 22, 1976: 586-587.

⁴ Two essays shaped the debate on Canadian independence: George P. Grant, *Lament for a Nation: the defeat of Canadian nationalism*, Toronto: McClelland and Stewart, 1965 and Kari Levitt, *The Silent Surrender: the multinational corporation in Canada*, Toronto: Macmillan of Canada, 1970.

⁵ John G.H. Halstead, 'Trudeau and Europe: reflections of a foreign policy adviser', *Journal of European Integration / Revue d'intégration européenne*, 12, 1988: 39.

between the two countries'. The Americans, however, were inflexible. In retrospect, it would appear that the major reason for such inflexibility was that the United States wished to enlist Canada in its effort to convince the Europeans, the Germans in particular, as well as Japan, to revalue their currencies. After some months, the Germans and Japanese having made such concessions, the surcharge was revoked. The episode, however, led Canadians to realize that the 'special relationship' did not exist, and to continue believing in it was tantamount to embracing a semiotic solution to the problem of Canadian economic vulnerability vis-à-vis the United States.⁶

The foreign policy review identified three options concerning relations with the United States. The first option was to do nothing and accept the situation of trade dependence, and hence vulnerability, as a given. Such an option, however, also entailed resigning oneself to increasing economic integration with the United States (what Canadians call 'continentalism'). The second option was to choose 'continentalism' voluntarily, that is to hasten the process of economic integration with the United States. These two options, however, were rejected because it was felt that not even with the second option would the Canadian government be able to shape the process politically. In a free trade area, in fact, there are no common political institutions. Hence, the interests and preferences of the more powerful partner inevitably end up shaping the relationship. As then Minister for External Affairs Mitchell Sharp put it: 'the option of continentalism is not an acceptable option for Canada...Canada intends to remain sovereign, free, and independent.'⁷ The second option, however, would be adopted some years later, in 1985, by the conservative government of Brian Mulroney.

The third option identified the European Union (then simply European Community or EC) as a potential new counterweight to the United States - a role that Great Britain was no longer able to play. Here we will not retrace the history of the negotiations, which led first (1974) to the choice of the term defining the relationship and then (1976) the signing of the framework agreement.⁸ It will be sufficient to point out that the European Community showed indifference, if not reticence, when confronted with the Canadian advance. To get European attention, the Canadian government was obliged to abandon its already declared intention of reducing the size of Canadian military forces in Europe and its contribution to NATO. It also had to promise giving Europeans better access to Canadian raw materials and energy resources. Such a move was perhaps decisive given European insecurity in this issue area at the time. The novelty of the term chosen to describe the agreement ('contractual link') indicated that it was more than a simple reaffirmation of GATT principles but less than the establishment of a system of preferential exchanges. The agreement

⁶ For more details on this episode see Osvaldo Croci 'L'ami américain. L'image de la 'relation particulière' et le processus de prise de décision au Canada pendant la crise monétaire internationale de 1971', *Études internationales*, 30, 1999: 493-519.

⁷ Quoted in Maurice Torrelli and Kimon Valaskis, 'Le Canada et la Communauté européenne' in P. Painchaud (ed.), *Le Canada et le Québec sur la scène internationale*, Québec: Centre québécois de relations internationales, 1977, pp. 350-351.

⁸ This has already been done by E. E. Mahant, *loc. cit.* and Charles Pentland, 'Linkage politics: Canada's contract and the development of the European Community's external relations' *International Journal*, Spring 1977: 347-362.

called for the development of commercial relations, suggested instruments for economic and industrial cooperation, and created a joint committee charged with supervising and developing the 'link'.

At the time the 'contractual link' was hailed as a 'juridical novelty' and welcomed as a significant innovation in Canadian external relations.⁹ Soon, however, it would prove to be little more than a declaration of general principles. Since it is primarily private entrepreneurs who conduct international trade, the Canadian government, while able to provide some incentives to diversify their markets, could not oblige them to turn their attention towards Europe. Neither could it force European investors to come to Canada. Hence, this attempt at diversification, or 'this Canadian entrepreneurship challenge' as the framework agreement called it¹⁰, had rather modest success. European direct investments in Canada continued to be small when compared to those coming from the United States.¹¹ The value of Canadian-European trade increased slightly but as a percentage of total Canadian trade it continued to decrease. At the same time, trade with the United States continued to increase both in terms of value and as a percentage of total trade. It is perhaps not surprising that some years later the Canadian government would decide to embrace the 'continentalist' option in the hope that a formal free trade agreement, while not diminishing Canadian vulnerability, would offer more protection against American periodical protectionist moods.

The Phase of Tensions

The Common Agricultural Policy (CAP) was the first, and still is, a source of tension between Canada and the European Union. What Canada - as well as numerous other countries such as the United States, Australia, and New Zealand - reproach the European Union is not so much the protectionism of CAP (they too, after all, are guilty in different measures of the same thing) but the way the CAP works, namely the fact that it leads the European Union to sell its agricultural overproduction on the world market, and thus put a downward pressure on world prices. Uranium and sealing have also been sources of tensions. In 1974, following the testing of a nuclear bomb by India, the Canadian government asked buyer countries to provide new guarantees besides those agreed upon in the original contracts. When in 1977, the Canadian government went as far as temporarily stopping the export of uranium, the Europeans denounced the adoption of this measure as an effort on the part of the Canadian government 'to increase its leverage' in the renegotiation of the 1959 sale agreement between Canada and Euratom.¹² In 1983, it was the turn of the European

⁹ Jean-Yves Grenon, 'L'accord-cadre entre le Canada et les Communautés européennes: une première juridique', *Annuaire canadien de droit international*, 1979: 304-314.

¹⁰ Kimon Valaskis, 'L'option Europe: une vue de long terme' *L'Actualité économique*, October-December 1976: 553.

¹¹ See the analysis of Michel Azoulay, 'L'accord-cadre et les nouvelles orientations des investissements des pays des Communautés européennes au Canada' *Journal of European Integration / Revue d'intégration européenne*, 3, 1980: 181-196.

¹² J. William Galbraith, 'Les relations entre le Canada et l'Euratom', *Journal of European Integratio / Revue d'intégration européenne*, 5, 1981: 72. See also Robert Boardman, 'Canadian Resources and the Contractual Link: The Case of Uranium', *ibid.*, IV, 3, 1981, pp. 299-325.

Community to impose an embargo on a Canadian product: seal skins. Ironically, however, it was a Canadian group for the protection of animals that played the central role in pushing the EC to take such a decision.¹³

More recently, the major source of tension has concerned the North-Atlantic fisheries. In 1981, after four years of difficult negotiations, Canada and the European Union signed an agreement whereby Canada gave the European Union access to some species of fish within its territorial waters of 200 nautical miles in exchange for privileged access to the European market limitedly to certain types of fish products. This agreement was not easy to negotiate primarily because Canada requested recognition of a special interest in the management of certain species of fish known as 'straddling stocks', that is to say species that are found both inside and outside Canadian territorial waters. Three times between 1979 and 1984 Canada suspended the access of European fishing boats to its territorial waters.¹⁴ The most serious clash concerning fisheries happened in March and April 1995 over a species known in Canada as 'turbot' and in the European Union as 'Greenland halibut'. In the North Atlantic, the decision concerning the allotment of what is known as 'total allowable catch' (TAC) of various species of fish belongs to an international organization set up in 1978: the North-Atlantic Fishery Organization, or NAFO.¹⁵ On 24 September 1994, NAFO following the advice of its Scientific Council fixed the TAC for turbot for 1995 at 27000 tons. On 1 February 1995, NAFO announced the allotment of the TPA: 16300 tons would go to Canada, 3400 tons to the European Union, and the rest to the other member countries. The logic behind such allotment, which could appear strange and even unjust, was based on variables such as the fact that Canada is the coastal state and the value of its contribution to scientific research on the status of fish stocks.

The North-Atlantic Fisheries Organization's decision was accepted by almost all member states with the exception of the European Union, which manifested its dissatisfaction through a parliamentary resolution. On 28 February the Council decided to allot itself 69% of the TAC authorized by NAFO that is, 18630 tons instead of the 3400 allotted to it by NAFO.¹⁶ Such an initiative is permitted under NAFO's procedural rules, which define it as 'opposition procedure', but was taken in spite of the fact that Canada had declared itself ready to negotiate transitional measures to help EU member countries to adjust to the 1995 NAFO allotment. It should be mentioned in this context that the European Union had resorted to such a 'procedure' (i.e. fixing its own TACs) for

¹³ It was the 'International Fund for Animal Welfare', founded by the Canadian Brian Davis who had left the position of Secretary of the 'New Brunswick Society for the Prevention of Cruelty to Animals' following a conflict concerning the priority to be given to the struggle against sealing among the activities of the organization. See, Donald Barry, 'The Campaign Against the Seal Hunt: The Case of the European Community Import Ban' in V. Summers and S. Tomblin (eds.), *Change by Design: When does it succeed or fail?* Papers presented at the Conference of the Atlantic Provinces Political Studies Association, 19-21 October 1990, St. John's: Memorial University of Newfoundland, 1990, pp. 162-180 and 'Animal-welfare group keeps finances secret' *The Globe & Mail*, 27 April 1994.

¹⁴ Donald Barry, 'The Canada-European Community Long Term Fisheries Agreement: Internal Politics and Fisheries Diplomacy', *Journal of European Integration / Revue d'intégration européenne*, 9, 1985: 5-28.

¹⁵ The 17 member states of NAFO are: Canada, the EU, Bulgaria, Cuba, Denmark (for the Faroe Islands and Greenland), Estonia, France (for St. Pierre et Miquelon), Iceland, Japan, Lithuania, Latvia, South Korea, Norway, Poland, Russia, Ukraine and the US.

¹⁶ *Bulletin de l'Union européenne*, 1/2, 199: 82-83.

other species of fish, and cod in particular, at different times since 1985, that is to say after the entry of Portugal and Spain in the Community.¹⁷ Such unilateral actions on the part of the European Union as well as the fact that fishing vessels of countries other than NAFO members continued to fish disregarding stocks management measures led the Canadian government to take a series of increasingly more severe initiatives. At first, it was simply a matter of trying to discourage such practices by denying foreign vessels to re-supply easily in Canadian ports, particularly that of St. John's.¹⁸ In the month of May 1994, however, following the collapse of the cod stocks and the adoption of a moratorium, the Canadian government adopted the procedure of searching and seizing foreign vessels fishing in the area regulated by NAFO. The targeted vessels were those suspecting of violating conservation measures established by NAFO as well as by the Canadian government. The most controversial aspect of this decision from the point of view of international law were that the Canadian coast guard was authorized to operate, forcefully if necessary, 'within the whole NAFO regulated area' and therefore also in international waters.¹⁹ It should be mentioned, however, that Canada aimed primarily at protecting the straddling stocks inside two zones known as the 'nose' and the 'tail' of the Grand Banks which are just outside Canadian territorial waters and that its main targets were ships flying flags of convenience. The Canadian government reacted to the Council's decision to increase its turbot allotment by suggesting a 60-days fishing moratorium. At the same time, however, it modified one more time the rules concerning the application of the 'Coastal Fisheries Protection Act' by adding Spain and Portugal to the list of states whose ships could be searched and seized. It justified such a decision by underlining that following the EU decision of 28 February 'the main threat to turbot and its stocks comes from Spanish and Portuguese ships which unless impeded will have a total catch largely beyond its allotment of 3400 tons as decided by NAFO'.²⁰

On 9 March, the Council having refused to impose the moratorium suggested by Canada, the Canadian government seized the fishing vessel Estai in international waters and accused it of utilizing illicit fishing nets and of tampering with catch records. Reciprocal accusations of piracy and irresponsibility were hurled across the Atlantic until a compromise agreement was reached a week later: Canada accepted to cut back its catch of turbot to 10000 tons (of which only 3000 to be caught in international waters) while the European Union, which had already caught 7000 tons, would be allotted an additional 5013 tons. The most important aspect of the agreement was that, from then on, all Canadian and European ships fishing in the NAFO regulated zone would be subject to a new regime of obligatory application of rules concerning stocks management. On 15 September, NAFO

¹⁷ B. Applebaum, 'Straddling Stocks: International Law and the Northwest Atlantic Problem', in L. S. Parsons and W. H. Lear (eds.), *Perspectives on Canadian Marine Fisheries Management*, Ottawa: National Research Council of Canada, 1993, p. 196.

¹⁸ Malcom Rowe, 'An Overview of Straddling Stocks in the Northwest Atlantic. Peace in Our Time?' in Keith Storey (ed.), *The Newfoundland Groundfish Fisheries. Defining the Reality*, St. John's: Institute of Social and Economic Research, Memorial University, July 1993, pp. 9-20.

¹⁹ 'Règlement sur la protection des pêcheries côtières-Modification', *Gazette du Canada*, Partie II, Vol. 128, No. 12, DORS/94-362, 25 May 1994, pp. 2222-2227.

²⁰ 'Règlement sur la protection des pêcheries côtières-Modification', *Gazette du Canada*, Partie II, Vol. 129, No. 6, DORS/95-136, 3 March 1995, pp. 650-654.

decided to extend such a regime to the ships of all its member countries.²¹

Two factors explain this peculiarly aggressive Canadian initiative. First, the shock caused by the disappearance of cod stocks, which had important political repercussions since foreign over-fishing was identified, rightly or wrongly, as the most important cause of such a disaster.²² Second, the fact that it was Brian Tobin, the former Premier of Newfoundland - the Canadian province most hit by the fishing crisis - who held the Fishery portfolio in the Chrétien Liberal government. He dared to take at least some of the severe measures long advocated in his native province and was able to prevail, even if only temporarily, over the more cautious approach of other members of the Cabinet, the Department of External Affairs in particular. The seizing of the Estai must also be seen against the background of the pressures that Canada was exercising at the 'UN Conference on straddling stocks and highly migratory fish' to reach an international agreement on a more effective enforcement of fishing rules outside territorial waters. The UN Conference had begun its work in 1993 and the first meeting of its fifth session was being held in New York precisely at the time of the Estai crisis. The Canadian government maintained that in the case of straddling and migratory fish stocks conservation measures adopted within territorial waters are futile unless the same measures are enforced also outside the 200-mile limit. Hence, it wished to arrive at a multilateral agreement, which would give NAFO the task of enforcing the respect of its conservation measures on all fishing vessels, regardless of their flags. Failing that, the Canadian government argued that coastal states should be authorized to extend their own conservation measures outside the 200-mile limit and thus be able to inspect and, if need be, seize vessels transgressing such measures.

The Canadian position was shared by other coastal states but opposed by the European Union as well as other states habitually fishing in the high seas.²³ The Canadian position however, did not prevail and NAFO has remained, much like other international organizations, toothless. Its members have the right of boarding and inspecting fishing vessels but prosecution and sanctions, based on evidence resulting from such inspections, remain the prerogative of flag states. Occasional crises thus continue to characterize relations between Canada and EU states, particularly Spain and Portugal, the last major one having occurred in May 2004. The Canadian coastal guard boarded two Portuguese vessels and gathered evidence of their illegal fishing. In the end, however, the Portuguese government considered the evidence gathered by Canada insufficient and did take legal action against the vessels.²⁴

²¹ *The Globe and Mail*, 16 September 1995.

²² Susan McCorquodale, "The Fisheries Crisis in Newfoundland" in Douglas M. Brown and Janet Hiebert (eds), *Canada: The State of the Federation 1994*, Kingston: Institute of Intergovernmental Relations, 1994, pp. 85-108.

²³ B. Applebaum, *loc.cit.*, pp. 199 et 202; Ronald Barston, 'United Nations Conference on straddling and highly migratory fish stocks', *Marine Policy*, 19, 1995: 159-166; Ted L. McDorman, 'Canada's aggressive fisheries actions: will they improve the climate for international agreements?' *Canadian Foreign Policy / La Politique étrangère du Canada*, 2, 3, 1994: 5-28.

²⁴ *The Globe and Mail*, 8 May 2004 and 2 August 2004.

Conclusions

Although predictions based on current trends risk to be widely off the mark, some conclusions concerning the future of the relationship can be advanced. Canada has solved (or at least thinks it has solved) the problem of its economic vulnerability vis-à-vis the United States by forming a free trade area, which has grown to include Mexico and which might grow to include most, if not all, South-American countries. If the formation of large free trade areas is not an intermediate step on the road to world trade liberalization but reveals itself to be simply a new form of protectionism practiced at the macro-regional rather than at the state level, then tensions between Canada and the European Union will continue, and perhaps become even more frequent and acute. Apart from the fishery problem, however, they are likely to manifest themselves mainly as tensions between the European and American economic blocs.²⁵

While periodical irritants characterize commercial exchanges, something interesting is happening in another issue-area. Since the beginning of the 1980s, Canadians have been engaged in a divisive debate concerning their constitutional architecture. Those who maintain that the Canadian federation is too centralized as well as those who wish to find compromise solutions have begun to look at the EU constitutional architecture and follow closely its evolution in the hope of finding answers applicable to Canada.²⁶ This should be a source of reflection and optimism for all those in Europe who lament that the European Union is not yet a federation, nor is likely to become one in the near future. If it were to become one, the European Union would not solve all its problems but would, most likely, have to face challenges which would not be less important than those it faces in its currently unique institutional set-up. In this field, Canada and the European Union have much to learn from each other.

²⁵ For some examples of tensions in fields other than fisheries, which occurred soon after the turbot crisis, see *Financial Times*, 23 February 1995; *The European*, 12-18 May 1995; *The Telegram*, 26 July 1995.

²⁶ See, for instance, David Cameron (ed.), *Regionalism and Supranationalism: Challenges and Alternatives to the Nation-State in Canada and Europe*, Montreal: The Institute for Research on Public Policy, 1981; G. Bruce Doern, *Europe Uniting. The EC Model and Canada's Constitutional Debate*, Toronto: C.D. Howe Institute, 1991; Roy B. Christensen (ed.), *Canada and the European Union: a relationship in focus*, Ottawa: Delegation of the European Commission to Canada, 1995. This volume collects a series of papers presented at the conference 'Canada and the European Union', held in Toronto on 28-29 October 1994.