

**Draft/ CONCEPT PAPER: THE EU AS A GOOD GLOBAL ACTOR****19 June 2020, City Law School, City, University of London****An overview**

The EU has as its mission to be a good global governance actor yet is continuously challenged in the world. As a global actor, the EU is both a weak and strong actor in a divergent range of global governance areas. It is not comparable to study the EU as a global trade actor for example to its efforts in human rights, data, cyber or the environment. EU international relations constitutes arguably a booming field of law where the EU appears often to be a victim of its own success. The range of the subjects and objects of EU law continues to expand and the EU is arguably increasingly a victim of its own success, increasingly taking decisions with impacts on third countries or parties, subjecting more entities to sanctions regimes, being bound to consult more entities and have more third countries, parties and entities such as lobbyists interested in the directions of EU law. The assessment of the EU as a global actor includes broad checks on normative action *ex ante* and *ex post facto*- yet it is no less harsh. *Ex ante* metrics of EU global action include court-centred ones such as an opinion from the CJEU on legality of an international agreement, often precluded in most constitutional systems on account of its conflict with *pacta sunt servanda*. The contours of the principle of the autonomy of EU law have the capacity to put more stringent parameters on EU institutionalised evolutions as to international engagement. How can we actually assess the EU as a global actor given these realities? Is the core of the EU as a global actor knowable? This exploratory webinar explores informally the nexus between trade and security, trade and economics and trade and human rights as a future research agenda with input from a variety of scholars. Which nexus is most apt as the EU evolves? Which nexus is the hardest to prove, to show or to engage with?

**The last internationalist standing?**

The event explores the inherent contradictions as part of the EU as a global actor, that it is often neither global more so an aspirant, an addition to the state and often not an actor, instead it is disunified, seeking to act with one voice. In the coronavirus pandemic, the conflicts and tensions at the heart of the EU expose themselves well. The EU showed itself constantly willing to lead and act at the limits of its competences. Yet it has been constrained by so many entities- its incomplete powers, external actors, nations and organisations less open to multilateral approaches. It is also regularly constrained on an operational level by its modest powers and rules-based competences. It increasingly appears as the last internationalist standing in recent times (Smith, 2017). The COVID-19 crisis has operated as a crisis unlike any other, halting the global economy, stifling the normal working of democracy through emergency laws, the suppression of liberty, assembly and protest, equality and in particular has drowned out the voice of civil society. The EU has had a complex task of engaging with challenges to the internal market through the many notifications to the WTO of 9 forms of measures relating to customs and PPE amid fragile supply chains. It has also to deal presently with the suppression of some of its core fundamental freedoms, directly and indirectly and the loss of privacy as Europe's First Amendment as a core guiding principle in the public interest (Petkova, 2019). Can it still thrive as an internationalist in this context, where its distinctiveness is increasingly drowned out? Its departing or exiting State, the UK, despite having policies not implementing WHO guidelines seeks to lead the race for a global vaccine and support the WHO. The competitive pressures on symbolic globalness appear filled here with optical illusions. How do we measure symbolic internationalists in this current era?

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There are always competitive pressures and contestations with respect to its actions internally and externally. Long-festering disputes with the German Constitutional Court show themselves to manifest at awkward points in the EU COVID and rule of law crises. Europe unveiled its Green Deal and Data Strategies at the cusp of unfathomable crisis. The control that the EU wishes to convey over standards as an internationalist e.g. as to data as is highly conditional on cooperation and careful market power delineation. What time span is appropriate for analysis now- and going forward- of it the EU and the analyses of its power contestations in its international relations?

Even adherents of the EU and passionate supporters of the EU as an international organisation (IO) criticize its over extensive diplomatic and regional ambitions, that appear immensely stretched relative to its useful engagements (Gardner, 2020; cf Nicolaidis 2018). The nature of the EU as an innovator but also an entity willing to expose itself to new levels of internal and external institutionalisation, reaches into all fields and areas of EU level, from areas of long-established competence, cutting-edge regulatory issues to sensitive complex areas, e.g. data to defence (Fahey, 2018). On occasion, this has taken place outside of the treaties e.g. Unified Patent Court. On other occasions, the EU has pushed for new institutionalisation at the margins of multilateralism through bilateralism e.g. WTO DS reform. The CJEU has settled for pragmatic fudges in certain instances e.g. splitting trade and investment or discretely encouraging multilateralism along with a rising rigour to the autonomy of EU law after Opinion 2/15 and Opinion 1/17. Yet the EU's major efforts at multilateralism or institutionalisation beyond the state e.g. Multilateral Investment Court or a Unified Patent Court look increasingly fragile, albeit for various reasons.

The EU is arguably one of the ultimate convergence actors in contemporary global politics and a driving force behind contemporary multilateralism and a rules-based international order. It will likely soon have considerable 'muscle' or 'teeth', with a newly institutionalized regime of a Trade Enforcement officer and multiple trade defence instruments. In this regard, 'the EU will promote its own unique model of cooperation as inspiration for others... But to better defend its interests and values and help shape the new global environment, the EU needs to be more assertive and effective' (European Council, 2019). Yet the political rhetoric behind this can easily appear grandiose and divorced from policies outside of trade, for example, to the effect that 'Europe is not a second-tier power. Europe in its entirety is a vanguard: it has always defined the standards of progress (Macron, 2019). Or does it match best the legal tale of the 'Brussels Effect', where EU laws rule the world- even if not everybody knows about it yet? (Bradford, 2020). It may be said that the EU has reached a zenith point of multilateralism by early 2020 as one of the few remaining advocates of multilateralism and international institutions. However, it regularly engages in simultaneously multilateral proclamations and bilateralism with smaller or weaker partners and a very small number of like-minded significant states. Does its efforts at a WTO Dispute Settlement workaround support this thesis? Is this the contradiction at its core or its Machiavellian strategic direction per Hoekman et al (Hoekman et al, 2019)? How does a view on competence affect this analogy? How will its engagement with the UK and its third country trade partners in this new constellation of multilateralism? Is trade the apex or the nadir of its bifurcated actorness?

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**The metrics of the EU as a ‘Good Global Actor’**

The EU finds itself in a “dynamic but fragile equilibrium”: it pursues stability and durability, while it evolves, defines new ambitions and is faced by new shocks (Nicolaidis 2018). Not only is the EU confronted with new digital and geopolitical transformations that require it not to lag behind and establish itself as an influencing global actor amidst competing models of global governance and standards. The EU’s efforts at maintaining its precarious equilibrium are increasingly challenged by rule of law crises, migration crises, pull-backs from the EU project, dismantling of global governance institutions, viruses and national court judgments confronting the CJEU. Never like before was in recent months Jean Monnet’s statement that ‘Europe will be forged through crises’ shared in social media: how does the EU re-surface from these crises? Is the EU a monolith – just another slowing moving dinosaur (Slaughter 2000)? Or how does it face change? Do the EU’s efforts at institutionalising and formalising defy or enable evolution and innovation? How can the EU prepare to be durable and flexible (Fichera 2020)? Does institutionalisation empirically and normatively grasp the EU’s main hook? How does this square with the external dimension? How does the EU preserve an internal market embedded in values of democracy and fundamental rights, while externalising and internationalising it? What is the EU prepared to give and keep to the rest of the world? Can we speak of ‘institutionalisation of democratisation’ of EU’s international relations? How does the EU compare as a ‘Good Global Actor’ across different subjects and objects?

We ask: how does the EU matter in the world and global governance? How can we assess and take stock of the EU’s action in the world? How do we look beyond questions of the EU as an international organisation or regarding the nature of its power (realist/civil/normative power) and impact thereof in world politics? Rather, how do we assess the EU’s external behaviour, how it acts internationally, what it does in the world and the impact on it as an actor on the international scene? What kind of actor is the EU *in* the world? How does the EU’s global actorness manifest?

The EU has as its mission to be a ‘Good Global Governance Actor’. How do we understand ‘good’ in global actorness? What does it mean? How can EU ‘good global actorness’ be understood in case studies such as trade and data? Can we escape from case studies and adopt more broad-brush lenses? How can e.g. values underpin the EU’s action in the world? How, then, do we assess the EU as a Good Global Actor? What parameters and metrics can we use? What normative checks can we apply to its action? What tools has the EU at its disposal to be a ‘good’ global actor? What are the main challenges and limitations? Ambitions vs constraints in the post-COVID era (if it indeed becomes a past tense)? Or could the EU become constrained by a post-globalisation world which tears out its core capacity to facilitate globalisation through openness?

How *should* the EU contribute to global governance? – How *can* it? – What does it do and do not? What kind of actor does it strive to be and what role does it strive to have? E.g. defender of multilateralism, rules-based order, democracy and human rights? Where does the EU appear as a weak v strong global actor relative to (proportionate to) and disproportionate to its competences/ powers? What is realistic

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in recent times? What methodological biases surround EU global action? How do disciplines engage with the substantive contradictions at play?

For example, with respect to lawyers, should the synergy of the internal and external of EU law not be capable of being more accurately captured as to the EU's role as an international actor? Why is this complex for authors to depict it? What challenges has EU External Relations law as a field generated for other areas? What methodological biases of EU law impact its capacity to engage with global governance? Can a more aligned view of global governance be adopted by the EU law community? The methodology of depicting the global dimension of EU law has never been more topical but it is also important to note how so many scholars can also be at cross-purposes with one another (e.g. Cremona and Scott, 2019)? And are recent developments in critical EU studies taking aim at appropriate subjects and objects?

How do subject fields and competences unduly influence broader narratives? For example, the Area of Freedom, Security and Justice (AFSJ) exemplifies the challenges of the EU as a global actor battling the most complex contemporary elements of globalisation or global governance regimes, beyond areas of EU global strength, for example, in trade. Here, EU global action impacts significantly upon the individual, perhaps even more distinctively than trade. It is a more complex area of the EU to adopt a 'global' approach because of its multifarious subjects and objects [...].

We ask many questions and pose few answers but we take liberty to map the following as salient:

We suggest that exploring depth and breadth of the EU as a Good Global Actor in a Research Agenda might comprise some of the following themes:

**1. The EU and Democratisation of Global Governance**

How are different conceptualisations and interpretations of "democratisation of global governance", as both a process and an objective? The speakers are invited to reflect upon how the EU contributes to the democratisation of global governance/democratic governance beyond the state: can it? Should it? Has the EU reached the zenith of its global ambitions in the current geopolitical context? How have EU developments to deepen its democratisation, to widen the concept of civil society or to involve more actors and entities beyond its borders into its law-making procedures have global effects? What has stymied internally with external effects? Or accelerated? How can we assess methodologically the spread of EU procedures to global organisations? Does the weakness of civil society across EU law and policy impinge upon democratisation? Are ECIs under-used? Over-litigated? How malleable or flexible is the EU as to social preferences? How does this change across different subjects and objects? How are fundamental rights omissions in law-making feeding into democratisation gaps? What is left out? Or who? Why?

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### **2. The EU and Deeper Trade**

How should we consider the evolving subjects and objects of EU external trade law-making, and on trade agreements as platforms of global standard-setting and normative directions thereof? We reflect upon the intrinsic linkages between trade and fundamental rights, and normative evolutions of the EU as a convergence actor of trade and fundamental rights. The speakers are invited to consider the question of “how we should think of fundamental rights in trade agreements and their addressees”, *beyond* traditional approaches to fundamental rights that understand them as an *exogenous* policy area to trade, or a development issue to be pursued *via* trade agreements. How should we understand fundamental rights in more complex and far-reaching trade agreements with other advanced economies such as US, Canada, South-Korea, Singapore, Japan and soon the UK? The speakers are invited to discuss parameters and metrics of deeper trade, the EU’s international engagement in global regulatory endeavours and the relationship with EU law; to explore normative foundations, subjects and objects of far-reaching trade agreements in the present context of “globalised discontent”.

### **3. The EU and Good Global Data Flows**

The event explores the nexus between trade and data, in the context of the EU’s ever more explicit willingness to lead and set global trade rules on data flows and privacy. How can it reconcile objectives of trade and data privacy in the era of digital trade? How does the internal dimension to data becomes an object in external trade? Who are its new and evolving subjects? How has the Covid-19 affected the EU’s ambitions as to data protection, within the internal market as much as in its external relations? How have partners with adequacy arrangements been affected? How is democracy in Europe affected by global flows of information and human face to face interactions, with less protest, assembly or sitting parliaments? What has the EU’s role here been? How have shifts in practices as to COVID-19 demonstrated EU good practice? The speakers are invited to discuss the challenges of divergent data privacy regulations and cultures in the present geopolitical context and ways in which the EU can be a global actor in trade *and* data.

#### **Suggested workshop reading:**

- Anu Bradford *The Brussels Effect: How the European Union Rules the World* (OUP, 2020)
- Nico Krisch, COVID, Crisis and Change in Global Governance (2020), <https://nicokrisch.net/2020/04/17/covid-crisis-and-change-in-global-governance/>
- San Bilal and Bernard Hoekman (eds.) *Perspectives on the Soft Power of EU Trade Policy* (VoxEU CEPR 2019) <https://voxeu.org/content/perspectives-soft-power-eu-trade-policy>
- Elaine Fahey (ed.), *Framing Convergence with the Global Legal Order: The EU and the World* (Hart, 2020), Introduction
- Isabella Mancini, ‘Fundamental Rights in the EU’s External Trade Relations: From Promotion ‘Through’ Trade Agreements to Protection ‘in’ Trade Agreements’ in Eva Kassoti, Ramses Wessel (eds.) *EU Trade Agreements and the Duty to Respect Human Rights Abroad*, CLEER

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- Kalypso Nicolaïdis, Braving the Waves? Europe's Constitutional Settlement at Twenty, *JCMS: Journal of Common Market Studies*, 1-17, 2018  
<https://onlinelibrary.wiley.com/doi/abs/10.1111/jcms.12791>
- Henry Farrell and Abraham Newman *Of Privacy and Power: The Transatlantic Struggle over Freedom and Security* (Princeton University Press, 2019)
- Ivan Krastev, *After Europe* (University of Pennsylvania Press, 2017)
- Shoshana Zuboff, *The Age of Surveillance Capitalism* (Profile Books, 2019)
- Gregory Shaffer, 'Retooling Trade Agreements for Social Inclusion' (2019) *Illinois Law Review* 1 (forthcoming) <https://illinoislawreview.org/wp-content/uploads/2019/03/Shaffer.pdf>
- Marise Cremona and Joanne Scott (eds), *EU Law Beyond EU Borders: The Extraterritorial Reach of EU Law* (OUP 2019)