

## JEAN MONNET SUPPLEMENT

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### EDITORIAL

In this month's *Jean Monnet Supplement*, I comment on the Snap elections in the UK in the context of the Brexit White Paper from the perspective of international relations, highlighting the internal and external legal and governance challenges facing the UK in implementing the Great Reform Bill and its foreign policy ambitions post-Brexit.

Caliel Calves da Costa goes on to comment on Cosmopolitanism today, quoting António Guterres that, "It is clear that all societies will be multiethnic, multicultural, multi-religious in the future" and trying to avoid it is pointless, and supporting the need for countries to invest in their social cohesion in response to the divisive populism of today.

Also in this issue, following up on the Young Research Seminar in February, Livia Radaeski reports on the research of Joyce Pereira on the topic of "Knowledge mobility as a tool to strengthen EU-Brazil relations", and Adriana Pou Hernández comments on the ongoing research of Fernão Kastrup under the title "Access to Basic Rights and Social Goods, an EU and Brazil comparison of capabilities". These contributions will eventually be published in the collected volume due for publication in 2018 and are another core output of the project Brazil-Caeni-EU, co-financed by the Erasmus+ funds of the European Union.

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## A Snap General Election, the Brexit White Paper & UK international relations

Kirstyn Inglis\*

To accompany the formal launch on 30 March 2017 of the UK withdrawal from the European Union under Article 50 of the Treaty on European Union, the UK Government released its White Paper *The United Kingdom's exit from and new partnership with the European Union*<sup>1</sup> at the end of March. By calling a snap general election for 8 June 2017, Theresa May now reveals the internal political difficulties facing the government in implementing its Brexit strategy. This forthcoming election is the government's play to secure the sufficient majority support in Parliament that will be required for the anticipated far-reaching constitutional, legal and governance reforms in the UK's internal governance as well as its future international relations post-EU membership.

The White Paper sets out to expand upon the 12 principles outlined by Prime Minister May before the national Parliament on 17 January 2017, by providing a broader basis and strategy for "forging the new strategic partnership between the United Kingdom and the EU". While "Providing legal certainty and clarity" is at the top of the list of those twelve principles, the glaring lack of form and detail in the exit-strategy makes analysis of the true potential of the government's approach towards meeting the needs of business and citizens as much as the Union's international relations, difficult. From the Preface<sup>2</sup> by David Davis, the UK's Secretary of State for Exiting the European Union, an obvious reason underlying this skeletal approach to the strategy set out in the White Paper, is the concern of the UK Parliament not to undermine the UK's national interests in its negotiations with the EU in the lead up to the actual exit in March 2019.

### 12 Guiding Principles

The 12 guiding principles all relate to the functioning of the United Kingdom post-Brexit and even the predominantly nationally focused objectives have a European or an international dimension. Internally, the need for legal certainty and clarity is top of the list, alongside taking control of national laws, strengthening the UK and its devolved jurisdictions, and including Gibraltar. All other nine principles have a decidedly international relations dimension: protecting ties with the Republic of Ireland, an EU Member State; controlling immigration; securing rights for EU nationals in the UK and *vice versa*; protecting worker's rights; ensuring free trade with European markets; securing new trade agreements with other countries; ensuring the UK holds its position in science and innovation; co-operation in the fight against crime and terrorism, and; delivering a smooth and orderly exit from the European Union.

### The Brexit Strategy: protecting national interests or lack of preparedness?

While this argument of maintaining a skeletal approach to the strategy may justify withholding intentions on issues of direct impact on the UK's international relations, it is less convincing in the national context. In the national context, extricating the UK laws and institutions from the

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<sup>1</sup> Dated 2 February 2017, available at [www.gov.uk/government/publications](http://www.gov.uk/government/publications)

<sup>2</sup> See p. 6.

catalogue of EU law and practice that make up the *acquis communautaire* threatens to open up gaps and voids in rights and obligations and governance generally. Legal certainty underlies the rules of law that makes international relations possible, and in the European Union this is as much a feature of the free movement of people under the Schengen Convention as for the economic investment between companies in different Member States. The personal interests of individuals and business either within the UK or interacting with it from other EU states, remains unclear under the approach proposed.

This said, the UK government is generally reported in national and EU sources as lacking sufficient understanding of the legal and political issues – or even the necessary human resources – to properly engage with the European Union to negotiate the final settlement<sup>3</sup>. The White Paper does little to prove otherwise. In the field of international relations under international trade law in particular, the European Union has held the exclusive reigns over EU commercial relations for the duration of UK membership and the default setting of the UK's secession will mean that WTO rules will apply. Consequently, the UK will need to build up new expertise in WTO law in order to manage its relations with the EU and other international partners post-Brexit. No doubt also, a measure of practice and experience in EU external relations law will also be required for dealing with the remaining EU Member States.

Interestingly, the White Paper specifically explores possible forms of dispute resolution mechanisms<sup>4</sup> to underpin the UK's future relations with the EU. The intention is to preclude any direct effect of rulings of the Court of Justice of the European Union or other international organisations for that matter, in the interpretation and effect of the international agreement. Reference to the dispute resolution mechanism under the EU-Canada Comprehensive Economic and Trade Agreement (CETA) as a model mechanism, calls to mind the laborious negotiation process on both side of the Atlantic. The dispute settlement mechanisms investment court system introduced under CETA were controversial throughout the negotiation of this Agreement on grounds of respect of national constitutional identities of the EU Member States and suffered considerable societal resistance, as have counterpart such agreements for the same reasons, notably including the failed Transatlantic Trade and Investment Partnership (TTIP).<sup>5</sup>

As a general remark, under European Union law, the constitutional arrangements and procedures for final ratification and entry into force of Treaties at EU level even after their negotiation is demanding for the European Union and its Member States. Taking as a case in point, voting by referendum in April 2016, the Dutch people rejected the EU Agreement with the Ukraine, scuppering the entire enterprise Europe-wide. The deal was first proposed in March 2012, took a further two years to negotiate before signature its signature in 2014. While the Agreement took interim effect in January 2016, core provisions of the Agreement

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<sup>3</sup> Roger O'Keefe, Professor of International Law at University College London, speaking at the Institute for International Relations of the University of Sao Paulo, 4 April 2017.

<sup>4</sup> See pp. 13-15.

<sup>5</sup> A summary of such issues is *Think TTIP is a threat to democracy? There's another trade deal that's already signed*, to be found at <https://www.theguardian.com/commentisfree/2016/may/30/ttip-trade-deal-agreements-ceta-eu-canada> visited on 3 May 2016.

have had to be renegotiated<sup>6</sup> to enable the Dutch to go ahead with ratification of the final Treaty, which is currently before the Dutch Senate.

### **The Great Repeal Bill: a piecemeal approach to filling the void**

The proposal last October 2016 for *The Great Repeal Bill* aims to ensure a coherent approach that will provide the necessary continuity and yet, the strategy to provide that coherence is itself skeletal. In a common law jurisdiction where the courts have law making capabilities, the challenge will be for national courts to handle legal principles and approaches that have been devised by the UK government in partnership with the Member States at the EU level prior to Brexit, but which will have changed fundamentally in legal form.

The Great Repeal Bill is intended to: first, repeal the UK's European Communities Act 1972; second, preserve EU law as it stands on the date of Brexit and then enable Parliament and the devolved jurisdictions to retain, amend or repeal those provisions, and; third, provide for secondary legislation to be put into place so that the UK legal system will continue to function "sensibly" outside of the EU legal system. Again, the actual strategy outlined is skeletal in approach.

In the meantime, for the purposes of coherence and continuity, the government intends that UK law continues to apply EU law as it does today until such time as national provision is made. Being a Parliamentary democracy, this inevitably means involving the Parliament, and explains the government reverting to a general election in order to secure the necessary majority to do so.

### **Divisiveness within the United Kingdom**

This is further complicated by the lack of provision for the roles of the devolved jurisdictions of Scotland, Wales and Northern Ireland, in future law and governance in adapting to the post-Brexit reality. Moreover, Scotland in particular is historically a distinct legal jurisdiction within the Union of the Crowns, including in constitutional set-up and governance. This adds to the prevailing impressions of lack of preparedness that will not be reassuring to third country investment nor comforting to EU companies with long established presence in the UK, such as banks and airline companies – notably Ryanair – which are already threatening to leave the UK.

The divisiveness arising from the constitutional challenges facing the UK government and Parliament, House of Lords and courts, is widely reported, covering their respective roles and the legality of the government's approach. The tensions arising between the Scottish government and Westminster over the lacks in the strategy and the former's frustrations over its role in the Brexit negotiations, highlight not only the lack of clarity and legal certainty that prevails at national level. It highlights the divisiveness of the UK government's Brexit strategy in its relations with Scotland and Northern Ireland in particular. In the same week as the UK government published the White Paper, the Spanish government announced that it would not block an independent Scotland from EU membership in its own right<sup>7</sup>. As yet, another Scottish

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<sup>6</sup> See *Dutch parliament ratifies the EU-Ukraine Association Agreement, despite rejection by population*, to be found at <https://www.neweurope.eu/article/dutch-parliament-ratifies-eu-ukraine-association-agreement-despite-rejection-population/> visited on 24 February 2017.

<sup>7</sup> Any country seeking membership of the European Union must secure the unanimous support of all EU Member States for their accession, and previously Spain had resisted this due to its potential precedent for Spanish entities seeking autonomy and/or EU accession in their own right.

referendum on Scotland's independence from the UK has not been formally confirmed and is being resisted by Prime Minister May. Moreover, it cannot be assumed that an independent Scotland would seek EU membership in its own right. However, the results of the snap June 2017 elections will reveal the measure of the Scots' support for the Westminster government and the Brexit strategy as well as for the Scottish National Party, and the true extent of support for an independent Scotland or even for Scotland's membership of the European Union.

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## Cosmopolitanism in Brief Suspension

**Caliel Calves da Costa\***

We are living in a period where globalization is unquestionably in retreat and cosmopolitan values are in suspension, implying considerable uncertainty for its future. As António Guterres, the Secretary-General of the United Nations, declared in an interview given at his *Ted Talk* last year in Geneva on the subject "Refugees have the right to be protected", many of the world's most influential and powerful politicians are nowadays taking extreme measures, having a decidedly populist basis because of the failure of the integration models proposed since the mid-Twentieth Century. He is talking specifically about the European Project but his thinking can also be applied to over-arching international relations established in contemporary times and to current events in the World.

The uneasiness and even anger that citizens of many states are now demonstrating are the result of a divided World that fails to recognize its international responsibilities and its collective responsibility, if not guilt, for the failure of consecutive integration policies to respond to their needs and expectations. To illustrate this, we can work with three democratic anomalies of the Twenty-first Century:

- Brexit;
- the election of Donald Trump and his policies in the United States, and;
- the rise of nationalism in European counties.

Primarily, the election of Donald Trump and his policies impairs the idea of globalization due to its divisive, protectionist and US-centric nature, which is apparently based on weakening other superpowers in order to prevail economically and politically, while changing the balance of power to its own gain and damaging the international order in the process.

Similarly, Brexit is an evident backlash to globalization, arguing erratically against the European integration project on the basis of costs, immigration problems and legislative dependence on EU institutions, while disregarding every economic and political advantage resulting from the investment in being part of the European Union over and above the

bureaucratic hurdles and the diplomatic efforts required, or the complexities of its institutional structures.

Finally, the rise of nationalism inside European countries in the form of right-wing populist leaders and parties clashes with the globalization ideas: it opposes any form of international order based on a multipolarity and functioning of the interests and needs of others, where stability, affluence and justice are made possible through co-operation and co-governance.

Nevertheless, to the contrary, it is important to lay stress on the hopeful words of António Guterres, in the above *Ted Talk* and his view of the world when he states that: “It is clear that all societies will be multi-ethnic, multicultural, multi-religious in the future” and trying to avoid it is pointless.

However, in order to enable this kind of organization to work properly, every leading country of the world needs to invest massively in the social cohesion of their own societies. With it, our inability to manage crisis situations will only grow and our possibilities to live in a truly cosmopolitan social organization, will certainly to be diminished. Therefore, the only way we will be able to accomplish the status of a globalized, stable world is through co-operation and recognition of our interdependence in economic, political, environmental and social spheres. And this demands our respect for the whole of our international collective responsibilities. No one country acting alone is capable of achieving this through force and intimidation, as to do so can only lead to a more dangerous World, diminishing the capacity of the international community to prevent conflicts and blurring power relations and compromises made through global governance mechanisms.

In conclusion, in our times we need to combine the best qualities of all countries, including Canada’s multiculturalism and universal hospitality, China’s urge to grow, and the basis of the European integration project. Only then will we be able to contemplate all the possibilities for the resumption of the contemporary expression of liberal pluralism and halt this brief suspension of cosmopolitanism.

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## Knowledge mobility as a tool to strengthen EU-Brazil relations: preliminary results

Livia Radaeski\*

According to the 2014 *OECD Indicators*<sup>8</sup>, more than 4.5 million students were enrolled in higher education outside their country of citizenship during 2012. Compared to 1975 when this number was around 0.8 million, knowledge mobility has seen an impressive increase in numbers. This upward tendency can be attributed to an interest in promoting academic, cultural, social and political ties among countries, as well as the expansion of access to higher education worldwide. Since the late 1980s, the expanding European Union has hosted several programmes for academic mobility exchange and today it presents itself as a major destination for foreign students seeking higher education.

In this context, speaking on 14th February 2017, the first day of the Young Researchers Seminar, at the Institute of International Relations of the University of São Paulo (USP), **Joyce Pereira de Almeida** presented her research on the theme of knowledge mobility and developments in this field between the EU and Brazil. Pereira de Almeida presented the preliminary results of her research "*Furthering EU-Brazil relations through knowledge mobility*" in the first panel of the day, which was entitled "*Brazilian Perceptions of Brazil's relations with the European Union*". Her presentation not only shed light on the steps taken to promote knowledge mobility, but also displayed charts and tables to help the audience grasp the dimension of academic mobility exchanges in Europe and Brazil.

The first Framework Agreement for Co-operation between the European Union and Brazil was signed in 1992 and aimed to "impart renewed vigour to relations between them"<sup>9</sup>. The main fields of co-operation related to trade, investment, finance and technology. Regarding co-operation in the field of Science and Technology, as noted in Article 10 of the above Framework Agreement, it could be said that the agreement took a first step towards promoting knowledge mobility when the parties agreed to strengthening links between their scientific and technological communities, as well as encouraging the exchange of researchers. The commitments within this framework for co-operation were strengthened with the 2005 Agreement for scientific and technological co-operation between the European Community and the Federative Republic of Brazil, under which:

*"The Parties shall encourage, develop and facilitate co-operative activities in areas of common interest by carrying out and supporting scientific and technological research and development activities."*<sup>10</sup>

<sup>8</sup> OECD (2014), "Indicator C4: Who studies abroad and where?", in Education at a Glance 2014: OECD Indicators, OECD Publishing, Paris. <http://dx.doi.org/10.1787/888933118656>

<sup>9</sup> EU. "Framework Agreement For Cooperation between the European Economic Community and the Federative Republic of Brazil." in Official Journal of the European Communities. 1995. [http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:21995A1101\(01\)](http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:21995A1101(01))

<sup>10</sup> EU, "Agreement for scientific and technological cooperation between the European Community and the Federative Republic of Brazil" in Official Journal of the European Communities. 2005. <http://ec.europa.eu/world/agreements/downloadFile.do?fullText=yes&treatyTransId=2781>

The developments in knowledge mobility also benefit from the EU-Brazil Civil Society Round Tables, organized by the European Economic and Social Committee and the Brazilian Economic and Social Development Council, both of which signed an interinstitutional agreement in 2003. Their main purpose is to allow civil society organisations to regularly contribute their points of view on all issues covered by the partnership. Throughout the meetings, knowledge mobility was mentioned superficially either when linked to investment in research, development and innovation, or to migration and tourism. It was only in the last meeting, held in 2014, that knowledge mobility became an official topic of discussion. The importance of mobility in the sphere of globalization was recognized and seen as a key to develop innovation, and a tool to serve humankind in stepping up the fight against all kinds of social exclusion.

In the second part of her research presentation, Pereira de Almeida analysed charts and tables comparing the percentage of European and Brazilian students in exchange programmes. In the last decade, there has been a steady growth in the number of Brazilian students in Europe, jumping from 115 in 2006 to 1,893 in 2016. This was followed by a modest increase in European students in exchange programmes in Brazil, reaching its peak in 2014, with 1,027. This data was collected from the University of São Paulo and EU Agreements, contemplating students from USP only. The researcher intends to expand her investigation and collect data from other universities in the country. Attention was also given to scholarship programmes and how they contribute to the promotion of knowledge mobility.

Finally, there were some considerations about the EU-Brazil sector dialogue and how it can be perceived as a contribution for the enhancement of the bilateral partnership between the Parties. The dialogue about Youth, Education and Sports, which aims to strengthen actions in educational co-operation, and the dialogue on Science and Technology, with a focus on the promotion of scientific and technological research, are ways in which knowledge mobility can reap many benefits.

In view of the above, many questions arise from this preliminary research. Firstly, how can knowledge mobility act as a key to promoting and strengthening the EU-Brazil partnership? What are the challenges it must face and the perspectives to the parties involved? Concerning the sector dialogues, how is this co-operation contributing to the EU Brazil Strategic Partnership, especially regarding the exchange of researchers? How does the number of exchange students from both sides vary from region to region in Brazil? Last but not least, what are the expectations of the **Horizon 2020** Programme and the role it could play in this framework for co-operation?

Being a product of knowledge mobility herself, Pereira de Almeida (who studied at the University of Paris-Sorbonne with a scholarship of the Brazilian fund “CAPES” and participated in congresses and conferences promoting Brazilian literature), will focus on answering these and other questions that might arise from her further investigation.

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## **Access to Basic Rights and Social Goods: a Comparison of EU and Brazil of Capabilities**

**Adriana Pou Hernández\***

At the Young Researcher's Seminar held on 14 and 15 of February at the Institute for International Relations of the USP, researcher Fernão Kastrup presented his initial findings regarding a study to compare the capabilities of Brazil and the EU in access to justice and social goods.

The analysis explores the specific contexts that shaped tensions between governmental social policies and the response of the social movements in both regions. The author approaches two cases for study. For Brazil, the Journeys of June of 2013 are analysed, where protesters raised against an increase on public transport costs. In Europe, he focuses in the United Kingdom, where the London Student Protests in late 2010 and early 2011 represented a chapter of police brutality and violence. In both cases, he analyses how the State responded, the impact of media coverage and the outcomes of the movements.

The similarities of both movements lie not only in how the State reacted, but also the contexts. These were popular mobilizations fuelled by discontent for an increase of the costs of Social Goods, mainly composed by young people that did not feel represented by political actors. In both cases, a lack of accountability for police actions was blatantly revealed, and no one was punished for the abuses.

To compare the capabilities and reactions of a federal entity such as Brazil with an integration project such as the EU is not an easy task. Nevertheless, they share certain characteristics that deserve comparison and contrast, such as their geographical dimensions (considering Brazil is even bigger than the EU), the diverse and complex societies in which people cohabit, and the common human rights' rhetoric that both share, regarding not only internal matters, but also when aiming to enforce human rights standards on other countries.

Brazil postures as a leader of the South-South movement, and standing up for international values as well as respecting a wide range of human rights treaties and standards. The right to protest and public gathering is embodied in Article 5 of the Brazilian Federal Constitution, and its Article 34 authorizes the Federal Government to intervene when human rights are being violated. Nevertheless, the Brazilian police ranks as one of the most brutal and deadly in the world. In this sense, the journeys of June demonstrate how in practice, the Brazilian government has been unable to guarantee the protester's basic human rights and this social movement faced violent and systematic repression by the State forces.

The author emphasises that if in Europe there is supposed to be far-reaching access to justice, there are similarities with Brazil on the disproportionate and harsh response from State actors. Member States of the European Union claim to hold strict human rights standards, and they expect other countries to meet them as a condition to establishing relations with them. Human Rights, human dignity and freedom are values and rights consummated by virtue of Article 2 of the Treaty on the European Union (TEU), providing – through Article 7 TEU – the possibility to impose sanctions on countries that violate basic human rights.

As examined in the research work, the winter of 2010/2011 in London riots showed how inside the European Union, such respect for basic rights and widespread access to justice is not as strong as the EU apparently demands from their partner countries. Unfortunately,

critics have only targeted peripheral countries of the EU. The lack of competence for actions by the EU authorities was never pointed out.

The methodology proposed to continue developing this analysis is based on existing literature about authoritarianism and violence as a strategy for governments to put out social movements.

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