

## JEAN MONNET SUPPLEMENT

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This issue reports on the Workshop on “Harnessing Globalisation” at the Biennial Jean Monnet Conference of the European Union’s External Action Service (EEAS) held in Brussels on 28 November 2017. A new EU political narrative has emerged to balance values and trade interests, through a mix of policy, legal and financing tools, particularly in EU foreign policy/external relations over the last year. Sources are highlighted here for those interested in policy research and monitoring progress of current actions. Pressing topics for further research topics are flagged.



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The European Commission President, Jean-Claude Juncker, presented the “harnessing globalisation” initiatives in his *State of the Union* address in September<sup>1</sup>. The EU’s response to globalisation is both internal and external. The intra-EU dimension involves innovative regional approaches to securing the Union’s future resilience, which demands EU level collaboration by the Member States, including through structural and cohesion funding for social and education responses, and for fostering innovation in the broadest sense. Internationally, the EU is co-operating to shape globalisation through trade, economic diplomacy and fairness based on rules and high-standards between many countries with different interests, cultures and levels of development.

On the day, it was on the external dimension that the Jean Monnet Professors focused at the workshop. Professors from China, India, the United States as well as France, Ireland, Poland, Portugal and the UK intervened. To begin, *Kolja Raube* of the Leuven Centre for Global Governance Studies introduced the broader context and EU policy for harnessing globalisation, while *Mirosław Galar* of the European Commission’s Strategy Unit of its Directorate General for Trade laid out the new initiatives specifically relating to trade. The rationale is that trade provides economic results which enable international co-operation and becomes a vehicle for these values. Under the framework of the Brazil-C-EU project here at the University of Sao Paulo, IRI’s *Kirstyn Inglis* moderated the session.

From the Editor, **Kirstyn Inglis**

Visiting Professor at the Institute for International Relations (IRI)  
of the University of Sao Paulo, December 2017

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<sup>1</sup> See European Commission Communication *The White paper on the future of Europe* of 1 March 2015, [https://ec.europa.eu/commission/sites/beta-political/files/white\\_paper\\_on\\_the\\_future\\_of\\_europe\\_en.pdf](https://ec.europa.eu/commission/sites/beta-political/files/white_paper_on_the_future_of_europe_en.pdf), last visited 3 December 2017; see also *State of the Union speech (2017)*: [http://europa.eu/rapid/press-release\\_SPEECH-17-3165\\_en.htm](http://europa.eu/rapid/press-release_SPEECH-17-3165_en.htm), last visited 3 December 2017; see also the “Reflection papers” on the future of EU policies can be found at [https://ec.europa.eu/commission/white-paper-future-europe-reflections-and-scenarios-eu27\\_en](https://ec.europa.eu/commission/white-paper-future-europe-reflections-and-scenarios-eu27_en), last visited 3 December 2017.

## **The new EU agenda for “Harnessing Globalisation”: values, democratic legitimacy & trade**

*Kirstyn Inglis\**

### **1. Context**

In the 13<sup>th</sup> issue of this *Jean Monnet Supplement*, on the Rome Declaration of 25 March 2017, I highlighted the EU Member State’s continuing intention to shore up their capacity to act together through European Union level external relations in order to address crises and other global challenges. The *White Paper on the Future of Europe*<sup>2</sup> that accompanied the Rome Declaration presented 5 scenarios for plotting the EU’s path and – aside from the first “business-as-usual” scenario – all would necessarily impact on the future policy directions for the Union’s international relations to a greater or lesser extent.

The 2017 Jean Monnet Biennial Conference of the EEAS on 28 November 2017 was dedicated to the intensive reflection and debate that has been ongoing in the European Union since the launch of that *White Paper*. Juncker’s address presents itself as a “sixth scenario” following up on this intense debate. Shoring up the democratic legitimacy of these EU initiatives, the 27 Member States and the EU institutions, including the European Parliament, have endorsed the EU’s multilateral approaches to engaging with its global partners, rejecting protectionism, a fact which is an important indicator of political support for progress to be made in the implementation by the EU and its Member States of the package<sup>3</sup>.

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\* Kirstyn Inglis, PhD, is Visiting Professor at the Institute for International Relations (IRI) of the University of Sao Paulo, and Vice-Coordinator of the Brazil-C-EU Project there.

<sup>2</sup> *Op. Cit.* n. 1.

<sup>3</sup> See Conclusions 16, 17 and 18 of the European Council of 22 and 23 June 2017, to be found at <http://www.consilium.europa.eu/media/23985/22-23-euco-final-conclusions.pdf>, last visited 9 December 2017.

From an external relations point of view, Juncker's programme indeed gives complementary form and substance to the "collective sense of direction" that the Union has declared under its June 2016 Global Strategy on Foreign and Security Policy (*Shared Vision, Common Action*)<sup>4</sup>. Moreover, these new initiatives should be read in conjunction with each other. Significantly also, the *Europe 2020 Strategy*<sup>5</sup> remains valid: adopted back in 2010 it remains the current 10-year overarching workplan for the EU aiming for "smart, sustainable and inclusive growth", and involves multiple international facets. However, it has floundered due to its technocratic nature and a notable lack of political impetus and political narrative<sup>6</sup>. Other core policy shaping instruments at global level will be influential: the Union's recent commitments to the *UN 2030 Agenda on Sustainable Development*<sup>7</sup> of 25 September 2015, and the *Paris Climate Agreement*<sup>8</sup> for greenhouse gases emissions mitigation, adaptation – all with financing starting in 2020 – under the framework of the United Nations Framework Convention on Climate Change (UNFCCC).

Overarching the implementation of the EU's foreign policy generally is a complex mix of financing instruments – notably the 2014 Partnership Instrument<sup>9</sup> which is expressly designed to provide concrete support to the Union's current international commitments and own strategic interests abroad. These instruments are increasingly managed at the level of the EEAS delegations in third countries, as well as in Brussels. The range of support spans many objectives: meeting the great global challenges of our time, dialogue and co-operation internationally in the Union's strategic interests, the international dimension of the *Europe 2020 Strategy*, market access and business matters and the implementation of EU free trade agreements, as well as undertaking public diplomacy and outreach with civil society and academic diplomacy beyond the EU.

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<sup>4</sup> To follow the EUGS as it evolves, go to <https://europa.eu/globalstrategy/en/language-versions>, last visited 9 December 2017. For the Portuguese version, go to [https://europa.eu/globalstrategy/sites/globalstrategy/files/eugs\\_pt\\_version.pdf](https://europa.eu/globalstrategy/sites/globalstrategy/files/eugs_pt_version.pdf), last visited 9 December 2017. More recently, see also the Joint Communication of the High representative for Foreign Affairs and Security Policy *A Strategic Approach to Resilience in the EU's external action*, JOIN(2017) 21 of 7 June 2017, to be found at [https://eeas.europa.eu/sites/eeas/files/join\\_2017\\_21\\_f1\\_communication\\_from\\_commission\\_to\\_inst\\_en\\_v7\\_p1\\_916039.pdf](https://eeas.europa.eu/sites/eeas/files/join_2017_21_f1_communication_from_commission_to_inst_en_v7_p1_916039.pdf), last visited 13 June 2017.

<sup>5</sup> See Commission Communication COM(2010) 2020 of 3 March 2010, adopted by the European Council on 20 June 2010, and to be found at <http://ec.europa.eu/eu2020/pdf/COMPLET%20EN%20BAR-ROSO%20%20%20007%20-%20Europe%202020%20-%20EN%20version.pdf>, last visited 9 December 2017.

<sup>6</sup> Nor indeed in the *Mid-Term Review* of the *Europe 2020 Strategy* in 2015, the single most important reason for the lack of progress in the *Europe 2020 Strategy* was found to be its lack of political narrative and its technocratic nature.

<sup>7</sup> For the range of EU references relating the implementation of the *SDS 2030*, including the *SDS* itself, go to [http://europa.eu/rapid/press-release\\_IP-15-5708\\_en.htm](http://europa.eu/rapid/press-release_IP-15-5708_en.htm), last visited 9 December 2017.

<sup>8</sup> The Agreement entered into force in November 2016. The official website for this Agreement of United Nations Framework Convention on Climate Change (UNFCCC) can be found at [http://unfccc.int/paris\\_agreement/items/9485.php](http://unfccc.int/paris_agreement/items/9485.php), last visited 9 December 2017. The official website of the European Union on how it implements the Agreement can be found at [https://ec.europa.eu/clima/policies/international/negotiations/paris\\_en](https://ec.europa.eu/clima/policies/international/negotiations/paris_en), last visited 9 December 2017.

<sup>9</sup> The 2017 implementing decision can be found at [http://ec.europa.eu/dgs/fpi/documents/key-documents/20170524\\_decision\\_aap\\_2017-Phase-I\\_en.pdf](http://ec.europa.eu/dgs/fpi/documents/key-documents/20170524_decision_aap_2017-Phase-I_en.pdf), last visited 30 October 2017. Source policy materials [http://ec.europa.eu/dgs/fpi/what-we-do/partnership\\_instrument\\_en.htm](http://ec.europa.eu/dgs/fpi/what-we-do/partnership_instrument_en.htm), last visited 10 December 2017.

Time will tell whether today's new political narrative will indeed serve to harness the necessary political impetus at home and abroad in order for the EU to secure the balance between values and its future global trade regime.

## 2. *The “Harnessing Globalisation” agenda: values, democratic legitimacy and trade*

More than half of the twenty-two page *Reflection Paper* is dedicated to the anticipated benefits and impacts of “globalisation”, essentially involving the shift from trade and capital flows being its main drivers to rapid technological change based on knowledge. By 2025, digitisation, robots, artificial intelligence, the internet of things and 3D printing will inevitably revolutionise the way we produce, work, move and consume. Weighing the pros and cons of “globalisation”, at page 12, it asserts that:

“Unless active steps continue to be taken, there is a risk that globalisation would compound the effect of technological advances and the recent economic crisis and contribute to further widening inequalities and social polarisation. Over the last decade, real incomes of middle-class households in the EU and other advanced economies have, for the most part, stagnated even as the economy has grown overall. While inequality in Europe remains much less marked than elsewhere in the world, the wealthiest 1% of our population still own 27% of the total wealth. [...] Many citizens [...] view that governments are no longer in control or are not able or not willing to shape globalisation and manage its impacts in a way that benefits all. This is the political challenge we must now confront.”

Specifically concerning trade, fairness and respect for common values take centre stage in the EU policy makers' programming for future trade and economic and cultural diplomacy for the EU and its Member States. A new “Package” of trade and investment measures are accompanied by specific actions pursuing fairness and EU values, and expressing the consciousness of and intention to adhere to global commitments and values. Rooted in the two new 2017 Communications on *A Progressive Trade Policy to Harness Globalisation*<sup>10</sup> and on *Welcoming Foreign Direct Investment while Protecting Essential Interests*<sup>11</sup>– and not forgetting work already done under the previous 2015 Communication on *Trade for All: Towards a More Responsible Trade and Investment Policy*<sup>12</sup> – initiatives on trade and investment are to be balanced with global governance in human rights and working conditions, food safety, public health, environmental protection and animal welfare. Added to this, the EU globalisation agenda now also incorporates recent EU level or global consensus on: supporting the global economy through the regulation of financial markets and addressing tax avoidance; the UN Compact on refugee and migration flows; both the *Paris Agreement* and the UN SDS 2030 (see above), and; the EU *Consensus on Development* of June 2017<sup>13</sup>.

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<sup>10</sup> See COM(2017) 492 of 13 September 2017, to be found at <https://ec.europa.eu/transparency/regdoc/rep/1/2017/EN/COM-2017-492-F1-EN-MAIN-PART-1.PDF>, last visited 9 December 2017.

<sup>11</sup> See COM(2017) 494 of 13 September 2017, to be found at <https://ec.europa.eu/transparency/regdoc/rep/1/2017/EN/COM-2017-494-F1-EN-MAIN-PART-1.PDF>, last visited 9 December 2017.

<sup>12</sup> On the rational and concrete next steps for trade and investment, see COM(2015) 497 of 14 October 2015 [http://trade.ec.europa.eu/doclib/docs/2015/october/tradoc\\_153846.pdf](http://trade.ec.europa.eu/doclib/docs/2015/october/tradoc_153846.pdf), last visited 9 December 2017.

<sup>13</sup> Full sources references can be found at [https://ec.europa.eu/europeaid/policies/european-development-policy/european-consensus-development\\_en](https://ec.europa.eu/europeaid/policies/european-development-policy/european-consensus-development_en), last visited 30 November 2017.



The five initiatives under “The Trade Package” include the creation of a multilateral investment court, EU level screening of foreign direct investment into the EU, as well as the opening on trade agreements with Australia and New Zealand. Fourth and fifth on the list, and a remarkable development in the EU’s commitment to improving global governance and democratic control, the European Commission has commitment to making public its negotiating mandates for international trade agreements.

Also novel is the creation of a new Advisory Group on EU trade agreements specifically to include civil society in trade policy formulation<sup>14</sup>. However, this platform is not available to third countries per se, although under the Partnership Instrument in particular, financing is foreseen for civil society consultation and engagement activities in third countries, including academic communities.

Finally, recent ground breaking legal clarification by the Court of Justice of the European Union (CJEU) eases the negotiating process for the international agreements, summarised in the following section.

### *3. An easier juridical context for EU trade agreements*

For those researching future shifts in international negotiations, it is useful to comment on the recent rationalisation of the European Union’s and the Member States’ negotiating hats.

The European Union’s capacity to progress as a regional integration in trade and investment treaties with third countries has long been dogged by a challenging lack of clarity in the boundaries of where the Member States’ negotiating powers end and the European Union’s negotiating powers begin (“exclusive” competences at EU level, or “mixed” competences combining EU and national negotiators). It has been a complicating challenge for the Member States and the European Institutions as much as for partner countries involved in international negotiations with the EU.

On 16 May 2017, the Court of Justice of the European Union (CJEU) laid down a landmark Opinion<sup>15</sup> delineating the fields where the European Commission can go ahead and negotiate trade agreements with third countries in its own right. Whereas the Union’s trade negotiations have been laborious to date due to insecurities and confusion in the EU negotiating mandate for EU institutions and Member States as much as for partner countries, this recent juridical evolution has clarified the potential and limits of EU treaties with third countries on trade matters, effectively opening a faster track to new EU trade and investment agreements with third countries.

As a result, essentially the European Commission is only not empowered to negotiate regimes for non-direct foreign investment (‘portfolio’ investments made without any intention to influence the management and control of an undertaking) or for dispute settlement between investors and States.

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<sup>14</sup> The EU civil society dialogue on trade can be followed at <http://trade.ec.europa.eu/civilsoc/index.cfm>, last visited 9 December 2017, and the procedure for establishing the list of trade experts was published 13 September 2017, COM(2017)6113, to be found at <http://trade.ec.europa.eu/civilsoc/index.cfm>, last visited 9 December 2017.

<sup>15</sup> Court of Justice of the European Union, *The free trade agreement with Singapore cannot, in its current form, be concluded by the EU alone*, Opinion 2/15, Press Release 52/17 of 16 May 2017, to be found at <https://curia.europa.eu/jcms/upload/docs/application/pdf/2017-05/cp170052en.pdf>, last visited 3 December 2017.

For the rest, summarising the CJEU Press Release on the Singapore Judgment, the European Commission holds exclusive competence over provisions for:

- ⊗ market access for goods and services (including all transport services), public procurement and energy generation from sustainable non-fossil sources;
- ⊗ protection of direct foreign investments of third country nationals in the EU (and *vice versa*);
- ⊗ intellectual property rights;
- ⊗ provisions to combat anti-competitive activity and laying down a framework for concentrations, monopolies and subsidies;
- ⊗ sustainable development (the objective of sustainable development now forms an integral part of the common commercial policy of the EU, making liberalisation of trade between the EU and the third country subject to the condition that the Parties comply with their international obligations concerning social protection of workers and environmental protection);
- ⊗ rules on exchange of information and obligations governing notification, verification, co-operation, mediation, transparency and dispute settlement between the Parties, unless those rules relate to the field of non-direct foreign investment.

#### 4. Conclusions

Time being of the essence for all countries facing imminent and inevitable disruption in the face of globalisation, today the EU Member States are actively seeking out multilateral approaches and resisting protectionism through their regional integration. Looking at the EU from a Strategic Partner country, the Member States and EU institutions have recently strengthened their political commitment to and engagement in the EU external agenda over the last year. As noted already, even as the European Union faces a complexity of internal crises, it is pursuing increasing strength and capability in its external agenda, the Member States being convinced of the value added by their EU level collaboration. The evidence of *Eurobarometer Report 86* of 2016, “a majority of European citizens recognise that protectionism does not protect”, serves to reinforce the democratic legitimacy of this EU external agenda also at the level of EU citizens.

On the day of the workshop, it was on the external dimension that the Jean Monnet Professors focused at the workshop. Professors from China, India, the United States as well as France, Ireland, Poland, Portugal and the UK intervened. Comment and questions related to the interpretation and form of values in obviously diverging cultures and countries of differing levels of development. Faced with important instances of fundamental disagreements on the rule of law, the EU is adopting a pragmatic approach in trade and with transnational actors in investment. The varying definitions of “globalisation” and related terms were highlighted. Trends in geopolitics on the actual implementation of the “harnessing globalisation” agenda was also key to the debate. Other issues arising included the future of public procurement in addition to trade and investment, the limitations of direct effect at WTO level compared to EU domestic level court enforcement – and the use of retaliatory threats at WTO level – as well as the extra-territorial scope and impacts of EU regulatory actions. The relevance of the new Asian Infrastructure Investment Bank (AIIB) as a platform for furthering co-operation in context of the new EU harnessing globalisation strategy, was also touched upon.

The EU’s success in its harnessing of globalisation through this balance of fairness and good governance and democratic controls in conjunction with trade initiatives, is under pressure of time

given the imminent and inevitable global disruption. Will Juncker's sixth option redress the lack of political impetus for the *Europe 2020 Strategy* and in the EU's international relations in the face of the challenges of globalisation? Can implanting values into building trade relationships provide a more meaningful political narrative that will engender the trust and leadership required of the EU before its global partners in this "harnessing globalisation" agenda?

A major test of this balance will be in the practice and the EU's speed of response to the challenges arising in what is such a near future. The mix of the ambitiousness, flexibility and meaningful commitment of the Member States to progressing as a block on their own deliverables will be one test. How the Union brings on board its global partners in pursuing this balance will be crucial, in addition to becoming resilient itself to the unavoidable transformation involved. On climate change and sustainable development in its broadest sense, to some extent the commitments of the *Paris Climate Agreement* and the UN *SDS 2030* provide benchmarks against which to measure this balance. To become more flexible, responsive and adaptable in a globalising world, the Union has evolved in notably pragmatic ways since 2010, not least with the institutional changes increasing the capacity of the EEAS and the Union's external delegations. The new Partnership Instrument combines with a raft of pre-existing financing instruments to reorient the capabilities of the EU's foreign policy ambitions. It promises additional support for concrete actions at local level within third countries to achieve this balancing in the values-combined-with-trade agenda.

It is still early days in the executive practice under the Partnership Instrument and the reorientation of the Union's external financing instruments. From the perspective of academic analysis and scrutiny, as yet the accessibility, responsiveness and meaningfulness are difficult to grasp in terms of practice. The challenge of balancing transparency with flexibility/responsiveness in the operation of these financing tools is a challenge for the EEAS and the European Commission services as well as for potential worthy civil society beneficiaries abroad seeking to absorb these funds and contribute the global societal resilience challenges today.

#### EXPEDIENTE

<b>Coordenador:</b>	Amâncio Jorge de Oliveira
<b>Editor in Chief:</b>	Janina Onuki
<b>Executive Editor:</b>	Kirstyn Inglis
<b>Assistente executiva:</b>	Vanessa Munhoz

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