

JEAN MONNET SUPPLEMENT

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EDITORIAL

This issue of the *Jean Monnet Supplement* to the *Análise Caeni Newsletter*, welcomes a contribution of **Professor Alex Crowther** of the National Defense

University Institute for National Strategic Studies in Washington DC, advocating deeper Brazil-EU joint action in cyber security, together with India, in the context of an overall rapprochement on trade, diplomacy, and security, particularly cyber security. Professor Crowther made his mark at the EPIIC Symposium at the Fletcher School of Law and Diplomacy in March earlier this year, when discussing the challenges of new forms of global warfare, highlighting the sovereignty and legal challenges in this context as well as the role for international relations per se. **Caio Duarte** of the Law Faculty here at the University of São Paulo, goes on to promote Brazil's adoption of NATO's *Tallinn Manual* on cybersecurity and international law applicable to cyber operations, in order to give form and substance to human rights and state responsibility in its responses to cyber warfare globally. **João Trigo** and **Otávio Viegas**, both of the Institute for International relations at USP, respectively comment on the French presidential elections, looming on 23 April 2017, and Brexit, which was triggered by the UK government on 29 March 2017. National elections and referendums are hot topics today because of their detrimental potential for international relations generally, and the EU's integration project in particular. Compared to the UK's Brexit votes to secede from the European Union in June 2016, the potential for the success of the populist *Front National* in the contest would go further because it proposes France's return to the French Franc, posing new dis-integration challenges to the Eurozone. And Brexit steers the UK into uncharted waters in terms of its future relations with Brazil and globally, not only with its closest neighbours in the European Union.



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From the Editor, **Dr. Kirstyn Inglis**

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EU-Brasil Cyber Security Relations: a partnership waiting to be consummated

Professor Alex Crowther*

The *European Union's Global Strategy 2016* acknowledges that they live in an interconnected world, and seek a rules-based international order with multilateralism as its key principle and the UN at its core. They want to contain power politics and contribute to a peaceful, fair, and prosperous world¹. They will selectively seek partners around the world, particularly those who share their values. Rather than partnerships with the other BRICS countries² whose sole unifying theory is the creation of a multipolar world opposed to a dominant United States, Brazil should seek out relations with countries and groups who share Brazil's core values: multiculturalism, democracy and global trade and sovereignty as equals. Although individual countries such as India support these views, the EU produces one quarter of the global GDP³ and is a natural partner. While the EU and Brazil have had a strong trade-relationship going back decades, there is room for improvement. Efforts to improve relations could also allow Itamaraty to regain some ground lost during recent Brazilian presidencies.

Cybersecurity is one area where the EU and Brazil could co-operate closely. Brazil has already indicated displeasure with US cyber activities⁴ and any democratic country that values trade would be outraged by large-scale cybertheft by the Chinese and cyber information operations as practiced by the Russians. That leaves the EU as the only major cyber actor with whom the Brazilians share what could be called cyber-values.

Shared values are necessary but not sufficient to interest Brazil. The EU has concrete accomplishments that they can share with Brazil. In particular, the European cybersecurity framework⁵ provides something that Brazil can copy without subordinating themselves to a global player like Russia, China or the United States. EU countries that are major cyber players (such as the French and Germans) could also build cyber partner capacity in Brazil under an EU rubric without threatening Brazilian cyber sovereignty.

¹EU Global Strategy for the EU's foreign and security policy: "Shared Vision, Common Action: A Stronger Europe", June 2016 at p 15, available at <https://europa.eu/globalstrategy/en/global-strategy-promote-citizens-interests>

² Russia, India, China and South Africa

³The EU in the world - economy and finance. Available at http://ec.europa.eu/eurostat/statistics-explained/index.php/The_EU_in_the_world_-_economy_and_finance

⁴ The (UK) Guardian "Brazilian president: US surveillance a 'breach of international law'", available at <https://www.theguardian.com/world/2013/sep/24/brazil-president-un-speech-nsa-surveillance>

⁵EU Directive Concerning Measures for a High Common Level of Security of Network and Information Systems Across the Union, 6 July 2016, available at <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016L1148&from=EN>

Brazil could also sign up for global cyber norms as espoused by the EU. The UN Group of Government Experts (GGE) has developed certain global norms. The US and China have a bilateral cyber agreement. The G7, G20, and the Organization for Security and Cooperation in Europe (OSCE) have defined norms. However, it is the Cooperative Cyber Defense Centre of Excellence 2017 Tallinn Manual 2.0 that fully describes international cyber norms in peace and in war, like the Budapest Convention that codifies international norms in cybercrime.

Although Tallinn 1.0 concentrated on cyber operations that break the threshold of an “armed attack” under the UN Charter, Tallinn 2.0 expands this discussion to include cyber operations that occur under that threshold. These are the types of cyber operations that plague international powers such as Brazil on a daily basis, and therefore important to deal with.

One major milestone for Tallinn 2.0 is a restrictive definition of an armed attack. While the United States prefers a much looser definition,⁶ it would be easy to see why states like Brazil and organizations like the EU would prefer a much higher threshold in order to prevent stronger states from using cyber “attacks” as an excuse to intervene elsewhere.

An EU-Brazil partnership makes sense. From existing trade relations to common values to globally-oriented economies to common security requirements (especially in the cyber realm), this is a partnership waiting to be consummated. Both China and Russia are against the current global setup, which has proved so beneficial to both Brazil and the EU. Both the EU and Brazil have problems with the US approach to international relations. Together with India, Brazil and the EU should rapidly move to a rapprochement on trade, diplomacy, and security, and particularly cyber security.

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The Tallinn Manual 2.0 and the challenges of cyber warfare

*Caio H. D. Duarte**

The US is already debating whether a separate branch of the Armed Forces should be created and dedicated to cyberwarfare, and much still needs to be brought to this debate on new forms of cyber warfare in the Global South. While the form of the concept itself is nascent and nebulous, Brazil seeks a peacekeeping role in the Community of Nations, and must face the threat of cyber warfare if it wishes to safeguard its natural resources and sovereignty and contribute to the advancement of human rights globally speaking.

Brazil as a country prides itself in promoting legal equality of nations, multiculturalism and sovereignty as values for a solid democracy. If it seeks to play an active part in the promotion of

⁶ As an example, the US DOD defines operations against US logistics or command and control as armed “attacks.” See US Department of Defense *Law of War Manual June 2015*, pp. 998-999, available at http://www.dod.mil/dodgc/images/law_war_manual15.pdf

democratic values in the world, it must look to the new Tallinn Manual and give form to its role in these issues.

The Tallinn Manual is a NATO commissioned collection of essays by respected experts on cybersecurity and the international law applicable to cyber operations. Recently reissued in its second edition to expand the conceptualization of cyberwarfare and related actions on pressing issues such as human rights and state responsibility, the Tallinn Manual represents an opportunity for Brazil. While active on these matters in stages such as the InterAmerican System for the Protection of Human rights, Brazil is yet to take a more active role in its policy making and academia when it comes to discussing how the state-of-art technological advancements of the 21st Century are to affect the stability of Latin America, Africa and the world as a whole.

The manual aims to be a collective work, Estonia and NATO being the catalysts, to deliver an answer to cyber warfare motivated by the Russian cyber-attacks in 2007. Whether or not it aims to become the legal reference on the matter, it has become so, and, taking into consideration the need to create treaties and standards that take hold of the issue of cyber warfare, the active co-operation with the EU and countries such as Estonia, should be long term priorities that Brazil should focus on – if not lead – so as to avoid a revival of the lack of definition of aggression in the discussions surrounding the Rome Statute, which still remain unresolved and which became the basis of so much criticism and challenges for the expansion of international law in this field today.

Reading the Tallinn Manual, discussing cyber policy making and debating the relations of nations under the cyber scope and the importance of cyber sovereignty in a clear but still modernizable international legal framework, is vital. Only then will we be able to take part in the creation of it, which is already emerging within UN norms and regulations, or even through the Manual itself.

Cyber warfare has shown us that individuals or movements can have the same weight and power as whole countries during a conflict, in a new logic that is yet to be understood by the *jus in bello* – including international humanitarian law – of our time. To take part in the designing of such an ever-changing and challenging scenario in the aim of maintaining world peace and justice, will be no easy task. But it demands full participation so that it may become a representative legal construct, one that agrees with our core values. If once we took pride in having coined the principle of the legal equality of nations in The Hague, we should look to the Tallinn Manual as a starting point.

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Uncertainties in France: the French Presidential Elections

João de Souza Trigo*

The French electoral race for the Presidency is in its final stages. Soon the country will decide upon the political leadership to be entrusted with French interests in the coming years. In two rounds of voting on 23 April and then again on 7 May 2017, France will go through national elections for the

next President of France that will not only have relevance to its own internal functioning. It has been said that in recent history there has never been such a disputed election in France, with a potentially catastrophic outcome for the international community, especially the European Union.

Among the top five contenders for the Presidency, two have emerged stronger for the next, the second round of voting in the run up to the final election on 7 May 2017, and neither represent the two traditional French leading socialist or republican parties. Marine Le Pen leads the far-right *National Front* party. Emmanuel Macron is the young center-left candidate representing his similarly young party "In March". However, the threat to regional integration promoted by the EU may well become a reality if Le Pen indeed were to win the Presidency.

The fierce criticism of the French extreme-right candidate has been gaining public support as a solution to the country's internal problems. It discredits the EU, emphasising the narrowing of national sovereignty to the detriment of the bureaucracy of the continental bloc, in addition to linking low French economic growth rates to free trade and blaming the German Chancellor, Angela Merkel for her management of the refugee crisis, a factor which – according to Le Pen – takes away employment from French nationals, especially the young, and is "Islamizing" the French nation.

Therefore, what Le Pen is really promoting is the exit of France from the European Union bloc. It is a move that, following the Brexit-path being beaten out by the British, has already earned the nickname of "Frexit". However, any possible French departure – secession – is not entirely comparable to Brexit in terms of negative impacts on the European Union, for two main reasons. In addition to being one of the founding countries, together with Germany it is also one of the pillars supporting the institutional structures of the bloc: France has adopted the Euro, whereas the British remain under a permanent opt-out from the Euro, a fact that obviously facilitates the UK secession from the EU. A return to the French Franc would obviously be a costly affair.

It must be said that in terms of legality of Euro membership in addition to EU membership, Mario Draghi, Head of the European Central Bank, made clear the irrevocable nature of Euro membership on 9 March 2017. Indeed, a combination of provisions contained in the Treaty on the Functioning of the European Union expressly reinforce such reasoning (Arts. 46(3), 49 and 140(3)), even drawing into question the legality of a parallel voluntary withdrawal of a Member State under Article 50 TEU. It is important nevertheless to highlight the legally problematic challenge of maintaining a country's Euro membership in the event that it were to invoke a voluntary withdrawal.

Opting for the scenario that a return to the Franc is indeed a true possibility, with France's exit from the Eurozone and the Union, what would in fact seem to more likely to happen would be the opposite of what Le Pen promises. As in the UK with the Pound Sterling, the Franc would depreciate and would inevitable cause strong inflation in France. At the same time, economic closure would make external products more expensive, many of which France does not produce or produces poorly. Consequently, the poorest people – who coincidentally make up Le Pen's electorate – would be the most affected as they spend a larger percentage of their income on basic food products which would have to be imported at higher rates. The depreciation of the Franc would also make it difficult to pay off foreign debts and negotiations with the EU, which would impose the stronger Euro as the reference currency. Comparably, for the Euro it would only be a brief scenario of economic decay.

Abandoning the Euro is not a process that is easily solved, and is purely hypothetical at the moment. The EU does not provide in its Treaties any scenario for replacing the Euro with a national currency in one of its Member States. This was once a topic studied and debated at the height of the Greek crisis when a possible withdrawal of the single currency from Greece was put forward. As there

are no rules outlining the legality of withdrawal from the Euro, this would be a time-consuming and painstaking negotiation process that would have to be set out in another Treaty, between the retiring country and the rest of the countries in the Eurozone. In addition to the payment for the negotiation of reestablishing monetary sovereignty, France, if it withdraws from the single currency, would immediately be considered a country with high investment risk due to imminent monetary and fiscal instability. Thus, fundraising in the international market would become impracticable and would compel France to seek emergency funding from the International Monetary Fund (IMF).⁷

Still, polls indicate that Macron, even should he lose the first round, would easily be elected President in the final run-off because he is able to garner the votes of the other candidates, while Le Pen, despite a strong electoral base, is limited in her potential to extend that power base on 7 May 2017. However, Le Pen's proposals should not be taken as absurd, even though extremist as such, because her current support is real and not weakening. Her rise so far is evidence of a global shift in the more traditional political dichotomy of the left and the right, which is moving towards an open and closed dichotomy.

Brexit and the election of Donald Trump both confirm this trend and alert us not to underestimate this shift in dichotomy. The lack of activism by specialists, the media and the business sector was founded on the misconception that these scenarios were impossible. Now comes the turn of France and, above all, the German government will be a key actor. Germany is required to be vigilant and to encourage France and its partnerships in the successes of the EU, and particularly to take advantage of the vacuum that Brexit will leave. Only the day after the UK's Brexit referendum, many companies were already relocating from the City of London (Britain's financial center) or declaring their intent to migrate their European headquarters to a greater or lesser extent, to Paris or Frankfurt. Brexit offers a considerable opportunity to France to generate income and jobs nationally, but in the current Presidential elections, this opportunity is apparently being neglected.

The uncertain future facing France today must be seriously debated, since if France were to secede from the bloc, the consequences would be so great that it could mean the end of the single currency or the beginning of the end of the largest and most intense regional integration project ever consolidated.

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Brexit and Brazil

*Otávio Macedo Viegas**

The British Government formally triggered Brexit, the Union's secession from the European Union on 29 March 2017, under Article 50 of the Treaty on European Union, and published its White Paper "The United Kingdom's exit from and new partnership with the European Union". The ensuing negotiations between the European Union (EU) and the United Kingdom (UK) could last up to two years, in an international conjuncture dramatically changed after the election of Donald Trump in the USA – and the tendency towards a more isolationist American foreign policy. Besides, elections in Europe this year also bear the possibility of populist and anti-EU leaders coming to power and the ongoing political crisis in Brazil could also impact the country's aspirations for its future international relations. The purpose of this article is to analyze Brexit from the perspective of international relations actors and processes, and also offer some prospective thinking on the future relationship between the UK and the EU.

The weeks preceding the referendum had been marked by bitter campaigning between both camps and the murdering of Jo Cox – a Labour MP who supported the "remain" camp. Above and beyond, the polls showed a razor-thin win for the remain vote, which made predictions about the referendum result very difficult, but largely it can be said that nobody expected the Brexit win. What seems to have exasperated pro-EU academics and politicians is the scale to which UKIP's Nigel Farage campaigning was based on lies, a strategy soon also to be used by Donald Trump in the US. The aftermath of Brexit on financial markets was dramatic, with around \$2.2 trillion being wiped out from the world trading system in one day (24 June 2016), when analysts highlighted the unprecedented situation produced by the win of the "leave" vote.

The first days post-Brexit also saw an exponential increase in hate crimes across the UK, targeting EU nationals living in the country – which was also unprecedented. There was a high initial uncertainty about David Cameron's reaction to the referendum result, but the Prime Minister was left with little choice other than resigning. At the same time, bitter campaigning was also taking place in the USA, and Donald Trump – in Scotland at time – was quick to underline that "people have made their choice, [...] people want their country back". However, Nicola Sturgeon, SNP leader and Scottish First Minister emphatically pointed out on the morning after the referendum that the "leave" win would almost certainly imply a second referendum on Scottish independence from the UK – a possibility which has gained momentum in the last week.

Theresa May became prime-minister after Cameron's resignation. In recent weeks she has consistently voiced her belief that the UK will become more global after Brexit, a view that has little support empirically and historically. Moreover, leaving the single European market will more likely make her country poorer, pose challenges for example, to the future of UK research, farming, the environment and energy. It will certainly as make Europe more unstable and the European fight against terrorism more difficult. In the weeks following the referendum, EU leaders pushed the UK to leave the bloc as soon as possible – which Mrs. May was arguably successful in doing – but the British government has been criticized for not advancing an inch on negotiations, which apparently means the country is heading for a "hard Brexit". While the White Paper makes sweeping claims of

providing legal certainty to people, business and trading partners, it provides few concrete guarantees as such, opting to simply adopt the entirety of EU system on the date of secession and then gradually working out the means and structures at national level after actual Brexit.

Trump, now already two months in office, said earlier this year that “Brexit will be a great thing”. However, the consequences of the UK triggering Article 50 TEU could very well turn out to be bad for the United States in domains such as trade, security and co-operation with other European partners, including non-EU countries. The consequences of Brexit for Brazil are still unclear, but will surely depend on ongoing trade negotiations between the EU and MERCOSUR. To conclude, Trump might find a close partner in Theresa May and for sure there will be no wall separating New York from London, but opposition to the US president seems to be gaining momentum not only in America, but also across Europe: Britons have already gathered more than one million signatures against his state visit to the UK.

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