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# INTRODUCTION: UNDERSTANDING THE EU AS A GOOD GLOBAL ACTOR: WHOSE METRICS?

Elaine Fahey and Isabella Mancini

## Exploring the EU as a 'good' global actor: a research agenda

The EU constitutes one of the most successful and complex peace and regional organisation experiments ever created. Europe in its entirety is a vanguard: it has always defined the standards of progress.<sup>1</sup> On several occasions, institutional representatives have reaffirmed a commitment for the EU to be 'a force for good',<sup>2</sup> with external trade as one of the main instrument to fulfil this objective in the world.<sup>3</sup> From a legal perspective, the EU has a legal mission to be a 'good' global actor. In its Treaties, the EU is expected to uphold and advance peace, democracy, the rule of law, human rights, and respect for international law in its relations with the wider world.<sup>4</sup> The principles and objectives in Articles 3(5) and 21 TEU have been said to provide a "conceptual umbrella", or "kaleidoscope", of what the EU considers to be good global governance.<sup>5</sup> What is not yet clear, however, is how these principles are and should be translated in practice, particularly in the context of EU external trade. The editors therefore believe there is value in applying the concept of 'good' to the study of the EU as a global actor. By asking what the attainment of this 'goodness' implies, this book seeks to unpack and problematise the mission of the EU to be a good global actor, and to explore the complexities of fulfilling it.

While any definition of 'good' can hardly escape moral connotations, we anchor it here to the values that the EU has set for itself in its treaties, above all the ones contained in Article 21 TEU for its external action. Good is defined in this book to be how the EU consistently is working towards peace, human rights, social justice, democratisation, the rule of law and equality of all kinds. In the understanding of good, we focus in particular on the EU's attainment of better integration and coherence between, on the one hand, the pursuit of its interests and different policy objectives, and on the other hand, its values. A crucial question is thus how the EU's external action can uphold and comply with its constitutional principles, and whether any legal obligation arises at all.<sup>6</sup>

Because the aim is not to study the extent to which the EU projects its values in third states or promotes peace in the world, the book provides a conceptual shift which differs from the literature on the EU as a 'normative' or 'ethical' power<sup>7</sup>, 'doing good' to the world.<sup>8</sup> In this sense, the book differentiates itself from the growing body of literature that questions whether trade policy is effective

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<sup>1</sup> Emmanuel Macron, 'Dear Europe, Brexit is a lesson for all of us: it's time for renewal' (*The Guardian*, 4 March 2019)

<<https://www.theguardian.com/commentisfree/2019/mar/04/europe-brexit-uk>> accessed 31 January 2022; Anu Bradford, *The Brussels Effect: How the European Union Rules the World* (OUP 2020).

<sup>2</sup> Javier Solana (EU High Representative for the CFSP and ESDP), 'Countering globalisation's dark side' (2007) *Europe's World*, Policy Dossier <[https://www.consilium.europa.eu/ueDocs/CMS\\_Data/docs/pressdata/EN/articles/96791.pdf](https://www.consilium.europa.eu/ueDocs/CMS_Data/docs/pressdata/EN/articles/96791.pdf)> accessed 31 January 2022;

Council of the European Union, 'A Secure Europe in a Better World. European Security Strategy' (12 December 2003) <<https://www.consilium.europa.eu/en/documents-publications/publications/european-security-strategy-secure-europe-better-world/>> accessed 31 January 2022.

<sup>3</sup> Cecilia Malmström, 'The future of EU trade policy' (Bruegel Lunch Talk, 24 January 2017, Brussels) <[https://trade.ec.europa.eu/doclib/docs/2017/january/tradoc\\_155261.pdf](https://trade.ec.europa.eu/doclib/docs/2017/january/tradoc_155261.pdf)> accessed 22 January 2022.

<sup>4</sup> Consolidated version of the Treaty on European Union (TEU) [2012] OJ C326/13, art 21(1).

<sup>5</sup> Joris Larik, 'Good Global Governance Through Trade: Constitutional Moorings' in Steven Blockmans and Jan Wouters (eds), *The EU's Role in Global Governance: The Legal Dimension* (OUP 2013) 6, 52.

<sup>6</sup> See Ramses Wessel, 'The Role of Values in EU External Relations: A Legal Assessment of the EU as a Good Global Actor' in this volume.

<sup>7</sup> Ian Manners, 'Normative Power Europe: A Contradiction in Terms?' (2002) 40 *Common Market Law Review* 235; Urfan Khaliq, *Ethical Dimensions of the Foreign Policy of the European Union: A Legal Appraisal* (CUP 2008); Andrew Williams, *EU Human Rights Policies: A Study in Irony* (OUP 2004).

<sup>8</sup> Lisbeth Aggestam, 'Introduction: Ethical Power Europe?' (2008) 84 *International Affairs* 1.

– or the right tool – to promote those values in third states.<sup>9</sup> The book may be said to transcend an understanding of the EU as an agent of values *either* within *or* outside the Union.<sup>10</sup> Rather, by considering these dimensions as mutually influencing each other, the book endorses Cremona's suggestion that there is a need for the Union to integrate all aspects of the EU's external action and to ensure consistency between the internal and external policies.<sup>11</sup> The focus is therefore on the paradoxes and inherent challenges that EU external trade may generate for some of the values of the EU, and on how these values (should) weave into EU trade policy. The contributions in this book show how, in addition to external challenges, the dynamics between the EU's internal and external sheds light on the complexities and trade-offs that compromise the achievement of 'goodness'.

From tax evasion to spam to gender to climate change to fisheries to Passenger Name Records, nothing is beyond being included in trade agreements by the EU anymore. A wide number of objects now appear to be closely tangled to what trade agreements do and how they operate, challenging traditional assumptions on what should go into free trade agreements and the EU's competences to conclude them. Deep trade agreements also stretch the stakes and implications for people's rights and challenge some of the very values the EU wants to adhere to in its external relations.<sup>12</sup> Trade and data governance are worth studying in this regard, as two of the most key areas of EU action with strong internal and external components. For example, the balance to be struck between liberalisation of trade and the fundamental right to personal data protection is still a contested issue.<sup>13</sup> How does the EU's mission to be a good global actor manifest itself as the deeper trade agenda (or 'trade and ...', or 'trade plus') evolves so quickly and dramatically with endless new subjects and objects? Against this backdrop, the book explores the factual, analytical and normative complexities that arise in the nexuses between trade and its evolving subjects and objects which the EU engages with. Is the opening of markets already 'good' by itself or more 'selfish' or ethically neutral? Is the trade agenda compromising being good? Or by contrast, does being good necessarily compromise the free trade agenda? Is a very green procurement policy disguised protectionism?<sup>14</sup> What generates here the challenge for the 'good' in this context?

This book provides a framework to understand the law and practice of the EU's mission to be a 'good' global actor. It argues that the EU has fundamentally challenged the notion of 'good' global actorhood despite its many complexities, shortcomings and architectural limitations. Importantly, the exploration of the EU as a good global actor is not to be understood as an imposition of the statement that the EU *is* a good global actor. On the contrary, the aim is to elicit critical reflections, showing the thorniness of 'goodness' in EU external relations from descriptive, analytical and normative perspectives. We ask- what normative metrics are useful in the study of the EU as a 'good' global actor? How do lawyers and political scientists and political economy scholars differ in their methodologies?

## A taxonomy of challenges

The EU has as its legal mission to be a good global governance actor, yet it is continuously challenged in the world.<sup>15</sup> 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

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<sup>9</sup> Jacques Pelkmans, 'Linking "values" to EU trade policy—a good idea?' (2021) *European Law Journal* 1; Aydin Yildirim and others, 'EU Trade and Non-trade Objectives: New Survey Evidence on Policy Design and Effectiveness' (2020) 59 *JCMS* 556.

<sup>10</sup> Ester Herlin-Karnell, 'EU Values and the Shaping of the International Legal Context' in Dimitry Kochenov and Fabian Amtenbrink (eds), *The European Union's Shaping of the International Legal Order* (CUP 2013) 90.

<sup>11</sup> Marise Cremona, 'The Union as a Global Actor: Roles, Models and Identity' (2004) 41 *Common Market Law Review* 553.

<sup>12</sup> Eyal Benvenisti, 'Democracy Captured: The Mega-Regional Agreements and the Future of Global Public Law' (2016) 23 *Constellations* 58.

<sup>13</sup> See Svetlana Yakovleva, 'EU's policy on cross-border data flows: navigating the thin line between liberalizing digital trade, promoting rules-based multilateralism and safeguarding fundamental rights and values' in this volume.

<sup>14</sup> We are grateful to Martin Trybus and Maria Garcia for suggestions on shaping these reflections.

<sup>15</sup> Sophie Meunier and Kalypso Nicolaidis, 'The Geopoliticization of European Trade and Investment Policy' (2019) 57 *JCMS* 103.

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 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 development of the EU as a global actor continues to have multiple facets to it across disciplines.

The shifting anchors of the 'centre' of the world are of significance in the appreciation of the challenges and in the discussion of the 'global' and what it means for the EU to do 'good'. The history of world society from 1492 onwards is the history of consecutive western states acting as institutional anchors of the world economy, enabling global economic exchanges, global reserve currencies, using force to maintain global order.<sup>16</sup> The US no longer dominates the world economy and neither the EU nor China are likely to fill the gap. From trade and investment law to internet law no single global framework in the form of WTO law or UN law will take hold and instead distinctive EU, Chinese and US centric domains of law are predicted to become the norm.<sup>17</sup> The pivots of normative framework reference points are key here: knowing what is 'good' or even 'global' becomes more challenging in increasingly inter-regime domains. Arguably, the deepening of the term global law remains quite apart in its development as a genre.<sup>18</sup> Yet it is also the case that the framework of international economic law and international trade is largely still concerned with questions of wealth and exclusivity, where civil society has a difficult time engaging in a state-centric set of regimes and where gender, poverty and conventionally marginalised interests have had a difficult time integrating into the evolution thereof. There is only a relatively embryonic literature on the injustices generated by global trade in 'mainstream' international economic law and mainstream international law literature.<sup>19</sup> Sometimes the EU is viewed with a certain disdain or distance by such literature, concerned to label it a neoliberalist colonial organisation, irreversibly committed to liberalisation with respect to the scope of Article 207 TFEU.<sup>20</sup> Often, however EU practice is not far from the vanguard of IO developments as this book explores in e.g. climate policies or data policies.

In trade, the new strategy of the European Commission is a clear example of the EU's reaction to other competing poles. It shows how the EU is retooling and updating its trade policy in light of a new state of world affairs and widespread normative concerns. Among other things, there is a strong focus in the review on strategic autonomy, as well as on sustainability and assertiveness.<sup>21</sup> The EU is determined to defend its interests and to ensure the commitments in its trade agreements are abided by its trade partners. In pursuing more assertiveness, it has also found in enforcement a useful device to promote the legitimacy of its trade policy agenda, by presenting it as a tool for trade and sustainable development chapters despite the provisions of the trade agreements suggesting otherwise. The EU 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

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<sup>16</sup> Poul Kjaer, 'What Comes After Neoliberalism? Four Propositions for a New Law of Political Economy beyond Structural Liberalism and Structural Marxism' (*Verfassungsblog*, 31 August 2020) <<https://verfassungsblog.de/what-comes-after-neoliberalism-2/>> accessed 31 January 2022.

<sup>17</sup> *ibid.*

<sup>18</sup> E.g. Neil Walker, *Intimations of Global Law* (CUP 2014).

<sup>19</sup> E.g. Margot Salomon, John Linarelli and Muthucumaraswamy Sornarajah, *The Misery of International Law: Confrontations with Injustice in the Global Economy* (OUP 2018).

<sup>20</sup> E.g. Quinn Slobodian, *Globalists: The End of Empire and the Birth of Neoliberalism* (HUP 2018) 278, citing Ernst-Ulrich Petersmann, 'Legal, Economic and Political Objectives of National and International Competition Policies: Constitutional Functions of WTO "Linking Principles" for Trade and Competition' (1999) 34 *New England Law Review* 153 and Ernst-Ulrich Petersmann, 'From Negative to Positive Integration in the WTO: Time for Mainstreaming Human - Rights into WTO Law' (2000) 37 *Common Market Law Review* 1363.

<sup>21</sup> European Commission, 'Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Trade Policy Review - An Open, Sustainable and Assertive Trade Policy' COM(2021) 66 final.

values and help shape the new global environment, the EU needs to be more assertive and effective'.<sup>22</sup> 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-rank power'.<sup>23</sup>

Numerous stumbling blocks have emerged internally as well. While the Court of Justice has approved a significantly liberalised view of EU competences in its landmark Opinion 2/15 on the EU-Singapore FTA, with the important result of 'hiving-off' investment from future trade agreements, this has not been sufficient to allay concerns of many as to the direction of the deeper trade agenda.<sup>24</sup> Significant forms of soft law, multiple sets of national litigation and countless declarations as to the nature of the agreement have not sufficed to defuse concerns about the allegedly most progressive trade agreement to date. Instead, new fundamental rights such as data rights appear to operate with radical implications for the content of trade agreements and the place of rights therein going forward. All EU trade agreements are different irrespective of the regularisation of EU procedures, even if they largely align to a 'megaregional'-style agenda of deeper trade.<sup>25</sup> Despite an emerging standardised practice of Trade and Sustainable Development chapters, differences in human rights provisions across trade agreements do not go unnoticed when comparing for instance the EU-Japan EPA, or the EU-Singapore FTA, with CETA and the recent EU-UK TCA. Furthermore, in the case of the trade agreement with Vietnam, and unlike its established practice, the Commission failed to conduct a prior human rights impact assessment, subsequently denounced by the Ombudsman.<sup>26</sup>

The new era of the EU's deeper trade (or trade 'and...'), alongside the politicisation and litigation deriving thereof, has seen develop significant commitments to good governance internally *and* externally, beyond trade agreements. The EU's agenda externally in international relations, in particular on trade, has had a palpable effect upon the internal. Internally, impact assessments, consultation, information procedures and transparency practices *ex ante* have pushed the law and practice of external trade much further than any other policy. *Ex post facto*, and despite the living nature of most post-Lisbon EU trade agreements, no similar commitments to good governance seem to apply or exist. Externally, the institutional architecture of trade agreements now includes as of ordinary practice Domestic Advisory Groups and civil society dialogues in the form of joint forums, intended to enhance the participatory dimension of external trade. These bodies however remain consultative in nature and bear little influence on the decision-making processes at the bilateral level. And yet for all of the extensive developments on participation generally, there are also key constituencies that readily get overlooked. For example, the European Parliament (EP) is not part of the institutional landscape of free trade agreements as regards their implementation. In the vast architecture of Joint Committees, Trade Committees, Domestic Advisory Bodies and civil society forums that is found within all post-Lisbon EU trade agreements, the European Parliament has little involvement *ex post facto* and generally few if any decision-making powers, aside from the formal consent to the conclusion of the agreements. This state of affairs calls into question the possibility for the EP to exercise a meaningful control and influence over any decisions that are taken at the joint level at once an agreement is concluded. Significant principles such as those of institutional balance or the autonomy of the EU legal order – if it can be labelled as such – operate with uneven application in this new era, raising the question of whether this would restrain or liberate the EU to pursue good global governance. Much recent litigation involves the CJEU engaging with the many subjects and

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<sup>22</sup> European Council, 'A new strategic agenda 2019-2024 (Press Release)' (2019) <<https://www.consilium.europa.eu/en/press/press-releases/2019/06/20/a-new-strategic-agenda-2019-2024/>> accessed 31 January 2022.

<sup>23</sup> Emmanuel Macron, 'For European renewal (Speech)' (4 March 2019) <<https://www.elysee.fr/emmanuel-macron/2019/03/04/for-european-renewal.en>> accessed 31 January 2022.

<sup>24</sup> See Ewa Zelazna, 'The EU as a Good Global Actor in International Economic Relations: The Role of Parliaments' in this volume.

<sup>25</sup> Kingsbury and others, *Megaregulation Contested: Global Economic Ordering After TPP* (OUP 2019).

<sup>26</sup> European Ombudsman, 'European Ombudsman's Decision on the failure of European Commission to conduct a prior human rights impact assessment of the EU Vietnam free trade agreement (Speech)' (3 March 2016) <<https://www.ombudsman.europa.eu/en/speech/en/64453>> accessed 31 January 2022.

objects of EU law from trade to security, e.g. Sahrawi people in the Western Sahara or Venezuela and their right to participation in EU law and policy.

In data, the EU is ever more explicit about its willingness to lead and set global trade rules on data flows. It wants to assert itself as a “global digital player” by being at the forefront of global standard-setting for emerging technologies, while remaining open to trade and investment. Governments and regulators in many parts of the world are faced with the question of how to unleash the potential of data-driven innovation and harness the economic benefits of digital trade, while preserving the integrity of their domestic regulatory system and achieving public policy objectives, such as privacy and national security.<sup>27</sup> US trade policymakers have typically been quick to label privacy regulations as disguised forms of protectionism, and not legitimate regulation.<sup>28</sup> Is this a trade-off or can the needs of digital trade and of domestic regulators be accommodated at once? A recurring problem for the EU has been how to strike a balance between a “safe EU” and international competitiveness and innovation. Data is one of the most evident cases studies showing the Brussels Effect, yet the EU’s tightening of standards and their imposition to the world raises the question of how far the Brussels Effect can be pushed. Data and privacy regulation are a booming field of law challenging the internationalist standing of the EU, which finds itself having to choose between openness and global projection of its standards. Which trade-offs are acceptable in the choice between protection and multilateralism? While the European Commission has been flexible in its adequacy decisions, ex-post checks by the CJEU have shown less openness to political considerations. The recent judgment by the CJEU against a data equivalence arrangement with the US has widely been regarded as posing new limits to the EU as an internationalist. As wondered by Kuner, is the EU boxing itself in a corner? Is the EU becoming more nationalistic and less of a globalist? Digital trade requires the interoperability of rules that govern “whether, how, when and whose data will be protected as information flows across borders”.<sup>29</sup> Is there scope for international operability of EU law? How can the EU reconcile objectives of trade and data privacy, and of trade and security, in the era of digital trade?

A crucial question we ask then is what normative metrics are useful in the study of the EU as a ‘good’ global actor?

### **On normative metrics of the EU as a global actor**

The book project engages with a broad array of literature on the nature of international relations as a peace-oriented project and debates as to whether international organisations (IOs) can do good. Some suggest *many* international organisations are undemocratic and combinations of immunity and limited jurisdiction entail that their actions are rarely subject to judicial review of any kind, rendering them ‘less good’ or less open to challenge or contestation.<sup>30</sup> It is important to note that the EU has sought to address its legitimacy deficits successively, most acutely in an international context. It is legally bound to engage in good global governance, to promote public international law and comply with the UN Charter. Yet it is difficult to say that the EU meets any model of being a classical actor in international relations as a quasi-state like entity, with circumscribed competences in areas such as borders, asylum and immigration where EU powers are limited and have precluded more far-reaching solidarity and indeed have generated dangerous precedents in e.g. the Mediterranean.

In an era where the EU increasingly attempts to democratise its external relations and to inbuilt better systems of accountability therein, it is difficult to employ the term ‘democracy’ and global actor together. Liberal democracy is in trouble across the world, with the decline of democracy being

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<sup>27</sup> Joshua Meltzer, ‘Governing Digital Trade’ (2019) 18 *World Trade Review* s23.

<sup>28</sup> Susan Aaronson, ‘Why Trade Agreements are not Setting Information Free: The Lost History and Reinvigorated Debate over Cross-Border Data Flows, Human Rights, and National Security’ (2015) 14 *World Trade Review* 671.

<sup>29</sup> *ibid.*

<sup>30</sup> E.g. Jan Klabbers, ‘The Cheshire Cat That Is International Law’ (2020) 31 *European Journal of International Law* 269.

charted it is important to examine the EU's place as a 'good' actor in broader perspective. Many dictatorships today are still integrated in the global capitalist economy and rely on international trade, labour and investment flows. They are not per se autarkic. Where uniform market regulations benefit all, regulatory power is as important for markets as military power and battles over global regulation have been fought originally between the EU and US but will likely involve China more so going forward.<sup>31</sup> There are significant metrics from international law to state that on balance the EU engages in good actions as a global legal actor. Studies of authoritarian regimes and international law indicate that the EU liberally uses international law like many good democratic regimes.<sup>32</sup> The EU is an active practitioner in the global legal order and has presence in many bodies, organisations and institutions. Democratic states are also measured to regularly engage in Treaty-making, aligning with the actions of the EU as an international actor.<sup>33</sup> In fact, evidence suggests that the EU's state-like endeavours, powers and actions contribute towards it being part of the metrics of democratised states vis-a-vis the metrics of authoritarian regimes. On whatever view, there is a dynamic distinctiveness to how the EU acts in the world. As an organisation unlike any other, will it continue to *shape* IO theory on IOs?<sup>34</sup> Does it get sufficient credit in global governance scholarship? Is its contribution meaningful?

Normatively rich and vibrant discussions of the metrics of 'good' cannot lose sight of the 'duller' qualities of bureaucracy that sit underneath the layers of organisational administration, actorship capacity- and impact upon it, perhaps significantly. The EU's capacity for bureaucracy, its stable and long-standing civil service entail that its development is stable and continuous and backed up by the capacity to carry out policies and develop strategies.<sup>35</sup> Some indicate that this is particularly salient in any discussion of Brexit, where coherent bureaucracy kept the EU negotiation lines consistent, coordinated and unified.<sup>36</sup> But did it make the EU negotiation position 'good'? This would appear to be a more intricate question, when considering e.g. the calls for reverse sincere cooperation to be practiced.<sup>37</sup> In other words, organisational practice increasingly matters across subjects and disciplines.

## The critique of the EU as a good global actor

There is a significant capability gap between the EU's legal mandate to be a 'good' global actor and the practice of it. The book project explores the inherent contradictions as part of the EU as a good 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.

## The unwelcome actor

It is now of textbook status to state that the EU conducts its external relations by participating in international institutions, including formal international organisations such as the UN and other institutionalized treaty regimes, where its ambitions and objectives nearly always meet complex legal and political realities or imperfect compromises.<sup>38</sup> For instance, the EU is a party to the UN Convention on the Law of the Sea but is not able to participate in all areas of the UNCLOS institutional system because for the EU to participate it must either amend the constitutive instrument of the organisation

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<sup>31</sup> Bradford (n 1); Tom Ginsburg, 'Authoritarian International Law?' (2020) 114 *American Journal of International Law* 221.

<sup>32</sup> Ginsburg (n 27).

<sup>33</sup> *ibid.*

<sup>34</sup> Jan Klabbers, 'The European Union in the Law of International Organizations: Misfit or Model?' in Ramses Wessel and Jed Odermatt (eds), *Research Handbook on the European Union and International Organizations* (Edward Elgar 2019).

<sup>35</sup> Maria Josepha Debre and Hylke Dijkstra, 'Institutional design for a post-liberal order: why some international organizations live longer than others' (2020) 27 *European Journal of International Relations* 311.

<sup>36</sup> Brigid Laffan, 'The EU's Response to Brexit: Rapid, United and Effective' (*EUI Yves Meny lecture*, 2020) <<https://www.youtube.com/watch?v=hhHXCIOSd0I&feature=youtu.be>> accessed 31 January 2022.

<sup>37</sup> E.g. Joseph HH Weiler, 'The Case for a Kinder, Gentler Brexit' (2017) 15 *International Journal of Constitutional Law* 1.

<sup>38</sup> Cf Ramses A Wessel and Jed Odermatt (eds), *Research Handbook on the European Union and International Organizations* (Edward Elgar 2019).



to join or participate without full membership. Member States are arguably quite obstructive of EU change, development and evolution. Despite exercising significant competences in the fields dealt with by the bodies, the EU is neither a member of the International Maritime Organization (IMO) nor the International Civil Aviation Organisation (ICAO). The EU has joined a number of UN Conventions such as the UN Convention on the Rights of persons with disabilities, UN Convention against Corruption, the UN Convention against Transnational organised crime and the UN Framework Convention on Climate change. The EU has long struggled with the reluctance of some member states to accept the EU advancing its role in the transport sector in particular (IMO, Rhine, Danube Commissions) and it has long faced deadlock in some important UN bodies e.g. UNHCR.<sup>39</sup> While the EU has had a status of enhanced observers in the UNGA since 2011, it has faced difficulties in translating this position into a meaningful role- despite its commitment to multilateralism being in the EU 'DNA'.<sup>40</sup>

### The conflicted actor

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. Yet the EU also regularly engages in simultaneously multilateral proclamations and bilateralism with smaller or weaker partners in trade and a very small number of like-minded significant states. Do its efforts at a WTO Dispute Settlement workaround support this thesis? Is this the contradiction at its core or its Machiavellian strategic direction, 'hingeing' between both bilateralism in practice and multilateralism in rhetoric, advocacy and projection?<sup>41</sup> How does a view on competence affect this analogy? Is trade the apex or the nadir of its bifurcated actorness? The control that the EU wishes to convey over standards as an internationalist, for instance as to data, is highly conditional on cooperation and careful market power delineation. What time span is appropriate for analysis now- and going forward- of the EU and the analyses of its power contestations in its international relations? What are the EU's ambitions and constraints in the post-COVID 19 era? Or could the EU become constrained by a post-globalisation world which tears out its core capacity to facilitate globalisation through openness? Even adherents of the EU and passionate supporters of the EU as an organisation criticize its over-extensive diplomatic and regional ambitions that appear immensely stretched relative to its usefulness.<sup>42</sup> While many are critical of the EU's engagement with human rights,<sup>43</sup> for others the EU even acts 'almost entirely ignoring its own proclaimed principles and values for the sake of short-term political considerations with no greater interests in mind'.<sup>44</sup> The nexus between trade and the promotion of development is a clear example of this, challenging the EU's attainment of 'goodness' in trade.<sup>45</sup> It is a core ambition of this book to show the paradoxes and limitations of the EU as a 'willing-to-be' good actor, by shedding light on the complexities of navigating what the EU is mandated to do, what it says it wants to do relatively to values and other commitments, and what is done in practice.<sup>46</sup>

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<sup>39</sup> Frank Hoffmeister, 'Outsider or Frontrunner? Recent Developments under International and European Law on the Status of the European Union in International Organizations and Treaty Bodies' (2007) 44 *Common Market Law Review* 41.

<sup>40</sup> European External Action Service, *Shared Vision, Common Action: A Stronger Europe – A Global Strategy for the European Union's Foreign and Security Policy* (June 2016).

<sup>41</sup> Bernard Hoekman and others, 'WTO dispute settlement and the appellate body crisis : insider perceptions and members' revealed preferences' (2019) Working Paper, EUI RSCAS, No 2019/95.

<sup>42</sup> Antony Gardner, *Stars with Stripes: The Essential Partnership between the European Union and the United States* (Palgrave 2020); Cf. Kalypto Nicolaidis, 'Braving the Waves? Europe's Constitutional Settlement at Twenty' (2018) 56 *Journal of Common Market Studies* 1614

<sup>43</sup> E.g. Williams (n 6).

<sup>44</sup> Dimitry Kochenov and Fabian Amtenbrink, 'Introduction: the Active Paradigm of the Study of the EU's Place in the World' in Kochenov and Amtenbrink (n 7) 5.

<sup>45</sup> Alasdair Young and John Peterson, '“We care about you, but ...”: the politics of EU trade policy and development' (2013) 26 *Cambridge Review of International Affairs* 497.

<sup>46</sup> See Eva Pander Maat, 'The EU Carbon Border Adjustment Mechanism - merging 'good' global leadership on climate and trade?' in this volume.

## The non-unitary actor

There are also significant gaps in the advancement of the position of EU unity in EU foreign policy which complicates any view of 'good'. From the (non-binding) Global Compact on Migration to the adoption of EU sanctions on Belarus, there are manifold examples of the statements on behalf of the 27 EU Member States or EU positions being blocked, vetoed or thwarted. These pressures give more credence to the pithy views expressed as to state of the reality of the EU as a global legal actor. Moreover, the legal tools of the duty of sincere cooperation or duty of loyalty are the subject of only scant enforcement and highly fluid principles which renders their effectiveness often questionable or more honoured in their breach. There is increasingly caselaw on non-binding documents which accords enhanced powers to executive action which emasculates the institutions e.g. Swiss Association or EU-Turkey. There is also increasing interest on non-binding agreements entered into by the member states and their likelihood of conflict on the margins of perceived competences e.g. Belt and Road Initiative. As some pithily observe, for example, as to China there is no single EU foreign policy, the EU has been the 28th foreign policy in addition to those of each Member State.<sup>47</sup> The EU's reaction time to respond to Belarus with a unified position on sanctions was viewed as critical- an unforgiving metric as to a bloc encumbered by procedures, processes and institutional design to act. Yet, rather significantly, it is also contended that one of the EU's most serious foreign policy crises to date, Brexit, has shown ironically unprecedented unity, cooperation and strength, largely through unified legalisation, bureaucratisation and good administration.<sup>48</sup> Here, the internal perspective (on internal EU law) puts an external relations matter into a very different perspective. Europe unveiled its landmark Green Deal and Data Strategies at the cusp of unfathomable crisis as landmark unitary global actions. The control that the EU wishes to convey over standards as an internationalist e.g. as to data, 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?

## The themes and organisation of the book

We advance a research agenda for the study of the EU as a 'good' global actor using four themes, reflected in the sections of the book: 1) The complexities of the EU as a global actor in trade, to develop the global dimensions of EU actorness in a multipolar world, 2) Good trade governance, to examine the evolving external agenda of EU trade at the intersection with new emerging 'trade and' issues, 3) Good data governance, in order to develop how the EU has evolved some of the highest global standards on individual privacy that it now increasingly has to integrate with difficulty into its trade and other policy frameworks, 4) The institutional dimension of the EU as a global actor in trade, to study the role of EU institutions in shaping EU 'good' global actorness.

Section 1 – The complexities of the EU as a global trade actor

Section 2 – On 'good' trade governance: emerging values and complexities of a deeper trade agenda

Section 3 – On 'good' data governance: emerging ambitions and complexities in digital trade

Section 4 – The EU institutional dimension of 'good' global actorness

Section 1 of the book addresses some of the complexities and external pressures facing the EU as a global actor in trade. From comparative and international relations perspectives, the chapters in this section contextualise the EU's external action within the wider international system, where the EU represents only one of the alternative models of regulation and governance. The authors discuss how the EU's global actorness in trade manifests itself and the contestation and pushbacks to it. An

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<sup>47</sup> Steven Erlanger, 'E.U. Failure to Impose Sanctions on Belarus Lays Bare Its Weakness' *New York Times* (24 September 2020) <<https://www.nytimes.com/2020/09/24/world/europe/europe-sanctions-belarus-cyprus.html>> accessed 31 January 2022.

<sup>48</sup> Laffan (n 32).

important premise of Section 1 is that the EU's internal dimension – its laws, ambitions, values and interests – has a bearing on the external dimension. Yet because the EU is not an isolated actor, impervious to crises and competing systems, this section also sheds light on some of the inherent struggle of the EU with maintaining coherence when moving from the internal to the external dimension. Together, these overarching perspectives on the EU as a global actor in trade provide the foundations for the following sections, which focus on sectoral thematic issues.

Section 1 begins with an overview by Garcia Bercero and Nicolaïdis. Their chapter *'Brussels Calling: The paradoxes of power and the trade/regulatory nexus'* offers a typology of forms of external EU regulatory impact. It warns against the risks of either underusing or overusing the regulatory power surplus, and discusses the 'good global governance' model implied by a principled geopolitical role. The chapter provides six specific suggestions for how the EU can best exercise its regulatory power.

Garcia, in *'Leverage in Trade Agreements and Linkages – Challenges to the Trade and rights linkages'*, argues that the relative erosion of EU market power, the approach of other powers, and the time-pressures in recent years to appear as a defender of the international rules-based order, have pushed the EU into the ironic position of accepting some dilution of its preferred values to sign timely agreements that overall support the rules-based trading.

Melo Araujo, *'Market Power Europe? Exporting EU disciplines on domestic services regulations through trade agreements'* examines the EU's attempts to use deep and comprehensive free trade agreements to develop disciplines on domestic regulations on services. The chapter argues that the EU's current approach to negotiating disciplines on domestic regulation on services contributes to the EU as a Market Power Europe.

Velut, in *'Environmental allies and trade competitors: a comparative analysis of US and EU governance models for trade and climate action'* compares the EU and US approaches to the trade-environment linkage, with a focus on climate action. The chapter dissects the European and American governance models to trade and climate action, outlining the different policy instruments used by each trading power and their influence on global environmental governance.

Section 2 reflects upon the emerging ambitions and values of a deeper trade agenda under the heading of 'Good' Trade Governance.

The first chapter *'The Role of Values in EU External Relations: A Legal Assessment of the EU as a Good Global Actor'* by Wessel and Kaspiarovich provides the foundations for the following chapters by mapping and examining the values that underpin the EU's action in the world. The chapter provides a comprehensive assessment of the extent to which the values in Article 2 TEU are part of key instruments in EU external relations and contribute to the EU's good global actorness.

Trybus, in *'The EU acting through Free Trade Agreements: The case of sustainability and public procurement'*, examines the role of EU FTAs in the promotion of sustainability by focusing on public procurement. The chapter asks whether current FTAs can be classified as instruments of EU external action to further non-economic social and environmental considerations through public procurement.

Novitz in *'The role of the EU in making 'sustainable' labour linkages in contemporary trade: is being 'assertive' also 'good'?'* questions the preconditions for ethical conduct in the EU's exercise of its market and normative power. Focusing on the EU-Korea Expert Panel findings, it argues that the EU's approach has been more conducive to their protection than might have been anticipated, thus offering the basis to regard the EU as a 'good' rather than merely an 'assertive' actor.

Pander Maat, *'The Carbon Border Adjustment Mechanism and the challenge of being a 'good' climate and trade actor'*, unveils some of the complexities of being a 'good' global climate actor, and a 'good' climate and trade actor. Taking as a case study the CBAM, the chapter argues that the EU would have to foster mutual understanding not only between the legal orders on climate and trade, but also between EU law and international law.

Gammage, *'Empowering Women in Trade: How Gender Responsive are the EU's Trade Agreements?'*, critically assess the gender responsiveness of the EU's external trade policies. It argues that, even though the EU's modernised agreements exhibit evolving and advanced gender responsiveness, the transformative potential of the EU's gender responsive trade policy will be limited until the challenges associated with measuring the impacts of trade on gender can be overcome.

Section 3, on 'Good Data Governance', turns to the ambitions and values that the EU seeks to pursue in the regulation and governance of data flows as a global actor in data.

Polakiewicz in *'The Emperor's New Clothes – Data Privacy and Cybersecurity from a European Perspective'* examines the EU's involvement in the Council of Europe's standard-setting activities on cybersecurity and privacy. The chapter argues that, while the EU has been a driving force in multilateral negotiations under the auspices of the Council of Europe, it has also raised several complex legal issues resulting from the coexistence of supranational EU and international law.

Yakovleva in *'EU's policy on cross-border data flows: navigating the thin line between liberalizing digital trade, promoting rules-based multilateralism and safeguarding fundamental rights and values'* presents some of the limitations of the EU's approach to cross-border data flows. By comparing it with that of the US and China, the chapter shows the degree of regulatory autonomy these jurisdictions are willing to give up in order to promote cross-border data flows is actually much more similar than is often assumed.

Chen and Gao in *'Comparing the EU's and China's approaches in digital governance: on power and regulatory capture'* shed light on the synergies and divergence between the EU's and China's approaches to digital governance, as a way to evaluate the EU's vision of 'good' global actorness in digital governance by comparison to other actors' approaches. The chapter provides suggestions for how the EU may draw lessons from the competing models in the definition of its role as a good actor in digital governance.

Section 4 focuses on the institutional dimension of the EU's global actorness in trade, asking *inter alia* how the EU institutions contribute to the EU's normative ambitions in its external relations.

Weiss in *'Democratisation of Good Global Governance: The EU's Role in the Parliamentarisation of Trade Policy'* argues that, against a backdrop of increased politicisation of trade, the innovations in EU parliamentarism in trade policy and in other legitimacy dimensions, such as transparency, output legitimacy and public participation, foster the democratic accountability of EU external relations and make the EU a good global actor to the benefit of democratisation of global trade governance.

Żelazna in *'The EU as a Good Global Actor in International Economic Relations: The Role of Parliaments'* examines the parliaments' contribution to the EU's normative role in trade. The chapter focuses on the European Parliament's role in the definition of EU trade policy strategic objectives and in the implementation of the EU's trade agreements. It also considers the role of national parliaments in ensuring democratic legitimacy of EU trade and investment policy.

Kassoti and Butler in *'The Approach of the Court of Justice of the European Union to International Law: Towards a Context-Specific Approach'* address the question of the role of the EU institutions in EU good global actorness by advancing new lens to look at the Court's approach to public international law in its jurisprudence. They argue that recent judgments of the Court attest to the need to move beyond the classic, binary of 'openness/hostility' prism.

Kübek, *'Sustainability and Dispute Settlement under EU FTAs: Lessons Learned from Ukraine – Wood Products and Korea – Labour Rights'* looks at the EU as a 'good' global litigator, by examining how the TSD Chapters in EU FTAs may impact the outcome of disputes. It argues that, in order to become a more assertive normative trade actor, the EU should design and enforce the relationship between TSD chapter and market access commitments more clearly and consistently under its FTAs.

We hope that the reader enjoys this contribution to this vibrant future research agenda.