

# ACADEMIC SEMINAR: “THE EU’S GEOPO- LITICAL AUTONOMY & CITIZENS’ RIGHTS”

18<sup>TH</sup> November 2022 15:00-18:30 (online event)

## Contents

Executive Summary.....	2
Overview.....	2
Panel 1 Contributors.....	2
Panel Two Contributors.....	3
Context and Opening of the Seminar.....	3
Panel 1 Introduction.....	4
Professor Karen E. Smith (London School of Economics and Political Science).....	4
Traditional Pushback against Human Rights.....	4
New EU Challenges in the Geopolitical Situation.....	5
Associate Professor Alex Dukalskis, School of Politics and International Relations, University College Dublin.....	6
Overview of the Global Human Rights System.....	6
Rise of Authoritarian Powers.....	6
The Norms that China Frustrates and How they Achieve this.....	6
Professor Andrew Cottey, Department of Government and Politics, University College Cork.....	8
Historical Evolution of Human Rights Issues.....	8
Failed EU Attempts at Engaging with China on Human Rights.....	8
The EU’s Era of Realism.....	8
Panel 1: Discussions and Questions.....	9
Relevance of normative standards, sanctions and the role of citizens in Human Rights Policies.....	9
Use the tool of ‘Normative Standing’.....	9
‘Protect Democracy At All Costs’.....	9
The Need to ‘Find a Middle Ground’.....	10
Panel 2 Introduction.....	11
Dr. Isabella Mancini, Brunel University, London.....	11
International Co-Operation.....	11
Trade Liberalisation.....	11
International Law.....	11
Dr. Gesa Kübek, University of Groningen.....	12
The EU’s Multilateral Approach.....	12
Bilateral Approach.....	12
The EU’s Unilateral Approach.....	12
Dr. Luigi Lonardo.....	13
The Positive and Negative Framing of Autonomy.....	14
In Favour and Against EU Autonomy.....	14
Panel 2: Discussions and Questions.....	15
EU’s Compliance with International Law: Fundamental or Forced?.....	15
Hierarchy of Fundamental Values and Rights?.....	15
Justified Neglect of Human Rights at the expense of Strategic Autonomy?.....	16
The Value of Comparing Strategic Autonomy and Legal Autonomy?.....	16
What Role Can the law play?.....	16
Concluding Remarks.....	17

## Executive Summary

### Overview

This seminar was co-organised and co-chaired by Professor Andrew Cottey and Dr. Luigi Lonardo, of the Jean Monnet Centre of Excellence: EU Integration and Citizens' Rights at University College Cork. This seminar focused on the European Union's role in global rights in the context of the rapidly shifting international political environment of the 2020s. It addressed issues such as the place of human rights in EU Foreign Policy, the rights of (and in) authoritarian states, such as China and Russia, and the widening global rights agenda.

This seminar was comprised of two panels, the first of which focused on the EU and Global Human Rights. This included contributions from three speakers: Professor Karen E. Smith, Department of International Relations, LSE; Associate Professor Alex Dukalskis, School of Politics and International Relations, UCD; and Professor Andrew Cottey, Department of Government and Politics, UCC.

The second panel focused on trade and the economic dimensions of the EU, and whether EU trade and investment agreements protect or hinder citizens' rights. This included contributions from Dr. Isabella Mancini, School of Law, Brunel University; Dr. Gesa Kübek, Faculty of Law, University of Groningen; and Dr. Luigi Lonardo, School of Law, UCC.

### Panel 1 Contributors



Professor Karen E. Smith presented her work on her core areas of expertise, which include the EU and the global rights regimes and in particular, the UN Human Rights Council. She focused on a key question, which is how the EU is navigating its support for a human rights regime and the geopolitical conflict occurring presently.

The second contributor to the first panel was Associate Professor Alex Dukalskis, who provided an overview of the global human rights systems, rise of human rights powers and the results from a study he recently conducted.



The final contributor to the first panel was Professor Andrew Cottey, who delivered a presentation entitled: 'The EU, China, and Human Rights: Old and New Agendas'. This draws from his experience, research, and his books. His presentation focused on EU Policy, new agendas and the old agendas that have not gone away in the evolution of human rights issues in EU-China relations.

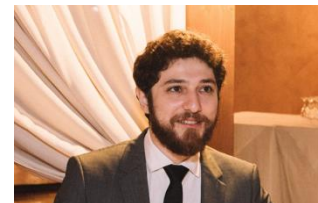
## Panel Two Contributors

The first speaker of the second panel was Dr. Isabella Mancini, who presented her work with Dr. Gesa Kübek, focusing on strategic and open autonomy. Dr. Mancini focused on the constitutional parameters of openness in EU external trade and the evolution of strategic autonomy throughout the years.



Dr. Gesa Kübek then focused on her work with Dr. Mancini, in the sphere of strategic and open autonomy. Dr. Kübek highlighted what the EU has been doing at an international, multilateral, and bilateral level, and the subsequent geopolitical tensions ensuing. She also looked at the effects of this in practice and how there is a rise towards unilateralism in the present day.

The final speaker of the second panel was Dr. Luigi Lonardo, who framed his presentation by focusing on strategic and legal autonomy in both a positive and a negative fashion. The contrasting viewpoints offer different perspectives of how the EU works in practice and whether it protects human rights. He considered whether the legal principle of autonomy protects strategic autonomy as an essential characteristic.



## Context and Opening of the Seminar

Professor Dagmar Schiek (Principal Investigator of the Jean Monnet Centre of Excellence: EU Integration and Citizens' Rights – JMCE EUICR) opened the seminar. This was the first event of Work Package 4 of the project, and the main theme of this seminar involved looking at the global role of the EU. She notes how the global role of the EU is often investigated from an institutional aspect rather than examining the EU's ability to engage with citizens. By contrast, the research question of JMCE EUICR asks whether and how citizens' activation of EU-derived rights may initiate citizens' engagement with each other and the EU, and thus enhance the EU's substantive legitimacy. Through Work Package 4, JMCE EUICR addresses the question in how far this connects to or how this plays out in the EU's external policy. This is the most challenging aspect of JMCE EUICR, because in relation to external policy EU-derived rights typically lack direct effect, in particular for citizens in the states with which the EU engages externally. She stressed how she was looking forward to learning how the researchers assembled on the panel could contribute to addressing this challenge.

Professor Andrew Cottey provided context for the seminar as a whole and the work package underpinning it. Broadly, this seminar dealt with the EU and the global rights agenda, and subsequent issues surrounding this. Professor Cottey noted how there has been a shift in perspective over the course of the last two to three decades; where formerly, in the 1990s/2000s, the legal and political perspective was at the height of liberal international order, where the International Criminal Court

and the World Trade Organisation were increasingly powerful in their impact on political, economic and social rights. This is contrasted with the present-day perspective on the European Union and the human rights agenda, now presented with a different global situation; one that involves the rise of authoritarian states, such as Russia and China, and where these states have become increasingly authoritarian domestically and are asserting greater influence in international institutions, such as the United Nations.

He also noted the changing agendas surrounding trade, economics and strategic autonomy, with questions about deglobalisation and resilience, and (potential) dismantlement of economic ties that were developed in the 1990s and 2000s.

He also identified a third area of focus, which is the set of rights agendas in new areas, such as the digital and information rights agenda, and the role the EU has in protecting such rights. Other new areas of rights include environmental rights, such as in relation to climate change. There has been a seismic shift in the global rights agenda over the last 10-15 years, and this has large implications for the EU and how the EU engages with rights in different areas.

## Panel 1 Introduction

Dr. Luigi Lonardo chaired the first panel of the day, which addressed the changing global rights agenda from a political perspective. He introduced the first speaker of the day, Professor Karen E. Smith, Department of International Relations, LSE. She has explored the concept of foreign policy and how the EU promotes democracy and human rights abroad in her research throughout the years.

### Professor Karen E. Smith (London School of Economics and Political Science)

The first contributor to this seminar was Professor Karen E. Smith, of the London School of Economics and Political Science, who presented her work entitled 'EU Foreign Policy and Human Rights'. Her presentation focused on a core question, which was how the EU is navigating between its declared strong support for a robust human rights regime and the challenges it faces with the current geopolitical conflict. Her presentation had three main parts; addressing the geopolitical competition evident in politics of international human rights now; the challenges the EU faces in achieving unity; and finally, how the EU might situate itself to better promote rights in the UN Human Rights Council.

### Traditional Pushback against Human Rights

Addressing her first point, Professor Smith noted that international human rights has always been contentious, and this is evident from the 'pushback' exhibited at the United Nations Human Rights Council, where there are consistent attempts from authoritarian states to be more respectful of sovereignty and traditional values, which often include anti-feminist, anti-gender agendas. This pushback against human rights can be seen at both an internal and external level, whereby authoritarian states such as China and Russia are using international human rights institutions to legitimise such agendas, but also on an internal level, in states where right-wing conservative parties in government share the same views. Russia, for example, was a leading state promoting such traditional views, but were subsequently removed from the UN Human Rights Council after their invasion of Ukraine.

Professor Smith noted that for the first decade of the UN Human Rights Council's existence, there was a 'group vs group' dynamic on issues, which essentially became a struggle of the 'west vs. the rest' with the west being the European Union. The problem with this group dynamic was that the European Union agendas were being outvoted, as other groups were dominating. Now, however, there is a new geopolitical landscape beyond the group v. group dynamic, and this is the conflict between the larger authoritarian states also.

She noted that there is also growing polarisation in opinions on human rights in our political landscape. This polarisation is clear in two ways. Firstly, P5 Members of the UN Security Council rarely get investigated for human rights concerns/violations in their own states, as they are so powerful. This can be seen when in 2022, the UN Office of the High Commissioner for Human Rights released an assessment of the human rights concerns in Xinjiang, China, following complaints from Western states. However, ultimately, a decision to debate this matter was voted against, with China's power influencing even traditional Muslim countries such as Pakistan and Indonesia to vote against this. This shows the geopolitical tension and power that such Authoritarian states are exerting presently in conflict with Western and European states. Furthermore, the polarisation can be seen even after the first time a P5 member was subject to a human rights resolution, when 26 out of the 27 EU States tabled a resolution to investigate Russia. China, a clear authoritarian power, responded badly to this resolution.

Professor Smith noted that the pushback against human rights can be seen in other areas and is particularly prevalent in the sphere of gender equality. Terms such as 'gender' and 'identity' are often debated against in the UN Human Rights Council, with authoritarian states promoting traditional, conservative views.

### New EU Challenges in the Geopolitical Situation

Leading into her second point of her presentation, Professor Smith focused on the challenges the EU faces to this new geopolitical situation. She noted that the European Union are not in unity on several human rights issues, and this split causes problems, as the pushback against human rights agendas is not only external from authoritarian powers but is also internal with schisms in the European Union itself. She provided an example of this, examining the fact that Hungary has traditional views on gender identity and sexual orientation, even abstaining from a vote tabled on gender identity, as they wished to define marriage and family in accordance with their conservative national legislation.

The EU faces more challenges with such split opinions on certain human rights agendas, with some states having 'given up' on the EU, as they feel it is too conservative. This can be seen in the representations made from the 5 Nordic States and the 3 Baltic States (NB8) who have spoken on behalf of themselves almost as much as the EU (an institution representing over 3 times the number of states) on behalf of itself. This here shows that the internal challenges faced by the EU are fronted by a consensus that the EU is underdelivering and not representing the states of the European Union as much as they could or should.

Despite these internal and external challenges to addressing human rights agendas, Professor Smith provided us with her final remarks, and noted that the EU still can take action. She admitted that the EU will most certainly struggle in the new geopolitics of human rights and the legitimacy of the human rights regime could be undermined as the EU is caught between the great powers. However,

the EU could engage more with issues of global importance, such as climate change and racism, and they could reach out to other regions for support.

Associate Professor Alex Dukalskis, School of Politics and International Relations, University College Dublin

Associate Professor Dukalskis then began his presentation entitled 'Authoritarian Powers and Global Human Rights'. His presentation focused mainly on China, and how it frustrates human rights norms to pursue and protect their own agenda. Professor Dukalskis structured his presentation in four main parts; firstly, he provided an overview of the global human rights system; he then highlighted the rise of authoritarian great powers; he discussed results of a study he conducted on China and the United Nations Human Rights Council and finished with his concluding remarks.

### Overview of the Global Human Rights System

In his first point, Associate Professor Dukalskis demonstrated how the global human rights system is built around norms, which are traditionally not binding. In the second half of the twentieth century, many such norms were adopted into domestic legislation and supported by states. Although some of these norms did have a positive impact, such as women's anti-discrimination norms ultimately resulting in more rights for women, most of the literature has shown that incorporation or adoption of human rights norms does not lead to any meaningful change, as ratifying a treaty does not necessarily ensure that a state will comply. The result of this is that the ratification of such treaties can often blunt the effects in which they were designed to have, an instead, it enables authoritarian states to go even further, and promote their own norms.

### Rise of Authoritarian Powers

Professor Dukalskis used this to lead into his second point, which was the subsequent rise of authoritarian powers in recent years. Reporting on a study in progress, he showed how global economic power has shifted in the last thirty years, with more power now held by those states which are less democratic. This rise in autocracy is a challenge to the European Union when attempting to advance human rights agendas as authoritarian leaders often find democracy and human rights threatening, and in turn, criticise and challenge the architecture of human rights regimes. Authoritarian states often argue that states/regions such as the EU who promote human rights are hypocritical, and authoritarian states respond to human rights advocacy with a strong conception of state sovereignty.

In his third point, Professor Dukalskis presented a critical analysis of the world's most powerful non-democratic state, China, who is also an active member of the United Nations Human Rights Council. He answered two main questions in regard to China's authoritarian behaviour; the first one focused on what norms China frustrates in the United Nations Human Rights Council; and secondly he addressed how China frustrates these norms.

### The Norms that China Frustrates and How they Achieve this

In answer to the first question that Professor Dukalskis posed about the norms that China frustrates in the Human Rights Council, he provided four main norms that China seems to frustrate. Firstly, China's own human rights record is kept off the agenda. The most notable one is the 2022 Xingjiang resolution investigating suspected human rights violations in China, however, this was ultimately not voted for, and China avoided any investigation. The result of this meant that China was prevented from being scrutinised and there was no accountability towards this authoritarian state. Secondly,



Professor Dukalskis' research showed that China generally votes against or abstains from votes to protect human rights for specific countries. This approach represents a clear authoritarian tenet which is to promote and protect sovereignty at all costs. Thirdly, the trend that has emerged in recent years has shown that China prefers to advance rights concerning development rather than an exclusive human rights agenda. This approach once again is not surprising for a great authoritative power, as focusing on state development reduces focus on individual rights and gives the state primary control. Finally, China also abstains on many liberal, democratic issues, such as gender identity or orientation, meaning that traditional values are the focus for China, rather than any rejection of longstanding conservative views.

Professor Dukalskis then addressed his second question, which dealt with how China frustrated these norms in practice. He identified four clear ways in which this is achieved, but many of these methods tend to interlink and overlap. Firstly, China frustrates such democratic and liberal norms by mobilising like-minded states and amplifying support from them. These states are usually democratic, developing countries. This can be best exhibited in the proposed Xingjian resolution, which was not supported by 37 countries in the Human Rights Council. The data showed that most of the signatories of this letter opposing such an investigation included the world's most non-democratic countries. The result of this tactic employed by China, which involved grouping together with like-minded states meant that China's suspected human rights violations were kept out of the agenda and China remained out of the spotlight. Secondly, and closely linked to the first tactic that China used, includes implied coercion used to ensure that Council Members vote in certain ways. This coercion can include physical intimidation and threats but can be most seen in the trade space, with threats to future trading relations and agreements with China. Thirdly, China employed tactical deception to keep human rights off the agenda, by engaging with internal procedures within the Human Rights Council that are traditionally regarded as impartial and democratic. One such example of this can be seen through the Human Rights Council allowing NGO's the option to comment in the Council and on resolutions. The reason behind this is that NGO's are usually independent. China uses this method as a vehicle to push back against human rights through China's Society for Human Rights Studies NGO engaging with the Council. This 'NGO' has a questionable reputation for being 'independent', since its leaders are mostly former political leaders in China, and the websites and publications of this so-called 'NGO' do not criticise any Chinese human rights. Finally, China also engages frequently in repression to silence critics and ensure that human rights concerns are not voiced. This is most easily done through preventing domestic critics of China from leaving the country, meaning there is no opportunity for such concerns to be heard at the Human Rights Council.

Professor Dukalskis then provided two concluding remarks from his findings. The two main takeaways from his presentation were that the rise of China as an authoritarian state illustrates how the pushback and rejection of human rights agendas is in fact going to become more prevalent and not less prevalent in the future. Secondly, events such as the invasion of Ukraine and China sanctioning human rights research should be seen as a stark reminder to the EU that these authoritarian powers are a great threat today and are a challenge that the EU will face when trying to globally promote human rights and subsequent protections.

Professor Andrew Cottey, Department of Government and Politics, University College Cork

Professor Cottey was the final speaker of the first panel, and made a presentation entitled 'The EU, China, and Human Rights: Old and New Agendas'. His presentation focused on the historical evolution of human rights issues, how the EU has engaged with China on human rights, and the current period of 'realism' that the EU faces with China.

### Historical Evolution of Human Rights Issues

Professor Cottey began his first point framing the historical evolution of human rights issues in EU-China relations, of which there were four eras. EU foreign policy has developed over time and wasn't always as pertinent as it is today. Initially, during the Cold War, EU Foreign Policy and connected human rights dimensions were embryonic and under-developed. After the Tiananmen Square massacre, the EU and other countries imposed sanctions on China. However, these sanctions were lifted by the mid-90s. In the mid-90s, the EU engaged with China and developed a strategic partnership, focusing on trade, economics, and even human rights, in some instances. However, from the mid-2010s onwards, there was a more hard-headed EU policy towards China, and China was seen as both a co-operation partner and an economic competitor. A challenge for the EU in this new era is striking the balance between these elements and managing this new situation.

### Failed EU Attempts at Engaging with China on Human Rights

Professor Cottey argued that there have been attempts from the EU to engage with China on human rights. This attempt by the EU to change China's behaviour, with hindsight, might be deemed to be delusional rather than successful. The EU engaged with China by firstly expanding their economic ties with China through trade and investment. Although this method did not primarily aim to promote human rights, human rights still featured in such agreements- a strategy of 'change through trade' (to borrow from the German phrase "Wandel durch Handel"). However, Professor Cottey noted that human rights endeavours were not a direct or even indirect goal of such trading expansions and were instead a post-hoc rationalisation from the European Union; to 'promote' human rights. The EU employed other techniques to protect human rights through quiet diplomacy with China, with the aim of raising both generic issues and specific human rights cases. The success of this is questionable though. Finally, the EU engaged in an EU-China Human Rights Dialogue, whereby China was willing to formally discuss and engage with the EU on human rights issues.

Despite these efforts by the EU, Professor Cottey argued that EU policy has clearly failed: the human rights engagement that the EU conducted with China has not changed or improved human rights in China, there is little to no evidence that the Human Rights Dialogue led to any change, and furthermore, from a political standpoint, the situation has gotten worse, as China has since become increasingly authoritarian.

### The EU's Era of Realism

Professor Cottey then moved onto the third point of his presentation, stressing how the EU has now entered a period of 'realism' with China, and there are now new developments in the conduct between the EU and China, and the political landscape underpinning them. The human rights situation has deteriorated in China, and subsequently, the EU has applied new sanctions. However, the sanctions are limited in scope and scale, so the actual effects on China are limited. A further factor is that China is now willing to fight back, and for the first time has issued countersanctions towards the EU.



China is also externalising its authoritarianism by exporting its model to other states. This can be seen whereby Chinese embassies repress political opponents of China in other countries, such as the UK and Canada.

In his concluding remarks, Professor Cottey remarked that the EU has embarked on a long journey that began with naivety but has now shifted to realism. The hopes of the EU to influence China's human rights behaviour quietly and co-operatively have categorically failed. The EU not only has to face these realisations but must begin a new era of balancing and prioritising, which includes the dilemma of whether the EU believes trade and economics can trump human rights and realism, because looking into the future with China, both will not co-exist in harmony.

### Panel 1: Discussions and Questions

After the speakers from Panel One had finished presenting, there was then an opportunity for further discussion and questions from the participants and other contributors.

*Relevance of normative standards, sanctions and the role of citizens in Human Rights Policies*  
Dr. Luigi Lonardo firstly posed a question about human rights being normative standards of behaviour. He asked how the EU/its citizens activate these standards. In this time of geopolitical competition, should the EU rely heavily, or at all, on rights or laws. Dr. Lonardo then posed a further discussion point, focused on the impact of the EU human rights sanctions regime, as it has a direct impact on individuals.

Professor Dagmar Schiek posed a question which reiterates the whole core tenet of the Jean Monnet project in UCC, which is about citizens; whether they have any role regarding human rights policies, and if so, what could this role be?

#### Use the tool of 'Normative Standing'

Professor Smith was first to provide insight and answers to such questions. She noted that authoritarian states and their dictators have shut down many areas of society and civil society is repressed as a result. This makes it more difficult for the EU to have an external impact, however, she provided hope for the EU, as the tool the EU should choose is normative standing. She said the EU should be more forthright about their past and admit to the weaknesses of both Europe and the European Union. She said that many people desire to live in the European Union because it is perceived that there are more rights there, and the European Union should use this to their advantage.

She focused on the missed opportunity for the EU to use this normative approach, when looking at the Russian invasion of Ukraine. She noted that the EU made a mistake when they labelled this invasion in the context of it being a 'European Security Matter' and instead should have vocalised that this invasion is the result of an authoritative state who takes advantage and is not stopped. The EU cannot intervene in traditional ways, such as funding NGOs, as these authoritarian states block many channels of communication or exposure of human rights violations, so the normative approach is something the EU needs to keenly foster.

#### 'Protect Democracy At All Costs'

Associate Professor Alex Dukalskis then offered his perspective to the questions posed. In response to Dr. Lonardo's query about how citizens can activate the standards of human rights behaviour, Professor Dukalskis stressed the need to protect democracy at all costs, as this is intrinsically

connected to human rights. He then gave three key areas that we need to focus on. Firstly, there should be a focus on protecting dissidents from authoritarian states. There needs to be an understanding and acknowledgement of the fact that authoritarian states often go beyond their borders to repress their people, but their human rights can be protected if citizens, including citizens of the EU, help them. However, Professor Smith warned that this would have to be done implicitly, rather than citizens explicitly declaring support of such citizens. Secondly, there is a need to mitigate our vulnerabilities to protect human rights. He provided the example of the Russian gas issues facing people today, and how often such vulnerabilities can be connected to politics. Finally, he stressed the need to have independent expertise on such issues, as this will promote and foster public conversation on human rights.

In response to Professor Schiek's query as to what role, if any, citizens have regarding human rights policies, he noted that there is a role for public opinion in the sphere of human rights. Events such as the Russian invasion of Ukraine has increased scepticism of authoritarian states and has reawakened public opinion. Moreover, citizens can support people from such states who are in exile, which can protect their human rights.

#### The Need to 'Find a Middle Ground'

Professor Andrew Cottey then addressed the question posed in turn. He noted three main points to be aware of. Firstly, he said that the role the EU/citizens can play is to shift the focus. In recent years, there has been a lot of focus on purely authoritarian states, where it is hard for citizens to make a meaningful impact. However, he noted that there is a 'middle ground' of states that need more attention, and this includes states which are democratising and are recently democratised. He hoped that citizens can exert more influence to promote human rights in these countries than in authoritarian states, and that this can lead to positive change.

Secondly, he echoed the remarks from Professor Smith's presentation, that authoritarian states such as China have learned from their previous mistakes, meaning they will often take different approaches to secure their power, which includes brute repression where necessary. Finally, Professor Cottey noted that although sanctions have an important normative point, in reality, they can often be an ineffective and blunt instrument, as sanctions do not usually lead to any meaningful improvement in human rights. Professor Smith added to this contribution, noting that the EU should refrain from positively engaging with such authoritarian states, and to 'not give them anything' by refusing to trade with them. She warned that the EU are sometimes naively generous towards authoritarian states and that this can have a negative impact.

With regard to citizen engagement and its impact on human rights, Professor Cottey noted that initiatives such as the EU-China dialogue was aimed at including citizens' engagement and input, however due to the fact that some 'civil' organisations in China are government approved groups, this means that the goal of engagement was therefore compromised and independent engagement was not realised as well as it could have been.

Dr. Lonardo argued that engagement with citizens who support authoritarian states is necessary, to understand their viewpoints.

## Panel 2 Introduction

Professor Andrew Cottey chaired the second panel of the seminar, which focused on the economic and trade dimensions of rights in EU Foreign Policy and EU agreements with third parties. This panel had contributions from Dr. Isabella Mancini, Brunel Law School, who focused on her work which was co-authored by Dr. Gesa Kübek, University of Groningen. The final speaker was Dr. Luigi Lonardo, who closed the seminar with his views on EU Foreign Policy and its relationship with autonomy.

[Dr. Isabella Mancini, Brunel University, London.](#)

The first speaker of the second panel was Dr. Isabella Mancini, who made a presentation entitled 'EU Trade Policy between constitutional openness and strategic autonomy'. She noted that strategic autonomy has become something of a 'buzz word' in recent years and has gained a lot of traction as a result of geopolitical tension. It has been recently used to stress the capacity of the EU to act autonomously, without ceasing co-operation with other countries. However, Dr. Mancini argued that in recent years, strategic autonomy has mutated and now often includes the qualifier 'open' preceding the term. Her presentation focused on the analytical utility of the newly termed 'open strategic autonomy' from both a legal perspective in external relations, and the instruments that the EU have recently adopted in their treaties.

In opening her main argument, Dr. Mancini highlighted that the concept of 'openness' is not expressly mentioned in the treaty, and this lends an investigation as to the value of openness in external trade that the EU should pursue. In her research, Dr. Mancini concluded that the treaty provisions reflect the concept of openness in three distinct categories: trade liberalisation, international co-operation and the observance of international law.

### International Co-Operation

Openness can be analysed in international co-operation with reference to Article 21 TFEU for example, which emphasises the importance of multilateral co-operation, which suggests the idea of openness. However, while openness and multilateralism are a preference, there are caveats to this, and can be interpreted simply from the fact that unilateralism by nature is not banned in the treaties. The result of this means that the EU Treaties leaves a broad discretion for the EU to defect from their constitutional commitment to multilateralism. This means that openness may not be endorsed or incorporated fully into the EU's agenda.

### Trade Liberalisation

The second area where openness can be analysed lies within the sphere of trade liberalisation. Although the preference for trade liberalisation is rooted in the EU treaties, this is not absolute. For example, Article 206 TFEU does not call for swift trade liberalisation, but instead talks about the progressive removal of barriers to trade. Moreover, the compromising aspects of openness can be seen in the fact that the EU does not ban protectionism. This is clearly running counter to the goal of trade liberalisation, and in practice, this level of wide discretion results in the EU choosing protectionist measures, which conflict with the goal of an 'open' strategic autonomy.

### International Law

Finally, openness can be analysed in the context of the observance of international law. Both article 3(5) TEU and Article 21 TEU provide a constitutional mandate for the EU to be open to international law and to comply with international law. However, despite this, such compliance can be trumped

by other constitutional principles and objectives. Although international law is rarely breached by the EU in practice, there are some examples of this occurring, such as situations whereby complying with international regimes would mean that fundamental values and core beliefs of the EU are at stake. Overall though, it seems that openness is mandated more strictly in this sphere, compared to trade liberalisation and international co-operation, as treaty provisions such as Article 216 TFEU sets out clear obligations to comply with international agreements, meaning that more closed off, anti-open agendas and deviations are not usually permitted.

Overall, Dr. Mancini stressed the point that there is value to the modern day additional qualifying preceding term of 'open' to the traditional concept of strategic autonomy. She then passed the presentation onto Dr. Gesa Kübek, who expanded on Dr. Mancini's points.

### Dr. Gesa Kübek, University of Groningen

Dr. Gesa Kübek expanded on the presentation made by Dr. Mancini and structured her presentation around four main points. She firstly looked at what the EU is doing at an international/multilateral level, then she analysed the EU's conduct at a bilateral level, she then looked at the trends and types of unilateral instruments employed by the EU in recent times, and then conducted an assessment as to what all of this means in practice.

#### The EU's Multilateral Approach

From a trade perspective, Dr. Kübek focused on her first point, which was an analysis of what the EU is doing at a multilateral level currently. At an international level, Dr. Kübek noted that reform of the WTO has been very slow for years, and there has been a systemic dismantling of the judicial system of the WTO from within for many years. Although the EU have attempted to fix this with a multi-party interim appeal mechanism for example, it is not a practical or effective solution to the problems.

#### Bilateral Approach

She then focused on her second point, which was a study on what the EU are doing on a bilateral level. She noted that there has been a substantial shift in priorities of the EU over the last decade or so. This can be seen from the 2006 EU Trade Policy Strategy, which highlighted FTAs as an external priority; however, in the EU Trade Strategy of 2021, this priority was no longer reflected. There are also new geopolitical tensions which are problematic, including the opposition to the EU-Mercosur Association Agreement and the EU- China CAI Investment Agreement. Although there are some positive aspects of the EU's bilateral actions, such as the new Trade and Technology Council, she argued that it is unlikely this Council will produce any meaningful results in a legal context.

#### The EU's Unilateral Approach

Dr Kübek then moved onto her third point and noted that there is a significant increase of EU unilateral instruments arising since 2021. While unilateral elements to trade policy have always been present in the past, the sheer volume of them in recent years is surprising. Dr. Kübek not only noted the amount of new unilateral instruments but categorised them into three main groups. The first group of instruments is contained in the category of reciprocity. These EU Instruments limit access to the internal market for companies of some countries if their respective government refuse to allow access to EU countries. These instruments clearly conflict with an open, multilateral policy. Secondly, the EU are exporting their sustainability standards abroad, by restricting access to the EU's internal

market and using access to this internal market as a measure to achieve their goals. Finally, a trend which Dr. Kübek argued is on the rise the most are instruments which seek to pursue security interests through trade. Combined, it is clear to see that unilateral instruments are being used more and more to further the EU's own interest.

Dr. Kübek then presented an analysis of what this information means in practice, and the effects. Dr. Kübek notes that inconsistency in the approach to international co-operation is problematic. There has been a sharp rise in unilateralism and most European Instruments used today leave the intensity for international co-operation almost exclusively at the discretion of the commission. There seems to be no criteria which lends itself to any reliable consistency for a balance between security, reciprocity, and sustainability goals on one side, and acting multilaterally on the other.

Dr. Kübek once again argued that there is no consistency in the sphere of trade liberalisation, with too much discretion left to the EU Commission. Protectionism was previously something that was to be avoided at all costs, and this can be seen in the 2006 EU trade strategy, whereas now protectionism is seen as a useful tool which can limit market access to pursue non-trade objectives, such as security. This means that there is once again lots of freedom and discretion left to the EU Commission, whereby such protectionist and unilateral measures can be legally justified. However, the lack of consistency or guidance as to what exactly can or cannot be justified or protected is problematic for the future.

Finally, the balancing effect can be exhibited very clearly in the obligation to observe international law. All the EU's new unilateral instruments raise many questions about international and/or WTO law compatibility. For example, the anti-coercion instrument conflicts with international law in the definition as to economic coercion, in its application it can oftentimes circumvent the WTO dispute settlement process. It is necessary to see in time whether the EU legislator will respect the limits that are imposed by international law or whether the EU's instruments will continue to conflict with their mandate to obey international law, but the answer remains to be seen.

Dr. Kübek then concluded her presentation, stressing the fact that although there is a constitutional preference for multilateralism, international co-operation and trade liberalisation, there appears to be a practical trend towards unilateralism which can be seen to be a new form of protectionism and a blatant disregard for international law. This situation raises questions about how much the EU wishes to give up on the constitutional objectives to ensure its economic self-interests.

### [Dr. Luigi Lonardo](#)

The final speaker of the second panel and the seminar was Dr. Luigi Lonardo from University College Cork. His presentation was focused on EU's relationship with autonomy and was entitled 'The relationship between the legal principle of autonomy and strategic autonomy. Conceptions, limits and normative assessments.' In his speech, Dr. Lonardo firstly introduced the legal principle of autonomy and the principle of strategic autonomy. He talked about the different conceptions of autonomies, and the ability to frame autonomic principles in both a positive and negative fashion. He then conducted a normative assessment of the autonomy in the EU. The main question underpinning both his research and his presentation was an investigation into the relationship between strategic autonomy and legal autonomy; and whether they are essentially the same, or whether one enables the other.

Firstly, Dr. Lonardo introduced the two conceptual autonomies. The EU legal principle of autonomy can be exhibited in the fact that EU law is separate from the domestic law of each state, and of international law. It is seen as a constitutional feature of the European Union and this principle preserves certain distinctive features of the European Union, such as the fact that the EU has its own mechanism for human rights, enabled by the EU Human Rights Charter.

This is in contrast with strategic autonomy, which is presented by other institutions, such as the European Council and EU Commission as a policy choice. The term 'strategic autonomy' was born out of defence and security and emerges from the belief that the EU should be able to act in the absence of external protections of NATO, for example. In 2016, the European Council defined strategic autonomy as the 'capacity to act autonomously when and where necessary and with partners wherever possible.

### The Positive and Negative Framing of Autonomy

Drawing from the writings of the President of the European Court of Justice, Koen Lenaerts, Dr. Lonardo then analysed the possible conceptions of the principles of autonomy, arguing that legal autonomy and strategic autonomy can be considered in both a positive and a negative fashion. When framed in a negative fashion, it is clear what EU is not; it is not international law, as there are certain specific features that distinguish EU legal order from international order. For example, the main difference between the two sources of law is that EU law is enforced by individuals, unlike international law. Strategic autonomy, at its minimum says that the EU should be independent from external powers.

Autonomy can also be framed in a positive fashion, and when analysed from this viewpoint, one acknowledges and accepts that the principle of legal autonomy means the EU has a constitutional identity, and this concept has been accepted previously by European Courts. This then leads to a question of whether the constitutional identity is about procedural safeguards, such as the rule of law, or whether autonomy of EU law protects substance, which includes values and fundamental rights. Strategic autonomy can also be presented in a positive light, endorsing the belief that the EU makes its own choices.

Dr. Lonardo then offered the opportunity to examine the relationship between the two autonomies. He presented the question of whether one of the characteristics protected by EU law is the capacity to act autonomously, or whether the autonomy of EU law protects strategic autonomy as an essential characteristic.

### In Favour and Against EU Autonomy

Dr. Lonardo then engaged in a normative assessment of both strategic and legal autonomy. Underpinning discussions of autonomy, there are two normative commitments that are most prevalent, and these are commitments in favour of EU autonomy, and positions against EU autonomy. The normative assessment in favour of legal autonomy is that it enables increased efficiency of the functioning of the European Union and of certain specific areas, such as fundamental rights. This is good for both the European Union and for the citizens within it. However, the argument against strategic and legal autonomy are the fact that national courts may have conflicts of allegiances whereby they have to make a choice between two standards: the ECtHR on one hand, and the CJEU on the other. Another argument against EU autonomy is that there is not the level of efficiency envisaged, and in fact



there is unnecessary duplication, prevalent in areas such as defence, leading to increased inefficiency.

Dr. Lonardo's concluding comments were that legal autonomy and strategic autonomy are not value neutral, nor is the EU, and that the EU has substantive normative commitments. The relationship between strategic autonomy and legal autonomy is not clear, meaning the core question as to whether strategic autonomy and legal autonomy are the same, or whether one allows or informs the other, remains unanswered.

## Panel 2: Discussions and Questions

Dr. Lonardo kicked off the questions from the second panel. He firstly posed the question to Dr. Mancini, wondering whether it is valuable to discuss and analyse the bindingness of institutional objectives. In response to this question, Dr. Mancini noted that in the context of international law and its compliance, it is difficult ground. The value of compliance with international law is separate from the other values since the EU has a clear obligation to comply with this under article 216 TFEU.

### EU's Compliance with International Law: Fundamental or Forced?

Dr. Lonardo then posed a question to Dr. Kübek, querying whether the EU's compliance with international agreements and international law is part of the rule of law, or whether such compliance only occurred because Article 3(5) TEU mandates it. Dr Kübek discussed this in depth, noting that in many ways, the answer is about balancing the two. The wording of certain Treaty provisions, such as Article 3(5) TEU clearly mandate the EU to uphold its constitutional values and international agreements, however this must be balanced against the fact that fundamentally, everything in the treaties is linked back to what we understand the rule of law is. Without the rule of law, the substantive values of the EU would be an empty shell and would be meaningless, so there is a clear relationship and indeed balance between the Treaty mandates and the rule of law.

### Hierarchy of Fundamental Values and Rights?

Professor Dagmar Schiek then posed a question towards Dr. Mancini. She argued that the EU treaties protect the rule of law and other values as fundamental to the functioning of the European Union. However, Professor Schiek challenged as to why multilateralism should be the main value of the EU Treaties, according to the arguments advanced by Dr. Mancini. Moreover, Professor Schiek wondered why unilateralism is often portrayed as a counter-value, and to be viewed negatively, especially in situations for example where the EU might unilaterally take action to protect human rights in a situation where international law is compromising such rights.

In response to this question, Dr. Mancini noted that her presentation did not necessarily argue that there is an order of values, or that multilateralism should trump other values, but the core part of her presentation was an investigation as to whether open autonomy protects against accusations of protectionism, or whether it does more than that. She also noted that certain instruments that the EU have adopted in recent years, particularly in trade do not have an agenda to protect, or a link to fundamental rights at all. Because fundamental rights are not the goal of these certain instruments, their nature and operation are therefore not intended to threaten or destroy fundamental rights of the EU and its citizens. Dr. Kübek agreed with this defence, noting that the investigation into the open autonomy and its impact on the legal sphere was not to showcase a diminishment or an attack of fundamental rights; highlighting the fact that the two concepts are indeed separate.

### Justified Neglect of Human Rights at the expense of Strategic Autonomy?

Professor Schiek then posed another question, this time in response to the presentation and arguments advanced by Dr. Lonardo. She noted that in practice, it seems that although legal autonomy contains some element of protecting human rights, strategic autonomy appears to be more of a justification of neglect of human rights in the name of protecting the strategic autonomy of the European Union.

Responding to this question, Dr. Lonardo acknowledged the core differences between strategic autonomy and legal autonomy, noting that the former is a policy concept developed by the European institutions, whereas the latter can be clearly identified and endorsed by the Court of Justice of the European Union. He stressed that the main reason behind his presentation and accompanying research was to investigate whether strategic autonomy and legal autonomy were about the same type of autonomy. Although there is some connection in the context that both types of autonomy are meant to preserve some fundamental characteristics of the European Union, this is not necessarily mean led to a justifiable neglect of fundamental rights, as Professor Schiek enquired. Although Dr. Lonardo acknowledged that Ursula Van der Leyen recently noted that in certain situations, normative standards of behaviour could be disregarded if it was necessary to pursue the European Union's interests, this does endorse overall neglect of certain fundamental rights, and further analysis would be needed before one could conclude on such a matter.

### The Value of Comparing Strategic Autonomy and Legal Autonomy?

Dr. Mancini then posed a question aimed at Dr. Lonardo. She wanted to know can one compare strategic and legal autonomy and what can be made of such autonomy. She advanced the argument that legal autonomy predates strategic autonomy, so therefore she did not believe that strategic autonomy justifies or can be regarded as a condition of legal autonomy. She instead argued that legal autonomy often is seen to be a justification of actions of the EU on a political level. Dr. Lonardo then agreed with Dr. Mancini's points, arguing that it seems more appropriate to argue that the legal order protects the characteristic of strategic autonomy.

### What Role Can the law play?

Professor Cottey also offered his views on this question, highlighting that strategic autonomy is clearly a political concept. He believed the reason why strategic autonomy has been so well accepted in the European Union is attributable to the fact that it means different things to different states. This differing interpretation can be seen in debates on open strategic autonomy often have opposing views, where some states believe cross border dependence is a good thing, especially in the sphere of trade, as it means economies can grow bigger and quicker, whereas others view such dependence as a negative aspect, as it creates vulnerability and may have adverse economic consequences. He then posed a follow-on question, which was where can one actually find the middle ground in between these polarised views, and what role, if any, the law can play in determining such a middle ground.

Dr. Kübek firstly dealt with this question, noting that there is immense discretion awarded to the European Commission about how independent the EU wishes to be, and often disregards the EU's existing connections with the rest of the world. She said there is often a lot of room in instruments, for example the anti-dumping instruments, for policy makers to make decisions, however at the same time, there are also limits placed on policy makers as to how far they cannot go, which is seen in the

parameters in which they must comply with international agreements and laws. However, despite these freedoms and subsequent constraints, time will be the real indicator as to the real impact of an autonomic approach.

Dr. Mancini provided a positive aspect, and praised the EU, arguing that they have managed well thus far in determining a 'middle ground' and that this can be seen in trade instruments, where non-trade objectives have been integrated. She argued that the law does indeed have a role to play in determining this middle ground, as the law allows for both discretions, while also placing limits as to how far this discretion will go.

Dr. Lonardo ended with some insightful comments, predicting that in the future, the EU's legal order might promote divergence between the EU and NATO, as the EU might wish to protect certain essential characteristics, and NATO might affect such characteristics, so a necessary divergence may take place.

## Concluding Remarks

Professor Schiek then linked back this seminar to the core project of European Union Integration and Citizens' Rights. She noted the concern that when one discussed human rights from an international law perspective, the sight of the citizen is automatically lost. If this analysis is carried further into the realms of strategic autonomy and legal autonomy, there is no mention at all, or indeed relation to citizens' rights, and this is problematic from a citizens' perspective. However, even instruments such as trade instruments which predominantly affect companies have a large impact on citizens, as they can own the companies, or work for the companies, and are therefore directly affected by the problems that these instruments cause. This once again links back to the importance of integrating the rights of citizens into the EU on an individual level, to enhance the legitimacy of the EU as an accessibility point for citizens to engage with their rights and protections underpinning this. Professor Cotey thanked everyone for their input and concluded the seminar.

More about the Jean Monnet Centre of Excellence for EU Integration and Citizens' Rights, including a list of our upcoming events can be found on our [website](#).