EU MODELS OF INSTITUTIONALISATION AND (DIS-)INTEGRATION BEYOND THE NATION STATE? ON TTIP, CETA AND BREXIT

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INSTITUTIONALISATION BEYOND THE NATION STATE:

- Institutionalisation theory and practice
  - Meanings and potential

- EU’s role in promoting institutionalization
  - Era of attacks to rules-based global legal order
    - UN, WTO, NATO, Council of Europe, EU, ICC

- Lessons learned?
  - Casestudies:
    - Not comparable!
    - TTIP - novel institutionalization attempts
    - CETA - most progressive trade deal ever?
    - BREXIT - a novel non-institutionalization?
ON INSTITUTIONALISATION

- Shared meanings?
  A verb, noun, adverb, adjective
  Positive & negative

- Means a process about:
  Progress
  Bottom up formalization/stabilisation
  Shared expectations/Community?
  Humanising IOs;

- Beyond the Nation State:
  Certainty, clarity, legitimacy
  Public-ization factor
  key in EU’s global actions
EU’s role:
• in promoting & nudging innovations, solutions, multilateralism
• unfailing commitment to internationalization
• Eg supporting International Criminal Court, Multilateral Investment Court, UN Ombudsman
ERA OF THE END OF THE (INSTITUTIONALISED) MEGAREGIONALS EXPERIMENT OUTSIDE OF WTO?

So what is progress now?
THE EU-US TRANSATLANTIC TRADE AND INVESTMENT PARTNERSHIP (TTIP)

‘State Of Play’- state of death?

- EU-US Relations -> ‘quasi-institutionalised’?
- TTIP’s ‘Living Institutions’
- Institutional Provisions
  - Regulatory Cooperation Provisions
  - ISDS/ICS
TTIP REGULATORY COOPERATION NEGOTIATIONS

- RCB -> Institutional ‘set up’
- Joint Committee ‘tempered’ by Regulators Forum
- Oversupply of participation, bodies?

- Lexicon institutionalization > toxic
- Normative standards, internationalisation >

TLD, Civil Society Forum, Domestic Advisory Body
PROPOSED MULTILATERAL INVESTMENT COURT: BEYOND TTIP AND INTO CETA?

> Institutionalisation
- Normative standards
> Internationalisation?

Proposal

- a permanent World Court, professional judges, transparency, ethical standards
  -> wholesale reform of ISDS.

Public consultation, 2014, Concept paper

CETA
EU-CANADA ECONOMIC AND TRADE AGREEMENT (CETA)
‘CETA provides Canada and the European Union and its Member States with a platform to facilitate cooperation between their regulatory authorities, with the objective of achieving better quality of regulation and more efficient use of administrative resources. This cooperation will be voluntary: regulatory authorities can cooperate on a voluntary basis but do not have an obligation to do so, or to apply the outcome of their cooperation.’
REGULATORY COOPERATION: CH. 21

21.2.6; 21.7;
- voluntary cooperation & each other’s right to regulate

21.3.b,
- improve transparency & predictability, enhance the efficacy of regulations avoid unnecessarily regulatory differences & improve regulatory implementation

21.3
- objectives of a particular high standard eg protection of human life, health & safety.

21.4
- experimentalist
  - identify lessons learned, explore alternative approaches and exchange experiences

->RCF is only obligated to meet at least annually.
<table>
<thead>
<tr>
<th>Similar</th>
<th>dominance experimentalist learning as TTIP</th>
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<tr>
<td>Difference</td>
<td>From TTIP as to overall sophistication and participation</td>
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<td>International cooperation less ambitious</td>
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<td>More modest engagement with stakeholders/civil society</td>
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<td>Challenges</td>
<td>Conformity of Better Law Making &amp; International Agreements issues?</td>
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<td>EP oversight v CETA Joint Committee</td>
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<td>Joint Committee considerable discretion over huge annexes</td>
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<td>What does it subordinate? For ‘unnecessary barriers to trade and investment’?</td>
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Direct effect and place of institutions

Ch. 30, Article 6 CETA:

'nothing in this Agreement shall be construed as conferring rights ...permitting this Agreement to be directly invoked in the domestic legal systems of the Parties'
CETA & ICS
- CETA moves decisively away from the traditional approach of investment dispute resolution & establishes independent, impartial & permanent investment Tribunals
- inspired by principles of public judicial systems in the EU and its MS and Canada, international courts (e.g., ICJ, ECHR)

The EU-Canada Joint Interpretative Instrument:
- "...EU and Canada will work expeditiously towards the creation of the Multilateral Investment Court. It should be set up once a minimum critical mass of participants is established, ...

Opinion 1/15 EU-Singapore FTA due 14 May
- Provisional application, exclusive competence issues only
DATA PRIVACY AND TRANSFER AND INSTITUTIONALISATION

Privacy Shield

Umbrella Agreement

EU-Canada SPA

CETA E-Commerce chapters

EU-Canada Passenger Name Records Agreement
Theresa May’s Brexit Strategy: 12 key points

1. Providing certainty “wherever we can”
2. Ensuring laws made in devolved parliaments
3. Strengthening union between UK nations
4. Maintaining Common Travel Area with Republic of Ireland
5. Controlling number of EU migrants into UK
6. Guaranteeing rights of EU citizens living in Britain & rights of British nationals in other member states
7. Protecting and extending EU workers’ rights
8. Pursuing Free Trade Agreement with EU
9. Rediscovering UK’s role as a global trading nation
10. Continuing to collaborate with EU partners on major science, research and technology initiatives
11. Working closely with Europe on foreign and defence policy
12. Initiating a phased process of implementation
Why DO so many older women long for one last baby?

PM unveils bold 12-point plan for Brexit
She rejects any deal that leaves us ‘half-in, half-out’
We’ll regain control of borders – and break free from EU judges

THERESA’S
NEW
FREE
BRITAIN

‘THERESA May will vow to break free from the EU’s shackles today – pulling out any deal that leaves us “half-in, half-out”’

Dr James Slack

Our new leader will be a popular, pragmatic politician who can take the UK out of the EU. But only if we support her. We do not need to adopt a narrow, populist approach, but a pragmatic one. The country must be united.

Turn to Page 6
GLOBALISATION AND THE POST-WW2 INSTITUTIONS IN THE UK
UK must retain link with European Court of Justice, say MPs

Committee says role for ECJ in British legislation will be ‘price worth paying’ for effective cross-border justice after Brexit
Challenges for (EU) Institutionalisation & IOS?

Effects upon multilateral institutionalization initiatives?
Effects on EU membership?
- Eg EU at UN, UNSC, EEAS generally, WTO

Effect upon EU unity, information sharing and speaking rights