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# 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



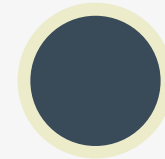
Means a process about:

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

# EUROPEAN-ISING OF INSTITUTIONALISATION

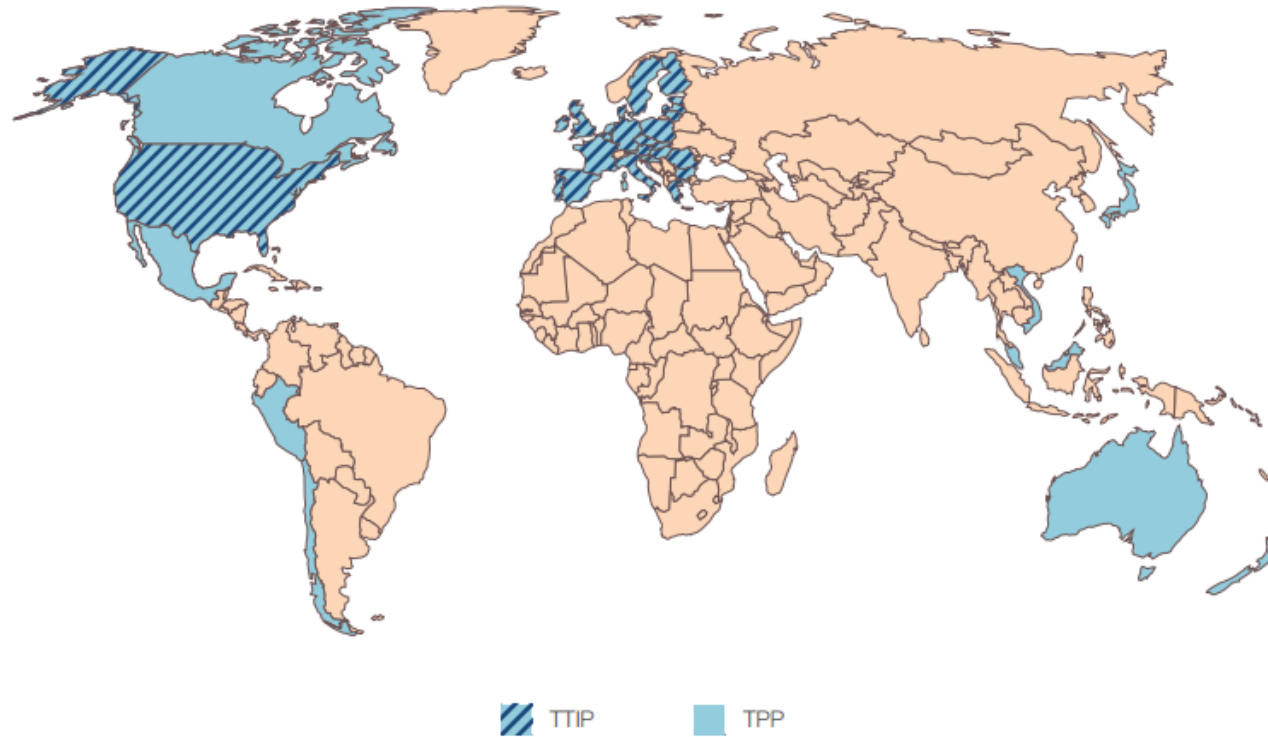
## EU's role:

- 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?

Figure 2: TTIP and TPP membership



***So what is progress  
now?***





# THE STATE OF EU TRADE

2017

- EU & Customs union (Andorra, Monaco, San Marino, Turkey)
- European Economic Area (Norway, Iceland, Liechtenstein)
- Preferential trade agreement in place (FTA, EPA, DCFTA)
- Preferential agreement awaiting adoption/ ratification

- Preferential trade agreement being negotiated
- Potential for free trade partnership
- Stand-alone investment agreement being negotiated
- Preferential agreement in the process of modernisation



# 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?

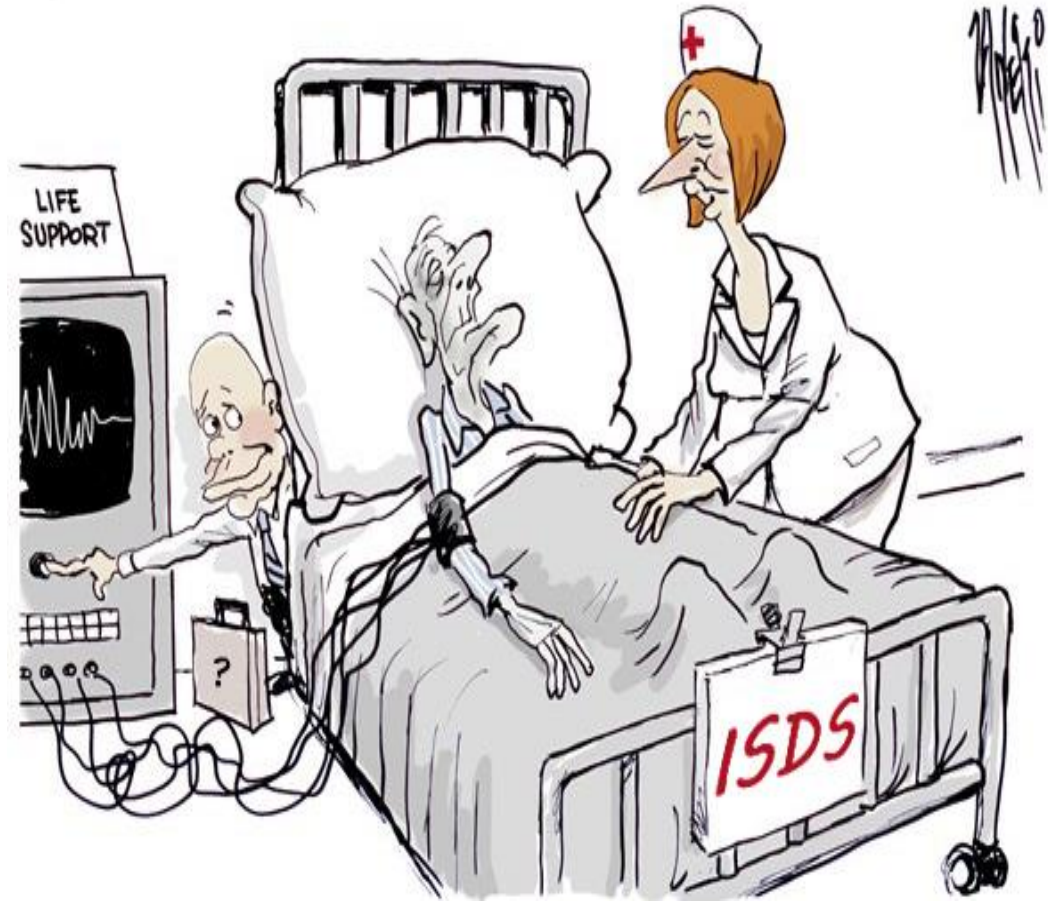
> Institutionalisation  
Normative standards>  
Internationalisation?

## 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)

## Canada-European Union

Comprehensive Economic  
and Trade Agreement

#CETA



## Ceta: EU and Canada sign long-delayed free trade deal

30 October 2016 | Europe



The European Union and Canada have signed a long-delayed landmark trade

### Top Stories

#### Iraqi forces enter Mosul city limits

Iraqi troops enter the IS-held city of Mosul, facing heavy resistance, embedded BBC journalists say.

19 minutes ago

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4 hours ago

#### Campaigners seek Orgreave judicial review

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### Features



#### Tangled tales

The lies told about wigs and hair extensions



- '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.



# REGULATORY COOPERATION CHAPTER 21: CETA V. TTIP?

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## Similar

dominance experimentalist  
learning as TTIP

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## Difference

From TTIP as to overall  
sophistication and participation

International cooperation less ambitious

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More modest engagement with stakeholders/  
civil society

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## Challenges

Conformity of Better Law Making &  
International Agreements issues?

EP oversight v CETA Joint Committee

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Joint Committee considerable  
discretion over huge annexes

What does it subordinate? For 'unnecessary  
barriers to trade and investment'?

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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 v. EU-CANADA JOINT INTERPRETATIVE INSTRUMENT

## 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 ( eg 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

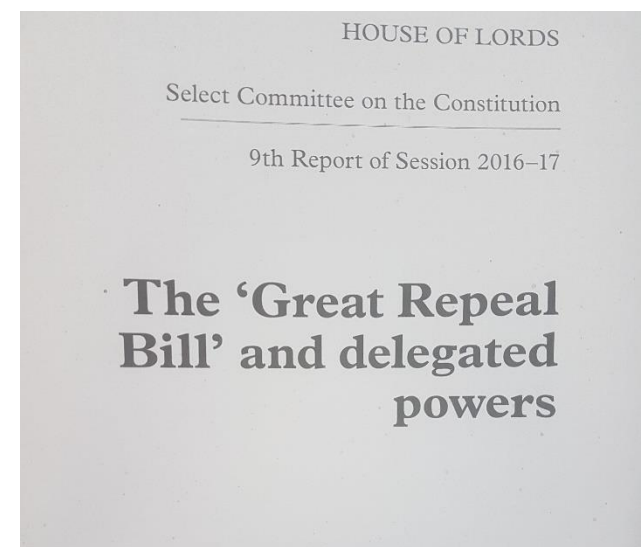




## Theresa May's Brexit Strategy: 12 key points

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

PA





**Why DO so many older women  
long for one last baby?**

SEE PAGES  
24-25



**Daily Mail**

TUESDAY, JANUARY 17, 2017

www.dailymail.co.uk

DAILY NEWSPAPER OF THE YEAR 65p

 **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 – ruling  
out any deal that 'leaves  
us half-in, half-out'.**

Setting out her detailed plan for Brexit, the Prime Minister will reject partial or associate membership in favour of a 'brighter future' outside the Brussels bloc. Her 12-point plan will see Britain regain full control over borders and quit both the single market and European Court of Justice. She will insist the UK can become a great, outward-looking trading nation.

– We seek a new and equal partnership

By **James Slack**  
Political Editor

erning, global Britain and our friends and allies in the EU, she will say. 'Not partial membership of the European Union, associate membership of the European Union, or anything that leaves us half-in, half-out.'

'We do not seek to adopt a model already enjoyed by other countries. We do not seek to hold on to bits of membership as we leave.'

'The United Kingdom is leaving the European Union. My job is to get the right deal for Britain as we do.'

The PM will not explicitly vow to leave the customs union, which allows tariff-free trade and the movement of

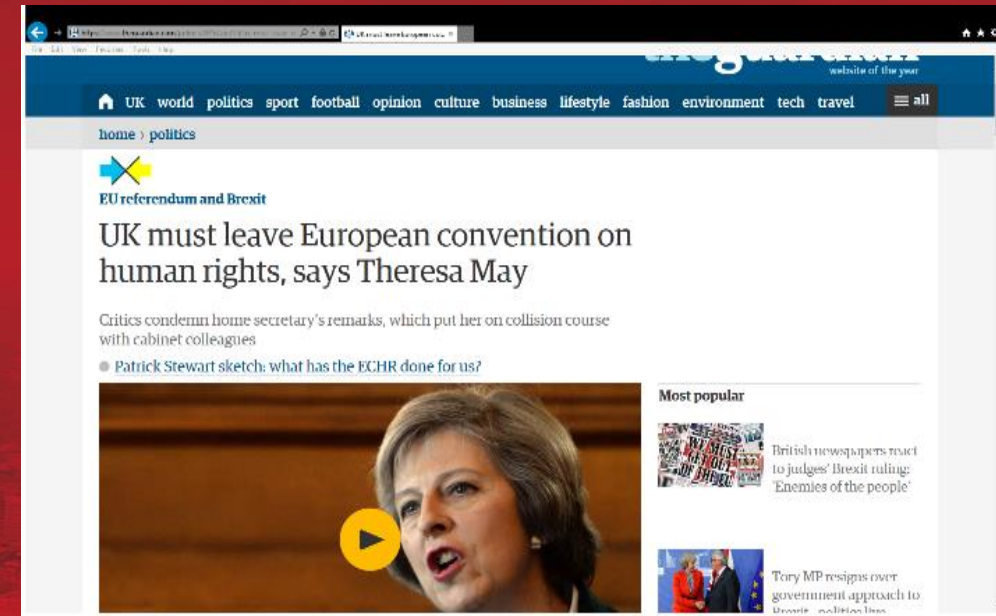
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# GLOBALISATION AND THE POST-WW2 INSTITUTIONS IN THE UK





Law

# 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



## Most popular in US

 Rex Tillerson: 'I didn't want this job ... my wife told me I'm supposed to do this'

 Will Trump be impeached - or is it just a liberal fantasy?

 US diplomacy in crisis amid cuts and confusion at state department

# 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