



CALL FOR PAPERS

Adjudicating international trade and investment disputes: between interaction and isolation

PluriCourts conference

Thursday and Friday 25-26 August 2016

Call for papers

1 January 2016

Abstracts due

1 March 2016

Notifications of acceptance

15 March 2016

Draft papers due

15 August 2016

The PluriCourts Centre of Excellence at the University of Oslo is organizing a conference titled 'Adjudicating international trade and investment disputes: between interaction and isolation.' The conference will be hosted at the Faculty of Law of the University of Oslo on Thursday and Friday 25-26 August 2016. Submission procedures and timelines are detailed at the end of this call.

This conference aims to focus on the relationship, interactions and comparisons between the international trade and investment regimes in the context of adjudication of disputes. The conference will welcome research across the disciplines of law, political science, and philosophy relating to three themes: the new mega-regionals, comparisons and practices, and cross-fertilization and learning.

Historically, the global regulation of international trade and investment relations have been closely interrelated; but in the post-war period, international trade law and international investment law developed on largely divergent paths. While international trade regulation has culminated in a multilateral regime with a permanent dispute settlement mechanism, the international regulation of foreign direct investment is primarily governed by 3500 essentially bilateral treaty relationships calling for ad hoc investor – state arbitration potentially to be hosted by a variety of international institutions. Despite these seemingly distinct structures, there is a recent trend that some say signal a move towards regime convergence: most clearly seen in the rise of mega-regional free trade agreements (FTAs) with investment chapters.

This potential convergence may be deceiving, however. The investment chapters of FTAs remain separate from the rest of the agreements and provide for distinct rules and procedures on dispute settlement. Moreover, issues of overlap between trade chapters and investment chapters have not been resolved, which means that the same case could possibly be raised simultaneously in two

separate disputes under the same FTA. Legal disputes based on investment chapters in FTAs to date (ie under the NAFTA and DR-CAFTA) appear to interpret the investment protection chapters as standalone agreements with little or no reference to other sections of the FTAs.

Despite the limitations to integration that this new generation of trade and investment agreements may represent, there are other areas of interaction between the trade and investment regimes that could provide better evidence of a gradual move towards cohesion. This conference aims to look at the development of the new mega-regionals, but also the ways (or lack thereof) that the trade and investment regimes share practices and cross-fertilize.

Theme 1: The new mega-regionals

The first theme will focus on research relating to the increasing negotiation of mega-regional FTAs with investment chapters and what effects these agreements will or could have on the adjudication of international trade and investment disputes. The conference will seek to discuss state-of-the-art research, from both legal and social science perspectives, relating to the dispute settlement options under FTAs, including existing (inter alia NAFTA, ECT, ASEAN, DR-CAFTA) and emerging (inter alia CETA, TPP, RCEP, TISA, TTIP). Additionally, and given the EU's recent preference for FTAs, the conference will also seek research on how the EU's post-Lisbon trade and investment policy may have spill-over effects for the global trade and investment regimes. Papers under this theme could address the following:

- Analysis of the TPP, TTIP drafts and other recently signed FTAs: how will disputes be resolved?
- The relationship between the WTO agreements and FTA provisions: potential conflicts or cohesion in the adjudication of disputes?
- What relevance will the shift towards mega-regionals have for the legitimacy of international adjudication?
- Recent investment arbitration jurisprudence under FTAs with investment chapters: new developments?
- The proposal for a TTIP investment court: a dispute settlement mechanism for investment protection modelled on the WTO?
- The EU strategy for extra-EU BITs after Lisbon: A potential move towards multilateralization?

Theme 2: Comparisons and practices

The second theme of the conference will invite research focusing on comparisons between the WTO dispute settlement mechanism and investment treaty arbitrations tribunals; and research that focuses on the practices of WTO disputes and investment tribunals. The conference will also seek research relating to the distinct practices and structures of international trade and investment disputes may affect both their normative and sociological legitimacy. There are significant structural differences between WTO dispute resolution and investment treaty arbitration. Despite these differences, there are some similarities in the subject matter (global economic governance) that make these systems of international dispute settlement worthy of comparison. Papers under this theme could address the following:

- Are there important? Salient? differences in the appointment and selection of adjudicators in investment arbitration and WTO panels?.
- Comparative approaches in managing legitimacy: how do arbitrators, judges and institutions in trade and investment adjudication legitimize themselves?

- Public opinion and the anti-globalization movement: a valid constraint on the development of trade and investment adjudication?
- What are the roles and influences of institutional secretariats in the adjudication of trade and investment disputes?
- Litigating trade and investment disputes: what is the role of legal counsel in regime shaping and targeting?
- How have the trade and investment regimes comparatively dealt with issues of systemic interpretation and the inclusion of extra-sector concerns such as human rights and the environment?
- The possibilities for multilateralizing investment treaty law: are there lessons to be learned from the WTO?

Theme 3: Cross-fertilization and learning

The third theme will focus on the interaction between the international trade and investment regimes in the context of adjudication. The conference seeks research on how the interaction (or lack thereof) between WTO disputes, FTA trade disputes, investment treaty arbitration and other areas of international law affects the legitimacy and efficacy of international economic governance. The conference will seek both social science and legal research focusing on issues of judicial dialogue between trade and investment tribunals; and how cross-fertilization of ideas and practices between tribunals affects the development of the jurisprudence and the legitimacy of these institutions. Papers under this theme could address the following:

- Issues relating to overlapping jurisdiction: increasing fragmentation or opportunities for coherence?
- Is there judicial dialogue and cross-fertilization between trade and investment tribunals?
- Are there differences or similarities in how trade and investment tribunals deal with issues of legal interpretation and with the precedential value of previous awards?
- Treaty shopping issues in trade and investment disputes: is it actually a problem?
- The relationship between investment chapters and other chapters in FTAs: investment chapters as stand-alone agreements?
- What are the implications of the overlap between the trade in services and investment protection regimes?

Submission procedure

We invite researchers from the disciplines of law, political science and philosophy to submit abstracts of no more than 500 words along with a CV of no more than two pages to Dr. Daniel Behn d.f.behn@jus.uio.no by 1 March 2016. Please indicate in the subject line of the email as to which Theme your abstract corresponds. Selection of papers will be based on abstracts as assessed through a blind process of a five person committee. Notification of successful applicants will be made by 15 March 2016. We will aim to select approximately 15 papers for presentation. Selected applicants will be required to submit a draft paper of 5000 to 7000 words two weeks prior to the conference. Travel funding may be available to paper presenters. Please indicate in the application your needs for funding.