



Re: Trade, Development Cooperation & Multilateral Institutions

22 March, 2018

What is the role for multilateral institutions in trade and development policy? To answer that question, we must ask others: How are relevant multilateral institutions structured, whom do they include and exclude, and how do they operate? Multilateral institutions are crucial to maintaining the bedrock level of trust necessary to pursue foreign policy in a globalized world.

We propose to refocus research on the limits and opportunities of multilateral institutions in today's globalized climate. Together with the City of The Hague, the Asser Institute will host the closing plenary at the American Society of International Law's Annual Meeting, to address the pressures facing multilateral institutions. SDG 16 will be met not just by realizing new ways to make international institutions stronger, but also by realizing the ways in which institutions as we know them have contributed to problems associated with other SDG's. We need a broad rethink, and here our knowledge institutions can play an important role. We must reexamine critically the procedures by which relevant multilateral institutions are constituted under law, and we must examine, perhaps for the first time, the material values embedded in the way our multilateral institutions are constituted by networks of professionals and structural resources.

TTIP was doomed in no small part by an Investor-State dispute settlement mechanism that was perceived to be insufficiently integrated into European and domestic politics, and insufficiently inclusive of actors, voices and interests from beyond the professional world of investment and investment arbitration. CETA has attracted similar criticism. The CJEU's *Achmea* judgment has recently validated these concerns. That judgment raises a powerful question: Are we thinking critically enough about the practices that have become routine in 21st century foreign affairs?

To meet that question, we need knowledge institutions with the capacity to operate critically and independently, capable of challenging what is accepted as common sense. We need knowledge institutions that do more than reproduce policy papers. Social, political and legal challenges are all deeply intertwined in the most important issues facing the Ministry in the areas of trade, investment and sustainable development. Our knowledge institutions require the methods and resources for critical and independent research capable of addressing these several dimensions together.

With respect to trade and development, we urge the government to determine policy also on the basis of concrete information from socio-legal analysis. Socio-legal analysis asks pressing, but unconventional questions: What are the networks involved in trade, investment and

T.M.C. Asser Instituut

R.J. Schimmelpennincklaan 20-22

2517 JN The Hague

Mailing Address

P.O. Box 30461

2500 GL The Hague

The Netherlands

Telephone 0031 - (0)70 - 3420300

Fax 0031 - (0)70 - 3420359

info@asser.nl

www.asser.nl

ING Bank

IBAN NL38INGB0000792990

BIC INGBNL2A

CC, The Hague S 41158427

VAT NL802893636B01



development? Who is included? Who is excluded? How do these networks distribute resources? What technologies do they rely on, and what technologies do they promote?

The theme for the upcoming conference hosted by the Institute for Transnational Arbitration and the American Society for International Law addresses the lack of diversity in international arbitration, and its consequences. These institutions at the heart of the practice recognize that the networks that define international arbitration reflect privilege and bias. That condition speaks powerfully to the momentous decision in *Achmea*, and underscores the need for new analytics to support new policy.

Question 6 asks how investments can contribute to the achievement of Sustainable Development Goals. Relying on investment solutions requires critically examining the social and professional networks involved, including the way they are constituted and how they operate, to determine whom investments represent, what they achieve, and how. There are very few women arbitrators in international arbitration, and relatively few practitioners from outside Western Europe, the US and UK. The disparity raises the possibility of bias. What are the concrete steps we can take? There exist proven methods to support more inclusive networks. But research underscores that inclusion must also extend to viewpoints. Knowledge institutions must promote the engagement necessary to appreciate interests excluded or neglected by established international networks in trade, investment and development. We welcome the opportunity to expand the discussion to include counterparts and knowledge institutions around the globe, with emphasis to include partners and potential partners not limited to the Global North.

On the basis of the above, we must redeem multilateral institutions with the sort of engagement that facilitates dialogue beyond the limits of already-existing professional and knowledge networks.