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On Methods and Convergence: In Search of a "Deep Trade Agenda for Fundamental Rights"

Abstract

A key feature of the latest EU trade negotiations was the pursuance of a "deep trade agenda" for "deep integration" with the trade partners. The concept of "deep" has yet remained unexplored from a fundamental rights perspective. The central question of this chapter asks how a methodological framework of "convergence" can help the exploration and understanding of "deepness of fundamental rights" in the new generation of EU trade agreements. Using the Civil Society Forum under CETA as a case-study, the chapter argues that while convergence can justify the targeting of certain analytical elements as opposed to others, its usefulness remains limited for more normative explorations.

Introduction

The study of the European Union (EU) in the global legal order implies a complex exercise from a methodological point of view. The EU is famously described as a *sui generis* entity, with at times competing objectives; not least a mutating actorness and status across disciplines and contexts. Attempts to order and make sense of this complexity prove even more challenging when studying the EU in its relations with the wider world. EU external trade is a case in point where different interests and objectives are likely to collide. In line with the theme of the book, this chapter wants to probe the usefulness of "convergence" as a methodological device to study the EU as a global actor in external trade *and* fundamental rights. This chapter focuses on the EU' latest trade negotiations with other developed countries, which for their ambition have resulted in so-called "deep" trade agreements. The specific methodological problem addressed here lies in the study of the concept of "deep" in relation to fundamental rights. The central question of this chapter asks how convergence can help the exploration and understanding of "deepness of fundamental rights" in the new generation of EU trade agreements. Unlike the literature on the EU as a normative actor, which sees trade agreements as vehicles to pursue a human rights policy externally, this chapter is interested in the methodology of exploring "deepness" in terms of what would be necessary, in the context of trade agreements, for the safeguard of fundamental rights; which could be understood, more broadly, as convergence of two regimes, namely trade and fundamental rights. The chapter starts by outlining the methodological challenges of understanding and exploring the concept of deepness of fundamental rights in EU trade agreements. Next, it investigates the usefulness of "convergence" as a methodological device for such enterprise. Finally, it applies the methodological framework of convergence to a specific case study, looking at convergence of trade and labour via treaty bodies and their actors. The chapter concludes that while convergence can justify the targeting of certain analytical elements as opposed to others, its usefulness remains limited for more normative explorations.

1. The Methodological Challenges of Understanding and Exploring "Deepness of Fundamental Rights" in EU Trade Agreements

The concept of "deepness" finds its origin in the context of international economic law and in the literature on economic integration. When speaking of "deep" trade agreements, "deepness" has been understood in several different ways: in economic terms, to refer to extent of liberalisation in a wider array of issue-areas, as well as in legal terms, to refer to trade agreements dealing with issues that would add to or go beyond the framework of the WTO.[1] "Deepness" has also been employed to refer more broadly to the degree of integration sought via the trade agreement, thereby also involving explorations of institutional and legal mechanisms, created under the trade agreement with a view to integrating the market further.[2] A similar interpretation understands "deep" as the extent to which trade agreements reach domestic policies,[3] for instance by dealing with procedural issues and behind-the-border measures.[4]

In the context of trade agreements negotiated by the EU, it is since the so-called "new generation" that trade agreements have gained the label "deep".[5] With the adoption of the strategy "Global Europe: Competing in the World", EU trade negotiations have sought deeper integration and marked the beginning of a new trade politics.[6] The aim of the strategy was further openness and integration, where the EU should have played a central role:[7] trade agreements were conceived as strategic vehicles to extend the EU's regulatory market to the outside and thus to globalise the EU's regulatory standards.[8] The strategy hence placed the EU at the forefront for driving and shaping globalisation.[9] Developed countries in North America and Asia were targeted as the ideal partners for more ambitious trade negotiations. Following what has been

[1] Some scholars have compared FTAs by looking at the number of these provisions in the trade agreements and their legal enforceability (Henrik Horn, Petros C. Mavroidis and André Sapir, 'Beyond the WTO? An Anatomy of EU and US Preferential Trade Agreements' (Volume VII, Bruegel Blueprint Series 2009); Claudia Hofmann, Alberto Osnago and Michele Ruta, 'Horizontal Depth: A New Database on the Content of Preferential Trade Agreements' (Policy Research Working Paper 7981, World Bank Group 2017)). Other scholars have drawn from the notion of deepness developed by Downs et al and looked at the extent to which States liberalise trade and go beyond what they would have done in their absence (George W Downs, David M Rocke and Peter N Barsoom, 'Is the good news about compliance good news about cooperation?' (1996) 50 International Organization 379; Andreas Dür, Leonardo Baccini and Manfred Elsig, 'The design of international trade agreements: introducing a new dataset' (2014) 9 Review of International Organization 353; Leonardo Baccini, Andreas Dür and Manfred Elsig, 'The politics of trade agreement design: revisiting the depth-flexibility nexus' (2015) 59 International Studies Quarterly 765). Some have also combined the interpretation employed in the market integration literature with the interpretation under international economic law: in such cases, deep trade agreements would be understood as those including provisions on both behind-the-border barriers to trade and an extensive range of (also non-trade) issues beyond WTO law (see Kim Soo Yeon, 'Deep Integration and Regional Trade Agreements' in Lisa Martin (ed), *The Oxford Handbook of the Political Economy of International Trade* (OUP 2015)).

[2] World Trade Organisation, 'The WTO and preferential trade agreements: From co-existence to coherence' (World Trade Report 2011); Edward Best in Vincent Vicard, 'Trade, Conflicts, and Political Integration: Explaining the Heterogeneity of Regional Trade Agreements' (2012) 56 European Economic Review 54; Damian Raess, Andreas Dür and Dora Sari, 'Protecting labor rights in preferential trade agreements: The role of trade unions, left governments, and skilled labor' (2018) 13 The Review of International Organizations 143.

[3] Robert Z Lawrence, Regionalism, Multilateralism and Deeper Integration (Brookings Institution 1996); Finn Laursen and Christilla Roederer-Rynning, 'Introduction: the new EU FTAs as contentious market regulation' (2017) 39 Journal of European Integration 763; Christopher S P Magee, 'New measures of trade creation and trade diversion' (2008) 75 Journal of International Economics 349; Aaditya Mattoo, Alen Mulabdic and Michele Ruta, 'Trade Creation and Trade Diversion in Deep Agreements' (World Bank Policy Research Working Paper No 8206, 2017); Vincent Vicar observes that, by introducing additional step of regional integration and reducing intraregional trade costs, "more integrated arrangements provide for deeper trade integration", see Vincent Vicard, 'On trade creation and regional trade agreements: does depth matter?' (2009) 145 Review of World Economics 167.

[4] Andreas Dür and Manfred Elsig, 'Introduction: the purpose, design, and effects of preferential trade agreements' in Andreas Dür and Manfred Elsig (eds), *Trade Cooperation: The Purpose, Design, and Effects of Preferential Trade Agreements* (CUP 2015) 7.

[5] See European Commission, 'Global Europe: Competing in the world' (4 October 2006) COM(2006) 567. Available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52006DC0567>.

[6] Alasdair R Young, 'Liberalizing trade, not exporting rules: the limits to regulatory co-ordination in the EU's 'new generation' preferential trade agreements' (2015) 22 Journal of European Public Policy 1253.

[7] Euroepan Commission (n 5) 8.

[8] Marise Cremona, 'Expanding the Internal Market: An External Regulatory Policy for the EU?' in Bart Van Vooren and others, *The EU's Role in Global Governance: The Legal Dimension* (OUP 2013).

[9] See European Commission, 'Reflection Paper on Harnessing Globalisation' (10 May 2017) COM(2017) 240. Available at <https://ec.europa.eu/commission/publications/reflection-paper-harnessing-globalisation_en>.

called a "deep trade agenda",[10] the EU Commission started negotiating with such countries as the US, Canada, South Korea, Singapore and Japan. With the exception of the failed TTIP, the resulting trade agreements are extremely ambitious. They are more complex in scope, as they include disciplines, and involve commitments, going significantly beyond WTO law; and they also create mechanisms for regulatory alignment and new institutions.[11] They can thus be said to reflect aims of "deep integration"[12] according to the understandings outlined above. Up to now, however, research has tended to focus on the economic aspects of "deepness", and there has been no discussion about what the concept would mean for fundamental rights in the context of trade agreements.

While trade agreements have been said to be *deepening* inasmuch they seek further liberalisation and economic integration, the scope of this *deepening* has not been explored with respect to fundamental rights. So far, little is known about its understanding and meaning in relation to fundamental rights. There exists no exploration as to whether - and if so, how - fundamental rights have deepened along the deepening of trade, and what this would mean. The question then arises as to what "deep" means for fundamental rights in the context of trade: in the new generation of EU "deep" trade agreements, how would a deep agenda for fundamental rights in trade look like? How should we understand and explore the "deepness" of fundamental rights? Asking these questions implies a transposition of a concept that has traditionally been employed with reference to economic integration, onto an understanding of that concept in relation to fundamental rights in the context of trade agreements. From a fundamental rights perspective, "a deep trade agenda for fundamental rights" would be one that took into consideration fundamental rights across different new features and dimensions of these "deep" trade agreements. The aim would be to ensure their protection, by preventing potential negative impacts on their enjoyment. From here, the next question could be: insofar as the EU's "deep" trade agenda aims at further economic integration, what place and consideration are (and should be) given to fundamental rights in these trade agreements?[13]

Unlike the literature on the EU as a normative power, which would think of trade agreements as tools for the EU's promotion of human rights abroad,[14] the exploration of "deepness" in relation to fundamental rights allows changing perspective: one that *also* looks inward, in the sense of being critical about how the trade agreements themselves, by deepening and becoming more complex and far-reaching, could become vehicles of downward pressures on the protection of fundamental rights. Such perspective then would also lead to question what should be present, in the trade agreements, for the protection of fundamental rights. The EU has traditionally included human rights requirements as a sort of EU political messianism,[15] which considered human rights as exogenous features of the trade agreement, and whose protection could nonetheless be promoted through trade. Conversely, some have argued that today "fundamental rights" represent defensive interests of the EU as a result of deep trade relations with other

[10] Billy A Melo Araujo, *The EU Deep Trade Agenda: Law and Policy* (OUP 2016).
[11] Ibid 22; Alasdair R Young, 'Not your parents' trade politics: the Transatlantic Trade and Investment Partnership negotiations' (2016) 23 Review of International Political Economy 345.
[12] Alasdair Young, 'The politics of deep integration' (2018) 30 Journal Cambridge Review of International Affairs 453.
[13] See similarly Araujo (n 10) 4.
[14] See for instance Sophie Meunier and Kalypso Nicolaidis, 'The EU as a Trade Power' in Christopher Hill and Michael Smith, *International Relations and the European Union* (OUP 2011) 276-277; Sophie Meunier and Kalypso Nicolaidis, 'The European Union as a Conflicted Trade Power' (2006) 13 Journal of European Public Policy 906; Ian Manners, 'Normative Power Europe Reconsidered' (2004) Paper presented at the CIDEL Workshop 'From Civilian to Military Power: The European Union at a Crossroads?'; Ian Manners, 'Normative Power Europe: A Contradiction in Terms?' (2002) 40 JCMS 235; Karen E Smith, 'The End of Civilian Power EU: A Welcome Demise or Cause for Concern?' (2000) 35 International Spectator 11.
[15] Joseph HH Weiler, 'In the face of crisis: Input legitimacy, output legitimacy and the political Messianism of European integration' (2012) 34 Journal of European Integration 825.

developed countries.[16] In this sense, the language of "fundamental rights" from an EU perspective, as opposed to "human rights", allows going beyond an understanding of the linkage between trade and rights that looks at core human rights as a development issue or as a problem for the trade partner alone. The perspective suggested here instead brings to consider the relevance of fundamental rights across new "deep" features and mechanisms of EU trade agreements, and the potential impact of these features and mechanisms on the protection of fundamental rights.

Second, the fact that the EU's trade partners are economically developed countries also prompts more fresh explorations as to the understanding of fundamental rights in trade beyond core human rights: it enables to embrace broader conceptualisation of linkages between trade and issues such as inequality and social protection, in a context of increasing '*globalised discontent*' with globalisation and free trade.[17] While international trade law and human rights have traditionally been kept separate, there seems to be a "social question" emerging that calls for them to converge, and to understand their relevance and impact on one another.[18] And while there is no framework for human rights under WTO law, the EU Treaties have recently provided the EU with an important normative mandate to respect and safeguard fundamental rights in its external trade relations.[19] Unlike many other regional organisations and actors, the EU is a global actor in trade expected to respect and promote fundamental rights in its external relations. From here, then broader questions open up as to what kind of global actor is the EU in trade: how can the EU can be a global actor in trade *and* fundamental rights? Exploring the concept of "deepness" in relation to fundamental rights – in the sense of trying to understand what should be, in deeper trade agreements, for the protection of fundamental rights – can provide new perspectives on the role of the EU in global economic governance.

Reflecting upon what deepness could mean for fundamental rights raises a number of methodological challenges. The concept of "deepness" has been employed in the realm of trade liberalisation and economic integration but its meaning in terms of fundamental rights in the context of (deep) trade agreements has not been explored before. This also implies that there exists no real definition of it or conceptualisations providing guidance for its exploration. Even though the indeterminateness of the concept leaves room for such exploration, "deepness of fundamental rights" is something that does not exist as such. And because this exploration involves transposing the concept of "deepness" from its traditional understanding in economic terms to its understanding in relation to fundamental rights, trying to conceptualise and "capture" it becomes methodologically challenging. This is even more so since fundamental rights typically represent an omission in trade agreements; and second, since the deepening of trade occurs in a regime complex involving different actors, standards and levels of trade-law making (from the negotiation to the treaty itself, and its implementation), which complicate an organic analysis and clear targets and parameters for such exploration.

[16] Vincent Depaigne, 'Protecting fundamental rights in trade agreements between the EU and third countries' (2017) 42 European Law Review 562, 563.

[17] Joseph Stiglitz, 'The Globalization of Our Discontent' (Project Syndicate, 5 December 2017) available at <https://www.project-syndicate.org/commentary/globalization-of-discontent-by-joseph-e--stiglitz-2017-12?barrier=accesspaylog>. See also Frank J Garcia and Timothy Meyer, 'Restoring Trade's Social Contract' (2017) 116 Michigan Law Review Online (forthcoming).

[18] Anne Orford, Fifth Annual TMC Asser Lecture on November 28 at the Peace Palace in The Hague, see <https://www.asser.nl/about-the-institute/asser-today/watch-the-full-annual-asser-lecture-by-prof-anne-orford/>; see also Anne Orford, 'I Want to Put the Social Question Back on the Table' – An Interview with Anne Orford (Opinio Juris, 27 November 2019) available at <https://opiniojuris.org/2019/11/27/i-want-to-put-the-social-question-back-on-the-table-an-interview-with-anne-orford/>.

[19] A combined reading of Article 207 TFEU and Articles 3(5) and 21 TEU implies that, in its trade relations with third countries, the EU is obliged to observe and promote fundamental rights. See Vivian Kube, 'The European Union's External Human Rights Commitment: What is the Legal Value of Article 21 TEU?' (EUI Department of Law Research Paper No 2016/10, 2016) 10-13.

Asking "how to explore and understand the deepness of fundamental rights" can indeed be understood as a methodological question per se, in the sense of how to go about this exploration and understanding: where the focus should be and what could be left out of the analysis. It is a task for the researcher to unfold deepness of fundamental rights methodologically, and in this sense, *develop* a methodological framework for its understanding. When asking "how to explore and understand", "exploring" is held here to relate to the search of the analytical elements of deepness. The challenge then would be how to design an analytical framework for its exploration; namely, to pinpoint elements where deepness is to be studied and contributing to the normative construction of the concept. The absence of operationalisations and analyses of what deep would mean in relation to fundamental rights inevitably poses a conceptual problem of how to frame it and break it down to analytical components for the purpose of its study. The challenge of developing an analytical framework has an impact on how we go about exploring deepness and where do we seek it, from a methodological perspective.

Regarding the second element, "understanding" is held here as pointing at the normativity of deepness, in the sense of how we should think about fundamental rights in trade agreements; how to conceptualise their linkage, and operationalise such linkage with a view to protect fundamental rights. as a result, even where the researcher was able to develop an analytical framework for the exploration of deepness, the challenge would still remain as to the normative stance: what should deepness ultimately mean and look like for fundamental rights? Is it possible to pinpoint cases of deepness? The researcher would have to construct such knowledge and develop a particular normative understanding or perspective. A conceptual challenge in depicting this normative understanding is whether "deepness" means looking at whether fundamental rights permeate new deep dimensions of trade agreements (and in this sense, stick to the economic understanding of deep trade agreements and infusing in fundamental rights) or whether deepness of fundamental rights in trade means something that works for fundamental rights; or in fact, a combination of both. Possibly, the first understanding would be more closely related to the analytical dimension of deepness, while the latter to the broader normative stance.

2. Convergence as a Methodological Device

Provided the methodological challenges of studying the concept of "deepness" from a fundamental rights perspective, this section engages in an exploration of how "convergence" could be useful as a methodological device for such enterprise. The turn to "convergence" in relation to the study of the law is more recent and can be understood as a response to phenomena and literature on "fragmentation".[20] Particularly in the field of International Law, fragmentation has been described in its substantive, institutional and methodological manifestations: respectively, the mushrooming of sub-fields of International Law; the proliferation of non-hierarchical courts and non-traditional actors beyond States; and the emergence of new types of norms besides established sources of International Law.[21] Some have

[20] See Eyal Benvenisti and George W Downs, 'The Empire's New Clothes: Political Economy and the Fragmentation of International Law' (2007) 60 Stanford Law Review 595; John H Merryman, 'On the Convergence (and Divergence) of the Civil Law and the Common Law' (1981) 17 Stanford Journal of International Law 357; Jan Klabbers, 'Reluctant Grundnormen: Articles 31(3)(c) and 42 of the Vienna Convention on the Law of Treaties and the Fragmentation of International Law' in Matthew Craven, Malgosia Fitzmaurice Maria Vogiatzi, *Time, History and International Law* (Brill 2007); International Law Commission, 'Report of the Study Group of the International Law Commission, Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law (UN doc A/CN.4/L.682, 2006).

[21] See Jed Odermatt, Book Review (2016) 14 International Journal of Constitutional Law 776; Anne Peters, 'The refinement of international law: From fragmentation to regime interaction and politicization' (2017) 15 International Journal of Constitutional Law 671; Anne van Aaken,

problematised it, studied its causes, discussed its potentials and categorised different types of it: from functional to geographical fragmentation; from institutional to ideational; not least fragmentation in law-making and fragmentation in law-application.[22] The focus has been on competing actors of law-making or competing objectives and sources of laws. However, focusing on divergences is perhaps a straightforward descriptive exercise, and with limited usefulness from a normative point of view.[23] Highlighting why, how, over what and towards what "convergence" happens (and should happen) is possibly a more challenging and informative approach.[24]

Despite the predominant lexicon of fragmentation, some have pointed at how "convergence" can be usefully employed as a framework "for the analysis of [the] global".[25] Adopting lenses of convergence would provide guidance to navigate in a sea of fragmentation and plurality, and capture spaces of convergence, beyond spaces of fragmentation. A lexicon of convergence, as opposed to divergence, can help identify patterns in "shifts in the global legal order" against a context of global *dis*order.[26] It allows moving from a narrative of competition and disparities (e.g. competing legal orders and standards) to a more positive narrative of cooperation (e.g. rapprochement of law and practice). At the same time, adopting convergence "as a methodological device" leads to a vicious cycle whereby the researcher is inevitably induced to look for convergence as a "factual object" of research, which raises questions as to the added-value of convergence as a methodological device.

It is argued here that a methodological framework of convergence contributes to consider different aspects of convergence beyond its factual state of being: not only would it enable to focus on agents, mechanisms and reasons for convergence, but it could also lead to assess and weight factual states of convergence against possible alternative available options; from here, reflect upon normative directions of convergence in a context of global fragmentation; and perhaps even challenge and counter states and processes of convergence.[27] As a methodological device, convergence is understood as having the potential to raise such questions as: what is the object of convergence, i.e. what is that is converging? Why do we see convergence? Who and what explains convergence? Where do we see the descriptive and normative meeting points of convergence? Convergence can thus potentially provide new conceptual lenses to study *how* and *why* the law develops as it does in a globalised world,[28] not least the role of the EU therein.

The framework of "convergence" can come at hand to the question of how we can methodologically understand and study the EU in the global legal order. As a methodological device, it lends the lenses to filter and focus on *patterns* in laws and practices, and look at the role and place of the EU therein. Convergence can help capture the EU's legal reach in the world; situate legal orderings in relation to the EU; and in this sense, explore the extent to which the global legal order is shifting closer to the EU or vice versa. In this sense, it resonates with studies that have explored the global reach of EU law and the so-called "Brussels effect". More broadly, convergence provides a frame to appreciate the EU's role and contribution

'Fragmentation of International Law: The Case of International Investment Law' (2008) 17 Finnish Yearbook of International Law 91; Eyal Benvenisti and George W Downs, *Between Fragmentation and Democracy: The Role of National and International Courts* (CUP 2017).

[22] Anne Peters, 'The refinement of international law: From fragmentation to regime interaction and politicization' (2017) 15 International Journal of Constitutional Law 671.

[23] See Elaine Fahey in this volume, 'Framing Convergence with the Global Order: the EU and the World'.

[24] Ibid.

[25] David Cox and Andrew O'Neil, 'The unhappy marriage between international relations theory and international law' (2008) 20 Global Change, Peace & Security 201.

[26] Fahey (n 23).

[27] As convergence has been pointed by some as not being always desirable, see Jürgen Kurtz, *The WTO and International Investment Law: Converging Systems* (CUP 2016).

[28] Rob van Gestel, Hans-W. Micklitz & Miguel Poiares Maduro, 'Methodology in the New Legal World' (2012) EUI Working Paper LAW 2012/13.

as a participant in global legal ordering. What is interesting for this chapter is to look at the role of the EU in nudging convergence between two regimes, trade and fundamental rights, that at the international level have typically been kept separate.[29] Following this understanding, the investigation would focus on how the EU, via its bilateral trade agreements, embeds (or could embed) fundamental rights considerations in a way that trade agreements respect and safeguard the protection of fundamental rights. Such perspective would enhance our understanding of the EU's contribution to a more socially legitimate global economic order in a context of social backlash to globalisation and free trade.

While the EU is a global actor in trade, convergence can provide the conceptual framework to engage in an exploration of the EU as a global actor in trade *and* fundamental rights. It is posited here that this macro-level marriage of fundamental rights *and* trade would be indicative of the deepness of fundamental rights in trade agreements. As explained, while EU trade agreements have deepened and account for further economic integration, the fundamental rights dimension of this deepening has remained largely unexplored. The deepness of fundamental rights in the context of trade agreements could be equated with cases where certain features of deep trade agreements converged with fundamental rights. Convergence can possibly help to focus on mechanisms and spaces of trade agreements where convergence with fundamental rights would be possible. It can lead to identify elements that either reflect a state of convergence, as could be objectives or provisions related to fundamental rights within the trade agreements; or it could also steer towards the identification of processes and mechanisms that could have the potential to nudge convergence: for instance, the creation of joint-institutions and mechanisms for exchanges and dialogues between different actors; or commitments to cooperate on regulatory matters, not least parallel political agreements for cooperation on a wide range of matters, are held as examples of such elements that could potentially nudge convergence. Convergence as a methodological device would thus direct attention to those places and mechanisms of convergence: from objectives and standards, to actors, institutional practices and regulatory cooperation activities, or the promotion of good governance principles and good regulatory practices. A frame of convergence allows focusing on analytical elements that could trigger convergence of trade and fundamental rights or where convergence could potentially be found. The next section thus turns to the exploration of a case-study, chosen because consisting of a space which could potentially nudge such convergence.

3. Case study: convergence of trade and labour via treaty bodies and their actors

This section examines convergence of trade agreements and fundamental rights via new treaty bodies and their actors. The case-study explored here is the joint Civil Society Forum created under the EU-Canada Comprehensive Economic Trade Agreement (CETA),[30] which is taken as an instance where convergence between trade and labour rights could be nudged and promoted. The Forum represents an institutionalised mechanism for exchanges between, on the one hand, the EU Commission and Canadian government officials, and on the other hand, civil society representatives of both Parties[31] and the so-called Domestic Advisory Groups (DAGs). Whilst under CETA it is the Parties that are in charge of reviewing, monitoring

[29] See eg. Robert Howse and Mutua Makau, 'Protecting Human Rights in a Global Economy: Challenges for the World Trade Organization' in Hugo Stokke and Anne Tostensen (eds), Human Rights in Development Yearbook 1999/2000. The Millennium Edition (Kluwer Law International 2001).
[30] Article 22.5 CETA.
[31] "Representative employers, unions, labour and business organisations, environmental groups, as well as other relevant civil society organisations as appropriate", see Article 22.5(2) CETA.

and assessing the impact on sustainable development as a result of the implementation of CETA,[32] the Forum provides an additional platform for dialogue and exchanges on the sustainable development aspects of CETA, together with a plethora of other actors beyond the Parties themselves.

In addition to civil society actors, the DAGs are newly-created entities that take part in the Forum. Composed of economic, social and environmental stakeholders,[33] the DAGs have been envisaged by the new generation of EU FTAs to involve civil society, particularly during the implementation phase of the chapters on trade and sustainable development. The DAGs are bodies that the Parties can consult to seek views and advice on labour and environmental issues in relation to trade.[34] On their own initiative they may also "submit opinions and make recommendations".[35] Furthermore, since the public can send submissions to the Parties on labour matters, the Parties are expected to inform the DAGs when this occurs.[36] It follows that, while being bodies of trade agreements, the DAGs can be also understood as hubs of information and expertise on a series of matters related to both trade *and* labour. Their involvement in the Civil Society Forum means that they are enabled to bring their knowledge and views on the implementation of the CETA to the table, and in this sense, potentially contribute to make discussions on trade converge with considerations relating to labour rights.

As a whole, the Civil Society Forum has the role of enabling a dialogue on the sustainable development aspects of CETA,[37] reflecting a purpose for its creation that presupposes discussions on linkages between trade and labour issues. The Forum represents an important interlocutor of the main Committee that deals with trade and sustainable development (TSD), and which also monitors the implementation of the relevant provisions: the TSD Committee has to update the Forum on any matter related to the Labour Chapter, present the Forum's views directly to the Parties and report annually on the follow-up to those communications.[38] The meetings of the Civil Society Forum are followed by, and are intended to inform, the meetings of the Committee on TSD and the representatives of the Parties the following day. The Civil Society Forum has also a role in the consultation process for matters arising under the chapter on trade and labour: it can "submit observations" to the TSD Committee when monitoring the follow-up and recommendations of the Panel of Experts.[39] The second and latest meeting of the Civil Society Forum under CETA has taken place in November 2019. [40] It has witnessed participation of a wide array of actors and enabling exchanges with EU officials and the representatives of the government of Canada, with sessions on the review of the TSD chapters as well as "any other" TSD issue worth of discussion.[41] The Forum could thus represent a platform to bring the relevance of fundamental rights into trade discourses.

[32] Article 22.3(3) CETA.
[33] See European Economic and Social Committee, 'The EU-Canada Domestic Advisory Group' available at <https://www.eesc.europa.eu/en/sections-other-bodies/other/eu-canada-domestic-advisory-group>. For specific members, see <https://www.eesc.europa.eu/en/sections-other-bodies/other/eu-canada-domestic-advisory-group/organisation>.
[34] Article 23.8(4) CETA. See also Article 24.13(5) CETA generally providing for the establishment of advisory groups. In the context of CETA, the EU has created one DAG, for both labour and environmental matters, while Canada has taken a different approach, and created two separate ones.
[35] Ibid. The DAGs can also "submit observations" to the Committee on Trade and Sustainable Development when monitoring the follow-up and recommendations of the panel of experts, see Article 23.10(12) CETA.
[36] Article 23.8(5) CETA.
[37] Article 22.5(1) CETA.
[38] Article 22.4 CETA.
[39] Article 23.10(12) CETA.
[40] See European Commission, 'EU-Canada (CETA) Civil Society Forum' at <https://trade.ec.europa.eu/doclib/events/index.cfm?id=2063>.
[41] Ibid.

On the other hand, it is probably too early to judge the role of the joint Civil Society Forum to the convergence of trade and labour rights, in the sense of enabling discussions on their mutual impact and linkages – discussions that could be taken into consideration not only in the context of the implementation of CETA, but also in future trade law-making endeavours. At the same time, it could be expected that exchanges between civil society actors, also across constituencies, can expose different perspectives on matters related to labour rights and trade. On this, liberal theories of civil society would emphasise the possibility for diffuse interests to find in the Forum an arena for their expression and discussion.[42] The Civil Society Forum could work as a "transmission belt" between citizens and global governance arrangements,[43] through which citizens could find an outlet for their interests and thereby a possibility to influence the decisions of global governance bodies in a way that takes into consideration fundamental rights concerns.[44]

In a context where global governance is often object of criticism for lacking social legitimacy, a large body of literature has focused on the intermediary function of civil society actors between the local and the global.[45] This would particularly be relevant for local understandings of fundamental rights; for targeting and addressing specific fundamental rights problems in a particular societal, geographical and cultural context, so that fundamental rights could be effectively applied and implemented to local circumstances.[46] Were standards discussed and eventually set in global fora, civil society actors could act as translators of concepts adopted globally into local terms.[47] Furthermore, it has been observed how civil society actors can have on-the-ground and contextualised knowledge to review certain policies, making them good candidates for continuous monitoring and feedback:[48] not only could they shed light on the main shortcomings, but they could also advance solutions and provide perspectives that would otherwise lack in official circles.[49] It has to be seen whether their involvement in the Civil Society Forum can indeed provide such new perspectives, for trade and labour to concomitantly join a common agenda. The framework of convergence yet is arguably limited to understand by which means this could be so.

It is posited here that the lenses of convergence remain short-sighted to understand ways in which the Civil Society Forum could be designed for truly enhancing discourses of labour rights in the context of trade agreements. As a methodological device, convergence can lead to focus and dig deeper into analytical dimensions where trade and labour could meet, as part of a broader search of convergence of regimes. However, from a normative perspective, convergence would not help with designing the functioning of such process to achieve convergence, in the sense of providing guidance on how such process should look like for trade and labour to convergence. Hence, it would not provide a normative picture of deepness of fundamental rights in the analytical dimension of "actors". Methodologically, convergence would only point at those *process* that could nudge convergence. This same limitation would still hold true for analyses

[42] Francesca Bignami, 'Theories of civil society and global Administrative Law: the case of the World Bank and international development' in Sabino Cassese (ed), *Research Handbook on Global Administrative Law* (Edward Elgar 2016) 327.
[43] Jens Steffek and Patrizia Nanz, 'Emergent Patterns of Civil Society Participation in Global and European Governance' in Jens Steffek, Claudia Kissling, and Patrizia Nanz (eds), *Civil Society Participation in European and Global Governance: A Cure for the Democratic Deficit?* (Palgrave Macmillan, 2007).
[44] Robert O'Brien and others (eds), Contesting Global Governance: Multilateral Economic Institutions and Global Social Movements (CUP 2000).
[45] See e.g. Jens Steffek and Patrizia Nanz, 'Emergent Patterns of Civil Society Participation in Global and European Governance' in Jens Steffek, Claudia Kissling, and Patrizia Nanz (eds), Civil Society Participation in European and Global Governance: A Cure for the Democratic Deficit? (Palgrave Macmillan, 2007); Koen De Feyter, Stephan Parmentier, Christiane Timmerman and George Ulrich (eds), *The Local Relevance of Human Rights* (CUP 2011).
[46] Ibid.
[47] Sally Engle Merry, 'Transnational Human Rights and Local Activism: Mapping the Middle' in René Provost and Colleen Sheppard (eds), *Dialogues on Human Rights and Legal Pluralism* (Springer 2012).
[48] Gráinne De Búrca, Robert O Keohane and Charles Sabel, 'Global Experimentalist Governance' (2014) 44 British Journal of Political Science 477, 478.
[49] Jan Aart Scholte, Civil Society and Democratically Accountable Global Governance (2004) 39 Government and Opposition 211.

of *factual* cases of convergence of trade agreements and labour, such as specific *standards* for labour rights included in trade agreements: in this case, a methodological framework of convergence would not be helpful to indicate what the relevant standard for labour rights should be (for instance, European Union standards as opposed to an international standards); or whether having labour standards in trade agreements equates with "deepness" of fundamental rights, in the sense of ensuring that the trade agreement in its entirety does not undermine or exacerbate downward pressures on the enjoyment of labour rights.

Conclusion

As a methodological device, convergence is posited to prove useful from an analytical and descriptive perspective, yet it emerges as arguably less so the development of a normative perspective, which in this case would consist of a meta-level normative understanding of what convergence of trade and fundamental rights would look like, or what it should imply. Applied to the study of "deepness" of fundamental rights in the context of "deep" trade agreements, convergence will only help to pinpoint elements that can nudge convergence of trade and fundamental rights regimes via specific spaces and dimensions of this new generation of EU trade agreements. Convergence can certainly help *exploring* deepness: it provides a roadmap to navigate across actors and objects of EU trade, seeking meeting points of deepening of trade and fundamental rights therein; it justifies the targeting of certain analytical elements as opposed to others, namely elements that account for a meeting point, a coming closer of two objects. Yet where the meeting point does not necessarily represent the normative meeting point; where it lies is independent from the justification and elements that were used for exploring it. In other words, convergence as a methodological device can provide the lenses and guide the researcher in selecting elements for analysing phenomena underpinned by a narrative of convergence, yet it remains to the researcher to develop a normative understanding of the object of observation.