Treaties as Data: Leveraging Technology to Support Trade Negotiators

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Three Premises

1. Law is a form of data
   → “treaty texts as data”

2. Data science is a natural complement to traditional legal analysis, but requires different tools
   → processing rather than reading scales analysis

3. Technology does not have to be sophisticated to be useful
   → less AI-hype and more knowledge management
Three Premises

1. Law is a form of data
→ “treaty texts as data”
What is data?

Traditional Data
“Structured data”

New Data
“Unstructured data”
Legal Data

Significant opportunity
- Legal data is everywhere
  - Treaties, MOUs
  - Legal decisions
  - Minutes
  - News items
  - Non-text data
- Government has lots of it
Legal Data

Significant challenges

• Texts not in machine-readable format
• Need to be laborious collected (and digitized)
• Missing data
• Unclear benchmarks
Trade Agreements based on WTO Data

Trade Agreements based on the DESTA Research Data
Three Premises

1. Law is a form of data
   → “treaty texts as data”

2. Data science is a natural complement to traditional legal analysis, but requires different tools
   → processing rather than reading scales analysis
Complementary Tools

“To succeed in the profession of the law, you must seek to cultivate command of language. Words are the lawyer's tools of trade.

... When I was young, I did not think much in words. At Oxford, I studied Mathematics. No need for words there. The tools I used then were numbers, letters and symbols. Lifeless things without meaning or sound – the necessary tools of the scientist but not of the lawyer.”

Lord Denning, “The Discipline of Law”, 1979
Complementary Tools

Traditional Legal Techniques
- Reading
- Small Scale
- Interpretation

Legal Data Science
- Processing
- Large Scale
- Computation

Rendering Policy Analysis Scalable
Three Premises

1. Law is a form of data
   → “treaty texts as data”

2. Data science is a natural complement to traditional legal analysis, but requires different tools
   → processing and visualizing rather than just reading

3. Technology does not have to be sophisticated to be useful
   → less AI-hype and more knowledge management
Technology as Knowledge Management & Analysis Tool

Technology solves old problems

- Retain expertise and experience
- Replace labor-intensive tasks
- Ensure efficiency by creating analysis pipelines for recurring questions
- Level-the-playing field by providing equal access to insights
Trade Agreement Lifecycle

Preparation → Negotiation → Implementation
Trade Agreement Lifecycle

Preparation → Negotiation → Implementation
Preparing Negotiations

Economic and Political Determinants

Normative Determinants
– Outdatedness of existing rules
–Overlap with existing treaties
– Exposure to litigation risk
Identify targets for re(negotiation)

- Litigation Risk -

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<th>Arbitrary Measures</th>
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Trade Agreement Lifecycle

Preparation → Negotiation → Implementation
Implementation

Compliance

Uptake of agreement benefits

Litigation intensity
Trade Agreement Lifecycle

Preparation → Negotiation → Implementation
Data-Driven Negotiations

1. Reviewing global treatymaking trends
   – best practices
   – practices falling into disuse
2. Analysing treaty networks of partners
   – Consistency of past practice/ willingness to compromise
   – Evolving national practices
3. Comparing partner countries’ treaties and treaty networks with Canadian practice
   – Identify low-hanging fruit and contentious issues
   – Contrasting different formulations
Welcome to EDIT

Electronic Database of Investment Treaties

What is EDIT?

The Electronic Database of Investment Treaties (EDIT) is a new comprehensive full text database of international investment agreements (IIAs). Its goal is to facilitate informed public discourse, evidence-based reform, and academic study of the international investment regime by providing unprecedented access to the most extensive set of IIA texts to date.

As a fully machine-readable database, EDIT allows for efficient search through all IIAs, including through pre-defined content categories. All texts have been standardized and are now available in one single language (English) and format (XML). In addition, EDIT embraces a Wiki model whereby users can correct and help improve the data.

Read more...
Minimum standard of treatment

1. Each Party shall accord to a covered investment treatment in accordance with the customary international law minimum standard of treatment of protection and security.

2. The concepts of fair and equitable treatment and full protection and security in paragraph 1 do not require treatment in addition to or beyond the customary international law minimum standard of treatment of aliens.

Compensation for losses

Notwithstanding subparagraph 5(b) of Article 16 (Reservations and Exceptions), each Party shall accord to an investor of the other Party, and to a covered investment, treatment in respect to measures it adopts or maintains relating to compensation for losses incurred by investments in its territory as a result of armed conflict...
Investment Treaty Analytics Dashboards

EDIT provides a selection of dashboards that allow users to investigate the content of investment treaties in novel ways. The dashboards help track trends in investment treaty-making, compare country practices and identify areas of convergence and divergence. Together these dashboards form an analytics toolkit to support investment treaty negotiation, the reform of the investment regime, and research and analysis on past and current treaty practice.

- **Clause Tracker**: Explore the evolution of treaty provisions to spot trends over time.
- **Convergence Finder**: Detect commonalities and differences in the treaty practice of selected states.
- **Country Comparator**: Compare the treaty practice of multiple states on specific provisions.
- **Country Heatmap**: Assess the consistency of treaty networks.
- **World Map (Choropleth map)**: Spot global treaty making patterns.
- **Text Comparator**: Compare the language of individual treaty provisions.
Questions

1. How to convince a partner country to include sustainable development references in the treaty preamble?

2. What is likely to be a contentious procedural issue if Canada and Turkey were to negotiate a FIPA with ISDS?

3. What are key differences in the ‘Environmental Measures’ clauses of NAFTA (Art. 1114) and the Guatemala – Trinidad BIT (Art. 16)?
Merci

Get in touch: wolfgang.alschner@uottawa.ca

Learning Resources: www.datascienceforlawyers.org

Treaty Analytics:
EDIT Database (edit.wti.org)
Mapping Treaties (mappinginvestmenttreaties.com)