

Closing Remarks:

International Conference: *New International Trade and Investment Rules between Globalization and Anti-Globalization*. Penn State University, University Park, PA

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I have been tasked with the great responsibility of closing this excellent conference. My closing remarks must start with a heartfelt thanks to [Shaoming Zhu](#) for her brilliant work in putting this conference together; she was the master weaver whose efforts produced this great tapestry. Great thanks as well for the organizations whose backing made this conference possible: [Penn State Law](#); The [Coalition for Peace & Ethics](#); [Penn State School of International Affairs](#); The [Foundation for Law and International Affairs](#); The [Penn State University Center for Global Studies](#); [Business and Human Rights Catalyst, Alliance Manchester Business School, Manchester University](#) (U.K.); and the Penn State University [Research and Career Development Network for Law and International Affairs](#). Many thanks as well for the support of Penn State Law's Interim Dean [James W. Houck](#), and our [Dean Designate Hari M. Osofsky](#) and for their gracious and warm welcome that opened the Conference.

Over the course of the last two days, a group of extraordinary academics and graduate students have come together to share perspectives, insights, and the fruits of research around some of the most pressing issues of the day, issues that have lent their name to the conference itself: *New International Trade and Investment Rules Between Globalization and Anti-Globalization*.

We started with the opening remarks of Dean McPhail, which set the stage for our discussions. The connections between trade and human rights must take into account both the language of normative frameworks and the language of business. There was great subtlety in the double meaning of the notion of *accounting* for human rights in international trade both as a reference to assessment and judgment, on the one hand, and as well to the framing language through which these judgements ought to be made.

Our first panel considered the *Convergence and Diversification of The International Trade and Investment Regimes*. The panel pointed to certain contradictions at the heart of the construction of global trading orders. On the one hand the need to facilitate global production chains, bringing together all of the elements necessary for the exploitation of resources and labor, and the need to ensure sustainability for the long-term value creation of these production chains, militate in favor of convergence and coordinated linkages. On the other hand, the specific national context and stages of historical development of states situated in different portions of those production chains, pull toward diversification. At its most advanced, these forces of diversification produce either fracture within states (as the domestic economy splits

between a globalized and a residuary sector) and between them. It was in this context that one could consider national perspectives in the trade of illegal timber products, the recognition of arbitral awards, anti-dumping duties on international trade, embedding of free trade zone arbitration rules and cross border bankruptcy and FDI regulatory frameworks as background for China's One Belt One Road implementation. We are grateful to *Yanmei Lin*, *Oluwaseun Ajayi*, *Armstrong Chen* and *Feng Li* for these insights.

Our second panel moved from convergence and divergence to the fundamental issue of *Constitutionalization of international trade and investment Rules Beyond the State or Among States*. Constitutionalization was once considered a "one road" process. The panel revealed the variety in paths toward Constitutionalization and its contextualized manifestation among the leading states and international organizations driving the process. These discussions, of course, occur in the shadow of the Trans-Pacific Partnership as a constitutionalizing framework now abandoned by one of its principal architects. *Dean Wei Shen* reminded us of the complexities and possibilities beyond TPP Constitutionalization through China's BITs and FDI law. This road to Constitutionalization may be more profoundly influential than it might have been through even a year ago—what might be the functional difference between a unitary Constitutionalization process represented by TPP, and the aggregation of deeply coordinated bilateral agreements all which together produce the same effect? *Paolo Faarah's* consideration of civil society, and national, bilateral and multilateral investments toward what was euphemistically called "non-trade concerns" added an important human rights dimension to that trend. Beyond that, *Flora Sapio* reminded us of the critical importance of unwritten constitutions and the Constitutionalization of the territories framed through international trade. The reference to Jiang Shigong's germinal work on Chinese and European written and unwritten constitutions here are both echoed and transformed. *Bin Li* picked up the critical linkage between trade and rights—that is between the rights of capital and that of labor and mass society. His consideration of those linkages between human rights norms and investment rules reminded us that Constitutionalization must be considered in a broader scope than what might be intimated from the limits of the functional differentiation that separates trade from other aspects of human political and economic life. Lastly *Xiaofu Li* provided an essential link between the structures of Constitutionalization and the provision of services. His consideration of legal service of the Chinese market in the current stage of Chinese historical development provides a reminder that high theory fails unless it can be expressed precisely in operational lives of economic actors.

Our third panel moved from convergence, divergence and Constitutionalization to the critical actors and terrains within which the normative project of international trade is unfolding. The panel, *The Rise of New Societal Orders and Global Supply Chains, Labor, and Investment Markets*, worked through a cluster of complex issues that has destabilized the once simple landscape within which international trade could be constructed. Its speakers introduced us to the clusters of new actors—international financial institutions, the multinational enterprise, international organizations, global civil society—and new frameworks for regulation that appear increasing to drive the form and content of trade and its constitutionalizing expression. That was in some part my contribution to the panel. Yet, *Keren Wang* reminded us that at the same time, these trends retain a string attachment to the traditional rituals of the production and assertion of power. And *Sean Jorgensen* reminded us of the problematic position of labor within the construction of

international trade regimes that remain obsessed with the privilege and authority of capital. *Nicholas Rowland and Matthew Jon Spaniol* lastly reminded us that these forces are neither chaotic or unmanageable, introducing us to the rigor of scenario planning within the context of trade with a focus on China.

Today, Dean Wei Shen started the proceedings with a marvelous critical summary of the first day's efforts with suggestions for moving forward. He highlighted the four great themes of the first day's efforts:

Globalization v anti globalization

Trade v investment

Governance

Prediction

He then asked: How to move forward? That question provides a doorway through which it now becomes evident that substantial continuous reflection on globalization is required. We are called to the sort of Criticism-self-criticism that may move us toward greater insights relating to the great issues raised with necessary roots in the usual differences between North-South, developed- developing states. Lastly he noted the possibility of sustainable convergence of legal norms rules in the area of trade may not extend to convergence in all areas of macro-economic activity, and especially touching on uniform monetary, tax, and fiscal policy. There is little by way of cost benefit analysis of value of this uniformity. It is hard to develop effective enforcement tools. Therefore these will remain driven by needs of local context. Lastly he noted that the project of prediction might require a purpose based focus. One might need to figure out for what perspective one engages in the prediction—china, west or global. This will produce useful question.

With these insights in mind, our two panels rounded out the discussion started during the first day of the conference. Our first panel of the day, *States and stakeholders in the construction of an economic legal order* brought back the state to the center of our discussion. *Sukuru Say and Aisi Zhang* focused on global and national civil society and the roles they play in domestic and international stages in promoting the transparency of international trade negotiation and in international organizations. They both noted the extent of the challenge that is posed through civil society and the challenges that states and political organizations pose for the integrity and viability of a strong civil society presence in norm making and governance in trade related matters. Lastly *Jianzhi Zeng* sought to situate the traditional concepts of sovereignty within the otherwise contradictory trends of internationalization of authority for trade and investment. He insights around notions of “rights to regulate” may provide a useful means of working through the issues of the changing role of states within supra national constitutional orders.

Our last panel then turned to *New Trade and Investment Rules: Chinese Perspectives*. Here we reframed our perspective in a refreshing way. Chinese perspectives on the construction of trade, and China's increasing influence in that construction is both hard for Westerners to grasp and absolutely essential for rigorously understanding the way these trends toward trade Constitutionalization will be shaped. Paolo Farah spoke to China's One Belt One Road initiative and geopolitics in Eurasia. The focus was on cooperation and synergies in energy and infrastructure. It provided an interesting window on a markets based approach that also provided strong state guidance in targeting investment objectives. The project

serves as a reminder that Westerners become more comfortable with Marxist Market approaches to international trade and development. *Nicholas Rowland and Matthew Jon Spaniol* walked us through scenario planning focused on a report of the results from a [pre-conference scenario planning workshop](#). futures for China. *Yi Liang* then brought us back to the development of Chinese engagement with the traditional regulatory structures of international trade. The consideration of the enforceability of WTO-Plus and WTO-Extra provisions in the new generation of Chinese Free Trade Agreements provided an additional window on the way in which multiple variations on regional trade systems are developing, even in the shadow of global trade regimes. It is a reminder that in the end, even governance standards are made and operationalized through the language of law, and that while the great norms are satisfying, a proficiency with the technical language of trade tends to be the way that the great norms are actually manifested.

Our work here now is done. We come away from the Conference with a tremendous amount of insight from which to draw. I thank you on behalf of the conference organizers for contributions that individually and in the aggregate has substantially advanced knowledge in the field, and indeed can serve as a profoundly important set of ideas that themselves drive the field in new and exciting directions.

Thank you.