



American Society of International Law

INTERNATIONAL ECONOMIC LAW INTEREST GROUP

&

Georgetown University Law Center

Co-sponsored by the **Institute of International Economic Law (IIEL)**



**INSTITUTE OF INTERNATIONAL
ECONOMIC LAW**
GEORGETOWN UNIVERSITY LAW CENTER

BIENNIAL CONFERENCE

MAKING INTERNATIONAL ECONOMIC LAW WORK: INTEGRATING DISCIPLINES AND BROADENING POLICY CHOICES

September 30, 2016 – October 1, 2016

Venue: Georgetown University Law Center, 600 New Jersey Avenue N.W., Washington, DC 20001, USA

Registration: <https://www.asil.org/event/making-international-economic-law-work-integrating-disciplines-and-broadening-policy-choices-0> (Note: you do not need to be an ASIL member but you will need to create a free ASIL account to register). All conference attendees and speakers must register. Registration is discounted for students and ASIL members, and includes some meals and refreshments.

Overall Concept and Themes:

The conference will feature:

- Keynote speakers
- Academic paper presentations
- Roundtable conversations with practitioners, governments officials, NGO representatives, think tank members

From a research agenda perspective, we hope to foster a reflection on what international economic law as a discipline might look like when research focuses on the reality of blurred boundaries between the traditional fields of trade, investment, tax, finance and monetary law.

From a policy perspective, we hope to explore the implications of legal imports from one field into another, how legal and policy options might be expanded in the face of converging trade,

investment and financial law, as well as through emerging private and public-private sorts of ordering. Because the blurring boundaries have created challenges as well as opportunities, we also look forward to proposals identifying chasms and tensions that need to be addressed.

Illustrative Themes:

- Cross-fertilization opportunities between trade, monetary and finance law: How does monetary law impact trade and finance, and vice-versa?
- Soft law in international economic law: Are there lessons to be drawn from financial regulation for trade and investment?
- How does regionalism shape and challenge international economic law?
- Dispute resolution in the face of trade and investment treaty convergence: What are the opportunities and challenges raised by recent innovations? Is a unified system possible or desirable?
- International economic law and systemic risk
- Public-private partnerships in international economic law

DRAFT PROGRAM

Friday September 30, 2016

8:30 a.m. – 9:00 a.m.

Coffee, Registration & Welcoming Remarks: Sonia E. Rolland, David Zaring and Chris Brummer
Hotung Lobby

9:00 a.m. – 10:30 a.m.

Session 1

Panel A: IEL Lawmaking: Multilateral Dynamics *in memoriam John H. Jackson*

- *Moderator:* Sonia E. Rolland (Northeastern University School of Law)
- Jide Okechukwu Nzelibe, Fragile Consensus Treaties (Northwestern University School of Law)
- Tania Voon (Melbourne Law School, University of Cambridge), Out of Many, One: Learning from Trade Law Processes in Multilateralising Investment Law
- Benedict Kingsbury, Dick Stewart, Paul Mertenskoetter, and Thomas Streinz (New York University School of Law), The New Public Law of Private Transactions in Global Markets: The TPP and the Return of the Big Treaty in International Economic Law
- Abraham Newman (Georgetown University Edmund A. Walsh School of Foreign Service), Structuring Transnational Interests: The Second-order Effects of Soft Law in the Politics of Global Finance

Panel B: Investment, Finance, Tax and Trade: Clashes and Coordination

- *Moderator:* R. Michael Gadbaw (Georgetown University Law Center)
- Anna DeLuca (Bocconi University), Bank Rescue Measures Under International Investment Law: What Role for the Principle of Causation?
- Bjorn Arp (Aparicio, Arp & Associates, LLC), International Investment Disputes about Taxation Measures: Harmonizing Investment Protection with the States' Sovereign Right to Tax
- Bryan Mercurio (Chinese University of Hong Kong), 'There is a road, no simple highway': The IMF's Endorsement of Capital and the Coming Clash with Trade and Investment Law

Panel C: Systemic Aspects of Regionalism *in memoriam Stephen Zamora*

- *Moderator:* David Gantz (Georgetown University School of Law & Rogers College of Law, University of Arizona)
- David Gantz (Georgetown University School of Law & Rogers College of Law, University of Arizona), The Spaghetti Bowl Revisited: Coexistence of Regional Trade Agreements as NAFTA with the TPP
- Xiuyan Fei (Institute of BRICS Legal Studies of East China University of Political Science Law), Shaping International Economic Law by Regionalizing Multilateralism and Multilateralizing Regionalism?
- Nicolas Lamp (Queen's University Faculty of Law), The WTO or PTAs? The Future of Trade Lawmaking among the Big Five
- Jane Korinek (OECD), Multilaterlising Regionalism: Disciplines on Export Restrictions in Regional Trade Agreements

Roundtable D: The Diminishing Power of US Courts in Transnational Disputes: Serving or Undermining International Commerce

- Pamela Bookman (Temple University, Beasley School of Law)
- Donald Earl Childress III (Pepperdine University School of Law)
- Aaron Simowitz (Willamette University College of Law)

10:30 a.m.-11:00 a.m.

Break

Hotung Faculty Dining Room

*Room open all day Friday & Saturday to house exhibitors' tables, JIEL table, coat rack, luggage storage space*11:00 a.m. – 12:30 p.m. **Session 2****Panel A: IEL Lawmaking: Domestic Dynamics**

- *Moderator:* Jeremy Weinberg (Department of State, Office of the Legal Advisor)
- Kathleen Claussen (Office of the U.S. Trade Representative), Path Dependence and Trade Law's Next Generation
- Simon Lester (Cato Institute), Interest Groups vs. the Public Interest: Applying Public Choice Theory to Trade Negotiations and Agreements

- Rachel Brewster (Duke University School of Law), Treaty-Dependent Statutes: The Development and Enforcement of the Foreign Corrupt Practices Act

Panel B: Topical Aspects of Regional Trade

- *Moderator:* Jeffrey Dunoff (Temple Law School)
- Pasha Hsieh (Singapore Management University School of Law), Integrating Development Policy in Post-Nairobi Trade Agreements: The Paradigm Shift in Asia-Pacific Regionalism
- Jeffery Atik (Loyola Law School, Los Angeles), EU and U.S. Nondiscrimination and Antitrust Restraints on FRAND Royalties
- Mira Burri (University of Lucerne Faculty of Law), The Governance of Data Flows Through Trade Agreements

Panel C: International Standards: Challenges and Opportunities

- *Moderator:* Steve Charnovitz (George Washington University School of Law)
- Erik Wijkström (World Trade Organization) – What are international standards and international standardising bodies? Are private standards covered under WTO law?
- Jan Yves Remy (Sidley Austin) – Recent developments in jurisprudence with respect to international standards under the SPS Agreement
- Joshua Meltzer (Brookings Institution) – What are the regulatory and economic effects of standards developed within mega-regional agreements?
- Marc L. Busch (Georgetown University Edmund A. Walsh School of Foreign Service) – Procedural plus provisions on TBT issues in PTAs and specific trade concerns
- Tatiana Yanguas (Advisory Centre on WTO Law) - How to enhance the participation of developing countries and LDCs in the development of international standards – challenges and the way forward?/Concerns of developing countries with regard to private standards

Roundtable D: Rethinking Subsidies, State Aids and Government Assistance, and Incentives, and on and on....

- *Moderator:* Sonia E. Rolland (Northeastern University School of Law)
- Gary Horlick (Law Offices of Gary N. Horlick and Georgetown University)
- Lilian Faulhaber (Georgetown University Law Center)
- William Powers (United States International Trade Commission)
- Gary Hufbauer (Peterson Institute for International Economics)

12:30 p.m.-2:30 p.m. **Buffet Lunch**
Gewirz 12th Floor

Program:

Dean's Welcome

Memorial tribute to John Jackson led by Michael Gadbow and Gary N. Horlick

Memorial remarks for Stephen Zamora led by David Gantz

2:30 p.m. – 4:00 p.m.

Session 3

Panel A: Transnational Regulation

- *Moderator:* Meredith Kolsky Lewis (State University of New York at Buffalo School of Law)
- Anupam Chander (UC Davis School of Law), Privacy and Trade
- Kishanthi Parella (Washington & Lee University School of Law), From Regulation to Catalysis: A New Functional Approach to Transnational Regulation
- Dan Danielsen (Northeastern University School of Law), The role of law in global value chains: a research manifesto
- Leonardo Borlini (Bocconi University), The Evolution of the EU Law Against Criminal Finance: An Analysis of the Recent Legislation to Contrast Money Laundering and Terrorism Financing in the Light of the Evolving International Instruments

Panel B: Emerging Economies in the Shadow of Mega-Regionals

- *Chair/Discussant:* Alvaro Santos, Georgetown University Law School
- David Trubek (University of Wisconsin-Madison), Fabio Morosini (Federal University of Rio Grande do Sul), Michelle Badin (FGV *Direito* São Paulo)
- James Nedumpara (Jindal Global Law School)
- Jing Tao (New York University School of Law)
- Mark Wu (Harvard Law School)

Panel C: Financial Institutions and Cross Border Risk

- *Moderator:* Chris Brummer (Georgetown University Law Center)
- Peter Conti-Brown and David Zaring (Wharton School of the University of Pennsylvania), The Foreign Relations Power of the Federal Reserve
- Daniel Awrey (University of Oxford), The Euromoney Problem
- Anna Gelpern (Georgetown University Law Center), How Much Is This Clause? Debt Managers on Pricing Bond Contract Terms
- Carlo de Stefano (Bocconi University), Reforming Rulemaking and Enforcement Mechanisms of International Financial Law

Panel D: (Re)Examining the Contours of Foreign Investment Law

- *Moderator:* Jarrod Wong (University of the Pacific McGeorge School of Law)
- Murilo Lubambo de Melo (University College London), Entry Rights for Investments: Adjudicatory Convergence between Regimes?
- Otabek Ismailov (University of Ottawa), Interaction of International Investment and Trade Regimes on Interpreting Treaty "Necessity" Clauses: Convergence or Divergence?

- Alexia Herwig & Azernoosh Bazrafkan (University of Antwerp), Reinterpreting the Fair and Equitable Treatment Provision in International Investment Agreements as a New and More Legitimate Way to Manage Risks
- Julian Scheu (International Investment Law Centre Cologne), Trust building, balancing and sanctioning - three pillars of a systemic approach to human rights in international investment law and arbitration

4:00 p.m. – 4:30 p.m.

Break

*Hotung Faculty Dining Room
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4:30 p.m. – 5:30 p.m.

Keynote Address: A conversation between Grant D. Aldonas (Center for Strategic & International Studies) and Jennifer Hillman (Cassidy Levy Kent & Georgetown University Law Center)
Gewirz 12th Floor

5:30 p.m. – 7:00 p.m.

Reception

IIEL Presentation: Chris Brummer (Georgetown University Law Center)
Gewirz 12th Floor

Saturday, October 1, 2016

9:00 am

Coffee

9:30 a.m.-11:00 a.m.

Session 4

Panel A: China, State Capitalism and IEL

- *Moderator:* James Feinerman (Georgetown University Law Center)
- Heng Wang (University of New South Wales), The Future of China's Approach to International Economic Law in Deep FTAs Era: A Paradigm Shift Towards Deep FTAs Lite?
- Jingxia Shi (China University of International Business & Economics), OBOR and International Law: A Perspective from International Public Goods
- Wentong Zheng (University of Florida Levin College of Law), Trade Law's Responses to the Rise of China
- Paolo Farah (West Virginia University), Trade and Progress: The Case of China

Panel B: Systemic Aspects of International Financial Law

- *Moderator:* Robert Peterson (United States Department of Treasury)
- Stavros Gadinis (Berkeley Law School), Basel III: A Harmonization of Methods
- Caroline Bradley (University of Miami School of Law), Financial Stability, Regulation and Politics: Risks, Uncertainties and the International Financial System

- Matt Turk (Indiana University Kelley School of Business), An Integrated Perspective on the International Financial Architecture: Exploring the Overlooked Policy Complementarity Between the IMF and Basel Committee
- Yesha Yadav (Vanderbilt University Law School), Fixing Private Regulation in Public Markets

Panel C: Disputes and Enforcement Issues in IEL

- *Moderator:* Cherie Taylor (Houston College of Law)
- Yuliya Guseva (Rutgers Law School), Extraterritoriality of Securities Law Redux: Litigation and Public Enforcement Five Years After *Morrison v. Nab*
- Matthew Swinehart (United States Department of the Treasury), Expert Evidence in International Disputes: Toward a Comprehensive Approach for Assessing Reliability
- Perry Bechky (International Trade & Investment Law PLLC and Visiting Scholar, Seattle University School of Law), The Blurred Boundaries of Economic Sanctions

11:00 a.m. – 11:15 a.m. Break
Hotung Faculty Dining Room
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tables, JIEL table, coat rack/luggage storage space*

11:15 a.m. – 12:45 p.m. **Session 5**

Roundtable A: Research methods

- *Moderator:* David Zaring (Wharton School University of Pennsylvania)
- Jason Yackee (University of Wisconsin – Madison)
- Erik Voeten (Georgetown University Edmund A. Walsh School of Foreign Service)
- Cosette Creamer (Boston University School of Law)

Panel B: Global v. Regional/local: Solutions for Trade and Sustainable Development

- *Moderator:* Elizabeth Trujillo (Texas A&M School of Law)
- Timothy Meyer (Vanderbilt University Law School), How Selective Enforcement Stifles Innovation
- Carolina Palma (World Trade Institute)
- Ilaria Espa (World Trade Institute)
- Peggy Clarke (Law Offices of Peggy A. Clarke)
- Daniel Klein (Legal Affairs, UNFCCC)

Panel C: Selected WTO Topics

- *Moderator:* Tomer Broude (Hebrew University of Jerusalem Faculty of Law)
- Robert Anderson & Anna Caroline Muller (World Trade Organization), The Revised WTO Agreement on Government Procurement: Cross-Cutting Lessons for the Future of the International Trading System

- Julia Ya Qin (Wayne State University & Tsinghua University of Law, China), When Is The Price Right? – Government Ownership of Natural Resources and Market Benchmarks in WTO Subsidy Law
- Oisin Suttle (University of Sheffield), Formalists by Default: A Constructivist Solution to Anti-Dumping's Interpretive (and Legitimacy) Problems

12:45 p.m.-1:45 p.m. Boxed Lunch (optional)
Interest Group Business Meeting (election information)
Gewirtz or Hotung Faculty Dining Room