

ASIA PACIFIC DISPUTE RESOLUTION ANNUAL UPDATE

Research and Results: The Eighth Year of the APDR Project

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In April and May 2016, the APDR project hosted a series of Policy Roundtables, taking place in Vancouver (in collaboration with the Asia Pacific Foundation of Canada), Toronto (with the Canada-China Business Council and the Asian Institute at the Munk Centre of the University of Toronto) and in Ottawa (with the Institute for Public Policy Research). The Roundtables provided opportunities for feedback and discussion with stakeholders in the Asia Pacific community (Vancouver), the business community (Toronto) and the policy community (Ottawa) on the results of a seven-year policy research program on coordination of international treaty compliance in trade and human rights.

International, regional, and subnational disputes over issues of trade and human rights have become increasingly serious obstacles to international cooperation in the Asia Pacific region. Coordinating trade and human rights performance can be an important step toward preventing and resolving these disputes. Despite robust efforts to establish international standards for business and human rights, efforts to integrate human rights standards into trade arrangements often have resulted in mainly hortatory efforts with modest operational effects.

MAJOR 2016 / 2017 WORKSHOPS & CONFERENCES

- **Public Forum: Trade, Poverty and Income Distribution: The Indonesian Experience**
University of Indonesia, Jakarta, Indonesia, April 20, 2016
- **Coordinating Performance in International Trade and Human Rights Policy Roundtable (Vancouver)**
900/675 W. Hastings St., Vancouver, BC, April 20, 2016
- **Coordinating Performance in International Trade and Human Rights Policy Roundtable (Toronto)**
Munk School of Global Affairs, University of Toronto, May 3, 2016
- **Coordinating Performance in International Trade and Human Rights Policy Roundtable (Ottawa)**
International Arts Centre, Ottawa, ON, May 5, 2016
- **2016 Annual Meeting: Law and Society Association**
New Orleans, USA, June 2-5, 2016

UPCOMING EVENTS

- **2017 Annual Meeting**
Law and Society Association, Mexico City, Mexico, June 20-23, 2017
- **Coordinating Performance in International Trade and Human Rights: Policy Implications**
Asia Pacific Foundation of Canada, Vancouver, BC, Canada, October 26, 2017
- **Coordinating Performance in International Trade and Human Rights: Discussion of Ongoing Research**
Peter A. Allard School of Law, The University of British Columbia, Vancouver, BC, Canada, October 27, 2017

Participants noted several initiatives that could strengthen coordination of trade policy with human rights:

- **Clarify human rights standards** and acknowledge that international human rights standards include economic, social and cultural rights in addition to civil and political rights.
- **Integrate human rights provisions in trade and investment agreements.** Measures such as production and value chain monitoring and human rights impact assessments should be used to strengthen human rights conditions.
- **Build capacity.** Establish a framework to measure integration of trade and human rights; provide assistance in the drafting of regulations; build administrative capacity with respect to investor–state arbitration, and assist in strengthening bureaucratic cohesion.
- **Pursue gender parity.** Develop standards and frameworks for building greater opportunities for women in trade and human rights performance and expand opportunities for women in leadership positions.
- **Provide incentives for performance** in promoting human rights.
- **Monitor corporate social responsibility (CSR).** Track the effectiveness of corporate social responsibility measures and engage with host country governments to identify how they can contribute to that work.
- **Establish certification processes.** Use third party certification as a basis for human rights engagement, which can provide market incentives for compliance.
- **Pursue engagement.** Pursue stronger engagement in Asia on trade and human rights. Emphasize the role of international organizations in setting performance standards.

MAJOR 2016/2017 PUBLICATIONS

- Potter, Pitman B., “Coordinating Performance in Trade Policy and Human Rights: Policy Roundtables with Canadian Stakeholders” (Vancouver, Canada, 2016) [Policy Report].
- Biukovic, Ljiljana, Pitman B. Potter, *Local Engagement with International Economic Law and Human Rights* (Cheltenham, UK: Edward Elgar, 2017).

NEWS

April 29, 2017—The Consulate–General of Japan in Vancouver announced that APDR International Advisory Board Member **Mr. Joseph Caron** would receive Japan’s Prestigious Order of the Rising Sun for his invaluable contributions in promoting friendly bilateral relations and mutual understanding between Japan and Canada.

May 4, 2016—*The Stability Imperative: Human Rights and Law in China* (Vancouver: UBC Press, 2015), by APDR Co–investigator **Professor Sarah Biddulph**, was shortlisted for the best 2015 book in Law and Society by the Canadian Law and Society Association.

VISITING SCHOLAR PROFILE

Abby Kendrick (appointed as a visiting scholar with APDR from April 1 to September 3, 2016) seeks to investigate and address the disconnect between the requirements of international human rights law and local human rights compliance in the Asia Pacific region. The project aims to provide a rigorous model that explains changes in compliance with economic and social human rights standards as a direct result of differences in the nature of interaction with those standards across the Asia Pacific region.

The Vancouver Roundtable: The Asia Pacific Community

The Vancouver policy roundtable focused on hearing from stakeholders in what is widely considered to be Canada’s gateway to the Asia Pacific region. The Roundtable concluded with keynote remarks from

Professor Daniel Drache, Professor of Political Science at York University and Associate Director of the Robarts Centre for Canadian Studies.

The development discussion group noted a range of issues to be considered in coordinating trade policy and human rights, including definitions and enforcement of legal rights; issues of policy enforcement; questions about corruption; the role of culture; and the functions of governments and NGOs.

The poverty and inequality discussion group focused on coordinating trade policy and poverty reduction. Participants noted the importance of Human Rights Impact Assessments (HRIA), while also noting the importance of transparency and credibility in HRIA activities. Participants discussed the proper role of government, while raising questions about whether there is a political appetite in Canadian society to promote human rights at the [perceived] expense of global competitiveness.

Participants in the government accountability discussion group noted many issues linking trade policy and human rights, including distinguishing between accountability and transparency as standards for trade and human rights performance and liability for harmful socio-economic consequences. As well, participants noted the importance for trade and human rights performance of newly emerging issues such as robotics, e-commerce, genetics and DNA modification.

The Toronto Roundtable: Considering Business Dimensions

The Toronto policy roundtable focused on business dimensions of integrating trade policy and human rights. The Roundtable concluded with keynote remarks from Professor Michael Goldberg, Dean

Emeritus at UBC's Sauder School of Business and Senior Fellow of the Asia Pacific Foundation of Canada.

The development, poverty and inequality discussion group noted a range of issues. In response to questions about the elements of development, poverty and inequality that are most amenable to trade policy solutions, participants focused on Indonesia in particular and the unintended consequences of poverty alleviation. Palm oil production, for example, has the potential to decrease poverty even while leading to serious environmental harm. Participants suggested the imposition of certain control mechanisms, such as an export tax on palm oil, to mitigate the negative effects of trade on human rights.

Participants in the public health discussion group noted many questions related to linkages between trade policy and human rights. Participants discussed patent protection regimes and their effects on access to medicines in Asia and in Canada, pharmaceutical and health care pricing mechanisms as non-tariff barriers to trade and the issue of affordability of medicines. Participants suggested carving out public health measures from investor-state dispute settlement in international trade and investment agreements.

Participants in the government accountability discussion group raised several questions about foreign direct investment and trade policy, including the challenges and possibilities of linking trade and investment with human rights protection. Transparency and accountability were seen to pose serious challenges in many economies, with China being a key example. Participants noted that a potential free trade agreement with China should

focus not only on tariffs, but also on important aspects of human rights. In this regard, participants acknowledged the leading role played by Canada in the world political economy and its potential impact on international agreements affecting world trade and investment.

The Ottawa Roundtable: The Policy Community

The Ottawa policy roundtable focused on hearing comments and discussion from stakeholders on current and emerging trade and human rights policy issues facing Canadians and their governments. The roundtable concluded with keynote remarks from Professor Michael Goldberg, Dean Emeritus at UBC's Sauder School of Business and Senior Fellow of the Asia Pacific Foundation of Canada.

The development discussion group discussed a range of issues including political support for trade agreements; issues of policy implementation; the balance between customary and formal regulation; and the functions of overseas governments. Participants noted significant progress in the integration of trade and human rights as policy priorities. Participants recognized the importance of educating Canadians on the importance of trade and developing a "social license" for trade policy. Participants suggested that a more informed discussion on the benefits and potential trade-offs of trade agreements could be achieved by including Canadian society in the negotiation process through increased transparency.

Participants in the labour relations discussion group discussed several questions about linking trade policy and human rights, including the effectiveness of international law to improve labour standards; labour mobility; and the politics of using international law to improve labour standards abroad.

Participants noted that the Trans-Pacific Partnership presents an important opportunity for Canada to include labour standards in trade negotiations. As well, participants suggested that TPP labour standards should extend beyond issues of minimum wages to include working conditions. Looking forward, participants discussed the importance of a multi-stakeholder approach in the dynamics of trade agreements.

Participants in the poverty and inequality discussion group focused on the role of international economic law and the sustainability of current poverty and inequality alleviation strategies in Indonesia. Participants also acknowledged the tension between the goals of economic development and sustainability. Also discussed was how human rights could be integrated into trade policy and who should be taking the lead in assessing human rights compliance. Participants noted that governments and NGOs could act as complements to government certification efforts.

Participants in the government accountability discussion group considered a wide range of issues, including the way in which accountability is conceived; the way in which good governance is defined; the requirements of transparency to achieve accountability; and the functions of various actors such as businesses and banks.

Next Steps

The Policy Roundtables provided invaluable feedback and policy discussion on the wide range of issues addressed in the five Thematic Volumes being prepared under the APDR project. Moving forward, the editors of the thematic volumes will be reexamining their work and including reflections and insights gained from the policy roundtables.