with these individuals, although some of the targeted air strikes by U.S. forces in the combat environment of Afghanistan and in Yemen[14] appear to have had specific terrorist suspects in their sights. U.S. officials have repeatedly stressed the need to bring leading terrorist suspects to justice, even though the occasional statement by President Bush or Secretary of Defense Donald Rumsfeld may leave a different impression.[15] One can discern a great temptation on the part of the Bush administration to employ Carr's tactics.

Carr's book serves a useful purpose in presenting an argument against "total war" in the vein of certain past American campaigns. But while Carr asks the right questions about total war, he arrives at the wrong answers. Just because civilians are assaulted during war does not mean that they are the victims of terrorism. Carr would lead one to believe that war is equivalent to terrorism because of war's impact on civilians and civilian property. He fails to appreciate that the law of war is replete with rules regarding the treatment of civilians during warfare, and that it accepts that under some circumstances civilians will be victims.

Carr's position leads to a distorted view of terrorism. It is extremely important to distinguish between war (which can be justified under a range of circumstances, can be legally waged in a manner that protects civilians, and can be protective of individual combatants' rights to fight within legal parameters) and terrorism (which should be unjustifiable under any circumstances, can be waged only in an illegal manner, and offers terrorists only due process rights under criminal law). His advocacy of "progressive war" overlooks the fact that the methodology of such warfare has deep roots in international law even if it has utilitarian origins in the thinking of Falstoff, Vattel, and Prussian generals. Progressive war should not be used as a pretext for evading law; rather, existing legal justification for elements of progressive war should be recognized and developed. In his call for new strategies to wage war against terrorists who essentially evade legal norms and institutions, Carr denigrates everything that the weapon of law enforcement, backed by a substantial body of international treaties addressing terrorist threats, can bring to the challenge of defeating terrorism. In the end, international terrorism will be crippled (never completely defeated) because of the permanence of a well-organized international law-enforcement system underpinned by a complex, but enforceable, body of international treaties and domestic antiterrorism laws. Occasional military actions probably will be required against terrorist cells, but they will serve as the exceptional strategy and not as the fundamental strategy sought by Carr.

Carr closes his book by calling upon military thinkers to unite "the acceptance of progressive war (and the attendant abandonment of total war) with the vigorous pursuit of American national security" (p. 254). But he ignores the reality that many other nations have joined the United States in this fight against terrorism and also that their civilian law enforcement authorities, like ours, will have the most challenging struggle in confronting terrorist threats long after high-profile military interventions—some of which are bound to ignite other conflicts—become historical lessons.

Kaplan and Carr are significant voices in the growing debate over the future course of American foreign and military policy. One can only hope that they are not the sole or dominant voices, and that their recent books are countered by scholars and other writers who present a vigorous defense of international law.

DAVID J. SCHEFFER
United Nations Association of the U.S.A.

[14] *See* James Risen, *Threats and Responses: Drone Attack; An American Was Among 6 Killed by U.S., Yemenis Say*, N.Y. TIMES, Nov. 8, 2002, at A13.

[15] *See, e.g.*, David Sanger, *Bin Laden Is Wanted in Attacks, 'Dead or Alive,' President Says*, N.Y. TIMES, Sept. 18, 2001, at A1; Ewen MacAskill, Jonathan Steel, & Nicholas Watt, *War in Afghanistan: Manhunt: Rumsfeld Wants Bin Laden Dead as Allies' Net Tightens*, GUARDIAN (London), Nov. 22, 2001, at 5. There remains the strong inference in some of the tactics reportedly used by the United States that rendering so-called justice against alleged terrorists will take the form of summary executions (with high technology weaponry or otherwise) in lieu of taking on the additional risks (and perhaps exercising the patience) required to capture them alive, if possible, and bring them to trial. *See* James Risen & David Johnston, *Threats and Responses: Hunt for Al Qaeda; Bush Has Widened Authority of C.I.A. to Kill Terrorists*, N.Y. Times, Dec. 15, 2002, at A1.

BOOK REVIEWS

Trade Law and Global Governance. By Steve Charnovitz. London: Cameron May, 2002. Pp. 539. £95, $160.

The most contentious issue in GATT/WTO law and policy over the past decade has been the debate over what is called the "trade and . . ." problem. The point in dispute has been the extent to

which GATT/WTO trade norms should make room for certain social welfare interests that seek to employ trade-restricting measures in pursuit of their objectives. The most prominent competing social welfare interests have been environmental protection (including policies on the treatment of animals), labor rights, human rights, and policies involving protection of human health. As part of their demand for accommodation, private organizations devoted to promotion of these various interests have sought the right to participate in heretofore closed WTO legal and policy-making operations.

One of the most highly respected voices in the "trade and . . ." debate is Steve Charnovitz, whose prominence rests on a number of very high-quality scholarly monographs that began appearing in the early 1990s. These writings were uniformly thorough, balanced, and well reasoned, and invariably added an interesting perspective on the problem at issue.

The sixteen essays in *Trade Law and Global Governance* are divided into five parts that cover the five main subjects of the "trade and . . ." debate. Part I deals with the overall issue of "linkage"—the question of when and where it is appropriate to "link" the obligations of an international agreement that deals primarily with one subject (in most cases here, trade) with obligations pertaining to another, separate subject such as environmental protection. Parts II, III and IV deal with the case for linking WTO trade policy with the three major "other" topics of the "trade and . . ." debate—environmental policy, labor rights, and human rights. Part V then deals with the general issue of participation by nongovernmental organizations (NGOs) in the affairs of international organizations, presenting a framework for analysis of current demands to open the WTO to participation by private groups representing interests such as environmental, labor, and human rights policy.

Charnovitz is perhaps best known for his distinctive historical approach to linkage issues. His writings on a particular linkage issue typically begin with a detailed account of previous international agreements addressing this type of linkage. The message to be read in the historical record is often powerful and usually demonstrates that, contrary to arguments from the trade law side, the linkage in question had in fact achieved a measure of agreement in the past. Many of the more telling examples Charnovitz cites are obscure agreements that date back to the turn of the previous century and even before; his readers, for example, will repeatedly encounter such long-forgotten measures as the 1906 Convention Respecting the Prohibition of the Use of White (Yellow) Phosphorus in the Manufacture of Matches. The "trade and . . ." debate is thus much indebted to the author's archeological research skills (and interests) that have enabled him to unearth these earlier measures and introduce them into the debate.

This lengthy catalogue of prior experience does not, of course, prove the case for linking GATT/WTO trade rights to other social welfare interests. That was then, and this is now—conditions surrounding those earlier agreements were probably quite different from conditions today. However, the existence of such previous agreements makes it impossible for those who oppose "trade and . . ." linkages to take the blanket position that trade agreements must never be linked to other social values. Instead, studying the past has revealed that arguments about linkage must deal with the specifics of each situation, and that in most cases the issue will turn out to be a question of political preferences regarding predicted consequences. This conclusion was dramatically confirmed in 1994 by the GATT's decision to add the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) to the Uruguay Round trade negotiations. This linkage of GATT trade rights to enforcement of intellectual property rights undermined once and for all the absolutist refusal to consider linking trade rights to other issues. Since the creation of TRIPS, it has become clear to all that the issue of whether to link trade rights to other social welfare values is simply a political question of costs and benefits. It may or may not be a good idea in particular cases, but the case for or against it must be made in terms of specific consequences.

Two of the most interesting historical essays in *Trade Law and Global Governance* are Chapters 9 and 15. Chapter 9 examines the historical background of the GATT Article XX(a) exception for trade measures that are "necessary to protect the public morals"—an exception whose meaning has never been tested in WTO litigation but which has been included, in one form or another, in a large percentage of commercial agreements both past and present, and which appears to be the only GATT exception under which governments

might justify trade measures seeking to promote labor and human rights. In this chapter, Charnovitz presents an exhaustive and meticulous account of the various "morals" exceptions that have appeared in commercial agreements to date. One of the central issues he tracks is whether the "public morals" these clauses refer to are the morals of a government's own citizens, or whether such clauses also include protecting the morals of foreign persons (e.g., export restrictions on narcotics), or whether they could extend to morally based objections to treatment of foreign persons (e.g., import restrictions on products of child labor). Although Charnovitz's survey finds substantial evidence of views limiting "morals" exceptions to protection of one's own citizens, he also finds sufficient examples of outward-looking explanations to make the scope of such clauses a matter open to debate.

With 98 pages and 883 footnotes, Chapter 15 offers a painstaking account of the more than two-hundred-year-history of participation by private issue-oriented organizations in the making of international agreements. Such history places the WTO's general resistance to public participation into sharper focus. Given the extensive degree of NGO participation in international negotiations over the past two centuries (particularly during several periods of the twentieth century), the reader may find it difficult to accept WTO rejection of such participation without a better explanation of how the WTO differs from all the other institutions that have participated in the past. The WTO may in fact be different, but Charnovitz contends that this difference has not yet been adequately explained and terms the present arguments against NGO participation in the WTO "a-historical." (p. 519).

In addition to the author's historical research, the second major strength of these essays is his analysis and support of trade policies that would accommodate the various social welfare interests seeking recognition. This analysis varies according to the particular interest involved. Chapter 5 surveys the GATT legal issues presented by the multiple ways in which trade measures might be used to support environmental goals—from the unilateral U.S. trade restrictions employed in the celebrated *Tuna/Dolphin*[1] cases to the various trade measures called for by multilateral environmental agreements (MEAs) such as the Montreal Protocol. The chapter 5 essay, published in 1992, anticipated much of the criticism of GATT legal doctrine that has since occurred, including the apparent reversal by the WTO Appellate Body of the *Tuna/Dolphin* decision's ban on "extra-jurisdictional" trade measures. Separate chapters on the legal status of trade measures authorized or required by MEAs, and the environmental provisions of regional trade agreements such as NAFTA, round out the very comprehensive legal analysis of this area.

Unlike most scholars writing on GATT/WTO international trade policy, Charnovitz devotes considerable attention to the parallel field of international labor policy centered around the International Labor Organization (ILO). Four of his sixteen chapters are devoted to international labor policy (undoubtedly reflecting his experience as an international relations officer for the U.S. Department of Labor). He expresses respect and admiration for the accomplishments of the ILO. Charnovitz argues in favor of employing trade measures to enforce core labor rights, but, unlike many trade policy writers, he would employ the ILO rather than the WTO to carry out that task.

Part IV, the section on human rights, consists mainly of historical and legal analysis of GATT Article XX(a). As previously noted, Charnovitz recognizes that an open-ended XX(a) exception allowing country *A* to impose trade restrictions against country *B* in furtherance of country *A*'s moral objections to country *B*'s policy would lead to an extreme situation. As a middle-ground interpretation, he recommends that the WTO interpret Article XX(a) as limiting outward-directed moral claims to measures based on international human rights law (p. 373). However, he acknowledges that this would be a bold step.

The book concludes with an essay advocating greater participation by NGOs in the work of the WTO. Charnovitz does not rest his case, as many do, on the WTO's need for greater democratic legitimacy. Rather, he is content to rest his case on the value of the contributions that NGOs can make to the intellectual quality of an international organization's legal and policy-making operations—better ideas based on better information and better analysis—and presents a list of the specific roles that NGOs can play in the various branches of WTO operations.

ROBERT E. HUDEC
Fletcher School of Law and Diplomacy
Tufts University

[1] Panel Report, United States—Restrictions on Imports of Tuna, GATT B.I.S.D. (39th Supp.) at 155 (1993), *reprinted in* 30 ILM 1594 (Aug. 16, 1991) (unadopted); Panel Report, United States—Restrictions on Imports of Tuna, GATT Doc. DS29/R, *reprinted in* 33 ILM 839 (June 16, 1994) (unadopted).