Introduction

In December 2012, Professor Robert M. Stern of the University of Michigan invited me to prepare a collection of my articles to be published in the World Scientific Studies in International Economics. Back in 2002, I had assembled a collection of 16 of my articles written between 1987 and 2001 that were published under the title *Trade Law and Global Governance* (Cameron May, London). Professor John H. Jackson generously contributed the Foreword to that volume. Now, ten years later, I had written a fresh batch of scholarship, and so a new collection would be timely. I began preparing a new collection of 18 articles under the theme *The Path of World Trade Law in the 21st Century*. With one exception, the new collection covers the period between 2002 and 2011. The exception is my panel presentation of 1998 in commemoration of the Universal Declaration of Human Rights. That article, published in 1999, discusses the right to buy and sell in international trade as a human right.

My interest in international economics began at Yale College in the early 1970s under the influence of Robert Triffin and Lloyd Reynolds. I first learned about the Bretton Woods institutions from Professor Triffin, who also taught me the importance of seizing opportunities to redesign our complex international financial system to meet the needs of a changing world economy. Professor Triffin was very active in European integration and, as Master of Berkeley College, introduced us to many distinguished visitors from Europe and on one special occasion, served a salamander cognac presented to him by Jean Monnet (an Associate fellow of our college). Professor Reynolds taught me international trade and labor economics, both

of which proved enormously useful when I joined the Policy Office of the U.S. Department of Labor in 1975. Lloyd also introduced me to the splendors of the Cosmos Club in Washington, D.C. where I sometimes slip away to study on a quiet afternoon.

My writings in the 2000s and 2010s continue to be sharpened by my teaching at the George Washington University Law School. Often my students are the first receivers of my new thoughts and I value their pragmatic feedback. My scholarship also benefits from regular insights from my Law School colleagues specializing in other fields of law.

The Foreword to this volume is written by James Bacchus, a former member of World Trade Organization (WTO) Appellate Body who served eight years as a judge beginning with the first establishment of the Appellate Body. Jim is now Chair of the Global Practice at the GreenbergTraurig law firm. Earlier in his distinguished career, Bacchus was elected to be a U.S. congressman from the district including Orlando, Disney World, and Central Florida's Space Coast.

Preparation of the essays in this collection took a lot longer than expected because most of my time in 2013 was devoted to caregiving for my mother, Minnie Charnovitz, who passed away in September 2013. I dedicate this book to her and acknowledge her artistic advice in selecting the cover design.

Let me also thank many individuals and institutions that contributed to this project. Editing assistance was received from students and staff at George Washington University including Aseel Barghuthi, Carolyn Bethea, Yvette Butler, Kevin Healy, Barrett Hunter, Michelle Khilji, Lisa Lindhorst, Laurel Parker, Elizabeth Rivera, and Lillian White. Let me also thank the GWU Institute for International Economic Policy and the Law School for its support for this project and also the publishers of the original essays for permission to republish.

My essays cover many topics, but one unifying theme is that we can learn from studying the path of world trade over the past century and use those historical insights to help international trade promote future prosperity. The 18 essays are divided into eight sections: (1) A Theory of the WTO, (2) The WTO as an Economic Constitution, (3) Assessing the WTO's Enforcement Mechanism, (4) The WTO and Discrimination, (5) The WTO and Individual Rights, (6) The WTO and Sustainability,

(7) The WTO and Labor Markets, and (8) The Future of Global Economic Governance.

Below I provide a short summary of the 18 essays along with the circumstances that led me to each of these projects:

I. A Theory of the WTO

From its beginnings in the Havana Charter for an International Trade Organization and the General Agreement on Tariffs and Trade (GATT), the world trading system manifested a tension between those issues that were the proper province of international trade disciplines and those issues that should be left to other organizations or not regulated on the international plane. When I was a U.S. trade bureaucrat in the early 1980s, I became more inquisitive about these policy interstices than about the mainstream trade issues like antidumping adjustments and textile quotas. In 1984, after I served as a U.S. trade negotiator for the Caribbean Basin Initiative, I began writing about linkages between international trade and labor standards.[1] In 1990, on a Congressional staff trip to Canada led by Jonathan Fried[2], I first learned about the linkages between trade and the environment, and soon wrote my first article analyzing those linkages, "Exploring the Environmental Exceptions in GATT Article XX".[3]

In 2001, a forthcoming Symposium in the American Journal of International Law on "The Boundaries of the WTO" gave me an opportunity to formulate a theory of the substantive content of world trade law. At a Symposium authors meeting at Columbia Law School in fall 2001, I learned that some other participants were writing on the so-called "trade-and" linkages. Because I had already written extensively on the interstices, I chose instead to prepare an interdisciplinary article that would focus on the prior question of how to ascertain the purpose of the WTO. Given that many purposes

[1] *See* Steve Charnovitz, *Fair Labor Standards and International Trade*, Journal of World Trade Law, January–February 1986.

[2] Fried is now Canada's Ambassador to the WTO.

[3] Journal of World Trade, October 1991.

for the WTO and the trading system had been postulated in the literature, I decided to systematically test these propositions against the actual legal content in the WTO agreement. In doing so, I discovered quickly that the provisions of WTO law were too diverse to fit any unitary explanatory model.

Consequently, I formulated a complex model. Borrowing a term from navigation, my article (Chapter 1 in this book) employs "the method of legal triangulation"— in which one examines the position of the WTO in relation to interstate diplomacy, domestic politics, and the plane of the international organization — to test whether a new issue should rationally be included under the umbrella of the WTO. These three foci are then subdivided into individual frames (eight frames in total), each of which offers a promising hypothesis of what the WTO seeks to accomplish. For example, in the first frame, cooperative openness, the motivating idea is that governments use the WTO to facilitate reciprocal and mutually beneficial trade concessions. This is not a new idea in international economics, of course, but sometimes economists stop there in explaining the foundations of the WTO.

By contrast, my analysis points to seven additional explanations that are just as convincing. These frames are: harmonizing domestic policy, making trade fairer, reducing risk for private economic actors, engaging in self-restraint (sometimes termed commitment theory), building domestic coalitions in support for trade liberalization, centralizing the trade function among international organizations, and putting in the WTO those functions for which the WTO has comparative competence. Each of these frames is tested against existing WTO law to see if the frame can "explain" the suitability of the norms already in the WTO. Perhaps the most difficult to explain is the Agreement of Trade-Related Intellectual Property Rights (TRIPS). I hypothesize that a frame that fails to explain what is already in the WTO will not be useful for showing what *should be* in the WTO or predicting what *will be* added to the WTO.

Although I am especially proud of this contribution to trade law theory, I regret that the impact of my findings has been only modest. One reason may be the complexity of my model in juxtaposition

with the severe space limitations of the Symposium. Another reason may be the title I chose[4] which, looking back, I see poorly communicates the content of the study. As my article was being prepared for publication, Professor Michael Reisman, then editor-in-chief of the *Journal*, gently urged me to reconsider the title. I regret not taking his hint to heart and selecting a clearer title such as "What is the Purpose of the WTO?".[5] A year later, I was elected to the *Journal's* Board and learned over my ten years of service the value of the editing wisdom offered by the editors-in-chief.

II. The WTO as an Economic Constitution

The next group of essays revolves around the concept of the WTO as a constitution. This idea is usually credited to Professor John Jackson who has had more influence in systematizing trade law and in teaching it than anyone else. John has also encouraged many people across the planet, including me, to become professors of international trade law.

The advent of the WTO in 1995 sparked more thinking about the WTO as an economic constitution with some scholars analogizing from the deepening developments at the European level. I contributed to this debate occasionally in my scholarship. Although classroom commitments in Washington, D.C. prevented me from attending the World Trade Forum in September 2009, I was happy to contribute an article to the World Trade Institute's Project on "Governing the World Trade Organization". Given to the topic of "governing", I delved into a classic work of political philosophy, *The Spirit of Laws* by Montesquieu. In March 2010, I presented a draft of my study to the Faculty of the University of Notre Dame Law School and benefited from many helpful comments. While Montesquieu's *Spirit* is regularly consulted for insights into the healthy structure

[4]That is, "Triangulating the World Trade Organization".

[5]Actually, I have chosen even less suitable titles. Perhaps the worst was *A Close Look at a Few Points*, 8 Journal of International Economic Law 311 (2005). My advice to authors now is to carefully craft your title before you write your article!

and function of constitutions at the national level,[6] few scholars had sought to redirect his analysis up to the international level and in particular the international economic order. So that became my goal — to reread Montesquieu carefully for insights into an international economic constitution and to apply Montesquieu's model of divided powers to the World Trade Organization.

I call my new analysis the "Post-Montesquieu". My analysis looks at judicial and executive powers in the WTO, and then explains what those constitutional heads of power can contribute to the WTO's interface with its constituents and the market. Applying Montesquieu to the WTO is especially apposite because the socially constructive role of commerce is discussed throughout *Spirit*. For example, Baron Montesquieu wrote that "peace is the natural effect of trade". Moreover, Montesquieu evinced an understanding of the important principle that free trade should not be falsely equated with the absence of government regulation.

My article (Chapter 2) makes numerous recommendations for how the WTO might be better governed. For example, I propose a periodic conference of trade jurists that would bring together WTO appellators and national judges that specialize in trade and customs cases. To experiment with having non-governmental organizations as part of the WTO's deliberations, I suggest inviting the tripartite International Labour Organization (ILO) to participate in a newly created WTO Committee on Trade and Employment, and inviting the International Union for the Conservation of Nature (IUCN) to participate in the WTO Committee on Trade and Environment. I also take note of the ongoing contradiction between the WTO's espousal of the principle of non-discrimination and the WTO's own discriminatory practices in hiring staff and contractors. For example, in its 2008 announcement of an architectural competition to design an extension to the Centre William Rappard, the WTO Secretariat insisted that the competition be open only to architects in WTO member countries.

[6]The U.S. Supreme Court has done so since 1800. *See Cooper v. Telfair*, 4 U.S. 14 (1800).

My work on judicial independence as a constitutional principle arose out of a seminar at the University of Geneva in February 2001 organized by Laurence Boisson de Chazournes. The topic of her conference was dispute settlement in international organizations and many cutting-edge papers had been presented. A distinguished expert on the WTO had participated in the seminar, but was unable to complete a paper for publication. With a big hole to fill, Laurence asked if I could prepare an analysis of WTO dispute settlement, and to do so quickly. I agreed and, after perusing the ten seminar papers, decided to weigh in on the topic of judicial independence at the international level, which had received only limited attention in her project at that point.

My article begins with an overview of the history of the judicial function in international organizations. I distinguish between review by an international tribunal of whether actions by a state are in accord with a treaty and review of whether acts by an international organization are in accord with the organization's organic law. I note that both types of adjudication were to be available in the Charter of the International Trade Organization (1948), but that the WTO's judicial function is limited to review of state actions. Next I point out the "plentitude" of DSU features of judicial independence, such as the automatic adoption of panel and Appellate Body reports.

My article (Chapter 3) then proceeds to a case study of the *EC-Asbestos* episode in November 2000 wherein judicial independence came under challenge. Aiming to increase fairness, transparency, and predictability in dispute settlement in a high visibility case about human health, the Appellate Body announced a one-off procedure for social and economic actors to seek leave to file an *amicus curiae* brief. This led to a firestorm of protest by many governments who then convened a meeting of the WTO General Council to criticize the Appellate Body for acting in contravention to its authority. Stunned by this unexpected censure, the Appellate Body backed down and dismissed all of the non-governmental petitions.

My analysis of the case study leads to three main conclusions: First, the WTO constitution provides no recourse to directly review

the legality of an Appellate Body action. Second, the consensus rule in the DSB effectively prevents it from any legislative override of Appellate Body procedural decisions. Third, the only path remaining for WTO Members to reverse the Appellate Body's action was to put "extra-legal pressure on the judiciary". Looking back to that unfortunate episode in 2000, one can happily say that as of 2013, no similar instance of extra-legal pressure has occurred.

Writing projects do not always proceed in a linear way. In early 2001, longtime GATT economist and good friend Richard Blackhurst invited me to contribute an article for the inaugural issue of the *World Trade Review* to be published in March 2002. Professor Blackhurst, by then at the Graduate Institute, was the founding editor of this new peer-reviewed journal sponsored by the WTO and Cambridge University Press. I accepted Richard's invitation and for my topic chose to address the implications for the WTO of a fascinating lecture recently given by European Trade Commissioner Pascal Lamy. Lamy's February 2001 lecture was titled "Harnessing Globalisation: Do We need Cosmopolitics?". I welcomed Lamy's idea for a "new term" to describe a "new world", and wanted to further develop this innovative concept specifically as it applies to the WTO and other international organizations. I completed my draft article over the summer, sent it to Lamy for his comments, and then transmitted it to the *Review*. Several weeks later, to my surprise, Richard wrote back that the Editorial Board had decommissioned my article. Disappointed that my work had failed to impress the Editorial Board, I submitted my paper to the *New York University Journal of International Law and Politics*, one of the oldest student-run journals on international law. My article was soon accepted as the lead article for the *Journal's* Winter 2002 issue.

The thesis of my article is that the WTO needs more "cosmopolitics" which I define as "global political action transcending a strict state-to-state, or multilateral, basis". My article (Chapter 4) begins by sketching out the intellectual history of the idea of "cosmopolitics" beginning with Immanuel Kant. It is Kant who first postulates a normative basis for cosmopolitics by emphasizing the importance of government openness (he calls it "publicity") in constitutional doctrine

as it relates to civil law and the law of nations. For Kant, human reason will motivate individuals to offer advice to governments so long as governments do not forbid it. My intellectual history continues with the economist Friedrich List, the political scientist Norman Hill, and the sociologist Herbert Shenton who was the first analyst to extensively describe the phenomenon of "cosmopolitan conversation" in international organizations.

Next my article contrasts what I term "ortho-politics" with cosmopolitics. Ortho-politics, which was the prevailing thought for much of the 20th century, argues that an individual's participation in international governance should be and is through her own government. I explain why ortho-politics is inadequate for the 21st century, noting that "the notion that international organizations can operate as islands of non-democracy is no longer acceptable". I also consider objections to my thesis. For example, I note my former professor Robert Dahl's argument that "international decision-making will not be democratic", and then seek to rebut that by arguing against vote-centrism. Indeed, as I put it, "No one today seriously would argue that the quintessential democratic act is what the individual does alone in the voting booth". Rather, the democratic process is how individuals seek to influence the governors that have been constitutionally elected.

In cosmopolitics, one should start the democratic analysis with the individual rather than the state. A rational individual wants to influence decision-making at all levels of the world economy that affect him. So it would be irrational for such an individual to "stay his passions at the border". Thus, marrying Kantian theory and Professor Shenton's empirical observations, one can derive a logical explanation for the fact that individuals, autonomously, "create their own cosmopolitan communities of common concern" in international affairs.

Having presented a general theory of cosmopolitics, my article then asks whether there is justification for "WTO exceptionalism". While noting the strongly held view in the WTO that non-state interests should not be directly involved in the WTO, I point out how counterproductive these insular views are to the project of trade

liberalization. As I put it, "Domestic trade debates are held in the desolate sands of nationalism, isolationism, and protectionism. Given that the trading system was set up to overcome economic nationalism, it is perverse to rely on communication channels owned by national governments".

My article concludes that "Cosmopolitics *is* the new world order", and that Pascal Lamy's provocative question should be answered affirmatively. Writing in 2002, I argue that cosmopolitics is needed to make the WTO a better marketplace for ideas in order to conclude the Doha Round. Looking back over a decade later at the tattered Doha Round, I lament the continuing unwillingness of the WTO power structure to move beyond ortho-politics.

III. Assessing the WTO's Enforcement Mechanism

The next set of essays examines the WTO dispute settlement system which also serves as the WTO's enforcement mechanism. In the 1980s, I began writing about the use of trade measures to enforce labor rights, and my writings drew the attention of the globally respected trade economist Jagdish Bhagwati who invited me to lunch at the IMF. Jagdish soon became a good friend and mentor, and contributed intellectually to my understanding of how to match policy instruments with economic purpose. In the early years of our friendship, he tended to quote from my writings as evidence of error, but when *Trade Law and Global Governance* was published, he graciously wrote a book blurb that I cherish saying: "Charnovitz is in a class by himself. His essays reflect both enormous scholarship and a splendid policy sense".

The fierce debate in the 1980s and 90s about the use of trade measures to enforce labor and environmental rules led me to reflect on the puzzling practice of using trade measures to enforce *trade* rules. Although GATT-era commentators occasionally argued that the GATT enforced its rules with trade sanctions, the fact that such sanctions were never used and only authorized once made the claim of a GATT sanction tenuous. All that changed in the WTO, when the WTO's Dispute Settlement Body began authorizing remedial measures in 1999 and

commentators routinely referred to such measures as a WTO "trade sanction". I discussed these developments with Professor Robert E. Hudec on several occasions, and when, in early 2000, he began organizing a conference in honor of his retirement from the University of Minnesota Law School, Bob invited me to present a paper on trade remedies for enforcement. That conference was held in September 2000. My research was then published in the American Journal of International Law and later as revised in the Festschrift volume for Professor Hudec.[7] My study of WTO trade sanctions received considerable attention in WTO legal circles, and over the next decade references to WTO "sanctions" became commonplace. Always seeking to make my work accessible for broader audiences than legal scholars, I decided to prepare a more concise version of my thesis on WTO sanctions for an international economics journal. The Swiss Review of International Economic Relations agreed to publish my research in 2002, and that is the short article (Chapter 5) included in this book.

My article addresses several important questions regarding the political economy of sanctions: First, is the WTO remedy of "suspension of concessions or other obligations", for which I coined the acronym "SCOO", truly a multilateral trade sanction for violating the WTO, or is it instead merely a way to engage in authorized self-help to rebalance WTO obligations following a contract breach? My conclusion is that the SCOO is a sanction. Second, if the SCOO is a sanction, is it an effective sanction to deter the violation of WTO law and to induce compliance? My conclusion is that the SCOO is an intentionally weak sanction that is not particularly effective.[8] Third, is there a way to justify using a trade sanction in the WTO to enforce

[7]Steve Charnovitz, *Rethinking WTO Trade Sanctions*, American Journal of International Law, October 2001; *Should the Teeth Be Pulled?: An Analysis of WTO Sanctions*, *in* The Political Economy of International Trade Law (Daniel L.M. Kennedy and James D. Southwick (eds.), Cambridge University Press, 2002).

[8]Ten additional years of data since 2002 has shown the SCOO and threat of the SCOO to be more effective than it had been earlier. Even with an imperfect SCOO, the WTO today probably has the best complex system of any international organization.

trade rules while not permitting the use of trade sanctions in other regimes to enforce non-trade rules? My conclusion is that there is no principled rationale for why the WTO should have sole use of the trade instrument for enforcement, especially when a targeted SCOO violates core WTO principles such as avoiding quantitative restrictions and discrimination. Fourth, how can the SCOO be reformed? My article calls for improving the transparency of WTO dispute settlement so as to better utilize the power of public opinion to promote compliance.

Following my article on WTO enforcement in the American Journal of International Law, important new DSU decisions ensued and other scholars injected new ideas into the debate. I was looking for an occasion to discuss these recent developments when Ambassador Julio Lacarte Muró invited me to participate in a conference in Montevideo in April 2004. I regretted not being able to attend, due to pressing deadlines at my law firm Wilmer Cutler & Pickering, but agreed to prepare a study for the project. The resulting book was launched in December 2004 at the Inter-American Development Bank through the laudable efforts of the IDB's trade expert Jaime Granados. During the same period, Jaime, Debra Steger, Jane Bradley, and I were preparing a lengthy video history with Ambassador Lacarte, now 95, who as a young United Nations staffer, helped organize the U.N. conference that wrote the Havana Charter and the GATT.

My chapter (Chapter 6) examines the recent scholarship on WTO enforcement by coauthors Warren F. Schwartz and Alan O. Sykes, two prominent law and economics scholars, and by economist Robert Lawrence. Schwartz and Sykes suggest that DSU enforcement exemplifies a contract remedy based on a liability rule. This means that it is efficient and acceptable for a WTO scofflaw government to violate the WTO if the benefits of doing so are greater than its costs from suffering the resulting SCOO. Lawrence rejects the efficient breach analysis because the retaliating country would not be as well off as it would have been if compliance had occurred. Nevertheless, he accepts the principle that the proper measure of

trade retaliation is the amount needed to rebalance concessions rather than to induce compliance.

In my commentary, I criticize Professor Lawrence's position that compliance should not be the goal of WTO enforcement. To wit, "Like many economists writing about international trade, Lawrence scrutinizes the WTO with the same lens once used for the GATT. The problem with this lens is that it does not focus well on the role of the WTO as an international organization and as a set of legal norms. Governmental members of the WTO have developed expectations as to duties of WTO Members, and numerous private economic actors look to the WTO to maintain the rule of law in trade relations".

IV. The WTO and Discrimination

The next four essays discuss "WTO and" issues, which is shorthand for how WTO law addresses or relates to another body of law. The collection starts with "discrimination" and two essays are included. The first study shows how the GATT judiciary hardened the non-discrimination principle in the early 1950s. The second study shows how WTO ministers flouted non-discrimination in the late 1990s in the quest to exact liberalization from governments joining the WTO.

The beginning of my education about discrimination in world trade came in the mid-1970s when I was researching the history of protectionism against Japan. I saw a reference to Gardner Patterson's classic study[9], and read with interest his discussion of the difficulty Japan faced in joining the GATT. I met Gardner a few years later after he had retired from the GATT Secretariat and cherished his friendship until he passed away in 1998. Gardner's book explains the benefits of the "general policy of nondiscrimination" and then analyzes the benefits and costs of trade discrimination. His economic analysis is shrewd and timely over a half century later.

[9]Gardner Patterson, Discrimination in International Trade. The Policy Issues, 1945–1965 (Princeton University Press, 1966) at 272ff. Patterson's book made great use of the GATT archives.

By the late 1980s, I was working on trade policy as a legislative assistant to the Speaker of the U.S. House of Representatives. Many members of Congress had been fashioning proposals to step up threats of retaliation against Japan and other countries that were viewed as trading unfairly and discriminating against the United States. I was personally opposed to such U.S. unilateral retaliation for a variety of reasons. But one day, I attended a seminar on Capitol Hill where Bob Hudec presented a paper on justified disobedience. Bob's argument was that while the retaliation being threated by U.S. politicians was improper, there was a case for violating GATT rules as a way of building support for strengthening the GATT's dispute system. I liked the idea, and was impressed with the subtle and thoughtful way that Bob presented it. In the years ahead, Bob became a mentor for my scholarship in international trade law. In July 1993 at his invitation, I served as a commentator at the Minneapolis authors workshop for the American Society of International Law Project on "Fair Trade and Harmonization".[10] This Project, led by Hudec and Jagdish Bhagwati, was the first interdisciplinary research effort in international economic law to be based on parallel contributions of economists and lawyers.

Robert E. Hudec passed away suddenly in March 2003. In a tribute to him, two prominent trade law journals organized symposia in his honor. I participated in the symposium published in the World Trade Review edited by Richard Blackhurst and Petros C. Mavroidis. The editors chose "Non-Discrimination" as the theme for our contributions and pointed out how "Hudec's thinking on the issue was very much influenced by economic analysis".[11]

As my topic, I chose to re-examine a seminal GATT-era case, *Belgian Family Allowances* (1952), the first case to apply the non-discrimination principle in GATT Article I (General Most-Favoured-Nation Treatment).

[10]I delivered comments on the paper by Drusilla Brown, Alan Deardorff, and Robert Stern.

[11]Richard Blackhurst and Petros C. Mavroidis, *A tribute to Robert E. Hudec*, *in* 4(1) World Trade Review 3 (March 2005).

Hudec had written a fine essay about *Belgian Family Allowances* in his 1975 treatise *The GATT Legal System and World Trade Diplomacy*, but a lot had happened in the trading system since then. The panel is remembered for its broad interpretation of the unconditional MFN principle, and I wanted to consider the panel's method and analysis under contemporary jurisprudential norms. I also wanted to analyze how subsequent GATT and WTO cases built on *Belgian Family Allowances*, and on what Hudec's essay has added to our understanding about the case.

The holding by the *Belgian Family Allowances* panel that the exporting country's attitude toward family allowances was irrelevant was not the only way the panel could have decided the case, but it was surely the most progressive interpretation open to the panel. As for Hudec's commentary, I point out how it has played an important role in GATT legal discourse by enthroning a brief panel decision into being appreciated as the leading case for a broad interpretation of MFN.

My article (Chapter 7) also reflects on *Belgian Family Allowances* as the first GATT dispute about the "level playing field" and municipal collective preferences. Belgium was trying to use a trade instrument to protect its social policy from being undermined by trade competition. And GATT rules stopped that. On the other hand, Belgium was not trying to use trade measures to get other countries to adopt similar family allowances. That kind of dispute did not ambush the trading system until the Tuna-Dolphin cases of the early 1990s.

To honor the tenth anniversary of the dispute settlement system, the WTO sponsored six conferences during 2005–2006 in academic institutes around the world. I am not aware of any other international organization to have undertaken a global scholarly effort of this scale. The sixth conference was held at Columbia University in New York in April 2006 and was organized by Merit Janow, the Appellate Body member from the United States.[12] Professor Janow invited me to join a panel reflecting on the "The Dispute Settlement System in the Next Ten Years".

[12]Professor Janow is now Dean of Columbia's School of International and Public Affairs.

My remarks discuss WTO accession as well as other topics, but after the conference I decided to focus my book submission on accession because of the importance of these developments for the world economy. As a result of space constraints, my paper was trimmed back by the editors of the conference volume. In preparing this new collection of essays, however, I have rescued those sections of the original paper for republication as it presents a more complete exposition of my findings and concerns about WTO accession law.

When I began researching WTO accession law, no accession cases had yet been initiated at the WTO, but the first case, *China — Auto Parts*, began just as I was finalizing my book contribution. Since that time, the WTO dispute system has issued five judgments with accession-related claims: four cases against China and one against the United States. So far, four important Appellate Body decisions have been handed down. One of my writing projects for the future will be to revisit WTO accession law and take account of this new jurisprudence. I would also like to incorporate a systematic examination of the ten most recent accessions that I did not cover in my article, including, most notably, Vietnam, Russia, and, a few months ago, Tajikistan.

My article, "Mapping the Law of WTO Accession", (Chapter 8) is an excursus into trade law theory. The central question I examine is why WTO accession agreements are enforceable against applicant countries. The answer is far from obvious because the ordinary understanding of the enforceability of WTO law relates only to the "covered" agreements listed in the DSU. But accession agreements are not listed as covered agreements. This presents a legal puzzle that my study undertakes to solve.

In doing so, my article proposes a new accession vocabulary and introduces a taxonomy of accession by dividing the universe of commitments into conceptual categories that turn on whether the accession protocol adds to or diminishes the obligations of the acceding party, the incumbent parties, and the WTO itself. In other words, instead of using the amorphous "WTO-plus" common in the literature, I distinguish between *applicant* WTO-plus and *incumbent* WTO-plus. In addition to giving analytical leverage to the legal argument,

my new taxonomy will help economists and social scientists do empirical studies of WTO accession.

After carefully defining the accession baseline, my article provides a comprehensive survey of WTO-plus and minus provisions in the GATT and WTO accessions. The landscape shows accession commitments on industrial policy, health and environmental regulation, tax policy, financial policy, foreign policy, transparency, due process, and the enforcement of WTO agreements in national courts. I look particularly at China's Accession agreement which is replete with singular burdens on China that are reminiscent of the "unequal treaties" that China suffered in the century after 1840.

My article posits that accession agreements are legal instruments that modify the WTO agreement. They do so through Article XII of the WTO Agreement which provides for accession "on terms" to be agreed between the acceding Member and the WTO. My study expounds Article XII as a "horizontal shelf" containing the accession terms and posits that Article XII provides the authority for enforcing those accession agreements.

In addition, my article discusses some of the coming challenges in interpreting accession agreements. One is legal hierarchy, that is, whether accession agreements are superior or subordinate to provisions such as GATT Article XX. Another is how to harmonize parsimonious accession terms, for example on safeguards, with the more detailed language in the Safeguards Agreement. I predicted that accession agreements will be applied by panels as WTO law.

My article criticizes WTO accession practice for undermining the WTO norm of non-discrimination and for fragmenting the unity of WTO law. I also point out the anti-democratic character of accession whereby WTO Members approve accessions before they release the details to the public. This makes it nearly impossible for economic and social actors to object to unconscionable provisions or for applicant countries to band together to oppose WTO-plus obligations.

Another issue my article addresses is the contested meaning of WTO rights. The Appellate Body has repeatedly engaged in rights

talk, but without any analysis of how the right arises or what it means. The resulting holdings do not offer a method of principled application of WTO law, but rather seem to delegate future decisions to the whims of international judges. In my article, I suggest that the WTO Agreement should be read only as conveying obligations, not as granting rights. In the seven years since my article went to press, developments ensued as I had predicted. In all four of its accession decisions, the Appellate Body applied the involved accession agreements as WTO law. In no place, however, did the Appellate Body explain how those accession agreements became WTO law.

V. The WTO and Individual Rights

The next set of essays discusses individual rights. In November 1998, I had the opportunity to take part in a celebration of the 50th anniversary of the Universal Declaration of Human Rights (UDHR) that took place at Brooklyn Law School. Professor Louis Henkin and ICJ Judge Christopher G. Weermantry gave the keynotes for the conference. I was asked to be a commentator on the first panel on the topic "The Global Market as Friend or Foe of Human Rights". The two panelists, both of whom gave fine presentations, were Professor Frank Garcia, now at Boston College Law School, and Mark A.A. Warner, then at the OECD Secretariat. My presentation commenced with a discussion and comparison of the two papers and then moved to place the key issues in a broader perspective. My published remarks were titled "The Globalization of Economic Human Rights" and are republished here in a shortened form (Chapter 9).

My remarks begin by noting that the year 1948 saw the birth not only of the UDHR but also of the GATT. My thesis is that the founders of both the post-war trading system and the post-war human rights system were vitally concerned about economic human rights and included "topologically similar" provisions in both regimes to address government failure. The topological symmetry is that both regimes put forward deregulatory rules to prevent states from making poor utilitarian judgments that undermine human freedom. For example, I note that the Charter of the International Trade

Organization includes chapters on employment and fair labor standards and that the UDHR includes provisions on the "protection against unemployment" and "just and favourable conditions of work".

After noting the shared historical roots, my article demonstrates how the two regimes resemble each other. For example, I postulate that both regimes are "non-dependent" on cooperation in the sense that a single government can achieve the sought-after results unilaterally (i.e., opening up its markets and according human rights). While granting that technically trade law is one step removed from the individual, I observe that "if we peel off the mercantilism from international trade law, which looks at States as trading entities, we discern that the true beneficiaries of GATT are the individual traders". My overall conclusion is that "International trade law needs to become more like international human rights law in establishing norms for what a State owes its citizens" and that "International human rights law needs to become more like international trade law in enforcing norms through mandatory dispute settlement and potential penalties for non-compliance".

"Transparency and Participation in the World Trade Organization" originated in my presentation in March 2004 to a Symposium on "Citizen Participation in the Global Trading System" held at the Rutgers University School of Law. The GATT's attention to the transparency of governmental trade policy dates back to the GATT's beginnings in 1947. Of course, the historical portion of my article (Chapter 10) begins much earlier; in this instance, with Immanuel Kant's essay *Perpetual Peace* written in 1795 wherein I discover the wellspring of the norm of the individual's right to information.

The *Rutgers* article begins with a brief overview of the myriad provisions in WTO law that provide for participatory rights to individuals at the national level.[13] These provisions are then analyzed through the lens of administrative law. Should international organizations,

[13]In an earlier article, I called attention to these WTO due process provisions. Steve Charnovitz *The WTO and the Rights of the Individual*, Intereconomics, March/April 2001. That article was republished in both Spanish and Chinese.

such as the WTO, be viewed as a legislature or as an international administrative agency with delegated authority? Without judicial review of WTO action, the administrative agency model does not fit the WTO snugly, but that model does offer insights into how to regulate the WTO's use of administrative power.

Another noteworthy aspect of my study is the discussion of the emerging "Administrative Law at the WTO". Since each WTO Member's interaction with the WTO is carried out through bureaucrats, diplomats, and occasionally ministers, there is a continuing need to achieve accountability for the authority that diplomatic and bureaucratic agents exercise at the WTO. In response, I call for the WTO to routinely use a "notice and comment" process for administrative decisions, such as those being taken in the WTO Committee on Technical Barriers to Trade. In addition, my article proposes the establishment of a new global calendar of current opportunities for the public to give comments to international organizations. I first made this suggestion for a "Global Federal Register" over 15 years ago and presented it at the headquarters of the World Economic Forum and at the Council on Foreign Relations. No progress has occurred so far, but I continue to hope that my idea will be picked up by a global publisher or social media giant.

VI. The WTO and Sustainability

The next group of essays addresses the linkages between trade and the environment. My article (Chapter 11) ""germinated as part of a Research Project on "Biosafety and Trade" sponsored by the United Nations University (UNU). Originally, the unforgettable environmentalist Konrad von Moltke had agreed to write an overview of the trade-environment linkage, but he died in May 2005 before doing so. The Project's energetic leader Bradnee Chambers[14] asked me to step in for Konrad, and I was honored to do so. Konrad had been a good friend for many years and became my guru when I began writing

[14]Chambers is currently Executive Secretary of the Secretariat of the Convention on Migratory Species.

about the ecolonomy in the early 1990s. My book chapter for the Project serves a double purpose of providing an overview of "trade and the environment" and memorializing Professor von Moltke's enormous contributions to that debate.[15]

The UNU Project was not a law-centered project, and as I wrote my contribution, and fit it into the very tight space constraints, the pages left on the table began to morph into a new article. I offered my new synthesis to the SINGAPORE YEARBOOK OF INTERNATIONAL LAW, and they agreed to publish it in their 2007 Yearbook. My article is titled "A New WTO Paradigm on Trade and the Environment".

The thesis of my article is that the developments in the international economy over the previous 15 years have transformed the WTO from an exclusively trade agency to a multi-functional agency with an environmental portfolio that coexists with core trade functions. The old paradigm was to view the WTO solely as a trade agency that should seek to balance its pro-trade volitions against environmental needs. In other words, the two objectives of freer trade and environmental protection were viewed as distinct and competing objectives. By contrast, the new paradigm is to emphasize the common ground in those objectives, and to put the WTO on the organization chart of the global environmental regime.

In support of this thesis, my article comprises four sections: Section I provides a synoptic history of the trade-environment linkage starting with the League of Nations's Customs Convention of 1923. Section II examines the environmental provisions in WTO rules and shows how the caselaw has been deferential to environmental law. Section III discusses the environmental dimension of the WTO Doha Round of trade negotiations and proposes ways to enhance that important dimension. Section IV points out how the principle of organizational "speciality" in international law has become outmoded and urges the trade community to avoid narrow-mindedness about the prospects for "an environmentally sound WTO".

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[15] *See* Steve Charnovitz, *The WTO as an Environment Agency*, *in* INSTITUTIONAL INTERPLAY. BIOSAFETY AND TRADE (Oran R. Young, W. Bradnee Chambers, Joy A. Kim, and Claudia ten Have (eds.), United Nations University Press, 2008).

In October 2000, I gave a lecture at the Graduate Institute in Geneva at an "Academics and Negotiators" evening seminar. My topic was trade and domestic measures based on processes or production methods (PPMs). I pointed out to a skeptical audience that in light of the then-recent *U.S. — Shrimp* case, WTO law did not prohibit PPMs and that misunderstandings to the contrary were impeding progress in the trade and environment debate. Following the lecture, I decided to expand my analysis into a full-blown article and was delighted when the Yale Journal of International Law agreed to publish it under the title "The Law of Environmental 'PPMs' in the WTO: Debunking the Myth of Illegality".

My article (Chapter 12) begins by unpacking the meaning of a PPM. Although many commentators posit a black line between PPMs related to the product itself and PPMs related only to the production of the product, I argue that such a line does not exist in the market because consumers are concerned both about consumption externalities (and direct physical effects) and production externalities. Next I introduce a three-part taxonomy of PPMs based on how the product is produced, on what policies are followed by the exporting government, and on the characteristics or practices of the producer. I give examples of environmental PPMs in each of these three categories and discuss the trade problems that can ensue. Many of the PPM examples I provide were precedent-setting such as the U.S. law of 1906 that bans the importation of sponges caught with a diving apparatus, which was the odious new fishing technology of that era.

My article then explodes the myth that environmental PPMs are WTO-illegal. I begin with several quotations from WTO analysts arguing that PPMs are illegal and then go through the evolution of GATT and WTO caselaw for each of the three types of PPM in my taxonomy and for each GATT rule relevant to PPM measures. I summarize my analysis with a "Restatement of the Law" of environmental PPMs declaring that the WTO "does not prohibit environmental PPMs as such". Then, as I did in my talk to the WTO ambassadors, I point out how the myth that PPMs are illegal "has prevented a

reasoned discourse about how to distinguish between appropriate and inappropriate PPMs".

In 2002, Elliot Diringer, a vice president of the Pew Center on Global Climate Study, invited me to participate in a new project to propose ways to move forward international policy on climate change. The rejection of the Kyoto Protocol by the Bush Administration had led some opinion leaders to erroneously proclaim that climate policy was at a dead end. Taking up that challenge, the Pew Center, a leading global think tank, decided to prepare a roadmap for long-term constructive solutions. Six "think pieces" were being commissioned from policy-makers and academics, and Elliot invited me to address the international trade issues involved in climate policy. I accepted the assignment and my essay "Trade and Climate: Potential Conflicts and Synergies" was published in December 2003 as part of the larger collection titled *Beyond Kyoto: Advancing the international effort against climate change*.

The overall conclusion of my study is that while there are no fundamental incompatibilities between expanding trade and reducing greenhouse gas (GHG) emissions, these two goals can come into conflict, and may increasingly do so unless the spillovers are better managed. My paper (Chapter 13) makes several recommendations for how the trade and climate regimes can work together to anticipate and avoid conflicts between their mandates. For example, I recommend that the U.N. Climate Framework Convention institutions promote a uniform approach to energy taxation, particularly with respect to imports and exports. I also recommend that the WTO launch new negotiations to phase out fossil fuel subsidies. Noting that "Countries with closed, uncompetitive markets are unlikely to be leaders in clean energy", I suggest that developed countries swap greater access to their markets for significant commitments by developing countries to restrain their GHG emissions.

A major portion of my study analyzes whether various climate-related measures would be consistent with WTO law. Among the measures analyzed are energy taxes, process-based electricity taxes, fuel economy regulations, climate labels, and emission trading.

The study posits that electricity will be assumed to be a good rather than a service and that marketable rights are neither a good nor a service. Another prediction is that a WTO dispute panel "would be sympathetic to a defense based on a parallel obligation under a climate treaty".

VII. The WTO and Labor Markets

The next set of essays addresses the linkages between trade and workers. I first met Professor Virginia Leary in the early 1980s when she was teaching at the University of Buffalo Law School. At that time, I was serving in the International Labor Affairs Bureau of the Labor Department where I sought to get acquainted with leading scholars on the topics that my duties covered. Virginia was a visionary scholar on the International Labor Organization, and we soon became good friends. In the early 2000s, Virginia invited me to participate in a new project on social issues in the world economy. Unfortunately, I was not able to attend the authors' workshop in Geneva due to pressing business at my law firm in Washington, D.C. Initially, Virginia had offered me the topic of labor rights in the WTO, but as her project moved along, she received an excellent article by Rob Howse and Brian Langille on the WTO and worker rights plus two excellent articles on core labor rights by Philip Alston and Brian Langille that also touched on the WTO worker rights debate.

So Virginia asked if I could write about a different aspect of international social issues. Eager to help out, I agreed to prepare an article on the employment dimension of the WTO that would cover everything except the debate on trade and labor standards. I called my article "The (Neglected) Employment Dimension of the World Trade Organization" because from promising post-war beginnings, the trading system had done little to systematize attention to needs of workers and the goal of full employment.

Section I of my article (Chapter 14) points out that while the WTO Preamble asserts the goal of "ensuring full employment", WTO law and practice does little to actively achieve that goal. Looking at

WTO practice, I observe that the insular WTO should have "acknowledged that a labor dimension to WTO law already exists, and thus moved beyond the denial of a linkage that so often permeates WTO discourse regarding labor". I give several concrete examples, and include a mini-book-review of the WTO Secretariat's "Special Study on Adjustment" where I show how the study focuses on policies *to delay* trade liberalization rather than on policies to facilitate positive adjustment to economic change.

Section II of my article describes the awakening of social awareness in trade policy and notes that "the beginning of wisdom in thinking about the future is looking to the past". Among the key milestones, I discuss the early 20th century treaties touching on labor and trade, Albert Thomas's synthesis of the "world economy" in the 1920s, the League of Nations and ILO work programs on international employment issues, and the failures of ILO–GATT cooperation in the 1960s. I also discuss the WTO's Singapore Ministerial Conference of 1996 where the trade ministers shamefully brushed off ILO standards by suggesting that they were protectionist.

Section III presents "A Positive Employment Agenda for the WTO". Noting that "The most important contribution the WTO can make to raising standards of living would be to tear down the protectionist walls between economies", I lament how poorly the WTO performs, and then suggest that the WTO would be more effective at its core mission if it showed more sensitivity to labor-related concerns that have undermined public support for freer trade. I propose the creation of a WTO Committee on Trade and Employment that would guide a new work program that could include improved financing for adjustment aid, collecting and disseminating data on national adjustment programs, and establishing a new international prize to encourage experimentation in social safety nets.

Section IV begins with some theoretical points and then ends with an historical observation. Because of competition between countries, governments will tend to adopt sub-optimal policies for both trade and labor protection. Both targets will be hard to hit alone, but attention to both goals together can expand the production possibility frontier.

The historical observation is that at the 1923 dedication of the first ILO Headquarters, an inscription at the bottom of the foundation stone read: "*Si vis pacem, cole justitiam* (If you wish for peace, cultivate justice). That was a suitable motto for the ILO of the 1920s with its original mission of promoting social justice to prevent war. But the inscription stayed with the building and happily was equally relevant for the organization that replaced the ILO in the Centre William Rappard, namely, the GATT, and later the WTO. Indeed, social justice may be a more vital contributor to the sustainability of world economic growth than it is to the preservation of world peace.

To call attention to those two goals, the designers of the Centre William Rappard placed two statues on either side of the front entrance to signify peace and justice.[16] Facing the building, the statue on the left with the child is "Peace" and the Statue on the right is "Justice". Both were commissioned by the Swiss Federation and carved by the artist Juc Jaggi in 1924. A photograph of the two statues adorns the cover of this book.[17] With a modern sensibility, Jaggi depicts Justice with eyes wide open rather than blindfolded.

In summarizing my article, I am reminded of how sad the human rights community was when Virginia Leary died suddenly in 2009.

My writings on trade and international migration arose out of an invitation in 2001 from Professor T. Alexander Aleinikoff[18] to join an experts group of legal scholars who were preparing to restate the international legal standards on migration. Although I had a longtime interest in the economics of immigration, I did not have any scholarly background in migration law. Aleinikoff assured me, however, that he was looking for an expert on international trade law and his Georgetown Law Center colleague Professor John Jackson had recommended me. Aleinikoff's project was a cooperative venture of

[16]In a recent book about the role of justice in international economic law, my good friend Ulli Petersmann calls attention to the iconography of the two statues in front of the WTO. Ernst-Ulrich Petersmann, International Economic Law in the 21st Century (Hart Publishing, 2012) at 9, 38–39.

[17]Thanks to Ruosi Zhang of the WTO Secretariat for the photograph.

[18]Professor Aleinikoff is now the U.N. Deputy High Commissioner for Refugees.

the Migration Policy Institute, the Graduate Institute of International Studies, the Swiss Federal Office for Refugees, and the International Organization of Migration (IOM). Intrigued, I signed on.

After I read more on the project, I appreciated Alex's keen insight. We should look at the WTO as a source of law for the migration regime. To be sure, the WTO had no black letter law on permanent migration. Nevertheless, the emerging WTO law on the temporary movement of natural persons providing services (GATS Mode 4) surely does have relevance for migration law and policy. Similarly, WTO norms could cascade back into the migration regime. A meeting of our group of experts held in Geneva in May 2002 broadened my understanding of the complex issues and helped me better visualize the institutional linkages between trade, migration, development, and labor markets.

The resulting article, "Trade Law Norms on International Migration" (Chapter 15) surveys how the WTO promotes and supervises temporary migration. My article also points to the limits of that law. I plumb the depths of economic integration regarding the movement of workers and compare it to the corresponding law regarding the movement of goods, other services, capital, and technology. Because our project had a *lex ferenda* dimension, I also push the envelope to make suggestions for how the WTO can boost worker mobility and improve WTO cooperation with the IOM.[19]

VIII. The Future of Global Economic Governance

The next group of essays reflects on the trade law of the future and on the contributions of WTO law to broader issues of global governance. In December 2001, I participated in a conference in Japan organized by the University of Kagawa International Center for Environmental Compliance Assessment. My paper considers what can be learned from the WTO that can be applied to improving

[19]This project led to further research on the ILO and a year later I wrote a new article, *Assessing the ILO's Efforts to Develop Migration Law*, Legal Issues of Economic Integration, December 2003, at 193–200.

economic and environmental governance. After the conference I revised my paper to be published in a remarkable set of essays co-edited by Alexandre Kiss, Dinah Shelton, and Kanami Ishibashi. Professor Kiss, who passed away a few years later, made enormous contributions to international environmental law and helped to initiate me into the field.

The thesis of my article (Chapter 16) is that while the WTO dispute system has tremendous importance for the progressive development of international law, some aspects of the system should not be grafted onto the environmental regime. I begin the analysis by identifying the most positive features of WTO dispute settlement such as compulsory jurisdiction, rapid adjudication, single opinions, and appellate review. I then address and seek to debunk the most common criticism of WTO dispute settlement — namely, that WTO judges have overstepped their authority. I point out that the WTO dispute system is working better than the WTO negotiating function which has proven unable "to take decisions on discrete matters, even when doing so would be in the trade community's interest".

Although environmental institutionalists have sometimes expressed admiration of WTO trade sanctions, I point out some problems with that approach. To wit, "it is somewhat ironic that the trading system, which ostensibly favours trade, is so willing to undo the benefits of trade through authorized trade retaliation. No other regime would take such a self-contradictory action: for example, the World Health Organization does not threaten to spread disease".

Following the global financial crisis of 2008, John Jackson, the Editor-in-Chief of the Journal of International Economic Law decided to devote a special issue of the Journal to new scholarship on "The Quest for International Law in Financial Regulation and Monetary Affairs". John selected Thomas Cottier and Rosa Lastra to be the special editors for the symposium, and in 2009, Thomas invited me to contribute a paper. Unfortunately, logistical challenges prevented me from attending the authors' workshop in London in May 2010 where there was a general discussion of the 23 papers.

The purpose of my article, "Addressing Government Failure through International Financial Law" (Chapter 17) is to propose

improvements in international economic law so as to prevent a repeat financial crisis in the United States and around the world. I begin my article by quoting an ILO of 1923 that called for giving the world economy its fundamental law. To my knowledge, this was the earliest study to do so. My article contains three main sections: first, to diagnose the cause of the crisis; second, to propose substantive changes in U.S. policy to enhance recovery; and third, to analyze whether better international economic institutions are needed.

In contrast to the conventional narrative that the U.S. financial crisis was caused by excessive speculation on Wall Street, by greedy bankers, and by abuses in the mortgage markets, I posit that the financial meltdown was at least as much a product of government failure as it was of market failure. The large mortgage subsidies followed by homeowner bailouts exacerbated moral hazard and the inconsistent Treasury practices for financial rescues bred uncertainty that further undermined confidence in the management of the U.S. economy. In contrast to the conventional narrative in favor of the Dodd–Frank legislation, I contend that the Financial Stability Oversight Council is ill-designed. To wit, "The inescapable conclusion is that a Council dominated by government bureaucrats is unlikely to be able to predict and manage systemic risk. This is particularly so when the mandate of the Council does not include oversight of the government-induced sources of risky behavior such as huge, uncontrolled budget deficits, lax monetary policy, and corrupt relationships between federal legislators and banks".

Expanding the economy is the best way to recover from the crisis, but unfortunately, at the time of my writing in July 2010, the U.S. economy was underperforming due to inadequate pro-growth policies. My article proposes concerted federal efforts to boost U.S. competitiveness, such as increasing public infrastructure and abandoning the "weak" trade policies of the Obama Administration. Much of my analysis is based on the work done by the U.S. Competitiveness Policy Council in the early 1990s under the leadership of C. Fred Bergsten.[20]

[20]I was the Policy Director of the Council in its first four years.

In addition, my article urges the U.S. government to seek to "transform the Doha Agenda into a true development round" to address world poverty.[21]

The next part of my article considers what institutional models would be most appropriate for international financial regulation. Although "seeking to assign the WTO the role of the super-regulator in financial services would be a mistake for many reasons", I find that some of the innovative techniques used by the WTO would be useful for financial regulation. Reviewing the recent G-20 declaration, I conclude that it was merely "a declaration of platitudes not moored to any accountability mechanism". My article then examines the detailed and thoughtful recommendations sent to the G-20 by the private sector, labor unions, and civic society groups, and laments the unwillingness of the G-20 ministers to provide a hearing for the transnational public interests being expressed.

A few years earlier, I was happy to learn of the advent of a new interdisciplinary Journal of International Law & International Relations at the Munk School of Global Affairs (in Toronto). My knowledge came in the form of an invitation that came from the *Journal* to participate in its Inaugural Issue to be published in 2005. Because a good inaugural essay should have staying power, I chose to write an essay exploring the path of world trade law in the years ahead. My title was "The World Trade Organization in 2020" (Chapter 18).

Writing about the future requires an eclectic methodology, and for that I chose the methodology of the New Haven School pioneered by the noted political scientist Harold D. Lasswell and international legal scholar Myres S. McDougal. My analysis commences with an examination of the key features and trends of the contemporary WTO. Then I project two future scenarios, one

[21] The negotiation of the Bali Ministerial Declaration in December 2013 was a valuable achievement for the WTO and can be attributed to the management skills of the new Director-General, Roberto Azevêdo, a Brazilian diplomat who was a first-rate ambassador to the WTO. But the Bali Declaration makes no more than a down payment on what could be attained in a true development round if the leading industrial countries were to put aside protectionist proclivities.

pessimistic and one optimistic. In the dystopic scenario, the WTO fails to complete the Doha Round and diminishes in institutional importance. In the optimistic scenario, the WTO completes the Round, improves its governance, and contributes more successfully to poverty alleviation. Writing in early 2005, I stated that I was pessimistic that the WTO would be able to achieve much constitutional change by 2020, but that I was not pessimistic about the prospects for greater trade liberalization over the following 15 years.

I began my essay by referring to an insightful observation by Jan Tumlir, the GATT's longtime Chief Economist, that government policies are always experiments. Tumlir's insight is routinely missed by politicians and analysts who are quick to criticize program failures. As a result, bold initiatives are often left on the table. Sad to say, I never had an opportunity to meet Dr. Tumlir (who passed away in 1985) because he has influenced my scholarship on the political economy of the GATT and on environmental issues in trade. My excursion into futurology allows me to suspend disbelief as, for example, when I imagine the efficiency benefits of a case in the WTO against the United States for violating the WTO Agreement on Technical Barriers to Trade by failing to adopt the metric system.

In closing, let me thank Bob Stern for giving me this opportunity to assemble my oeuvre and to Monica Lesmana and Alisha Nguyen, the editors at World Scientific Publishing.

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37 World Scientific Studies in International Economics

The Path of World Trade Law in the 21st Century

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About the Author

Steve Charnovitz teaches at The George Washington University (GWU) Law School. Originally from Savannah, Georgia, he received a B.A. from Yale College, a J.D. from the Yale Law School, and an M.P.P. from the Kennedy School of Government at Harvard University. Prior to joining the GWU Faculty in 2004, he practiced law for six years at the global firm now known as Wilmer Hale in Washington, D.C. From 1995 to 1999, he was Director of the Global Environment & Trade Study (GETS) located at Yale University. From 1991 to 1995, he was Policy Director of the *Competitiveness Policy Council*. The Council issued four reports to the U.S. Congress and President with recommendations on how to boost American competitiveness. From 1987 to 1991, he was a Legislative Assistant to the Speaker of the U.S. House of Representatives (Wright and Foley). Early in his career, he was an analyst at the U.S. Department of Labor where he served as a labor specialist for U.S. trade negotiations. Professor Charnovitz is a present or past member of several editorial boards, including the *American Journal of International Law*, the *Journal of International Economic Law*, the *World Trade Review*, *Cosmopolis. A Review of Cosmopolitics*, and the *Journal of Environment & Development*. He is a member of the Council on Foreign Relations and the American Law Institute and is admitted to the bar in New York and the District of Columbia.