

## Resolving or Exacerbating Disputes? The WTO's New Dispute Resolution System

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### Abstract:

In 1995 the dispute resolution system of the WTO was transformed to make it more effective in enforcing WTO rules. Ironically, the improvements in the dispute resolution system have contributed directly to greater conflict in the WTO. How can improving a system to resolve disputes actually exacerbate conflict? The problem is that the political-judicial balance that at the domestic level keeps courts in sync with political sentiment does not work at the international level. The solution, Alter argues, is to intentionally build political checks into internationally legalized processes. She explains how this would work in the context of the WTO.

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### International Law in International Politics

International law and international courts are experiencing a renaissance. Historically maligned by realists as irrelevant, and by legal scholars who questioned if international law deserved even to be called "law," today we see a renewed interest in international law and international courts. Seventeen international judicial bodies and thirty-seven quasi-judicial international bodies have been created since the end of WWII, and if anything the trend is accelerating. The 1990s witnessed the formation of more international judicial bodies than any other decade.

At their best international legal mechanisms facilitate the peaceful resolution of disputes and have a prophylactic effect, encouraging political actors to think about how their actions might hold up if scrutinized by a third-party, like a court. But there is a problem inherent in the international legal process that raises the question of whether this trend towards using legal bodies to enforce international rules is a positive development. Put simply: the political-judicial balance that at the domestic level allows legal bodies to offer independent and authoritative rulings, while keeping courts in sync with political sentiment, does not work well at the international level. International courts are more likely than most courts to generate conflict, yet the international legal and political system is less able to respond in a timely matter to address valid public concerns. Left unaddressed, these concerns erode support for the international legal system and multilateral strategies in general.

The new dispute resolution mechanism of the World Trade Organization (WTO) is a case in point. The WTO's dispute resolution mechanism was reformed in 1995, as part of the Uruguay round, to make it more effective in enforcing WTO trade rules. Ironically, the greater ability to enforce WTO rules has contributed directly to the political difficulties the WTO currently faces. From the transatlantic trade wars over bananas and beef with hormones, to the pressure on developing countries to respect intellectual property rights and to allow non-governmental organizations to participate more in WTO proceedings, dispute resolution rulings have given groups on the left and the right of the political spectrum, and in the North and South of the

international political system, reason to be deeply unhappy and united in opposition to the WTO. The enhanced dispute resolution system is hardly the only reason protesters are fighting globalization in the streets of Seattle and elsewhere, but the issues provoked by the dispute resolution process have mobilized opposition, and shaped the demands of many countries in negotiations in Doha over launching a new trade round. How can improving a system to resolve disputes actually exacerbate conflict?

## **A Jewel in the Crown of the Uruguay Round**

The World Trade Organization's new dispute resolution mechanism was to many the jewel in the crown of the Uruguay Round. It offered tangible benefits that did not have to wait to be phased in. And unlike the agreement on protecting international property rights (TRIPS), and the rules regarding free trade in services (GATS), improving the dispute resolution mechanism seemed to offer something for everyone. The new dispute resolution system was to improve the quality of dispute resolution panel rulings, end the practice of states blocking panel decisions, and make the retaliatory sanctioning mechanisms of the GATT (General Agreement on Tariffs and Trade) usable. This outcome would satisfy the U.S. Congress and American firms that had long complained about the unenforceability of GATT rules. The new system would also satisfy other GATT members because in exchange for reforms, the US promised not to use its unilateral tool of Section 301 to retaliate against "unfair" trading practices. Developing countries were also going to be big winners. They would gain an effective legal tool to confront big powers, and each other, and they were promised special allowances to help them benefit from the WTO system and its dispute resolution mechanism.

These promises were to be achieved through an institutional reform of the existing GATT dispute resolution system. The Achilles heel of the GATT system was the ability of states to block formation of panels and the adoption of panel rulings. There were a number of gentleman's agreements among states not to exercise this right to block, but they continually broke down. While the GATT system resolved 53 disputes between 1948 and 1959, it was used successfully only 7 times in the 1960s, and 32 times in the 1970s. In the 1980s, countries significantly increased their use of the GATT dispute resolution system, but as the number of cases rose, blocking panels became a significant problem. According to Robert Hudec's data, 25% of the disputes initiated in the 1980s, and fully half of all complaints raised by developing countries, were either blocked or withdrawn because it was clear that a GATT ruling was not going to lead to a policy change.<sup>[1]</sup> In the 1990s, before the new system was operational, 40% of the panel reports (12 out of 29) were blocked.<sup>[2]</sup> Blocking a panel report meant the report was not binding, and was not published—in other words no formal finding of a violation existed.

The dispute resolution reforms changed decision-making rules so that proceeding from consultations to panel formation, from panel formation to the issuing of a binding report, and from the issuing of a report to implementation and if necessary retaliatory sanctions, is virtually automatic. Whereas before adoption of a panel report required unanimous support (allowing for a single country veto), now a country needs unanimous support to block a panel report. The reforms brought other changes too: unilateral retaliation is now explicitly prohibited; strict timelines were created for each stage of the dispute resolution process, to speed up the resolution of disputes; and a permanent appellate body was created to allow "bad" rulings to be appealed. The reforms also brought greater legal transparency. There is now a single organizational forum for managing disputes, replacing the hodge-podge system where procedures and rules varied by GATT agreement. The arguments of the parties are included

in panel and appellate body rulings, and information about the proceedings at each stage of the process is available in real time over the internet.

The new reforms came into effect January 1, 1995. What have they delivered?

### **Assessing the Dispute Resolution Reforms: A Mixed Bag**

Certainly there are many positive results of the reforms. More disputes are now making it through the dispute resolution process, and thus being resolved. Where there were 229 cases in its first 42 years of the GATT system (1948-89) leading to 98 rulings, since 1995 a total of 239 cases have been registered, resulting in 53 adopted rulings and 57 reported settlements thus far. According to WTO officials, the more automatic system is speeding up the dispute resolution process. Also under the new system the U.S. has refrained from unilateral action. Technically the United States retains the right to use Section 301 wherever it finds unreasonable and unjustifiable trade restrictions, but the U.S. is keeping its promise to go through the WTO system first. And the new system appears to have enhanced the bargaining powers of weaker states. A trade diplomat in Geneva told of a long-running dispute with the EU regarding its treatment of soluble coffee from Brazil. Brazil had not pursued a complaint under the old GATT system because it knew the complaint would be blocked. Its negotiations under the new system got nowhere until Brazil notified the EU that it would request formal consultations at the next Dispute Settlement Body meeting—the first step of initiating the dispute resolution process. Three days later, the EU offered concessions it had previously said were impossible, and the dispute was resolved. These successes are reason enough not to go back to the old GATT system.

But there are many disappointments with the new system. Retaliation is not the remedy it was expected to be. In the WTO, states may be authorized to retaliate for WTO-illegal behavior, by raising tariffs on imports from the violating country equal to the amount of damage caused by losing country's continued protectionism (officially known as "suspending concessions"). There is no retaliation to correct for past wrongs, and only parties who raised the dispute are authorized to retaliate. Thus a country can, without cost, violate WTO rules up until the point that it loses a dispute settlement case. Even then it can continue to violate rules with respect to countries that were not part of the original WTO case. Usually the retaliating country picks domestically powerful industries, in hopes that these industries will pressure their government to comply with WTO rules. But this pressure does not always work. The EU has tolerated \$128 million per year in retaliatory trade sanctions since July 1999, rather than change its prohibition against US beef produced with hormones. And for developing countries, retaliation won't get them far; they import such a small fraction of the overall exports of rich countries, that their retaliation matters little to large industrialized economies.

Also disappointing, the concessions developing countries fought hard for have counted little in a legalized process. There is no concrete way to compel the Dispute Settlement Body to take the special situation of developing countries into account. And the US and Europe's skill at negotiating agreements and crafting language so to protect sensitive economic areas has meant that developing countries lack a legal basis to challenge policies that clearly disadvantage their producers. For example, virtually all of the promised changes in the US and European textile regimes come in the last year of the transition period. Meanwhile, despite the promises of time to adjust to new rules, in 1997 India lost a case involving the Trade Agreement on Intellectual Property (TRIPS), even though TRIPS supposedly did not

create obligations for developing countries until 2000.<sup>3</sup> Moreover strong-arm tactics by powerful states can keep developing countries from exercising their legal rights, such as their legal right to declare a national emergency and violate pharmaceutical patent rights. And even when they win a legal case, the threat retaliation offers developing countries little leverage when negotiating over compliance.

To make things worse, the WTO dispute resolution system is extremely expensive for developing countries to use. Rich and poor countries have put their hopes in a new law advisory office for poor countries that provides free advice on WTO law, helps train lawyers from developing countries, and offers legal services in dispute resolution cases at steeply discounted prices. This office allows developing countries to pool their resources by splitting legal fees, increasing the chance of multi-country suits with multi-country retaliation. But significant resource problems continue to disadvantage developing countries. Rich western firms hire private lawyers to prepare suits to be delivered to governments to prosecute; there is no aid for the leather producer in Jamaica to put together a case. And the resources of the advisory office are limited. Developing countries will not be able to continually draw from the well of legal aid to challenge the US and Europe's latest protectionist tool- countervailing duties that are applied on an item by item, firm by firm, bases.

### **The Greater Problem- Exacerbating Conflict in the WTO**

Overall, more disputes are being resolved than before. But is it also true that more conflict is being generated by the new dispute resolution process? In a news search in Westlaw, the terms "GATT or WTO" and "law and violation," yielded 198 newspaper articles from 1985 to 1990, and 2915 articles from 1995 to 2000. This may just mean that disputes are now more transparent because they are being pursued through the WTO system. But there is reason to believe that transformation of the WTO system really is creating more conflict, and thus more news to be covered. The bickering over whether or not states are complying with a ruling, the authorization of retaliation, release of new lists of targeted sectors, and protests engendered by some WTO rulings, are newsworthy events. These events are signs of greater conflict, and serve to focus public attention more on disagreements regarding the WTO, and on the less desirable aspects of WTO membership.

It seems that the greater effectiveness and automaticity of the dispute resolution system itself contributes to greater conflict in the WTO. In the old GATT system, it was easy to block the dispute resolution process, so threatening a suit was not that useful of a tool. At the same time, the requirement of unanimity to accept panel agreements forced compromise and ensured that legal rulings did not run roughshod over very sensitive issues. In the transformed system, the possibility of winning a case, and gaining retaliation, makes threatening a case very tempting- perhaps too tempting. The bananas dispute was a thorn in the side of US-European relations for years, all for 191 million dollars- roughly .03% of Europe's total imports. And the beef hormones dispute continues to anger US beef producers, while raising the ire of the European public who find it incredible that at a time they were spending billions of dollars fighting the man-made Mad Cow disease, the WTO could insist there is no good evidence that injecting hormones in beef is actually dangerous. These symbolically rich cases would have been blocked under the old dispute resolution system. In the new system they have caused significant damage in trans-atlantic relations, undermining cooperation between the US and EU on WTO issues, distorting public perceptions about the overwhelmingly positive and

mutually beneficial trade relationship between the US and Europe, and mobilizing opposition to the WTO.

Statistics undeniably show that more disputes are being resolved. But disputes—even when they are “resolved”—breed more disputes. Eric Rheinhardt finds that being the defendant of a case increases the chance that the targeted state will raise a suit against the plaintiff state by up to 55 times.<sup>[4]</sup> There are two reasons for this: 1) losing a WTO case leads a country to look for cases to bring so that they can show domestic actors that being a member of the WTO brings advantages for their country too; and 2) once targeted, countries look for cases they can bring against their accusers as bargaining chips in negotiations over compliance. The European challenge to the American system of export subsidies winding its way through the dispute resolution process now was clearly brought as payback for the banana and beef hormones cases. Given the potential level of retaliation Europe could win (\$4.1 billion), and American exporter’s insistence that subsidies remain, this dispute will likely dwarf in acrimony what we have already seen in the bananas and beef hormones cases.

Retaliation also leads to more conflict, without providing relief for aggrieved industries. Gucci bags, French foie gras and British Scotch now cost more in the United States, upsetting producers of luxury goods, while doing nothing for beef producers in Idaho. Additionally, Europe’s willingness to accept retaliation rather than change its policy has sent the message that rich countries can buy their way out of compliance. And while the banana dispute between Ecuador, the EU and the United States is “resolved,” Chiquita banana has filed for bankruptcy, and Ecuador was so upset with the US-EU settlement that the Foreign Minister threatened to demand the United States withdraw a military base from Ecuador.<sup>[5]</sup>

The WTO’s new appellate body approach, legalistic and at times harshly critical of ad hoc panel rulings, has also contributed to greater conflict. Legalism was already on the rise in the old GATT, as governments turned to lawyers to draft their submissions and argue their cases. But the transformation of the dispute resolution mechanism instilled legalism at a new level. No longer is the goal of a panel report to resolve the dispute. Instead, panels mainly want to avoid being reversed by the appellate body. Avoiding reversal means following the appellate body’s legalistic method drawn from the Vienna convention on the Law of Treaties—looking first to the “plain meaning” of the text in the context of general rules of international law, rather than relying on the arguments of the parties regarding the original intent of negotiators. Given the complexity of the cases, and the legalistic, somewhat dismissive tones of the appellate body, few diplomats are willing to serve as panelists anymore. Lawyers who do sign up for service are heavily dependent on the WTO’s legal secretariat— the only people with the time and the expertise to evaluate the legal arguments.

As Joseph Weiler shows, the culture of law has a more pervasive impact on the politics of dispute resolution. Turning the process over to lawyers means that cases are chosen based on their legal merits, not their political merits. The best arguments are saved for court, and not divulged during the consultation phase. Once in court, the goal is to win the case, making compromise harder.<sup>[6]</sup> The result: legalism supplants diplomacy in resolving the dispute. And countries with a comparative advantage in lawyering— the United States and Europe—become even more advantaged in negotiations over compliance with WTO rules.

Perhaps most worrisome of all has been the willingness of the WTO’s dispute resolution bodies to fill in where political actors failed to go. International legal texts are often vaguest

where disagreement is strongest. Faced with vague rules, dispute resolution bodies fill in their own meaning- at times handing one side a victory it had failed to achieve through political negotiations. GATT panels created law too. But the problem is more sensitive now because the veto right is gone, and the Uruguay Round agreement reaches into regulatory policy that is not directly related to trade—such as health and safety standards, and environmental protection rules. Diplomats have reacted most strongly to the appellate body's Shrimp-Turtle ruling allowing the United States to require imports to meet its national process and production requirements, and allowing the submission of amicus briefs by NGOs in the dispute resolution process. To developing countries, these judicial interpretations essentially rewrote the WTO agreement, handing the US a victory it had failed to win in the Uruguay Round negotiations. The effect of this ruling was to mobilize developing countries to boycott efforts to further improve the legal process of dispute resolution. The Shrimp-turtle case is the most well known WTO example, but it is not the only example of WTO legal bodies changing the meaning of an agreement through interpretation.

The requirement of unanimity in the old GATT system forced states and panelists to rely on diplomacy in the resolution of disputes, helping to ensure that legal rulings did not run roughshod over politically sensitive issues. But going back to the old GATT system is not the answer. Blocking cases was too easy in the old GATT system, and the ineffectiveness of the system contributed to the US pursuing unilateral approaches. International trade enhances the welfare of all states, and promoting trade through multilateral institutions is the best way to help the weakest states benefit from international trade, and constrain the strongest states from abusing their power. The question is, how can we change the current system to work better? To answer this, we must understand what has gone wrong.

### **What Went Wrong?**

It might be tempting to look at individual cases in isolation. The new dispute resolution process is still in its infancy. In retrospect some of these cases should not have been brought. Panelists and the appellate body are making mistakes, and there are a number of technical fixes that are necessary for the system to operate smoothly. The reality is, however, once the appellate body becomes more savvy, once the technical problems with the dispute resolution system are addressed, and once the current conflicts are resolved, the dispute resolution process will continue to exacerbate conflict.

Conflict in itself is not bad. In any political system, legislative texts are likely to be vague and imperfect, judges are likely to be called upon fill in, and political actors are in some cases going to be unhappy. Indeed it is arguably good that protesters have forced governments to justify and explain more fully the benefits of participating in the WTO, because this can only enhance the legitimacy and accountability of the WTO. The problem is that the political process has trouble responding to the problems international legal bodies generate. The risk is that unpopular legal rulings may undermine support for international legal processes and multilateral approaches more generally, undermining continuing multilateral efforts to address common problems, and leading to withdraw from international forums.

International courts are more likely to generate conflict than their domestic counterparts because the texts international legal bodies are interpreting contain more political mine-fields than most domestic legislation, and because international courts lack the legitimacy of their domestic counter-parts to make controversial rulings more palatable. Having fought hard and

traded for the compromises in international agreements, countries feel very strongly that agreements be applied as negotiators intended. While lawyers tend to prefer legal logic over a diplomatic fudge, national governments do not. The appellate body's legalistic style combined with its willingness to rule where legal vagueness masks a lack of political consensus, is not appreciated in national capitals. It may also be true that international society is so heterogeneous that no group of arbiters, no matter how skilled, will be able to craft a solution that will be acceptable in Chile, Malaysia, Egypt, Europe and the United States.

Domestic courts also have been known to make unpopular rulings. But domestic courts can draw on their cache of legitimacy to make these rulings palatable. Studies show that courts gain legitimacy from the prestige of their members, and from their reputation over time for ruling fairly. International judges are generally not well known, and a judge with a perfect Indian reputation—and even a masters from Harvard-- garners little respect in the United States. And while international legal bodies lean over backwards to be procedurally fair (which is why they are generally held in high esteem by the lawyers who work with them), countries participate too infrequently for a longer-term perception of fairness to solidify. In practice, the larger public has no real knowledge or appreciation of the workings of international legal bodies. To them an international court is a foreign body of unknown people challenging policies that have been adopted through legitimate domestic means.

Problematic international legal rulings are inherent in the enterprise. But international political bodies are less able to correct problematic interpretations of the rules. Courts are by design counter-majoritarian institutions; they are not intended to be directly accountable to the public will. But at the domestic level, if politicians are unhappy with the way a judge is interpreting a law, they can rewrite the law-- all it takes is a simple majority to clarify the meaning of a law, and such an action in no way threatens judicial independence or undermines the rule of law.<sup>[1]</sup> This balance does not work at the international level, where the legislative process of negotiating international treaties is unusually onerous. International agreements are negotiated only occasionally, and the requirement of unanimous support makes it difficult to do anything. While in theory one could create a process to incrementally adjust the rules—through working parties, or regular diplomatic meetings--these processes never really work. International agreements, and especially trade agreements, are made by linking issues. Even if countries find no objection to proposals that clarify WTO rules to reflect the intent of the negotiators, they usually want something in return for their support. In practice, a legal ruling that sets a precedent few or many strongly oppose cannot be addressed for years, and then the requirement of unanimity to change the status quo makes reform extremely difficult. We have seen this hold true in the WTO where the US (and Europe) could ignore the developing country's concerns regarding amicus briefs, and where even small technical fixes that involve no clear benefit to any particular group have proven beyond the capacity of WTO political bodies, and could not even be attained as a bare minimum result in Seattle.

This reality might lead one to think that states should never create or use international legal mechanisms. This would surely be a mistake. International legal bodies can helpfully resolve disputes. And having a permanent judicial body is certainly better than creating ad hoc legal bodies to address only some violations by some countries. The answer lies in designing international legal mechanisms to help international legal bodies better navigate the mine-fields of international politics, to build their legitimacy, and be more accountable to national governments.

## Lessons for the WTO and Beyond

One reason the WTO system is under attack is that the rules themselves are unpopular. Developing countries have been forced to accept agreements regarding intellectual properties that offer them little, while the US and Europe have resisted reforms in the areas developing countries care most about- agriculture, and anti-dumping and countervailing duties. As Thomas Franck has argued, there must be basic fairness in international agreements if they are going to be legitimate.<sup>[8]</sup> In the aftermath of September 11, the US and Europe saw launching a millennium round as vital to boosting confidence in the international economy- thus they agreed to negotiate on these issues. They must now carry through their promises, and create a system that is more generous to developing countries.

At the same time, we need to explicitly allow more safety valves for all countries—developing and developed. A government's first obligation is to the well-being of its citizens. Any reasonable rule aimed at protecting the environment, public safety, cultural institutions, and health of citizens must be accepted regardless of its trade consequences. The legal provisions for this are already present in the WTO agreements. What is needed is a more clearly articulated legal "rule of reason," subject to some proportionality principle to ensure that market access is not unnecessarily compromised in achieving a valid goal. States would still be required to defend their policies, but the assumption would be that any domestic legislation that has a reasonable aim, is proportional to its objective, and was not adopted with the intention of distorting trade, is acceptable. Furthermore, the WTO should go out of its way to let the public know that this is the norm.

The WTO system must also become more transparent. This is not easy, because developing countries strongly oppose allowing non-governmental actors to participate in WTO negotiations, fearing it would only reinforce the political influence of Western interests. Claude Barfield offers a solution: allow non-governmental actors as observers with opportunities to lobby governments during political negotiations; open oral argument sessions to the public and the press; post legal briefs of governments; and allow governments to submit amicus brief arguments as part of their cases, but do not allow panels to accept amicus briefs not submitted by governments. Such a solution would keep focus on governments while making them more accountable for their actions in the WTO.<sup>[9]</sup>

We should also explicitly endeavor to enhance the legitimacy of the dispute resolution process. Appellate body judges, and panelists, should be chosen in part to confer legitimacy on the body. Well-known domestic judges who bring a cache of legitimacy might help. Since rulings are one of the few public manifestations of the WTO as an institution, appellate body and panel rulings should speak to the broader public. Putting a length limit on the submissions of parties would be a service to all and make it possible to include more non-trade specialists and non-lawyers as panelists in dispute resolution cases. In any event, discussions of parties' arguments in rulings should be shortened, and the ruling part of each decision should be concise, well written, crafted in plain language, without numerous references to chapeaus and articles, so that the media and the public can clearly see what WTO law requires and what it does not. If such legal decision-making is abhorrent to international lawyers, perhaps the solution is to appoint more diplomats.

Most importantly, we need political checks on legal decisions that can work. WTO panelists often find themselves in a bind when the rules are unclear. The parties to the dispute want a

resolution, yet there is no way to remand the issue back to negotiating bodies for clarification. There should be a way for panelists to stop the proceeding and request submissions from any state that wishes to clarify how they understood the rule when it was negotiated. Such a process is akin to a Bernstein Letter in the US legal system. The dispute resolution body is still the final arbiter, but at least it would be better informed. WTO judges might also be well advised to avoid issues that are too politically controversial, using one of their many judicial techniques to avoid ruling on the legal question. Absent a judicial ruling, the default position might hinder market access, but it will likely reflect the political will of the time. Finally, the requirement of consensus to reject a panel decision raises the political bar too high; even the winner of the case would have to agree to reject the decision. I agree with Claude Barfield that a more appropriate rule might be consensus minus some number of members, so that a ruling that angers too many can still be blocked.

The combination of ambiguous international legal texts that are purposely written to mask differences of opinions and allow for flexibility, a legal process in which judges naturally fill in the blanks, political use of this legal process that prioritizes short term expediency over long term consequences, and an international political process unable to keep international judicial bodies in check or "correct" unwanted interpretations, creates the ingredients for an explosive backlash against international law and international cooperation more generally. It would be nice if we could rely on governments to think in the longer term, to consider the best interests of the international system, ensuing cases that are only likely to antagonize others and reveal the fragility of the international legal system. But this surely is naive. The US and China have been roundly criticized for opposing the international criminal court, and trying to interject political vetoes to protect their nationals. Returning to a system of national veto power is not the right approach. But given that the political-legal system does not work well at the international level, and given that we cannot count on prudence and self-constraint, we need to be more intentional about enhancing the legitimacy and building appropriate political checks into any internationally legalized process. Demonstrated here in the case of the WTO, this is an important lesson that applies to international law and international dispute resolution mechanisms generally.

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<sup>[1]</sup> Robert Hudec, *Enforcing International Trade Law: Evolution of the Modern Gatt System* (New Hampshire: Butterworths, 1993). P. 286 and 322.

<sup>[2]</sup> Robert Hudec. "The New WTO Dispute Settlement Procedure: An Overview of the First Three Years." *Minnesota Journal of Global Trade* 8 (1999): 1-53. Note 14.

<sup>[3]</sup> India- Patent Protection for Pharmaceutical and Agricultural Chemical Products WT/DS50/1

<sup>[4]</sup> Rheinhardt, Eric. "Aggressive Multilateralism: The Determinants of Gatt/Wto Dispute Initiation- 1948-1998." Manuscript (1999). <http://userwww.service.emory.edu/~erein/> p. 25

<sup>[5]</sup> "Ecuadorian Banana Growers Request US Base Withdrawal Due to New Import Scheme" in *World News Connection* April 26, 2001.

<sup>[6]</sup> Joseph Weiler. "The Rule of Lawyers and the Ethos of Diplomats: Reflections on the Internal and External Legitimacy of WTO Dispute Settlement." Jean Monet Working Paper Series WP 09/00, 2000.

<sup>[7]</sup> Constitutional court rulings are the exception; reversing a ruling based on a constitution requires a constitutional amendment. But very few countries even allow for constitutional review of policy, and constitutional courts are, after all, applying constitutions, not international treaties.

<sup>[8]</sup> Franck, Thomas. *Fairness in International Law and Institutions*. Oxford: Clarendon Press, 1995.

<sup>[9]</sup> Barfield, Claude. *Free Trade, Sovereignty, Democracy*. Washington D. C.: American Enterprise Institute, 2001.