

awards may say that tribunals confuse hard questions of treaty interpretation or identification of customary law, which are vexing but perfectly capable of being answered in technical legal terms, with gaps or other reasons that call for the application of general principles. The clarity, elegance and authority with which Kotuby and Sobota express their principles may further nudge such tribunals in the direction of easy and clear solutions to fill such apparent gaps, with associated problems for correctness, consistency and predictability. The quality of the argument makes its likely effect all the more concerning.<sup>22</sup>

Kotuby and Sobota have written a very interesting book on an important topic that will certainly be cited as an authority, particularly in international dispute settlement. They are to be commended for squarely addressing the impact of shifts in the structure of international dispute settlement on sources of international law as well as for the breadth of the authorities in international and domestic law relied on (particularly for going beyond the usual suspects in the choice of domestic legal orders). It is, of course, a daunting challenge to write in the shadow of Cheng's *General Principles*, and, just like the beautiful friendship with Louis promised by the final sentence of *Casablanca*, the new piece will not appeal to all of the fans of the original. But even those who are not persuaded by the broader argument or its particular elements would have reflected upon and refined their own position. Surely, that is a contribution that any author should be pleased to have had on the debate.

*Martins Paporinskis*

*Reader in Public International Law*  
*University College London, United Kingdom*  
*Email: m.paporinskis@ucl.ac.uk*

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Mihir Kanade. *The Multilateral Trading System and Human Rights: A Governance Space Theory on Linkages*. Oxford: Routledge, 2018. Pp. 282. £100.  
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Mihir Kanade's book is a refreshing addition to the voluminous literature on how to deal with two key phenomena in international law: fragmentation and the enhanced influence of developing countries. Its focus on the linkages between the World Trade Organization (WTO) and human rights is timely as both regimes face important questions concerning their legitimacy and universality. The WTO has become increasingly politicized in recent years and faces significant challenges regarding, *inter alia*, the conclusion of trade negotiations, the unilateral use of trade remedies and the functioning of the dispute settlement mechanism. Towards the end of his term as the UN High Commissioner for Human Rights, Zeid Ra'ad Al Hussein described the situation of human rights in alarmingly negative terms, emphasizing factors such as zero-sum nationalism, short-term interests of individual leaders, the targeting of civilians in military operations, the use of chemical weapons, racism and xenophobia and the criminalization of human rights activism.<sup>1</sup>

One of the key contributions of Kanade's book is its explanation of why the challenges faced by the two regimes cannot be seen in isolation. Kanade proposes a 'governance space theory'

<sup>22</sup> Cf. Caron, 'The ILC Articles on State Responsibility: The Paradoxical Relationship between Form and Authority', 96 *American Journal of International Law* (2002) 857.

<sup>1</sup> Zeid Ra'ad Al Hussein, 'Human Rights Are Not a Luxury', 15 June 2018, available at [www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=23275&LangID=E](http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=23275&LangID=E).

to explain challenges associated with the linkages between the WTO and human rights. He applies the theory to three distinct categories of linkages between the two regimes. The first concerns formal limitations following from WTO obligations on member states' freedom to take measures to comply with their human rights obligations. The focus is on the extent to which WTO rules conflict with duties under human rights treaties and customary law. With respect to this linkage, Kanade addresses much-discussed issues, including whether there is a normative hierarchy between human rights and the WTO Agreement (Chapter 3), how the dispute settlement mechanism of the WTO can and should address human rights treaties and customary law in specific cases (Chapter 4) and to what extent Article XX of the General Agreement on Tariffs and Trade (GATT) provides adequate governance space to members seeking to comply with human rights obligations (Chapter 5).<sup>2</sup> While these issues have been discussed before, Kanade contributes to the debate by approaching them from the perspective of the right to development.

The second linkage category concerns another way in which the WTO can have adverse effects on members' human rights performance. In Chapter 6, Kanade discusses how the WTO can create a 'permissive environment to abuse governance space'. He identifies two reasons why such 'abuse' takes place. The first is that in order to benefit from the multilateral trade system, countries may be less willing to use governance tools to promote human rights. The second is that countries may lack the ability to use their governance space to protect human rights if they want to maintain their ability to compete on the global market. Kanade discusses this category of linkages by analysing the relationship between the WTO and labour standards and the division of responsibilities for improving labour standards between the WTO and the International Labour Organization (ILO). The linkages within this second category are indirect and sometimes weak. Kanade points out problems associated with a failure of taking them properly into account, in particular from the perspective of developing countries.

The third category of linkages equally concerns the impact of the WTO on member countries' ability to use their governance space to fulfil human rights obligations. In Chapter 7, Kanade asks whether the WTO creates a 'limiting environment to use governance space'. The focus here is on the contribution of the WTO towards reducing members' ability to fulfil human rights obligations. He argues that such effects follow from applying essentially the same rules to unequal political and economic entities. While developing countries have been allowed some flexibility when implementing obligations under the WTO, the same has been the case for developed countries. Kanade argues that, in sum, the WTO has resulted in more market access for developed countries than for developing countries. This linkage category is discussed based on a thoughtful and critical analysis of the 'Aid for Trade' initiative launched at the WTO Hong Kong Ministerial Conference in 2005.

The main reason why Kanade distinguishes between the three linkage categories is that his governance space theory aims at identifying measures to maintain or enhance the governance space needed to comply with human rights obligations. The distinction between linkage categories reflects an assumption that the strategies to deal with the challenges differ. The book suggests that measures to deal with formal limitations of governance space would generally consist of regulatory initiatives in the WTO to safeguard or enhance members' governance space. Human rights impact assessments are identified as an adequate means to deal with formal limitations on human rights policies (the first category) as well as with the creation of a limiting environment in which to deploy governance space (the third category). To deal with the abuse of governance space (the second category),

<sup>2</sup> Agreement Establishing the World Trade Agreement 1994, 1867 UNTS 154; General Agreement on Tariffs and Trade 1994, 55 UNTS 194.

the book suggests that solutions, in general, should be sought in specialized international institutions outside the WTO.

In the following, I shall discuss in more depth three main aspects of the book: (i) Kanade's discussion of legal issues regarding the relationships between the WTO Agreement and human rights; (ii) the book's emphasis on developing country perspectives; and (iii) the extent to which Kanade's theoretical framework of linkages is relevant for other 'trade and ...' issues.

## 1 The Relationship between the WTO Agreement and Human Rights Law

A very significant part of Kanade's book – three chapters, comprising his first linkage category – consists of a thorough and up-to-date analysis of rules and case law addressing the relationship between the WTO Agreement and human rights law. One essential conclusion is that scholarly debate on the relationship between the WTO Agreement and human rights treaties has focused too much on conflicts. Kanade himself offers a narrow definition of 'conflict' based on incompatibility from a legal perspective (at 56–59) and, thereby, leaves a relatively broad scope to the two other linkage categories. Against this background, one could have wished for a book that had paid more attention to the second and third linkage categories and less to the first.

A narrow definition of conflict is appropriate when the focus is on the principles for solving norm conflicts – *lex superior*, *lex posterior* and *lex specialis*. Kanade convincingly argues that some human rights are *lex superior* to the WTO Agreement based on Articles 55, 56 and 103 of the UN Charter. However, he does not clearly define the scope of applicability of the Charter in this regard. One argument that could have been addressed is whether the starting point should have been the human rights listed in the human rights document that is most directly related to the Charter – the Universal Declaration on Human Rights – potentially as elaborated and interpreted in subsequent global human rights treaties.<sup>3</sup>

As pointed out by Kanade, the application of *lex posterior* and *lex specialis* to the relationship between the WTO Agreement and human rights law is much less clear-cut. Discussions of *lex specialis* run into problems of the normative status of the principle and of determining which rules are *lex specialis* – the applicable WTO rules, human rights or both (at 76–78). And discussions of *lex posterior* run into the problem that elements of the WTO Agreement – in particular, the GATT – are carried over from the original GATT, which predates global human rights treaties, while other elements of the WTO Agreement are much less clearly linked to previously existing rules (for example, the Subsidies Agreement and the Agreement on Technical Barriers to Trade).<sup>4</sup>

Kanade discusses various views on whether and how the WTO dispute settlement mechanism (DSM) could apply human rights. He agrees with the view that the WTO DSM cannot resort to human rights as a basis for rights or obligations or as justification for non-compliance with obligations under the WTO Agreement but, rather, that human rights may be relevant as interpretative arguments in accordance with Articles 31 and 32 of the Vienna Convention on the Law of Treaties.<sup>5</sup> This is relevant, in particular, when interpreting the general exceptions of Article XX of the GATT and Article XIV of the General Agreement on Trade in Services (GATS).<sup>6</sup>

<sup>3</sup> Universal Declaration of Human Rights, GA Res. 217, 10 December 1948.

<sup>4</sup> Agreement on Subsidies and Countervailing Measures (Subsidies Agreement) 1994, 1867 UNTS 14; Agreement on Technical Barriers to Trade 1994, 1868 UNTS 120.

<sup>5</sup> Vienna Convention on the Law of Treaties 1969, 1155 UNTS 331.

<sup>6</sup> General Agreement on Trade in Services 1994, 1869 UNTS 183.

This part of Kanade's book is relatively uncontroversial and based on broadly accepted views on the interpretation and application of the WTO Agreement. However, one may question Kanade's arguments on a couple of specific points. One is his claim that it is much easier to justify measures under Article XX(g) than under Article XX(b) due to the strict requirement that a measure be 'necessary' to achieve its objective under the latter. On this basis, Kanade finds that 'the governance space that States have with respect to designing and structuring measures for conservation goals is much broader as compared to those for protecting human health'. He argues that 'there is no valid justification' for such differences (at 125). Whether the difference between the two provisions is as important as Kanade claims can be disputed though. His view essentially depends on the interpretation and application of the requirement of Article XX(g) that measures be 'made effective in conjunction with restrictions on domestic production or consumption'. The threshold for fulfilling this requirement remains unclear and is case dependent. Second, Kanade finds, based on the few cases in which Article XX has been successfully invoked, that it has 'empirically proved to be extremely difficult for States to successfully demonstrate the requirements of [the Chapeau] of Article XX' (at 127). However, this assumes that the real force of Article XX is revealed only in the WTO case law. This need not be correct; it may well be that, if defendants have strong claims under Article XX, potential claimants do not challenge trade-restrictive measures in the first place. Article XX might play a much more important role in practice than what is frequently assumed based on a study of WTO case law.

All things considered, Kanade provides an up-to-date discussion of the interface between WTO law and human rights – the first of his three linkages. This is valuable, but it is only a first step in his attempt to set out a general theoretical framework for addressing the effects of international trade agreements outside WTO law. In relation to this theoretical ambition, the discussion of the first linkage can be regarded as introductory; it provides the background and justification for the book's engagement with the more innovative second and third linkage categories.

## 2 Developing Country Perspectives

In light of Kanade's background from India, his more than 10 years of affiliation with the United Nations (UN) University for Peace in Costa Rica and his work for the UN High Commissioner for Human Rights on the right to development, it is not surprising that developing country perspectives are in the foreground of his book. However, it is worth noting that Kanade chooses not to place his book within the literature classified as Third World Approaches to International Law (TWAIL). The parts of the book that study the indirect effects of the WTO through the second and third linkage categories are the ones that most clearly take a developing country perspective. The two case studies associated with these linkage categories are of great interest to those seeking literature that expands the perspectives of mainstream legal scholarship regarding the WTO Agreement.

This is notably true for Kanade's case study of the 'Aid-for-Trade' initiative, which he uses to discuss the third linkage category – the WTO as creating a limiting environment to the use of governance space. Here, Kanade comes the closest to applying TWAIL (at 190–191). This part of the book is highly critical and refreshing. Informed and well-researched contributions by legal scholars regarding international aid are rare. Kanade's study is based on a thorough review of literature from several fields of research. To the extent that the Aid-for-Trade initiative was aimed at improving developing and least developed countries' ability to benefit from their WTO membership, Kanade's conclusions are scathing. He finds that the initiative creates 'a structure where the unfair norms are no more questioned. They are rather internalized as the indisputable norms' (at 191), and 'there are enough reasons to believe that the principal beneficiaries' of the initiative are developed countries (at 193).

The case study on core labour standards, which Kanade uses to illustrate the second linkage category – the WTO’s contribution in enabling an environment prone to the abuse of governance space – is equally instructive. Kanade draws on studies of the relationship between trade liberalization and the level of labour standards. Arguably, by lowering trade barriers, the WTO provides incentives to members to lower labour standards in order to maintain or increase their competitiveness. This poses a challenge to least developed countries that may not have adequate opportunities to increase productivity through technological improvements. The dilemma between improving competitiveness and raising labour standards is not easy to resolve and will remain so for the foreseeable future. Kanade’s discussion is based on a balanced presentation of arguments. He points out that controversial issues, such as proposals to include a ‘social clause’ to counter ‘unfair labour standards’, have led developing countries to block attempts to place labour issues on the agenda of the WTO. In fact, they even blocked the invitation to let the ILO’s Director General address the ministers at the WTO Ministerial Conference in 1996 (at 139). Developing countries’ concerns, to a large extent, have been driven by the fear that to place labour standards on the agenda of the WTO would open the door to trade sanctions by developed countries – a fear that probably has grown even stronger given the renewed popularity of such sanctions. In recent years, it seems that attempts at dealing with labour standards in international economic law have been more successful in international investment agreements than in agreements regarding trade in goods and services.<sup>7</sup> This might be a sign that the interests and positions of developing countries are becoming more nuanced and that progress on linking trade and labour issues may occur more likely, at least initially, at a bilateral or regional level than within the WTO and the ILO.

Looking beyond the specifics of his case studies, it is worth noting that Kanade relies heavily on the right to development when seeking to resolve challenges associated with the second and third linkage categories. His discussion of the legal status of this right begs some important questions – in particular, his claim that it has attained the status of generally applicable customary international law and can be characterized as an inalienable human right (at 205–211). Beyond the focus on core labour standards, Kanade pays no attention to specific human rights or common classifications of human rights. A discussion of the linkage categories based on different human rights could potentially have offered interesting insights. Arguably, strategies to deal with challenges within the three linkage categories would relate differently to different human rights, for example, based on the varying degrees of justiciability of human rights.

The book does not provide any explicit reason for avoiding distinctions between human rights. However, its emphasis on the close links between categories of human rights and the role of the right to development as a ‘vector’ for other human rights (at 206) indicates a preference for addressing human rights issues from a political, holistic and developing country perspective, rather than from a judicial, particular and developed country perspective. The right to development approach is a good match to the focus on sustainable development in the WTO Agreement. Kanade offers a convincing argument that the concepts of ‘right to development’ – as representing an emerging acknowledgement of developing country perspectives in the field of human rights – and ‘sustainable development’ – as representing an emerging acknowledgement of broader objectives of the multilateral trading regime – provide what we could label ‘a solid normative bridge’ between the multilateral trade regime and international

<sup>7</sup> Of the 2,573 international investment agreements coded up through the end of 2017, 108 contain substantive provisions that refer to labour standards. These treaties cover a broad range of developing and least developed countries. Data from the United Nations Conference on Trade and Development’s IIA Mapping Project. For relevant coding, see the Project’s Codebook, at 16, <https://investmentpolicyhubold.unctad.org/Upload/Documents/Mapping%20Project%20Description%20and%20Methodology.pdf>.

human rights. This does at least to some extent justify Kanade's choice of not discussing human rights in more detail.

### 3 A General Theoretical Framework for 'Trade and ...' Issues?

Given that the central ambition of Kanade is to construct a general theoretical framework for addressing the effects of international trade agreements on human rights, a key question is whether the proposed framework is relevant and useful for resolving similar challenges presented by other 'trade and ...' issues. I shall discuss this question from a trade and environmental perspective. This seems a useful perspective since environmental policy and environmental law have been at the forefront of the debate about 'trade and ...' issues. Initiatives to address trade and environment issues and associated academic analyses go back at least to the United Nations Conference on the Human Environment in Stockholm in 1972, and they have resulted in the establishment of dedicated Committees on Trade and Environment under the GATT and the WTO.<sup>8</sup> There have been endless discussions, significant jurisprudence and extensive negotiations in the WTO focusing on the ways in which the environmental 'governance space' is limited by the WTO Agreement. Little has been achieved beyond the sensitization of the dispute settlement mechanism to environmental concerns and increased focus on making international trade and environmental institutions mutually supportive. In particular, efforts to reform the WTO in order to expand members' environmental governance space have been unsuccessful. Examples include the expiration of the environmental clause in Article 8 of the Subsidies Agreement and the failure to move forward negotiations on the inclusion of a clause similar to Article XX(g) of the GATT in Article XIV of the GATS.<sup>9</sup> At most, the negotiations on trade and environment issues have protected the existing environmental governance space against further erosion through amendments to, and interpretation of, existing WTO rules. The lack of progress in the WTO as well as the extent to which environmental issues have come up in the WTO dispute settlement mechanism demonstrate the continued need for identifying new approaches to resolving issues of limitation of governance space.

Looking at related issues from the perspective of Kanade's work, his argument is based on sustainable development and the right to development functioning as a normative bridge between the WTO and human rights. In his discussion, he acknowledges that, so far, sustainable development has most importantly been used as a normative bridge between trade and environmental issues. In line with conclusions emerging from the trade and environment discourse, Kanade finds sustainable development to be the key objective of the WTO Agreement and argues that the covered agreements must be interpreted and applied in conformity with this objective. He concludes that 'free trade and economic growth are not ends in themselves but are intended to be means to achieve sustainable development. And because sustainable development cannot be promoted if human rights are undermined, it is necessary for all WTO processes to internalise human rights considerations' (at 232). Moreover, he argues that the right to development is 'an inalienable self-standing human right' and that it 'should be understood as a vector, which in turn comprises all other human rights' (at 209). By emphasizing the economic and human

<sup>8</sup> GATT established a Group on Environmental Measures and International Trade in 1971 during the preparations for the 1972 UN Stockholm Conference, and this group was reactivated in 1991 in preparation for the upcoming 1992 United Nations Conference on Environment and Development in Rio.

<sup>9</sup> See Art. 31 of the Subsidies Agreement, *supra* note 4, and the Decision on Trade in Services and Environment of the Marrakesh Ministerial Conference.

rights aspects of sustainable development as well as the economic and developing country aspects of the right to development, he provides a relatively strong argument that countries have legal and political obligations to take measures to address all three categories of linkage issues. As indicated above, the measures to be taken differ significantly among the three categories.

Does the long-standing trade and environment debate yield any insights into the relationship between trade and human rights, as discussed by Kanade? And could, conversely, the trade and environment debate benefit from the linkages explored by Kanade? My discussion of such potential ‘spill-overs’ has to remain tentative and general, but three points can be made. These proceed from three established strands of discourse about trade and environment issues, which in turn can be related to Kanade’s three linkage issues. The first strand is pragmatic; it draws on environmental or sustainability impact assessments of trade negotiations that have been undertaken by many countries since the mid-1990s. On the face of it, this resembles a similar pattern in the trade and human rights context; there is some limited experience with, and a relatively significant literature on, human rights impact assessments of trade rules and policies.<sup>10</sup> Kanade discusses human rights impact assessments towards the end of the book as a key means to address challenges associated with the first and third linkage categories (at 216). He advises that such assessments ‘need to be conducted at least at four stages of the WTO processes, namely pre-negotiation, negotiation, implementation and trade policy review and by different actors’ (at 218).

Notwithstanding the ostensible similarities, readers familiar with environmental and sustainability impact assessments may find surprising the focus on regulatory issues generally found in human rights impact assessments. Environmental assessments have been more closely associated with the negative and positive environmental consequences of trade agreements and the need to identify measures to enhance synergies and reduce negative effects. Based on the experience with environmental assessments, the prospect of expanding governance space for human rights purposes through human rights impact assessments may seem slim. The lack of progress during the Doha Round of trade negotiations and its uncertain future, as discussed by Kanade (at 234–236), reflect the current lack of willingness of developed countries to reform the WTO to the benefit of developing and least developed countries. Kanade’s analysis might be of use for those considering how to adapt impact assessments in the environmental field; it notably suggests that increased focus on regulatory effects could serve as a means to safeguard or potentially enhance environmental governance space. Arguably, this could more successfully be achieved in bilateral or regional trade agreements. However, as pointed out by Kanade, the possibility of expanding governance space under the WTO Agreement through bilateral or regional treaties would only be successful as long as such initiatives are not challenged in the WTO.

The second strand of the trade and environment discourse is more systemic. It concerns the relationship between multilateral environmental agreements (MEAs) and trade agreements, and it helps situate aspects of Kanade’s second linkage category – the potential of the WTO to facilitate ‘abuse’ of governance space. Kanade discusses these linkage issues in relation to labour rights and the respective roles of the ILO and the WTO and concludes that ‘amending WTO law is not the appropriate solution’ to the challenges associated with low labour standards (at 225). Experiences from trade and environment debates suggest that this conclusion may be open to challenge. One environmental parallel is the need to deal with ‘free-riders’ in MEAs. Free-riding occurs when countries prefer not to participate in MEAs whilst still benefiting from

<sup>10</sup> See World Bank, *Human Rights Impact Assessments: A Review of the Literature, Differences with Other Forms of Assessments and Relevance for Development* (2013). The European Union published guidelines on the analysis of human rights impacts in impact assessments for trade-related policy initiatives in 2015.

the efforts of MEA parties. In addition, non-participating countries may gain significant economic advantages by allowing activities that are environmentally harmful and economically profitable, a policy that undermines the efforts of MEA parties through 'leakage'. Several MEAs include provisions regulating international trade,<sup>11</sup> but the climate treaties and the Convention on Biological Diversity are not among these.<sup>12</sup> Some MEAs even regulate trade with non-parties.<sup>13</sup> The relationship between trade provisions in MEAs and the WTO Agreements has been hotly disputed in negotiations and scholarly debate. The extent to which trade measures taken according to these treaties to prevent free-riding and leakage are allowed under the WTO Agreements remains unresolved.<sup>14</sup>

All this is of relevance to Kanade's debate about trade and labour standards. Like the trade and environment discourse, the trade and human rights debate needs to address problems of free-riding and leakage. Kanade shows how resistance from developing countries has prevented negotiation of labour issues in the WTO. We have seen similar tendencies in the negotiations of environmental issues within the WTO, which have provided very meagre results despite having been on the agenda of the WTO for decades. One noteworthy difference is that labour conventions do not deal with trade issues in the way they are addressed in MEAs. Kanade's conclusion that labour issues should be addressed in the ILO rather than in the WTO thus indicates that the ILO should be more actively involved in discussing trade-related issues during negotiations of labour conventions, perhaps inspired by the negotiations of MEAs. His analysis of the effect of trade treaties in facilitating the abuse of governance space is an important reminder for ongoing negotiations to resolve key environmental challenges – in particular, those on climate change and biodiversity.

The third strand of the trade and environment discourse has been the search for, and implementation of, 'win-win-win' initiatives that prioritize trade liberalization in the WTO when this will also benefit both the environment and sustainable development. There seems to be no direct equivalent to this positive focus in Kanade's discussion; his third linkage category remains premised on a negative relationship, asking whether WTO rules create a limiting environment for the use of governance space. According to Kanade, these effects of trade agreements are 'a result of the imbalance between the economic and social costs of undertaking commitments under WTO rules, on the one hand, and the capability of those States in benefitting from the resultant MTS [multilateral trading system], on the other hand' (at 169). The book

<sup>11</sup> These include the regulation of trade in endangered species under the Convention on Trade in Endangered Species of Wild Fauna and Flora (CITES) 1973, 993 UNTS 243; ozone-depleting substances under the Montreal Protocol on Substances that Deplete the Ozone Layer 1987, 1522 UNTS 3; living modified organisms under the Cartagena Protocol on Biosafety to the Convention on Biological Diversity (Biosafety Protocol) 2000, 2226 UNTS 208; persistent organic pollutants under the Stockholm Convention on Persistent Organic Pollutants 2001, 2256 UNTS 119; hazardous wastes under the Basel Convention on the Control of Transboundary Movements of Hazardous and Their Disposal 1989, 1673 UNTS 126; mercury under the Minamata Convention on Mercury, UN Doc. (DTIE)/Hg/INC.5/7, 10 October 2013; and hazardous chemicals under the Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade 1998, 2244 UNTS 337.

<sup>12</sup> Convention on Biological Diversity 1992, 1760 UNTS 79.

<sup>13</sup> This is the case for CITES, *supra* note 11; Montreal Protocol, *supra* note 11; Biosafety Protocol, *supra* note 11; Stockholm Convention, *supra* note 11; and Minamata Convention, *supra* note 11.

<sup>14</sup> WTO Ministerial Declaration, Doha 2001, 41 ILM 746 (2002), para. 31: '[W]e agree to negotiations, without prejudging their outcome, on: (i) the relationship between existing WTO rules and specific trade obligations set out in multilateral environmental agreements (MEAs). The negotiations shall be limited in scope to the applicability of such existing WTO rules as among parties to the MEA in question.' No progress has been made on this topic. Questions related to trade measures taken against non-parties to environmental treaties were left out of the mandate.



recommends addressing such challenges by focusing on a ‘right to development approach’ (at 225–227). While that right could indeed function as a normative framework, human rights impact assessments might be a more pragmatic means to address such challenges in practice. However, experience with environmental and sustainability impact assessments brings out the complexities and uncertainties inherent in predicting the effects of trade rules and policies.

Moreover, most such assessments are undertaken by developed countries, and the extent to which they address effects in other countries, including developing and least developed countries, varies significantly. Such assessments have frequently concluded that negative effects from trade liberalization are too insignificant or uncertain to justify any major policy adjustments or responses. Nevertheless, in the trade and environment discourse, impact assessments have provided a framework for policy initiatives to offset potential negative environmental effects, and have become an important tool to inform member states and the public about the consequences of trade reforms. Such experiences with environmental assessments could inform the debate on how impact assessments can be used to improve synergies and avoid conflicts between trade and human rights.

These considerations are tentative. However, they indicate that Kanade’s framework is relevant in an environmental context and that at least some elements of the framework provide useful perspectives to the trade and environment discourse. Perhaps more importantly, the discussions suggest that experiences from trade and environment should be taken into account to inform initiatives to apply, adjust and elaborate Kanade’s governance space framework.

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In sum, Kanade’s book represents a thoughtful and innovative perspective on how to move the academic and policy discourse on ‘trade and ...’ issues forward. Its key contribution is the identification and discussion of the two indirect linkage categories – the facilitation of abuse of governance space and the creation of a limiting environment for the use of governance space. Much work remains to be done in terms of further exploring these linkage categories and determining how they can and should be addressed when applying existing rules and negotiating new ones. As Kanade points out, the distinction between the linkage categories is not clear-cut. The tentative discussion offered in this review not only indicates that Kanade’s categories are relevant to, and useful for, ‘trade and ...’ debates in the environmental field but also suggests that further clarification and adjustments are needed. Kanade’s discussion on how to achieve synergies between the WTO and human rights, relying on the right to development and the objective of sustainable development, is very timely; it feeds into the current processes to achieve 17 sustainable development goals by 2030 and the ongoing negotiations of a legally binding instrument on the right to development.<sup>15</sup> The linking of these two processes might well become a key to our analysis and understanding of current developments of international law and policy.

*Ole Kristian Fauchald*

*PluriCourts Centre for the Study of the Legitimate Roles  
of the Judiciary in the Global Order, University of Oslo*  
Email: [o.k.fauchald@jus.uio.no](mailto:o.k.fauchald@jus.uio.no)

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<sup>15</sup> See Sustainable Development Goals, [www.un.org/sustainabledevelopment/sustainable-development-goals/](http://www.un.org/sustainabledevelopment/sustainable-development-goals/); Human Rights Council Res. 39/9, 27 September 2018, para. 17(e).