is left unclear what influence is accorded to contributing other practice on the formation of a rule of customary international humanitarian law. It is regrettable that, whereas the study contains detailed information on how weight is attributed to, for instance, resolutions from international organizations, this is not specified at all for non-state actors or persistent objectors. It seems a less important question in situations where state practice overwhelmingly points in the same direction; the issue becomes more pressing, however, when there is little state practice available and the weight accorded to other practice has consequence for the formation of a rule of customary international humanitarian law. The present author maintains that a view of the content of the 'black box' would have made a stronger case for general acceptance of the innovative and most welcome rules put forward by the ICRC.

I would venture to conclude that anyone with a genuine interest in the process of law creation would immediately identify the ICRC Study as an impressive example of the influence exercised by a unique institution that, by virtue of its special status in international law, with certain authority affects the process of discourse on the law. If anything a primary objective of the ICRC Study has been to instigate further debate and dialogue, and to identify areas in the law that require clarification and further development. The Study is beyond doubt impressive and the first, most wide-ranging word on this particular topic; however, it should certainly not be the last. Although the Study offers an invaluable reference guide on actual practice it should not be mistaken for a legal document but understood as a statement of the law. It is an important tool in a worldwide process of discourse on the law that should lead to more insights into the current state and the process of the formation of customary international humanitarian law. The Study will, hopefully, find its way to the bookshelves of many practitioners, policymakers, and military specialists, where it may provide guidance and its statements may stimulate the expansion of the protection that is provided to those unfortunates exposed to the brutalities of warfare.

*Eloisa Newalsing**

Giorgio Sacerdoti, Alan Yanovich, and Jan Bohanes (eds.), *The WTO at Ten: The Contribution of the Dispute Settlement System*, Cambridge, Cambridge University Press, 2006, ISBN 9780521863148, 531 pp., £60.00 (hb).
doi:10.1017/S0922156507004852

The World Trade Organization (WTO) dispute settlement system involves a unique method for dispute resolution in international law, and it has become an influential point of reference. Irrespective of their proficiency in WTO law, many international

* Ph.D. candidate, Leiden University; visiting scholar, Asia Pacific Centre for Military Law, Melbourne University. With thanks to Horst Fischer, Jan Klabbers, and Marten Zwanenburg for their insightful comments. This work forms part of the project 'The Formation of Customary International Humanitarian Law Applicable to Non-international Armed Conflicts', funded by the Netherlands Organization for Scientific Research.

lawyers invoke the functioning and jurisprudence of WTO panels and the Appellate Body as a symbol of the amplitude and maturation of international law. The WTO legal community, if it exists, is now gradually becoming aware of the significance of the WTO as an institution and as a network of treaty law for other areas of international law. This collection of essays reflects the realization of how WTO law and jurisprudence can connect with other parts of international law. Most of the essays were presented as papers during one of the five conferences organized by the WTO Appellate Body to commemorate the tenth anniversary of the WTO dispute settlement system (Stresa, 11–13 March 2005); the structure of this collection follows generally the programme of the conference at which the papers were presented (i.e. reporters' essays are supplemented by commentaries). The first four essays, in Part I, offer a retrospective of the birth and life of the WTO and its dispute settlement system, and sketch key achievements, challenges, and limits facing the WTO as an institution and as a legal system. Part II groups essays on the balance between political governance and judicialization. Part III is devoted to the reform of the Dispute Settlement Understanding (DSU). Part IV celebrates the significant contribution of the Appellate Body to substantive international trade law – as contrasted with procedural law addressed in Part III. Part V groups essays from members of various international courts and tribunals on their interpretative methods and techniques.

The two principal themes of this collection of essays are (i) the interaction and balance between the political and judicial branches of the WTO, and (ii) the relation of the WTO dispute settlement system and its jurisprudence to other international (and regional) courts and tribunals. Central to both themes is the understanding that the Appellate Body members perceive themselves as adjudicators, similar to members of other courts and tribunals and despite the alleged lack of *res judicata* of panel and Appellate Body reports. Appellate Body member Sacerdoti stresses the character of the Appellate Body as a judicial body, which represents 'a new chapter in the evolution of international justice' (p. 55) – although not all contributors would agree (see, for example, p. 81). If a WTO community exists, this community's perspective is increasingly becoming outward-looking. There is a growing awareness of the influence of WTO law and its jurisprudence on general international law, for example the law of treaties, and other sub-systems of international law. This trend is in parallel with efforts of some WTO members to regain more political control of the dispute settlement system. It would appear that as long as such efforts do not result in treaty amendments, interpretative declarations, or authoritative interpretations, panels and especially the Appellate Body will not likely feel constrained by discussions in the Dispute Settlement Body on how to curtail the extent to which general international law and other international law becomes relevant in adjudicating disputes. Some of the essays shed light on this interaction between political discussions and trade negotiations, and dispute settlement. Robert Howse and Susan Esserman, for example, emphasize the function of the Appellate Body as a reconciliatory, stabilizing force on the political processes in the WTO, and especially on trade negotiations (pp. 64–8). Conversely, political decisions of WTO members in areas such as the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) and public health and on the Kimberley Waiver on conflict diamonds can

equally inform the interpretation and application of WTO rules by panels and the Appellate Body – as provided in the WTO Agreement itself (pp. 75–6). The essays in Part II leave the impression that a balance between political governance and judicialization – however 'balance' is conceptualized (see pp. 125–7) – has developed organically over time and continues to be tested by the ongoing Doha Development Round negotiations. Given the status of DSU reform negotiations and the report of the Consultative Board to the Director-General, it is not surprising that the overall message is that the WTO dispute settlement system requires little reform. If there is an imbalance between the political bodies and the dispute settlement system in the WTO, a rebalancing exercise will not likely be achieved through amending the DSU. Some essays in this collection revisit in detail the known problem areas in DSU reform, such as the sequence between Articles 21 and 22 DSU, the position of third parties, *locus standi*, the desirability of a remand procedure, and transparency issues. Underlying each of these essays on DSU reform is the question of whether and how panels and the Appellate Body should respond to the apparent inability of the political branch to remedy procedural silences and deficiencies in the DSU. This, in turn, raises questions about treaty interpretation and the extent to which panels and the Appellate Body should defer to negotiators to resolve procedural silences – a theme explored further in the final part. One thing that should be emphasized – but is not sufficiently addressed – is that issues of treaty interpretation cannot be treated just like other procedural DSU reform proposals. Treaty interpretation is about guidance, not procedure or substance.

Another group of essays traces how the Appellate Body's function has evolved from the minimal conception of an appeals body at the time of the Uruguay Round negotiations to the position of judicial authority and strength it now enjoys after 12 years of jurisprudence. This appraisal implies an examination of the Appellate Body's legal responses in resolving individual cases, as well as a contemplation of the framework in which to assess the body of substantive case law the Appellate Body has so far produced. It also raises the question of the self-awareness of the Appellate Body and how it perceives its function and develops its identity within the WTO institutional structure. The Appellate Body has furthered broader values underlying the WTO covered agreements and the WTO institution. These values include trade liberalization, but equally consistency, internal coherence, and effectiveness of the covered agreements and the institutional structure of the WTO. Some of these values are written down in the covered agreements, others are not. This should not be surprising. The Appellate Body is a permanent judicial body that continuously revisits the same treaty language within a particular institutional constellation. This necessarily entails that the Appellate Body takes account of broader values. This qualitative assessment engages insightful contributions in this collection of essays on whether the substantive jurisprudence of the Appellate Body is a function of a particular interpretation or application of the Vienna Convention on the Law of Treaties, or whether interpretative philosophies are merely accessory and determined by the values that the Appellate Body is seeking to protect. The essays in Part IV demonstrate that this is not an 'either/or' question: they show how the Appellate Body's contribution to substantive international trade law has

at the same time brought about a substantial contribution to general international law.

Undoubtedly, the most valuable contribution of this collection is the elaboration by different judges or members of international courts and tribunals in the final Part V on 'Treaty Interpretation in International Law'. The attempt at public judicial dialogue between Appellate Body members and judges of international courts is the first of its kind. Most of the essays do not engage in a comparison of different interpretative practices, but they do provide a remarkable exposé of how each participant approaches treaty interpretation. The contrast in style and presentation of the different judicial philosophies of the Appellate Body, the International Court of Justice, the European Court of Justice, the Court of First Instance, and the International Tribunal on the Law of the Sea is striking. The ease of some judges in explaining their perception of treaty interpretation is remarkable in comparison with the restraint detectable in the exposition of another judge on the same issue. It is not always clear to what extent each of the essays reflects the personal perspective of each of the judges or of the court or tribunal of which they are members, perspectives that may – understandably – not always necessarily correspond and converge. The common understanding is, though, that the meaning and function of principles of treaty interpretation cannot be isolated from the judicial and institutional context in which they are applied. Equally, all these members of various courts and tribunals share the perception that their role is also one of consolidating the discipline of international law itself and of supporting the evolution of international law. The essays in this part support the conclusion that treaty interpretation is inherently context-specific and that a certain margin of inconsistency or divergence in their application is inevitable.

The breadth of issues and the richness of arguments covered in this collection of essays do justice to over a decade of jurisprudence of the WTO dispute settlement system. The collection is intended to help a broad and varied audience understand the impact of the WTO dispute settlement system on the development of international trade law and general international law. The book is the first instalment of a promising series of publications to celebrate the tenth anniversary of the WTO dispute settlement system.

*Isabelle Van Damme**

Olivier Corten and Pierre Klein (eds.), *Les Conventions de Vienne sur le droit des traités: Commentaire article par article*, 3 volumes, Brussels, Bruylant, 2006, ISBN 2802721828, 3,024 pp., €395.00.
doi:10.1017/S0922156507004864

It would not be an overstatement to assert that the publication of the first scholarly commentary on the two Vienna Conventions on the law of treaties is a

* Gonville and Caius College, University of Cambridge; iv218@cam.ac.uk.