
Forever Searching: How Far Can We Go?

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I. From Reciprocity to Multilateralism – And Back to Regionalism?

The Bretton Woods Institutions and the General Agreement on Tariffs and Trade (GATT) 1947 – and the United Nations framework established at the same time – came as a powerful tool for peace after two world wars. On the trade side, replacing reciprocity with multilateral rules provided both a base for unprecedented trade expansion and a sobering assessment of its shortcomings in terms of ‘development’ and ‘fairness’.

The climax of multilateralism was reached on 15 April 1994, when 124 governments and the European Communities convened in Marrakesh to sign 30,000 pages of World Trade Organization (WTO) Agreements and Schedules of Concessions. This ‘single undertaking’ contained new commitments for trade in goods, services and intellectual property, and only a few holes to be filled by ‘review clauses’ and ‘reform process’ undertakings. A brand new dispute settlement mechanism without ‘foreign judges’ making new rules would provide proper rules reading and interpretation.

Multilateralism remains the *voie royale* of trade and investment liberalisation. However, with the wisdom of hindsight, one might surmise that a more progressive view of comprehensive liberalisation, in particular in North–South agreements, would have avoided today’s visceral disputes on the adequacy of ‘trade only’ agreements

As for Thomas Cottier and his co-thinkers, it is probably fair to say that views on multilateralism and regionalism did not stop at recording the numbers, and discussing the (WTO) compatibility, of regional trade agreements (RTAs), including ‘mega-regionals’. Early on, they also discussed whether the defensive but imprecise formulation of GATT, Article XXIV allowed a harmonious coexistence

of multilateral and regional values and treaties – especially with developing countries.

II. Rethinking Multilateralism versus Regional Trade Liberalisation

Cottier and his World Trade Institute team wondered whether the rapidly increasing number of North–South trade agreements warranted a review of the WTO rules on development aspects of regional trade agreements. They pointed out that ‘current RTA disciplines, particularly Article XXIV GATT, serve neither development nor trade needs’. For instance, there is a ‘tariff bias’ when only liberalisation in goods is taken into account in determining compatibility with the original meaning of GATT, Article XXIV. Moreover, this key provision for the relationship between multilateral and reciprocal trade disciplines ‘creates a system of perverse incentives that benefit neither the parties to the agreement, nor, when seen from a proper perspective, third party WTO Members’. Hence, some reform of this provision might be required to bring it up to date. They outlined a series of legal options and a new view of measuring RTA liberalisation in which account is also taken of a broader set of economic interests – including services, aid-for-trade and trade facilitation.¹

Those were also the years when the gigantic Common Market project of the European Communities made its best progress, pragmatically called ‘two steps ahead, one step back’. Geographic expansion confirmed the success of an integrated Europe based on ever-deepening rules securing free trade, investment and movement of persons. For Thomas Cottier, this was also the perfect template for a closer relationship with Switzerland and other stand-alone countries. A customs union being out of reach, these other Europeans united in the European Free Trade Association, set up in 1960 by its then seven Member States for the promotion of free trade and economic integration between its members.

Many RTAs remain cloistered in tariff-only provisions, with a few steps addressing some non-tariff measures, but without subsidy limitations or mutual recognition agreements, let alone common market features. When the EU added a chapter on ‘Trade and Sustainable Development’ to its Economic Partnership Agreements with African, Caribbean and Pacific partner countries, it purposely excluded dispute settlement from those provisions and avoided a revision of measuring the development impact of these treaties. A vast field of action for future modernisation was left behind – with a silent GATT, Article XXIV.

¹ Lorand Bartels, Sacha Silva, Hadil Hijazi, Hannes Schloemann and Thomas Cottier, ‘Re-Thinking Reciprocity: A New Framework for WTO Disciplines on North–South Regional Trade Agreements’ (1 May 2013) NCCR Trade Regulation Working Paper No 2013/20/University of Cambridge Faculty of Law Research Paper No 14/2013.

III. The Pragmatic Spirit of the GATT

Ratifications were fast and expectations were high, especially for the trade impact of the new rules. Scholarship had its heyday, and the skies were blue for all traders. World trade expanded. Never mind funny terms like non-trade concerns, development and rural development needs and intellectual property technology transfer. Unfinished business remained, of course. Preambular language and legal loopholes allowed voluntary export restraints and food export restrictions. But all of these would be addressed in new ('development') negotiation rounds. Adjudicators (instead of the General Council) could also clarify unclear rules. Most dispute settlement rulings were duly implemented, albeit at times at the expense of third parties.

IV. Judicial Review: Reading National Law

Article 11 of the WTO's Dispute Settlement Understanding enjoins panels to 'make an objective assessment of the facts'. Cottier repeatedly contributed to the long-debated question on the standards of review, insisting that there is no room for deference to interpretations given by Member States in accordance with their domestic policies and interests. There is a fundamental difference between domestic and international review: adjudication on the level of international law has, in principle, no jurisdiction to construe and interpret domestic rules. Unlike domestic law, it is not a matter of interpreting both constitutional rules and statutory law (and possibly treaty rules in case of direct effect and consistent interpretation). Here, domestic rules are conceptually dealt with as questions of fact and not of law. Whether or not domestic law is in compliance with international obligations is based on a comparison of national law as reasonably stated by the respective member and as interpreted by its authorities and of WTO rules construed and applied by the WTO bodies. Panels and the Appellate Body cannot exclusively rely upon the reading of national law as submitted by the defending party (naturally in an alleged WTO-compatible way), and at least apparent misperceptions and interpretations short of a sound rational basis cannot be accepted. The assessment, therefore, does entail legal analysis, but it has to be dealt with as a matter of evidence, ie as to whether a defending party is in a position to demonstrate the alleged meaning and scope of its own and domestic law challenged by the complainant.²

²Thomas Cottier, 'Recalibrating the WTO Dispute Settlement System: Towards New Standards of Appellate Review' (2021) 24(3) *Journal of International Economic Law* 515–33; Thomas Cottier and Krista Nadakavukaren Schefer, 'The Relationship Between World Trade Organization Law, National and Regional Law' (1998) 1(1) *Journal of International Economic Law* 83; Krista Nadakavukaren Schefer and Serge Pannatier, 'The Banana Dispute and Implementation of WTO Legal Rulings' (1999) 11(2) *European Legal Developments Bulletin* 16; Thomas Cotter and Krista Nadakavukaren Schefer, 'Non-Violation Complaints in GATT/WTO Dispute Settlement: Past, Present, and Future' in

V. The Battle of Seattle: Just a Glitch?

The first clouds came soon enough, and without multilateralist pundits noticing.

One of the first anti-globalisation movements got together for the Third WTO Ministerial in Seattle, in November 1999. Protests by trade unionists, farmers and anti-genetically modified organism demonstrators clad in Monarch butterflies and peace and human rights activists ended in tear gas clouds instead of a dialogue. A group of trade ministers selected by US Trade Representative Charlene Barshefsky spent four days talking about agriculture in the Green Room before the talks collapsed at 4 am on day 5, with African and other ministers complaining about being treated like lost luggage and without the planned adoption of a negotiating mandate for a new negotiation round.

No such problems occurred when ministers reconvened to adopt the 'Doha Development Agenda' in November 2001 – with post-9/11 bombs falling on Afghanistan only 1000 km away. New and ambitious 'Singapore Issues' (transparency in government procurement, trade facilitation/customs issues, trade and investment, and trade and competition) provided a palatable menu package. The People's Republic of China and Chinese Taipei triumphantly joined as new WTO members.

Other issues were ignored or postponed. Many development, environmental and social concerns went unheeded. More snags came later, after intensive but fruitless negotiations and more ministerial reunions. The (misnomer) 'Doha Development Agenda' was amputated in 2003. The revised Doha Round 'modalities' proposals dated 6 December 2008 failed to obtain a go-ahead to reach a package solution.

No room for development and more coherence? Thomas Cottier never thought so.

VI. More Labour Protection under Trade Law?

In most of his publications, Cottier looks out for more equity and fairness. Adequately addressing labour standards in international trade regulation – a big topic for more than 200 years, and one with many ramifications – requires deference to the notion of public morality and a balance of interests in applying standards of necessity and fair competition. This is a highly sensitive issue in every country, and the tripartite process of the International Labour Organization (ILO) still appears to be the best formalisation of international standards. Looking at *EC – Seals*, Cottier argues that assessing the policy space of members of the WTO allows closer linkages between trade and ILO core labour standards.³

Ernst-Ulrich Petersmann (ed), *International Trade Law and the GATT-WTO Dispute Settlement System* (Kluwer Law Publishers, 1997) 145–83.

³Thomas Cottier, 'The Implications of EC – Seal Products for the Protection of Core Labour Standards in WTO Law' in Henner Gött (ed), *Labour Standards in International Economic Law* (Springer, 2018) 69–92.

The first and only multilateral trade agreement concluded since the WTO was established, the Trade Facilitation Agreement, entered into force in 2017.

VII. Sectoral Policies Benefiting from WTO Law?

Proposals for bringing trade-relevant sectoral policies into the WTO always faced opposition. For instance, the invitation to the Director General of the International Labour Organization to attend the first WTO Ministerial Meeting in Singapore (1996) had to be cancelled, replaced by a permanent inter-Secretariat dialogue without tangible results. Nevertheless, labour issues popped up in WTO disputes, albeit with very limited success. Labour, to be sure, was always a special topic for Thomas Cottier.

Other labour issues potentially affecting trade appeared in one WTO dispute (USA versus EU and Japan about public procurement of forced labour products in Myanmar) and two bilateral trade disputes (USA versus Guatemala about freedom of association, and EU versus Korea about ILO Convention's compliance in their free trade agreement (FTA)). Vietnam's commitments in this respect towards the USA (a side letter in the Draft Trans-Pacific Partnership Agreement) and the EU (a chapter on trade and sustainable development in the EU–Vietnam Trade Agreement) have not been challenged so far. Several articles report the views taken by Thomas Cottier et al. He repeatedly probed into the trade law impact of forced labour provisions existing under public international law.

VIII. Forced Labour Prohibition with International Economic Law?

Trade lawyers have tried in different ways to bring peremptory labour standards into the fold of multilateral trade disciplines. In her *Habilitationsschrift* completed under the supervision of Thomas Cottier and published in 2007, Christine Kaufmann places the debate under a human rights and international economic law (IEL) perspective starting in 1967, when the UN Economic and Social Council passed Resolution 1235, drawing the line at gross and systematic violations of human rights. This bottom-up approach further developed to define some human rights as being so basic or essential that they must be considered universal (*erga omnes*) obligations or even *ius cogens* proper. Such core labour rights would hence apply to any human activity in the workplace. They would be binding at least for all ratifying ILO members, and, in view of the large number of ILO Member States, come close to being universal, private international law-based obligations for all states.

Cottier and Oesch claim that the ‘essence of non-discrimination in international economic law’ is the ‘creation of equal conditions of competition among domestic and foreign products and competitors, with respect to trade in goods, services, investment and labour.’⁴

IX. Can Switzerland Integrate with the EU Common Market? How?

The Swiss–EU relationship remains at the centre of Cottier’s personal, political and legal agenda. He had always wanted more: his *ceterum censeo* was EU accession, but he looked further than full accession in his search for Swiss cosmopolitan policies. Cottier apparently regretted, for example, the lack of a dispute settlement mechanism in the unequal alliance based on the 1972 FTA with the EU (still the main pillar of the Swiss–EU trade treaties). The Swiss vote against joining the European Economic Area Agreement in 1992 also came as a bitter experience in Cottier’s moving forward agenda. He had to wait until 1999 and the achievement of the so-called ‘Bilaterals II’ package to see a big step forward towards a common market.

More coherence remained central in Cottier’s thinking, as much as for other reflections on sovereignty and market integration.

A. The Five-Storey House for Cosmopolitans

Many trade-related issues must be addressed in a wider public international law context. The doctrine of the ‘five-storey house’, taking into account cosmopolitan political theory, is informed by the idea that all layers of governance are of equal importance and reflect human interaction. It no longer makes a fundamental difference between domestic and international law in terms of allocating powers to regulate and enforce. It is similar to the perception of ‘sovereignty-modern’ developed by the late John H Jackson. It essentially argues that all levels of governance, from local to global, entail human conduct and behaviour, and share basic traits in terms of legal foundations and sources, albeit in very different constellations and compositions. In particular, it assists in distinguishing global, regional, national and local concerns and corresponding public goods. It also helps allocate powers in terms of power-sharing among different layers beyond federalism.⁵

⁴T Cottier, and M Oesch, ‘Direct and Indirect Discrimination in WTO Law and EU Law. NCCR Trade Regulation’ (Swiss National Centre of Competence in Research, 2011); C Kaufmann, *Globalization and Labour Rights: The Conflict between Core Labour Rights and International Economic Law* (Hart Publishing, 2007) 75.

⁵T Cottier and Z Ahmad (eds), *The Prospects of Common Concern of Humankind in International Law* (Cambridge University Press, 2021) 49.

After the failure of a seven-year ‘pre-negotiation’ process for a Framework Agreement covering several hundred Swiss–EU agreements, the 2024 decision by the EU Commission and the Federal Council to actually start new negotiations, called ‘Bilaterals III’, has brought Cottier *emeritus nec invictus* a sigh of relief – including a new approach for dispute settlement without ‘foreign judges’.

B. Bilaterals III – A Fair Deal for Switzerland and the EU!

Securing market access to the common market and supplying security for Switzerland are paramount conditions for the most integrated European country after Luxembourg. This coming negotiation includes education and research, electricity, food safety, health and a better integration into the European labour market. It promises participation in decision-making and dispute settlement based on bilateral treaty law – without those foreign judges that a legendary William Tell had thrown into a stormy Lake Lucerne back in 1291.⁶

X. Restoring Trust Badly Needed

With the slowly but persistently darkening clouds over the multilateral trading system, where could academia take the lead? In 2018, Cottier contributed to Peter Van den Bossche’s Festschrift on ‘restoring trust in trade’ with his ideas on equitable trade.

A. Equity as a Precondition

The global financial crisis eroded trust in the international trade regime, which was also suffering from the mood of Brexit and the Trump administration’s unilateral trade policies. Restoring trust in the international trading system is essential to prevent the rise of economic nationalism and beggar-thy-neighbour policies, which history has shown to be a threat to global welfare and peace.

We can get back to a ‘trustworthy’ rules-based multilateral trading system, which has left a lasting legacy, by focusing on: (i) a robust institutional framework that promotes the rule of law over power politics; (ii) safeguarding the integrity and effectiveness of trade dispute settlement; and (iii) ensuring that

⁶Thomas Cottier, ‘Die Bilateralen III sind ein faires Bündnis’ (*Vereinigung La Suisse en Europe*, 5 February 2024) <https://suisse-en-europe.ch/die-bilateralen-iii-sind-ein-faires-buendnis-von-thomas-cottier/>. For earlier discussions about ‘foreign judges’, cf Thomas Cottier and Krista Nadakavukaren Schefer, ‘Switzerland: The Challenge of Direct Democracy’ in John H Jackson and Alan Sykes (eds), *Implementing the Uruguay Round* (Oxford University Press, 1997) 334–63.

substantive international trade rules appropriately balance trade and non-trade interests.⁷

New concerns and new issues cropped up continuously. Here is just a quick look at environmental concerns and the climate agreement.

B. Environment and Climate: Justifying ‘Good’ Protectionism?

Environmental concerns and global warming brought new tools under the name of ‘noble’ or ‘good’ protectionism. The EU Green Deal, announced in 2019, is a ‘train’ of over 50 policy proposals providing a framework for the EU to reach its carbon neutrality targets without losing competitiveness and avoiding carbon leakage. It includes the ‘Fit-for-55’ climate package published in July 2021. The EU Emission Trading System (ETS) will be revised and extended to new sectors, including the transportation sector. In this context, the Carbon Border Adjustment Mechanism was proposed as a new mechanism to complement the EU ETS and gradually replace the ETS-free allowances to prevent the risk of carbon leakage.

Cottier produced multiple texts, lecturing students and coaching PhD candidates for these concerns. He recognised the basic obligations of states and technology holders, comprising not only that of international cooperation and duties to negotiate, but also unilateral duties to act to enhance the potential of public international law to produce appropriate public goods.⁸

Perhaps the most important WTO agreement for Switzerland in economic terms is the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement).

C. Intellectual Property Reforms for More Development?

One of the chief architects of the TRIPS Agreement, Cottier never let go of the need to develop this treaty with a special interest for Switzerland. He often claimed that a good regulatory framework for intellectual property would help home states, foreign and local businesses to reinforce systemic, substantive and enforcement-related issues arising from plurilateralism (versus multilateralism for developing countries). At the same time, Cottier is always aware of the TRIPS

⁷ Thomas Cottier, ‘The Prospects of Equity in International Economic Law’ in Denise Prévost, Iveta Alexovicova and Jens Hillebrand Pohl (eds), *Restoring Trust in Trade: Liber Amicorum in Honour of Peter Van den Bossche* (Hart Publishing, 2018) 119–38.

⁸ Thomas Cottier, ‘Preparing for Structural Reform in the WTO’ (2007) 10(3) *Journal of International Economic Law* 497; Thomas Cottier and Sofya Matteotti-Berkutova, ‘International Environmental Law and the Evolving Concept of “Common Concern of Mankind”’ in Thomas Cottier, Olga Nartova and Sadeq Z Bigdeli (eds), *International Trade Regulation and the Mitigation of Climate Change* (Cambridge University Press, 2009) 21–47.

objective ('to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare' – Article 7) of the public health challenge (Article 31*bis*/compulsory licences), and of the never fulfilled obligation of developed countries to 'provide incentives to enterprises and institutions in their territories for the purpose of promoting and encouraging technology transfer to LDC Members' (Article 66/2). This development dimension kept him permanently on the lookout for fair solutions – including through better protection of new inventions.⁹

But this was also the time of RTAs and 'mega-regionals' claiming compatibility with GATT, Article XXIV (except the Transatlantic Trade and Investment Partnership), bilateral investment treaty expansion and unfettered new trade arrangements, sometimes at the limits of most favoured nation (MFN) treatment and national treatment (NT).

D. Migration: Mission Impossible?

International regulation of the three key international production factors – trade, investment and migration – remains highly fragmented, even contradictory and self-defeating. Cottier and Sieber-Gasser show how migration regulation on the international level is lagging behind that of trade and investment. Stronger coordination, consideration of migration in trade and investment policy and stronger international cooperation in migration will provide the foundations for a coherent international architecture in the field.¹⁰

Still, the community of traders, governments and scholars remained optimistic. Dispute case initiations and settlements reached an all-time high, with over 200 cases in each of the years 1998–2000. Besides recording and commenting on the development of this peaceful conflict settlement tool, Thomas Cottier was also one of the most prolific WTO panellists of all time.

XI. Trade Wars and Solutions

The first across-the-board break-in into the holy MFN provision of GATT, Article I came when US President Donald Trump thought he could double the

⁹Thomas Cottier and Marion Panizzon, 'Legal Perspectives on Traditional Knowledge: The Case for Intellectual Property Protection' (2004) 7(2) *Journal of International Economic Law* 371; Thomas Cottier, 'The Doha Waiver and Its Effects on the Nature of the TRIPS System and on Competition Law: The Impact of Human Rights' (2007) NCCR Trade Regulation Working Paper No2006/21; Pedro Roffe et al, 'Current Alliances in International Intellectual Property Lawmaking: The Emergence and Impact of Mega-Regionals' (CEIPI & ICTSD, 15 September 2017) Global Perspectives and Challenges for the Intellectual Property System No 4.

¹⁰Thomas Cottier and Charlotte Sieber-Gasser, Labour Migration, 'Trade and Investment: From Fragmentation to Coherence' in *The Palgrave Handbook of International Labour Migration* (Palgrave Macmillan, 2015).

USA's bound tariffs for imports from China (and other countries). The punitive tariffs under sections 232 and 301 (which he called an 'easy win') hit the fan in the dispute settlement body (DSB) with a reinvented national security interpretation of Article XXI. China quickly retaliated in kind and added a DSB complaint over a slew of US state-level renewable energy programmes.

XII. National Security: Fake Only?

For decades, GATT, Article XXI and General Agreement on Trade in Services (GATS), Article XIVbis were invoked only to (unsuccessfully) justify balance-of-payment measures protecting sectoral interests or the domestic production of military boots. This almost benign neglect of a potentially powerful trade blocker ended when governments used trade restrictions and prohibitions to fight real (and alleged) wars. Their claims that security issues were involved which could not be addressed otherwise never succeeded. But when big countries like Russia and the USA fail to solve their problems with either wars or diplomatic means, a dispute settlement ruling may be the most efficient (and least expensive) way of solving a problem, assuming, of course, compliance.¹¹

Cottier thought that due weight should be given to the adjective 'essential' before 'security interests', but that states should be given broad rights to define 'security interests'. Iryna Bogdanova explores in her PhD thesis, completed under the supervision of Thomas Cottier and published in 2022, the legality of unilateral economic sanctions, ie those imposed by individual states without authorisation of the UN Security Council, under international law. She considers that GATT, Article XXI and GATS, Article XIVbis prescribe the security exception quite clearly. The 'self-judging' nature of the national security determination of such scope inevitably includes a discussion of the self-judging nature of the clause. The panel report in *Russia – Traffic in Transit* distinguished between objective and subjective elements of the national security clause, as well as identifying the scope of the reviewability of the subjective elements.¹²

The negative impact of unilateral coercive measures on the enjoyment of human rights came as collateral damage way beyond the multilateral trading system. The costs of the trade war to the USA increased rapidly, however, especially to US agriculture. In 2018, the US Department of Agriculture authorised

¹¹ Panagiotis Delimatsis and Thomas Cottier, 'Article XIV bis GATS: Security Exceptions' (2008) 6 *Max Planck Commentaries on World Trade Law, WTO – Trade in Services* 329.

¹² Iryna Bogdanova, *World Trade Institute Advanced Studies Vol 9. Unilateral Sanctions in International Law and the Enforcement of Human Rights. The Impact of the Principle of Common Concern of Humankind* (Brill Nijhoff, 2022) <https://boris.unibe.ch/173691/>. See also Iryna Bogdanova, *Human Rights and Unilateral Economic Sanctions: A New Perspective on a Twisted Relationship*, *European Yearbook on Human Rights* (Intersentia, 2023) 171–203. For earlier discussions about 'national security' cf Michael J Hahn, 'Vital Interests and the Law of GATT: An Analysis of GATT's Security Exception' (1991) 12 *Michigan Journal of International Law* 558, <https://repository.law.umich.edu/mjil/vol12/iss3/3>.

\$12 billion for three programmes aimed at shielding US farmers and ranchers from retaliatory tariffs imposed on US goods. Together with other farm (and electoral) support programmes, the USA thus probably exceeded WTO bindings starting in 2019.¹³

XIII. Beyond the Boxes for *Ius Cogens*

On his way forward to the highest circle of scholars *emeritus*, Cottier launched a multi-year and multi-author research programme probing *de lege ferenda* borders of IEL, with help from international law, showing the emergence of new principles of law.

A. Common Concern of Humankind in International Law

Traditional treaties are rooted in the pursuit of national interests based upon reciprocity and do not generally accept a 'responsibility to protect' (R2P) by governments and corporations. According to Cottier, and his team of young researchers, climate change, protection of biodiversity, marine pollution, genetic resources and cultural diversity require essentially one-sided efforts. Benefits are not directly mutual, and the essential element of reciprocity in terms of interests and benefits is lacking. This incentivises unilateral policies of free riding and attitudes of wait and see, and leaves adjustments to others. The sustainable production of such global public goods requires new forms of cooperation and commitments, and a multi-level governance agreement. It implies some kind of enhanced commitment and obligations to international cooperation, starting with cogent law (*ius cogens*) and reinforcing the shift of classical international law from coexistence to cooperation, recourse to equity, public trust doctrine, community interests, preserving peace and security, and ultimately to integration and legal harmonisation in specific regulatory areas addressing shared problems and transboundary preoccupations.

The landmark Cambridge publication edited by Cottier and Ahmad contains seven areas of application in international law showing the emerging new Principle of Law:¹⁴

- Trade-Related Measures to Spread Low-Carbon Technologies: A Common Concern-Based Approach (by Zaker Ahmad)
- Marine Plastic Pollution as a Common Concern of Humankind (by Judith Schäli)

¹³In 2019, Joseph Glauber described the US Market Facilitation Program and found that, despite massive increases in domestic support, US agricultural exports to China fell from almost \$22 billion in fiscal year (FY) 2017 to \$7.3 billion projected for FY 2019: Joseph W Glauber, 'Agricultural Trade Aid' (American Enterprise Institute, November 2019).

¹⁴Cottier and Ahmad (n 5).

- Exploring the Recognition of New Common Concerns of Humankind: The Example of the Distribution of Income and Wealth within States (by Alexander Beyleveld)
- Reshaping the Law of Economic Sanctions for Human Rights Enforcement: The Potential of Common Concern of Humankind (by Iryna Bogdanova)
- Migration as a Common Concern of Humankind (by Thomas Cottier and Rosa Maria Losada)
- International Monetary Stability as a Common Concern of Humankind (by Lucia Satragno)
- Financial Stability as a Common Concern of Humankind (by Federico Lupo-Pasini)

A rich harvest for future interaction and reality checks between academia and policy-making at both national and international levels!¹⁵

XIV. Conclusion: How Far do We Have to Go?

This ‘vertical’ glance through some of Cottier’s works is not a summary in a nutshell. It only tries to show where academia can play its fact-finding and advisory role for rule-makers and other opinion leaders. After six fruitless trade and climate ministerial conferences, the time has come for academia to call a spade a spade, letting governments reassemble at the level of commitments required by present circumstances and challenges to humankind. Today’s trade scholars need to address fragmentation and pluralism, not speculating whether the glass of WTO rules is half full or half empty. Work starts at home. Academia must help trade and investment regulators find their place in a changing world where a little-qualified prohibition of discrimination cannot be the only yardstick. Thomas Cottier’s preferred way is for mending IEL and dispute settlement with the help of Public International Law, whereas for me, governments must acknowledge that the present rules are a part of the problem. International governance is the first victim of the refusal to initiate negotiations on fundamental problems. Today, most governments neglect even the most burning issues, such as standard harmonisation or mutual recognition agreements for ‘like’ products and processing methods. We thus need to find new ways to avoid ‘green subsidy’ rows, whereby every state subsidising and promoting the decarbonisation agenda is accused of distorting trade. This underscores the need for the whole scholarship to provide facts, data assessments and legal opinions on the options available inside and outside the box.

¹⁵ Thomas Cottier and Krista Nadakavukaren Schefer, ‘Responsibility to Protect (R2P) and the Emerging Principle of Common Concern’ in Peter Hilpold (ed.), *Die Schutzverantwortung (R2P): Ein Paradigmenwechsel in der Entwicklung des Internationalen Rechts?* (Martinus Nijhoff, 2013) 123–42.