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# **THE IMPACT OF ARMED CONFLICT ON INTERNATIONAL TRADE LAW: A JURISPRUDENTIAL CHALLENGE AND SDG IMPLEMENTATION**

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## **ABSTRACT**

The current rise in armed conflict represents a significant threat to the survival of the rules-based Global Trading System (GTS) and the United Nations Agenda 2030. This paper examines in detail the economic and legal frictions that result from sovereign states prioritizing their national security imperatives over their binding commitments under the multilateral trading system. To achieve this purpose, a doctrinal and analytical approach to the research methodology was employed through examining the catastrophic effects of war on global trade infrastructure, supply chains and cross-border commercial dispute resolution. One of the core areas of focus of this paper is to examine the jurisprudential crisis surrounding the invocation of national security exceptions, specifically Article XXI of the General Agreement on Tariffs and Trade (GATT) as it relates to the WTO Appellate Body's institutional paralysis resulting from relevant panels' rejection of the self-judging doctrine following geopolitical intransigence, particularly as demonstrated in the high-profile cases of Russia - Traffic in Transit and Saudi Arabia - Intellectual Property Rights. This paper employs a research methodology that consists of primarily doctrinal and analytical methods, allowing for the examination of the normative conflict between the principles established in international economic law and sovereign security requirements during armed conflicts. Additionally, the research contains actual event statistics changing the overall development of the variety of trade conflicts that resulted in a general slowdown in every area of international sustainable development. Many examples exist including an unprecedented decline in institutional capacity (SDG 16), dissolution of worldwide financial trade agreements (SDG 17), and the essential regulatory function of the Arms Trade Treaty (ATT) to assist global jurisdictions in trade relations and compliance. Ultimately, it is concluded that to achieve global economic integration and sustainable development will require immediate structural modifications, including the restoration of WTO dispute resolution mechanisms, creation of a concrete improvement's framework for exemptions, and inclusion of humanitarian protections related

to international economic sanctions within global economic agreements, specifically regarding arms proliferation.

**Keywords:** Armed Conflict, International Trade Law, Sustainable Development Goals (SDGs), Russia-Ukraine War, Armed Trade Treaties.

## INTRODUCTION

Historically armed conflict has proven to be a significant challenge for the stability of global legal regimes, the humanitarian crisis created by armed conflict also disrupts the basic framework of international trade law.<sup>1</sup> The world economy relies on a level of global interconnectedness that depends on the establishment of peace and cooperation; therefore, the escalation of warfare has made the rules-based multilateral trading system that the WTO governs exceptionally fragile.<sup>2</sup> In response to the outbreak of hostilities, many sovereign states will employ defensive economic measures, which are, among other possibilities, unilateral sanctions, export blockades and the intentional destruction of trade infrastructure.<sup>3</sup> The result of these protectionist actions is that global supply chains are violently disrupted, cross-border commercial dispute resolution is rendered inoperable and long-term changes to the international trade patterns are catalyzed.<sup>4</sup>

There are many legal tensions that exist between a country's sovereign power to protect its national security versus its obligations under international trade agreements (multilateral).<sup>5</sup> One of the biggest issues facing international courts during periods of armed conflict is how to reconcile these two competing obligations. One of the main difficulties in reconciling these two sets of obligations is the way that security exceptions are interpreted, particularly with regard to Article XXI of GATT, which permits a country to suspend its obligations under the GATT in "time of war or other emergency in international relations."<sup>6</sup> Current geopolitical crises currently happening around the world, including between Russia and Ukraine, have

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<sup>1</sup>Oldřich Krpec & Vladan Hodulák, War and International Trade: Impact of Trade Disruption on International Trade Patterns and Economic Development, 39 BRAZ. J. POLIT. ECON. 152, 153 (2019). <https://www.scielo.br/j/rep/a/8fXLkKsKQ8bLMf6nBBMrnWK/?format=html&lang=en>

<sup>2</sup>Joost Pauwelyn, Conflict of Norms in Public International Law: How WTO Law Relates to Other Rules of International Law 12–15 (CAMBRIDGE UNIV. PRESS 2003). <https://doi.org/10.1017/CBO9780511494550>

<sup>3</sup> Sarah H. Cleveland, Human Rights Sanctions and International Trade Law: A Theory of Compatibility, 5 J. INT'L ECON. L. 133, 135 (2002). DOI:10.1093/jiel/5.1.133

<sup>4</sup> Ebru Orhan, The Effects of the Russia–Ukraine War on Global Trade, 8 J. INT'L TRADE, LOGISTICS & L. 141, 141 (2022). [https://www.jital.org/index.php/jital/article/view/277/pdf\\_150](https://www.jital.org/index.php/jital/article/view/277/pdf_150)

<sup>5</sup> Pauwelyn, *supra* note 2.

<sup>6</sup> Jacob Gladysz, The National Security Exception in WTO Law: Emerging Jurisprudence and Future Direction, 52 GEO. J. INT'L L. 835, 837 (2021). <https://www.law.georgetown.edu/international-law-journal/wp-content/uploads/sites/21/2021/12/GT-GJIL210007.pdf>

resulted in these provisions of international trade treaties being put to the test in deciding whether there are limits on sovereign discretion.<sup>7</sup>

Lastly, the systemic shocks of armed conflict greatly impair progress towards achieving the UN's 2030 Sustainable Development Agenda across all goals (17 SDGs). Evidence shows that war has caused structural setbacks in achieving most of the 17 SDGs (i.e., on average >5% developmental delay) for many of the targets in regions affected by armed conflict (i.e. > 50%).<sup>8</sup> The regression, however, is not limited to a single metric (e.g., SDG 16 - peace/justice), but represents a broad, system-wide, multi-faceted collapse of sustainable development as a result of the interconnectedness of the 2030 Agenda. Destruction of trade infrastructure and unchecked weapon proliferation simultaneously undermine global efforts to meet these goals ranging from poverty elimination and zero hunger through industrialization and action against climate change.<sup>9</sup>

This paper employs a research methodology that consists of primarily doctrinal and analytical methods, allowing for the examination of the normative conflict between the principles established in international economic law and sovereign security requirements during armed conflicts. This analysis is completed using qualitative measures of normative friction through a comprehensive review of binding treaties, multilateral trade agreements and institutional protocols. Furthermore, this study is heavily reliant upon the jurisprudence pertaining to both WTO dispute resolution (DSB) and the seminal case-law reports of the DSB, to carry out an extensive, qualitative, evaluative, and case-study analysis of the evolution, contemporary meaning and application of national security exceptions. A thorough review of secondary sources has been conducted to establish the broader legal, political, and economic dimension of these conflicts. The secondary sources examined include authoritative and scholarly published books, peer-reviewed articles from legal databases and reports published by intergovernmental organizations such as the United Nations Conference on Trade and Development (UNCTAD) and the World Bank.

Therefore, in view of these complexities, the present paper seeks to *firstly*, explore, examine

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<sup>7</sup> Pramila Crivelli & Mona Pinchis-Paulsen, Separating the Political from the Economic: The Russia–Traffic in Transit Panel Report, 20 WORLD TRADE REV. 582, 583 (2021). DOI:10.1017/S1474745621000197

<sup>8</sup> Di Wang et al., Assessing the Impact of Armed Conflict on the Progress of Achieving 17 Sustainable Development Goals, 27 iSCIENCE 111331, 111331 (2024). DOI:10.1016/j.isci.2024.111331

<sup>9</sup> Id. at 111332.; Eva Nave, The Importance of the Arms Trade Treaty for the Implementation of the Sustainable Development Goals, 24 J. CONFLICT & SEC. L. 297, 298-99 (2019). DOI:10.1093/jcsl/krz010

and analyse the economic as well as the legal consequences of the armed conflicts and hostilities on the international trade laws, *secondly*, analyse the jurisprudential challenges that emerges with such situations and *thirdly*, assess its impact on the SDG implementation across the States globally. The present paper will explore and analyse the international trade laws, treaties and conventions and the recent case studies such as Russia-Ukraine, trade sanctions in Syria, etc.

## THE ECONOMIC AND LEGAL CONSEQUENCES OF ARMED CONFLICTS ON INTERNATIONAL TRADE LAWS

### Genesis of Systematic Global Crisis and the Multilateral Trade structure

The present architecture of the international economic order, which is primarily built on the foundation of the World Trade Organization (WTO), was based on the core belief that strong economic interdependence would make armed conflict economically catastrophic and therefore unlikely to occur.<sup>10</sup> However, with the recent and growing number of regional conflicts across the globe, this belief system has faced significant challenges and has created profound jurisprudential and macroeconomic disorder that could destroy the core principles of multilateral trade.<sup>11</sup> As we have entered a very closely connected global economy, the increase in warfare makes a rules-based multilateral trading system extremely fragile.<sup>12</sup> International law has established a fundamental principle that the mere occurrence of armed conflict does not automatically end or suspend the operation of commercial treaties.<sup>13</sup>

Therefore, sovereign States find themselves trapped in a very complicated and conflicted web of binding international trade obligations, while at the same time, dealing with the existence of military threat.<sup>14</sup> This instability creates considerable legal tension between a State's sovereign right to protect its national security and its obligations under multilateral trade agreements while it operates to blur the lines between international humanitarian law and international economic law.<sup>15</sup>

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<sup>10</sup> Pauwelyn, *supra* note 2.

<sup>11</sup> Krpec & Hodulák, *supra* note 1, at 153.

<sup>12</sup> World Trade Organization, World Trade Report 2023: Re-Globalization for a Secure, Inclusive and Sustainable Future 14 (2023). [https://www.wto.org/english/res\\_e/booksp\\_e/wtr23\\_e/wtr23\\_e.pdf](https://www.wto.org/english/res_e/booksp_e/wtr23_e/wtr23_e.pdf)

<sup>13</sup> Ian Brownlie (Special Rapporteur), First Report on the Effects of Armed Conflicts on Treaties, U.N. Doc. A/CN.4/552, at 209 (Apr. 21, 2005). [https://legal.un.org/ilc/documentation/english/a\\_cn4\\_552.pdf](https://legal.un.org/ilc/documentation/english/a_cn4_552.pdf)

<sup>14</sup> Orhan, *supra* note 4.

<sup>15</sup> Cleveland, *supra* note 3.

Legal scholars are increasingly indicating that international trade agreements, which have been structured for the governance of peacetime, have no structural capacity to deal with the systemic shocks caused by the occurrence of military conflict.<sup>16</sup> The fragmentation of international law leaves tribunals in a position wherein they need to regularly reconcile competing norms, creating a complicated interplay between one hand's trade liberalization and the other hand's sovereign defense efforts.<sup>17</sup>

### **The Physical Devastation of Global Trade Infrastructure and Economic Fallout of Global Trade Infrastructure**

Physical conflict dramatically undermines the physical, operational, and logistical infrastructure that provide the foundations of international trade.<sup>18</sup> The acute results of military hostilities become evident through the severe disruption of global supply chains that are interwoven and also through the circumstantial damage to the significant infrastructures that support international trade.<sup>19</sup> For military strategic purposes, critical infrastructure, such as deep-water ports, transcontinental transportation networks, and electrical power grids, is often directly targeted to degrade an enemy's ability to effectively manipulate the logistical elements of military combat operations.<sup>20</sup> The economic outcome of targeted disruption of trade-related infrastructure ultimately changes the historic patterns of trade and requires a complete and lasting reconfiguration of economies of the nations engaged in hostilities.<sup>21</sup> A prime empirical example of this devastating effect on global trade is the complete and rapid dismantlement of a major node in the global supply chain resulting from the continuing Russia-Ukrainian conflict.<sup>22</sup> The first year of the conflict resulted in damage to physical trade routes and cost Ukraine between 30% and 35% of its Gross Domestic Product (GDP) due to the conflict.<sup>23</sup> In addition, as reported by the World Bank, exports have decreased by billions due to reduced trade volume, and there are likely to be further supply shortages in agricultural markets throughout the world as a result of this disruption.<sup>24</sup> Similarly, there are case studies

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<sup>16</sup> Michele Ruta et al., *The Impact of the War in Ukraine on Global Trade and Investment 1–2* (World Bank 2022). <https://documents1.worldbank.org/curated/en/099750104252216595/pdf/IDU0008eed66007300452c0beb208e8903183c39.pdf>

<sup>17</sup> Pauwelyn, *supra* note 2.

<sup>18</sup> Reut Oppenheimer, *International Law in War and Its Economic Impact 2* (Feb. 18, 2025) (available at SSRN). <http://dx.doi.org/10.2139/ssrn.5145423>

<sup>19</sup> Krpec & Hodulák, *supra* note 1, at 154.

<sup>20</sup> Di Wang et al., *supra* note 8.

<sup>21</sup> Krpec & Hodulák, *supra* note 1, at 164.

<sup>22</sup> Orhan, *supra* note 4, at 142.

<sup>23</sup> *Id.* at 145.

<sup>24</sup> Ruta et al., *supra* note 18, at 5.

documenting additional disruptions across many countries, such as those in the Middle East region, where the latest UN forecasts stated that military conflict had caused one of the largest declines ever recorded in the Palestinian economy, with Gaza's GDP falling 83% in Q1 2024 and all productive capacity being destroyed as a consequence.<sup>25</sup> In addition to the above, the recent increased number of attacks on merchant ships in the Red Sea has forced shipping companies to continue rerouting their ships with significant delays in this process and has also significantly increased the cost of shipping goods from Asia to Europe by three-fold.<sup>26</sup> Collectively, these events and circumstances illustrate how deeply affected the global maritime community and how critical chokepoints will continue to be over time when experiencing periods of geopolitical unrest.<sup>27</sup>

### **The Expansion of Economic Sanctions Within Modern Warfare**

Armed conflict not only causes immediate physical destruction, but also serves as a catalyst for establishing complex regimes of economic warfare, predominantly through unilateral economic sanctions. States involved in warfare, as well as their geopolitical allies, routinely implement far-reaching financial sanctions, total import bans, and complete export blockades as a means of attempting to constrict their opponents' economies.<sup>28</sup> The implementation of economic sanctions raises significant questions regarding the precise relationship between international trade law and international economic law more broadly.<sup>29</sup> Some scholars contend that under customary international law, economic coercion is an accepted form of legal conduct; however, the extra-territorial reach of a state's unilateral economic sanctions often runs counter to the international law principles of non-interference in the affairs of other states, as well as to the principle of state sovereignty.<sup>30</sup> The widespread use of such measures by states typically violates the core World Trade Organization (WTO) principles of Most-Favoured-Nation (MFN) treatment and non-discrimination.<sup>31</sup> For instance, the sweeping economic

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<sup>25</sup> UNCTAD, *Developments in the Economy of the Occupied Palestinian Territory*, U.N. Doc. TD/B/72/3, at 4 (2025). [https://unctad.org/system/files/official-document/tdb72\\_d3\\_en.pdf](https://unctad.org/system/files/official-document/tdb72_d3_en.pdf)

<sup>26</sup> UNCTAD, *Global Trade Update*, U.N. Doc. UNCTAD/DITC/INF/2024/3, at 2 (Dec. 2024). <https://unctad.org/system/files/official-document/ditcinf2024d3.pdf>

<sup>27</sup> World Economic Forum, *The Global Risks Report 2025*, at 40 (2025). [https://reports.weforum.org/docs/WEF\\_Global\\_Risks\\_Report\\_2025.pdf?\\_gl=1\\*12b1ope\\*\\_up\\*MQ..\\*\\_gs\\*MQ..&gclid=Cj0KCQiAtfXMBhDzARIsAJ0jp3CqeT1bCNjcFOtlgimQsnpoRyHbAIS0psSz\\_-uNR1QPL7CcAPAL7i4aApVgEALw\\_wcB&gbruid=0AAAAAoVy5F6Vz10GX28zAxpAYlsa2Fzx5](https://reports.weforum.org/docs/WEF_Global_Risks_Report_2025.pdf?_gl=1*12b1ope*_up*MQ..*_gs*MQ..&gclid=Cj0KCQiAtfXMBhDzARIsAJ0jp3CqeT1bCNjcFOtlgimQsnpoRyHbAIS0psSz_-uNR1QPL7CcAPAL7i4aApVgEALw_wcB&gbruid=0AAAAAoVy5F6Vz10GX28zAxpAYlsa2Fzx5)

<sup>28</sup> *Id.* at 785.

<sup>29</sup> Cleveland, *supra* note 3, at 136.

<sup>30</sup> Iryna Bogdanova, *Targeted Economic Sanctions and WTO Law: Examining the Adequacy of the National Security Exception*, 48 LEGAL ISSUES ECON. INTEGRATION 1, 3 (2021). DOI:10.54648/LEIE2021010

<sup>31</sup> General Agreement on Tariffs and Trade, Oct. 30, 1947, 61 Stat. A-11, 55 U.N.T.S. 194, art. I.

sanctions imposed against Russia by the European Union (EU) and the United States (U.S.) following Russia's invasion of Ukraine included revocation of Russia's MFN status, as well as extensive export controls on dual-use technologies. Theoretical frameworks indicate that economic sanctions that are imposed in the course of warfare should be implemented in accordance with established principles of limitation, such as severity, effectiveness, and conditionality, in order to minimise the risk of indiscriminate collateral damage. The current reality of modern warfare is that aggressive and punitive economic instruments are being used as instruments of warfare, disrupting trade flows and capital away from the initial zone of conflict, often with huge butterfly effects.<sup>32</sup> These types of economic sanctions require international tribunals to consider whether or not the economic sanctions imposed can be justified under exceptions for public morals or national security, creating a politically charged environment for those making this determination.<sup>33</sup> The weaponization of trade through sanctions has the potential to permanently change the global economy, creating friendshoring the establishment of supply chains only with friendly countries and decoupling previously established international markets.<sup>34</sup>

### **Navigating the Disputes and Erosion of Judicial Setup**

The armed conflict creates systemic ripple effects that will have an impact on the complex private international law framework, changing the manner in which cross-border commercial disputes are resolved.<sup>35</sup> The rapid destabilization of civil societies will generate a highly volatile and legally unpredictable environment for both domestic and international businesses resulting in a significant increase in complicated commercial disputes.<sup>36</sup> These types of disputes usually arise from breach of contract; invocation of force majeure clauses due to war; catastrophic supply chain failure; and unilateral expropriation of foreign commercial assets.<sup>37</sup>

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<https://droitcamerounais.info/en/files/0.65.10.47-General-Agreement-of-30-October-1947-on-Tariffs-and-Trade.pdf>

<sup>32</sup> Eddy Bekkers & Sofia Schroeter, An Economic Analysis of the US-China Trade Conflict, WTO Staff Working Paper ERSD-2020-04, at 5 (2020). [https://www.wto.org/english/res\\_e/reser\\_e/ersd202004\\_e.pdf](https://www.wto.org/english/res_e/reser_e/ersd202004_e.pdf)

<sup>33</sup> Javier Garcia Olmedo, The Legality of EU Sanctions under International Investment Agreements, 28 EUR. FOREIGN AFF. REV. 95, 104 (2023). <https://doi.org/10.54648/eerr2023015>

<sup>34</sup> WTO Report 2023, supra note 12, at 45.

<sup>35</sup> Tiwalade Aderoju, The Impact of Armed Conflicts on Commercial Disputes, INT'L BAR ASS'N (Apr. 4, 2024), <https://www.ibanet.org/The-impact-of-armed-conflicts-on-commercial-disputes-Tiwalde-Aderoju> (Last Visited Jan. 27, 2026).

<sup>36</sup> Tobias Ackermann, The Effects of Armed Conflict on Investment Treaties 262–63 (CAMBRIDGE UNIV. PRESS 2022) <https://www.cambridge.org/core/books/effects-of-armed-conflict-on-investment-treaties/ECD395B1CD5BEDA14A5FCE83D48062A0>

<sup>37</sup> Aderoju, supra note 37.

The rapid collapse of institutional and legal systems located within the conflict zone will substantially restrict the ability of parties to effectively prosecute their claims and obtain equitable resolutions for commercial disputes.<sup>38</sup> Additionally, domestic courts will often be closed or severely restricted during armed conflict because all resources will be diverted to military efforts. Legal practitioners and adjudicators practicing in these degraded environments will face extreme physical danger, harassment and targeted attacks.<sup>39</sup> As a result, an overarching change has occurred with regard to how international commercial companies approach dispute resolution in the face of geopolitical instability; there has been an ever-increasing reliance upon alternative forms of dispute resolution such as international arbitration and online dispute resolution (ODR) outside of the immediate conflict zone.<sup>40</sup>

## **JURISPRUDENTIAL CHALLENGES AND ADJUDICATION OF NATIONAL SECURITY EXCEPTIONS**

### **The Knowledge About Security Exception Within International Trade Law**

GATT 1947's foundational document (Article XXI) is where the tension between the binding nature of international trade obligations and the significance of a state's primary and fundamental security interest resides.<sup>41</sup> While the architects of the WTO system created the framework of the WTO with the idea that trade barriers would be progressively reduced and non-discrimination would be adhered to, the architects of the WTO also provided explicit acknowledgement that states must maintain the unilateral right to take action to protect their existential national security interests.<sup>42</sup>

The GATT is designed with a rules and exceptions approach.<sup>43</sup> In other words, measuring if there are any rules/restrictions that would justify the state's activity by determining if the state's action meets the criteria set forth in Article XXI (the National Security Exceptions).<sup>44</sup> The text of Article XXI is broad as demonstrated in the following sentences:

*"Nothing in this Agreement shall be construed... (b) to prevent any contracting party from*

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<sup>38</sup> Pauwelyn, supra note 2, at 180.

<sup>39</sup> Aderoju, supra note 37.

<sup>40</sup> Id.

<sup>41</sup> Pauwelyn, supra note 2.

<sup>42</sup> Gladysz, supra note 6.

<sup>43</sup> Id.

<sup>44</sup> Id.

*taking any action which it considers necessary for the protection of its essential security interests... (ii) relating to the traffic in arms, ammunition and implements of war... [or] (iii) taken in time of war or other emergency in international relations.*"<sup>45</sup>

Clause (b)(ii) provides the State with the widest possible latitude to adopt measures of national security in relation to "trade activities engaged in as a result of or in connection with armed conflict."<sup>46</sup> For nearly 70 years after creating the GATT, there has been little to no judicial interpretation of Article XXI.<sup>47</sup> That lack of interpretation is based upon an overriding concern of institutional decision-makers that security measures will set off an uncontrollable wave of protectionism, which would undermine the multilateral trading system as a whole.<sup>48</sup>

Additionally, there was uncertainty regarding the justiciability of the first sentence of clause (b)<sup>49</sup> due to a long-standing legal ambiguity related to the phrase "which the Contracting Parties consider," contained in the chapeau of Article XXI(b), being construed by many among the Contracting Parties as meaning that the clause was entirely "self-judging."<sup>50</sup> Under this view, any unilateral assertion of a threat to national security by a Contracting Party would provide that Contracting Party with immunity from WTO judicial review and thus effectively deprive the WTO of jurisdiction over such matters.<sup>51</sup> The tension between contractually protected rights and State sovereignty finally exploded during the late 2010's geopolitical crises and resulted in WTO panels finally addressing the limits of sovereign discretion.<sup>52</sup>

### **The Landmark Precedent: Russia Measures Concerning Traffic In Transit (DS512)**

The turning point for modern international trade law occurred in the case of the Russia-Measures Concerning Traffic in Transit (DS512) dispute, which was brought by Ukraine.<sup>53</sup> This dispute arose from the fact that the Russian Federation had imposed significant transit

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<sup>45</sup> General Agreement on Tariffs and Trade, Oct. 30, 1947, 61 Stat. A-11, 55 U.N.T.S. 194, art. XXI(b). <https://droitcamerounais.info/en/files/0.65.10.47-General-Agreement-of-30-October-1947-on-Tariffs-and-Trade.pdf>

<sup>46</sup> Anhad S. Miglani, A Contemporary Contextualization of Security Under Article XXI of the GATT, 17 Global Trade & Customs J. 485, 486 (2022). DOI:10.54648/GTCJ2022068

<sup>47</sup> Sandeep Ravikumar, The GATT Security Exception: Systemic Safeguards Against Its Misuse, 9 NUJS L. Rev. 321, 335 (2016). <http://dx.doi.org/10.2139/ssrn.3759338>

<sup>48</sup> Id. at 339.

<sup>49</sup> Miglani, supra note 49, at 487.

<sup>50</sup> Id.

<sup>51</sup> Crivelli & Pinchis-Paulsen, supra note 7.

<sup>52</sup> Gladysz, supra note 6, at 837.

<sup>53</sup> Panel Report, Russia- Measures Concerning Traffic in Transit, WTO Doc. WT/DS512/R (adopted Apr. 26, 2019). [https://www.wto.org/english/tratop\\_e/dispu\\_e/512r\\_e.pdf](https://www.wto.org/english/tratop_e/dispu_e/512r_e.pdf)

restrictions on Ukrainian goods that were trying to transit through Russians territory to Kazakhstan and Kyrgyzstan.<sup>54</sup> Ukraine claimed that these restrictions constituted a prima-facie violation of GATT Article V (Freedom of Transit).<sup>55</sup> In defense of its actions, Russia claimed that they were justified under GATT Article XXI(b)(iii) because they were taken in response to an "emergency in international relations" that arose in Ukraine in 2014.<sup>56</sup>

As part of this dispute, Russia also raised the issue of jurisdiction, arguing that the Panel lacked any jurisdiction to consider Russia's invocation of the security exception due to the fact that the security exception is a self-judging provision.<sup>57</sup> The US, who was a third party in the dispute, supported Russia's position on the issue of non-justiciability<sup>58</sup> by arguing that if the Panel were to consider the measure, it would violate the Dispute Settlement Understanding (DSU) and would violate the sovereign rights of Russia.<sup>59</sup>

In an unprecedented decision made in April 2019, one of the WTO Panels decisively rejected the doctrine of absolute non-justiciability, thereby cutting through the Gordian knot of the security exception.<sup>60</sup> The Panel made its determination using the rigorous interpretation framework established by the Vienna Convention on the Law of Treaties (VCLT), as well as analyzing whether or not the subjective clause "which it considers" extended to the determination of the baseline circumstance described in the sub-paragraphs.<sup>61</sup> Therefore, any actual "war or other emergency in international relations" pursuant to Article XXI(b)(iii) must be objectively demonstrable and also fully subject to factual determination by an international tribunal.<sup>62</sup> The Panel explicitly warned that there was no legal authority to treat Article XXI as an unreviewable incantation, one that provided a shield for the challenged measure against any form of scrutiny.<sup>63</sup>

Once having established its jurisdiction, the Panel defined "emergency in international relations" broadly as "a situation of armed conflict or a latent armed conflict or a heightened

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<sup>54</sup> Id. at ¶ 7.1.

<sup>55</sup> Crivelli & Pinchis-Paulsen, *supra* note 7, at 584.

<sup>56</sup> Russia- Traffic in Transit, *supra* note v13, at ¶ 7.4.

<sup>57</sup> Id. at ¶ 7.57.

<sup>58</sup> Stephen S. Kho et al., The Conundrum of the Essential Security Exception: Can the WTO Resolve the GATT Article XXI Crisis and Save the Dispute Settlement Mechanism?, 40 *Am. U. Int'l L. Rev.* 127, 129 (2024). <https://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=2168&context=auilr>

<sup>59</sup> Id.

<sup>60</sup> Russia- Traffic in Transit, *supra* note v13, at ¶ 7.101.

<sup>61</sup> Id.

<sup>62</sup> Id.

<sup>63</sup> Id. at ¶ 7.100.

state of tension or crisis or a state of general instability either within or surrounding the relevant State."<sup>64</sup> Utilizing this objective test, the Panel determined that the significant deterioration in geopolitically charged relations between Russia and Ukraine was an objective emergency by any standard.<sup>65</sup> Furthermore, finding no evidence of bad faith, the Panel ultimately ruled that Russia's measures were legally justified under the Article XXI security exception.<sup>66</sup>

### **Jurisprudence Post 2019**

The detailed, detailed, objective/analytical framework of Russia- Traffic in Transit has given international tribunals a means of resolving multiple trade versus security disputes, which has been broadly used in other Trade versus Security disputes.<sup>67</sup> The jurisprudence mandates an extremely detailed and highly specific objective test to be used by international panels, which was subsequently followed by an international panel in Saudi Arabia- Measures Concerning Protection of Intellectual Property Rights (DS567), which was heard in 2020.<sup>68</sup>

Specifically, Qatar brought a claim against Saudi Arabia for failing to protect the intellectual property rights of Qatari nationals as a consequence of the severance of diplomatic relations between Qatar and Saudi Arabia. Saudi Arabia, in claiming that the TRIPS Agreement Article 73, which provides for a national security exception, was neither justiciable nor applicable, also raised the same arguments as to the TRIPS Agreements Article 73.<sup>69</sup> The WTO panel rejected Saudi Arabia's jurisdictional arguments and articulated a 4-part objective analytical framework for analysing claims made under Article 73- Security Exceptions: 1) objective determination of the existence of a "war or similar emergency"; 2) fulfilling the timing requirement that the measures were strictly applied "during the period of time of" the emergency; 3) performing an evaluation on a nation's necessary rights to protect national security interests; and 4) a requirement that the state acted in good faith, and reasonableness, in order to consider and use the necessary measures.<sup>70</sup>

### **The U.S. Position and the WTO's Institutional Crisis**

As a result of the judicial approach's consistency, the proliferation of national security claims and the resulting pressure on the structural limits of the WTO continues to be a major issue.<sup>71</sup>

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<sup>64</sup> Id. at ¶ 7.75.

<sup>65</sup> Id. at ¶ 7.121.

<sup>66</sup> Crivelli & Pinchis-Paulsen, *supra* note 7, at 603.

<sup>67</sup> Gladysz, *supra* note 6, at 861.

<sup>68</sup> Panel Report, Saudi Arabia- Measures Concerning the Protection of Intellectual Property Rights, WTO Doc. WT/DS567/R (adopted June 16, 2020). [https://www.wto.org/english/tratop\\_e/dispu\\_e/567r\\_e.pdf](https://www.wto.org/english/tratop_e/dispu_e/567r_e.pdf)

<sup>69</sup> Id. at ¶ 7.8.

<sup>70</sup> Id. at ¶ 7.242.

<sup>71</sup> Kho et al., *supra* note 61, at 128.

The tension between the parties peaked in December 2022 during the issuing of the highly controversial panel reports in the US case on Certain Measures on Steel and Aluminium Products (DS544).<sup>72</sup> Throughout both sets of proceedings, the United States continued to argue that Article XXI is completely self-judging and presented national security arguments to support its imposition of discriminating tariffs on steel and aluminium imports from our global friends (allies).<sup>73</sup>

The panels, through their consistent application of the jurisdictional framework established in 2019, rejected various arguments put forward by the United States, highlighting that generalized macroeconomic concerns, by themselves, do not qualify as an "emergency in international relations" to meet the high threshold imposed by the judicial process.<sup>74</sup> This rigorous judicial approach is critical to preserving the integrity of the security exception as an unregulated loophole.<sup>75</sup>

However, in response to this need for strict legal supervision, there has been considerable backlash from the institutions involved.<sup>76</sup> These rulings have led to increased US hostility toward the WTO dispute resolution process<sup>77</sup> as a form of retaliation for what they believe to be judicial interventions in sovereign matters related to national security; thus, the US has repeatedly blocked the consensus for appointing new members of the WTO Appellate Body.<sup>78</sup> The outcome of this blocking of appointments has resulted in the Appellate Body currently being completely dis-functional due the failure of its members to have been appointed. Therefore, the paralysis of the WTO Appellate Body<sup>79</sup> has caused a serious crisis in the enforcement of international economic law; due to the fact that WTO panel decisions are able to be appealed to an empty Appellate Body, it is impossible for resolution of trade disputes to occur in any form that is binding or final, which has left the WTO multilateral trade system very susceptible to unchecked bilateral protectionism.<sup>80</sup>

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<sup>72</sup> Panel Report, United States- Certain Measures on Steel and Aluminium Products, WTO Doc. WT/DS544/R (adopted Dec. 9, 2022). [https://www.wto.org/english/tratop\\_e/dispu\\_e/544r\\_e.pdf](https://www.wto.org/english/tratop_e/dispu_e/544r_e.pdf)

<sup>73</sup> *Id.* at ¶ 7.139.

<sup>74</sup> *Id.* at ¶ 7.148.

<sup>75</sup> Gladysz, *supra* note 6, at 835.

<sup>76</sup> Kenneth A. Reinert, Steel, Security and the WTO Dispute Settlement Mechanism: A Trade Catastrophe in the Making, 47 *World Econ.* 2741, 2742 (2024).

<sup>77</sup> *Id.*

<sup>78</sup> Kho et al., *supra* note 61, at 130.

<sup>79</sup> Reinert, *supra* note 79, at 2741.

<sup>80</sup> Kho et al., *supra* note 61, at 127.

## THE IMPACT OF ARMED CONFLICT ON SUSTAINABLE DEVELOPMENT GOALS (SDGS)

### Systemic Slowdown of the 2030 Agenda

The UN's 2030 Agenda for Sustainable Development asserts that achieving the 17 Sustainable Development Goals (SDGs) requires preconditions of peace and security.<sup>81</sup> The global security landscape demonstrates otherwise; the number of State-based armed conflicts in the world is at an all-time high since 1945, making it extremely difficult for the Agenda to be successful as a whole.<sup>82</sup> The systemic shocks caused by warfare do not just halt development but reverse it completely and therefore transform the path of development moving forward in the global community.<sup>83</sup>

Advanced empirical research conducting propensity score matching provides an utterly measurable magnitude of this regression. Recent studies show that war causes substantial, structural delays in the advancement of the 17 SDGs across all conflict zones, and create substantial, structural obstacles to advancements on the SDGs relative to a hypothetical scenario without conflict.<sup>84</sup> More than 50% of the SDGs have fallen behind by more than 5% in terms of advancement for countries experiencing armed conflict.<sup>85</sup> Moreover, the sectors that rely most heavily on physical assets and government-financed services show the steepest declines, as evidenced by SDG 9 (Industry, Innovation & Infrastructure) and SDG 4 (Quality Education) both showing declines in excess of 10%.<sup>86</sup>

Trade disruptions lead to economic catastrophe and create conditions where economies are rapidly contracting as a result of the destruction of critical infrastructure and the cutting off of trade routes as a result of conflict. As an example, during the first year of the Russia/Ukraine war, the destruction of physical trade routes in Ukraine caused a reduction of Ukraine's GDP of over 30 percent, resulting in an immediate spike in global agricultural inflation and reversing progress towards SDG 1 (No Poverty) and SDG 2 (Zero Hunger).<sup>87</sup> Additionally, continued military activity in the Occupied Palestinian Territory (see Case Study: Gaza) caused Gaza's

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<sup>81</sup> United Nations, *The Sustainable Development Goals Report 2025*, at 4 (2025).

<sup>82</sup> United Nations, *The Sustainable Development Goals Report 2024*, at 2 (2024).

<sup>83</sup> Di Wang et al., *supra* note 8.

<sup>84</sup> *Id.*

<sup>85</sup> *Id.* at 111332.

<sup>86</sup> *Id.*

<sup>87</sup> Orhan, *supra* note 4, at 142.

GDP to decrease by a staggering 83 percent by 2024 as a result of the complete loss of productive assets.<sup>88</sup> Consequently, based on the most recent UN assessments, globally only 35 percent of targets related to SDGs are on track to be achieved, with nearly 18 percent of targets regressing primarily as a direct result of the continued violence endemic to these conflicts.<sup>89</sup>

### **The Collapse of Institutional Capacity in Conflict Zones and SDG 16**

The Sustainable Development Goals (SDGs) are interdependent with one another. Within this interdependent framework of the 2030 Agenda, Sustainable Development Goal 16 (SDG 16)- Peace, Justice and Strong Institutions has two unique functions: it is the most glaringly affected by war; and it is the ultimate goal that must be met before the other 16 goals can be achieved.<sup>90</sup> Achieving SDG 16 requires establishing peaceful and inclusive societies; ensuring equal access to justice for all; and creating effective, accountable institutions.<sup>91</sup> In instances of armed conflict, the rule of law collapses instantaneously.<sup>92</sup>

In addition, when a country is torn apart by war, its domestic legal system is shattered and the ability of the courts to resolve commercial disputes ceases. The ability to enforce contracts and protect human rights is lost.<sup>93</sup> In the absence of armed conflict and without any guarantees of public respect for authority, there is a vacuum that is replaced with predatory criminal acts, exploitation and torture on an enormous scale.<sup>94</sup> The destruction of a nation's judicial system also leads to rampant corrupt practices and bribery, with the International Monetary Fund estimating that the total annual cost of bribery worldwide, exacerbated in fragile states is over \$2 trillion, which palpably restricts legitimate business growth and creates excessively high transaction costs.<sup>95</sup> The system degradation results in stripping vulnerable populations of their fundamental rights and are a driving force behind the International Displacement Crisis, which, by 2024, had displaced over 120 million forcibly displaced persons.<sup>96</sup> Without the foundational stability of achieving SDG 16, the legal certainty needed to support the facilitation of

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<sup>88</sup> UNCTAD, *Developments in the Economy of the Occupied Palestinian Territory*, U.N. Doc. TD/B/72/3, at 4 (2025). [https://unctad.org/system/files/official-document/tdb72\\_d3\\_en.pdf](https://unctad.org/system/files/official-document/tdb72_d3_en.pdf)

<sup>89</sup> UN SDG Report 2025, *supra* note 84, at 5.

<sup>90</sup> Nave, *supra* note 9, at 298.

<sup>91</sup> *Id.* at 300.

<sup>92</sup> Aderoju, *supra* note 37.

<sup>93</sup> *Id.*

<sup>94</sup> U.N. Global Compact, *SDG 16: Peace, Justice and Strong Institutions*, <https://blueprint.unglobalcompact.org/sdgs/sdg16/>

<sup>95</sup> *Id.*

<sup>96</sup> UN SDG Report 2024, *supra* note 85, at 3.

international trade and foreign direct investment is non-existent.

### **The Arms Trade Treaty (ATT ) as a Regulatory Bridge**

In order to address the problem of failure at SDG 16, it is necessary to take action on the physical aspects of how wars are fought. Specifically, we must focus on the unregulated spread of conventional weapons that are now flooding into many of the world's poorest countries. SDG target 16.4 states that the global community is expected to reduce the flow of illicit cash and arms into these countries significantly by the year 2030.<sup>97</sup> When we have a poorly regulated international arms market, we continuously add resources that contribute to violent conflict in fragile states and to extending violent conflict, dramatically increasing the mortality rate in urban conflicts, and forcing the displacement of millions of people into other countries.<sup>98</sup> In addition, large amounts of money spent on arms divert already sparsely funded governments across the globe from providing for basic human services (e.g., public health and education) and instead require them to provide resources to the military.<sup>99</sup>

At the moment, the major legal bridge connecting international trade laws with the aims of achieving a humanitarian goal as part of Sustainable Development Goal (SDG) 16 is called the Arms Trade Treaty (ATT).<sup>100</sup> This legally binding document sets out stricter international controls than what has been used in the past to control the international commercial trade of conventional weapons in order to ensure that they are not illegally imported from other countries.<sup>101</sup> To implement the ATT effectively, exporting States must make changes to their trading practices in order to incorporate comprehensive risk assessments into their authorizations for exporting weapons.<sup>102</sup> By requiring that each exporting State assess the potential negative impact of an arms transfer on the recipient country's human rights and development record, it provides a much-needed regulatory safeguard.<sup>103</sup> In conclusion, The ATT and the SDGs are based on the commonality of defining structural transparency in trade and respect for the rule of law as being the basic building blocks to reducing armed violence

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<sup>97</sup> Nave, *supra* note 9, at 301.

<sup>98</sup> *Id.* at 298.

<sup>99</sup> *Id.*

<sup>100</sup> *Id.* at 299.

<sup>101</sup> Control Arms, Goals Not Guns: Arms Control, the Arms Trade Treaty and the Sustainable Development Goals 2(2018), [https://attmonitor.org/wp-content/uploads/2020/07/ATT-Monitor\\_Goals-not-Guns-Case-Study\\_ENG\\_final\\_ONLINE-1.pdf](https://attmonitor.org/wp-content/uploads/2020/07/ATT-Monitor_Goals-not-Guns-Case-Study_ENG_final_ONLINE-1.pdf)

<sup>102</sup> Nave, *supra* note 9, at 304.

<sup>103</sup> *Id.* at 305.

and achieving sustainable development.<sup>104</sup>

### **The Fate of Global Partnerships and Financing (SDG 17)**

The success of the 2030 Agenda rests greatly on SDG 17, which aims at creating a new global partnership for sustainable development on the basis of: cooperation; debt sustainability; and the multilateral trade system that ensures that all countries have access to the same opportunities to participate in international commerce.<sup>105</sup> The ways in which trade is currently weaponised in particular through the widespread application of unilateral sanctions, embargoes on exportation and "friendshoring" of jobs away from regions in conflict are creating conditions that will result in the breaking apart of key global partnerships.<sup>106</sup> The retreat of major economies from multilateralism and towards unilateral and protectionist action is producing disruptive butterfly effects that will have far-reaching consequences on the ability of developing nations to engage with global trade and to have access to essential technologies.<sup>107</sup>

The current state of global geopolitics has led to an unprecedented level of fragmentation which has created a significant development finance crisis. Estimates now place the annual investment gap to meet the Sustainable Development Goals (SDGs) for developing nations at approximately USD 4 trillion, compounded by ongoing conflict and economic shocks.<sup>108</sup> In 2023, low- and middle-income countries have also been faced with record levels of debt servicing at USD 1.4 trillion, placing immense pressure on domestic fiscal space for the type of investments needed for development.<sup>109</sup> Adding to the precariousness of this situation is that there has been a decline (of 7.1 percent) in the level of official development assistance (ODA) in real terms in 2024 as donor countries redirected funding away from global development programs toward the management of refugee situations resulting from domestic crises and military assistance to assist in the continuation of active conflict.<sup>110</sup> The World Trade Organization has specifically cautioned that the continuation of this type of fragmentation of

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<sup>104</sup> Control Arms, *supra* note 104, at 3.

<sup>105</sup> United Nations, Goal 17: Revitalize the Global Partnership for Sustainable Development, <https://www.un.org/sustainabledevelopment/globalpartnerships/>

<sup>106</sup> World Trade Organization, World Trade Report 2023: Re-Globalization for a Secure, Inclusive and Sustainable Future 14 (2023). [https://www.wto.org/english/res\\_e/booksp\\_e/wtr23\\_e/wtr23\\_e.pdf](https://www.wto.org/english/res_e/booksp_e/wtr23_e/wtr23_e.pdf)

<sup>107</sup> Bekkers & Schroeter, *supra* note 9.

<sup>108</sup> OECD, Global Outlook on Financing for Sustainable Development 2025, (2025). [https://www.oecd.org/content/dam/oecd/en/publications/reports/2025/02/global-outlook-on-financing-for-sustainable-development-2025\\_6748f647/753d5368-en.pdf](https://www.oecd.org/content/dam/oecd/en/publications/reports/2025/02/global-outlook-on-financing-for-sustainable-development-2025_6748f647/753d5368-en.pdf)

<sup>109</sup> UN SDG Report 2025, *supra* note 84, at 8.

<sup>110</sup> U.N. Goal 17, *supra* note 108.

economies will have a detrimental impact on global economic growth, as well as collaboration between countries in addressing climate change and reducing poverty.<sup>111</sup> For that reason, achieving SDG 17, will require immediate rehabilitation of the rules-based multilateral trading system, and the re-establishment of the role of international trade as an engine of inclusive and sustainable growth, instead of the current situation being a battleground between countries.<sup>112</sup>

## CONCLUSION

There is a serious systemic crisis that is emerging, due to the combination of armed conflict and the rules governing international trade, which is resulting in a significant threat to the foundation of the global economy. The ongoing contemporary conflicts are massively disrupting the global supply chains of some of the most integrated economies on the planet, violating many of the critical sea trade routes, and creating many new instances where unilateral economic sanctions are being imposed by nations to protect their economies. These new examples of protectionist actions are also fundamentally transforming the patterns of international trade between the nations of the world; and ultimately causing catastrophic macroeconomic shocks to occur well beyond the geographic area of immediate armed conflict. As a result of the physical destruction of critical infrastructure combined with the previously existing domestic judicial frameworks collapsing in many of the war-torn regions of the world; therefore, there is now a paralysis of the ability to resolve cross-border commercial disputes and almost an unbelievable fragility of the rules-based, multilateral trading system.

In addition to the foregoing, the legal tensions caused by these conflicts are creating serious vulnerabilities in the WTO jurisprudence generally and particularly regarding the invocation of national security exceptions. Substantively, the language of GATT Article XXI has been so vague and confusing, for decades, that the more powerful states of the world have interpreted it to allow their nations to make the claim that this provision was self-judging and not subject to judicial scrutiny from the WTO or national courts. Even though the landmark case *Russia-Traffic in Transit Panel* has courageously denied the doctrine of total non-justiciability as established a very important and objective analytic standard, therefore, the amount of legal rigor that the Panel established in its findings has also caused the WTO system to receive unprecedented institutional backlash or damage; therefore the long-term viability of the WTO

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<sup>111</sup> WTO Report 2023, *supra* note 109, at 45.

<sup>112</sup> Krpec & Hodulák, *supra* note 1, at 164.

is in danger, possibly irretrievably. By refusing to allow the assessment of its security practices from an impartial perspective, the U.S. has purposely resulted in a deadlocked WTO Appellate Body. As a result, there is currently no "supreme court" of the international trading system; this presents a dangerous blurring of the distinction between valid state self-defense and unfettered economic warfare.

This geopolitical fragmentation and legal disintegration have catastrophic consequences in terms of sustainable human development. Strong evidence supports that armed conflict inherently slows the advancement towards all the Sustainable Development Goals (SDGs), undoing decades of poverty reduction and infrastructure development. The dysfunction of institutions under SDG 16 has produced such a significant vacuum of effective governance that it is now being filled by violence, corruption and the illicit proliferation of conventional arms. If there is no foundational stability required by SDG 16, then the legal certainty required to facilitate the international flow of goods and foreign direct investment is wholly removed. The weaponization trade perpetuates this problem by actively damaging SDG 17 and fracturing the global partnerships that are vital for financing sustainable development within the world's most vulnerable, low-income countries. Addressing this multidimensional crisis necessitates individuals seeking to undertake urgent, transformative structural reform and recommitment to diplomacy.

## **SUGGESTIONS**

1. The first step is to fix the WTO Dispute Settlement System as a priority. The international community should work together to put the independent WTO Appellate Body back into operation, or there will not be a reliable trading system that can adjudicate national security disputes on a rules-based, predictable, objective basis. Fixing the institutional gridlock that currently exists is a prerequisite to providing a reliable, rules-based trading system to adjudicate complex disputes regarding national security.
2. The second step is for WTO Members to negotiate and explicitly codify the Russia- Traffic in Transit and Saudi Arabia- Intellectual Property Rights decisions to provide an objective, four-part legal standard for the use of Article XXI (essential security interests). By providing clear definitions regarding the scope of "essential security interests" and how good faith can be determined, the international community will prevent the essential security exception from being used as a permanent loophole to impose discriminatory tariffs.

3. Incorporating Human Rights into Trade Sanctions: The relationship between economic sanctions and international humanitarian law is crucial to understanding their application. As unilateral sanctions have typically been used for political purposes alone, trade sanctions should be primarily used to legally restrict states' ability to carry out economic warfare against innocent civilians in accordance with conventional international law by following the principles of proportionality, severity (i.e., the degree of damage caused by the economic sanctions), and conditionality (i.e., whether or not the imposition of economic sanctions is contingent on compliance with the request or demand). As part of that, international tribunals should examine how human rights considerations can be integrated into international trade law to limit the extraterritorial reach of economic warfare.

4. Effective Implementation of the Arms Trade Treaty: The international legal framework for achieving the 2030 Agenda must be based on the use of international trade law as a basis for peacebuilding. The implementation of the Arms Trade Treaty (ATT) is essential to effectively combat the unlawful diversion of conventional arms worldwide. The ATT requires member states to conduct a thorough human rights and development risk assessment before authorizing any commercial transfer of arms to another country, which creates a critical regulatory path towards achieving SDG 16.

5. Revitalizing GFA for Sustainable Development Goals: The way global finance is structured should be changed, so that countries affected by violence and broken trade relationships can access capital. This will allow them to rebuild their infrastructure and develop a new economy based on sustainable development.

In addition to reforming the way governments finance development, there are two areas where multi-lateral institutions must make major changes to their policies to better support developing and war-torn countries in rebuilding critical infrastructure and providing the financial resources needed for debt repayment. There is no way for either of these kinds of change to happen unless everyone agrees to work together. If either does not happen, the world will continue to experience economic stagnation and will not be able to achieve long-term prosperity.