International Trade Law, United Nations Law, and Collective Security Issues

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CHAPTER 25

INTERNATIONAL TRADE LAW, UNITED NATIONS LAW, AND COLLECTIVE SECURITY ISSUES

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* The views expressed in this chapter are personal and do not reflect the views of the Office of the United Nations High Commissioner for Human Rights.
I. Introduction

Today, fragmentation and unity of the international legal order has become its own topic of study recognizing that a wide variety of international norms may create complex interactions and give rise to various types of conflicts. It is at this time that the relationship between international trade law and United Nations (UN) law, notably in the field of collective security, seems critical. To date, however, this issue has rarely been analyzed in its full scope. In strict legal terms, this is hardly surprising as the relationship between both regimes has generally been subjected to a formalistic, hierarchical approach. Emphasis is given to the special status of the UN Charter through its Article 103, which establishes the priority of the Charter over obligations under any other international agreement in the context of maintenance of peace and security. Concerning the WTO, issues involving State national and international security are dealt with through provisions establishing relevant exceptions. Such is the case with Article XXI GATT 1994, which Members may invoke as a justification for departing from their obligations. Article XXI (c) exempts a UN Member State from its WTO obligations when it acts 'in pursuance of its obligations under the UN Charter for the maintenance of international peace and security'. Such clear-cut provisions seem to leave little room for a more thoroughgoing analysis.

However, the scope of Article 103 needs further analysis before one can fully grasp the issue of the relationship between international trade law and other legal regimes. Article 103, because of its wording, has mostly been interpreted from the

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3 Art XXI (c) GATT 1994.
4 Article 103 reads as follows: 'In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail.'
Such a focus has been reinforced by the specificity of Article 103, which gives the UN Charter a unique status. However, one should recognize that incompatibility of norms is the exception rather than the rule within a legal system. Article 103 must also be read in terms of compatibility. This provision does not exclude the application of principles and rules of WTO law to the activities carried out by the UN Security Council under Chapter VII of the Charter in the absence of a normative conflict. The legal primacy of the UN Charter is thus merely one way among several to address the manifold interactions between WTO and UN law.

Some critical changes in UN practice call for a broader approach to analyzing the relationship between WTO law and UN law. Whereas economic sanctions were for a long time the sole UN-related challenge to WTO law, the recent, surreptitiously growing economic interventionism of the UN has raised new challenges. Economic sanctions mainly cover non-forcible measures adopted by the UN Security Council within the framework of its powers to maintain international peace and security under Article 41 UN Charter. Those measures—be they commercial or financial embargos, aerial, naval embargoes, or the freezing of assets—pose an issue of legality under principles and rules of WTO law including the principle requiring most-favoured-nation (MFN) treatment. In such cases, the conflict rule of Article XXI (e) GATT 1994 is directly relevant. In the 1980s and the 1990s, the Security Council's increasing recourse to economic sanctions as a means of carrying out its responsibilities brought this provision to the forefront.

Article XXI (c) GATT 1994 does not address all of the complexity of the issues raised by UN sanctions. Further, and most importantly, it leaves partly unanswered questions arising from new forms of economic intervention by the UN through collective security measures. One may think of the international administration of territories such as Kosovo and East Timor or the particular case of the occupation of Iraq by the US and the UK under the unified command of the 'Authority'. Those new forms of economic intervention are developed in a fragmented and ad hoc way, with little attention paid to international economic law aspects. This chapter provides an overview of the UN activities in the economic field, which shows the limits of the predominant 'exception oriented' approach and the need to rethink the relationship

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8 On this phenomenon and its implications, ibid.
between international economic law and UN law. This rethinking appears necessary given the critical changes in the economic context of the Security Council activities, with, *inter alia*, economic threats increasingly linked to threats to international peace and security. In this respect, the recently established Peacebuilding Commission represents an important change in approach, as well as the recognition of the increasing interface between collective security, maintenance of peace, and economic concerns. The parallel move in favour of strengthening and expanding the partnership between the UN and the private sector 'to promote the exercise of responsible investment in crisis areas' makes this need for a new approach even more essential.

The integration of international economic law principles in post-conflict situations could contribute to the achievement of UN goals when it acts in the field of international peace and security. Peacebuilding activities, for example, require involvement in social and economic development as much as in political and institutional reform. It is crucial to address the causes of a conflict. Taking into account international trade law in carrying out such activities may help to stabilize post-conflict economies by providing the grounds for a more flexible transition once the UN is gone. A clearer reference to economic parameters in UN work may also allow for a more complete assessment of economic challenges in war-torn territories. This approach implies going beyond the mere question of the legality of UN action under WTO principles and rules and instead advocates the application of each of these bodies of norms together.

This chapter will first look at the WTO security exceptions provision, which can be invoked with regard to sanctions adopted outside the UN framework, in order to illustrate certain legal issues under WTO law. Articles XXI (a) and XXI (b) GATT 1994 have often been assessed in terms of the risk they may pose to the whole WTO system by granting States discretion to depart from their GATT obligations. However, through reference to actual practice under this article, this chapter argues that such fears were overstated and that judicial review of States' unilateral determinations under these provisions is still admissible. These developments will help to shed some light on the relationship between WTO law and UN law concerning the issue of UN economic interventionism and collective security activities. Finally, the case of small arms trade will provide an example of the complexity of the challenges WTO law faces as a result of the development of new UN instruments.

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II. Economic Sanctions and Security Exceptions: An Open Door?

The WTO system provides for specific exceptions that may be invoked by Members to depart from their obligations when security is at stake. They are found in Article XXI GATT 1994 under the general heading of 'security exceptions'. However, the legal regime established under the WTO distinguishes between economic measures that a Member may adopt in accordance with the collective security regime of the UN Charter, and unilateral measures adopted by a Member for the purposes of its own security interests. Article XXI (a)-(b) GATT 1994 read as follows:

Nothing in this Agreement shall be construed
(a) to require any contracting party to furnish any information the disclosure of which it considers contrary to its essential security interests; or
(b) to prevent any contracting party from taking any action which it considers necessary for the protection of its essential security interests
   (i) relating to fissionable materials or the materials from which they are derived;
   (ii) relating to the traffic in arms, ammunition and implements of war and to such traffic in other goods and materials as is carried on directly or indirectly for the purpose of supplying a military establishment;
   (iii) taken in time of war or other emergency in international relations.

While Article XX GATT 1994 contains explicit legal requirements in order to invoke an exception, Article XXI appears to mostly depend on a Member’s own appreciation, and has been interpreted as allowing far more leeway to States in its application.12 The fear of an abuse of this article was thus seen as a threat to the WTO system, particularly with regard to a Member’s power to assess what it ‘considers necessary for the protection of its essential security interests’. According to Lowenfeld, with a ‘self-judging measure and no procedure created to subject assertion to international scrutiny, the provision had the potential to become a significant means for evading GATT obligations’.13

However, there are limits on the use of Article XXI (b). The absence of a specific legal requirement does not mean it contains no legal constraints. First, Article XXI (b) identifies in its subsections ‘objective circumstances’ to be considered.14 For instance, subsection (i) limits the scope of potential action to ‘fissionable

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14 Matsushita, Schoenbaum, and Mavroidis, above fn 12, at 222.
materials or the materials from which they are derived. Second, an element of necessity must be established, what seems to open the door to international oversight. Each State is allowed to determine what measure it considers necessary to protect its security interests, and to determine the scope of the exception. Nevertheless, it is still possible to assess the compatibility of the resulting measures with WTO rules in the context of a dispute settlement procedure. Analogies can be drawn with other fields of international law where States may take ‘self-judging’ decisions to determine what is necessary. In human rights law as well as in the law on the use of force, for instance, the condition of necessity must be met by States to invoke exceptions or derogations to justify certain acts. This self-assessment can be reviewed in a judicial forum.\(^{15}\)

Practice is scarce in terms of international oversight with regard to Article XXI (b). A Panel was established under the GATT 1947 in US – Trade Measures (Nicaragua). The US took the position that the legal terms of Article XXI (b) such as ‘security interests’ could not be the subject of examination or a decision by a Panel. The Panel did not have the opportunity to rule on this question of principle since the terms of its mandate prevented its review.\(^{16}\) This being said, one cannot conclude that any judicial review would be excluded in the context of another dispute.\(^{17}\)

Some have considered that recourse to Article XXI (b) to justify a Member’s adoption of unilateral ‘sanctions’ in violation of its WTO obligations is not appropriate in the light of the specific wording and scope of this provision. First, it has been interpreted as covering mainly export restraints.\(^{18}\) Second, the action affecting WTO rules needs to be adopted in a particular field, at least for subsections (b) (i) and (ii). Consequently, measures contemplated in this article seem to be more oriented towards a State that decides on restrictive measures on the basis of what is being traded rather than towards general measures taken against another State to ‘express disapproval of the acts of the target state or to induce that state to change some policy

\(^{15}\) For examples of such judicial review under human rights law and jus ad bellum, see respectively Human Rights Committee, General Comment. No 27: Freedom of movement (Article 12), CCPR/C/21/Rev.1/Add.9 (2 November 1999); ICJ, Oil Platforms (Islamic Republic of Iran v United States of America), Judgment, 6 November 2003, ICJ Reports (2003) 183, at paras 43, 74, and 76.


\(^{17}\) With regard to the expression ‘if that party considers that’, in the context of retaliation under Article 22.3 (b)-(c) DSU, the Arbitrators in the EC – Bananas III (Ecuador) (Article 22.6 – EC) held that there is a certain margin of appreciation, but nonetheless some judicial review applies to whether the Member had considered ‘the necessary facts objectively’. Decision by the Arbitrators, EC – Bananas III (Ecuador) (Article 22.6 – EC), at para 52. On the unsettled nature of this debate within the GATT/WTO Jurisprudence concerning Article XXI, see AS Alexandroff and R Sharma, ‘The National Security Provision – GATT Article XXI’ in PJ Macrory, AE Appleton, and MG Plummer (eds), The World Trade Organization: Legal, Economic and Political Analysis, Vol I (New York: Springer/International Law Institute, 2005), at 1573–78.

\(^{18}\) See, eg, Matsushita, Schoenbaum, and Mavroidis, above fn 12, at 220.
or practice or even its governmental structure.\(^{19}\) It then appears difficult to identify measures adopted under this provision that would be of a reactionary nature. The US measures imposing an import quota for Nicaraguan sugar were adopted in retaliation for the Nicaraguan support of subversive political activities. However, the US did not rely on Article XXI as a justification.\(^{20}\) This being said, one may support a broader interpretation of the expression 'protection of one's essential security interest' that goes beyond the specific reference to fissile materials and weapons. In this respect, a State could decide to exert trade restrictions against another State, in violation of WTO principles and rules, arguing within the frame of Article XXI that unilateral economic sanctions are justified because the benefits stemming from those exports are used by the target State to support terrorist acts against that State or its citizens abroad.

While having a potential negative effect on the WTO system, the debate on the exceptions based on the protection of security interests remains marginal, in spite of the recent increase of threats to national security.

### III. UN Economic Interventionism: Reconciling WTO and UN Law

Under UN law, the spectrum of measures that may be taken to confront 'any threat to the peace, breach of the peace, or act of aggression', as mentioned in Article 39 UN Charter, is very broad, ranging from the use of force to non-military measures. In practice, the Security Council has resorted to various 'economic sanctions', comprising a number of actions of an economic character under Article 41 to compel a 'troublemaking' State or, increasingly, non-State entities, in the sense of Article 39 UN Charter, to take particular steps to restore international peace and security. A careful analysis of UN practice leads to the conclusion that, although economic sanctions represent the traditional economic instrument used by the UN, it is only one aspect of growing UN economic interventionism, a phenomenon that encompasses a wide diversity of activities.\(^{21}\) Activities aimed at the restoration

\(^{19}\) See Lowenfeld, above fn 13, at 698.


of peace have engaged the organization in the adoption of resolutions setting up peace enforcement missions or dealing with the economic reconstruction of war-torn territories. The theatres of these operations are varied, spanning from a newly independent country to a region under international territorial administration, a State under military occupation, or a State recovering from violent internal conflict. Given the existence of the specific exception for UN Charter based actions for the maintenance of peace and security (Article XXI(c) GATT 1994) and the fact that, to date, there has been no systematic integration of economic considerations into the work of the UN Security Council, it is useful to assess the different legal issues at stake. The increasing interaction between peace and security activities and economic issues raises difficult questions in terms of the principles and rules of international law applicable in the collective security context.

A. UN Economic Sanctions Under WTO Law: The Derogations Permitted by Article XXI (c) GATT 1994

1. Elements of UN Practice
Within the framework of its principal responsibility to maintain international peace and security, the UN Security Council has had recourse to a wide range of measures, with those of an economic nature playing a particularly significant role. The UN Charter provides a non-exhaustive list of such measures including 'complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio and other means of communication ...' The Security Council has in many instances adopted these types of measures, as well as others such as the freezing of State and private assets.

The cases of Sierra Leone, Liberia, and Iran offer interesting illustrations of the use of varied economic sanctions. Security Council Resolution 1132 (adopted on 8 October 1997) imposed an oil and arms embargo, as well as restrictions on the travel of members of the military junta of Sierra Leone. On 5 July 2000, the Security Council adopted Resolution 1306 requesting all States to take necessary measures to prohibit the direct or indirect imports of all rough diamonds from Sierra Leone to their


territory, and also requesting that the government of Sierra Leone ensure that an effective Certificate of Origin regime for trade in diamonds be in operation in Sierra Leone. On 7 March 2001, the Security Council unanimously adopted Resolution 1343, by which it imposed sanctions on Liberia, including an arms embargo and the adoption by all States of necessary measures to prevent the direct or indirect imports of all rough diamonds. The Security Council specifically called upon the Government of Liberia to take urgent steps, including through the establishment of transparent and internationally verifiable audit regimes, to ensure that revenue derived by the Government of Liberia from the Liberia Shipping Registry and the Liberian timber industry is used for legitimate social, humanitarian and development purposes. Concerning Iran, the Security Council adopted a first set of sanctions to prevent Tehran from developing further its nuclear programme. Sanctions were taken in another particular field—that is, ‘all items, materials, equipment, goods and technology which could contribute to Iran’s enrichment-related, reprocessing or heavy water-related activities, or to the development of nuclear weapon delivery systems’. When Iran failed to comply with these UN Security Council resolutions, the Security Council passed a new resolution intensifying the existing sanctions.

2. Economic Considerations Linked to the Resort to UN Sanctions

Economic considerations linked to the resort to UN sanctions have so far been very marginal. The issue of political, humanitarian as well as economic consequences of these measures—often referred to as side effects—has led to debates within the UN on the compatibility of such sanctions with rules of international human rights law and humanitarian law. The ‘side effects’ issue had been raised early on with the adoption of sanctions against Southern Rhodesia, but it was with the imposition of sanctions against Iraq—over a thirteen-year period—that the issue became particularly controversial. Side effects obviously affect the target State (which is the very reason for the adoption of the measures) but not necessarily in the manner in which they are intended. The most harmful consequences generally fall on the civilian population far more than on members of the government.

Third States can also be affected, as a result of the growing interdependence of domestic economic systems. The UN Charter had considered the problem of the

effects of sanctions from the outset, but in extremely limited and ambiguous terms. Article 50 UN Charter specifies that a third State, that is, a State not targeted by sanctions, 'which finds itself confronted with special economic problems arising from the carrying out of those measures shall have the right to consult the Security Council with regard to a solution of those problems'. However, the Charter gives no definition of these 'special economic problems', and offers no guarantee of compensation. It is, however, very important to concretely identify the economic impact of specific measures.

Both the substance and the implementation of these measures have only rarely been considered in the light of principles and rules of international economic law, in particular those that favour free trade and non-discrimination. With regard to the growing recourse by the Security Council to measures having an economic impact, Harry Post wisely noted that 'such a series of wide-ranging, binding measures can no longer be considered limited or incidental economic curiosities (...). In terms of international economic law, it might even be said that in recent years a new “international sanctions law” is emerging with its own instruments (...), its own organs and institutions (...).

3. UN Sanctions and Article XXI (c) GATT 1994
With regard to WTO law, UN economic sanctions clearly violate the core principles that form the pillars of the international trade system. The most telling example is the decision to impose embargos or the 'complete or partial interruption of economic relations'. For instance, Security Council Resolution 757 of 30 May 1992 obliged Member States to suspend imports and exports of all commodities and products—except supplies for medical purposes—with regard to the Federal Republic of Yugoslavia.

Article XXI (c) GATT 1994 is widely invoked by States when implementing sanctions imposed by the UN Security Council. In contrast to unilateral measures regarding security issues as foreseen in Article XXI (a)-(b) GATT 1994, the condition of necessity is not required for measures adopted under the UN Charter with a view...

30 In the Agenda for Peace, the Secretary General recommends, with regard to the operation of Article 50 UN Charter (analyzed below) and third States affected by the application of economic sanctions, 'that the Security Council devise a set of measures involving the financial institutions and other components of the United Nations system that can be put in place to insulate States from such difficulties. Such measures would be a matter of equity and a means of encouraging States to cooperate with decisions of the Council'. Doc. A/47/627-S/24/111 (17 June 1992).
32 Eg, consider a document from India that observes that 'while almost all of India’s trading partners received most-favoured-nation treatment in the issue of import licences, import licences were not issued for imports from countries facing UN mandated sanctions, at present, Iraq, Fiji, Serbia and Montenegro', cited in Analytical Index, Guide to GATT Law and Practice, Vol I (WTO: Geneva, 1995), at 605.
to maintaining international peace and security. The only requirement that seems to prevail is that of a multilateral authorization given under the UN Charter. This seems to be the correct interpretation, unless one considers that a necessity requirement could be deduced from the spirit and the object of all the exception clauses, including the one referring to action pursuant to a resolution adopted by a UN body in the context of the maintenance of international peace and security. However, with practically non-existent travaux préparatoires and limited practice, there is very little to support this insertion of a necessity requirement.

Another issue deals with the effects of sanctions adopted under Chapter VII of the UN Charter on third States. It should be noted that the potentially disruptive effect on international trade of an abusive recourse to Article XXI GATT 1994 was invoked with regard to unilateral economic measures adopted outside of the framework of the UN Charter. The GATT Council adopted a decision in 1982 relating to Article XXI in which it asked that the interests of third States that could be injured by such actions be taken into account. This decision shares the spirit of Article 50 UN Charter and it can a fortiori be considered to apply to actions adopted in the framework of collective security.

The case of the Kimberley Process illustrates another challenge regarding the interpretation of Article XXI (c). Considering the criteria used in Article XXI (c), one may wonder what the scope is of the expression ‘obligations under the United Nations Charter for the maintenance of international peace and security’ and more precisely whether this exception only applies to Security Council decisions or may also cover recommendations of the General Assembly. The issue came up in relation with the Kimberley Process, which provides for the creation of an international diamond certification programme.

In 2000, the UN General Assembly adopted Resolution 55/56, calling for the adoption of measures to deal with the problem of trade in diamonds during armed conflicts. This resolution was part of the extension of the 1998 Security Council decision to impose sanctions. The only diamonds permitted to be exported from Angola were those that fulfilled the criteria of a monitoring system. They must be accompanied by an official certificate of origin. Subsequently, through the Interlaken Declaration of 5 November 2002, the vast majority of countries mining, trading, and cutting diamonds agreed to adopt the Kimberley Process Certification Scheme. States participating in the Kimberley Process agree to restrict trade to certified non-conflict diamonds. All diamond trade between those States and the States not participating

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33 GATT Council, Decision Concerning Article XXI of the GATT, 30 November 1982, BISD 29S/24–25. The GATT Council considered that 'in taking action in terms of the exceptions provided in Article XXI of the General Agreement, contracting parties should take into consideration the interests of third parties which may be affected', Analytical Index, ibid. at 609.

34 On this process, see <http://www.kimberleyprocess.com> (last visited 25 January 2008).

35 See also UN General Assembly Resolution 56/263, A/RES/56/263 (9 April 2002), on the role of diamonds in fuelling conflict.

in the Kimberley Process is prohibited. The Security Council then gave its support to these agreements through Resolution 1459, stating that it 'strongly supports the Kimberley Process Certification Scheme, as well as the ongoing process to refine and implement the regime, adopted at the Interlaken Conference as a valuable contribution against trafficking in conflict diamonds and looks forward to its implementation and strongly encourages the participants to further resolve outstanding issues'.

On 15 May 2003, WTO Members granted a waiver of GATT provisions to allow for the above-mentioned import and export restrictions on conflict diamonds. The GC decided that 'with respect to the measures taken by a Member listed in the Annex necessary to prohibit the export of rough diamonds to non-Participants in the Kimberley Process Certification Scheme consistent with the Kimberley Process Certification Scheme, paragraphs 1 of Article I; 1 of Article XI; and 1 of Article XIII GATT 1994 are waived as of 1 January 2003 until 31 December 2006'. This waiver did not cover the Kimberley Process Certification Scheme insofar as it concerned trade only in certified conflict diamonds as between the participating States. Clearly, therefore, it was believed that a waiver was not necessary for this aspect of the scheme. One may wonder why it was necessary to have a waiver for the elements related to trade in conflict diamonds with non-participating States. One cannot exclude that the waiver in this respect was a somewhat simplistic 'safety first' approach to the problem, without exploring further whether the security exception would also cover this aspect of the scheme, and in particular whether the resolutions of the General Assembly would qualify as a multilateral authorization given under the UN Charter as provided for by Article XXI (c), especially in the light of the resolutions of the Security Council on the same matter.

B. Framing UN Economic Intervention: The Need to Integrate WTO and International Economic Law Principles

UN involvement in economic matters has gone far beyond sanctions. Its involvement in post-conflict activities has led the organization to deal with the management of


economies in post-conflict situations as part of a global strategy to restore peace in war-torn territories. Such interventionism does not rely on any coherent framework. It is necessary for the UN to carry out its post-conflict activities by taking into account principles of international economic law such as transparency and non-discrimination in order to achieve its objective of sustainable peace, while at the same time taking into account the peculiarities of each country. Three cases illustrate the need for a paradigm shift.

1. Reconstruction of Economies by UN Peace-building Operations

Some UN missions have evolved in such a way that the UN played or will play a greater role in economic management. This is illustrated by the case of Ivory Coast, even if the UN mission was only marginally involved in economic activities. In addition, several international institutions other than the UN, such as the World Bank (WB), are increasingly participating in reconstruction efforts in post-conflict situations. The recently created Peacebuilding Commission may constitute a key institutional breakthrough to rationalize and coordinate UN and other agencies' economic activities.

a. The Economic Mandate of UN Missions: The Case of Ivory Coast

While originally established with a security-based mandate, some traditional UN peacekeeping missions became increasingly involved in economic matters, either because their mandate evolved or due to the need to coordinate with international institutions with responsibility in the economic field. Both trends derive from the key acknowledgement that economic development is a key component of the achievement of sustainable peace in a post-conflict zone. The case of Ivory Coast exemplifies these new trends.

The difficulties encountered in the peace process in Ivory Coast and the various agreements signed by the parties to the crisis caused the UN mission to evolve considerably. The UN Mission in Ivory Coast (MINUCI) was created in 2003 by Security Council Resolution 1479 following the Linas-Marcoussis Agreement concluded in January 2003. MINUCI was a political mission whose mandate was mainly to facilitate the implementation by the Ivorian parties of the 2003 agreement. On 4 April 2004, MINUCI was replaced by a UN peacekeeping operation—the UN Operation in Ivory Coast (UNOCI)—set up by Security Council Resolution 1528 (2004). Despite being 'deeply concerned by the deteriorating economic situation in Ivory Coast and its serious impact on the sub-region as a whole' and recognizing that economic development in Ivory Coast is a key element of long-term stability, the Security Council mostly limited the mandate of UNOCI to traditional

\[41\] See, on the role of international financial institutions in post-conflict situations and their relationships with the UN, KE Boon, "Open for Business": International Financial Institutions, Post-Conflict Economic Reform and the Rule of Law' 2007 Journal of International Law and Politics 39(3) 514.
peacekeeping responsibility. UNOCI monitored the cease-fire of May 2003 and assisted in disarmament, demobilization, and reintegration programmes. Its approach changed slightly over the next stages of the peace process, which involved economic development activities.

A Report of the Secretary-General (SG), issued in May 2007, recommended that the UNOCI be assigned responsibility for supporting the economic recovery process in Ivory Coast, in coordination with other UN agencies as well as with the International Monetary Fund (IMF) and the WB. The SC endorsed this request in its Resolution 1765 of July 2007, and stressed the adaptation of the UNOCI’s role to the new phase of the peace process in Ivory Coast as set out in the Ouagadougou political Agreement. As implicitly suggested in the SGs latest report, this economic mandate calls for a close cooperation between the various actors that are already engaged in reconstruction and recovery activity in Ivory Coast. The exact scope of UNOCI’s economic role remains to be defined, but it may include support to the rehabilitation and re-equipment of social and economic infrastructure in the communities most affected by conflict—one of the key objectives of the WB’s recent financial grant.

Ivory Coast, as well as other countries, witnessed increasing involvement of the UN in the economic sphere after peace was restored. Economic reconstruction was used as a tool aimed at preventing hostilities from breaking out again. Carrying out such action within the narrow framework of the collective security system cannot be satisfactory. Grounding the reconstruction of Ivory Coast on economic law pillars would contribute to strengthening the autonomous and sustainable character of the economy when the UN is gone. By resorting to principles of international trade law, the UN would ensure that individuals, private companies, and local entities rely on such principles, rendering the transition towards UN disengagement and the integration within the international economic order easier. This would also have positive consequences for third States and foreign entities. In that respect the recently established Peacebuilding Commission could be an appropriate forum for

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46 Ibid.
47 Noteworthy is the fact that Ivory Coast signed the GATT 1947 on 31 December 1963 and has become a WTO Member since 1 January 1995.
48 The protection of ‘individuals and the market-place’ being ‘one of the principal objects and purposes of the WTO’, see Panel Report, US – Section 301 Trade Act, at para 7.86.
49 If, for example, the principle of non-discrimination were applicable, specific provisions might, however, be considered to grant preference to local suppliers and contractors in order for them to help start up the local economy again and contribute to post-conflict reconstruction. There would be a need to define the adjustments, for example, in the context of procurement practices.
designing new frameworks of coordination and integration of economic parameters into the work of the UN in post-conflict situations.

b. The UN Peacebuilding Commission: A Promising Institutional Tool

Stressing 'the need for a coordinated, coherent and integrated approach to post-conflict peacebuilding and reconciliation with a view to achieving sustainable peace', States have decided to create the UN Peacebuilding Commission. It is an intergovernmental advisory body meant 'to address the special needs of countries emerging from conflict towards recovery, reintegration and reconstruction and to assist them in laying the foundation for sustainable development'. This organ has promising and interesting implications with regard to the economic activities carried out under the ambit of the UN. It represents a novel opportunity to take economic considerations into account in the broader framework of reconstruction activities.

Jointly created by the Security Council and the General Assembly, the Peacebuilding Commission is an advisory organ the main purpose of which is:

- to bring together all relevant actors to marshal resources and to advise on and propose integrated strategies for postconflict peacebuilding and recovery. The Commission should focus attention on the reconstruction and institution building efforts necessary for recovery from conflict and support the development of integrated strategies in order to lay the foundation for sustainable development. In addition, it should provide recommendations and information to improve the coordination of all relevant actors within and outside the United Nations, develop best practices, help to ensure predictable financing for early recovery activities and extend the period of attention by the international community to post-conflict recovery.

In addition to the Commission, a Peacebuilding Fund was launched on 11 October 2006 at the request of the General Assembly. According to its terms of reference, the Fund 'will support interventions of direct and immediate relevance to the peacebuilding process and contribute towards addressing critical gaps in that process, in particular in areas for which no other funding mechanism is available'. As the Commission is entitled to address the situation of particular countries, it initiated—between July and December 2006—its first phase of substantive consideration of two countries: Burundi and Sierra Leone. Through country-specific meetings, the Commission has formulated integrated peacebuilding strategies (IPBS) as the basis

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50 2005 World Summit Outcome, General Assembly, Resolution 60/1 (2005), A/RES/60/1 (24 October 2005), at para 97.
52 2005 World Summit Outcome, above fn 50, at para 98.
54 Terms of reference for the Peacebuilding Fund, annexed to Report of the Secretary-General, Arrangements for establishing the Peacebuilding Fund, A/60/984 (22 August 2006), at para 2.1.
55 Burundi has signed the GATT 1947 on 13 March 1965 and Sierra Leone on 19 May 1961. They both became WTO Members on 23 July 1995.
for its sustained support for Sierra Leone and Burundi. The development of an IPBS for Burundi was endorsed by the Commission on 20 June 2007. The designing of IPBS involved various UN agencies, as well as other stakeholders. To this end, a direct link was established with the UN Integrated Office in Burundi, which succeeded the UN peacekeeping operation in Burundi in 2006. This fact highlights the need to draw links between peacekeeping activities and economic reconstruction activities.

The Commission seeks to fill the ‘institutional gap’ in the UN system identified by the Report of the High-level Panel in 2004. The approach and methodology put forward by this newly created organ will be crucial for addressing economic challenges in the rebuilding of war-torn societies. It might be worth cooperating with the WTO and relevant regional economic organizations more closely in this endeavour.

2. International Administration of Territories by the UN

Within its primary and traditional responsibility to maintain international peace and security, the UN Security Council has adopted new means to restore peace in war-torn territories. In the case of Kosovo and East Timor, the Council set up interim administrations responsible for fulfilling the traditional State functions, including managing the economy.

These innovations inevitably led the UN to intervene in economic fields previously unexplored in terms of legal framework and economic management. This has been particularly true in the case of Kosovo, where the mission is explicitly mandated to support economic reconstruction. The UN transitional administration in East Timor is another example, although it saw less UN intervention. Moreover, there are common elements in these two experiences with regard to, inter alia, taxation and customs issues.

Security Council Resolution 1244 created an interim administration in Kosovo. The Resolution makes several references to the economic dimension of the mission, including one of the main tasks of the international civilian presence in ‘supporting the reconstruction of key infrastructure and other economic reconstruction’. It also

56 Organizational Committee, Provisional report on the work of the Peacebuilding Commission, PBC/2/OC/L.1 (28 June 2007), at para 3.
57 Ibid at para 18.
61 United Nations Interim Administration Mission in Kosovo (UNMIK).
62 Resolution 1244 of 10 June 1999, at para 11(g).
'encourages all Member States and international organizations to contribute to economic and social reconstruction as well as to the safe return of refugees and displaced persons, and emphasizes in this context the importance of convening an international donors' conference, (...) at the earliest possible date'. As a result, UNMIK has become involved in the creation of a viable economy and the installation of an overall programme of economic stabilization. This has been achieved through the authorization of the Special Representative of the Secretary-General (SRSG) to adopt a series of regulations, including Regulation No 1999/1 of 25 July 1999, which establishes the powers of the interim administration in Kosovo. A council responsible for economic policy has been created alongside the adoption of a legal framework through a regulation adopted by the SRSG. In fact, some of these measures call into question the monetary, financial, and economic unity of the FRY. The responsibility to develop and lead economic reconstruction activities to promote democracy, economic prosperity, stability, and regional cooperation in Kosovo fell to the EU in cooperation with the WB and other organizations, namely the implementation of the Stability Pact for South Eastern Europe, with considerable international support.

In terms of relevant principles and norms of international law to be taken into consideration, explicit mention of principles of international human rights law is generally made in Security Council resolutions or in the instruments adopted by the authorities responsible for territorial administration and reconstruction activities. However, no mention is made of principles and rules of international economic law that are relevant to these missions. No such rules are apparent from the mandate given by the UN SG to the UN Office of Legal Affairs (OLA), which was tasked with the vetting of UN regulations in East-Timor and Kosovo. The then Under-Secretary General for Legal Affairs later observed that:

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63 Ibid at para 13.
64 One can cite various examples of actions taken in the framework of territorial administration that concern the economic field: Regulation No 1999/16 that creates a Central Fiscal Authority of Kosovo; Regulation No 1999/9 on the Importation, Transport, Distribution, and Sale of Petroleum Products in Kosovo, as well as Regulation No 1999/20 on the Banking and Payments Authority of Kosovo.
65 Regulation No 1999/4 on the Currency Permitted to be Used in Kosovo. This regulation authorizes the free use of currency parallel to the Yugoslav Dinar in the payment and banking services sector, making the German Mark and, since 2000, the euro, the official currency of Kosovo. See R Borden, La Mission intérimaire d’administration des Nations Unies au Kosovo, LLM. Thesis, University Paris I (September 2000), at 47.
66 See the Petersburg Principles on the political solution to the Kosovo crisis, Statement by the chairman at the conclusion of the G-8 Foreign Ministers held at the Petersburg Centre on 6 May 1999, statement annexed to Resolution 1244. See also the Stability Pact website, at www.stabilitypact.org (last visited 25 January 2008).
67 For the case of Kosovo, see, Resolution 1244, at para 11(j) as well as Regulation No 1999/1, section 2 and Regulation No 2000/38 which created the Ombudsman institution. Considering those instruments, the UN Human Rights Committee expressively stated that UNMIK is bound by human rights obligations. See Concluding Observations of the Human Rights Committee – Kosovo (Serbia), CCPR/C/UNK/CO/1. (14 August 2006), 2, at para 4.
It became quite an extensive activity. Not that we questioned the substantive solutions in customs, taxation, banking or whatever the subject matter was. Our task was to review the regulations from a constitutional viewpoint. That is: were they in conformity with the Charter, the pertinent Security Council resolutions, international human rights standards, etc?

Human rights law may certainly be applicable with regard to some economic activities. The most significant example is the right to private property, which undoubtedly provides for legal guarantees and offers some indirect protection against abuses. Another example is the principle of non-discrimination, although its scope under human rights law does not fully cover trade and investments activities. Briefly put, international human rights law does not provide full legal guarantees and might be ill suited to deal with some economic activities and ensure, for example, that these are based on principles of transparency and fair competition.

Moreover, one may well ask whether UN law is the proper yardstick to review customs, taxation or banking regulations. While the UN has set up certain rules that apply to UN personnel, such as procurement rules, a wider approach that promotes and integrates general principles of international economic law would be preferable.

One might argue that the international organizations engaged in economic reconstruction activities will advocate for the application of rules that they have shaped through their normative and operational practice. However, affirming as a matter of principle the importance of the international rule of law for questions related to international trade, government procurement, or competition in the field of economic reconstruction still seems paramount. The procedures followed in the context of economic reconstruction would indeed benefit from explicit reference to clear legal criteria. Key standards such as openness and equity that are linked to the application of the well-established economic law principles of free competition and


73 This aspect is important if we consider the implication of many non-governmental actors, both public and private, among them non-governmental organisations (NGOs), in the management of public affairs and services, See C Stahn, ‘NGO's and International Peacekeeping – Issues, prospects and Lessons Learned’ 2001 Zeitschrift für ausländisches öffentliches Recht und Völkerrecht (61) 379, at 397.
transparency would help contribute to the reconstruction of stable domestic economies in the medium and long term. It would facilitate the transition of the newly recovered economies from a system backed by UN efforts to a sustainable system interacting within the international economic order.74

3. The Occupation of Iraq and the UN Resolution 1483

The case of Iraq following the adoption of Resolution 1483 by the Security Council of 22 May 2003—a fait accompli—merits special attention. The role of the UN in this context raises new questions with respect to the recourse to economic instruments, the international rule of law as well as issues of global legitimacy and coherence of the UN system in its relations with other actors, institutions, and norms.

Security Council Resolution 1483 primarily specified that the legal regime in force in Iraq at the time was that of military occupation as provided in the Hague and Geneva Conventions, and that the Coalition Provisional Authority (composed of the US and the UK) (CPA) was the occupying power. The Resolution also prescribed a role for the UN and other international organizations, but did not specify the law applicable to their activities. It was the balance of power in the international system at the time that led to the recognition that the primary responsibility for the political and economic reconstruction of Iraq was in the hands of the CPA. As such, the international community rubber-stamped a system that had been established and managed by the US and the UK. The UN was involved in the process on the basis of a very narrow mandate, breaking away from practice developed in preceding years in the area of political and economic reconstruction.75

In the economic field, Resolution 1483 envisioned the role of the UN and the international community through a range of complex procedures, which only accorded them a right to be informed, while the decision-making power remained in the hands of the CPA. This remained true even though the UN had taken part, for the first time,

74 This need for greater reliance on economic law is particularly true if we take into consideration the fact that institutions such as UNMIK or KFOR enjoy immunity in local courts. See Ombudsperson Institution in Kosovo, Special Report No 1 on the Compatibility with recognized international standards of UNMIK Regulation No 2000/47 on the Status, Privileges and Immunities of KFOR and UNMIK and Their Personnel in Kosovo (18 August 2000), 26 April 2001.


in the setting up of a regime where economic considerations were predominant. With regard to the delicate question of the management and exploitation of natural resources, the CPA was granted jurisdiction over export sales of petroleum, petroleum products, and natural gas from Iraq. These prerogatives were to be exercised under certain conditions and subject to oversight and audit procedures conducted by certain responsible international organizations. However, the nature and the duration of these procedures were not settled. The UN was given a coordinating role, in partnership with other international organizations, in 'promoting economic reconstruction and the conditions for sustainable development' and in 'facilitating the reconstruction of key infrastructure'. The Security Council resolution basically recognized, for the most part, the system put into place by the Coalition. In exchange, it obtained the recognition of the application of the law of military occupation with the concomitant minimum rules of proper economic behaviour as will be discussed below.

The issue of the relevant legal framework to cover these economic activities and the interaction between different sets of norms such as WTO law, the law of occupation, and UN law arose in the context of two specific cases. The first one deals with the GPA—a plurilateral agreement that binds only some of the WTO Members. This Agreement also provides for an exception clause covering security aspects, albeit formulated in more restrictive terms than the above-mentioned GATT 1994 security exception provision. It does not refer to the UN Charter and specifies the types of measures that can be taken. Article XXIII specifies that:

1. Nothing in this Agreement shall be construed to prevent any Party from taking any action or not disclosing any information which it considers necessary for the protection of its essential security interests relating to the procurement of arms, ammunition or war materials, or to procurement indispensable for national security or for national defence purposes.

2. Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail or a disguised restriction on international trade, nothing in this Agreement shall be construed to prevent any Party from imposing or enforcing measures: necessary to protect public morals, order or safety, human, animal or plant life or health or intellectual property; or relating to the products or services of handicapped persons, of philanthropic institutions or of prison labour.

Resolution 1483 (2003), at para 8 (e)-(d). The recent Security Council Resolution 1770 of 10 August 2007 confirms however the trend of an increasing involvement of the UN within economic matters in Iraq. The Resolution seeks to enlarge the UN mandate in Iraq through a stronger role of the Special SRSG and the UN Assistance Mission for Iraq (UNAMI). For example, the SRSG and UNAMI, as circumstances permit, (...) shall [p]romote, support, and facilitate, in coordination with the Government of Iraq:

(iv) Economic reform, capacity-building, and the conditions for sustainable development, including through coordination with national and regional organizations and, as appropriate, civil society, donors, and international financial institutions' (at para 2).
The relevance of this provision was invoked in the context of an American decision of December 2003 in the framework of calls for tender relating to contracts for economic reconstruction in Iraq that limited the right to tender to only certain States. A memorandum titled ‘Determination and Findings’ sought to justify this on the basis that it was ‘necessary for the protection of the essential security interests of the United States to limit competition’. This raises the issue of the compatibility of such a measure with WTO rules, especially the non-discrimination principle contained in Article III GPA. Could the exception of Article XXIII (i) be invoked? The issue is obviously linked to the problem of the relationship between the WTO agreements, the UN Charter, and the law of military occupation. Could one consider that the US, through the CPA, was in a position to benefit from the exception clause of the GPA by arguing that the decisions were taken in the framework of a regime ratified by the Security Council in application of Chapter VII? Considering the restrictive wording of Article XXIII (i), which is limited to ‘the protection of essential security interests’, this argument is rather dubious. Moreover, one may question to what extent the national security exception would have been able to cover all the reconstruction contracts envisaged by Washington.

A similar legal debate, although framed in different terms, developed with regard to other decisions adopted by the CPA. The Authority adopted orders and regulations, with reference to UN Security Council Resolutions, that changed the legal system in Iraq. For example, CPA Order 81, a controversial law that amends the patents and industrial design legislation, makes special reference to laws of war and UN resolutions such as Security Council Resolution 1483. The Order states that ‘several


80 Some have considered that the US was bound by the GPA, ibid at 272. The issues of the legal profile of the CPA, as well as those relating to the specific undertakings of the US in the context of the GPA have also caught attention. In that respect, the question whether the US discriminatory practice regarding reconstruction and relief contracts in Iraq falls at all within the scope of this agreement was discussed. For an interpretation questioning the relevance of WTO GPA rules to address the US determination under the conditions of this instrument, especially with respect to which entities are covered, see J Pauwelyn, ‘Iraqi Reconstruction Contracts and the WTO: "International Law? I’d Better Call My Lawyer"’ Jurist Forum (9 December 2003), at <http://www.jurist.law.pitt.edu/forum/forumnew133.php#2> (last visited 25 January 2008). More generally, on the issue of responsibility for the acts of the CPA, see S Talmon, ‘A Plurality of Responsible Actors: International Responsibility for Acts of the Coalition Provisional Authority in Iraq’ in P Shiner and A Williams (eds), The Iraq War and International Law (Oxford: Hart Publishing, 2008, forthcoming), at <http://http://www.ssrn.com/abstract=1018172> (last visited 25 January 2008).


provisions of the current Iraqi Patent and Industrial Design Law and related legislation does [sic] not meet current internationally-recognized standards of protection'. It also recognizes 'the demonstrated interest of the Iraqi Governing Council for Iraq to become a full member in the international trading system, known as the World Trade Organization'. Moreover, it relies on the 'the Report of the Secretary General to the Security Council of July 17, 2003, concerning the need for the development of Iraq and its transition from a non-transparent centrally planned economy to a free market economy'. The legal basis of this Order refers to various sets of norms. It combines WTO law, law on military occupation, and UN law.

Law on military occupation strictly limits the type of changes that can be made by the occupying power and does not entail the right to modify any law. However, the interaction with UN Security Council resolutions raised some complex questions to determine whether or not occupation law was fully applicable in those contexts. One may nevertheless question the legality and legitimacy of those changes in Iraqi law. Although meeting WTO objectives and standards could be seen as a fair justification, there is a need to consider carefully the complex legal framework at stake, especially given the fact that WTO law is at date not binding on Iraq.

Despite lingering questions, the case of Iraq offers an interesting example of emerging UN practice referring to the principle of transparency. In Iraq, the international community was granted a right of supervision through a monitoring and audit system. The International Advisory and Monitoring Board (IAMB), created in October 2003—involving, in particular, the UN, the WB, the IMF, and the Arab Fund for Economic and Social Development—had the responsibility to ensure that the funds from the sale of petroleum and natural gas were used in accordance with the principle of transparency. The Iraqi government has subsequently decided to

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83 Article 43 of The Hague Regulations concerning the Laws and Customs of War on Land annexed to the 1907 Convention (IV) respecting the Laws and Customs of War on Land that 'the authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country'. If the stabilization of an economy forms a part of the maintenance of public order and safety, questions arise as to the precise limits of this obligation.


86 See Resolution 1483, at paras 14 and 20. These objectives were also used to establish the framework of the International Advisory and Monitoring Board. The Terms of Reference for the International Advisory and Monitoring Board state that the purpose of the IAMB is 'to promote the objectives set forth in Security Council resolution 1483 of ensuring that the Development Fund for Iraq is used in a transparent manner for the purposes set out in §14 and that export sales of petroleum products and natural gas from Iraq are made consistent with prevailing international market best practices'. See <http://www.iamb.info/pdf/1orold.pdf> (last visited 25 January 2008).
create a national oversight body to succeed the IAMB and ensure respect for transparency principle.\(^7\) This example illustrates the positive impact that the Security Council's consideration of economic principles can have on a domestic system. However, one must also acknowledge the serious issues raised in the context of the management of Iraqi revenues. The establishment of the IAMB did not solve these issues entirely. There is therefore a crucial need to strengthen the principles of transparency and non-discrimination.

### IV. WTO and the Arms Trade: The Case of Small Arms

Three international instruments cover small arms and light weapons within the framework of the UN: the Programme of Action that was adopted in July 2001;\(^8\) the Protocol Against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components, and Ammunition,\(^9\) which entered into force on 3 July 2005; and the International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms, and Light Weapons, which was adopted by the General Assembly in December 2005.\(^9\) States participating in the 2001 Conference on the Illicit Trade of Small Arms and Light Weapons in All Its Aspects adopted a Programme of Action 'to put in place, where they do not exist, adequate laws, regulations, and administrative procedures to exercise effective control over the production of small arms and light weapons within their areas of jurisdiction and over the export, import, transit, or retransfer of such weapons.'\(^9\) Restrictions imposed by

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\(^7\) See the letter and annexed documents concerning the Council of Ministers of the Iraqi Republic, which adopted the decision to create the Committee of Financial Experts, Republic of Iraq, General Secretariat of the Council of Ministers, 22 October 2006; see also Letter from the UN Representative of Iraq to the United Nations to the Chairman of the IAMB, 31 October 2006, and Statement by the International Advisory and Monitoring Board on the Development Fund for Iraq, 6 November 2006, all those documents are available at <http://www-iamb.info> (last visited 25 January 2008).


\(^9\) International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons, 8 December 2005.

\(^9\) Programme of Action, above fn 88, at para II.2.
a State on the illicit trade of these weapons are one of the means for achieving the objectives of the various UN instruments on illicit trade of small arms.

In order to justify these measures with regard to WTO law, Article XXI (b)(ii) GATT 1994 specifically allows a WTO Member to take action ‘it considers necessary for the protection of its essential security interests relating to the traffic in arms, ammunition, and implements of war’. Measures adopted to implement the UN Programme of Action that would otherwise contravene WTO obligations on the elimination of quantitative restrictions can be justified under this provision. Article XXI (c) might also be relied upon, in as much as the UN Programme of Action recalls the threat to the peace that illicit trade of arms represents. Adopting measures to limit arms trade would then be understood as an action taken ‘in pursuance of [a State’s] obligations under the United Nations Charter for the maintenance of international peace and security’. Such reading may, however, be considered too wide given the scope and nature of the ‘obligations’ at stake.

A WTO Member could also invoke Article XXI (b)(ii) to restrict arms exports, even if perfectly legal, to another WTO Member if there are reasonable grounds to believe that those weapons will be used against the exporting Member’s territorial integrity or nationals either by the importing Member or even by non-State actors supported by the importing Member. In such a case, the notion of ‘essential security interests’, as contained in Article XXI, could be read in a wide and preventive way given the increasing importance of security considerations for Members. For example, the struggle against terrorist threats could lead to new restrictive measures.

The Programme of Action, which is not legally binding, calls for the development of new norms at the international level to strengthen the effort to combat illicit trade. In that respect, the interaction between WTO law and other treaties and instruments in the field of arms trade could raise some very interesting questions. Mutual supportiveness between arms trade conventions and instruments and WTO principles and rules should be sought. Given the importance of ensuring cooperation and compliance by all States to combat illicit trade of small arms, one may also envisage the resort to economic sanctions as a means to force a State to respect its commitments.

Although the debate over countermeasures is dealt with elsewhere in the Handbook, it is helpful to point out here that the Protocol Against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components, and Ammunition is silent on reactions to non-compliance. The question is then to what extent a State party can adopt economic measures when another State does

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92 For a discussion of a wider definition of security interests concerning arms trade, see G Bastid Burdeau, 'Le commerce des armes: de la sécurité à la défense de l’éthique et des droits de l’homme' 2007 Journal du droit international 134 (2) 413, at 418. In the same vein, on a similar issue of interpretation regarding whether or not a WTO Member imposing import restrictions for human rights considerations may justify its actions by invoking exceptions such as those for ‘security’, see G Marceau, 'WTO Dispute Settlement and Human Rights' 2002 European Journal of International Law 13(4) 753, at 789.

93 Programme of Action, above fn 88, at para 22 (a).

94 See chapter 15 of this Handbook.
not meet its obligations under this Protocol. The issue appears in slightly different terms when one looks at the recent Economic Community of West African States (ECOWAS) Convention on Small Arms and Light Weapons, Their Ammunition, and Other Related Materials that was signed by Member States during their 14 June 2006 Summit in Abuja. Article 27(2) of the Convention provides explicitly for the possibility of adopting collectively authorized sanctions.\footnote{Article 27, at para 2 reads as follows: ‘If the ECOWAS Mediation and Security Council considers that there is a breach of the obligations under this convention, it shall decide on the appropriate measures to be taken such as sanctions, inquiry, study or refer the matter to the ECOWAS Court of Justice.’} Under that provision, the competent organ could decide upon the adoption of sanctions of an economic nature that contradict WTO rules and that could be based on Article XXI (b)(ii).


V. Conclusions: The Need for a New Approach?

The UN is increasingly engaging in activities of an economic nature in the framework of its collective security mandate. There is therefore a need to think about the overall international legal framework for these activities in a more coherent manner. This approach should start with the recognition of the necessity to address the economic, as well as humanitarian, effects of sanctions.

Above all, while the yielding of both Article 103 UN Charter and Article XXI (c) GATT 1994 to the interests of peace and security is partly justified, it does not provide satisfying answers when it comes to the new economic role played by the UN. It is the authors’ view that these provisions do not exclude taking into account WTO law and principles of international trade law within the context of collective security activities of an economic nature. An approach that takes these principles into account would improve the long term efficiency of UN action and would advance the goal of achieving sustainable peace. It would provide a coherent framework to address economic challenges arising in post-conflict situations. If economic recovery is to be a pillar of peace, UN involvement needs to be based on legal principles to secure the proper functioning of post-conflict economies. It is critical in order to ensure that post-conflict...
transition and UN disengagement do not destabilize the economy, as was identified in the Report of the Panel on UN Peace Keeping Operations. This being said, careful attention should be paid to the specificities of each situation. Depending on the scale and the nature of the conflict as well as the local context, economic reconstruction may call for flexible and tailored solutions. The country-specific method at the heart of the Peacebuilding Commission’s work stems from this logic.

The increasing recognition of a more coordinated approach would help to go beyond the current logic of deference of WTO law towards UN law and encourage greater complementarity. This new approach is also relevant at the institutional level in terms of sharing of tasks and responsibilities. With the UN being increasingly involved in economic matters, there is a critical issue of coordination regarding the respective powers and competences of each organization involved. The existing institutional cooperation scheme between the WTO and the UN is governed by the *Arrangements for Effective Cooperation with other Intergovernmental Organizations – Relations Between the WTO and the UN* signed on 15 November 1995. The Chief Executive Board is composed of executive heads from various UN bodies, the WTO, and Bretton Woods institutions and meets twice a year under the chairmanship of the UN SG. It seeks to promote coherence both within the UN system and outside of it and serves as the main instrument to coordinate actions and policies. Such a forum could be used to further explore new approaches for the UN to take into account international economic law principles. On the other hand, the WTO as an institution should be more proactive in the promotion of international trade law principles and rules as a means to contribute to the stabilization of societies that have gone through major conflicts.

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