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International Economic Law and the Securitization of Policy Objectives: Risks of a Schmittean Exception

Geraldo VIDIGAL^{*} & Stephan W. SCHILL^{**}

1 INTO THE LIMELIGHT (AGAIN): NATIONAL SECURITY IN INTERNATIONAL ECONOMIC LAW

Over the past few years, the topic of national security has acquired a new-found centrality in international economic law debates. The narrative that prevailed in the 1990s and 2000s, that international economic law served to subject international economic relations to the rule of law and depoliticize economic disputes, allowing them to be settled in relative isolation from the vagaries of (geo)political struggles, increasingly gives way to the perception that economic interdependence could itself be a threat to autonomous decision-making by states. The concepts of ‘geoeconomics’,¹ ‘weaponized interdependence’,² and ‘strategic autonomy’,³ all reflect concerns that global economic integration might be affecting the very ability of states to remain the ultimate decision-makers within their territories. From this perspective, the consolidation of a global *lex economica*, which promotes ever greater economic integration and subjects national policy decisions to compulsory adjudication outside the control of states, can be perceived as contributing to this loss of political autonomy.

It is in this context that security exceptions have received increased attention in the jurisprudence of international courts and tribunals and in

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¹ Anthea Roberts, Henrique Choer Moraes & Victor Ferguson, *Toward a Geoeconomic Order in International Trade and Investment*, 22 J. Int’l Econ. L. 655 (2019).

² *The Uses and Abuses of Weaponized Interdependence* (Daniel W. Drezner, Henry Farrell & Abraham L. Newman eds, Brookings Institution 2021).

³ European Parliament Research Service, *On the Path to ‘Strategic Autonomy’: The EU in an Evolving Geopolitical Environment* (European Union 2020), [www.europarl.europa.eu/RegData/etudes/STUD/2020/652096/EPRS_STU\(2020\)652096_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2020/652096/EPRS_STU(2020)652096_EN.pdf) (accessed 13 Mar. 2021).

scholarship.⁴ Security exceptions are provisions that, with variations in title and wording, can be found in a large number of trade and investment agreements. Their object and purpose is the preservation of the ability of states to act in the protection of their security interests (usually ‘national security’ or ‘essential security’ interests).⁵ Article XXI of the General Agreement on Tariffs and Trade (GATT) is one of the prime examples for such an exception.⁶ Apart from specifically exempting from the treaty’s obligations measures that relate to trade in nuclear material, armament, and military equipment, GATT Article XXI also lays down a broader right for parties to take actions that the party invoking the exception ‘considers necessary’ to protect its essential security interests.

Beyond differences in wording, a fundamental divergence has emerged over the very function of security exceptions. International courts and tribunals asked to apply such exceptions have invariably treated them as components within a broader framework of rights and obligations. In their view, they are legal provisions that permit states to deviate from their regular treaty obligations in order to protect determinable interests, subject to the state showing a connection between the measures taken and the security interest invoked. Although in international economic agreements adjudicators do not have the power to prevent states from taking action (on grounds of national security or otherwise), adjudicators are available to verify, *ex post*, the connection between measures adopted and their professed objective. From the viewpoint of adjudicators, the primacy rests with the international rule of law: while exceptions permit states to promote national objectives, they also set legal limits for permissible action.

A number of states, however, have approached security exceptions, and the relationship between national security and international economic law, from a different vantage point: one that gives the exception primacy over the rule. In their view, the evocation of national security by a state displaces the otherwise applicable international legal framework, placing the measure taken on security

⁴ See e.g., J. Benton Heath, *The New National Security Challenge to the Economic Order*, 129 Yale L. J. 1020 (2019); Daria Boklan & Amrita Bahri, *The First WTO’s Ruling on National Security Exception: Balancing Interests or Opening Pandora’s Box?*, 19 World Trade Rev. 123 (2019); Tania Voon, *The Security Exception in WTO Law: Entering a New Era*, 113 AJIL Unbound 45 (2019); Geraldo Vidigal, *WTO Adjudication and the Security Exception: Something Old, Something New, Something Borrowed – Something Blue?*, 46 Legal Issues Econ. Integration 203 (2019); Caroline Henckels, *Permission to Act: The Legal Character of General and Security Exceptions in International Trade and Investment Law*, 69 Int’l & Comp. L. Q. 557 (2020); Kathleen Claussen, *Trade’s Security Exceptionalism*, 72 Stanford L. Rev. 1097 (2020); Harlan Grant Cohen, *Nations and Markets*, 23 J. Int’l Econ. L. 793 (2020); Mona Pinchis-Paulsen, *Trade Multilateralism and U.S. National Security: The Making of the GATT Security Exceptions*, 41 Mich. J. Int’l L. 109 (2020); Sebastián Mantilla Blanco & Alexander Pehl, *National Security Exceptions in International Trade and Investment Agreements – Justiciability and Standards of Review* (Springer 2020).

⁵ For an overview of different models of security exceptions in trade and investment agreements, see United Nations Conference on Trade and Development (UNCTAD), *The Protection of National Security in IIAs* (UNCTAD/DIAE/IA/2008/5).

⁶ General Agreement on Tariffs and Trade, Annex IA the Agreement Establishing the World Trade Organization, adopted 15 Apr. 1994, entered into force 1 Jan. 1995, 1867 U.N.T.S. 154.

grounds beyond both the reach of meaningful legal analysis and review by international courts and tribunals. This approach, which has found its way not only into state pleadings but also into more recent treaty texts, echoes Carl Schmitt's conception of sovereignty, under which the sovereign is empowered to suspend constitutional limitations and arrangements by declaring the existence of a state of exception.⁷ Associated with this approach is a 'securitization' of policy objectives, that is, a strategy of elevating certain policies to security objectives in order to seek to avoid limits on their pursuit imposed by international legal commitments.

In the following, we first zoom in on the two competing approaches to the relationship between national security and international economic law sketched out above: the rule-of-law approach adopted by international courts and tribunals (section 2) and the view expressed by some states of national security exceptions as Schmittean exceptions (section 3). We then turn to the risk that securitizing national interests raises under a Schmittean approach (section 4), before introducing the articles that form part of this Special Issue, which discuss different aspects of the securitization of policy objectives, assessing its utility and examining its limits (section 5).

2 TAMING SECURITY EXCEPTIONS: THE APPROACH OF INTERNATIONAL COURTS AND TRIBUNALS

Whenever presented with security exceptions, international courts and tribunals, including the International Court of Justice (ICJ),⁸ arbitral tribunals hearing disputes under international investment agreements (IIAs),⁹ and panels of the World Trade Organization (WTO)¹⁰ have interpreted these clauses as

⁷ See s. 3 *infra*.

⁸ *Military and Paramilitary Activities in and Against Nicaragua (Nicaragua v. United States)*, Judgment (Merits), ICJ Reports 1986, at 14, 116–117; *Oil Platforms (Iran v. United States)*, Judgment (Jurisdiction), ICJ Reports 1996, at 803, 810–811; *Certain Iranian Assets (Iran v. United States)*, Judgment (Preliminary Objections), ICJ Reports 2019, at 7, 24; *Alleged Violations of the 1955 Treaty (Iran v. United States)*, Judgment (Jurisdiction), 3 Feb. 2021, paras 108–112.

⁹ See *CMS Gas Transmission Co. v. Argentina*, ICSID Case No. ARB/01/8, Award (25 Apr. 2005), paras 353–377; *LG&E Energy Corp., LG&E Capital Corp., and LG&E International, Inc. v. Argentina*, ICSID Case No. ARB/02/1, Decision on Liability (3 Oct. 2006), paras 204–214; *Enron Corp. and Ponderosa Assets v. Argentina*, ICSID Case No. ARB/01/3, Award (22 May 2007), paras 322–342; *Sempra Energy International v. Argentina*, ICSID Case No. ARB/02/16, Award (18 Sept. 2007), paras 364–391; *Continental Casualty Co. v. Argentina*, ICSID Case No. ARB/03/9, Award (5 Sept. 2008), paras 182–188; *El Paso Energy Int'l Co. v. Argentina*, ICSID Case No. ARB/03/15, Award (31 Oct. 2011), paras 588–610; *Mobil Exploration and Development Argentina Inc. Suc. Argentina and Mobil Argentina S.A. v. Argentina*, ICSID Case No. ARB/04/16, Decision on Jurisdiction and Liability (10 Apr. 2013), paras 1037–1056; *CC/Devas (Mauritius) Ltd, Devas Employees Mauritius Private Ltd. and Telcom Devas Mauritius Ltd. v. India*, PCA Case No 2013–09, Award on Jurisdiction and Merits (25 July 2016), paras 218–220; *Deutsche Telekom AG v. India*, PCA Case No. 2014–10, Interim Award (13 Dec. 2017), paras 225–231.

¹⁰ Two WTO Panel Reports so far have addressed security exceptions: WTO Panel Report, *Russia – Traffic in Transit*, WT/512/R (adopted 26 Apr. 2019), paras 7.102 ff. and WTO Panel Report *Saudi Arabia – IP Rights*, WT/567/R (issued 16 June 2020; under appeal), para. 7.231.

regular elements of the international treaty frameworks in which they are included. For adjudicators, security exceptions constitute regular exceptions that allow states to deviate from their treaty obligations in order to protect certain interests, subject to conditions and limitations to ensure good faith use and prevent abuse.¹¹ If an exception is invoked in a dispute, adjudicators assess the exception's applicability, verify compliance with the conditions established for its use, and possibly consider claims of abuse.

Seeing security exceptions in this light, international adjudicators have so far unanimously found that measures justified under such exceptions remain justiciable. The party invoking the exception must demonstrate to the adjudicator that its actions, though otherwise incompatible with its treaty obligations, fall within the scope of the exception and meet any further requirements established in the treaty. At most, one could consider, with the *ad hoc* Committee in *CMS v. Argentina*, that a security exception establishes 'a threshold requirement: if it applies, the substantive obligations under the Treaty do not apply'.¹² The ICJ, however, has understood security exceptions (as usually worded) not as barring the applicability of the treaty's substantive provisions, but as 'affording the Parties a possible defence on the merits to be used should the occasion arise'.¹³ Dealing with security exceptions within the assessment of the merits of a dispute, and not as a bar to jurisdiction or admissibility, expresses an international rule-of-law approach to states' claims to be acting on grounds of national security.

To be sure, international courts and tribunals have conceded that their assessment of security exceptions must be coloured by the fluid character of the notion of (essential/national) 'security interests'. In *Military and Paramilitary Activities*, the ICJ found that 'the concept of essential security interests certainly extends beyond the concept of an armed attack, and has been subject to very broad interpretations in the past'.¹⁴ International courts and tribunals have also granted significant deference when determining what national interests qualify as security interests. For example, the Arbitral Tribunal in *CC/Devas v. India* reasoned that '[a]n arbitral tribunal may not sit in judgment on national security matters as on any other factual dispute arising between an investor and a State'.¹⁵ And the WTO panel in *Russia – Traffic in Transit* concluded that the 'specific interests that are considered directly relevant to the protection of a state from ... external or internal threats will depend on the particular

¹¹ On exceptions and defences under treaties more generally, see the contributions in *Exceptions in International Law* (Lorand Bartels & Federica Paddeu eds, Oxford University Press 2020).

¹² *CMS Gas Transmission Co. v. Argentina*, ICSID Case No. ARB/01/8, Decision on Annulment (25 Sept. 2007), para. 129 (contrasting the exception with the defence of necessity under general international law, 'which is only relevant once it has been decided that there has otherwise been a breach of those substantive obligations').

¹³ *Oil Platforms*, Judgment (Jurisdiction), *supra* n. 8, at 811.

¹⁴ *Military and Paramilitary Activities*, Judgment (Merits), *supra* n. 8, at 117.

¹⁵ *CC/Devas v. India*, Award on Jurisdiction and Merits, *supra* n. 9, para. 245.

situation and perceptions of the state', so that 'it is left, in general, to every Member to define what it considers to be its essential security interests'.¹⁶

This notwithstanding, in all three cases, just as in every other case in which security exceptions have been invoked before international courts and tribunals so far, the decision-making body has found that neither the applicability of the security exception nor its necessity could be determined entirely by the party invoking the exception. This has been the case even for clauses that contain self-judging elements, such as GATT Article XXI, which permits a party to take 'any action which it considers necessary for the protection of its essential security interests'.¹⁷ The Panel in *Russia – Traffic in Transit*, which for the first time adjudicated on the GATT's security exception, concluded that the wording employed did not exempt the WTO Member from establishing a connection between the justified measure and the security interests invoked. The Panel reasoned that the expression 'which it considers necessary' means that states may decide which measures, among the array of potential measures that address their security concerns, are 'necessary' to achieve its objective. However, the measure selected should still 'meet a minimum requirement of plausibility in relation to the proffered essential security interests'.¹⁸ The exception therefore would not exempt from trade obligations measures that are 'so remote from, or unrelated to, the [invoked] emergency that it is implausible that [the party] implemented the measures for the protection of its essential security interests arising out of that emergency'.¹⁹ Similarly, in each case involving an invocation of a security exception, the international court or tribunal in question assumed jurisdiction to entertain the underlying claims and held that it could determine whether the security exception applied.²⁰

Security exceptions, from this viewpoint, appear as integral elements in the overall balance of rights and obligations that states commit to when they enter into a treaty. Although the nature of the topic, as well as the occasional wording 'which it considers', provide states with a certain degree of discretion in acting within the bounds of security exceptions,²¹ the mere self-declaration by a state that a measure is 'security-related' does not suffice to make the dispute non-justiciable or exempt the

¹⁶ WTO Panel Report, *Russia – Traffic in Transit*, *supra* n. 10, para. 7.131.

¹⁷ GATT 1994, *supra* n. 6, Article XXI(b).

¹⁸ WTO Panel Report, *Russia – Traffic in Transit*, *supra* n. 10, para. 7.138.

¹⁹ *Ibid.*, para. 7.139. This reasoning was reproduced in WTO Panel Report, *Saudi Arabia – IP Rights*, *supra* n. 10, para. 7.231. See also *Certain Questions of Mutual Assistance in Criminal Matters (Djibouti v. France)*, Judgment, ICJ Reports 2008, at 177.

²⁰ See *supra* nn 8–10.

²¹ See further on the scrutiny of international courts and tribunals under self-judging clauses Stephan W. Schill & Robyn Briese, 'If the States Considers': Self-Judging Clauses in International Dispute Settlement, 13 Max Planck Y.B. United Nations L. 61 (2009).

measure from scrutiny. The WTO panel in *Russia – Traffic in Transit* put it particularly incisively by stating that ‘there is no basis for treating the invocation of [the GATT security exception] as an incantation that shields a challenged measure from all scrutiny’.²² Security exceptions, in other words, are not instruments for auto-interpretation; they are an element of the legal framework which international courts and tribunals, as agents of the international rule of law, are tasked with enforcing.

3 UNTAMING NATIONAL SECURITY: SECURITY EXCEPTIONS AS SCHMITTEAN STATES OF EXCEPTION

States regularly challenge the view of national security endorsed by international courts and tribunals. In international dispute settlement proceedings, states often reject the rule-of-law approach to security-related issues and question the ability of international courts and tribunals to assume jurisdiction to review a state’s invocation of a security exception. In *Russia – Traffic in Transit*, for example, Russia argued:

[T]he WTO is not in a position to determine what essential security interests of a Member are, what actions are necessary for protection of such essential security interests, disclosure of what information may be contrary to the essential security interests of a Member, what constitutes an emergency in international relations, and whether such emergency exists in a particular case.²³

Before the Arbitral Tribunal in *Deutsche Telekom v. India*, India stated:

[I]nternational tribunals should not second-guess national security determinations made by national authorities, as the latter are uniquely positioned to determine what constitutes a State’s essential security interests in any particular circumstance and what measures should be adopted to safeguard those interests.²⁴

As a third party in WTO disputes involving security exceptions, the United States proposed that there were ‘no legal criteria by which the issue of a Member’s consideration of its essential security interests can be judged’,²⁵ and that a WTO panel ‘should begin and end its analysis by taking note of a respondent’s invocation of a security exception’.²⁶ In at least some instances, therefore, states maintain that security exceptions should be viewed as a trump card rendering a dispute non-justiciable whenever preeminent national interests are declared to be at stake.

This approach likens reliance by states on security exceptions to the declaration by a sovereign of a state of exception under Carl Schmitt’s 1922 conceptualization of the relationship between sovereignty and constitutional law. Under Schmitt’s

²² WTO Panel Report, *Russia – Traffic in Transit*, *supra* n. 10, para. 7.100.

²³ *Ibid.*, para. 7.28.

²⁴ *Deutsche Telekom v. India*, Interim Award, *supra* n. 9, para. 234.

²⁵ WTO Panel Report, *Russia – Traffic in Transit*, *supra* n. 10, para. 7.52.

²⁶ WTO Panel Report, *Saudi Arabia – IP Rights*, *supra* n. 10, fn. 216.

approach, the very notion of sovereignty implies that, when push comes to shove, the sovereign is empowered to declare a state of exception and determine, without being constrained by the rule of law, what action the exception calls for. Within any legal system, Schmitt postulated, the sovereign would ‘stand[] outside the normally valid legal system’, being able to declare at any point an exceptional situation and ‘decide whether the constitution needs to be suspended in its entirety’.²⁷

In constitutional legal analysis, this view of sovereignty is nowadays widely rejected. While constitutions often provide for special regimes for emergencies, war, or other existential threats to the state and its population, usually no individual or institution alone has the prerogative of determining that the constitution can be suspended. By contrast, in the context of international law, the approach to security exceptions taken by some states, not only in pleadings but also in some recent treaties, resembles the Schmittian view of the relationship between sovereignty and the rule of law. For example, according to an explanatory footnote added to the renegotiated 2010 United States–Korea Free Trade Agreement, resort to the Agreement’s security exception is intended to be exempt from international scrutiny. It provides that ‘if a Party invokes [the security exception] in an arbitral proceeding ... the tribunal or panel hearing the matter shall find that the exception applies’.²⁸ To the same effect, the Comprehensive Economic Cooperation Agreement between India and Singapore provides that ‘any decision of the disputing Party taken on security considerations shall be non-justiciable in that it shall not be open to any arbitral tribunal to review the merits of any such decision’.²⁹ Under such clauses, it would appear to be exclusively up to the invoking state to determine (a) whether its essential security interests are at stake; and (b) what measures are apt to contribute to protect them. Thus, national security is given supremacy over all international legal commitments entered into in relation to the other state.

4 REGULAR PUBLIC INTERESTS, ESSENTIAL SECURITY INTERESTS, AND THE RISKS OF SECURITIZATION

It is not difficult to see why governments may consider such a right – to declare security exceptions to be applicable and thereby to eschew judicial review – as a

²⁷ Carl Schmitt, *Political Theology – Four Chapters on the Concept of Sovereignty*, 7 (University of Chicago Press 2005/1922). For the idea of a ‘state of exception’, see further Giorgio Agamben, *State of Exception* (University of Chicago Press 2005).

²⁸ Free Trade Agreement between the United States and the Republic of Korea concluded 3 December 2010, entered into force 15 March 2012, Art. 23.2(b), fn. 2, *Office of the United States Trade Representative*, <https://ustr.gov/trade-agreements/free-trade-agreements/korus-fta/final-text> (accessed 15 Mar. 2021).

²⁹ India–Singapore Comprehensive Economic Cooperation Agreement, signed 29 June 2005, entered into force 1 August 2005, Art. 6.12(4), www.enterprisesg.gov.sg/-/media/esg/files/non-financial-assistance/for-companies/free-trade-agreements/CECA_India/Legal_Text/Chapter6_Investment (accessed 15 Mar. 2021).

useful tool to safeguard their ability to protect their populations and territories from threats to vital national interests. States may deem the flexibility important in the face of security threats resulting from novel technological, social, and geopolitical developments, or from the appearance of actors that challenge traditional notions of interstate conflict. For instance, in a world in which non-state actors, acting entirely in cyberspace, may cause major disruptions and damage to vital infrastructure, particularly broad exceptions to justify state action in this domain may be desirable.³⁰

Even when in principle limited in scope, Schmittean security exceptions in international trade and investment agreements raise considerable risks for the authority of international economic law as a tool to submit economic relations to the rule of law. After all, Schmittean exceptions open the door to abuse, de facto making the legal framework states are agreeing to abide by into an optional set of guidelines that are dismissible by any future government at the stroke of a pen, merely by unilaterally declaring a security exception to apply. While cast as a supposedly narrow and issue-specific exception, such clauses risk undermining the binding nature and authority of the entire legal framework of which they form part.

The uncertainties start with the very concept of ‘essential security interest’ used in most security exceptions. Under a narrow reading, essential security may be understood to relate only to the survival of the state as a stable and autonomous political entity that is capable of independent decision-making and of protecting its citizens against military threats. Under a broader reading, ‘essential security’ may encompass the positive duty of states to preserve the life, health, and general well-being of their citizens, for example by offering public services, securing economic opportunities, and protecting the environment. An expanded view of security may justify measures taken to address, among others, ‘a grave danger to ... ecological preservation’³¹ or ‘major economic emergencies’.³² However, a Schmittean exception is different in nature from a broad exception: it would allow *any* aspect of *any* interest to be unilaterally elevated by a state to a non-justiciable security interest.³³ This would do away with any limit to what can be branded as an essential security interest.

A Schmittean approach risks leading to what one could call a ‘securitization’ of policy objectives. Securitization may consist in the elevation of legitimate policy objectives, already protected by regular exceptions, to ‘security interests’. This can be done either in order to enlarge the policy space for their pursuit or to demand for the

³⁰ See e.g. Regional Comprehensive Economic Partnership, adopted 15 Nov. 2020 (not in force), Art. 12.15(3) (prohibiting challenges to restrictions on data transfers, when imposed on security grounds).

³¹ *Gabčíkovo-Nagymaros Project (Hungary/Slovakia)*, Judgment, ICJ Reports 1997, at 7, 41.

³² *CMS Gas Transmission Co. v. Argentina*, Award, *supra* n. 9, para. 360.

³³ See Alessandra Arcuri, *International Economic Law and Disintegration: Beware the Schmittean Moment*, 23 J. Int'l Econ. L. 323 (2020).

securitized issue the visibility and importance in public discourse often afforded to classical, military security concerns. However, if all scrutiny can be avoided simply by labelling a measure as ‘security-related’, illegitimate objectives are as likely to be couched in the language of security as legitimate ones. Once securitized, they could be pursued without any regard for a state’s commitments under various treaties, on the basis of the sole declaration by the invoking state that the interests in question have now been elevated to (essential) security objectives.

Once taken to its logical conclusion, however, securitization may not enhance the protection of securitized interests but contribute to a dissolution of the very legal framework in which the security exception is contained, and which provides states with rights as well as obligations. The allure of securitizing one’s particularly cherished concerns, and thereby placing them outside the reach of legal norms and international adjudication, multiplied by the virtually infinite variety of objectives that can be rebranded as security objectives, could eventually void the legal framework governing inter-state relations generally, and international economic relations particularly, making discretionary political pressure the central instrument used to enforce state interests.

5 AUTONOMY UNDER THE LAW: PROTECTING AND PROMOTING SOCIETAL OBJECTIVES OUTSIDE OF SECURITY EXCEPTIONS

The question of how security exceptions, and international economic law more broadly, can address the elevation of societal objectives to security objectives was one of key debates we engaged in at the conference held in Amsterdam on 14 and 15 November 2019 on *International Economic Law and Security Interests*. The four articles that form part of this Special Issue on ‘International Economic Law and the Evolving Notion of Security’ derive from presentations made at this conference. They illustrate how various concerns and state interests that go beyond classical militaristic notions of (national) security are seen as falling under an expanded view of security – energy security (discussed by Anna Marhold), health security (discussed by Caroline Glöckle), or China’s notion of development-related security (discussed by Chieh Huang), as well as human rights abuses, cyberattacks, and threats to data protection that have given rise to targeted sanctions (discussed by Iryna Bogdanova) – and examine how the language of security may be mobilized to justify exempting the relevant policies from the regular rules and norms governing international economic relations.

One key insight these articles hold is that the securitization of policy objectives – in particular when coupled with a Schmittean approach to security exceptions – is often not helpful to allow legitimate societal interests to thrive within international economic law. In virtually all instances relating to newly emerging

security concerns, trade and investment agreements contain the legal tools necessary to permit states to pursue public interest objectives without requiring their securitization, and without incurring the connected risk of dissolving the overarching legal framework. As Caroline Glöckle shows, many measures taken by states in response to the public health challenges posed by the current pandemic, including those resulting in restrictions on trade, pass muster under WTO law, without the need to have recourse to the security exception in GATT Article XXI. Similarly, in discussing the concept of energy security, Anna Marhold demonstrates that WTO rules contain more appropriate exceptions than security exceptions within which to fit the debate regarding security of energy supply.

Other cases show that not everything a state considers as a 'security objective' automatically fits into a security exception. Chieh Huang discusses what could become a fundamental challenge to the existing framework, showing how China has expanded its internal understanding of national security to encompass a wide variety of broadly worded concerns. He also points out, however, that China continues to declare, in WTO proceedings, its support for a narrow interpretation of security exceptions under international economic law. Iryna Bogdanova, in discussing the adoption of 'smart sanctions' to achieve geopolitical goals, shows that even broadly worded security exceptions would not provide cover for any policy objective. Besides reflecting on the applicable legal framework, these two pieces describe how, left to their own devices, great powers may choose to interpret the breadth of their security interests expansively and act accordingly. A Schmittean exception, under which international adjudicators are required to accept the legality of any measure that is self-described by the invoking state as a security measure, would render the international legal framework entirely unable to set boundaries for state conduct. In the absence of legal boundaries, states seeking to challenge these measures would have only self-help as a response.

International economic law performs a key function in a globalized economy characterized by a territorial partition of political authority. It allows states to enter into binding commitments, setting out the conditions for transborder economic exchange, and establishes means for the settlement of economic disputes other than through political escalation. Well-defined exceptions, which allow the lawful pursuit of legitimate objectives, are an indispensable part of this legal architecture. By contrast, a Schmittean approach to security exceptions risks discrediting the entire legal framework in which exceptions are employed. By undermining adjudicators' capacity to separate legitimate from illegitimate resorts to exceptions, the Schmittean approach also dents their ability to contribute to fruitful cooperation and peaceful resolution of disputes. Too broad a security exception, in other words, may make international relations themselves less, rather than more secure.