Is More Trade Always Better? The WTO and Human Rights in Conflict Zones

Susan Ariel Aaronson & M. Rodwan Abouharb

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Scholars and policymakers have long believed that the interdependence encouraged by trade relations encourages trust and peaceful relations. In this article, we examine the role of the GATT/WTO (and the trade it supposedly encourages) in conflict zones. Although the WTO is built on the notion that trade stimulates peace, policymakers really do not know how more or less trade affects the human rights conditions of citizens living in zones of conflict. Policymakers often try to reduce trade in such zones in the hopes that sanctioning trade will reduce conflict. Yet, at other times, policymakers try to encourage trade in conflict zones. We show that policymakers have used several avenues under the WTO to discuss and address human rights in Member States experiencing conflict or in post-conflict recovery. We then focus on how policymakers can achieve greater coherence among trade and human rights policies in conflict zones.

1 IS MORE TRADE ALWAYS BETTER? THE WTO AND HUMAN RIGHTS IN CONFLICT ZONES

Sri Lanka and Myanmar/Burma are case-studies in the human rights dilemmas policymakers face in zones of conflict. Although the two nations are quite...
different, they also have much in common. Both states have experienced years of ethnic violence and civil war. The leaders of both countries long governed with impunity while thousands of their citizens suffered and died. Interestingly both Sri Lanka (the former Ceylon) and Myanmar/Burma (hereafter Burma) are founding members of both the United Nations and the international organization governing trade, the GATT (now the WTO). 3

During its long and brutal civil war (1983–2009), 4 the rights of many Sri Lankan citizens were undermined. 5 Nonetheless, trade continued apace. Other governments did not attempt to use trade policies to affect human rights in Sri Lanka until the conflict ended in 2009. Members of the WTO responded differently to civil war, ethnic violence, and human rights abuse in Burma. The US, Canada, and the EU as well as other nations maintained years of trade sanctions on Burma in the hopes of altering the military regime’s policies towards its citizens. 6

When countries such as Sri Lanka or Burma initiate or undergo conflict, policymakers from other governments must wrestle with difficult questions. Do they take steps to expand trade or do they use trade sanctions to punish or threaten governments which may act in an abusive manner? On one hand, rebel groups or oppressive regimes may use trade revenues to fund and perpetuate conflict. However, without the economic growth from trade, innocent civilians may be deprived of jobs, income, and opportunities (Deitelhoff and Dieter Wolf: 2010; De Luca: 2003). Moreover, after violence ends, trade can help policymakers restart the economy, expand opportunities, foster reconciliation, and promote respect for human rights.

But the international agreement and organization that governs trade, the GATT/WTO, does not provide its members with clear guidance about the role trade can and should play in zones of conflict. Under WTO rules, members of the GATT/WTO are not permitted to take trade actions to protect citizens of another Member State because such actions would violate WTO norms of equal treatment among nations. However, Member States may use trade sanctions against another

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4 Norway brokered a cease-fire in February 2002. However, violence continued until May 2009, when the government announced that it had finally defeated the remnants of the Tamil Tigers.


Member State if the UN Security Council authorizes such actions.\footnote{Article 39 of the Charter of the United Nations allows the Security Council to take measures such as sanctions only to ‘maintain or restore international peace and security’ following its determination that there exists a threat to or breach of the peace, or an act of aggression. Thus, sanctions may only be imposed upon a Government, ‘quasi-Government’ or other entity that is capable of being a threat to international peace or security or that is in fact threatening international peace and security. While armed groups within a country may pose a threat to international peace and security, a generally unarmed civilian population is, in all likelihood, unable to pose such a threat. Other States not presenting a threat to, or actually breaching, peace and security must not be affected by sanctions imposed on the violating State.} In the sixty-five year history of the GATT and its successor organization the WTO, the UN Security Council has rarely authorized such trade sanctions. Like its precursor, the GATT, the WTO, is built on a presumption that more trade is better for more people, including those living in conflict zones. Hence when countries imposed targeted sanctions on Burma, they did not act with the direct assent of the UN or the WTO. These nations argued that human rights abuses in Burma were so significant that they justified trade sanctions and an exception to GATT/WTO norms.\footnote{http://www.treasury.gov/resource-center/sanctions/Documents/burma.txt; http://burma.usembassy.gov/burma_sanctions.html; http://www.dfat.gov.au/geo/myanmar/; http://eeas.europa.eu/cfsp/sanctions/docs/measures_en.pdf (2, 50).}

During Sri Lanka’s years of war, trade and tourism were significantly reduced.\footnote{Sri Lanka is heavily dependent on tourism, commodity and garment trade. It has excellent harbours, high levels of literacy (91%) and life expectancy (75 years) and a low rate of infant mortality (14 per 1,000 live births), figures comparable to those of developed countries. Because of the importance of trade to the island nation, Sri Lanka joined the GATT in 1948 and was a founding member of its successor organization the WTO Australia Department of Foreign Affairs and Trade, Sri Lanka Country Brief, 8/2012, http://www.dfat.gov.au/geo/sri_lanka/sri_lanka_country_brief.html, K. Alan Kronstadt & Bruce Vaughn, CRS, Sri Lanka: Background and U.S. Relations, 4 Jun. 2009, http://assets.opencrs.com/rpts/RL31707_20090604.pdf.} Much of the nation’s infrastructure was destroyed and many of the country’s best and brightest left.\footnote{Asia Economic Institute, Economic Impacts of Sri Lanka’s Civil War, 2009, http://www.asiaecon.org/special_articles/read_sp/12556http://www.asiaecon.org/special_articles/read_sp/12556. The Asian Economic Institute estimated the war’s costs at some USD 200 bn.} To put it differently, Sri Lanka missed a significant amount of trade (Anderson: 2000). But Burma ‘missed’ even more trade because of the sanctions. After 2000, many countries banned exports in key commodities including gems, timber and other items that they believed were used to finance conflict; the US blocked all exports to Burma. According to the United Nations, the country remained isolated and traded much less than it should have, as indicated by its resource base and potential.\footnote{Witada Amakoonwattaka & Mia Mikic, Myanmar: Opening Up to its Trade and Foreign Direct Investment Potential, United Nations Economic and Social Commission for Asia and the Pacific, 31 Dec. 2012, http://www.unescap.org/tid/publication/swp112.pdf.}

Herein we examine how the members of the WTO use trade to affect human rights in Member States experiencing or recovering from conflict, focusing in...
particular on intrastate or internal conflict. Surprisingly, despite the important role of the WTO in trade, as well as the continuing force of the idea that trade promotes peace, neither trade, human rights, nor conflict scholars have focused on this question. We note that the WTO Secretariat has no independent authority; it operates at the behest of Member States. Under international law, Member States are obligated to protect, respect and remedy human rights. However, they may not be meeting that responsibility with their trade policies (Aaronson and Zimmerman: 2007).

As this is a complicated topic, we have kept our purview narrow. We do not attempt to identify the specific human rights that more or less trade might affect in conflict zones. Nor do we address whether WTO rules conflict with the international human rights system, or if the WTO is undermining its human rights obligations as an international organization when it promotes trade (or when Member States ban trade) in conflict zones. We note that other scholars have focused on these questions.

We begin with a brief review of the literature on trade and conflict. We then discuss how the WTO interacts with its members on the issue of human rights. We note that the WTO says little directly about human rights, but aims to enhance human welfare through expanded trade. Next, we examine the history and role of the WTO in dealing with both inter- and intra-state conflict. The general ethos of the WTO is that more trade is better – that trade will advance peace, and in so doing, human welfare. We show that policymakers have relied on several built-in mechanisms to discuss trade in countries experiencing human rights crises and conflict. But members of the WTO don’t really know how, when, or why trade can advance peaceful relations and human welfare. Finally, we develop conclusions and make some suggestions as to how members of the WTO can use trade to enhance human welfare in zones of conflict.

1.1 Literature review

Philosophers and theologians have long argued that trade can stimulate peace. Economic historian Douglas Irwin cites Petyt, who wrote in 1680 ‘nothing can so effectually and certainly secure the peace of the nation as the regulating of our

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12 We will also use quantitative research to examine if the WTO promotes peace in another study.
Philosopher Immanuel Kant suggested that ‘republican constitutions’ and the ‘commercial spirit’ of trade would lead to peace (O’Neal and Russet 1999, 1). Over time, the idea that trade facilitated peaceful relations among nations became a meme among scholars. But in recent years, some academics have begun to use empirical tools to tease out this relationship (Gartzke, Li and Boehmer: 2001; Mansfield and Pollins: 2001; O’Neal and Russett: 1997, 1999, 2001; Oneal, Russett and Berbaum: 2003; Oneal, Maoz and Russett: 1996). They have argued that trade agreements facilitate trust by enhancing political relations and creating expectations of future gains (Fernandez and Portes, 1998; Mansfield and Pevehouse, 2000). However, some scholars such as Green, Kim, and Yoon (2001) find no statistically significant relationship between international trade and conflict. In fact, Katherine Barbieri (1996, 2002), Barbieri and Schneider (1999), and Barbieri and Peters (2003) find that greater trade among states may enhance the likelihood of militarized dispute. Li and Reuveny offer a theory (2008) to explain how export and import flows in specific sectors influence decisions to initiate bilateral military conflict. Keshk, Pollins, and Reuveny (2004) and Kim & Rousseau (2005) find that conflict impedes trade, but trade does not deter conflict. Alternatively, Hegre, O’Neal and Russett (2009) control for size and distance between states, and find that trade does promote peace. They show that violence has high costs to trade, political stability, and commercial relations. Scholars have also attempted to understand why, how, and with which countries trade will occur. They note that trade theory asserts that nations possessing disparate factor endowments should have strong trade relations because each needs the goods and services that the other country produces. Yet economists have found that the bulk of trade occurs not between industrialized and developing countries or among developing countries, but between the advanced industrial states. Trade among developing/industrialized countries and between developing countries is ‘missing’ (Trefler: 1995). Industrialized countries have not only developed a wide range of goods and services for trade, but developed ‘relationship based’ or ‘rule based’ institutions and trust that facilitates trade (Bardhan: 2006). Scholars have also found that membership in a shared global network may facilitate trust among citizens of distant nations (Conley and Udry: 2010). Shared trust networks can work to sanction bad actors and behaviour. They


also allow partners to share information about new opportunities, about the reliability of financiers and to match producers and distributors. A system of rules such as a trade agreement may also facilitate the development of such trust. Developing countries that participate in trade agreements should be able to increase their trade.

Anderson (2000) argues that trade agreements provide a system of rules to ensure contracts are enforced and countries don’t default on their agreements. Other scholars see participation in a trade agreement as a means of formalizing commitments (Goldstein and Martin: 2000; and Sung and Chu: 2003) and spreading key norms of good governance and open markets (Sandholtz and Gray: 2003; Simmons, Dobbin and Garrett: 2008). Membership in the WTO signals good governance as more traders believe the country and its citizens can be trusted (Büthe and Milner 2008; Dobbins, Simmons and Garrett: 2007; Elkins, Guzman and Simmons: 2006; Mansfield and Pevehouse: 2008, 273). UNCTAD theorized that policymakers may see their commitments as 'investments....they are payments today in the expectation that they will produce rewards in the future' (Basu: 2008, 5). Moreover, when countries join, they are signalling foreign investors that the country will provide foreign and domestic actors with the information they need to assess market and political conditions (Barton et al.: 2006; Honda: 2006; Tang and Wei: 2006; World Bank: 2006).

Membership in the WTO may also improve governance as members over time gradually learn how to enforce the rules (Aaronson and Abouharb: 2013). With improved governance, governments may engender greater trust (Acemoglu, Johnson and Robinson: 2005; Ades and Di Tella: 1999).

Some scholars have found ways to connect the literature on trust and trade to trade and conflict. They have examined Preferential Trade Agreements (PTAs – which can include bilateral or regional trade agreements) and found that these agreements are more effective than trade alone at maintaining peace (Dembinski et al.: 2004; Mansfield, Pevehouse and Bearce: 1999). Hafner-Burton and Montgomery have nuanced this, arguing that the benefits of these PTAs are uneven and hence they can provide incentives for conflict as well as cooperation (2006, 2008, 2009, 2012). Other scholars have postulated that shared norms and trust can lower business transaction costs, accelerate economic growth, enhance government effectiveness, and reduce the likelihood of conflict among members of a society (Putnam: 1993; Plateau: 1994; Zak and Knack: 2001). In this view, trade can create a virtuous circle of good governance.

However, many of these scholars have examined trade, but not trade agreements specifically. We note that policymakers will respond differently to changes in trade versus changes and rules stemming from a specific trade agreement. We could not find any scholarship examining how the WTO, the
largest and most influential international trade agreement and institution, may affect conflict (or affect human rights in conflict zones). In this paper, we begin that analysis. Specifically, we examine the signals that WTO rules send to policymakers about trade and conflict. Then we examine the avenues through which Member States discuss trade, conflict, and human welfare.

1.2 THE WTO, HUMAN RIGHTS, AND CONFLICT

The GATT and its predecessor organization, the WTO, were built on the idea that trade can encourage peace. Although that idea has become an entrenched idea among Member States, we really don’t know how, and under what conditions, trade encouraged by membership in the WTO can advance peace. Moreover, we don’t know whether more or less trade is better to advance peace in particular circumstances.

During World War II, government officials in both the US and Great Britain worked to build institutions that could promote political and economic stability. These post-war planners devised an international institution, the International Trade Organization (ITO), to govern trade, employment, investment, and cartels, but it never came into existence. However, the General Agreement on Tariffs and Trade (GATT), the part of the ITO that governed commercial policy, tariffs, and quotas, went into force in 1948 (Aaronson: 1996; Irwin, Mavroidis and Sykes: 2008). In 1993, GATT Member States created a new institution, the WTO, which went into effect in 1995.  

The GATT and WTO do not have a direct human rights mission; but the postwar planners recognized that expanded trade could have benefits for human welfare. These officials thought that by reducing barriers to trade, the GATT/WTO would increase economic growth and employment.  

17 In this article, we focus on GATT 1994, which delineates the basic norms and obligations of the world trading system General Agreement on Tariffs and Trade 1994, http://www.wto.org/english/docs_e/legal_e/06-gatt.pdf.

18 The Preamble for the GATT states, 'Recognizing that their relations in the field of trade and economic endeavor should be conducted with a view to raising standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand, developing the full use of the resources of the world and expanding the production and exchange of goods,' http://find.galegroup.com/gic/infomark.do?contentSet=EBKS&docType=EBKS,Article &idigest=r726fd31d9036c1ed2d1f3a050066c2&type=retrieve&tabID=T0011&prodId=GIC&docId=CX344760046&userGroupName=stbtrial&version=1.0&searchType=BasicSearchForm&source=gale.

The Preamble for the WTO states, the ‘Parties to this Agreement…Recognizing that their relations in the field of trade and economic endeavor should be conducted with a view to raising standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand, and expanding the production of and trade in goods and services, while allowing for the optimal use of the world’s resources in accordance with the objective of sustainable development.’ http://www.wto.org/english/res_e/booksp_e/analytic_index_e/wto_agree_01_e.htm.
GATT nor the WTO mentions human rights; and neither organization has any human rights criteria for membership. Nor is there a democracy clause; authoritarian states have become members (Aaronson: 2007). But the WTO Secretariat is increasingly sensitive to human rights. In 2004, the Consultative Board to the WTO (an advisory board trying to help the WTO respond to new challenges) argued that the WTO does not threaten human rights. The Board stressed, ‘the case for freeing trade is made…in terms of enhancing human welfare’. Trade is a means to achieving that end, ‘but not an end in itself’. More recently, the Director General of the WTO has given speeches saying trade and human rights go ‘hand in hand’. But his arguments focused on the spill-over effects of trade and not the direct effects of WTO rules. He noted that the WTO system ‘.. contained protectionist pressures during the crisis helps shelter poorer populations. So, in a way, trade can be a transmission belt between human rights principles and practice.’

The GATT/WTO also never mentions conflict or how conflict can make it harder for states to enhance human welfare. In fact, the GATT/WTO does not govern trade in arms.

Nonetheless, the WTO does have direct and indirect effects on human rights conditions. The GATT/WTO’s rules constrain the behaviour of governments that want to use trade policy to advance human rights in zones of conflict. The GATT and the WTO are built on three key principles. First, Member States must automatically extend the best trade conditions granted to goods and services of any one member to the goods and services of every other nation that belongs to the WTO (the most favoured nation principle). So unless the Member State is willing to rely on an exception (or the members of the UN authorize trade sanctions), WTO member A can’t use a trade ban to punish WTO member B that is abusing human rights during conflict. And should member A use such an exception, it might be challenged in a trade dispute by member B. Second, Member States must treat products of foreign firms in the same way they treat local firms (the national treatment principle.). Finally, policymakers cannot discriminate between products originating in different countries, nor between imported goods and like domestically produced goods (like-product). Thus, the

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21 As of March 2013, the members of the UN are negotiating an Arms Trade Treaty, https://www.un.org/disarmament/convarms/ArmsTradeTreaty/. 
US or any other country can’t ban a product from Sri Lanka because it was made in poor human rights conditions or because its trade funded conflict. However, the members of the WTO can implement trade sanctions against non-Member States. The bulk of the world’s countries, some 159 nations, are now members of the WTO. But many of the world’s most volatile and conflict-ridden countries including Syria, Afghanistan, and Iraq are not members.

2 HOW MIGHT THE GATT/WTO PROMOTE PEACE BOTH WITHIN AND AMONG NATIONS?

WTO officials frequently claim the WTO promotes peace both directly through trade and indirectly through improved governance. The arguments sound logical, but they are not rooted in evidence. Governments that cooperate to resolve trade conflicts may or may not be able to resolve political or security conflicts, whether internal or external.

For example, in 2003, the WTO argued that the first benefit of the world trading system is to keep the peace. The Secretariat noted:

Sales people are usually reluctant to fight their customers. In other words, if trade flows smoothly and both sides enjoy a healthy commercial relationship, political conflict is less
likely….What’s more, smoothly-flowing trade also helps people all over the world become better off. People who are more prosperous and contented are also less likely to fight. But that is not all. The GATT/WTO system is an important confidence-builder. The trade wars in the 1930s are proof of how protectionism can easily plunge countries into a situation where no one wins and everyone loses.\(^\text{23}\)

The WTO Secretariat also claims that peace is a spillover effect of membership in the WTO. For example, in a 2008 brochure explaining the benefits of the WTO, the Secretariat argued that:

history is littered with examples of trade disputes turning into war….the system helps to keep the peace….Peace is partly an outcome of two of the most fundamental principles of the trading system: helping trade to flow smoothly, and providing countries with a constructive and fair outlet for dealing with disputes over trade issues. It is also an outcome of the international confidence and cooperation that the system creates and reinforces.\(^\text{24}\)

In a 2012 brochure, the WTO Secretariat wrote, ‘When the world economy is in turmoil, the multilateral trading system can contribute to stability. Some would argue that this can even contribute to international peace.’\(^\text{25}\)

The WTO Secretariat is essentially arguing that trust among nations created by this system acts as the social capital that enables peace. ‘When governments believe that others will keep their trade barriers within agreed limits, they will do the same. They will be in a much better frame of mind to cooperate with each other.’\(^\text{26}\)

In short, Member States policymakers must work together to find consensus on addressing and reducing barriers to trade. In so doing, they learn to trust and to resolve differences peacefully.

Finally, WTO leaders claim that the WTO is directly helping Member States reduce conflict. In 2013, Pascal Lamy (the Director General) noted that:

trade promotes peace, by binding nations together in ties of mutual interest and dependence….Conflicts are about much more than economics, of course. Nevertheless, it is clear that India-Pakistan relations will be quite different when a vibrant trading relationship creates constituencies for peace on either side of the border. Indian and Pakistani policymakers have recognized this, and have set targets for opening and expanding trade. Their leadership deserves praise. A similar case could be made for the


Israelis and the Palestinians….To put it bluntly: it is important for people to have a stake in something other than wanting to kill each other.27

Policymakers’ belief that trade can mitigate conflict has not been born out by WTO history. Members have gone to war against other Member States (as example Argentina and Great Britain). Member states have also experienced internal conflict; Colombia, Sri Lanka, and Burma are prominent examples. Trade diplomats from Member States do not have clear evidence that trade or WTO stimulated trade reduces conflict or that such trade consistently enhances human welfare in conflict zones. Nonetheless, like WTO Secretariat officials, WTO Member States make the case that membership in the WTO can promote peaceful relations among and within states. We see these arguments in the day-to-day workings of the WTO.

3 AVENUES WHERE MEMBER STATES DISCUSS TRADE AND CONFLICT

Member states regularly discuss conflict and post-conflict recovery in the day-to-day workings of the WTO.28 Some trade diplomats use these discussions to remind other Member States of their difficulties recovering from conflict. For example, at the 2007 WTO public forum, the foreign minister of Liberia H.E. MS. Olubanke King-Akerele wanted her fellow trade ministers to understand that trade alone cannot encourage peace if all countries in her region did not benefit. ‘Increased trade has an equally important role to play in solidifying peace in post-conflict situations….All the efforts at peace building in Liberia will mean nothing, ladies and gentlemen, if it doesn’t take place within the regional context of the Mano River Union Basin….We have the same people and instability in Guinea, or Côte d’Ivoire, flowing right into Liberia and Sierra Leone. We may have achieved the democratic process in Sierra Leone and Liberia but if we have instability on the border region we are going nowhere.’ She concluded by saying:

to those of us from conflict countries like mine, trade and export promotion facilitates the transformation of the lives of our people, and is critical to sustain our still fragile peace, and this again, as I said, within a regional context.29


Moreover, post-conflict countries have tried to remind their counterparts that they want the current trade negotiations—the Doha Round of trade talks—to truly focus on their needs. And what they need is greater market access. As Sierra Leone’s trade minister stressed, ‘Whilst Sierra Leone has made tremendous political and macroeconomic progress in less than two years following the end of the war, the country…faces peculiarly serious trade-related post-conflict constraints of reconstructing the devastated infrastructure and building human and other supply capacity.’ He then said while some countries are offering capacity building, what the country really needed is market access for its agricultural goods. But his plea seemed to fall on deaf ears. Although some WTO Member States provide capacity building funds and training to developing country members, many of the same countries don’t acknowledge the relationship between full market access for countries such as Sierra Leone and post-conflict recovery. Although rich countries say trade can promote peace, they are not really helping nations achieve market access by reducing barriers to trade.

Meanwhile, although they are doing little to actually help countries in or recovering from conflict, WTO officials frequently mention how the organization and its rules promote peace and prevent conflict. In 2001, after Moldova successfully concluded its negotiations to accede, then WTO Director General Michael Moore noted, ‘28 countries are queuing up to join the WTO and there is a good reason for this’, said Mr Moore. ‘Membership of the WTO promotes growth and development, peace and prosperity.’ The DG was essentially continuing the argument that simply joining the WTO promotes peace.

Why would these officials blather on with these claims? They seemed to truly believe that trade promotes an economic stake in peaceful relations among nations.

3.1 Accessions

Current WTO Member States use the accession process to improve governance in the states that seek to join the WTO (Aaronson and Abouharb: 2013) Working parties comprised of other WTO Member States closely monitor potential members, and make sure these nations meet their commitments.

31 http://www.wto.org/english/tratop_e/devel_e/build_tr_capa_e.htm; and www.wto.org/english/tratop_e/devel_e/teccop_e/financing_trta_e.htm.
Of the 23 states seeking to accede to the WTO as of March 2013, some seventeen countries are currently experiencing or recovering from conflict.\textsuperscript{33} These nations are required to show existing WTO members that they follow the rule of law, are transparent, and have clear and fair processes for trade policymaking. Often these countries must make major changes to their laws and governance processes (Aaronson and Abouharb: 2011; Mansfield et al.: 2002).

Countries that are recovering from conflict use the accession process to ask fellow Member States for their help. As example, Iraqi Trade Minister Mohammed Mustafa Al-Jibouri noted, ‘The new Iraq looks with great optimism at achieving political stability, economic prosperity and social development…we believe that our reintegration into the world trading system is an essential element to fulfil those aims.’\textsuperscript{34} And trade diplomats from other Member States say they are receptive to the needs of these states. During the deliberations over the steps that Afghanistan must take to join the WTO, The Working Party Chair, Ambassador Boudewijn J. Van Eenennaam (Netherlands) said that trade cooperation can enhance peace and security. He stated that Afghanistan faced particular challenges as a landlocked least-developed country rebuilding itself after decades of conflict and added that it was essential to take full account of these factors in the negotiations.\textsuperscript{35} However, we could find no direct evidence that Member States gave additional concessions because a Member State was in conflict or was recovering from conflict.

3.2 Non-application

GATT’s central principle is non-discrimination. Nonetheless, the members Under Article XXXV (Non-application of the Agreement), members are allowed a one-time exception with respect to their GATT obligations vis-à-vis a new member. If a new member and an existing member have not entered into tariff negotiations and if the existing member doesn’t want to give its consent, GATT obligations do not apply between those two members. Non-application could be a powerful tool; but we could find no evidence that any member of the GATT/WTO had invoked non-application in response to conflict. Morocco and


Tunisia maintain non-application of the WTO to Israel, but this conflict doesn’t fit traditional intra-state conflict models, as both Israeli and Palestinians claim much of the same land. The US invoked non-application at the behest of Congress to protest the Communist coup in 1951. However, this suspension was not done through Article XXXV, non-application, but through a Declaration on ‘Suspension of Obligations between Czechoslovakia and the United States Under the Agreement.’

3.3 Trade policy reviews

Member states monitor each other’s performance during trade policy reviews. If a WTO member does not adhere to their accession commitments and WTO norms, a Member State or states may use the trade policy review process to criticize that behaviour and they may even challenge its practices in a trade dispute. These reviews covered a wide range of trade-related policies. Member states are closely monitored for their governance practices and the implications of those practices for trade (the trade spill-overs.) Some members (in particular the US and the EU) also use the trade policy reviews to praise countries that have made governance progress and to name and shame countries that continue to have problems. But trade policy reviews cannot force nations to live up to their accession or WTO agreement commitments. Hence while the trade policy review process is useful as a means of ‘outing’ bad or inadequate adherence to WTO rules, it cannot stop such behaviour (Aaronson and Abouharb: 2011).

Not surprisingly, WTO Member States use these reviews to discuss how conflict can affect both trade and governance. For example, during Angola’s review, other WTO members acknowledged how hard it is for conflict-afflicted states such as Angola to recover from conflict. But they also made clear that it did not absolve that country’s leaders of their WTO obligations.

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38 Some members of the WTO have brought human rights concerns into trade disputes. For example, in the Brazilian tire case, Brazil became one of the first countries to argue that a trade ban is ‘necessary’ to protect the life and health of its people. It also argued that it had no reasonable alternative measure to such a ban to protect the right to health. See first written submission of Brazil, 8 Jun. 2006, http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds332_e.htm. Another case some see as protecting human rights (as well as the US gambling market) is Antigua US Gambling, http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds285_e.htm.
the members offered no concessions or plan to help. However, during Nigeria’s trade policy review, no other Member State mentioned that country’s internal conflicts.

Sri Lanka provides an interesting example of how WTO members discuss human rights in post-conflict zones. During Sri Lanka’s review, other Member States danced around continuing ethnic strife in Sri Lanka. They lauded the country for its attempts to post-conflict reconciliation. But the representative of Sri Lanka in fact protested that ‘the EU has withdrawn its GSP+ benefits’ for non-trade (human rights) reasons. ‘It would appear that these schemes are being utilized to achieve foreign policy objectives which are not consistent with WTO requirements.’ The EU responded by noting ‘The GSP+ scheme…aims at encouraging developing countries to comply with international standards relating to human and labour rights…It thus serves as an incentive.’ The EU representative then noted that if a country did not effectively implement human rights law the benefit would be withdrawn. The EU made its position clear. ‘Trade and investment can only reach their full potential in a conducive environment. This is where economic progress needs to be complemented by progress in areas such as the rule of law, individual freedoms and security.’ Sri Lanka was not making progress in these areas.

Trade diplomats were not as direct when they met to discuss the context for trade in Zimbabwe, a country with significant political conflict and human rights abuse. The WTO secretariat wrote:

Zimbabwe’s Constitution guarantees legal protection for all investors…It prohibits expropriation of private property without compensation. However, events in the last decade, whereby private commercial land has been seized without compensation would appear to indicate that the authorities have not always complied with the letter and spirit of the Constitution….A fractious socio-political environment, combined with a controversial land reform and measures in favour of indigenization, has triggered the withdrawal of support from the international community and cast a shadow over property rights.

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43 WTO, Trade Policy Review, Sri Lanka, 2 Dec. 2019, WT/TPR/M/237. For mention of the end of the conflict as an opportunity see Remarks by the Chairperson, 3, # 7, #9; and discussant, 8–9 #27, 31, Australia, 15, #64, and India, 13 #49.
44 WT/TPR/M/237. For complaint about human rights misuses of GSP, 6, # 18.
45 WT/TPR/M/237, 23–24, #122–123, 127.
The Secretariat noted that Zimbabwe’s ‘problems were exacerbated in the run-up to the last elections in 2008, which were also characterized by violence, and an atmosphere of political intolerance’. The WTO mentions the land tenure system as a source of conflict three times. The Secretariat concluded that this internal conflict made economic growth ‘uncertain’. But the members did not discuss how trade might help Zimbabwe make respect for specific human rights a priority. Nor did they discuss their own human rights responsibilities in relation to Zimbabwe, conflict and trade.

Thus, to some extent concerns about the relationship between trade, WTO membership and human rights in conflict zones are being discussed during trade policy reviews. Nonetheless, WTO members appear to have put little thought into developing strategies (such as capacity building) that might be helpful to facilitate trade and advance human rights in conflict zones or rules to guide business. Nor have they devised strategies to use the trade policy review process as a means of discussing the trade/conflict/recovery relationship.

3.4 Waivers

Waivers are temporary exceptions to WTO rules. WTO members may waive an obligation imposed on a member, provided that any such decision is approved by three-quarters of the other members. These waivers were supposed to be limited to exceptional circumstances and in fact such waivers are rare.

The members of the WTO have never used a waiver to assist a country that can’t meet its WTO obligations due to conflict or post-conflict recovery. However, WTO Members have used a waiver to address the problem of trade in diamonds that may stimulate conflict. The WTO acted at the UN’s behest. According to the UN, conflict diamonds ‘originate from areas controlled by forces or factions opposed to legitimate and internationally recognized governments, and are used to fund military action in opposition to those governments or in contravention of the decisions of the Security Council. WTO Member States called for and eventually agreed upon a waiver under the WTO for such a ban. Under the waiver, nations are allowed to trade only those diamonds certified

47 WT/TPR/S/252/ 66, #19; also see 64, #10, 11, and n. 2 and #15, 65.
49 Zimbabwe is a good example, WT/TPR/S/252, 117–121.
under the Kimberley Process Certification Scheme. Members applying for the waiver had to commit to ensure that the measures taken were consistent with international trade rules. The Kimberley Process Certification Scheme is a way for consumers and producers to ensure that they do not trade diamonds that indirectly fund wars in Sierra Leone or the Democratic Republic of the Congo. Rough diamonds must be shipped in sealed containers and exported with a Kimberley Process Certificate that certifies that the diamonds are conflict free. Seventy-five countries are involved in the Kimberley Process; but not all trade diamonds. This was the first time that the members of the WTO approved a waiver of trade obligations based on a human rights rationale. Thus, the Kimberley waiver sets an important precedent. Canadian Trade Minister Pierre Pettigrew stated, ‘This decision clearly shows that the WTO can be flexible when it comes to human security and development.’

However, many NGOs such as Global Witness and Oxfam among others are not happy with the Kimberley process. They argue that attempts at industry self-regulation coupled with the trade waiver can’t guarantee consumers that the diamonds they purchase are free from the taint of conflict and human rights abuse. Representatives of these NGOs believe the Kimberley Process and trade waiver should also address how diamonds enrich authoritarian regimes and fuel internal conflict. Nor has it addressed trade leaks and noncompliance in countries such as Venezuela, Guinea, Lebanon and Zimbabwe.

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WTO members have also established a waiver for industrialized countries that wanted to provide lower tariffs for developing country exports. The waiver is called the Generalized System of Preferences or GSP. After that waiver expired in 1981, the contracting parties (members) of the GATT adopted a declaration permanently extending the waiver. Many countries that provide GSP see it as a tool to improve governance and some use that lever to advance specific human rights. But GSP granting nations do not use this waiver to provide additional trade benefits for conflict-afflicted or conflict recovering states per se.

For example, the members of the UN did not call for trade sanctions during the civil war in Sri Lanka. However, since the end of the war, both the US and the EU have used trade policies (specifically preferential programs, also known as GSP) to improve human rights in Sri Lankan exports. In 2009, the Bush Administration temporarily suspended Sri Lanka’s benefits under the GSP due to allegations about labour conditions. Eventually, the Sri Lankan government was able to show that labour rights had improved. Meanwhile, in July 2010 the EU withdrew Sri Lanka’s eligibility for GSP plus, (where all goods but arms receive preferential access.) The country still receives some preferential benefits under the EU’s existing scheme. The EU said the Sri Lankan government failed to make a written promise of progress on torture, children’s rights and civil and political

As of March 2013, The EU has not reinstated Sri Lanka’s preferential access.  

As these examples illuminate, trade waivers may not be the most effective tools to use at the intersection of conflict, trade and human rights. Trade waivers are temporary measures and human rights problems generally cannot be solved on a short-term basis. Moreover, these waivers provide little guidance to trade policymakers on how to reconcile trade, human rights and conflict reduction objectives (Pauwelyn: 2003; Schefer: 2007). Finally, these waivers do not fully address the causes of conflict or human rights abuse. Perhaps the best evidence that this Kimberley Process waiver is not widely seen as a success is that neither states nor civil society groups are calling for a similar waiver for conflict minerals. In fact, a growing number of governments are relying on non-trade strategies (such as new corporate governance rules) or the WTO’s exceptions.

3.5 The exceptions Articles XX and XXI

Policymakers have long recognized that at times they must breach their trade obligations to achieve humanitarian objectives. As example, in the early nineteenth century policymakers used trade bans to reduce the global trade in slaves. In 1940, the US banned trade in airplanes and aviation gasoline destined for any country engaged in bombing attacks on civilians (Charnovitz: 1998, 12-13). The architects of the GATT acknowledged this need in its exceptions. Member states rely on these exceptions to justify their derogations of trade rules in the interest of protecting individuals at home and abroad from human rights abuse in zones of conflict. To put it differently, policymakers use the exceptions to reduce or ban trade in the interest of promoting peace.

Under Article XX, nations can restrict trade when necessary to ‘protect human, animal, or plant life or health’ or to conserve exhaustible natural resources. Governments may also restrict imports relating to the products of prison labour. Although it does not refer explicitly to human rights, some scholars attest that policymakers can use the public morals clause of Article XX to justify trade bans in the interest of promoting human rights (Charnovitz: 1998; Howse: 2002; WTO: 2001). Others say that because Article XX bans trade in prison labour,
policymakers could use it to ban trade in goods made with slave, trafficked, or abused workers (Stirling: 1996).

The national security exception, Article XXI, states that WTO rules should not prevent nations from protecting their own security. Members are not permitted to take trade action to protect another member’s security or to protect the citizens of another member per se, unless the United Nations Security Council authorizes trade sanctions (for example in the case of South Africa). However, because the UN and the WTO have rarely collaborated in the interest of promoting human rights in conflict zones, at times the US, EU, and others have adopted trade sanctions, which are often limited and targeted at particular sectors, individuals, or areas.

Under GATT/WTO rules, these countries are free to decide how their security is at stake when another nation violates human rights or is embroiled in conflict. A sanctioning Member need not give any prior notice of impending or imposed national security sanctions, justify the sanctions to the WTO or obtain the prior approval of other members. However it is in that member’s interest to have good trade relations with its fellow members and generally members will try to inform their colleagues if they are planning to adopt Article XXI sanctions (Bhala: 1999).

As of November 2011, both the US and the EU have adopted trade sanctions to advance human rights in Belarus, Burma, Iran, North Korea, Somalia, South Sudan, Syria and Zimbabwe (among other countries). Many of these states are experiencing or recovering from conflict. However, with the exception of Burma and Zimbabwe, these countries are not WTO members. Hence, they cannot use the WTO as a venue to challenge the trade sanctions. Burma and Zimbabwe could have challenged trade sanctions as a member of the WTO, but

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66 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; or (c) to prevent any contracting party from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security. GATT Analytical Index, Art. XXI, http://www.wto.org/english/res_e/booksp_e/analytic_index_e/gatt1994_07_e.htm#article20.

67 See, supra n. 7.

neither has. After some eleven years of sanctions, Burma began to liberalize both its economy and its political system in 2011. The US, EU, Australia, Canada and other nations decided to gradually reduce their sanctions on the country and encourage trade and investment.  

When nations such as the US employ trade sanctions, they don’t know if less or more trade can prod policymakers to respect specific human rights in conflict zones, such as protecting individuals from genocide or rape or establishing free speech rights (Stirling: 1996). When officials use sanctions or the incentive of more trade, they are focusing on altering policymaker behaviour (the supply side of human rights) and they presume that policymakers in repressive countries are sensitive to changes in supply of traded goods. But policymakers should also think about how policy can bolster the local inherent demand for human rights (Aaronson: 2011). Moreover, they must weigh the impact of sanctions (less trade) on human rights conditions of the citizens in affected states.

While there are many studies showing sanctions are ineffective (Hufbauer et al.: 1990; Petrescu: 2010; UNICEF: 2011), few of these studies have examined how trade sanctions (a smaller supply of goods and services) affects particular human rights conditions or specific human rights in conflict zones. Petrescu (2010) did a cross country survey of sanctions and found children’s health and mortality can be adversely affected as a result of inadequate sanitation, insufficient supply of medicines and vaccines, and poor nutrition. The UNDP reported that sanctions negatively impacted upon Burundi’s poor. Although humanitarian goods were exempted from the sanctions, they were held up for weeks before being allowed to enter Burundi (UNICEF: 2011, 1). Michael Ewing-Chow examined how US trade sanctions affected Burmese civilians. He found the military government was able to replace lost trade with the US with expanded trade from India and China. Moreover, because the government controlled the trade, the benefits from this increased trade with India and China accrued to corrupt officials in the regime and not to the people (Ewing-Chow 2007: 177–179).

Thus, the members of the WTO have become more sensitive to human rights conditions in conflict zones. They frequently discuss these issues in the day-to-day workings of the WTO. However, the WTO provides little guidance to policymakers and market actors regarding how to behave in conflict zones. Conflict-afflicted states ask for more trade and more capacity building assistance;

they argue that more trade is better for human rights. But although Member States agree with the notion that more trade promotes peace, we found little evidence that members are taking steps to expand trade or enhance capacity in conflict zones. However, some Member States are using sanctions to influence human rights conditions in conflict-ridden states. With sanctions, policymakers are essentially saying less trade is better for human rights. However, there is little evidence that sanctions actually improve specific human rights outcomes for citizens in conflict zones (UNICEF: 2011).

3.6 Recent Developments in Conflict and Human Rights

In recent years, much of the effort to use trade to advance human rights in conflict zones has occurred outside the WTO. Policymakers have developed human rights principles for business operating in conflict zones; and developed special initiatives to influence human rights conditions in conflict zones. However, these initiatives have trade effects and should be coordinated with the WTO Secretariat.

At the behest of UN Secretary General Kofi Annan, John Ruggie, the UN special Representative on Business and Human Rights developed the Guiding Principles for Business on Human Rights. His work was endorsed by the UN Human Rights Council in 2011.70 The Guiding Principles stress that states must do more to ensure that their firms (incorporated within their borders or those that they host) do not undermine human rights at home and abroad. States should take steps to educate their firms regarding their human rights responsibilities and hold these firms accountable for these practices. In this regard, states should examine how their public policies affect the state duty to respect, protect and remedy human rights violations. Hence, they should examine the effect of trade agreements upon human rights as well as the signals these agreements send to market actors. However, we could find no evidence that the members of the WTO have acknowledged Ruggie’s work on the Guiding Principles.

In 2011, the members of the OECD and Argentina, Brazil, Egypt, Latvia, Lithuania, Morocco, Peru, and Romania approved a ‘Recommendation on Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas.’71 This 2011 recommendation was developed to provide guidance to firms that rely on conflict minerals – minerals

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71 OECD due diligence guidance for responsible supply chains of minerals from conflict-affected and high-risk areas, OECD, http://www.oecd.org/document/36/0,3343,en_2649_34889_44307940_1_1_1_34529562,00.html.
mined in situations of conflict and human rights abuse. The Recommendation discusses how to identify and reduce use of these conflict minerals to ensure that mineral trade does not encourage human rights abuse or further conflict. But it will all be ‘pretty words’, unless the trade regime proves supportive of such efforts, as it has with conflict diamonds (see below).

In recent years, policymakers have tried to develop alternative strategies designed to maintain trade as well as to ensure that business activities do not finance or encourage conflict, especially in resource rich areas. The Dodd/Frank Wall Street Reform and Consumer Protection Act of 2010 may be a good example of this approach; it has sections related to trade in conflict minerals.72 Conflict minerals – tin, tantalum, tungsten, and gold from the Great Lakes Region of Africa have been traded by armed groups and military units in the Congo. These armed market actors use the funds from such trade to fund violence and instability in the region.73

With this legislation, Congress aimed to prod the US Government to develop a strategy to address the linkages between human rights abuses, armed groups, mining of conflict minerals and commercial products.74 The legislation requires all firms publicly traded on US exchanges (hence US and foreign firms) to report to their shareholders the steps they and their suppliers are taking to ensure that revenues from trade in conflict minerals (tantalum, tin, tungsten and gold) don’t finance conflict in the Democratic Republic of the Congo (DRC)75 and neighbouring states.76 It does not mandate any behaviour except reporting. The EU executive is currently mulling similar regulation with a broader scope, including not just conflict minerals but sectors such as forestry or consumer goods.77 In March 2013, the European Commission launched a public consultation on so-called conflict minerals. The aim of the consultation is to get

72 H.R.4173.ENR, http://thomas.loc.gov/cgi-bin/query/z?c111:H.R.4173.ENR: Any company that sells securities to the public in the US must disclose on a yearly basis whether the minerals originate from the DRC or an adjoining country and if so, the company has to include a conflict minerals report in its annual report.
75 DRC is blessed with large deposits of precious stones and diamonds, 80% of the world’s columbite-tantalite (coltan) reserves, 49% of its cobalt reserves, and 10% of the world’s copper reserves. US Geological Survey, Minerals Yearbook, Congo (Kinshasa) 1999, http://minerals.usgs.gov/minerals/pubs/mcs/2010/mcs2010.pdf
76 The US Conflict Minerals Law applies to materials originating (or claimed to originate) from the DRC as well as the 9 adjoining countries: Angola, Burundi, Central African Republic, Congo Republic (a different nation than DRC), Rwanda, Sudan, Tanzania, Uganda and Zambia.
interested parties’ views on a potential EU initiative for responsible sourcing of minerals coming from conflict-affected and high-risk areas – for example, war zones, postwar zones, and areas vulnerable to political instability or civil unrest. Reflecting the trade impact of such an initiative, the EC Directorate General for Trade is managing the consultation and ultimate policy.78

Meanwhile, the Dodd-Frank provisions have already had a sizeable effect on both trade and human rights conditions in the Great Lakes Region of Africa. First, many high tech firms have begun to source these minerals outside of the Congo.79 With less trade, some observers note that the planes that once went to rural regions to pick up the conflict minerals stopped delivering goods and merchandise to the people.80

The UN’s Coordinator of the Group of Experts concerning the DRC reported to the US Government on 21 October 2011 that the strategy is working. He noted ‘a higher proportion of conflict minerals is not funding conflict’ because production of these minerals has shifted to largely non-conflict areas of the Congo, armed groups have less control over tin mines. However, this strategy has not enhanced human welfare. He also admitted that Dodd-Frank has led to ‘increased economic hardship and more smuggling and general criminalization of the minerals trade. It has also had a severely negative impact on provincial government revenues, weakening governance capacity’.81 Although the legislation was not rooted in trade policies, by reducing trade, without direct intent, policymakers may have indirectly undermined human rights and the ability and funds of the states in the Great Lakes region to advance human rights.

In recognition that the Dodd-Frank approach could have a negative impact on the people in the Great Lakes region, the US and the Netherlands have launched a tagging process to trace the source of metals.82 In so doing, they hope

to encourage trade and reassure buyers that the minerals have been legitimately produced without funding conflict.

In sum, policymakers are experimenting with new approaches to influencing human rights conditions in conflict zones. But these strategies have trade spill-overs and hence officials must examine the human rights and trade impact of these options.

4 CONCLUSION

The GATT/WTO was forged from the belief that trade can promote peace. Although the GATT and the WTO have a sixty-five year track record, we don’t really know if the WTO has helped foster greater peace or if more trade among Member States has limited conflict within and among Member States. We also lack knowledge about how more or less trade can affect human rights conditions.

Although members argue that trade promotes peace, at times they use WTO exceptions to ban or reduce trade in the interest of encouraging peace. In recent years, policymakers have tried to target sanctions on specific leaders, commodities or areas (smart or targeted sanctions). However, former UN Secretary General Kofi Annan said, ‘It is not enough merely to make sanctions smarter.’ We need to understand how less trade affects opportunities for the people in conflict zones. We know that sanctions whether broad or targeted, don’t improve governance – the supply side of human rights; nor do they empower citizens – the demand side of human rights. Whether or not trade encouraged by the WTO promotes peace may be conditional on how Member States use the revenue from trade; do they use it to improve governance or do they use it to fund conflict?

The WTO should serve as a hotbed for research on best practice. Policymakers that seek to promote human rights in conflict zones should first focus on obtaining a better understanding of how trade in conflict zones may affect human rights conditions. Under WTO procedures, a member(s) can request that the Secretariat do research on the history of trade sanctions and their record in advancing specific human rights in zones of conflict. Second, a Member State should request that the WTO develop procedures as to how Member States should behave in conflict zones where trade might enhance and/or undermine specific human rights that the government is not respecting. The Secretariat should also examine how trade strategies can empower citizens to demand their rights. Finally, the WTO could set up a Working Group to examine trade in conflict zones and whether more or less trade will be helpful in particular circumstances.

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The members of the WTO should also re-examine how they act towards countries in or recovering from conflict. First, because so many of the states that seek to accede to the WTO are recovering from conflict, the WTO should examine how it can help these states meet their governance obligations. Second, WTO Member States already use the Trade Policy Review process to examine the governance context of Member States (Aaronson and Abouharb: 2011); they could use the process to examine the trade/conflict recovery and human rights relationship. And they should use the opportunity to ask these countries what capacity building they need and make efforts to provide such help – whether it is greater market access or training in computerized customs management.

As the UN Special Representative on Business and Human Rights John Ruggie noted:

the most egregious….human rights abuses take place in conflict zones….Yet there remains a lack of clarity among governments as to what innovative, proactive and, above all, practical policies and tools have the greatest potential for preventing or mitigating….abuses in situations of conflict.84

If the WTO aims to enhance human welfare, the GATT/WTO system must go beyond talk. In some instances, more trade may not be better for some human rights. Scholars and trade practitioners need to focus greater attention on and work towards greater understanding of how membership in the WTO can advance peace as well as human rights.

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