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**WEAPONISED INTERDEPENDENCE: THE
SECURITISATION OF REGIONAL INTEGRATION LAW
IN A FRAGMENTING GLOBAL ORDER**

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INTRODUCTION

Humanity is currently navigating a particularly turbulent historical juncture. Never since the Second World War have so many armed conflicts been fought at the same time. Military spending keeps climbing, year after year, to unprecedented heights. Yet, the institutions meant to hold the system together are deserted, or blocked, alarmingly, by the very power that did most to create them and that once guaranteed them. However, these are not separate emergencies. They proliferate, wandering through the channels that were built to make them impossible. It is this convergence that makes the present work necessary, because those very channels are the economic and legal ties on which peace was meant to rest. Understanding how they are turning into instruments of coercion means, indeed, understanding the crisis itself.

Economic interdependence was treated, from the very dawn of the concept, as a promise. Customs unions, free trade areas and common markets were meant to bind states so closely together that conflict between them would become too costly to contemplate. The law of regional integration, indeed, blossomed and grew into the most ambitious expression of that promise. Nevertheless, as we speak today, those same instruments narrate a different tale, reflecting a starkly different reality. Tariffs are imposed in the name of national security, export controls follow strategic rivalries, supply chains are redrawn along lines of political trust, and the multilateral institutions which once kept these tensions within the bounds of law now struggle to contain them, let alone rule on them.

It is enough to watch a single news bulletin to sense that none of this stays in the distant chancelleries. These are concrete issues with tangible consequences that affect us all. They directly reach households in the form of soaring heating costs or as gas bills once energy is weaponised, as tariffs paid at the checkout rather than

by the rival they target, as car plants left short of the magnets held back at a border. What was built to pacify is increasingly used to coerce.

Scholars and policy institutes have promptly addressed these pressing challenges. The vast literature on multilateral decline and fragmentation, securitisation and economic coercion is now expanding at a remarkable pace, growing almost as fast as the events it describes. Yet, these phenomena are rarely read as parts of a single movement, and perhaps even more rarely through the legal frameworks in which they take shape.

This thesis sets out to delineate that connection. Its core research question asks how the fragmentation of the multilateral order is reshaping the law of regional integration. Furthermore, it seeks to determine where that reshaping leads, and to what extent the securitisation and weaponisation of regional legal frameworks are transforming their original economic and peace-oriented function into an instrument of geopolitical competition. From there, the inquiry follows its own logic. It traces the legal mechanisms that make the weaponisation of integration possible, from the security exception of Article XXI GATT to emergency powers and export controls. It questions whether the European Union, the Indo-Pacific and the Global South answer a common pressure with convergent or divergent legal logics. Ultimately, the trajectory of this analysis culminates in asking where both paths lead: can multilateralism still be reformed, or has a plurilateral and regionalised order become structurally entrenched?

The aim is not merely to add one more diagnosis of crisis, but to change the angle from which the crisis is observed, following geopolitical pressure down to the treaty clauses, statutes and courts through which it becomes law. The true value of this research, and its contemporary relevance, rests not on uncovering new data but on connecting the dots on what is already known. It approaches these phenomena as a single, continuous chain rather than parallel symptoms, each link tested against the objections it invites.

The argument unfolds as a rising sequence. Chapter One lays the conceptual foundations, asking what multilateralism is and what, exactly, is said to be fragmenting. Chapter Two moves from theory to mechanism, tracing how the logic of security enters positive law. Chapter Three tests that mechanism in the field, starting from the Sino-American confrontation and comparing how different regions respond to the same pressure. Chapter Four, finally, turns to the question the whole inquiry leaves open, weighing the reforms currently on the table and asking in what sense, if any, multilateralism may yet be saved.

The generation that built the post-war order wagered that trade would keep the peace. Our generation, instead, is watching the tools of that wager turned into instruments of pressure, while the rules that govern them remain, on paper, in force. Whether international law can still hold sovereign states to their word is the question on which the next world order will rest.

CHAPTER 1

CONCEPTUAL FOUNDATIONS AND THE ANATOMY OF FRAGMENTATION: WHAT MULTILATERALISM IS AND WHY IT MATTERS

We are witnessing an epochal shift in the architecture of the global economy. Addressing the World Economic Forum at Davos on 20 January 2026, Mark Carney, Prime Minister of Canada and formerly Governor of both the Bank of Canada and the Bank of England, put it without euphemism: “We are in the midst of a rupture, not a transition. [...] great powers have begun using economic integration as weapons, tariffs as leverage, financial infrastructure as coercion, and supply chains as vulnerabilities to be exploited”.¹ For decades, the law of regional integration was entrusted with a profound and optimistic mandate: to weave economies so tightly together that conflict would become unthinkable. Today, that very interdependence is being weaponised. The research question which governs this work asks how the fragmentation of the multilateral order is reshaping the law of regional integration, and to what extent the securitisation and weaponisation of regional legal frameworks are transforming their original economic and peace-oriented function into an instrument of geopolitical competition. However, to frame the inquiry in these terms creates a methodological debt: the first clause assumes a structural “fragmentation” without specifying what has broken or how to measure the damage. This chapter exists precisely to settle that debt, defining what is said to be fragmenting before measuring whether, and how, it fragments.

¹Mark Carney, Principled and Pragmatic: Canada’s Path, Address to the Annual Meeting of the World Economic Forum, Davos, 20 January 2026, <https://www.weforum.org/stories/forum-institutional/davos-2026-special-address-by-mark-carney-prime-minister-of-canada/>

Measured by conventional indicators (the sheer number of treaties signed or institutions created), the order described here as fragmenting appears, paradoxically, to be flourishing. Relying solely on these numerical metrics, in fact, creates an illusion of health, suggesting that our foundational premise might be false. To dismantle this illusion, this chapter begins with the definition of multilateralism rather than with the crisis itself. It argues for the necessity of a recalibrated analytical lens: one capable of measuring multilateralism not as an arithmetical sum of states, but as a specific legal quality, drawn from established doctrine yet sharpened into verifiable tests of positive law. Only by redefining the instrument of measurement does fragmentation become something one may actively look for, and therefore either rigorously verify or, in principle, fail to find. This chapter refuses to merely catalogue the dominant narratives of the crisis: it weighs them against that instrument and records, without indulgence, where each of them falls short.

This conceptual groundwork leads to a precise destination, one that renders this chapter necessary rather than merely preparatory. Establishing what is being lost is only half of its task; the other half is to ask where the resulting pressure settles once the universal level can no longer absorb it, a question thoroughly pursued rather than presumed. However, by deliberate methodological design, it halts short of the mechanism, saying nothing of the form that pressure assumes once it has arrived. Diagnosing a fracture is not the same as explaining how a legal tool is weaponised; the conversion of that pressure into legal form is the task entrusted to Chapter Two.

1.1 *Manufactured Indivisibility: Multilateralism from Technical Necessity to Legal Artefact*

Three states signing a treaty are not, by that fact alone, doing something multilateral. If they were, the diagnosis this thesis sets out to make would collapse into an exercise in counting. Ruggie articulated the exact premise that underpins this thesis: “what is distinctive about multilateralism is not merely that it coordinates national policies in groups of three or more states, which is something that other organizational forms also do, but that it does so on the basis of certain principles of ordering relations among those states”.² The objection is not pedantic or doctrinaire: it decides what is actually being counted.

This section serves mainly as an opening, an incipit required as much by the logical development of the chapter as by the whole structure of the thesis; yet it already carries the methodological seed from which the rest of the work will grow. Its primary and very precise purpose, as outlined above, is to dismantle at once the idea that multilateralism is a mere matter of counting, an arithmetical calculation. Mere counting, in fact, exonerates the accused. The contemporary international system stands charged today with the fragmentation of the global order and with the abandonment of multilateralism; on the numbers, however, 387 regional trade agreements were in force in the summer of 2026, out of 640 ever notified.³ Counted by heads, multilateralism has never been healthier.

As in every section of this work, the argumentation will not be reached by accumulation. We shall descend directly into the context of the research question, in this case by tracing a brief, though essential, historical and conceptual trajectory. Brief as it is, the section is therefore a fundamental passage, not merely because it carries the reader from one section to the next, but because it establishes the very

² John Gerard Ruggie, *Multilateralism: The Anatomy of an Institution*, in “International Organization”, 46 (1992), 3, pp. 561-598, at p. 567.

³ World Trade Organization, Regional Trade Agreements Information System, <https://rtais.wto.org>, recording 640 notifications received since 1948 and 387 agreements in force.

premise of the inquiry. The research question this thesis pursues asks how the fragmentation of the multilateral order is reshaping the law of regional integration. What fragments when multilateralism fragments, and at what point it does so, must be settled first. Without that answer the question cannot even be formulated.

Multilateralism was practised for eighty years before it was named. The nineteenth century built its river commissions, its telegraph union of 1865 and its postal union of 1874, all without a vocabulary for what it was doing. The word arrived late, and when it came, it arrived to describe something the practice had already made ordinary: a rule addressed to everyone is a different kind of rule from a bargain struck with each in turn.⁴ Out of twenty-two jurisdictions the Bern Convention of 1874 assembled “a practically unified postal territory”, and from 1878 the union was called universal.⁵ There is no such thing as half a postal union. Indivisibility, then, was a property of the network and not of the norm.

After 1945 the arc reverses. Indivisibility, as a legal quality, ceases to be inherited from the object and begins to be manufactured by the rule, especially for fields which are not naturally indivisible at all: trade and security, first among them.⁶ Ruggie captured the mechanism in a way that translates effortlessly into legal logic, identifying the juridical device of that transformation: “it is the GATT

⁴ On the form as older than the word see Ruggie, *Multilateralism*, cit., p. 567, where multilateralism is “a generic institutional form of modern international life” which “has been present from the start”, and where that generic form is expressly distinguished from formal multilateral organisations, “a relatively recent arrival”; *ibid.*, p. 566, on the vocabulary of multilateralism as belonging to “an older institutionalist discourse, one informed by the postwar aims of the United States to restructure the international order”. The eighty years counted in the text run from the International Telegraph Union of 1865 to that post-war settlement. The distinction drawn in the text is Ruggie’s own at p. 569, contrasting tariff reductions negotiated bilaterally within the GATT and then “extended to all other parties on the basis of most-favored-nation (MFN) treatment” with the Schachtian scheme, “inherently and fundamentally discriminatory, so that bilateral deals held only on a case-by-case and product-by-product basis”.

⁵ Bob Reinalda, *Routledge History of International Organizations: From 1815 to the Present Day*, Routledge, London 2009, pp. 85-92, on the International Telegraph Union (1865) and on the General Postal Union, adopted at Bern in 1874 by twenty-two states, whose “leading principles were the complete freedom of transit from one jurisdiction to another and the creation of a practically unified postal territory comprising all treaty states”, and renamed Universal Postal Union from 1878 (p. 89); Figure 8.2, at p. 92, lists the Central Commission for the Navigation of the Rhine (1815) as the earliest intergovernmental organisation. See also Craig N. Murphy, *International Organization and Industrial Change: Global Governance since 1850*, Polity Press, Cambridge 1994, pp. 87-89.

⁶ Charter of the United Nations, 26 June 1945, 1 UNTS XVI, Chapter VII; Ruggie, *Multilateralism*, cit., p. 569, where a collective security scheme “rests on the premise that peace is indivisible”.

members' adherence to the MFN norm which makes the system of trade an indivisible whole, not some inherent attribute of trade itself".⁷ The device has a date, a precise moment when indivisibility ceases to be a practical necessity and becomes an invention of positive law, irrevocably tainting multilateralism with an intrinsic vulnerability. Where the telegraph had made a network indivisible in fact, Article I of the General Agreement, concluded on 30 October 1947, made a tariff concession indivisible in law.⁸ What law fabricates, law can unfabricate.⁹ It is in those few words that the conceptual engine of this thesis is crystallised: indivisibility, being an artificial construction created by a norm (and not an immutable technical condition), can be dismantled by manipulating or withdrawing adherence to the norm itself. Hence, Chapter Two will be the cradle of that unfabricating.

Every account of the crisis of multilateralism depends on a portrayal of it that its authors rarely make explicit. The definition must therefore be chosen, a choice which is by no means neutral. Keohane supplied the nominal one in 1990, on a purely arithmetical approach: multilateralism is "the practice of co-ordinating national policies in groups of three or more states, through ad hoc arrangements or by means of institutions".¹⁰ Ruggie refused it two years later (and in as many words), explicitly embracing a substantive approach: multilateralism is "an institutional form which coordinates relations among three or more states on the

⁷ Ruggie, *Multilateralism*, cit., p. 571, where indivisibility is also "a social construction, not a technical condition".

⁸ General Agreement on Tariffs and Trade, 30 October 1947, 55 UNTS 194, Art. I:1, extending "immediately and unconditionally" to the like product of all other contracting parties any advantage granted to a product originating in or destined for any other country. On the asymmetries of the networks through which that indivisibility now travels, Henry Farrell and Abraham L. Newman, *Weaponized Interdependence: How Global Economic Networks Shape State Coercion*, in "International Security", 44 (2019), 1, pp. 42-79, reconstructed in full in section 2.3 below.

⁹ The inference follows from a premise which is Ruggie's: if indivisibility is a social construction and not a technical condition, then it is revocable by the same means which established it, namely adherence to the norm. Ruggie states the mechanism in the negative on the same page, where bilateralism, in contrast, "segments relations into multiples of dyads and compartmentalizes them" (Ruggie, *Multilateralism*, cit., p. 571). That adherence can in fact be withdrawn, and the forms which positive law gives to its withdrawal, is the subject of Chapter Two.

¹⁰ Robert O. Keohane, *Multilateralism: An Agenda for Research*, in "International Journal", 45 (1990), 4, pp. 731-764, at p. 731.

basis of generalized principles of conduct”.¹¹ This thesis adopts Ruggie’s formulation, compelled by a distinctly legal rationale rather than by political grounds. The nominal definition, blind to the substance of the law, cannot tell a treaty binding every party to the same rule, from one giving each party a different bargain (becoming a mere container in which three or more states exchange asymmetrical bilateral favours).¹² What is defined here is the very nature of the obligation.

Were this thesis to accept Keohane’s definition, taking it as its structural pivot, its entire diagnosis would collapse. Counted simply by the institutions and agreements in circulation (which continue to grow), multilateralism would appear to be in excellent health and there would be no crisis to investigate. Adopting Ruggie’s definition, by contrast, equips the thesis with the instrument it needs to prove its real claim: we are not losing the treaties (the quantity); we are losing the property that made those treaties universal and indivisible (the legal quality). This is what allows the proliferation of institutions and agreements to be read not as evidence of the system’s health but, ironically, as the very symptom of its fragmentation.

Following this stark logic, regional integration does not belong to a different genus. It must be placed within the global legal ecosystem with some precision, clarifying that it is not an isolated phenomenon, nor one independent of multilateralism. It

¹¹ Ruggie, *Multilateralism*, cit., p. 565, where the definition employed by Keohane is “purely nominal”, and p. 566, where it “misses the qualitative dimension of the phenomenon that makes it distinct”; the qualitative definition quoted in the text is at p. 571. On the reception of that distinction within the same symposium, James A. Caporaso, *International Relations Theory and Multilateralism: The Search for Foundations*, in “International Organization”, 46 (1992), 3, pp. 599-632, at pp. 601-602, where the institution of multilateralism is “distinguished from other forms by three properties: indivisibility, generalized principles of conduct, and diffuse reciprocity”, and at p. 603, where “the term ‘multilateral’ does not analytically presuppose any particular number of countries in the way that unilateral, bilateral, trilateral, and universal do”.

¹² Ruggie, *Multilateralism*, cit., pp. 565-566, where the nominal definition “poses the problem of subsuming institutional forms that traditionally have been viewed as being expressions of bilateralism, not multilateralism”, the League of the Three Emperors among them; and p. 569, holding that “[t]he nominal definition of multilateralism would not exclude the Schachtian bilateralist device: it coordinated economic relations among more than three states”. The container described in the text is that device: *ibid.*, p. 568, where Germany required its trading partners to liquidate their claims “by reinvesting there or by purchasing deliberately overpriced German goods”, so that they “were doubly dependent on Germany”.

reproduces the same properties on a smaller scale, a fact recorded by positive law: Article XXIV admits regionalism as an authorised departure from non-discrimination, not as an order with foundations of its own.¹³ Since both share the same properties, the metric used to measure the fragmentation of one simultaneously measures the restructuring of the other. The question is therefore not whether regional law is being changed, but which property gives way first, and what that law becomes once it has.

A chapter on multilateralism, in a thesis on the law of regional integration, reads at first like a detour. It is the opposite: it is the only place in which this thesis can say what, exactly, is being lost. The word came to name a practice. The practice, in its turn, was given an architecture.

1.1.1 *The Post-War Architecture: Embedded Liberalism and the Rules-Based Order*

What follows is deliberately brief: it serves only to supply the exact coordinates of the order which is fragmenting and to plant the logical fuses which the diagnoses that follow will need. The post-war settlement is one of the most thoroughly narrated episodes in the literature of international relations and international economic history, and this thesis has no ambition to narrate it again. Accordingly, three of its features, only three, carry weight here.

The first is the bargain Ruggie named “embedded liberalism”, and he compressed it into a single sentence: “unlike the economic nationalism of the thirties, it would be multilateral in character; unlike the liberalism of the gold standard and free

¹³ General Agreement on Tariffs and Trade, cit., Art. XXIV. On the proliferation of such authorised departures and its effect on non-discrimination, Rafael Leal-Arcas, *Proliferation of Regional Trade Agreements: Complementing or Supplanting Multilateralism?*, in “Chicago Journal of International Law”, 11 (2011), 2, pp. 597-629. Article XXIV is developed in section 2.1 below.

trade, its multilateralism would be predicated upon domestic interventionism”.¹⁴ It should therefore be read as a price rather than as a description. In other words, it defines the historic compromise which made multilateralism possible. The order “bought” its multilateral quality on the domestic market, paying for external openness with the promise of internal compensation. That payment has since been withdrawn, and 1.4 traces what its withdrawal has done.

The second is the architecture, and rather than lose ourselves in a redundant historical summary, we distil the system. Bretton Woods, the General Agreement of 1947, the Charter of the United Nations: one design principle, namely rules addressed to a class of cases instead of bargains struck case by case, codified as non-discrimination in Articles I and III.¹⁵

The third is a formula rather than an institution, one that must be handled with tongs. “Rules-based order” is largely retrospective, ubiquitous only since the 2010s and mostly in the mouths of its defenders. The uncritical use of this formula must therefore be tempered, also because recent scholarship has begun to test the claims packed inside it, finding several of them unsupported.¹⁶ It must be recognised, indeed, that for those who look at it from outside the West it describes an order whose rules were settled before most of its members arrived.¹⁷ This thesis registers the contestation instead of assuming the order. Even so, the dispute is not whether

¹⁴ John Gerard Ruggie, *International Regimes, Transactions, and Change: Embedded Liberalism in the Postwar Economic Order*, in “International Organization”, 36 (1982), 2, pp. 379-415, at p. 393, whence the words quoted in the text.

¹⁵ General Agreement on Tariffs and Trade, cit., Artt. I and III; Articles of Agreement of the International Monetary Fund and of the International Bank for Reconstruction and Development, Bretton Woods, 22 July 1944; Charter of the United Nations, cit. On multilateralism as a “foundational architectural principle” of post-war American planning see Ruggie, *Multilateralism*, cit., p. 586; on the bargain by which the leading state accepted limits on the exercise of its own power in exchange for a durable order, G. John Ikenberry, *Institutions, Strategic Restraint, and the Persistence of American Postwar Order*, in “International Security”, 23 (1998), 3, pp. 43-78, at pp. 45 and 59.

¹⁶ Marc Trachtenberg, *The Rules-Based International Order: A Historical Analysis*, in “International Security”, 50 (2025), 2, pp. 7-54, concluding that the historical claims advanced on behalf of the rules-based order by its defenders are not supported by the evidence.

¹⁷ Amitav Acharya, *After Liberal Hegemony: The Advent of a Multiplex World Order*, in “Ethics & International Affairs”, 31 (2017), 3, pp. 271-285, for the objection, pressed from outside the West, to an order presented as universal whose terms were settled without most of its present members. The distinction between multipolarity and the “multiplex world” drawn in the same pages is used in 1.2.1; the legitimacy dimension of the objection is taken up in 1.4 and in 4.4.

there was an architecture, but whose interests it was built to serve.¹⁸ An architecture may be described at any length and still not be assessed. What is missing is a measure and the next section builds one.

¹⁸ G. John Ikenberry, *The End of Liberal International Order?*, in “International Affairs”, 94 (2018), 1, pp. 7-23, at pp. 9-10, where the order’s principal defender records that it was “built ‘inside’ one half of the bipolar Cold War system”, around “bargains, institutions and social purposes that were tied to the West” and diagnoses its present troubles as a “crisis of success”. The architecture is not what the critics dispute.

1.2 *Multilateralism as an Analytical Lens: A Theoretical Framework*

The following section embodies the logical engine which sets in motion the entire framework of this chapter. Here we shall not confine ourselves to introducing a concept, far from it: we shall attempt a very precise methodological operation. Just as an illness must be categorised before it can be treated, multilateralism must be defined before it can be diagnosed. We shall therefore attempt to turn multilateralism from a constantly abused abstraction of political science into an instrument, a lens through which to look at the world of today. The research question of this thesis asks how the fragmentation of the multilateral order is reshaping the law of regional integration, and a question of that shape presupposes an instrument capable of measuring the very thing said to be fragmenting. Let it be clear, to state the matter metaphorically: this section does not preen itself on having invented the “microscope”, which is to say the instrument in itself; what it attempts is to add an unprecedented lens, recalibrated to the problem, in order to isolate the pathogen. In other words, the order is not simply in decline: it is undergoing a mutation, and this thesis will argue that the mutation turns regional integration into a weapon of geopolitical competition.

The received usage supplies no such instrument, because it counts rather than describes: multilateralism, on that usage, indicates the working together of many states rather than of two, a purely quantitative difference in international relations.¹⁹ This section proposes the opposite operation. Multilateralism is treated here as a form, meaning a set of properties which an arrangement either possesses or does not, and each of which can be put to the text of a treaty as a question admitting of an answer.²⁰ The stakes are not confined to definition. If the properties

¹⁹ Rafael Leal-Arcas, *The Fragmentation of International Trade Law: Is Now the Time for Variable Geometry?*, in “Journal of World Investment & Trade”, 12 (2011), 2, pp. 145-195, at p. 164, recording that “[m]ultilateralism is generally used to indicate the working together of many States rather than of two States, as a purely quantitative difference in international relations”, and contrasting that usage with the qualitative accounts examined below.

²⁰ Ruggie, *Multilateralism*, cit., p. 571, defining multilateralism as “an institutional form which coordinates relations among three or more states on the basis of ‘generalized’ principles of conduct”. The article is also

are what varies, then fragmentation ceases to be a mood, a vague impression or a journalistic label, and becomes something truly measurable.

The anatomy, or in other words the internal structure of the concept, belongs to Ruggie, and it isolates three properties.²¹ The first, which is indivisibility, translates into a legal question of unusual precision: does a benefit granted to one participant extend automatically to the others? Most-favoured-nation treatment is its expression in positive law, and the answer it returns is unambiguous. Yet indivisibility remains an assertion until one asks why it should be the variable that matters.²² It is at this point that the economics of club goods supplies what doctrine alone cannot. Club goods are non-rival yet excludable; regulatory cooperation, in many instances, produces goods of exactly that kind. The theory, moreover, predicts an optimal club size which rarely coincides with the entire membership of an organisation.²³ Translated into the vocabulary proposed here, indivisibility is non-excludability, and plurilateralism is the deliberate decision to render the good excludable at the boundary of the club.²⁴ That decision is not an accident of

collected in J. G. Ruggie (ed.), *Multilateralism Matters: The Theory and Praxis of an International Form*, Columbia University Press, New York 1993, where the definition appears at p. 11; the original place of publication is cited throughout this thesis. For the same definition as received in the most recent literature see Andrew F. Cooper, Emel Parlar Dal and Samiratu Dipama, *Fragmented Multilateralism and International Institutions: Between Complexities and Challenges*, in “Third World Quarterly”, 46 (2025), 15, pp. 1825-1837, at p. 1827.

²¹ Ruggie, *Multilateralism*, cit., isolating indivisibility, generalised principles of conduct and diffuse reciprocity as the three properties of the form.

²² Ibid. states indivisibility as a property of the institutional form; the reason why it should vary from one arrangement to another is not supplied there and comes from outside political science. See the following note.

²³ Robert Basedow, *The WTO and the Rise of Plurilateralism: What Lessons Can We Learn from the European Union's Experience with Differentiated Integration?*, in “Journal of International Economic Law”, 21 (2018), 2, pp. 411-431, at pp. 415-416, on club goods as “non-rival yet excludable”, on the conditions under which regulatory cooperation produces them rather than public goods, and on the prediction that “clubs have an optimal welfare-maximising size” which “is unlikely [to] neatly correlate[...] with full WTO membership”.

²⁴ On the positive-law expression of that choice see the Marrakesh Agreement Establishing the World Trade Organization, 15 April 1994, 1867 UNTS 154, Art. II.3 and Annex 4, and Georgios Dimitropoulos, Richard C. Chen and Julien Chaisse, *Plurilateralism: A New Form of International Economic Ordering?*, in “Journal of World Investment & Trade”, 26 (2025), pp. 1-30, at p. 23, distinguishing “closed” plurilateral agreements under Article II.3, which the most-favoured-nation clause does not cover, from “open” ones applied on a most-favoured-nation basis. The distinction is developed in 1.2.1.

drafting. Not at all. It is, instead, a parameter of institutional design, and it is chosen.

The second property, “generalised principles of conduct”, asks whether the rule applies irrespective of the particular circumstances or the identity of the parties bound by it.²⁵ The third, “diffuse reciprocity”,²⁶ is at once the most demanding and the least examined. It requires that the obligation be owed to all participants at once, rather than exchanged as a bilateral *quid pro quo*. It is here that this thesis proposes a reading, rather than records a finding, seeking to strip the concept of its sociological flesh. Diffuse reciprocity, so understood, has a precise counterpart in general international law. Ruggie described the passage from bilateral exchange to collective obligation from the side of political science. Bruno Simma, writing in the same years from within general international law, described the identical movement from the side of positive law, as a passage from bilateralism to community interest.²⁷

The category in which that movement is now embodied is the obligation *erga omnes partes*. In *Questions relating to the Obligation to Prosecute or Extradite*, the International Court of Justice defined it as an obligation in which the states parties hold “a common interest”, one “owed by any State party to all the other States parties”.²⁸ There is a precise consequence the Court drew, and it is an

²⁵ Ruggie, *Multilateralism*, cit., p. 571, defining generalised principles of conduct as principles “which specify appropriate conduct for a class of actions, without regard to the particularistic interests of the parties or the strategic exigencies that may exist in any specific occurrence”, as against bilateralism, which “differentiates relations case-by-case based principally on a priori particularistic grounds or situational exigencies”.

²⁶ Ibid., pp. 571-572, where diffuse reciprocity appears, together with indivisibility, as a corollary of the definition: the arrangement is expected by its members to yield “a rough equivalence of benefits in the aggregate and over time”, rather than a balance struck transaction by transaction. The expression is taken by Ruggie from Robert O. Keohane, *Reciprocity in International Relations*, in “International Organization”, 40 (1986), 1, pp. 1-27.

²⁷ Bruno Simma, *From Bilateralism to Community Interest in International Law*, in “Recueil des cours de l’Académie de droit international de La Haye”, 250 (1994-VI), pp. 217-384, for the reconstruction of the same movement in general international law.

²⁸ International Court of Justice, *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)*, Judgment of 20 July 2012, I.C.J. Reports 2012, p. 422, at p. 449, para. 68, holding that the common interest of the states parties “implies that the obligations in question are owed by any State party to all the other States parties”, and that “[t]hese obligations may be defined as ‘obligations *erga omnes partes*’ in the sense that each State party has an interest in compliance with them in any given case”.

operative one: any state party may invoke responsibility for its breach, without holding a special interest of its own.²⁹ It becomes clear, then, that diffuse reciprocity, read in this way, is not a disposition of states, but rather a form of standing. A disruptive conclusion, one advanced here as a proposal rather than as a finding: diffuse reciprocity is not a political inclination or an attitude of good will, but translates into the right to bring an action, or to invoke responsibility.

The analysis now reaches the critical core within the chapter's climax. In this paragraph, indeed, a fundamental move is broached: a fourth dimension is accordingly proposed, a parameter that must be added to the original three properties. Its provenance, however, should be stated plainly, because a property produced out of nothing would discredit the whole grid. It is not imported from a neighbouring discipline, nor deduced from the practice. It is extracted from within the triad itself, by putting to each of the three properties the only question capable of testing them: what survives of this property once the mechanism that makes defection costly is removed? None of the three survives that removal on its own. Diffuse reciprocity is the clearest case, being an obligation owed to everyone and therefore, absent enforcement, claimable by no one in particular. A trenchant statement, one which seeks to lay bare certain vulnerabilities. What follows is accordingly a necessary corollary rather than an addition. This passage formalises a theoretical conclusion, which international studies have approached from several directions, but without ever stating it. Furthermore, it systematises the concepts already set out in this thesis and it confers upon them an ontological status they did not previously possess. *Actionability* is, therefore, proposed here not as a

²⁹ Ibid., at pp. 449-450, para. 69: "any State party to the Convention may invoke the responsibility of another State party with a view to ascertaining the alleged failure to comply with its obligations *erga omnes partes* [...] and to bring that failure to an end". The corresponding rule of general international law is codified in the Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, in "Yearbook of the International Law Commission", 2001, vol. II, Part Two, Art. 48(1)(a), on invocation by a State other than an injured State where the obligation breached is owed to a group of States and established for the protection of a collective interest of the group. On the persisting ambiguity of the categories so codified see Priya Urs, *The Elusiveness of 'Interdependent Obligations' and the Invocation of Responsibility for Their Breach*, forthcoming in "British Yearbook of International Law", cited from the pre-print version in "SSRN Electronic Journal" (2024), pp. 1-5.

condition of the effectiveness of multilateralism, but as a property of its form. In other words, it becomes a sort of requirement of existence: the system becomes something that stands on its own.

The proposal, indeed, is less exposed than it appears, because the literature has been converging upon it (for thirty years) without ever naming the convergence. Wilkinson, writing on trade, places “dispute settlement/enforcement of the rules” inside the triad in place of generalised principles.³⁰ Woods, writing on global governance, defines multilateralism outright as the arrangements which facilitate cooperation “by enshrining commitments to diffuse reciprocity and peaceful dispute settlement”.³¹ Basedow, from the vantage point of political economy, concludes that institutional embedding and access to a dispute settlement body are precisely what prevent differentiation from degenerating into fragmentation.³² Three disciplines, three decades, yet a single finding. The fourth property is not invented here, but merely named. A passage, this one, which claims no academic presumption whatsoever, but only the lucidity of joining the dots.³³

It is necessary, however, to lay bare the epistemological risk which an objection to a grid of this kind would press. Properties abstracted from the founding moment of an order will inevitably flatter that order and condemn whatever succeeds it, so that the instrument settles the verdict before the examination has begun. The reply

³⁰ Rorden Wilkinson’s formulation, as reported in Leal-Arcas, *The Fragmentation of International Trade Law*, cit., p. 164, describing multilateralism as an “organizational practice” revolving around the core principles of “indivisibility, diffuse reciprocity, and dispute settlement/enforcement of the rules”. The original is R. Wilkinson, *Multilateralism and the World Trade Organisation: The Architecture and Extension of International Trade Regulation*, Routledge, London 2000, pp. 32 and 34.

³¹ Ngaire Woods, *Multilateralism in the Twenty-First Century*, in “Global Perspectives”, 4 (2023), 1, art. 68310, at p. 1, defining multilateralism as “the arrangements created and agreed by states which facilitate cooperation by enshrining commitments to diffuse reciprocity and peaceful dispute settlement”, and at p. 2, where the same formulation is credited to Keohane 1990 and Ruggie 1992. Woods states the point as an operating definition and does not thematise it.

³² Basedow, *The WTO and the Rise of Plurilateralism*, cit., section 4.6, holding that “most differentiated integration initiatives take place within the legal and political framework of the EU and allow for dispute resolution through the Court of Justice”, and that “[t]he institutional embedment and central adjudication of differentiated integration should ensure a certain degree of legal and political coherence”, so that “firmly anchoring plurilateralism in the institutional framework of the WTO including its DSB may prevent regime fragmentation”.

³³ The finding belongs to Wilkinson, Woods and Basedow; none of the three presents dispute settlement as a property of the form.

is structural: the grid is applied at three separate moments, to the post-war architecture reconstructed in 1.1, to the emergent forms catalogued in 1.5 and to the regional laboratories compared in Chapter Three. A property that varies across all three is a variable, not a preference. Calibrating the instrument on the events of any single year would produce a different defect, and a graver one: an instrument tuned to the present is obsolete by the time it is used. Were the definition of multilateralism tailored, as a tailor would cut it, upon the way states behave today (the paralysis of the Appellate Body, say, or the tariff justified on grounds of national security, both examined in Chapter Two), one would obviously risk producing a defective and short-sighted instrument.

What the grid does not see must be registered with equal candour, as an operation of pure “epistemological hygiene”. It measures form, but form, realistically, is not justice. An arrangement may satisfy all four properties and still distribute voice unequally among those it binds. The criticism has been pressed against plurilateral governance from two directions at once. The first is that developing countries tend to be excluded from the design of rules they will later have to accept. A cruel paradox for the Global South, one which reflects all the vicissitudes of the WTO, from the Uruguay Round to the Doha Round.³⁴ The second is that they lack the administrative capacity to comply should they seek to join afterwards.³⁵ The instrument proposed here is silent on that objection, deliberately silent. A measure of legitimacy is a different instrument, built for a different question, and it is

³⁴ On the imbalance so described see Leal-Arcas, *The Fragmentation of International Trade Law*, cit., p. 176, note 208, recording that before the Uruguay Round “there was no single undertaking (and therefore GATT members had opt-out options available when new rules and agreements were being negotiated)” and that “there were few obligations imposed upon developing countries”; and p. 166, on the launching of the Doha Round as the outcome of an agreement that “it was time to address the imbalances of previous rounds and to offer developing countries the prospect of trade talks which they could see were to their benefit”.

³⁵ Basedow, *The WTO and the Rise of Plurilateralism*, cit., pp. 418-419, on the risks of political and legal fragmentation, and p. 419, on the side-lining of developing and least developed countries, which “may de jure not be bound by these rules” yet “may de facto have to accept and follow” them; Dimitropoulos, Chen and Chaisse, *Plurilateralism*, cit., p. 23, registering the same two concerns and observing that they “likely apply equally or more to regionalism since PTAs take place outside the auspices of the WTO”. The legitimacy question these criticisms raise is taken up in 1.4.

confined to a separate room, section 1.4. This grid establishes, in substance, what an arrangement is, never whether it deserves to be.

It is necessary, at this point in the argument, to take a few steps back and to reset the frame of the camera more widely, putting the analytical commitment of this thesis constructively into question. It is easy, indeed, to look at this section as a theoretical shelf, a bibliographical survey of classical doctrine from which to draw. It is therefore essential to identify what the ultimate aim of this thesis is and what it seeks to contribute. Until today, a large part of the literature has concentrated on counting how many states signed a treaty in order to call it genuinely multilateral. A blur of that kind would lead the present crisis to be diagnosed as a simple decline in political enthusiasm.

This is why taking Ruggie's three properties of political science, turning them into tests of positive law, adding *actionability* to them as a condition of existence and applying the whole apparatus to the law of regional integration amounts to an operation of reverse engineering. An analytical lens, certainly neither new nor invented, which nevertheless perhaps manages to catch the scent of a nuance, of a different approach to looking at the world in which we live. But what is this lens for, once it is turned upon the "weaponisation" and upon the crises of the present? Aimed at the research question, it allows us to understand how the fragmentation of the multilateral order is redesigning the law of regional integration, and to understand it property by property.

The weaponisation of interdependence (the transformation of supply chains, tariffs and technologies into weapons of blackmail) occurs exactly when the powers deliberately "turn off" the switches of the grid set out above.³⁶ They suspend indivisibility, granting to some what the rule would have extended to all. They stop applying generalised principles of conduct and begin to discriminate between allies

³⁶ The mechanism is Farrell and Newman's: Farrell and Newman, *Weaponized Interdependence*, cit., on the asymmetric, hub-and-spoke topology of global economic networks and on the levers it places in the hands of the few states holding jurisdiction over their central nodes. It is reconstructed in full in 2.3.

and strategic rivals. They kill diffuse reciprocity by demanding immediate bilateral advantages. It is strongly contended here, therefore, that without a component of actionability the weaker states hold no legal instrument with which to defend themselves against such retaliation. What is left, at that point, is an order sliding towards a logic of pure geoeconomic confrontation.

Once the analytical framework of this thesis is established, a critical question arises: does this shift in perspective yield tangible value, and what does it elucidate that was not previously evident? Calibrated in this way, the instrument has work to do. Its first task is terminological, given that the vocabulary this thesis must handle (multipolarity, regionalism, plurilateralism, minilateralism) circulates interchangeably in political commentary and, with some frequency, in legal scholarship as well. Applied property by property, the four questions separate those terms cleanly, and 1.2.1 undertakes precisely that separation. Its second task is comparative, and it reaches considerably further.

That second task requires crossing the boundary between the global order and the regional one, and the crossing costs less than might be expected: the categories are the same on either side, and they simply operate on two different scales. Basedow reads the plurilateralism of the WTO through the differentiated integration of the European Union, opt-outs, enhanced cooperation and intergovernmental treaties, drawing the equivalences explicitly.³⁷ Put differently, what measures the multilateral order measures the law of regional integration as well, which is the reason a thesis on regional integration must begin here rather than elsewhere.

The order this instrument was built to examine is described, by those who study it, as passing from a neoliberal to a geoeconomic logic, marked by the securitisation of economic policy and the economisation of strategic policy.³⁸ That neoliberal

³⁷ Basedow, *The WTO and the Rise of Plurilateralism*, cit., sections 4.2-4.3 and Table 2, setting out the equivalences between the instruments of differentiated integration in the European Union (opt-outs, enhanced cooperation, intergovernmental treaties) and their counterparts in the law of the WTO (negative-list approaches, plurilateral and critical mass agreements).

³⁸ Anthea Roberts, Henrique Choer Moraes and Victor Ferguson, *Toward a Geoeconomic Order in International Trade and Investment*, in "Journal of International Economic Law", 22 (2019), 4, pp. 655-

utopia of the post-Cold War period is being abandoned for a realm in which the boundaries between the economy and national security collapse, stripped to the bone. The economy is securitised (5G networks and semiconductors become weapons) and military strategy is economised (wars are fought with tariffs and financial sanctions).³⁹

Now, whether the law of regional integration is being reshaped by that passage, and whether the original economic and pacific function of that law survives it, is the question to be answered through the categories proposed above. The time has come to set that romantic premise, the pacific function with which integration was endowed at its origin, against the harsh geoeconomic reality just described, and to accept whatever follows on the theoretical plane.

The instrument, at this point, is finished, and it is pointed. What it will find is not written into it: an order may still hold all four properties and be measured intact, or it may have shed them one by one while keeping the name. That, precisely, is why it was worth building. A definition which the thing defined could never contradict would be no instrument at all, but rather a profession of faith.

1.2.1 *Conceptual Cartography: Multilateralism, Multipolarity, Regionalism, Plurilateralism, Minilateralism*

The preceding section has brought out the need to make things clear, to gather the various categories together and to dismember them. Packing them into a precise frame will allow us to proceed without becoming entangled in the literature's

676, at p. 655, on the transition from the “Neoliberal Order” to a “Geoeconomic Order” characterised by a growing “securitisation of economic policy and economisation of strategic policy” (the internal quotation is from M. Wesley, *Australia and the Rise of Geoeconomics*, in “Centre of Gravity”, 29 (2016), p. 4). The legal consequences of that transition are the subject of Chapter Two.

³⁹ Roberts, Choer Moraes and Ferguson, *Toward a Geoeconomic Order*, cit., p. 660, registering the growing tendency of states “to both ‘weaponise interdependence’ and to seek to reduce exposure to such weaponization”, and giving as instances of the same movement the recourse to national security in order “to justify limiting exports (such as the US Huawei ban), imposing tariffs in the trade sphere (such as US tariffs on steel and aluminium), and localizing data (such as in China’s cybersecurity laws)”.

labyrinths of nuance. For that purpose five terms which circulate in this debate will be taken into consideration. They are used as though they named five species of a single genus. They do not. It will be shown, in these few lines, that four of them describe institutional forms and that only the fifth describes a distribution of power. This section does not therefore set out to report the whole of the existing literature and to arbitrate between its positions; rather, it serves only as a toolbox handed to the reader, so that he may find his way through the arguments this thesis offers. It is strongly affirmed here that placing that fifth term alongside the others is not a matter of nuance. It is a category mistake, with substantial consequences. The order of operations adopted here is accordingly deliberate: the instrument built in the preceding section is turned first upon the vocabulary and only afterwards upon the world, so that 1.3 inherits terms which have already been sorted.

It is important to codify the fact that, while multipolarity counts poles, multilateralism describes the form of the arrangements binding them.⁴⁰ The two vary independently, with a record that says so plainly. The most powerful state of the post-war system was also the most consistent defender of multilateral norms, whereas the dispersed power of the 1930s produced discrimination and bilateral exchange.⁴¹ The objection, moreover, is not a lawyer's private complaint. Acharya, in his work *After Liberal Hegemony: The Advent of a Multiplex World Order*, discards multipolarity as a description of the emerging order and substitutes a "multiplex world" for it, precisely because polarity registers the distribution of capabilities and stays silent on the density and the crosscutting character of the orders erected upon it.⁴²

⁴⁰ Miles Kahler, *Multilateralism with Small and Large Numbers*, in "International Organization", 46 (1992), 3, pp. 681-708, at p. 681, where multilateralism is glossed as "international governance of the 'many'", and at p. 682, treating "the hierarchical power configuration of the international system" as a separate dimension against which the multilateral form is measured.

⁴¹ Ibid., p. 682, recording as an anomaly for realist accounts that "the most powerful nation in the postwar system, the United States, was also the most fervent and consistent supporter of multilateral norms and procedures"; and p. 681, on non-discrimination as awarding smaller states advantages "that had been denied them in the world of the 1930s", a world organised around bilateral and discriminatory arrangements.

⁴² Acharya, *After Liberal Hegemony*, cit., pp. 276-277, holding that the emerging order "is thus not a multipolar world, but a multiplex world", which is "not a singular global order, liberal or otherwise, but a

The stake, here, is not taxonomic. If multipolarity and multilateralism are the same thing, then the crisis of multilateralism is a by-product of the rise of China, and there is nothing, from a legal perspective, that can be usefully said about it. In other words, if multilateralism were to collapse simply because of a realignment of material power, the question would belong exclusively to geopolitics and a jurist would be a mere spectator. For this reason, this perspective must be overturned to grasp that what is fragmenting is not a generic balance of power, but the very structure of the arrangements. What we are witnessing is a morphological mutation of the institutions. In substance, merging the two concepts does not amount to a simple linguistic imprecision, but rather to an error which prevents any understanding of the present order of international crises. To conclude, the claim advanced is the opposite: what is changing is the form and form is where law lives.

Each of the remaining four terms, by contrast, can be put to positive law, and the addresses, or their absence, do the sorting. Multilateralism holds the four properties with a membership open in principle, which is to say open by its very nature.⁴³ Regionalism applies those same properties inside a bounded space, existing juridically not as a breach tolerated in silence but as an authorised derogation.⁴⁴ Plurilateralism retains generalised principles while closing the membership, so that the good becomes divisible again at the boundary of the club, and standing, it must

complex of crosscutting, if not competing, international orders and globalisms”; and at p. 283, where multipolarity is identified with “the general theory that international stability depends mainly on polarity or the distribution of power”. Acharya’s target is realist theory and not legal taxonomy.

⁴³ For the four properties and their derivation see 1.2 above. That the membership is open in principle is the received account of the post-war form: Kahler, *Multilateralism with Small and Large Numbers*, cit., p. 681, on the “impulse to universality” which “implied relatively low barriers to participation in these arrangements”. Its address in positive law is Art. I of the General Agreement on Tariffs and Trade, 30 October 1947, on most-favoured-nation treatment, and, for the general organisation, the Charter of the United Nations, cit., Art. 4, para. 1, on membership open to all states which accept the obligations of the Charter, and Art. 2, para. 1, on the sovereign equality of the members.

⁴⁴ General Agreement on Tariffs and Trade, cit., Art. XXIV, for customs unions and free-trade areas; Decision of the CONTRACTING PARTIES of 28 November 1979 on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries (Enabling Clause), doc. GATT L/4903, para. 1, which operates “[n]otwithstanding the provisions of Article I of the General Agreement”, and para. 2(c), on “[r]egional or global arrangements entered into amongst less-developed contracting parties”; General Agreement on Trade in Services, 15 April 1994, Art. V, on economic integration in services. On preferential and regional agreements as constituting “exceptions to some of the disciplines of the agreements of the WTO (above all, MFN)” see Dimitropoulos, Chen and Chaisse, *Plurilateralism*, cit., p. 18 and note 65.

be stressed, closes with it.⁴⁵ Minilateralism has small numbers, a logic of effectiveness and no address whatsoever: what it produces is organisation without delegation, an explicitly shared expectation of purpose in the place of a treaty and a rotating chair in the place of a secretariat.⁴⁶ That absence is therefore the finding, not a gap in the search.

A word is owed to the reader before the grid is applied, because what follows could easily be mistaken for a verdict. It is not one. Three of the four properties belong to Ruggie (they are used here in the sense he gave them); the fourth was proposed in the preceding section, and proposed as a reading rather than recorded as a finding.⁴⁷ The table which follows, therefore, decides nothing on its own authority. Each entry is a reading of the texts cited in the notes to this subsection, and each may be contested upon those same texts. The table is offered because it provides the possibility of putting to the test the framework built in the last section. It is a choice which reflects a need for completeness, and one which owes much to its

⁴⁵ Marrakesh Agreement Establishing the World Trade Organization, cit., Art. II:3, under which the Plurilateral Trade Agreements of Annex 4 “are also part of this Agreement for those Members that have accepted them” and “do not create either obligations or rights for Members that have not accepted them”. On the definition of plurilaterals as “multiparty, sector-specific agreements nested within the frame of an international organization or broader multilateral agreement by a subset of the overall membership” see Dimitropoulos, Chen and Chaisse, *Plurilateralism*, cit., p. 3. That standing closes with the membership is written into the dispute settlement system itself: Understanding on Rules and Procedures Governing the Settlement of Disputes, Art. 2.1, under which, for disputes arising under a Plurilateral Trade Agreement, “the term ‘Member’ as used herein shall refer only to those Members that are parties to the relevant Plurilateral Trade Agreement”. On Art. 25 of the same Understanding, providing for “[e]xpeditionary arbitration within the WTO as an alternative means of dispute settlement”, and on the arrangement built upon it, see 2.5.

⁴⁶ Moisés Naím, *Minilateralism: The Magic Number to Get Real International Action*, in “Foreign Policy”, n. 173, July/August 2009, pp. 136 and 135, at p. 135, proposing that states “bring to the table the smallest possible number of countries needed to have the largest possible impact on solving a particular problem”. The criterion is one of effectiveness and it is silent as to form. For the anatomy of those arrangements see Felicity Vabulas and Duncan Snidal, *Organization without Delegation: Informal Intergovernmental Organizations (IIGOs) and the Spectrum of Intergovernmental Arrangements*, in “The Review of International Organizations”, 8 (2013), 2, pp. 193-220, at p. 197, defining an informal intergovernmental organisation by “[a]n explicitly shared expectation [...] about purpose” and by participation in “regular meetings” with “no independent secretariat”; and at p. 200, on the rotating chairmanship which replaces the secretariat and on “limited delegation” as “the most distinctive feature of IIGOs”. That such arrangements fall outside positive law is registered by Dimitropoulos, Chen and Chaisse, *Plurilateralism*, cit., p. 6, on informal groupings which “lack the formal treaty-based commitments that bind parties to actionable agreements”, excluded on that ground from the definition of plurilateralism (ibid., p. 18).

⁴⁷ The three properties are Ruggie’s and are used here in the sense set out in 1.2 above; the fourth, *actionability*, is proposed there, where its provenance is discussed. On the crisis of actionability recorded in the first row of the table see Chapter Two.

strong visual impact. In very few words, indeed, it manages to bring order into the jungle of terms used (and often confused) by political scientists.

Applied for the first time, the grid returns the following.

	Indivisibility	Generalised principles	Diffuse reciprocity	Actionability	Address in positive law
Multilateralism	Yes: most-favoured-nation treatment	Yes	Yes	Yes, and in crisis	GATT, Art. I; UN Charter
Regionalism	Inside the bloc; suspended outside it	Yes, inside the bloc	Inside the bloc	Where the agreement supplies a court or tribunal	GATT, Art. XXIV; Enabling Clause, para. 2(c); GATS, Art. V
Plurilateralism	No: excludable at the boundary of the club	Yes, among the parties	Among the parties only	Yes, but confined to the parties	WTO Agreement, Art. II:3 and Annex 4; DSU, Artt. 2.1 and 25
Minilateralism	No	No	Specific, not diffuse	Absent	None
<i>Multipolarity</i>	<i>Not applicable</i>	<i>Not applicable</i>	<i>Not applicable</i>	<i>Not applicable</i>	<i>Not a form: a distribution of capabilities</i>

Legend. The four property columns are not applicable to multipolarity, which is not an institutional form but a distribution of capabilities.⁴⁸ That row is set apart from the others for that reason alone; and if this subsection adds anything of its own, it is no more than the separation.

Once they are so ordered, this thesis seeks to bring the reader towards the conviction that the four configurations are not neutral alternatives. They stand on a descending scale of the same four properties; the movement of the past three decades has run down that scale, one property at a time. It has run down it,

⁴⁸ Cooper, Parlar Dal and Dipama, *Fragmented Multilateralism*, cit., p. 1829, where the “multipolar world” is registered, alongside “anarchy”, “great-power conflict” and “disorder”, as a description of the emerging distribution of power and not of an institutional form. The row is left empty by construction and not for want of evidence.

moreover, without ever abandoning the multilateral vocabulary. What challenges a multilateral institution is now, characteristically, another multilateral institution, so that the retreat from the form is conducted in the language of the form.⁴⁹ Why the descent began when it did is the question of the next section.

⁴⁹ Julia C. Morse and Robert O. Keohane, *Contested Multilateralism*, in “The Review of International Organizations”, 9 (2014), 4, pp. 385-412, at p. 386, observing that “[f]requently, multilateral institutions are challenged through the use of other multilateral institutions, either without resort to unilateralism or bilateralism or in conjunction with those strategies”; at p. 387, specifying that what is contested “is not the institutional form of multilateralism as such [...] but rather specific institutional forms of multilateralism”. Morse and Keohane supply the evidence that the descent is conducted through institutions rather than against them.

1.3 *Crisis as the Matrix of Multilateralism*

Multilateralism has always been, in some ways, a child of catastrophe. Every crisis has proved fertile, and every enlargement of it over the past century was drafted in the immediate aftermath of a collapse. Arguably, the regularity of the pattern was such that it came to resemble a mechanical law: crisis in, institution out. The intuition is not a new one, and Jean Monnet had already fixed it in a formula which has since become proverbial:

*«J'ai toujours pensé que l'Europe se ferait dans les crises, et qu'elle serait la somme des solutions qu'on apporterait à ces crises».*⁵⁰

What he wrote of European integration this section extends to the multilateral order as a whole, arguing that the law still operates, only with a changed output. The crisis of 2008 produced what can be described as a club, rather than a proper treaty. Ironically, the pandemic crisis of 2020 produced a treaty that cannot yet be signed. Moving forward along the timeline, the crises of the present decade, those which touch us in the most direct manner, are producing exits. What we are describing, then, is a machine which has not stopped: it simply has begun to manufacture something else. The red thread of the research question drives us to ask whether the emerging plurilateral order is reformable or, by now, structurally consolidated. An observation is needed at this point, if not indispensable, one that reframes the enquiry rather than settling it. In order not to sink into the mire of a sterile debate over reform, it is therefore necessary to reformulate the question, and to do so incisively. In other words, the question is not whether the system can be repaired; it is whether the repair mechanism still works.

This paragraph belongs to the wider search for a demonstration, historical as much as empirical, of the claim just enunciated. The mechanism, indeed, is best

⁵⁰ Jean Monnet, *Mémoires*, Fayard, Paris 1976, p. 488. The formulation which circulates most widely, «L'Europe se fera dans les crises et elle sera la somme des solutions apportées à ces crises», is a third-person rewriting and does not correspond to the text of the *Mémoires*.

examined by its products rather than by its dates. The Great War produced, in 1919, the League of Nations and the International Labour Organization: a rudimentary, yet cardinal, first attempt whose failure was quite as instructive as any success, since it established that the conversion is not “self-executing”.⁵¹ Depression and the Second World War then produced the maximum case: Bretton Woods, the United Nations and the General Agreement of 1947. The collapse of the parity system and the oil shock that followed did not dismantle, nor abandon, the embedded liberalism compromise, but recalibrated it.⁵² They produced, in the same movement, the International Energy Agency of November 1974⁵³ and, at the close of the Tokyo Round, the plurilateral codes of 1979. The credibility crisis that overtook the GATT in the following decade produced the Uruguay Round, the Organization of 1995, the single undertaking and a compulsory jurisdiction. Four collapses, four institutions. The regularity is the point here; set within the logical structure of this thesis, however, the point shifts to what that regularity concealed. We therefore see how the very fact that this sort of “pattern” has repeated itself constantly for decades leads one to think that crisis supplied the driving spark.

On the other hand, stopping to count the institutions born of crises masks a far deeper trajectory. Today, to all appearances, the “regularity” so defined still seems to hold and continues to produce reactions. Measured against the grid, every one of these conversions raised the score: each new organisation born of a crisis possessed a juridical quality superior to that of the one which had preceded it. The last of them raised it furthest. The single undertaking is indivisibility written into

⁵¹ Ikenberry, *The End of Liberal International Order?*, cit., p. 14, on the Wilsonian order, of which the League of Nations was the “great centrepiece and organizational embodiment”, as an institutionally “thin” system of order “without a lot of institutional machinery” for global economic and social problem-solving or the management of Great Power relations.

⁵² Ruggie, *International Regimes, Transactions, and Change*, cit., on the recalibration, rather than the abandonment, of the post-war compromise in the course of the 1970s. The compromise itself is reconstructed in section 1.1.1 above.

⁵³ Ethan B. Kapstein, *Alliance Energy Security, 1945-1983*, in “The Fletcher Forum”, 8 (1984), 1, at p. 113, recording that the Agency was established as an affiliate of the OECD in November 1974 and that its oil allocation system is triggered upon a “finding” of a seven per cent shortfall, a finding which the same page notes has never been made. The crisis of 1973 thus produced an institution with a mechanism, where the crises examined below produce institutions without one.

the architecture of a treaty rather than promised in its preamble. Members, bound to the logic of “all or nothing”, were left no *à la carte* option at all, the choice being to accept everything or to remain outside the multilateral system altogether.⁵⁴ Compulsory jurisdiction, for its part, is actionability rendered in positive law, showing once again how a property of the form can be written into a treaty rather than left to the good will of its parties. Adjudication became available as of right, reports could no longer be blocked by the losing disputant, and retaliation could be authorised where a ruling went unimplemented.⁵⁵ In 1995 the machine was working at the top of its range, at the highest peak of its efficiency.

Unwinding the skein which follows the thread of the argument, it is right to dwell on what may be considered a historical exception, declaring it in full light rather than risking its turning into an object of criticism. Plurilateralism as a response to crisis had already appeared once. Several of the 1979 codes were implemented, indeed, on a non-most-favoured-nation or conditional most-favoured-nation basis, a precedent of fragmentation, an exercise in critical mass with an element of variable geometry.⁵⁶ The Uruguay Round, however, did not so much “repudiate” that precedent as turn it on its head: it folded five of those codes back into obligations binding upon the entire membership, those on antidumping, on subsidies and countervailing measures, on technical barriers to trade, on import licensing and on customs valuation, and left outside only the agreements on civil

⁵⁴ Peter Gallagher and Andrew Stoler, *Critical Mass as an Alternative Framework for Multilateral Trade Negotiations*, in “Global Governance”, 15 (2009), 3, pp. 375-392, at p. 381, recording that under the Mark II version of the single undertaking “[m]embers of WTO had no *à la carte* options at all: it was a case of ‘accept everything or remain outside the multilateral system’”. The same authors observe, at pp. 380-381, that the single undertaking as expressed at Punta del Este in 1986 carried the opposite meaning, and was converted into its present one only between 1992 and 1993.

⁵⁵ Judith Goldstein and Alan Sykes, *The Perils of Institutional Rigidity, or How the WTO Helped to Sow the Seeds of Trump*, in “World Trade Review”, 24 (2025), 4, pp. 481-488, at p. 483, on the Dispute Settlement Understanding under which “members complaining of legal violations could secure adjudication as a matter of right, its results could no longer be ‘blocked’ by a losing disputant, and the loser could not prevent eventual authorization for sanctions following its refusal to comply with a ruling”.

⁵⁶ Gallagher and Stoler, *Critical Mass*, cit., p. 384, observing that the Tokyo Round codes “were an exercise in critical mass with an element of variable geometry” and that certain of them “were implemented on a non-MFN or conditional MFN basis”.

aircraft and on government procurement.⁵⁷ The oscillation, then, is real, a fluctuation with the air of a film already seen, and it sustains the objection that all of this has happened before, an objection which consequently deserves to be met rather than ignored. What follows contends that the present movement is not another swing of the same pendulum.

The first divergence, in fact, has a date: November 2008, when the Group of Twenty was raised to the level of heads of state and government. The response it coordinated was real and, judged against the urgency of the moment, effective.⁵⁸ Consider, however, what the crisis had actually manufactured. No treaty, no secretariat, no criterion of membership, no legal personality, and decisions issued in communiqués. In other words, if we stop looking at the political success and look instead at the legal architecture, what surfaces is the void. It must further be recalled that, throughout its development, the enterprise has had no legal status, was never formalised by treaty, and has never promulgated rules governing its own decision-making.⁵⁹ The literature has a name for the resulting object, a name which does not coincide with that of multilateralism, but with that of the informal intergovernmental organisation. It refers to an arrangement resting upon explicitly shared expectations, regular meetings and the absence of any independent secretariat.⁶⁰ It was also the moment from which bodies of that kind began to

⁵⁷ Goldstein and Sykes, *The Perils of Institutional Rigidity*, cit., p. 483, note 8: five of the Tokyo Round codes, covering antidumping, subsidies and countervailing measures, technical barriers to trade, import licensing procedures and customs valuation, “were further negotiated during the Uruguay Round and became binding on all members of the WTO”, while the Civil Aircraft Agreement and the Government Procurement Agreement “remain plurilateral today”.

⁵⁸ Group of Twenty, *Declaration of the Summit on Financial Markets and the World Economy*, Washington, 15 November 2008. On the elevation of the Group to leaders’ level and on its orchestration of the response, see Morten Ougaard, *What Is the G20? On Theorizing a Singular, Sui Generis Global Institution*, Working Paper, Copenhagen Business School, Copenhagen 2022, pp. 12-15, describing the Group as an “informally formalized institution” operating through networked cooperation with member governments and formal international organisations.

⁵⁹ David Zaring, *International Institutional Performance in Crisis*, in “Chicago Journal of International Law”, 10 (2010), 2, pp. 475-504, at p. 497: “the development of the G20 has had little to do with law. Throughout this period, the enterprise has had no legal status; it was never formalized by a treaty, and the group has never promulgated or announced bylaws or rules for decision making. It has no administrative agency and has not created a secretariat or bureaucracy”.

⁶⁰ Vabulas and Snidal, *Organization without Delegation*, cit., pp. 197-198 and Table 2, where the Group of Twenty is placed among the informal intergovernmental organisations, defined by explicitly shared

proliferate, both in the global North and the global South.⁶¹ This passage photographs the exact moment at which the machine stopped manufacturing legal bonds and started manufacturing plain informal “clubs”. Put differently, whatever else the emergency manufactured, it manufactured nothing that anyone could invoke against anyone.

The year 2008 is usually filed as the last success of crisis multilateralism. What follows, at times, defies the common narrative. Read through the lens of the grid used here, it marks instead the first failure, and the fact that it was widely celebrated as a success is exactly what makes it so revealing.

The second divergence, instead, is still running. The pandemic presented what may safely be described as the largest collective action problem of recent decades, one that all of us had to confront. Without dwelling on the dramatic situation *intra moenia* of the various countries, we may see how the immediate products caused by COVID-19 were export restrictions on medical goods, vaccine nationalism and, at the twelfth Ministerial Conference of June 2022, a decision on the TRIPS Agreement drawn so narrowly as to satisfy nobody.⁶² For reasons of continuity this paragraph certainly does not mirror the events of so complicated a period, nor could it do so in a few lines, but it seeks to suggest to the reader that a crisis of this calibre did not in fact generate an enormous leap forward in multilateral law. The counterexample, however, must be handled rather than concealed, being precisely what makes the argument defensible. On 20 May 2025 the World Health Assembly adopted the WHO Pandemic Agreement.⁶³ Looking always at the grid, the

expectations, explicitly associated members, regular meetings and the absence of an independent secretariat, as against formal intergovernmental organisations founded upon an international treaty.

⁶¹ Emel Parlar Dal and Nobuhide Mert Matsumoto, *Assessing Legitimacy of Informal Intergovernmental Organizations in the Context of Changing Multilateralism*, in “International Affairs”, 101 (2025), 2, pp. 419-438, on the heightened visibility of such organisations after 2008; Cooper, Parlar Dal and Dipama, *Fragmented Multilateralism*, cit., p. 1826, recording that the number of informal intergovernmental organisations “started to grow after the 2008 financial crisis both in the Global North and Global South”.

⁶² World Trade Organization, *Ministerial Decision on the TRIPS Agreement*, adopted on 17 June 2022, WT/MIN(22)/30 and WT/L/1141, 22 June 2022.

⁶³ World Health Assembly, Resolution WHA78.1, *WHO Pandemic Agreement*, 20 May 2025, and the text of the Agreement annexed to it.

instrument is a remarkable object. Although it has been adopted, it is not in force and it is not yet open for signature at all. The whole difficulty lies here: Article 31 subordinates the opening for signature to the adoption of the annex contemplated by Article 12, the annex on pathogen access and benefit-sharing, which has not been concluded.⁶⁴ Setting the legal technicalities aside, one may see how the agreement is an empty shell: a diplomatic machine takes years to bring forth a text which is not in force and cannot even be signed.

The intergovernmental working group charged with negotiating it convened for the first time in July 2025, under a mandate to report within the year. Its seventh meeting closed on 17 July 2026 without agreement, the following session fixed for 14 to 18 September 2026, with an outcome that is now expected at the Assembly of May 2027 or at an earlier special session.⁶⁵ In the meantime the state whose participation would count for most left the organisation on 22 January 2026.⁶⁶ Even visually, looking at the dates in this paragraph, the impact is as strong as it is significant: the temporal gap between the onset of the crisis and the convoluted, belated and ineffective institutional and diplomatic reaction of the international system is precisely the material proof on which the argument proposed here rests. The conversion, it must be noted, still occurs. What it now delivers, however, is a treaty which has been adopted, cannot yet be signed, is not in force, and lacks the member whose absence it was in part designed to survive. The claim advanced

⁶⁴ WHO Pandemic Agreement, cit., Arts. 12 and 31. See Stephanie Switzer, Adam Strobeyko, Mark Eccleston-Turner, Sylvain Aubry and Michelle Rourke, *Negotiating Pathogen Access and Benefit-Sharing (PABS): Recommendations and Priority Issues*, August 2025, doi 10.31235/osf.io/9r3g7_v1, p. 2: “Article 31 of the Pandemic Agreement makes it clear that it cannot open for signature until the PABS Annex is agreed. Accordingly, the rest of the Agreement [...] cannot enter into force until PABS is resolved”. At least sixty ratifications are required for entry into force.

⁶⁵ Switzer, Strobeyko, Eccleston-Turner, Aubry and Rourke, *Negotiating Pathogen Access and Benefit-Sharing*, cit., p. 1, recording that the Intergovernmental Working Group first met in July 2025 with a mandate to report to the World Health Assembly of May 2026. On the extension of the negotiations and on the outcome of the seventh meeting see World Health Organization, *WHO Member States Agree to Extend Negotiations on Pathogen Access and Benefit-Sharing Annex*, 1 May 2026, and *WHO Member States Continue Negotiations on the Pathogen Access and Benefit-Sharing Annex*, 20 July 2026, both at www.who.int.

⁶⁶ World Health Organization, *WHO Statement on Notification of Withdrawal of the United States*, 24 January 2026, www.who.int, on the withdrawal of the United States from the Organization with effect from 22 January 2026.

here does not depend upon the annex failing and it may well be agreed. It rests on the delay itself: a mechanism which takes years to deliver a signature has forfeited the fourth property of the grid before producing a single obligation. The Covid case closes the syllogism of this paragraph: if in 1995 a crisis produced the compulsory jurisdiction of the WTO, in 2026 a far graver crisis produces a paralysed treaty.

Why the machine should have changed its product is a question this section may pose and only section 1.4 can answer. Here we confine ourselves to supplying the “keystone” which will orient that analysis, so as to keep the argumentative rhythm without digressing. What belongs here is the hypothesis that organises the answer. Historically, crises arrived from outside the system: they were “exogenous”, and they came in the shape of war, depression or technological rupture. Moreover, the guarantor of the system was also its principal beneficiary, so that repairing it lay squarely within its own interest. The pressure now comes from inside, the dynamic having been overturned: the crisis is “endogenous”. The election of 2016 transformed the government of the core guarantor of the order into that order’s strongest challenger, and the ensuing assault upon the dispute settlement machinery was driven by no particular crisis whatsoever: a deliberate and intentional attack upon a central multilateral institution.⁶⁷ Nor is the phenomenon reducible to a single administration, since the blocking of appointments began under one presidency, intensified under a second and continued under a third.⁶⁸

⁶⁷ David A. Lake, Lisa L. Martin and Thomas Risse, *Challenges to the Liberal Order: Reflections on International Organization*, in “International Organization”, 75 (2021), 2, pp. 225-257, at p. 240, holding that the election of 2016 “transformed the government of the core guarantor of the LIO to become its strongest challenger”, and at p. 244, on the blocking of appointments to the Appellate Body: “[d]riven by no particular crisis, this is a clear example of a voluntary attack on a core multilateral institution”.

⁶⁸ Jianfu Chen and Zhiqiong June Wang, *Geopolitical Conflict, Geoeconomic Manoeuvring, and the Law of the Jungle: Are We Witnessing the End of the Liberal Trading Order?*, in J. Nakagawa, T. Hamada and Y. Ishikawa (eds.), *Geopolitical Risks and Geoeconomics in International Economic Law: Asian Perspectives and Beyond*, Springer, Singapore 2026, pp. 11-30, at p. 25, recording that the paralysis of the dispute settlement system “started under the Obama presidency, intensified during Trump 1.0, and continued into the Biden Administration”. The consequences of that paralysis for the law of regional integration are examined in section 2.5 below.

The frustration, moreover, has a cause internal to the design itself, which ended by falling victim to it, and it is a cause this thesis is not entitled to overlook. An institution incapable of adjusting its rules to political shocks, and failing thereby in the most fundamental characteristic of an international organisation, will in time forfeit the political support that sustained those rules.⁶⁹ If the law does not manage to take the shape of political fluctuations, politics ceases to sustain it and destroys it. To conclude, a system whose repair depends upon the party profiting from its breakdown clearly does not, and cannot, repair itself.

None of this yet settles the questions deriving from the starting point we have set ourselves, and it would be an overstatement to pretend otherwise. To summarise the core intent of this section, without claiming to offer a dogmatic answer, it is crucial to recognise that the historical record does not prove the plurilateral order to be permanently entrenched rather than reformable. What it does is shift the burden of proof, repositioning it onto whoever maintains that the conversion will resume producing binding obligation once the present turbulence has subsided.⁷⁰ That remains a hypothesis to be tested rather than a conclusion already secured. If the repair mechanism has jammed, the question that follows is what precisely has broken, an answer of that kind calling for a diagnosis rather than a chronology. Crisis has not stopped producing order. What it appears to produce ever more reluctantly, at least in the forms this section has examined, is law.⁷¹

⁶⁹ Goldstein and Sykes, *The Perils of Institutional Rigidity*, cit., pp. 481-482 and 487, arguing that the Organization “suffers from an institutional rigidity that makes it difficult for member nations to respond to political exigencies while also respecting their treaty commitments”, and that the single undertaking, consensus-based decision making and an activist Appellate Body imposing de facto stare decisis together “eroded political support for WTO rules in the United States”.

⁷⁰ The caution is shared by the recent literature: see Ikenberry, *The End of Liberal International Order?*, cit., and Jeff D. Colgan and Robert O. Keohane, *The Liberal Order Is Rigged: Fix It Now or Watch It Wither*, in “Foreign Affairs”, 96 (2017), 3, pp. 36-44, both of whom treat the outcome as open rather than determined.

⁷¹ On the distinction between the two products see Kenneth W. Abbott and Duncan Snidal, *Hard and Soft Law in International Governance*, in “International Organization”, 54 (2000), 3, pp. 421-456, at p. 421.

1.4 *Fragmentation, Not Death: A Diagnosis Through Four Lenses*

The obituaries for multilateralism are premature, and the carving of the epitaph on its tomb can wait. Eulogies of any kind, indeed, are too hasty and inopportune for a reason which matters rather more than the correction itself: multilateral institutions are not disappearing. There have never been so many of them, their memberships are stable or growing, to say nothing of the fact that treaty-making has not stopped, and it is precisely that abundance which has produced the overlapping regime complexes examined below.⁷² What is fading away is conceptually different: a quality is disappearing, and with it the properties which compose it. It is here that the grid constructed in the preceding sections comes in handy and first pays off visibly. It bears unexpected fruit because it manages to separate two different movements which the current vocabulary conflates: the institutions persist but the quality declines.

That proposition, condensed into a very few words, releases the whole force of the arguments advanced by this thesis. It is a sentence which encloses the core diagnostic claim, namely that the crisis of multilateralism cannot be measured by a simple headcount of treaties or members. If multilateralism were to be judged arithmetically, it would appear in perfect health; but when it is measured substantively, by its foundational legal properties, its core quality is rapidly being dismantled. That is precisely why “fragmentation” is the accurate word and “death” is not. The aforementioned point is of fundamental importance (one which will of course be supported by the arguments which follow), as it directly addresses the premise of the main research question. The essential task entrusted to this section therefore lies in explaining why the presupposition of fragmentation is

⁷² Karen J. Alter and Kal Raustiala, *The Rise of International Regime Complexity*, in “Annual Review of Law and Social Science”, 14 (2018), pp. 329-349, at p. 330, recording “more than 2,400 intergovernmental organizations, 37,000 organizations engaged in international politics, and hundreds of thousands of international agreements”. The point of the count is not the count: it is that the received diagnosis of decline cannot rest upon it. See also Cooper, Parlar Dal and Dipama, *Fragmented Multilateralism*, cit., p. 1826, on successive crises which “have strained the legitimacy and functionality of established institutions”, and on the parallel proliferation of informal bodies.

demonstrated at this point instead of being taken on trust, and in identifying the limit which the four lenses share. Without undue apprehension regarding the diagnosis, what is attempted here is a concrete demonstration that fragmentation exists and a determination of its nature.

What follows, therefore, diagnoses the loss of “quality” through four lenses, closing by conceding what none of the four is able to do. It thereby answers, on the synchronic axis, the question left open by 1.3: why the conversion of crisis into institution should have changed its product. These lenses, so called, represent the state of the art of the existing literature (in political science, international relations and international law) for explaining the crisis of multilateralism.⁷³ They are not something new, nor a contribution which this thesis seeks to offer; rather, they are constructed by leaning explicitly upon authors and studies already established. They are four points of view, four visions through which to look at multilateralism today. The aim is by no means to invent a new theory of fragmentation. The point of assembling them is, instead, to place those theories in a row so as to bring out their common limit. In other words, each of them describes one piece of the problem, but none of them is able to explain in what way this systemic pressure is transformed into legal form. What this section truly seeks to offer, within the wider context of the chapter, does not lie in the lenses themselves, but in the idea of isolating a fundamental gap, labelled the “transmission problem”. That gap is not a simple observation, but the formal mandate handed to Chapter Two, a chapter which exists precisely in order to close it, explaining where this systemic pressure discharges itself and how it is converted into legal instruments serving geopolitical competition.

⁷³ The four correspond to the four strands along which the literature on the crisis of multilateralism has developed, and each is cited in its place below: the migration of rule-production, the domestic politics of international obligation, the legitimacy of global governance and the overlap of institutions. The selection is a reading of that field and not a census of it.

The institutional lens records where the production of rules has migrated.⁷⁴ Texts are still produced, binding agreements among them; however, this increasingly occurs among specific subsets of the membership rather than at the universal level. States, weary of the deadlock, shift the making of rules outwards in three degrees of distance from the universal level: the plurilateral agreements annexed to the Marrakesh Agreement, which stay inside the legal order and whose architecture has been set out in 1.2.1; the joint statement initiatives, negotiated among the willing, which stay inside the institution but outside its legal architecture and are unopposable to the members which stand aside; and the mega-regionals, which leave altogether.⁷⁵ The last of these do not confine themselves to discussing tariffs: they forge the trade norms of the future, circumventing the delays of the World Trade Organization and placing themselves, in Lee's words, "outside the WTO umbrella".⁷⁶ The paralysis of the appellate function belongs to the same picture, but it is only named rather than developed here, because 2.5 is where it carries its full weight.⁷⁷ The case which shows this lens at its sharpest, and the dynamic in

⁷⁴ Morse and Keohane, *Contested Multilateralism*, cit., p. 409: "[w]hen coalitions are dissatisfied with existing institutions, they seek to shift the focus of rule-making to other institutions or to construct new institutions for that purpose". The two forms there distinguished, *regime shifting* and *competitive regime creation*, are set out at pp. 391-392. The lens used in the text is that description put to a legal use.

⁷⁵ The three degrees are degrees of legal status. Only the Plurilateral Trade Agreements listed in Annex 4 form part of the Marrakesh Agreement Establishing the World Trade Organization, cit., and then only "for those Members that have accepted them", since they "do not create either obligations or rights for Members that have not accepted them" (Art. II:3), whose architecture is examined in 1.2.1 above. What is negotiated outside Annex 4 produces no rule of the Organization and is therefore unopposable both to the members which stand aside and within the dispute settlement system: that is the substance of the objection pressed in the communication from India and South Africa, *The Legal Status of 'Joint Statement Initiatives' and Their Negotiated Outcomes*, WT/GC/W/819, 19 February 2021.

⁷⁶ On the joint statement initiatives and on plurilateral negotiation as a device for circumventing delay at the multilateral level see Gunawan Widjaja, *Fragmentation and Harmonisation in International Trade Law: A Literature Review on the Impact of Regional Trade Agreements on the WTO's Multilateral System in the Post-Pandemic Era*, in "International Journal of Social and Education (INJOSEDU)", 3 (2026), 3, pp. 291-301, at p. 297. For the words quoted in the text see Jaemin Lee, *One Step Backward for Two Steps Forward: Rethinking Multilateralism in Global Trade*, in "Japanese Yearbook of International Law", 63 (2020), pp. 5-31, at p. 18, observing that the parties to such agreements "are not simply discussing tariff eliminations" but "are tabling future norms of trade", and citing the Comprehensive and Progressive Agreement for Trans-Pacific Partnership and the Agreement between the United States of America, the United Mexican States, and Canada for "their adoption of and experimentation with various new rules on trade, outside the WTO umbrella".

⁷⁷ On the blocking of appointments to the Appellate Body, and on its character as a deliberate act rather than as the by-product of any particular dispute, see Lake, Martin and Risse, *Challenges to the Liberal Order*, cit., p. 244, describing it as "a clear example of a voluntary attack on a core multilateral institution". The consequences for the law of regional integration are developed in 2.5.

real time, is the Agreement on Investment Facilitation for Development, itself the outcome of a joint statement initiative. The received account, which attributes the blockage to India and South Africa, no longer describes the file, and the record of the Conference does not bear it out: of the two members it names, only one still withholds agreement.⁷⁸ South Africa altered its position in December 2025, Türkiye withdrew its objection at the Conference itself, and at the fourteenth Ministerial Conference, closed at Yaoundé on 30 March 2026, one hundred and sixty-five members out of one hundred and sixty-six supported the ministerial decision incorporating the Agreement into Annex 4, a figure larger than the one hundred and twenty-nine parties to the Agreement itself. Consensus failed upon a single dissent. Those one hundred and twenty-nine parties replied with a joint ministerial declaration in which they undertake to bring the Agreement into force within the framework of the Organization, although it remains outside Annex 4.⁷⁹ The undertaking measures the defeat rather than repairing it: an agreement outside Annex 4 is no part of the WTO Agreement, so that it creates neither rights nor obligations under it and reaches no panel through it. What the parties may still do is bring it into force among themselves, by way of separate declarations, so that two bodies of trade rules, with two different memberships, come to govern the same conduct inside the same organisation. This is an outcome which issues in the de facto fragmentation of the legal order. The migration which this lens records therefore occurs even where the participants would have preferred to remain, and

⁷⁸ For the received account see the communication from India and South Africa, *The Legal Status of 'Joint Statement Initiatives'*, cit., and Jane Kelsey, *The Illegitimacy of Joint Statement Initiatives and Their Systemic Implications for the WTO*, in "Journal of International Economic Law", 25 (2022), 1, pp. 2-24. On the state of the file shortly before the Conference see Rashmi Jose, *The World Trade Organization Investment Facilitation Agreement in the Run-Up to the Fourteenth Ministerial Conference*, International Institute for Sustainable Development, 18 February 2026, recording that India, Türkiye and South Africa had blocked consensus over the two preceding years and that "[i]n December 2025, South Africa announced that it would no longer do so", <https://www.iisd.org/articles/policy-analysis/wto-investment-facilitation-agreement-mc14>.

⁷⁹ World Trade Organization, *Members Participating in IFD Agreement Issue Joint Ministerial Declaration at End of MC14*, news item of 30 March 2026, https://www.wto.org/english/news_e/news26_e/infac_30mar26_353_e.htm; the declaration itself is the *Joint Ministerial Declaration on the Investment Facilitation for Development Agreement*, WT/MIN(26)/32, 29 March 2026. The state of the file is in movement and the figures given in the text are those recorded at the close of the Conference.

this makes the case sharper rather than weaker. The consequence deserves to be stated as it stands: the consensus rule, devised in order to protect indivisibility, now produces the contrary result, since one member withholding agreement no longer preserves universality but bars one hundred and twenty-nine members from bringing their agreement inside the common frame.⁸⁰ What this lens does not explain is equally definite. It records where rules are made, but says nothing of what becomes of the rules already made.

The domestic lens supplies the motive. The internal bargain reconstructed in 1.1.1 has been withdrawn: the compensation which once purchased domestic consent to external openness is no longer paid. The transfer of decision-making to supranational bodies and intergovernmental networks had already severed the vertical chain of accountability between government and domestic public. Consequently, the government which emerges from that severance now confronts an electorate for whom international obligations represent a burden rather than insurance.⁸¹ In legal terms, this consequence is discernible in two main areas. The first is the backlash against international courts, in which what is contested is not the individual ruling but the authority of the institution to deliver it. Voeten identifies twenty-eight such episodes directed at eleven international judicial bodies, concluding that selective exit, rather than reform, is a more common outcome.⁸² The second is resistance short of exit, that is to say systemic non-compliance and the refusal of cooperation, a distinct legal phenomenon and not a

⁸⁰ Marrakesh Agreement, cit., Art. X:9, under which the Ministerial Conference, upon the request of the Members parties to a trade agreement, “may decide exclusively by consensus to add that agreement to Annex 4”.

⁸¹ Cihan Uzunçayır, *Take Back Control: Explaining the Rise of Populist Sovereignism Through the Legitimacy Crisis of the Liberal International Order*, in “Journal of Mehmet Akif Ersoy University Economics and Administrative Sciences Faculty”, 12 (2025), 3, pp. 900-924, at p. 909, on the transfer of elements of sovereignty to supranational institutions and intergovernmental networks as having “eliminat[ed] the vertical chain of accountability between the government and the domestic public”. The compromise whose domestic side has been withdrawn is Ruggie’s, reconstructed in 1.1.1 above.

⁸² Erik Voeten, *Populism and Backlashes against International Courts*, in “Perspectives on Politics”, 18 (2020), 2, pp. 407-422, cited from the pre-print version in “SSRN Electronic Journal” (2018), pp. 2 and 5, where “28 episodes of backlash against 11 different international judicial institutions” are identified, the operationalisation being confined to “efforts to curb a court’s formal institutional authority”; and p. 3, holding that “[s]elective exit is a more common outcome” than the reform of such courts.

lesser degree of the same one.⁸³ This domestic perspective also frames the core question for the securitisation analysis in 2.2. After all, the audience whose acceptance is required to complete a securitising move is precisely this dissatisfied domestic electorate.⁸⁴ However, while this perspective explains the motive, it fails to explain the form. It supplies the political driver but not the legal instrument, which is the common limit taken up at the close of this section. Distinct from it is a further question: why do governments facing comparable domestic incentives often resort to entirely different legal devices? That question belongs to Chapter Three; it is registered here only as a second limit of the present lens.

The social lens represents the most vulnerable flank of the argument advanced here. The analysis therefore turns to the legitimacy deficit of universal institutions. Legitimacy is contested from two opposite directions. From within, the objection is that authority has been displaced beyond the state faster than any procedure capable of legitimating it could be built. This unchecked rise in authority has, in turn, sparked politicisation and widespread contestation.⁸⁵ From the Global South, the objection is that rules are designed by few and applied to all, an imbalance already registered in 1.2. It is crucial to reiterate that the grid serves to measure legal form (the architecture of the rules) and not justice. The lens, nevertheless,

⁸³ Mikael Rask Madsen, Pola Cebulak and Micha Wiebusch, *Backlash against International Courts: Explaining the Forms and Patterns of Resistance to International Courts*, in “International Journal of Law in Context”, 14 (2018), 2, pp. 197-220, cited from the pre-print version in “SSRN Electronic Journal” (2018), p. 25, distinguishing pushback from backlash and treating systemic non-compliance, which “goes beyond single cases and often involves key institutions of the member state, including parliaments and courts”, as resistance directed at the authority of the court and not merely at the outcome of a case. Only backlash so understood bears upon the property this thesis measures.

⁸⁴ On the audience whose acceptance completes a securitising move see Barry Buzan, Ole Wæver and Jaap de Wilde, *Security: A New Framework for Analysis*, Lynne Rienner, Boulder (CO) 1998, pp. 25-26, on securitisation as a speech act which succeeds only where the claim is accepted by the audience to which it is addressed. The framework is set out in full in 2.2; what is registered here is only the domestic address of that audience.

⁸⁵ Michael Zürn, *A Theory of Global Governance: Authority, Legitimacy, and Contestation*, Oxford University Press, Oxford 2018, and, for the compressed statement of the cycle, Orfeo Fioretos and Jonas Tallberg, *Symposium: Authority, Legitimacy, and Contestation in Global Governance*, in “International Theory”, 13 (2021), 1, pp. 97-98, at p. 97, describing “a cycle from rising authority beyond the state through the 20th century, to ensuing legitimization problems toward the century’s end, to the politicization and contestation triggered by such problems”. For the standard against which such institutions are assessed see Allen Buchanan and Robert O. Keohane, *The Legitimacy of Global Governance Institutions*, in “Ethics & International Affairs”, 20 (2006), 4, pp. 405-437, at p. 408, on legitimacy as the right to rule.

earns its place by supplying a precise causal link to the ongoing crisis, rather than a normative or a moral one. A legitimacy deficit at the universal level is what renders the club attractive, because a club (a plurilateral or minilateral arrangement) is legitimate in the eyes of its own members by construction. As may be inferred from Drezner's account, legitimacy is not the monopoly of large memberships. An arrangement may derive it from technical expertise, from a record of success or from the aggregate power of its participants. For this reason, wherever the universal level is "gridlocked or perceived as biased", the alternatives to it, the club in its formal guise and informal mechanisms alike, cease to be peripheral and become the fulcrum of the system (especially for the Global South).⁸⁶ This structural shift paves the way for the arguments in 1.5, explaining why states opt for an exit strategy from the universal framework. What this lens does not explain is the legal form of what the states which exit then proceed to build.

The structural lens describes the architecture within which the other three operate. Where a field is governed not by one regime, but by an array of partially overlapping institutions (namely a regime complex) among which no hierarchy has been agreed, the result is forum shopping, regime shifting and the deliberate manufacture of inconsistent rules in parallel venues.⁸⁷ The legal counterpart of that literature, the point at which the present enquiry remains one in law and not in

⁸⁶ Daniel W. Drezner, *Institutional Proliferation and World Order: Is There Viscosity in Global Governance?*, Working Paper, The Fletcher School, Tufts University, March 2007, at p. 22, observing that membership size is not the only source of process legitimacy and that international organisations may derive it "from other factors, such as technical expertise, a track record of prior success, or simply the aggregate power of member governments". On informal mechanisms as central rather than peripheral "especially where formal multilateralism is gridlocked or perceived as biased", and as the flexible alternative sought by actors of the Global South, see Cooper, Parlar Dal and Dipama, *Fragmented Multilateralism*, cit., p. 1834.

⁸⁷ Kal Raustiala and David G. Victor, *The Regime Complex for Plant Genetic Resources*, in "International Organization", 58 (2004), 2, pp. 277-309, at p. 279, defining a regime complex as "an array of partially overlapping and nonhierarchical institutions governing a particular issue-area", and at p. 298, on the deliberate creation of strategic inconsistency; Karen J. Alter and Sophie Meunier, *The Politics of International Regime Complexity*, in "Perspectives on Politics", 7 (2009), 1, pp. 13-24, at p. 13, holding that "the lack of hierarchy distinguishes international regime complexity, making it harder to resolve where political authority over an issue resides"; and Alter and Raustiala, *The Rise of International Regime Complexity*, cit., p. 332, on the absence of hierarchy as "the key political feature of a regime complex".

political science, is the report of the Study Group of the International Law Commission finalised by Koskenniemi.⁸⁸ The document formalises a stark diagnosis: what once belonged to general international law has become the field of operation of specialist systems, shattering into relatively autonomous, specialised silos (trade law, human rights law, environmental law, the law of the sea), each possessing its own principles and its own institutions. The Commission states the result without softening it: “conflicts between rules or rule systems, deviating institutional practices and, possibly, the loss of an overall perspective on the law”.⁸⁹ The autonomy of the rule complexes so recorded is relative and not absolute, which is precisely what makes the finding usable here. The specialised fields have not seceded from international law. They have simply ceased to be read against one another. The operative consequence is stated by the Commission itself: “the rights and obligations of legal subjects may depend on which body is seized to recognize them”.⁹⁰ Identifying the applicable rule thereby ceases to be a mere technical deduction and becomes a strategic manoeuvre. Moreover, beyond a certain threshold of institutional density, the outcomes so produced cease to be rule-based and become fundamentally power-based.⁹¹ What this lens does not

⁸⁸ International Law Commission, *Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law*, report of the Study Group finalised by Martti Koskenniemi, A/CN.4/L.682, 13 April 2006.

⁸⁹ Ibid., para. 8, on what once appeared to be governed by “general international law” having become “the field of operation for such specialist systems as ‘trade law’, ‘human rights law’, ‘environmental law’, the ‘law of the sea’, ‘European law’ and even such exotic and highly specialized knowledge as ‘investment law’ or ‘international refugee law’, etc., each possessing its own principles and institutions”. The words quoted in the text are taken from the same paragraph.

⁹⁰ Ibid., para. 489. The passage is quoted for what it registers and not for what the report then does with it: the Commission adds, in the same paragraph, that “[f]ollowing decisions by the Commission in 2002 and 2003, this report set aside the institutional aspects of fragmentation”. That the institutional consequence should be stated and then set aside is precisely the space in which the present enquiry operates. Its own conclusion is that no hierarchical solution is available: *ibid.*, para. 493, holding that “no homogenous, hierarchical meta-system is realistically available to do away with such problems”. That is not, for the Commission, the absence of any remedy, since the report affirms the continued relevance of *lex specialis*, *lex posterior* and *lex superior* and proposes the 1969 Vienna Convention as the basis of an “international law of conflicts”; it does establish, however, that the overlap is a permanent condition of the system and not a transitional defect awaiting repair.

⁹¹ Drezner, *Institutional Proliferation and World Order*, *cit.*, pp. 2 and 4, arguing that beyond a certain point “proliferation shifts global governance structures from rule-based outcomes to power-based outcomes”, because proliferation enhances the capacity of the powerful to select their forum, and that this tactic “favors the strong over the weak to a greater degree than if forum-shopping did not occur at all”. The translation of that finding into the vocabulary of the grid, namely that forum choice operates upon the generalised

explain is direction. It describes, instead, the architecture, the static map of institutional overlaps, not the route authority takes through it under pressure.

At this stage, mapping these four lenses onto the four properties of the analytical grid returns a correspondence worth setting out: each lens answers to the erosion of one specific property, in the sense that it brings that property into view and not that it erodes it alone.⁹² The institutional lens captures the loss of indivisibility. In other words, where rules are made among subsets of the membership, the benefit granted to the participants no longer extends automatically to the rest. What the universal level treated as indivisible becomes excludable at the boundary of the club. The domestic lens exposes the loss of actionability. The backlash against international courts and the practice of systemic non-compliance erase not the rule itself but the answerability for its breach. Crucially, an obligation for which no one may be made to answer is an obligation in name only. The social lens highlights the decline of diffuse reciprocity. Where the universal level is held deficient in legitimacy and the club legitimate by construction among its own members, the obligation owed to all is exchanged for an advantage shared among the few. Reciprocity here contracts to the membership which produces it, and with it the standing to invoke a breach. The structural lens registers the erosion of generalised principles of conduct. Where a plurality of partially overlapping regimes governs the same conduct and no hierarchy has been agreed among them, the rule ceases to address a class of situations irrespective of the parties, because which rule applies depends upon which body is seized. Four lenses and four properties: what the diagnosis records is not four separate crises, but a single systemic fracture, observed from four distinct vantage points within the same structure. Nor are the

principles of conduct by determining which rule addresses a given situation, and derivatively upon actionability by determining before whom, if anyone, an obligation may be invoked, is not drawn in those terms by the author.

⁹² For the grid and its four properties see 1.2 above, where the first three are drawn from Ruggie, *Multilateralism*, cit., pp. 571-572, and the fourth, actionability, is proposed not as a fourth item standing beside the others but as the condition upon which the other three depend, diffuse reciprocity being the clearest case.

four of equal weight: actionability is the condition upon which the other three rest, so that its loss does not add to theirs but removes the ground on which they stand.

Collectively, the four lenses converge upon a description, yet they stop before the mechanism, and in stopping there they mark out the blind spot, announced above, which the literature has left open: the transmission problem. They map the landscape, showing where the rules are made (institutional), why political incentives drive states away from the system (domestic), why restricted clubs hold such appeal (social) and how regimes overlap without hierarchy (structural). However, none shows how systemic pressure crystallises into legal form: how the migration of rule-production, the domestic incentive, the legitimacy deficit and the overlap of regimes translate into a specific clause invoked in a concrete dispute against a particular state. That gap is not a defect of any one lens but the common boundary of all four, and it is registered here so that it may be met rather than merely lamented. Each of the four lenses shows that the pressure exists. None of them shows where it goes.

1.5 The Rise of the “Clubs”: BRICS+, the Quad, AUKUS and the G7

The club is usually presented as multilateralism “in miniature”, or even as its natural substitute. This section, however, proposes the exact opposite, and sets out to dismantle that false myth. Measured against the grid built in this chapter the club is something else: the same institutional form, but with three of its four properties inverted and the fourth simply absent. Four cases will test it and the finding they return fixes the subject of this thesis. Setting these clubs upon the diagnostic grid and reading what it shows, the section arrives at a systematic and unequivocal result. This is a section which closes the logical development of the chapter, and which performs the third and last diagnostic reading, the one along the prospective axis, in order to reveal where the global legal order is moving. It demonstrates, moreover, that clubs are, subject to narrow exceptions, not legal phenomena at all: they generate “commitment” and not “obligation”.⁹³ Since there is no obligation capable of being invoked before a judge, no legal breach is committed where the commitment is not honoured.

The Group of Seven is the oldest and most cohesive of them, although it has no legal status, no permanent seat and no secretariat, working by communiqué alone.⁹⁴ Its members, however, are also the principal architects of the universal institutions, which it has nurtured rather than displaced:⁹⁵ it catalysed developments at that level instead of substituting itself for it. For this reason, it is

⁹³ Joost Pauwelyn, Ramses A. Wessel and Jan Wouters, *An Introduction to Informal International Lawmaking*, in *Id.* (eds.), *Informal International Lawmaking*, Oxford University Press, Oxford 2012, p. 2, on output informality, that is, cooperation which “does not lead to a formal treaty or any other traditional source of international law, but rather to a normative output that is not part of the traditional sources of either domestic or international law”.

⁹⁴ Andrew Baker, *The Group of Seven*, in “New Political Economy”, 13 (2008), 1, pp. 103-115, at p. 103, observing that “by no conventional measure or definition is the ‘G7 process’ an institution”, since “[i]t has no official legal status, no permanent home base and no secretariat”. For its placement among the informal intergovernmental organisations see Vabulas and Snidal, *Organization without Delegation*, cit., pp. 197-198, noting that the Group “has no independent secretariat and no formal treaty spells out its procedures”.

⁹⁵ Baker, *The Group of Seven*, cit., p. 108, holding that “[m]ost of the consensual norms, ideas, approaches and principles that inform contemporary global financial governance are either authored or approved by the G7”, and that its power lies as much in “catalysing developments elsewhere” as in reaching decisions of its own.

regarded as the benchmark against which the other three must be measured. BRICS+ is the most illustrative case. This informal club has enlarged twice since 2024, adding members and a partner country category. Moreover, it remains without a constitutive treaty, consensual in its decisions and without compulsory dispute settlement.⁹⁶ This shows us directly that new members do not bring new legal quality with them: heads have been added, obligations have not. Where it did want obligations capable of being invoked, it had to build an institution upon a treaty: the New Development Bank possesses full international personality under Article 29(a) of its Articles of Agreement.⁹⁷ It is significant that the group produces law only under compulsion. The Quad confirms this from the security side: even scholars who praise its resilience admit that the partnership has never imposed explicit, legally binding, enforceable security obligations on its members.⁹⁸ AUKUS is the exception which confirms the rule. Its advanced capabilities pillar proceeds by memorandum and by exemption from export controls; its naval propulsion pillar required treaties, because nuclear material is not transferred by

⁹⁶ Kazan Declaration, XVI BRICS Summit, Kazan, 23 October 2024, for the Modalities of the BRICS Partner Country Category; Rio de Janeiro Declaration, XVII BRICS Summit, Rio de Janeiro, 6 July 2025, para. 3, welcoming the Republic of Indonesia as a member and ten further States as partner countries, and para. 124, recalling that enlargement proceeds under the BRICS Membership Expansion Guiding Principles, Standards, Criteria and Procedures adopted at the Johannesburg Summit and reaffirming the group's spirit of "full consultation and consensus". Neither instrument is a constitutive treaty, and none of the summits has adopted a charter or any procedure for the settlement of disputes. On the official count the members are eleven, one of which has never perfected its accession: Saudi Arabia has never formally confirmed the membership offered to it, and its representatives have repeatedly stated that the question remains under examination. See Oliver Stuenkel and Margot Treadwell, *Why Is Saudi Arabia Hedging Its BRICS Invite?*, Carnegie Endowment for International Peace, 21 November 2024, www.carnegieendowment.org, recording that at the Kazan summit the Saudi Foreign Minister committed only to strengthening the country's partnership with the group. That a State should be counted among the members without any act of accession is itself the proof that in a club membership does not require a legal act in order to be counted.

⁹⁷ Agreement on the New Development Bank, Fortaleza, 15 July 2014, and the Articles of Agreement of the New Development Bank annexed to it, Art. 29(a): "The Bank shall possess full international personality". The point is not the Bank but the form. The single BRICS undertaking which generates obligations capable of being invoked is also the single one constituted by treaty.

⁹⁸ Xingchuan Jiang, *Platformization Without High Commitment: The Institutional Resilience and Functional Limits of the Quad*, in "Pacific Focus", 2026, doi 10.1111/pafo.70036, pp. 1-19, at p. 1, recording that the Quad has operated since 2017 "despite the absence of legally binding security commitments", and at p. 4, defining low commitment as an arrangement which "has not set explicit, legally binding, and enforceable security obligations for members". The three dimensions along which the author measures commitment, that is, whether the obligations bind in law, whether the rules are precise, and whether a third party may interpret and apply them and settle disputes, are those of the legalisation literature and correspond to the properties measured by the grid used here.

communiqué. The trilateral agreement concluded in Washington on 5 August 2024 bars any transfer of material until Australia's Article 14 arrangement with the International Atomic Energy Agency (IAEA) is in place.⁹⁹ The bilateral agreement signed in Geelong on 26 July 2025, instead, entered into force on 19 December 2025 and runs to 31 December 2075.¹⁰⁰ Consider, by comparison, the Pandemic Agreement discussed in 1.3 above: adopted in May 2025, it is still not open for signature. Yet, even in these AUKUS instruments, the parties restricted the resolution of their differences to mutual consultation, "without recourse to any other dispute settlement mechanisms".¹⁰¹ Where physical reality compels the club to legislate, it legislates without a judge.

The result is therefore systematic. Inside the club the goods are divisible by construction, the principles are particular because membership is itself the rule, reciprocity is specific and endlessly renegotiated. Actionability is absent since there is no obligation to invoke. Subject to narrow exceptions, clubs are not legal phenomena at all: they generate commitment, and no offence is committed when a commitment is breached.¹⁰²

⁹⁹ Agreement among the Government of the United Kingdom of Great Britain and Northern Ireland, the Government of Australia, and the Government of the United States of America for Cooperation Related to Naval Nuclear Propulsion, Washington, 5 August 2024, Art. VII(B): "Australia shall have in place the Article 14 Arrangement, including any necessary implementing mechanisms, prior to the United Kingdom or the United States transferring any Material to Australia pursuant to this Agreement" (UK Miscellaneous Series No. 8 (2024), CP 1148; the Agreement entered into force on 17 January 2025, Australian Treaty Series [2025] ATS 5). The Article 14 Arrangement is the arrangement to be concluded with the International Atomic Energy Agency under Art. 14 of the Australia-IAEA Comprehensive Safeguards Agreement of 10 July 1974.

¹⁰⁰ Nuclear-Powered Submarine Partnership and Collaboration Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Australia, Geelong, 26 July 2025 (the so-called Treaty of Geelong), UK Treaty Series No. 7 (2026), CP 1518, in force from 19 December 2025; Art. XXIII(B), under which "this Agreement shall remain in force until 31 December 2075". On the WHO Pandemic Agreement, adopted on 20 May 2025 and not yet open for signature, see 1.3 above.

¹⁰¹ Nuclear-Powered Submarine Partnership and Collaboration Agreement, cit., Art. XXIII(E): "The Parties shall resolve any differences or disputes arising in the implementation or interpretation of this Agreement through mutual consultations without recourse to any other dispute settlement mechanisms". The same exclusion is written into the trilateral agreement, cit., Art. XIII(C). The clause is worth more than its length. Where the club does bind itself in law, it takes care that no third party may be seized of the breach.

¹⁰² Dick W. P. Ruiter and Ramses A. Wessel, *The Legal Nature of Informal International Law: A Legal Theoretical Exercise*, in Pauwelyn, Wessel and Wouters (eds.), *Informal International Lawmaking*, cit., pp. 162-184, at p. 163, recalling that the non-binding character of such norms "is reflected in the fact that ignoring them would not lead to a formal infringement and hence not to legal consequences: 'No offence

The consequence, and therefore this chapter's conclusion, is a matter of "load". The universal level still produces rules but has forfeited their actionability.¹⁰³ The level of the clubs produces commitments and not obligations. The regional level alone still holds general rules, internal indivisibility and an obligation capable of being invoked together. The pressure diagnosed in 1.3 and 1.4 does not dissipate into the ether because the universal channel is blocked and the club channel bears no load: it discharges, finding an outlet for itself, upon the one structure still carrying weight, the regional level.

If the research question asks how the fragmentation of the multilateral order is reshaping the law of regional integration, and to what extent the securitisation and weaponisation of regional legal frameworks are transforming their original economic and peace-oriented function into an instrument of geopolitical competition, this section answers the "why" of its happening precisely here. This chapter has established what is being lost and where the pressure comes to rest; it has not shown how that pressure becomes legal form. That is the transmission problem and the chapter which follows answers it. The clubs make commitments. Only the regions still make obligations.

is committed when a non-binding act is breached". The narrow exception admitted in the text is the treaty-based institution founded by a club, of which the New Development Bank examined above is the instance.

¹⁰³ On the loss of actionability at the universal level see 1.3 above; its consequences for the law of regional integration are developed in 2.5 below.

CHAPTER 2

THE LEGAL TURN: SECURITISATION AND WEAPONISATION OF REGIONAL INTEGRATION LAW

The second phase of our inquiry turns to the second clause of the research question: whether, and through what mechanism, securitisation and weaponisation are transforming the original economic and peace-oriented function of regional legal frameworks into an instrument of geopolitical competition. This chapter argues that the pacific vocation commonly ascribed to the law of regional integration was never an intrinsic property; rather, it was a structural loan, an architectural guarantee advanced by the multilateral order within which that law was permitted to exist. What is under way today is not the sudden corruption of a property, but the progressive recall of that systemic loan. The correction is no quarrel over attribution. Were the function intrinsic, securitisation would be an infection reaching that law from outside and the cure a matter of defences more solidly built. If it was advanced, the phenomena examined below are no pathology at all but the ordinary conduct of a body of law whose enabling condition has been withdrawn.

The subsequent sections take up the question that Chapter One deliberately left open: how systemic pressure, once diagnosed, acquires legal form. This chapter bridges a persistent gap in the literature, closing the analytical distance between macro-systemic geopolitical pressure and the specific treaty clauses governments actually invoke. The contribution this analysis endeavours to offer, however, lies not in discovering the individual symptoms of the current crisis but in exposing their structural progression. What is proposed is not a diagnosis of four parallel disorders, but the articulation of a single sequence in which each step is the precondition of the next. This transforms a mere coincidence of dates into a causal account, one the chapter must demonstrate rather than assume. Where that account

meets objections, it registers and answers them instead of setting them aside. It reconstructs the mechanism; how far that mechanism has reached, and whether regional blocs answer the same pressure alike, is left to the comparative analysis of Chapter Three.

2.1 *The Original Paradigm: Peace Through Law and Economic Interdependence*

*Europe will not be made all at once, or according to a single plan. It will be built through concrete achievements which first create a de facto solidarity.*¹⁰⁴

Robert Schuman, Declaration of 9 May 1950

Integration was crafted to make war impossible, tailored to restrain internecine conflict like a straitjacket and, it must be stressed, the “invention” worked. What this section argues, and tries to prove, is that it worked for a reason external to itself. The pacific function, with which the law of regional integration is universally credited, was never a property of that law, nor an intrinsic characteristic of it. It was borrowed from the multilateral order that authorised it and it is now being withdrawn along with it. A “multilateral loan” that rendered aggression materially irrational. The claim, here, is not decorative at all, because it changes what the remainder of this chapter is describing. Without circling the point, without frills, but also without the arrogance of wishing to spit in the face of the traditional accounts, it can be said that this thesis proposes a radical rereading, one that dismantles the myth according to which regional integration generates peace in a “self-sufficient” manner.¹⁰⁵ The securitisation traced in the sections that follow is

¹⁰⁴ Robert Schuman, *Declaration of 9 May 1950*, in the official English version published by the European Union, https://european-union.europa.eu/principles-countries-history/history-eu/1945-59/schuman-declaration-may-1950_en.

¹⁰⁵ The account here contested is a real one, and not a straw man built for the occasion. The editors of *Integration Through Law* observe that the trauma of the Second World War “created, especially in the generation of the ‘Founding Fathers’, a strong commitment to European integration as a meta-value in itself above any mundane cost-benefit analysis” (Cappelletti, Seccombe and Weiler, as reported in Frederick M. Abbott, *GATT and the European Community: A Formula for Peaceful Coexistence*, in “Michigan Journal of International Law”, 12 (1990), 1, pp. 1-58, at p. 6, note 13). That the pacific effect might rest on causes external to integration itself is a doubt the literature has already registered, although it locates those causes elsewhere: Enrico Spolaore, *What Is European Integration Really About? A Political Guide for Economists*, in “Journal of Economic Perspectives”, 27 (2013), 3, pp. 125-144, at p. 141, records that “[s]keptics of the ‘pacifying’ effect of European institutions stress the crucial involvement of the United States and NATO in Europe during the Cold War and afterwards”. The reading proposed here displaces that external cause from the security guarantee to the multilateral legal order which authorised integration.

not a particular disease which regional integration law contracted from outside. It is the form that law assumes once the premise that disciplined it has been removed.

To be precise, the literature bearing on the topics addressed in the sections that follow (securitisation, weaponised interdependence, Article XXI and the crisis of the WTO) is avowedly saturated.¹⁰⁶ These are not, moreover, questions that slip away and dissolve into the academic ether; on the contrary, having a real impact on everyday life, they are burning issues. So as not to prove redundant, this thesis does not promise the reader a programmatic shelf holding the whole of that literature, from which to extract an argument with the expectation of exhaustive coverage. It seeks, instead, to make an original contribution, by analysing how these phenomena hold together, how they pass the baton from one to the next (through a specific systemic lens). While these are, at times, diagnosed and treated as parallel symptoms, the multilateral lens recasts them as a single causal story. By design, this section merely supplies the hook and not yet the catch, but from here the argument climbs and it climbs one section at a time.

Begin, then, from what is not contested; one can confidently ascertain that the paradigm itself is not in dispute. In the post-war era, legal thought conceived of law as “essentially, an order for the promotion of peace”,¹⁰⁷ a view encapsulated by Kelsen’s formulation. Bretton Woods translated that conviction into economics: interdependence, if woven densely enough into an integration so profound and pervasive, would render aggression irrational. Regional integration was the same wager, only placed on a smaller table. What is routinely forgotten is the position that the design assigned to it. The blueprint drawn in 1944 was that of

¹⁰⁶ The reference is, for each of the four, to the works that have come to define the respective debates: Buzan, Wæver and de Wilde, *Security: A New Framework for Analysis*, cit.; Farrell and Newman, *Weaponized Interdependence*, cit.; J. Benton Heath, *Making Sense of Security*, in “American Journal of International Law”, 116 (2022), pp. 289-339; Weihuan Zhou and Victor Crochet, *Confronting Fragmentation: A Quest for a Plurilateral Appellate Mechanism under the WTO*, in “Journal of World Investment & Trade”, 26 (2025), pp. 275-300. Each is taken up, in its own place, in the sections that follow.

¹⁰⁷ Hans Kelsen’s formulation, reported in David Kennedy, *The International Style in Postwar Law and Policy*, in “Utah Law Review”, 1994 (1994), 1, pp. 7-103, at p. 40. Kennedy observes, on the same page, that the lectures “present an argument for international law [...] as an argument for peace”.

“a peaceful, nondiscriminating, and open system of economic and trade relations of global dimensions”, one in which “both bilateralism and regionalism were viewed, at best, as an exception and transitional phase in the realization of the ultimate goal”.¹⁰⁸ Article XXIV of the GATT is the positive-law expression of that subordination.¹⁰⁹ Regionalism did not begin as an alternative to the multilateral order. On the contrary, it began as a permission granted by it.

Regionalism, following this thread, does not exist in international economic law as an autonomous legal fact. It exists as an *authorised derogation*,¹¹⁰ an exception that the sections which follow will analyse and take apart in depth. And the dependence is not merely formal. When the multilateral framework dissolves, regional law does not carry on unchanged, as an island of order, a sanctuary of stability.¹¹¹ It changes function: it becomes the only surviving container of enforceable obligation and therefore mutates into the natural seat of geopolitical competition.

¹⁰⁸ Abbott, *GATT and the European Community*, cit., p. 9, quoting Stefan Riesenfeld. The subordination was not merely programmatic: the same author records, at p. 13, that “[t]he GATT Contracting Parties have never refused an article XXIV waiver to a prospective RTA”, and reports, at p. 5, note 11, Kenneth Dam’s observation that no customs union or free trade area agreement presented for review had complied with Article XXIV, and that every such agreement had nevertheless been approved by tacit or explicit waiver. On the drafting intention see Meredith Kolsky Lewis, *The Embedded Liberalism Compromise in the Making of the GATT and Uruguay Round Agreements*, in G. Moon and L. Toohey (eds.), *The Future of International Economic Integration: The Embedded Liberalism Compromise Revisited*, Cambridge University Press, Cambridge 2018, pp. 12-30, here cited from the pre-print version in “SSRN Electronic Journal” (2018), p. 5, on the “[l]imited exceptions permitting customs unions and free trade agreements, drafted so as to keep multilateralism the norm but to ensure the compatibility with GATT of nascent European groupings”.

¹⁰⁹ General Agreement on Tariffs and Trade, cit., Art. XXIV, para. 5, under which “the provisions of this Agreement shall not prevent, as between the territories of contracting parties, the formation of a customs union or of a free-trade area”, and para. 4, under which the purpose of such arrangements “should be to facilitate trade between the constituent territories and not to raise barriers to the trade of other contracting parties with such territories”.

¹¹⁰ Ibid., Art. XXIV, and in particular paras. 5 and 8, authorising departures from the most-favoured-nation obligation of Art. I for customs unions, free trade areas and interim agreements leading to their formation.

¹¹¹ The point has been made, and forcefully, from within the multilateral camp itself. Before the US Chamber of Commerce, Pascal Lamy held that “[w]hile bilateral agreements can be a useful complement, I do not believe they can substitute a strong multilateral trading system”: they are “by their very nature discriminatory”, they leave untouched “the toughest areas where trade restrictive and distorting measures, such as subsidies, still prevail”, and they force economic operators “to abide by a spaghetti bowl of different rules” (as reported in Leal-Arcas, *The Fragmentation of International Trade Law*, cit., p. 191). The same author records, at p. 189, that “[b]ilateralism/regionalism is the natural consequence of failed multilateralism”.

Here, the reading proposed by this thesis parts company with the received account or the traditional consensus. The founding acts of European integration were not economic instruments that later acquired a security dimension. They were, instead, security instruments from the outset. The Schuman Plan pooled coal and steel (or in other words the industries of war) and it was motivated by security as a way “to make it plain that any war between France and Germany becomes not merely unthinkable, but materially impossible”.¹¹² Adenauer, tellingly, overruled his own economics minister in order to obtain a narrower and deeper union with France, rather than the broader free trade area that Erhard would have preferred.¹¹³ Read through the analytical vocabulary that the next section supplies, the structure of that founding act is immediately recognisable. There was a securitising actor, a referent object, an existential threat and an audience prepared to accept all three. Consequently, the extraordinary measure was integration itself.

Now, the obvious objection, if we are to undertake a sincere assessment of the facts, deserves to be met rather than avoided. The Copenhagen School wrote in 1998 and Schuman spoke in 1950: nothing here suggests that the founders securitised in any technical sense they could have recognised. Therefore, the claim advanced is narrower and, for that reason, harder to dismiss. We are dealing with exactly the same grammar: only its direction has changed. The referent object has migrated from the collectivity to the single state, the existential threat from war between the members to dependence upon partners and the extraordinary measure from binding oneself to unbinding oneself. Security did not enter the law of integration from outside; rather, it was intrinsically bound to it at the very founding, and it is now being run in reverse.

¹¹² Spolaore, *What Is European Integration Really About?*, cit., p. 126, quoting the Schuman Declaration of 9 May 1950. The same rationale operated on the multilateral side of the design: Abbott, *GATT and the European Community*, cit., p. 5, records that the Article XXIV waiver was incorporated into the General Agreement in 1949 in part “because of post-war perceptions of the potential advantages for regional political stability which might be achieved through economic integration”.

¹¹³ Spolaore, *What Is European Integration Really About?*, cit., p. 141.

This is precisely where the multilateral lens earns its place, where the commitment of this thesis genuinely seeks to break through and where the present chapter becomes necessary rather than merely useful. Multilateralism is not a headcount of parties. It is an organisational practice resting upon indivisibility, diffuse reciprocity and the enforcement of common rules.¹¹⁴ Its constitutive achievement was to minimise the influence of power in the settlement of economic disputes.¹¹⁵ This argument seeks to illuminate multilateralism not so much as a quantitative fact, but rather as an essential qualitative infrastructure, one without which the system of regional integration crumbles. That achievement is precisely what regional integration law borrowed and what it never produced for itself. Withdraw it, removing the very frame, and the sections that follow cease to be four separate pathologies. The discursive “licence” examined in 2.2, the material asymmetry examined in 2.3, the textual opening examined in 2.4 and the collapse of enforcement examined in 2.5 become a single movement, observed at four successive depths. The paradigm is not failing because its defences were too weak, nor collapsing under the weight of its own fragility: it is failing because they are being used “exactly as drafted”, floating within a multilateral void.¹¹⁶

Ultimately, this section establishes the premise of the research question, rather than answering it. If the fragmentation of the multilateral order is reshaping the law of

¹¹⁴ Rorden Wilkinson’s formulation, as reported in Leal-Arcas, *The Fragmentation of International Trade Law*, cit., p. 164, describing multilateralism as an “organizational practice” revolving around the core principles of “indivisibility, diffuse reciprocity, and dispute settlement/enforcement of the rules”. The taxonomy derives from Ruggie, *Multilateralism*, cit.

¹¹⁵ Zhou and Crochet, *Confronting Fragmentation*, cit., p. 293, on the WTO’s “intended function to promote the settlement of disputes in a rules-oriented manner while minimizing the influence of power”. The warning is not new: already in 1990 Abbott cautioned that a liberalisation programme built upon case-by-case reciprocity would shift the system from comprehensive global liberalisation towards “fragmented country-by-country and region-by-region liberalization” (Abbott, *GATT and the European Community*, cit., p. 30).

¹¹⁶ On the regional side of the design see Sanjay Pandey, *Spaghetti Bowl Phenomenon and Crucification of Multilateralism: Task Ahead for WTO*, National Law University, Jodhpur 2006, pp. 5-6, observing that the agreements “which the architects of the GATT thought would be minor exceptions have now swallowed up the trading system”, and that they have proved “not the building blocks rather stumbling blocks of free trade”. What the drafters wrote as a limited permission has therefore been exercised as written, and not breached: on the drafting intention see Lewis, *The Embedded Liberalism Compromise in the Making of the GATT and Uruguay Round Agreements*, cit., p. 5, and, on the record of the waivers, Abbott, *GATT and the European Community*, cit., p. 13.

regional integration, it is because that law never owned the peace it has been credited with keeping. To what extent, securitisation and weaponisation are transforming its original economic and pacific function into an instrument of geopolitical competition, is what this chapter now sets out to measure.

2.2 Securitisation Theory and the Law of Regional Integration

This section sets out to delve into the analytical core of the proposed framework, allowing the reader to engage directly with the research question and to truly grasp the conceptual endeavour of this work. It argues that the theory of securitisation, which was developed to explain how issues are discursively constructed as existential threats, supplies the analytical key to the central transformation this thesis investigates. In other words, it refers to the passage of regional integration law from an instrument of economic cooperation and peace into a vector of geopolitical competition. Securitisation by itself, is not that transformation; it is its discursive precondition, the mechanism by which a policy question “migrates” from the register of ordinary economic regulation into the register of extraordinary measures that positive law reserves for exceptional circumstances. It is only once that “migration” has occurred, rhetorically, that a legal exception becomes invocable at all. The following arguments substantiate this claim and, in doing so, supply the methodological vocabulary needed to assess the empirical record examined in the subsequent sections.

The theoretical foundation lies within the Copenhagen School's “reconceptualization” of security. The proposed framework formulates it as an intersubjective practice rather than an objective condition.¹¹⁷ On this account, security is not a fixed set of threats awaiting discovery by experts; it is what results when a securitising actor performs an act of naming, declaring some referent object (whether the state, an economic sector, a supply chain) to be existentially threatened, and demanding that extraordinary measures be authorised to protect it.¹¹⁸ Within this theoretical architecture, Wæver's formulation of security as a “speech act” is decisive: the utterance, the statement itself, once accepted by a relevant audience, performs the securitising move, just as a promise is performed

¹¹⁷ Buzan, Wæver and de Wilde, *Security: A New Framework for Analysis*, cit., pp. 23-26.

¹¹⁸ Ibid.

by the very act of uttering it rather than merely described by it.¹¹⁹ In order to assess the methodological key to this scaffolding, reference must be made to the five elements that recur throughout the framework, structuring the analytical vocabulary needed for the entire chapter. This vocabulary includes: the securitising actor who makes the claim; the referent object said to be at risk; the existential threat invoked to justify departure from ordinary rules; the audience whose acceptance legitimises the move; and the extraordinary measures the successful securitisation is then held to authorise.¹²⁰ Although the referent object was traditionally the state, the Copenhagen School itself insists that, in principle, securitising actors can attempt to virtually construct any collectivity or interest as a referent object, subject only to the practical constraints of what a given audience will accept.¹²¹ Put differently, the only genuine check on this mechanism is that the audience must believe the narrative and accept it.

It is at the last element, that International Relations theory and positive law intersect. More precisely, it is such intersection that this thesis proposes to name *legal securitisation*. It must be noted that an "extraordinary measure," translated into the vocabulary of international economic law, is rarely a diffuse political declaration. Instead, it is the precise invocation of a specific clause of exception, a clause that a treaty regime has reserved for circumstances that fall outside its ordinary disciplines. The text of the Article XXI of the GATT authorises a state to take any measure it considers "necessary" for the protection of its essential security interests.

A provision that captures this dynamic perfectly. The clause is drafted to make the state's own securitising claim functionally decisive, echoing at the level of treaty

¹¹⁹ Ole Wæver, *Identity, Integration and Security: Solving the Sovereignty Puzzle in E.U. Studies*, in "Journal of International Affairs", 48 (1995), pp. 389-431, at pp. 402-405.

¹²⁰ Buzan, Wæver and de Wilde, *Security: A New Framework for Analysis*, cit., pp. 29-31, 40-41.

¹²¹ Barry Buzan and Ole Wæver, *Macrosecuritisation and Security Constellations: Reconsidering Scale in Securitisation Theory*, in "Review of International Studies", 35 (2009), pp. 253-276, at p. 255.

text the very speech-act structure theorised at the level of discourse.¹²² In practice, by declining to objectively define what constitutes a security emergency, the treaty delegates this assessment entirely to the invoking state, elevating its subjective judgment to a binding norm. Crucially, none of this is a mere isolated anomaly within the GATT: the same structural logic, this thesis anticipates, recurs (with different institutional consequences) in Article 346 TFEU's exception for measures a Member State considers necessary to protect essential security interests connected with the production of or trade in arms.¹²³ A vulnerability, this one, engraved into the treaty texts themselves. It is worth stressing, however, that in each instance, positive law does not itself define security. It delegates the definitional act to the state, which becomes subject only to whatever residual constraints the relevant adjudicative body later proves willing to impose. Naming this passage matters analytically, because it isolates the specific question this thesis pursues (under what circumstances the current legal framework permits national security invocations to bypass binding treaty obligations) from the related but distinct question of political science: when does a securitising claim succeed in persuading its audience? Legal securitisation, so understood, serves as the linchpin, is the hinge on which this chapter turns: the conceptual link between a discursive move theorised by International Relations and a justiciable or, only partially justiciable (as will emerge), act recognised by international economic law.

The dynamic in question is not confined to a single domain; rather, once released from Pandora's box, it becomes capable of transversally "infecting" the entire architecture of the global economy. Indeed, the same discursive mechanism travels across sectors with notable ease. Trade, technology, energy and supply-chain governance have each, over the past decade, supplied fresh occasions for securitising moves. Governments recasting tariff policies, semiconductor exports,

¹²² General Agreement on Tariffs and Trade, cit., Art. XXI(b). On the self-judging character of the clause, see Heath, *Making Sense of Security*, cit., p. 328.

¹²³ Consolidated Version of the Treaty on the Functioning of the European Union, OJ C 326, 26 October 2012, Art. 346(1)(b).

critical-minerals dependence and cross-border investment as matters of vulnerability, a vulnerability that becomes “existential” rather than ordinary commercial regulation.¹²⁴ This chapter, for the sake of analytical focus, does not attempt to catalogue that “migration” exhaustively; the following sections will take up its material and doctrinal specifics. What matters here, is the structural point that securitisation is “sector agnostic”: nothing internal to the theory confines it to a single domain. This is precisely why it can supply one analytical key to a phenomenon, such as the weaponisation of regional integration law, that manifests simultaneously across trade remedies, investment screening and technology controls.

Having built this analytical key, two limitations qualify it and, for the sake of rigour, must be registered here to anticipate possible objections. The first one is normative: securitisation theory's own architects regard desecuritisation (the return of an issue to ordinary politics) as the preferable outcome in the long run, on the ground that security claims tend to escape the ordinary accountability of liberal democratic politics. Yet, this default scepticism has itself been contested, on the ground that it may privilege the political status quo and risks dismissing, as illegitimately exceptional, security claims that could be normatively justified on their own terms.¹²⁵ The second limitation, a structural paradox, is more consequential for the argument that follows. If security is constituted discursively, through an actor's own assertion, on what basis can any external body (an adjudicative panel least of all) review that assertion at all? For a long period of “dormancy”, spanning nearly seventy years, this question remained purely academic, a logical loop that caused no tangible harm. The paradigmatic “self-judging” security exception at the heart of international trade law went effectively untested, as it was invoked only rarely and never tested before a dispute-settlement

¹²⁴ Heath, *Making Sense of Security*, cit., pp. 323-339.

¹²⁵ Rita Floyd, *Can Securitization Theory Be Used in Normative Analysis? Towards a Just Securitization Theory*, in “Security Dialogue”, 42 (2011), pp. 427-439, at p. 427; Heath, *Making Sense of Security*, cit., pp. 321-323.

panel¹²⁶. The question is no longer a mere academic speculation. The “frictionless appeal”, the ease with which the securitisation mechanism can be invoked, has forced panels to draw a line between the objective and the discretionary elements of states’ security claims.

Viewed comprehensively, these elements answer the “how” that opens this thesis’s research question: securitisation is the discursive mechanism through which the original economic and pacific function of the law of regional integration becomes available for reconfiguration as an instrument of geopolitical competition. It is securitisation that, like a switch capable of waking it, renders a dormant legal exception invocable in the first place. This passage is vital to the development of the logical structure, because it supplies the premise for an intrinsic question that arises, pursued by this thesis, concerning which legal mechanisms make the weaponisation of integration possible. Before any specific clause (Article XXI GATT, Article 346 TFEU, an export-control regime) can be catalogued as such a mechanism, securitisation must first have done its discursive work. This section has, therefore, supplied the method; the following ones will supply the evidence against which that method must now be tested.

¹²⁶ Heath, *Making Sense of Security*, cit., pp. 328-329.

2.3 *The Weaponisation of Interdependence: Trade as Geopolitical Instrument*

Securitisation, as reconstructed in the preceding section, supplies the discursive permission that renders a legal exception invocable. However, it does not, by itself, explain which states are structurally positioned to invoke that permission, raising the practical question: who can truly do so and why only a select few? Despite the formal equality presumed by international law and security theory, the global economic and technological landscape, remains profoundly asymmetric. A “reality check” necessary to abandon the frugal realm of theoretical narrative and enter the domain of the real economy, infrastructures and financial networks. The focus, therefore, shifts from that discursive precondition to its material counterpart. In other words, the question here is no longer why a trade measure may legitimately be recast or reshaped as a matter of national security. Instead, it becomes why translating that characterisation, into actual coercive leverage, is materially possible at all (for a narrow set of states).

Now, we must retrace the conceptual thread to the research question, because the enquiry, framed in this way, reflects the necessity to undertake a fundamental preliminary assessment concerning the (material) capability of the state. Logically, before identifying which legal mechanisms make weaponisation possible, such verification is crucial, as a state cannot weaponise a structure over which it exercises no control.

The subsequent paragraph marks the exact moment in which the defined framework “strips to the bone” the classic assumption of IR (economic interdependence as pacifying by the very construction), replacing it with the harsh geopolitical reality, standing as one of the crucial turning points of the entire chapter. Consequently, the assessment earlier mentioned, is grounded in Farrell and Newman’s *weaponised interdependence*.¹²⁷ The authors of the article *Weaponized Interdependence: How Global Economic Networks Shape State*

¹²⁷ Farrell and Newman, *Weaponized Interdependence*, cit.

Coercion show that global economic networks (financial, technological, logistical) do not evolve into flat and decentralised structures, but instead they converge into “hub-and-spoke” topologies. Here only a handful of states hold privileged jurisdiction over the central nodes through which money, data and goods must pass.¹²⁸

Regarding the operational architecture, this structural asymmetry yields two distinct levers, or, in other words, controlling the hub provides two precise weapons to the state. On the one hand, the “panopticon effect” is the informational advantage a hub state gains simply by monitoring the traffic that flows through its networks (passing via nodes under its jurisdiction)¹²⁹. On the other hand, the “chokepoint effect” is its capacity to sever an adversary’s access to the network altogether.¹³⁰ Fundamentally, jurisdiction over a hub is not, by itself, sufficient: exploiting either lever also requires domestic institutions capable of compelling private intermediaries to cooperate. Weaponisation is, therefore, an exclusive privilege, that remains available to only a handful of states, even though asymmetric networks span the whole of the global economy.¹³¹ Hence, the “punch in the stomach” to traditional theory. Interdependence, on this account, is not merely compatible with coercion: its very anatomy supplies the leverage, explicitly breaking with the functionalist assumption. The underlying idea was: if our economies are so intertwined, hurting you would mean harming ourselves. However, these dense economic ties do not, by density alone, restrain the states occupying a network’s centre. In fact, instead of acting as a “straitjacket” that restrains the superpowers, they “arm” them.

To illustrate how this structural logic operates, three empirical instances will be provided in the succeeding paragraph. They will be organised by mechanism rather than chronology, to “dissect” reality, avoiding a verbose summary of the trade war.

¹²⁸ Ibid., pp. 45, 49-50.

¹²⁹ Ibid., pp. 54-56.

¹³⁰ Ibid., pp. 54-56.

¹³¹ Ibid., p. 57.

As the first empirical argument, we will consider tariffs, because they supply the most visible case. Their *redployment* as an instrument of geopolitical pressure, rather than of ordinary trade policy, has become a paradigmatic strategy of coercion.¹³² Traditionally, a tariff serves as an economic tool designed to protect a struggling domestic industry from unfair foreign competition or to generate fiscal revenue, aiming to correct trade imbalances. Today, however, they have evolved into a "systemic tool for geopolitical leverage [...] and technological containment."¹³³ Tariffs are "no longer employed merely as temporary protective measures [...] but rather as structural tools designed to [...] enforce strategic decoupling", signalling a "decisive shift [...] toward power-based economic statecraft."¹³⁴

The second empirical instance examines an issue of profound contemporary relevance: rare earths and critical minerals, as they represent the textbook chokepoint case. China's dominance is concentrated not merely in extraction but, more decisively, in downstream processing and magnet manufacturing.¹³⁵ In other words it's the control over the value chain that transforms a natural resource into a structural checkpoint. Beginning in April 2025 (escalating sharply from October of the same year), China's Ministry of Commerce imposed export-licensing requirements on a widening list of rare earth materials and permanent magnets. This list reached automotive suppliers, wind-turbine manufacturers and defence contractors worldwide¹³⁶, illustrating the evolution of the legal architecture of

¹³²Chad P. Bown, *How Export Restrictions Threaten Economic Security*, Peterson Institute for International Economics, Working Paper No. 25-11, Washington (DC) 2025.

¹³³ Ziad Alzaidi, *Intellinomics and the Reconfiguration of Global Power: Davos 2026 and the Rise of Strategic Economies*, in "SSRN Electronic Journal" (2026), p. 2.

¹³⁴ Ibid., p. 5.

¹³⁵Giulia Claudia Leonelli, *Critical Raw Materials, the Net-Zero Transition and the 'Securitization' of the Trade and Climate Change Mitigation Nexus: Pinpointing Environmental Risks and Charting a New Path for Transnational Decarbonization*, in "World Trade Review", 24 (2025), pp. 237-256, at p. 240.

¹³⁶Ministry of Commerce of the People's Republic of China (MOFCOM), Announcement No. 18 of 2025 on the Implementation of Export Control on Certain Medium and Heavy Rare Earth-Related Items, 4 April 2025; MOFCOM, Announcement No. 61 of 2025 on Export Control of Rare Earth-Related Items, 9 October 2025. On the sectoral and extraterritorial reach of the October measures, see Center for Strategic and International Studies (CSIS), *China's New Rare Earth and Magnet Restrictions Threaten U.S. Defense Supply Chains*, Critical Questions, 14 October 2025.

Chinese power. Beijing has long ceased to merely “endure”, to be a passive recipient of international law; instead, it has begun to actively shape it by deploying the very weapons historically utilised by Washington. Most recently, China has even asserted jurisdiction over foreign made products containing a minimal threshold of Chinese content. This extraterritorial technique effectively mirrors, in reverse, the traditional export control laws of the United States.¹³⁷ A move, this one, that enables Beijing to assert control even over goods manufactured entirely overseas, with the possibility of denying licences, creating a so-called “tainting effect” across global supply chains.

Financial and technological networks complete the picture more briefly. SWIFT¹³⁸ remains the paradigmatic case of a hub exhibiting both panopticon and chokepoint effects simultaneously¹³⁹. Export controls on advanced semiconductors, instead (which prompted China itself to initiate WTO consultations against the United States in December 2022) extend the same logic into the technological domain.¹⁴⁰ This fragment surgically concludes the triad of empirical examples, demonstrating how chokepoint logic pervades every artery of globalisation: from physical commerce and manufacturing to the very lifeblood of the international system.

At this juncture, the geopolitical and factual analysis transitions into legal analysis, explaining how political power makes its way at the expense of positive law. These practices, indeed, do not remain inert facts or mere “muscular” actions. Rather, they generate a vocabulary that positive law subsequently absorbs. Law does not originate in a vacuum; on the contrary, it is a “receptor” of power shifts. *Economic security* and *de-risking* create the normative category through which, the phenomenon just described, migrates into binding legal instruments.

¹³⁷ MOFCOM, Announcement No. 61 of 2025, cit., and Center for Strategic and International Studies (CSIS), *China’s New Rare Earth and Magnet Restrictions Threaten U.S. Defense Supply Chains*, cit.

¹³⁸ Society for Worldwide Interbank Financial Telecommunication. For a fuller reconstruction, see J. Benton Heath, *Constructing a Global Panopticon: Toward a Jurisprudence of Weaponized Interdependence*, in “Journal of International Economic Law”, 28 (2025), pp. 505-512.

¹³⁹ Farrell and Newman, *Weaponized Interdependence*, cit., pp. 58-65.

¹⁴⁰ Leonelli, *Critical Raw Materials*, cit., p. 242.

This shift is evident in the Committee on Foreign Investment in the United States (CFIUS), whose scope has steadily expanded since 1989 despite an undefined “national security” mandate.¹⁴¹ The European Union has mirrored this trend through its own foreign direct investment screening framework,¹⁴² its Regulation on foreign subsidies,¹⁴³ and the overarching 2023 European Economic Security Strategy.¹⁴⁴

There is a clear recurring pattern. These instruments, share a “deliberate design flaw”: they tend to leave security underspecified, entrusting its content to flexible, often opaque administrative discretion. Similarly, Article XXI GATT (the subject of analysis in the next section) delegates the definition of a security emergency to the invoking state. This is the direct bridge to the following section. The strategic practices catalogued above generate categories (such as vulnerability, dependency, strategic sector) that positive law then receives as its own.

This last paragraph represents the ideological superstructure of the chapter. While the preceding sections have introduced the “weapons” (tariffs, export controls, investment restrictions) and the “battlefield” (technology, rare earths), the following paragraph provides the theoretical lens to understand how and why policymakers justify the deployment of these weapons, utilising the framework embedded in *Six Faces of Globalization: Who Wins, Who Loses, and Why It Matters*.

This further, indispensable frame for reading this competition, is supplied by Roberts and Lamp’s reconstruction of six competing narratives about economic

¹⁴¹J. Benton Heath, *The New National Security Challenge to the Economic Order*, in “Yale Law Journal”, 129 (2020), pp. 1020-1098, at pp. 1041-1042.

¹⁴²Regulation (EU) 2019/452 of the European Parliament and of the Council of 19 March 2019 establishing a framework for the screening of foreign direct investments into the Union, OJ L 79I, 21 March 2019.

¹⁴³Regulation (EU) 2022/2560 of the European Parliament and of the Council of 14 December 2022 on foreign subsidies distorting the internal market, OJ L 330, 23 December 2022, pp. 1-45.

¹⁴⁴European Commission and High Representative of the Union for Foreign Affairs and Security Policy, Joint Communication to the European Parliament, the European Council and the Council, *European Economic Security Strategy*, JOIN(2023) 20 final, 20 June 2023.

globalisation¹⁴⁵. Out of all these, the geoeconomic narrative is the most directly relevant here, because it rejects the idea of globalisation as a “positive-sum arrangement”. Instead, it views international trade as an arena of great power rivalry, where interdependence creates vulnerability rather than welfare. Consequently, operating within this militarised register, Peter Navarro (a former trade adviser to President Trump) dared to describe defensive trade measures as part of an “arsenal of democracy”¹⁴⁶.

Frankly, the same authors note that this typology reflects a predominantly Western “vantage point”, which is largely absent from non-Western debates about globalisation¹⁴⁷. A cultural and geographic bias, that highlights the anxiety over economic security and the geoeconomic narrative. Although the chokepoint logic examined above, is substantially narrated and legislated from within a small set of advanced economies, it carries unavoidable worldwide implications.

This section has shown what is being weaponised. More specifically, it refers to regional integration law’s original economic and pacific function being reconfigured into an instrument of geopolitical competition. It also assesses through what structural logic such weaponisation happens. It is not a discursive move alone, but the material architecture of asymmetric interdependence, increasingly absorbed by positive law under the label of economic security. What remains to be shown, and what the next section undertakes, is where exactly this material capacity finds a precise, textual opening within the law of international trade itself.

¹⁴⁵Anthea Roberts and Nicolas Lamp, *Six Faces of Globalization: Who Wins, Who Loses, and Why It Matters*, Harvard University Press, Cambridge (MA) 2021, chs. 3-8: respectively, the establishment, left-wing populist, right-wing populist, corporate power, geoeconomic, and global threats narratives.

¹⁴⁶*Ibid.*, pp. 122-123.

¹⁴⁷*Ibid.*, ch. 12.

2.4 The Legal Hinge: The National Security Exception (GATT Art. XXI) and Its Renaissance

In the following paragraphs, several case studies will be analysed. This constitutes a choice that reflects the persistent analytical intent of the thesis. The risk here is that of becoming entangled, getting lost in the tortuous technical meanders of jurisprudence, thereby losing sight of the main narrative thread. Nevertheless, this transition remains imperative. The examination, born of this explanatory necessity, is fundamental to imbuing the purely technical and legal arguments with a genuine, contemporary dimension. Without it, these arguments would be lost within the broader geopolitical context of this work, at the risk of becoming sterile. A shift in register is therefore indispensable, stemming from the need to transform theory into something “tangible”, and moving from the ethereal realm of doctrine to that of the harsh commercial tussle. The following analysis reveals how security theories materialise into a concrete legal loophole, but more importantly, how this opening has been actively forced in practice. In other words, empirical evidence will be provided of the systemic collapse that this thesis has sought to highlight from its very inception. The goal is not merely to chronicle the disputes. Rather, this section aims to demonstrate what happens to the multilateral architecture when the normative loophole of the security exception is exploited as a geopolitical weapon.

Continuing along the lines of the previous section, following its trajectory, it becomes evident that it is Article XXI of the GATT that supplies exactly the textual opening mentioned earlier.¹⁴⁸ Consequently, the progression between the two

¹⁴⁸ General Agreement on Tariffs and Trade, cit., Art. XXI, entitled “Security Exceptions”, provides: “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

sections is intrinsic. Here, the attention shifts from the material reality of geopolitics to its formalisation in positive law, examining its legal and jurisprudential consequences through concrete cases. More specifically, if legal securitisation names the conceptual hinge between the discursive construction of threats and positive law, Article XXI is where that hinge acquires a specific textual location: the “physical locus” where the mechanism gets tangled. The provision, and more precisely its paragraph (b), is structured as a “chapeau” followed by three enumerated grounds: fissionable materials, the traffic in arms and action taken in time of war or other emergency in international relations.¹⁴⁹ However, before discussing frictions between the USA and China, tariffs, trade wars, erosion of the WTO or Mega-Regionals, and so forth, it is necessary to delve into the core of the provision and dissect it. Performing this kind of “autopsy” is crucial to exactly pinpoint where the “rotten” core of the system resides. In other words, the provision allows a member to depart (that is, to derogate) from its trade obligations, whenever it invokes one of these grounds for the protection of what it deems its essential security interests.¹⁵⁰ Only the third ground has ever been tested (meaning the only one to have undergone formal review); the chapeau’s qualifying phrase

of international peace and security”. The provision was carried over unamended into the General Agreement on Tariffs and Trade 1994, 15 April 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, 1867 UNTS 187, paragraph 2 of whose Explanatory Notes specifies, at point (a), that “[t]he references to ‘contracting party’ in the provisions of GATT 1994 shall be deemed to read ‘Member’”. The present analysis concerns paragraph (b), and within it subparagraph (iii).

¹⁴⁹ The structure described here is that identified by the panels themselves. In *United States – Certain Measures on Steel and Aluminium Products* the Panel observed that “[p]aragraph (b) of Article XXI provides that the ‘action’ that a Member is not prevented from taking is ‘any action which [the Member] considers necessary for the protection of its essential security interests’, followed by three subparagraphs that are enumerated (i) to (iii)”, these being “separated by semicolons” with the word “or” appearing “after the semicolons at the end of paragraph (a) and subparagraph (iii) of Article XXI(b)”: Panel Report, *United States – Certain Measures on Steel and Aluminium Products*, WT/DS544/R (China), circulated 9 December 2022, para. 7.109. The Panel further held that “Article XXI(b) is to be given meaning as a complete sentence with the enumerated subparagraphs (i) to (iii) representing alternative endings to the sentence that begins ‘Nothing in this Agreement shall be construed’” (ibid., para. 7.111), and that “the subparagraphs are exhaustive in establishing the circumstances in which a Member may take the ‘action which it considers necessary for the protection of its essential security interests’” (ibid., para. 7.113). The term “chapeau” is the one employed by the parties and retained by the adjudicating bodies: see ibid., para. 7.109, note 435 (“[t]he parties have used different terminology to refer to the different parts of Article XXI, including ‘chapeau’, ‘subparagraph’, and ‘subparagraph ending’”), and Panel Report, *Russia – Measures Concerning Traffic in Transit*, WT/DS512/R, circulated 5 April 2019, para. 7.82, referring to “the adjectival clause ‘which it considers’ in the chapeau of Article XXI(b)”.

¹⁵⁰ General Agreement on Tariffs and Trade, cit., Art. XXI(b), chapeau and subparas. (i)-(iii).

“which it considers”¹⁵¹ therefore supplies the hinge’s pivot, acting as the critical turning point. This is the exact juncture where trade law openly concedes that the logic of security may lawfully displace (and perhaps even supersede) the logic of free exchange, implicitly acknowledging the override. This analysis thereby provides the legal “grip”, the mechanism through which the weaponisation of integration acquires a foothold in positive law.¹⁵²

The period of “dormancy”, already anticipated in the preceding sections, had a concrete history. It must be noted, indeed, that between 1947 and 2019 the exception surfaced only sporadically and defensively, remaining in the shadows for all these decades. Furthermore, despite these rare invocations, there was not a single panel that ruled on the provision’s substance. More specifically, the Nicaragua panel’s terms of reference expressly excluded review of the invocation itself, and the Yugoslavia panel was suspended before it could report.¹⁵³ Legal doctrine and contemporary commentary explained the true rationale behind this prolonged forbearance. The restraint should not be viewed as evidence of the clause’s non-justiciability, an insuperable legal barrier preventing judicial review for technical reasons, but rather as a cynical political calculation. It was a rational, reciprocity-driven equilibrium, where every member retained its own latent interest in leaving the boundary undefined.¹⁵⁴

That equilibrium broke in *Russia – Traffic in Transit* (DS512, 2019). It was the first panel ever to rule on the provision’s substance. Russia took a firm stance, arguing that its invocation lay entirely beyond the panel’s jurisdiction: a purely

¹⁵¹ Ibid. The qualifying phrase “which it considers” appears in the chapeau of Article XXI(b).

¹⁵² Stephen Kho, Yujin McNamara, Sarah Kirwin and Brooke Davies, *The Conundrum of the Essential Security Exception: Can the WTO Resolve the GATT Article XXI Crisis and Save the Dispute Settlement Mechanism?*, Akin Gump Strauss Hauer & Feld LLP, Working Paper, Washington (DC) 2023, pp. 5-9.

¹⁵³ Ibid., pp. 25-31; Michael J. Hahn, *Vital Interests and the Law of GATT: An Analysis of GATT’s Security Exception*, in “Michigan Journal of International Law”, 12 (1991), pp. 558-620, at p. 558. The invocations of this period concerned, in chronological order, Czechoslovakia in 1949, Ghana’s boycott of Portugal in 1961, the accession of the United Arab Republic in 1970, Sweden’s footwear quotas of 1975, the Falklands embargo of 1982 and, lastly, the measures against Nicaragua in 1985 and Cuba in 1996.

¹⁵⁴ Roger P. Alford, *The Self-Judging WTO Security Exception*, in “Utah Law Review”, 2011 (2011), pp. 697-759, at pp. 756-757.

discretionary act. The panel clearly disagreed, rejecting this radical argument. It established a sharp distinction between two elements, separating an objective, reviewable element from a discretionary margin. The objective and verifiable element consisted in determining whether a “war or other emergency in international relations” exists.¹⁵⁵ The discretionary margin, instead, was left to the invoking member’s own good-faith appreciation over what action is “necessary” to meet it.¹⁵⁶ Neither of the parties’ opposed readings prevailed: the panel rejected both blanket non-justiciability and full substantive review, holding that Article XXI(b)(iii) shields the invoking member’s own assessment of necessity while still permitting scrutiny of whether an emergency exists at all. The hinge, in other words, is neither an uncontrolled opening nor a fully disciplined one. It is precisely this operational ambiguity, rather than any wholesale surrender of sovereign discretion, that subsequent litigants would go on to exploit.

Delving into the core of the issue, we now approach the question of US tariffs. Applying that same test, the four distinct panels of the WTO, convened over United States Section 232 measures on steel and aluminium, examined the duties imposed by Washington. In reports circulated in December 2022, they found that the Commerce Department’s own investigations neither identified nor addressed any emergency in international relations. Accordingly, the panels denied the Article XXI defence to the claims brought by China, Norway, Switzerland and Türkiye.¹⁵⁷ Washington’s reaction reflected a stance of complete closure and outright rejection. It responded by notifying, on 30 January 2023, its intention to appeal, while reasserting that its national security measures remain wholly discretionary

¹⁵⁵ Panel Report, *Russia – Measures Concerning Traffic in Transit*, cit., paras. 7.64, 7.77, 7.100-7.103.

¹⁵⁶ Ibid., paras. 7.130-7.138. See also Daksh Dhariwal and Abhimanyu Beniwal, *Sanctions, Security, and the WTO: Navigating Article XXI in the Russia–Ukraine Conflict*, in “SSRN Electronic Journal” (2025), p. 10.

¹⁵⁷ Panel Reports, *United States – Certain Measures on Steel and Aluminium Products*, WT/DS544/R (China), cit., and WT/DS552/R (Norway), WT/DS556/R (Switzerland) and WT/DS564/R (Türkiye), circulated 9 December 2022, paras. 7.142, 7.147-7.149 (China). The panel found that “[t]he analysis and conclusions of the USDOC in the Steel and Aluminium Reports do not purport to identify or address the existence of an ‘emergency in international relations’ within the meaning of Article XXI(b)(iii) of the GATT 1994”.

and beyond WTO jurisdiction.¹⁵⁸ However, the notification of its intention to appeal vanished into the void, rendered ineffective by the dysfunctional state of the Appellate Body. A purely formal act, devoid of any tangible practical effect. Ironically, that paralysis was largely brought about by the systemic blocking of appointments by the United States itself.¹⁵⁹ The juridical defeat of the American position thus produced no practical compliance: the very discretion the panels had constrained proved, in practice, unconstrained.

A further complication followed shortly afterwards, arising from an unexpected direction, additionally straining the legal landscape. In *China – Additional Duties* (DS558, circulated 16 August 2023), the panel was asked to rule on Beijing’s retaliatory tariffs, rather than on Washington’s original measures. However, its answer produced what appears, at first glance, to be a flat contradiction. The panel accepted that the Section 232 measures had indeed been “sought, taken, or maintained pursuant to” Article XXI. Yet, this acceptance served an exclusively technical function: establishing that the Agreement on Safeguards (the agreement that disciplines the emergency measures on imports provided for in Article XIX of the GATT 1994) did not apply to them.¹⁶⁰ Nothing more than that. It left entirely undisturbed the 2022 finding that those very same measures fail Article XXI’s own

¹⁵⁸ *United States – Certain Measures on Steel and Aluminium Products*, Notification of an Appeal by the United States under Article 16 of the DSU, WT/DS552/16 and WT/DS556/21, 30 January 2023.

¹⁵⁹ On the paralysis of the Appellate Body, the result of the United States’ persistent blocking, since 2016, of the consensus required to appoint its members, and on the ensuing practice of the “appeal into the void”, see Tomohiko Kobayashi, *Does the Frequent Invocation of the National Security Exception Render WTO Disciplines Meaningless? Exploring Viable Options Under the Current WTO Dispute Settlement Mechanism*, in J. Nakagawa, T. Hamada and Y. Ishikawa (eds.), *Geopolitical Risks and Geoeconomics in International Economic Law: Asian Perspectives and Beyond*, Springer, Singapore 2026, pp. 139-148, at pp. 141 and 143. The same author observes that such an appeal does not deprive the circulated panel report of all normative weight, since it retains its persuasive force even where it is not adopted by the DSB (*ibid.*, p. 143).

¹⁶⁰ Panel Report, *China – Additional Duties on Certain Products from the United States*, WT/DS558/R, circulated 16 August 2023, paras. 7.116-7.119. The exclusion operates through Article 11.1(c) of the Agreement on Safeguards, 15 April 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, 1869 UNTS 154, under which that Agreement “does not apply to measures sought, taken or maintained by a Member pursuant to provisions of GATT 1994 other than Article XIX”; Article 1 of the same Agreement specifies that safeguard measures are “those measures provided for in Article XIX of GATT 1994”.

substantive requirements.¹⁶¹ The outcome is a curious legal duality, one worth pausing over. It must be noted that, here, two rulings coexist without any genuine contradiction. The same measures are shielded by the security exception for one purpose, but also denied its protection for another. It is a degree of sophistication that should caution the reader against treating this jurisprudence as a single, monolithic block. The case law is not a wall, but rather a mosaic; and its tiles, it must be said, do not all face in the same direction.

Nothing in this trajectory has since been reversed. If anything, it has accelerated and markedly so. In June 2025, Washington raised the Section 232 duties on steel and aluminium from 25 to 50 per cent, doubling them at a stroke. In April 2026, a further proclamation recalculated the duties on derivative products against the product's full customs value, rather than against its metal content alone, thereby widening their reach. Then, in June 2026, yet another proclamation broached temporary reduced rates for selected categories, set to lapse at the end of 2027.¹⁶² Each of these interventions was framed in precisely the same “essential security” terms that *Russia – Traffic in Transit* was supposed to have disciplined. Over the same period, moreover, Section 232 has not remained alone: it has been joined by an entire family of cognate national security authorities, fuelled by the relentless and compulsive deployment of the label to justify tariffs linked to matters that fall entirely outside the scope of war or traditional geopolitics (fentanyl trafficking, the management of migratory flows, the so-called reciprocal tariffs and measures against specific countries such as Brazil and India). An operation which commentators have flagged as a further, and arguably far bolder, overextension of

¹⁶¹ Panel Report, *United States – Certain Measures on Steel and Aluminium Products*, WT/DS544/R (China), cit., paras. 7.96, 7.149. Cf. Kho, McNamara, Kirwin and Davies, *The Conundrum of the Essential Security Exception*, cit., p. 39, note 145.

¹⁶² Presidential Proclamation 10947, *Adjusting Imports of Aluminum and Steel Into the United States*, 90 Fed. Reg. 24199, 9 June 2025; Presidential Proclamation 11021, *Strengthening Actions Taken to Adjust Imports of Aluminum, Steel, and Copper Into the United States*, 91 Fed. Reg. 18201, 9 April 2026; Presidential Proclamation 11032, *Further Adjusting the Tariff Regimes for Imports of Aluminum, Steel, and Copper Into the United States*, 91 Fed. Reg. 34085, 4 June 2026.

the Article XXI logic, colloquially a “stretch”.¹⁶³ The conclusion, at this point, imposes itself. Section 232 is no longer operated as the occasional emergency device for which the drafters of the GATT wrote Article XXI in 1947. It has become something else, entirely mutated from the original form. An ordinary instrument of everyday trade policy, continuously recalibrated, adjusted upwards and downwards with the routine ease of a thermostat.

This is precisely where the systemic cost of the hinge becomes visible, being starkly exacerbated. This paragraph, indeed, seeks to shift the focus from panel decisions to the internal diplomatic debate within the WTO. It must be stressed that the considerable cost of leaving that “opening” in place is not a recent discovery, nor an insight owed to hindsight. This was no epiphany reached *ex post* (retrospectively). Already in May 2018, well before any panel had ruled, the members of the WTO made the argument for themselves and did so in the plainest possible terms, at the General Council. China posed a devastating question that was rhetorical only in appearance, asking “whether anyone could find any group of products (from agricultural products to minerals, from textiles to high-tech products) that had no linkage with national security”.¹⁶⁴ And if none could be found, the delegation went on, the question became “whether the WTO Schedules of Concessions remained binding”.¹⁶⁵ Or, in other words, if they retain any binding force at all. Uganda, in turn, declared itself “particularly worried about the implications of such measures on Article II of the GATT 1994 and on what such measures meant for the multilateral trading system”.¹⁶⁶ The European Union, for its part, cautioned that accepting a security justification for what essentially

¹⁶³ Xiaoli Shi and Wei Guo, *The Consistency of the Recent US Unilateral Tariff Measures with the GATT Security Exception*, in “Journal of WTO and China”, 16 (2026), pp. 29-46, at pp. 44-45. It should be noted that these further measures were adopted not under Section 232 of the Trade Expansion Act of 1962, Pub. L. No. 87-794, 76 Stat. 872, codified at 19 U.S.C. section 1862, but under the International Emergency Economic Powers Act, Pub. L. No. 95-223, 91 Stat. 1626 (1977), codified at 50 U.S.C. sections 1701-1708 (IEEPA), invoked following the declaration of a national emergency.

¹⁶⁴ General Council, *Minutes of the Meeting Held in the Centre William Rappard on 8 May 2018*, WT/GC/M/172, 6 July 2018, para. 5.7. The Minutes report the delegations’ statements in indirect speech; the passages quoted here reproduce their wording verbatim.

¹⁶⁵ *Ibid.*, para. 5.8.

¹⁶⁶ *Ibid.*, para. 5.37.

constituted ordinary industrial protection would trigger systemic risks for the entire trading system.¹⁶⁷

Their apprehension was well founded. If any member may self-qualify as threatened whenever a bound commitment becomes politically inconvenient, then the whole edifice of negotiated, binding obligation dissolves into something considerably weaker. In other words, a standing option to defect, exercisable at will and at no cost. This is the exact juncture at which the hinge ceases to be a technical curiosity for specialists, becoming instead what can be considered the “crux” of this thesis’s research question. This passage serves as the bridge connecting the *pars destruens*, namely the analysis of the WTO crisis and the abuse of the norm, to the theoretical core of this research.

Up to this point, the analysis has sought to reconstruct the “crime scene”. It has progressed from identifying the “murder weapon” (Article XXI and legal securitisation) to mapping its location, and finally to performing an autopsy of the system (*Russia – Traffic in Transit*, Section 232). Subsequently, the repeat offence (the use of tariffs) was demonstrated on a factual level. This paragraph, therefore, allows the reader to step back from the courtroom reporting and regain a broader perspective, returning to a macro-level analysis. If the provision allows for the dissolution of legal obligations at will, what remains of international economic law?

Having dissected the unravelling of the multilateral architecture resulting from the abuse of Article XXI, we now shift our analytical lens to the regional context. The European Union’s regional answer to that same erosion is instructive, and it takes two legally distinct forms, reflecting a bifurcating legal order. Two forms which should, on no account, be confused with one another. The first is the Anti-Coercion

¹⁶⁷ Ibid., para. 5.49: “Seeking to do so could trigger major systemic risks undermining the multilateral trading system. The WTO national security exception did not allow import restrictions for supporting domestic industry”.

Instrument (Regulation (EU) 2023/2675),¹⁶⁸ which is a procedural and collective mechanism whose architecture is deliberately laborious and perhaps convoluted. This process entails fact-finding by the Commission, a Council decision by qualified majority, a mandatory negotiation phase and countermeasures admitted only as a last resort.¹⁶⁹ It has been brandished repeatedly since 2025, first against Washington's tariff threats, and then again, once Beijing's rare-earth export licensing began to disrupt European supply chains. The instrument has, nevertheless, yet to be formally triggered.¹⁷⁰ The weapon is displayed, but not fired. That restraint is itself revealing, measuring, better than any doctrinal argument could, the distance separating the Union's proceduralised legal securitisation from the unilateral self-judgment permitted by Article XXI.

The second instrument under consideration is the Carbon Border Adjustment Mechanism. It rests on an altogether different footing. Conceived as an environmental measure, it sits conceptually adjacent to the general exceptions of Article XX rather than to the security exception of Article XXI, and it entered its definitive phase on 1 January 2026.¹⁷¹ Conflating the two would misdescribe both. Kept distinct, however, they reveal that, despite the Union's increasing (in terms of frequency) shift toward unilateral action, its tools remain anchored, so far as

¹⁶⁸ Regulation (EU) 2023/2675 of the European Parliament and of the Council of 22 November 2023 on the protection of the Union and its Member States from economic coercion by third countries, OJ L, 2023/2675, 7 December 2023. The instrument is designed to deter and to counter the use of trade and investment measures by third countries as instruments of political pressure: under Article 2(1), economic coercion occurs "where a third country applies or threatens to apply a third-country measure affecting trade or investment in order to prevent or obtain the cessation, modification or adoption of a particular act by the Union or a Member State, thereby interfering in the legitimate sovereign choices of the Union or a Member State". Article 2(2) lists the criteria for identifying such coercion, while the response measures available to the Union are set out in Article 8 and in Annex I.

¹⁶⁹ Ibid., Arts. 4-5, 7-9 and 11; Sarah Marr, *A First Reading of Regulation (EU) 2023/2675 on Economic Coercion by Third Countries*, in "Juris Gradibus", 4 (2024), pp. 31-55.

¹⁷⁰ Jaša Veselinovič, *The Making of the EU's Geoeconomic 'Bazooka': The Anti-Coercion Instrument and the Role of Think Tanks in European Union Foreign Policy*, in "JCMS: Journal of Common Market Studies" (2025), p. 1; Viking Bohman, Audrye Wong and Victor Ferguson, *China's Sanctions Gambit: Formal and Informal Economic Coercion in the Second Trade War*, Swedish National China Centre, Brief No. 1, Stockholm 2025, p. 6.

¹⁷¹ Regulation (EU) 2023/956 of the European Parliament and of the Council of 10 May 2023 establishing a carbon border adjustment mechanism, OJ L 130, 16 May 2023, p. 52; George Mörsdorf, *The Limits Imposed on EU Green Industrial Policy by WTO Law*, in "Global Trade and Customs Journal", 21 (2026), pp. 200-210, at p. 200.

possible, to the framework and to the procedural logic of the WTO. Moreover, such tools ensure that political instinct is filtered and mediated by a rigid legal architecture.¹⁷²

One conclusion, at this point, can hardly be avoided. If a single treaty provision can be stretched, bent and circumvented this far without ever formally breaking, then the question this chapter must now confront is no longer whether Article XXI itself holds. It does hold, at least on paper; but that, precisely, is the problem. The real question indeed concerns the wider architecture of multilateral trade law, which depends on this hinge, and on others built like it, for its own stability. In other words, can that architecture withstand their continued weaponisation? The regional legal frameworks with which this thesis is concerned were certainly not built to answer a question of this kind. Whether they can do so regardless, or whether they are themselves being “quietly reshaped” by the very fragmentation of the multilateral order they were meant to outlive, is what the remainder of this chapter must now trace. Ultimately, will the contagion of unilateralism infect regionalism as well?

¹⁷² Sophie Bohnert, *The Shift to Unilateralism in the European Union's Trade Policy: An Exercise in Taxonomy*, in “Common Market Law Review”, 62 (2025), pp. 1057-1088, at p. 1088. It should be stressed that, within the taxonomy proposed by that author, the two instruments do not occupy the same position: the Carbon Border Adjustment Mechanism is classified among the “non-disruptive” measures, adopted “within the confines of the national policy space and flexibilities recognized by the WTO Agreements”, whereas the Anti-Coercion Instrument is placed among the “disruptive” ones. A divergence which reinforces, rather than weakens, the need to keep the two mechanisms analytically distinct.

2.5 *The Erosion of the WTO and the Turn to Mega-Regionals*

The preceding section's argument drew to a close on a provision that “bends without ever formally breaking”.¹⁷³ This section, instead, begins from the machinery built around it. If the winning party can be answered with a costless refusal to comply, cemented by the material consequences of the Appellate Body's void, the question is no longer whether Article XXI survives its weaponisation. The “legal victory” of multilateralism is hollowed out, eviscerated, becoming almost irrelevant. Article XXI is the symptom; but the enforcement mechanism is the true patient, the one suffering, at this stage, structural and perhaps irreversible damage.

To cast these strong, bitter statements into the current geopolitical context means taking a step towards recognising that an academic hypothesis has become a structural practice of international relations, particularly with the disruptive and sweeping return of the Trump administration. A praxis that has become established as the product, the fruit of a deliberate strategy (whatever one might say to the contrary) directed by a puppeteer, whose moves, on the international chessboard, make it undeniably clear that this impunity stems from an explicit trade doctrine. A “doubling down” that flouts and deliberately bypasses international law, becoming almost the leitmotif of his administration and thereby normalising the very symptom diagnosed by this thesis.¹⁷⁴ The claim here is that the response has not been repair of the multilateral channel, but its substitution by regional frameworks whose enforcement stays credible because it is narrower.

¹⁷³ On the elasticity of Article XXI of the GATT 1994 and on the conclusions here recalled, see section 2.4 above.

¹⁷⁴ Chen and Wang, *Geopolitical Conflict, Geoeconomic Manoeuvring, and the Law of the Jungle*, cit., p. 25: “[t]he fundamental nature of Trump 2.0 is the open disregard of international law which had never happened other than by rogue states”. The same authors recall, however, that the paralysis of the dispute settlement system “started under the Obama presidency, intensified during Trump 1.0, and continued into the Biden Administration”, so that Trump 2.0 “does not start the destruction of the global liberal trading order” but constitutes “another, potentially final, nail in the coffin”.

The paralysis has a precise date. On 10 December 2019 two of the three remaining Appellate Body members completed their terms, leaving the body below the quorum Article 17.1 of the DSU requires. This has led to thirty-five panel reports being appealed into a forum incapable of receiving them.¹⁷⁵ The connection with the previous section is therefore intuitively direct. Washington's refusal to comply with the Section 232 reports was no isolated act of defiance: it exercised an option the blockage had already conferred (and conferred on everyone). Viewed through a critical lens, it becomes evident that a remedy the losing party may switch off at will is no remedy. It is indeed a formality with a "docket number".

The institutional answer, which is the Multi-Party Interim Appeal Arbitration Arrangement of 30 April 2020, ironically, is more instructive for what it cannot do than for what it does.¹⁷⁶ Grounded in Article 25 of the DSU,¹⁷⁷ it preserves a genuine appellate stage among thirty-one parties covering sixty per cent of world trade.¹⁷⁸ Its architecture, however, is plurilateral (which, regardless of its

¹⁷⁵ Elisa Baroncini, *Saving the Right to Appeal at the WTO: The EU and the Multi-Party Interim Appeal Arbitration Arrangement*, in "federalismi.it", 22 (2020), note 38, observing that the mandates of Ujal Singh Bhatia and Thomas R. Graham expired on 10 December 2019, leaving Zhao Hong as the sole member in office and thereby blocking the Appellate Body, three adjudicators being required to decide an appeal under Article 17.1 of the DSU. On the ensuing practice of the appeal "into the void" and on its extent see Petros C. Mavroidis, *Adjudicating Trade Disputes: The Multi-Party Interim Arrangement (MPIA) – Back to the Past?*, European University Institute, Robert Schuman Centre for Advanced Studies, RSC Working Paper 2026/28, San Domenico di Fiesole 2026, section 1.2: "Thirty-five panel reports have been appealed since 2019 'into the void'. None have been discussed as there was no functional Appellate Body division in place to do so".

¹⁷⁶ Baroncini, *Saving the Right to Appeal at the WTO*, cit., p. 12, on the notification to the WTO on 30 April 2020 of the Multi-Party Interim Appeal Arbitration Arrangement Pursuant to Article 25 of the DSU, JOB/DSB/1/Add.12, and on its tripartite structure: the communication to the DSB, the template arbitration agreement in Annex 1 and the rules governing the pool of arbitrators in Annex 2.

¹⁷⁷ Understanding on Rules and Procedures Governing the Settlement of Disputes, 15 April 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 2, 1869 UNTS 401, Art. 25: "Expeditious arbitration within the WTO as an alternative means of dispute settlement can facilitate the solution of certain disputes that concern issues that are clearly defined by both parties" (para. 1); "[r]esort to arbitration shall be subject to mutual agreement of the parties which shall agree on the procedures to be followed" (para. 2); "[t]he parties to the proceeding shall agree to abide by the arbitration award" (para. 3). Official text: World Trade Organization, *Legal Texts: The WTO Agreements*, www.wto.org/english/docs_e/legal_e/28-dsu_e.htm.

¹⁷⁸ Giorgio Sacerdoti and Carlo de Stefano, *The WTO and Its Dispute Settlement System in 2025. The Panel Reports on the Territorial Extension of TRIPS Protection (DS611) and the Treatment of "Transnational Subsidies" under the SCM Agreement (DS618)*, in "SSRN Electronic Journal" (2026), p. 6, recording that the accession of Viet Nam, the United Kingdom, Malaysia and Paraguay in 2025 brought the parties to thirty-one, representing fifty-eight WTO Members once the individual Member States of the European Union are counted, accounting for sixty per cent of world trade and including six of the ten most frequent users of the dispute settlement system.

magnitude, inherently falls short of the original multilateral design) rather than universal, and its output thin: two awards out of twelve disputes among signatories.¹⁷⁹ These figures reveal that, even within this “club of the willing” (the MPIA signatories), the dispute settlement system struggles immensely to deliver tangible, concrete outcomes. The case of *Colombia – Frozen Fries* (DS591) measures the remainder of this systemic inefficiency. This procedural odyssey involves a panel requested in February 2020, an award in December 2022 and a compliance finding in 2025 that Colombia had still not complied.¹⁸⁰ The better part of six years, over frozen potatoes. The patch holds, but while it does, it remains an optional garment for powers such as the United States, which feel entirely free to cast it aside. Meanwhile, it moves at the pace of the least urgent dispute imaginable.

Recently, the fourteenth WTO Ministerial Conference, held in Cameroon (Yaoundé, March 2026), closed without an agreed Ministerial Statement, a minimum so customary that members abandoned the attempt before arriving.¹⁸¹ This confirmed the suspicion that no repair is imminent. In that vacuum, the regional channel becomes the rational one. Article XXIV of the GATT has authorised departures from “most-favoured-nation” treatment for customs unions and free trade areas since 1947. Its “hinge function” gains weight exactly as the

¹⁷⁹ Mavroidis, *Adjudicating Trade Disputes*, cit., section 3.1 and Table 2. Twelve disputes have been raised between MPIA signatories, counting DS591 twice (the MPIA arbitration first, the ensuing compliance proceedings next); an MPIA award has nevertheless been issued on two occasions only, in *Colombia – Frozen Fries* (DS591) and *China – IPRs Enforcement* (DS611).

¹⁸⁰ Award of the Arbitrators, *Colombia – Anti-Dumping Duties on Frozen Fries from Belgium, Germany and the Netherlands*, WT/DS591/ARB25, 21 December 2022, following the request for the establishment of the original panel made by the European Union on 17 February 2020. On the compliance panel under Article 21.5 of the DSU, which found that Colombia had not complied with the findings of the MPIA arbitrators, see Sacerdoti and de Stefano, *The WTO and Its Dispute Settlement System in 2025*, cit., p. 6, note 23.

¹⁸¹ Erin Hannah and James Scott, *The Turning Point That Didn't Turn: WTO MC14 and the Future of Global Trade*, in “Global Policy” (2026), p. 3. It had been “largely agreed before arrival in Cameroon that there would be no attempt to forge an agreed Ministerial Statement”, the depth of the divisions between members making even that customary minimum unattainable, so that the conference closed with a Chairperson’s Summary “which would not require sign-off from members”: World Trade Organization, *Fourteenth Ministerial Conference: MC14 Chairperson’s Summary*, WT/MIN(26)/35, 31 March 2026.

multilateral level weakens.¹⁸² Washington, meanwhile, has invited the organisation to abandon that treatment outright, dismissing as “naïve” the convergence it was meant to produce.¹⁸³ Consequently, the exception is being asked to become the rule.

The USMCA supplies the clearest specimen and it does so on two distinct levels. Article 32.10¹⁸⁴ subjects a party contemplating a free trade agreement with a “non-market country” to prior notification duties, letting the other two terminate the Agreement on six months’ notice and reconstitute it between themselves.¹⁸⁵ Its target was never in doubt. What matters analytically is the technique rather than the aim. Again, not an exception invoked *ex post*, as Article XXI is, but containment written into the treaty at the moment of drafting. The section at hand aims to solidify the core analytical contribution of this thesis, without, obviously, any arrogant or assertive ambition to establish a new interpretative category. In fact, it crystallises the genetic divergence between the breakdown of the WTO and

¹⁸² Carla Gulotta, *The Future of Multilateralism and Mega-Agreements: The Hinge Function of GATT Article XXIV*, in “Annali della Facoltà Giuridica dell’Università di Camerino”, 12 (2023), p. 3, on “the key role that GATT Article XXIV can play in bridging these two normative levels”. The term “hinge” is retained here in the sense given to it in the preceding section, with one deliberate displacement: Article XXI is the hinge through which the logic of security displaces trade discipline, Article XXIV the hinge through which the preferential level is reconciled with the multilateral one.

¹⁸³ Sacerdoti and de Stefano, *The WTO and Its Dispute Settlement System in 2025*, cit., p. 4, on United States, *On WTO Reform*, Communication to the General Council, WT/GC/W/984, 15 December 2025, in which the most-favoured-nation principle is said to rest upon “an expectation of deepening convergence among trading partners” that was “naïve”, and in which the requirements imposed on free trade areas by Article XXIV of the GATT 1994 are attacked with a view to permitting preferential arrangements *inter se* without limits.

¹⁸⁴ Agreement between the United States of America, the United Mexican States and Canada, signed 30 November 2018, entered into force 1 July 2020, Art. 32.10 (Non-Market Country FTA): “At least 3 months prior to commencing negotiations, a Party shall inform the other Parties of its intention to commence free trade agreement negotiations with a non-market country” (para. 2); “[e]ntry by a Party into a free trade agreement with a non-market country will allow the other Parties to terminate this Agreement on six months’ notice and replace this Agreement with an agreement as between them (bilateral agreement)” (para. 5). Official text: Office of the United States Trade Representative, *Chapter 32. Exceptions and General Provisions*, ustr.gov/sites/default/files/files/agreements/FTA/USMCA/Text/32_Exceptions_and_General_Provisions.pdf.

¹⁸⁵ On the clause see Geraldo Vidigal, *A Really Big Button that Doesn’t Do Anything? The ‘Anti-China Clause’ in US Trade Agreements*, in “SSRN Electronic Journal” (2019), pp. 4-5, observing that its value lies less in its concrete legal effects than in its signalling and legitimating function. A “non-market country” is one which a party “has determined to be a non-market economy for purposes of its trade remedy laws” on the date of signature of the Agreement and with which no party has signed a free trade agreement (Art. 32.10(1)); paragraphs 6 to 8 govern the content and the entry into force of the replacement bilateral agreement.

the rise of the new regionalism, exposing a weaponisation by design, rather than by derogation.

The second level is the joint review of 1 July 2026. Under Article 34.7¹⁸⁶ the Agreement expires sixteen years after entry into force unless each party confirms its wish to continue at the six-year review. Therefore, for the sake of clarity, inaction produces termination, not continuation.¹⁸⁷ On that date the United States Trade Representative announced that Washington would not renew the Agreement and would renegotiate it annually instead.¹⁸⁸ A sixteen-year term has factually and paradoxically become a subscription renewed twelve months at a time. All of this (second-generation agreement, anti-circumvention clause) proves no less exposed to recurrent politicisation than the order it was meant to improve upon. It marks out a third model, distinct from American unilateralism authorised by Section 232 and defended under Article XXI and from the European Anti-Coercion Instrument's proceduralised collectivism. We are speaking, as noted above, of containment embedded in the design, of legitimacy re-granted at intervals short enough to keep bargaining permanent.

¹⁸⁶ Agreement between the United States of America, the United Mexican States and Canada, cit., Art. 34.7 (Review and Term Extension): "This Agreement shall terminate 16 years after the date of its entry into force, unless each Party confirms it wishes to continue this Agreement for a new 16-year term, in accordance with the procedures set forth in paragraphs 2 through 6" (para. 1); "[o]n the sixth anniversary of the entry into force of this Agreement, the Commission shall meet to conduct a 'joint review' of the operation of this Agreement" (para. 2). Official text: Office of the United States Trade Representative, *Chapter 34. Final Provisions*, ustr.gov/sites/default/files/files/agreements/FTA/USMCA/Text/34_Final_Provisions.pdf.

¹⁸⁷ Barry Appleton, *No Going Back: Five Economic Scenarios for the 2026 USMCA-CUSMA Joint Review*, Working Paper, 30 April 2026, p. 9: "CUSMA Article 34.7 provides that the Agreement terminates sixteen years after entry into force (July 1, 2036) unless each party confirms, at the six-year review, its wish to continue", so that "[t]he legal consequence of inaction is termination, not continuation". On the negotiating posture preceding the review, and in particular on the United States seeking "structural changes, not a simple extension", on the rules of origin and on the reshoring of automotive production, see Barry Appleton, *Know Your Ground: Canada's Strategic Imperatives and Red Lines for the 2026 CUSMA-USMCA Joint Review*, Working Paper, 30 April 2026, p. 29.

¹⁸⁸ Office of the United States Trade Representative, *Ambassador Greer Issues Statement on the USMCA Joint Review*, Press Release, 1 July 2026. On the announcement and its immediate reception see Juan Carlos Moreno-Brid and Edgar Pérez Medina, *Growth and Redistribution in the Mexican Economy's Left Turn: 2019-25*, in "real-world economics review", 114 (2026), pp. 78-86, at p. 83, reporting "the USTR's statement on July 1st that the United States will not renew the USMCA Trade Deal and will renegotiate it on an annual basis", and at p. 84, on "the US's refusal to renew the USMCA opting, instead, to renegotiate it on an annual basis; thus introducing greater uncertainty to Mexico's already deteriorated investment climate". The same authors observe, at p. 83, that Mexican expectations of nearshoring rested on "a guarantee of a preferential agreement under the USMCA", a guarantee the announcement dissolved.

Two concluding reflections bring this chapter to a close. The first is the caveat sounded by Jagdish Bhagwati in his renowned work *Termites in the Trading System*.¹⁸⁹ The exceptions that the drafters of 1947 thought minor have now multiplied into a “spaghetti bowl” of incompatible rules of origin that obstructs the liberalisation each proclaims.¹⁹⁰ The second is the balance that the record now permits. An appellate vacuum in its seventh year, a plurilateral and glacial patch, a ministerial conference that settled nothing, a mega-regional now renewed one year at a time. All evidence leans towards and corroborates the structural consolidation of a plurilateral, regionalised order rather than reform. But we must be aware: to lean is not to compel. Fragmentation of this kind tracks durable shifts in economic and technological power and is not the passing whim of some populist leader. It is a trend that will not correct itself, though it has not yet passed the point of no return.¹⁹¹

The Geneva consensus rested on the premise that economic interdependence would dilute geopolitical rivalry. Today, that interdependence has become the very terrain of conflict.¹⁹² As the universal architecture crumbles into an archipelago of

¹⁸⁹ Jagdish Bhagwati, *Termites in the Trading System: How Preferential Agreements Undermine Free Trade*, Oxford University Press, New York 2008. The author’s declared purpose is to “provide every scholar and policymaker with a comprehensive and analytically coherent, if brief, overview of the arguments that must be confronted if we are to cut through the fog that surrounds this important and, in my view, pernicious development” of proliferating preferential trade agreements; in the closing chapter he nevertheless concedes that “[h]alting the formation of PTAs is no longer a possibility”. Both passages are reproduced in Daniel Griswold, Review of J. Bhagwati, *Termites in the Trading System*, in “Cato Journal”, 28 (2008), 3, pp. 555-558, at pp. 555 and 557.

¹⁹⁰ Pandey, *Spaghetti Bowl Phenomenon*, cit., pp. 5-6, noting that the agreements “which the architects of the GATT thought would be minor exceptions have now swallowed up the trading system”, having proved “not the building blocks rather stumbling blocks of free trade”, and that the resulting requirements of local content and rules of origin generate legal and economic uncertainty in the determination of the nature of the product.

¹⁹¹ Luka Salu Keiser, *Goeconomic Fragmentation, Security Exceptions, and the Weaponisation of Economic Interdependence in International Economic Law*, in “SSRN Electronic Journal” (2026), pp. 25-26: the fragmentation of the 2020s “is not a temporary aberration that will self-correct when geopolitical tensions ease”, since it “reflects structural changes in the distribution of economic and technological power, enduring strategic competitions between major powers, and domestic political economies that systematically reward security framing of economic policy”. The same author holds, however, that the trajectory “is not yet irreversible”.

¹⁹² Abdulkarim Abdullahi, Abdulrazak Salihu Ibrahim and Muhammad Alamin Mahmud, *The Weaponization of Economic Interdependence: Sanctions, Financial Statecraft, and the Fragmentation of the Global Economic Order*, in “International Journal of Social Sciences and Management Review”, 8 (2025), 4, pp. 256-275, at p. 256, recalling that for decades “the very foundation of the post-Cold War liberal international order was a belief that increasing economic interdependence was a powerful force for

fortified regional blocs, the question is no longer how to save the multilateral order, but how to survive its fragmentation. So, whether the frameworks absorbing that displaced authority preserve their pacific function, or merely displace the confrontation, furnishing a more sophisticated arsenal for hegemonic competition, is what this thesis must establish.

stability and peace”, whereas in the 2020s “[e]conomic interdependence is no longer just a good stabilizer; it has become a major weapon in the great powers’ arsenals, used more frequently, and with greater force”.

CHAPTER 3

REGIONAL LABORATORIES: DIVERGENT LEGAL RESPONSES TO A COMMON PRESSURE

Chapter One planted the conceptual foundations, reconstructing the order within which the law of regional integration was built and the terms on which its legitimacy has since been contested. Chapter Two set out the mechanism, from the discursive work of securitisation to the material asymmetries which make weaponisation possible, up to the clauses through which both enter positive law. Here, the thesis enters its proper empirical and comparative phase, where those concepts are tested in the field and placed under our magnifying glass.

A premise, this one, which serves as the spark to ignite the confrontation that those same mechanisms produce, in the very first section of the chapter (3.1). The reactions of those who undergo it follow in 3.2.1, 3.2.2 and 3.2.3, where the European Union, the Indo-Pacific and the Global South answer the same pressure from three different legal positions, drawing the balance in section 3.3. In other words, this chapter analyses how the various blocs respond to the same systemic pressure with converging or diverging legal logics.

3.1 The Sino-American Confrontation: Tariffs, Courts and the Limits of Weaponisation

The structural interlacing knitted by Chapter Two dismantled the confrontation without ever reassembling it: the export controls in 2.3, the security exception and Section 232 in 2.4, each measure examined on its own, so that the reader was handed the anatomical diagnosis of a body without ever being given the chance to see it alive. Well, this section shows it alive, with the preceding chapters serving as a base.

It must be stated that what follows is not a compartmentalised phenomenon. On the contrary, it is one of the most relevant and complex geopolitical dynamics of the twenty-first century. Whatever one wishes to call it, a competition, confrontation, rivalry, or even the contest of the century, it is what this thesis proposes as the widest frame within which its own question sits. The tariff¹⁹³ does not appear here as an example: it appears indeed as the point where the entire apparatus comes down. This is where fragmentation ceases to be a diagnosis and becomes an instrument. That is because it is here that the two entities with the greatest structural capacity to weaponise interdependence turn that very capacity against each other, inevitably leaving every other bloc to answer a pressure it did not generate.

The section therefore sets the “benchmark”: geopolitical pressure is global, but the law is not defenceless and can still (try to) impose a form. Its logic is that of a primary clinical case, a controlled experiment demonstrating that the law does not vanish before a clash between superpowers, but is manipulated, forced and, in the end, resists. The passage moves accordingly, from the place where the weapon is manufactured to the mirror dynamic on the Chinese side, up to the constitutional

¹⁹³ The tariff, or customs duty, is the charge levied upon a good at its entry into the customs territory of the importing State, and it is the object of the concessions bound in the Schedules of Concessions: General Agreement on Tariffs and Trade, cit., Art. II. Its redeployment as an instrument of geopolitical pressure, rather than of ordinary trade policy, is reconstructed in section 2.3.

brake and to the impact upon the wider frame. All of this may seem dense and arduous at first impact, a section full of technicalities which jumps from global theory to the judgments of the Supreme Court.¹⁹⁴ The said technicality is not a mannerism, but indeed, the exact heart of the demonstration: weaponisation is a legal phenomenon. To prove it we must enter the “atelier” where those weapons are materially manufactured.

To grasp the internal legal mechanics by which the United States implemented the weaponisation of the tariff, we must picture that precise attempt of the executive to evade its evidentiary constraints. Two instruments, side by side, are enough. Section 232 of the Trade Expansion Act requires an investigation by the Department of Commerce.¹⁹⁵ The International Emergency Economic Powers Act, on the contrary, requires only that an emergency be declared.¹⁹⁶ Between 2018 and 2025 the tariff moved from the first instrument to the second. This shift reinforces the decision to open the chapter with this section, rather than treating it as a mere case study. Each rung of the ladder asked less of the securitising claim than the rung beneath it. In February 2026, nevertheless, the Supreme Court removed the top rung, thereby devolving the responsibility to the immediate subordinate level.¹⁹⁷

Read in order, the two instruments describe a gradient rather than a list. Section 232 anchored the tariff to a formal investigation and to public findings proving a threat to national security, so that the executive cannot impose a duty acting alone.

¹⁹⁴ The judgments referred to are *Learning Resources, Inc. v. Trump* and *Trump v. V.O.S. Selections, Inc.*, decided together on 20 February 2026 and examined in the closing part of the present section.

¹⁹⁵ Trade Expansion Act of 1962, Section 232, cit., under which the duty may be imposed only upon an investigation and a report of the Secretary of Commerce finding a threat to impair the national security. The provision is examined in section 2.4 above.

¹⁹⁶ International Emergency Economic Powers Act, cit., whose powers become exercisable upon the declaration of a national emergency (50 U.S.C. section 1701(a)). The statute is examined in section 2.4 above.

¹⁹⁷ Lawrence J. Liu, *No More IEEPA Tariffs? The Legal Bases of an Alternative Regime*, in “Minnesota Law Review Headnotes”, 110 (2026), pp. 89-121, at p. 95, recording that the tariff authorities mobilised in the first Trump administration proceeded through “administrative investigations accompanied by some, even if varying, levels of process”, whereas “the bulk of the tariffs” imposed from 2025 were issued under the emergency statute, which does “not require an agency investigation prior to imposition”.

The IEEPA relies instead upon a declaration which the securitising actor issues to itself: no other organ examines before the duty takes effect.¹⁹⁸ Measured against the five elements isolated in Section 2.2, the movement is legible in a single line. The audience whose acceptance completes the securitising move was progressively relieved of the burden of being shown anything. A legal short circuit, an autopoietic logic, in which the executive writes the narrative of the emergency and, simultaneously, invokes it in order to act.

One distinction, condensed until now, must be separated here, because what follows turns upon it. Article XXI of the GATT and Section 232 are not functionally equivalent. Article XXI defends the measure at Geneva, before a panel (once the measure exists and a trading partner contests it), while Section 232 authorises it in Washington, in domestic law. It is there that weapons are built. Chapter Two examined these elements jointly, as the argument at that stage merely required demonstrating the measure's securitisation, rather than differentiating its dual dimensions. This chapter, conversely, delineates them.¹⁹⁹ If the research question asks how the fragmentation of the multilateral order is reshaping the law of regional integration, and to what extent the securitisation and weaponisation of regional legal frameworks are transforming their original economic and peace-oriented function into an instrument of geopolitical competition, the years examined below answer at the second stratum first. That is where the instrument is made, long before any panel is seized of it.

Meanwhile Beijing, once the frame is widened enough to take in the counterpart as well, has stopped contesting the American technique and has begun to reproduce it. The licensing regime of October 2025 (in particular the claim to jurisdiction over goods manufactured abroad above a given threshold of Chinese content) was

¹⁹⁸ Ibid., p. 95: under the emergency statute "the President need only declare a national emergency via executive order".

¹⁹⁹ Article XXI of the GATT operates as a defence before a panel (section 2.4 above); Section 232 and the emergency statute operate as authority in domestic law, and are the object of the present section. The separation of the two strata is taken up again in section 3.3.

examined in 2.3 and is recalled here for a single feature. It clearly resembles the American export-control architecture, only run in reverse.²⁰⁰ The technique converges, but, ironically, what is built with it does not.

It is evident that China builds while it fights. The point deserves to be made in simple terms, because the identity of technique conceals two existentially diverse visions of order. Washington mostly employs the tariff as a short-term and transactional instrument, calibrated upon the negotiation under way and revocable the moment that negotiation shifts.²⁰¹ Beijing, due to its long-term strategy, exploits its horizon to the full, absorbing the cost of the measure and converting it into industrial policy. Substantially, it diversifies its export markets towards the Global South, subsidises the sectors struck and finances self-reliance in the very technologies over which the confrontation is fought.²⁰² The asymmetry is not one of strength, but of time, one that produces a second imbalance concerning legitimacy. In May 2018, before the General Council, China had defined unilateralism as action taken against the multilateral rules at the expense of other members, locating in those rules the line separating legitimate policy space from unilateral action.²⁰³ Seven years later the same state asserts jurisdiction over goods manufactured outside its own territory. It is apparent that, whoever wins this confrontation, the argument which is losing it is the argument about the rules.

It does so in two registers. Political influence travels through agile, flexible and dense instruments which carry no binding force, such as memorandums. The

²⁰⁰ MOFCOM, Announcement No. 61 of 2025, cit., examined in section 2.3 above, where the extraterritorial technique and its mirroring of United States export controls are reconstructed.

²⁰¹ Xing Li, *Conceptualizing China-U.S. Rivalry through the Lens of Globalization in an Era of Changing Structure-Agency Dynamics*, in “Globalizations”, 23 (2026), 3, pp. 389-407, at p. 398, describing the tariff as “a short-term and transactional tool”.

²⁰² Ibid., p. 398, recording that the Chinese state “has already diversified export markets by increasing its trade with the Global South, subsidized affected industries, and heavily invested in self-reliance in areas such as semiconductors”.

²⁰³ General Council, *Minutes of the Meeting Held in the Centre William Rappard on 8 May 2018*, WT/GC/M/172, cit., para. 6.31, where China described unilateralism as “taking actions that went against the multilateral rules at the expense of other Members” and stated that “[t]he multilateral rules Members had agreed upon drew the line between legitimate policy space and unilateral action”. The same minutes are examined in section 2.4 above.

cooperation documents of the Belt and Road, indeed, explicitly state that they create no rights or obligations under international law.²⁰⁴ Capital, on the contrary, travels by treaty: the Asian Infrastructure Investment Bank rests upon Articles of Agreement, in force since 25 December 2015, under which it possesses full juridical personality.²⁰⁵ The finding recorded in 1.5 (that these new formations produce binding law only where they are compelled to) is thereby confirmed on material which postdates it, more on the challenger than on the incumbent. Where the object is considered to be merely influence, a memorandum possibly suffices. Where funding is at stake, iron guarantees and inviolable legal protections are demanded at once, and nothing short of a treaty can supply them.

The confrontation was then suspended, though not settled, at Busan on 30 October 2025,²⁰⁶ an event under the spotlight of the whole world. To an attentive eye, indeed, it was not merely a gathering of world leaders in South Korea, but a historic summit which gave occasion to the first bilateral meeting between Donald Trump and Xi Jinping in six years. The arrangement announced two days later lowered the fentanyl-related duty, suspended the export controls of that same month, extended the suspension of the heightened reciprocal tariff and postponed the maritime measures.²⁰⁷ Every one of those commitments was expressed as a term: one year from 10 November 2025 for the export-control and maritime suspensions, 10 November 2026 for the tariff suspension and the exclusions extended alongside

²⁰⁴ Heng Wang, *The Belt and Road Initiative Agreements: Characteristics, Rationale and Challenges*, in “World Trade Review”, 2021, here cited from the pre-print version, pp. 9-10, recording that such agreements “often explicitly indicate that they are not binding”, the memorandum concluded with Italy providing that it “does not constitute an international agreement which may lead to rights and obligations under international law”.

²⁰⁵ Articles of Agreement of the Asian Infrastructure Investment Bank, in force from 25 December 2015, under which the Bank possesses full juridical personality and, in particular, the capacity to contract, to acquire and dispose of property and to institute and respond to legal proceedings. Compare the New Development Bank, examined in section 1.5 above.

²⁰⁶ White House, *Fact Sheet: President Donald J. Trump Strikes Deal on Economic and Trade Relations with China*, 1 November 2025, recording the meeting held at Busan on 30 October 2025 between the President of the United States and the President of the People’s Republic of China.

²⁰⁷ *Ibid.*, for the four components of the arrangement: the reduction of the fentanyl-related duty, the suspension of the export controls of October 2025, the extension of the suspension of the heightened reciprocal tariff and the postponement of the maritime actions.

it.²⁰⁸ The dates are the substance here, not merely an accessory detail. What governs the most consequential economic relationship in the world is a set of instruments which expire, but, indisputably, an instrument which expires is a bargaining position rather than a bond. The relationship holds together by commitment and not by obligation, which is, by the way, the finding of Section 1.5, verified where it had most to lose (that is, in the most consequential economic relationship in the world). A truce, on the other hand, is not a rule.

On 20 February 2026, the Supreme Court of the United States somehow put a brake on the escalation of the American executive, establishing that the emergency statute confers no tariff power at all.²⁰⁹ In *Learning Resources, Inc. v. Trump*, decided together with *Trump v. V.O.S. Selections, Inc.*, the Court held that the emergency statute does not authorise the President to impose tariffs. It also emphasised that the power to lay duties in peacetime is strictly a congressional prerogative. For the plurality, an authority to regulate importation does not equate to the clear and explicit grant of the power to tax, which a delegation of that magnitude would require.²¹⁰ The Government, for its part, conceded that the President enjoys no inherent authority of his own (the Court ruled by six votes to three).²¹¹ Executive Order 14389, issued the same day, terminated every duty resting on that authority.²¹² The impact was, to say the least, immediate: four days.

²⁰⁸ Ibid., recording that the suspension of the heightened reciprocal tariff and certain exclusions from the Section 301 duties are extended “until November 10, 2026”, and that the export-control and maritime actions are suspended “for one year, starting on November 10, 2025”.

²⁰⁹ *Learning Resources, Inc. v. Trump*, No. 24-1287, decided together with *Trump v. V.O.S. Selections, Inc.*, No. 25-250, 607 U.S. ____ (2026), judgment of 20 February 2026, holding that “IEEPA does not authorize the President to impose tariffs”.

²¹⁰ Ibid., where the Court recalls, with *The Federalist* No. 48, that the Framers gave Congress “alone [...] access to the pockets of the people”. The requirement of a clear statement is the ground of a plurality of three.

²¹¹ Ibid., recording that the Government “concedes that the President enjoys no inherent authority to impose tariffs during peacetime”. Six Justices agreed on the holding and three dissented; Kagan J., joined by Sotomayor and Jackson JJ., reached the same result by the ordinary tools of statutory interpretation.

²¹² Executive Order 14389, *Ending Certain Tariff Actions*, 20 February 2026, 91 Fed. Reg. 9437 (25 February 2026), providing that the additional duties imposed under the emergency statute “shall no longer be in effect and, as soon as practicable, shall no longer be collected”, and expressly leaving unaffected those imposed under Section 232 of the Trade Expansion Act of 1962 and under Section 301 of the Trade Act of 1974 (section 2(d)). The order was filed with the Federal Register on 24 February 2026, the day on which the Section 122 surcharge took effect.

The claim must be stated precisely, however, because it is narrower than it sounds. What fell in four days were the duties resting on the emergency statute, those alone. Paradoxically, the same order expressly left the Section 232 and Section 301 measures standing. Moreover, an additional charge, a surcharge, on a different basis, took effect on the very day the terminations were completed. Tariffs did not stop, only one statutory basis did.

Consequently, two results follow and, for the sake of the argument, both are matters of record. The first concerns primarily the forum, bringing a striking systemic paradox to light. In December 2022 four panels found that the American reports had identified no emergency. Moreover, the notification of appeal which followed reached a body incapable of receiving it, so that nothing was withdrawn and nothing was owed.²¹³ In 2026 a domestic court, seized of a different statute, obtained in a matter of days what the Geneva forum had not obtained since 2022.²¹⁴ The constraint which bit was constitutional and, ironically, internal.

The second result, instead, concerns what happened next, and it is what prevents the section from closing on a triumphal note. Section 232 was left intact and was then widened by the proclamations of April and June 2026.²¹⁵ Even more revealing is the fact that, on the very day the terminations took effect, a temporary balance-of-payments surcharge (under Section 122 of the Trade Act of 1974) entered into force, proclaimed on the evening of the judgment itself.²¹⁶ We can apprehend how,

²¹³ Panel Reports, *United States – Certain Measures on Steel and Aluminium Products*, cit., and the notification of appeal of 30 January 2023, both examined in section 2.4 above. The two proceedings did not concern the same measures: the panels examined the duties imposed under Section 232, the judgment of February 2026 those resting on the emergency statute. What is compared in the text is the effect each forum produced upon the measure before it.

²¹⁴ *Learning Resources, Inc. v. Trump*, cit., and Executive Order 14389, cit.: the duties resting on the emergency statute ceased to be collected within four days of the judgment, whereas the panel reports of December 2022 procured the withdrawal of no measure at all.

²¹⁵ Presidential Proclamation 11021, *Strengthening Actions Taken to Adjust Imports of Aluminum, Steel, and Copper Into the United States*, 2 April 2026, 91 Fed. Reg. 18201 (9 April 2026); Presidential Proclamation 11032, *Further Adjusting the Tariff Regimes for Imports of Aluminum, Steel, and Copper Into the United States*, 1 June 2026, 91 Fed. Reg. 34085 (4 June 2026), both recalled in section 2.4 above.

²¹⁶ Proclamation of 20 February 2026, *Imposing a Temporary Import Surcharge to Address Fundamental International Payments Problems*, effective 24 February 2026, recorded as unaffected by Executive Order 14389, cit., section 2(c). On the recourse to the non-emergency authorities after the judgment, Liu, *No More IEEPA Tariffs?*, cit., pp. 106-107.

the moment the court struck down the tariffs, the executive did not lose a second, taking swift action. A vivid illustration that encapsulates the arguments set forth, proving the sheer resilience of weaponisation: one weapon breaks, another is picked up at once. As the opening anticipated, however, the law is not defenceless; it resists. The new statutory basis, in fact, introduces two stringent constraints absent from the emergency statute: Section 122 caps the surcharge at fifteen per cent and confines it to one hundred and fifty days unless Congress extends it.²¹⁷ The pernicious process of securitisation is not eradicated: the law did not remove the instrument, but it did bridle it, imposing a form upon it. This is precisely what Chapter Two says of Article XXI, only observed from the other side.

Putting the pieces back together, a question is handed to the section which follows, quite obvious by this point. What about all the other blocs? What do they do inside this confrontation? The same movement will be examined in another constitutional grammar, one in which the emergency basis is a treaty article, the applicant is a parliament and the court is not in Washington.

²¹⁷ Trade Act of 1974, Section 122, codified at 19 U.S.C. section 2132(a), authorising a temporary import surcharge of not more than fifteen per cent ad valorem for not more than one hundred and fifty days unless extended by Act of Congress.

3.2 Binding, Bypassing, Building: Three Regional Responses

*[...] right, as the world goes, is only in question between equals in power, while the strong do what they can and the weak suffer what they must.*²¹⁸

Thucydides, History of the Peloponnesian War, V, 89

Despite stemming from a distant epoch and an intrinsically different context, Thucydides' words resonate across the centuries, capturing that immutable relationship between right and power. Transposed to the present day, this logic endures as a tacit truth, embedded in the very nature of international relations. It serves as the underlying backdrop to geopolitical dynamics, a concept lucidly encapsulated today by the warning of Singapore's current Prime Minister: "We risk descending into a world governed by the law of the jungle, where power dictates justice, and might become right".²¹⁹ From this logical standpoint, this is the risk that constitutes the exact framework within which the clash just described (by section 3.1) unfolded.

The geopolitical and commercial confrontation reconstructed above was, indeed, carried out between the two major superpowers: two states that neither enjoy the perks nor face the constraints of being a regional organisation. At this juncture, the perspective changes drastically, redirecting attention to the primary object of the thesis. This section seeks to examine how the spectators, the blocs standing outside of the clash, have reshaped their own internal law as the recent trade war unfolded. Determining whether a common pressure is answered with convergent or with divergent legal logics is essential to acquiring a genuine and comprehensive view of modern regional integration.

²¹⁸ Thucydides, *History of the Peloponnesian War*, transl. R. Crawley, J. M. Dent & Sons, London 1910, V, 89.

²¹⁹ Lawrence Wong, *PM's Video Message at the Launch of the IPI-RSIS Report on "Small States and the Future of Multilateralism"*, International Peace Institute, 19 September 2024, www.ipinst.org, para. 4(b).

Three cases answer this question, almost as if they mirrored the shifting properties of a kaleidoscope. One bloc bound itself; a second left unused the instruments it had written for itself; a third answered from the far side of the hub-and-spoke topology. The same devices do not produce the same results:²²⁰ weaponisation is not an inevitable destiny for all. Binding, bypassing, building: the initial constitutional architecture acquires a compelling force, an enormous weight on the outcome. If the EU uses the emergency to ignite integration further (albeit by straining democratic procedures) and ASEAN's legal framework is walked around at the first real impact, it means that global pressure does not erase regional law, but reveals its true, deep nature. What is measured in each of the cases is one thing only: the mutation of the pacific function which section 2.1 described as a loan from the multilateral order, one upon which the securitising move set out in section 2.2 operates.²²¹

It is by following this logic that the subsections below take on a role of vital importance within the architecture of the thesis, not only because they offer a gaze that breaks free from the Sino-American dynamic, but also because they prevent the work from falling into a universal and homogeneous narrative of the crisis. It should be anticipated that, so that the work of this section may boast narrative continuity and fluidity, without thereby breaking the thread of the argument, the three subsections will descend directly into the logical heart of the dissertation.

3.2.1 *The European Union: Securitisation Through Integration*

In May 2025 the Council of the European Union adopted a regulation lending member states up to one hundred and fifty billion euros for defence procurement. This instrument was adopted under Article 122 of the Treaty on the Functioning of

²²⁰ Farrell and Newman, *Weaponized Interdependence*, cit., pp. 45, 49-50 and 54-56; on the appeal "into the void", Kobayashi, *Does the Frequent Invocation of the National Security Exception Render WTO Disciplines Meaningless?*, cit., pp. 141 and 143.

²²¹ Abbott, *GATT and the European Community*, cit., p. 9; Buzan, Wæver and de Wilde, *Security: A New Framework for Analysis*, cit., pp. 29-31 and 40-41.

the European Union, a provision written for difficulties in the supply of energy.²²² Article 122, however, does not require the European Parliament to be consulted,²²³ and the Parliament, de facto sidelined in the actual course of events, decided to bring the matter before the Court of Justice.²²⁴ One must realise that every securitising move examined in the preceding chapter loosened a legal bond. This one, instead, creates a bond, and it creates it for forty-five years.²²⁵

The Union, to say the least, was not deprived of the other option. It ought to be considered that market access and regulatory extraterritoriality furnish the hub position (reconstructed in section 2.3), along with the two levers such a position confers. The fact that it opted instead for a legal basis, a loan agreement and a repayment schedule represents a deliberate choice rather than a structural incapacity.²²⁶ Legal securitisation, in Brussels, does not unbind; on the contrary, it binds, sometimes in a hurry.

The sequence has four terms, four distinct stages, unfolding over five years. SURE, in May 2020, lent up to one hundred billion euros for short-time work schemes.²²⁷ Two years later, in August 2022, a specific regulation on gas demand empowered the Council to declare a Union alert, thereby converting a voluntary target of fifteen per cent into a binding one.²²⁸ Later, in December, a subsequent second

²²² Council Regulation (EU) 2025/1106 of 27 May 2025 establishing the Security Action for Europe (SAFE) through the Reinforcement of the European Defence Industry Instrument, OJ L, 2025/1106, 28 May 2025, Arts. 5 (loans granted by the Union to the Member States) and 6 (maximum amount of EUR 150 000 000). The preamble cites “Article 122 thereof” without specifying which paragraph is relied upon. The proposal is COM(2025) 122 final, 19 March 2025.

²²³ Treaty on the Functioning of the European Union, cit., Art. 122; on the two legal bases it contains, which enable the Council to act “without involving the European Parliament in any way”, see Rafał Mańko, *Legal Bases in Article 122 TFEU: Tackling Emergencies through Executive Acts*, European Parliamentary Research Service, PE 769.579, Brussels, April 2025, p. 1.

²²⁴ Case C-560/25, *European Parliament v Council of the European Union*, action brought on 20 August 2025, OJ C, C/2025/5209, 6 October 2025. At the time of writing the case is pending.

²²⁵ Regulation (EU) 2025/1106, cit., Art. 10(2): “The loan agreement shall have a maximum duration of 45 years”; see also recital 28, providing a grace period on principal repayments of ten years in principle.

²²⁶ Farrell and Newman, *Weaponized Interdependence*, cit., pp. 54-56, on the panopticon and chokepoint effects.

²²⁷ Council Regulation (EU) 2020/672 of 19 May 2020 on the establishment of a European instrument for temporary support to mitigate unemployment risks in an emergency (SURE) following the COVID-19 outbreak, OJ L 159, 20 May 2020, p. 1, Arts. 1(2) and 5.

²²⁸ Council Regulation (EU) 2022/1369 of 5 August 2022 on coordinated demand-reduction measures for gas, OJ L 206, 8 August 2022, p. 1, adopted on the basis of Art. 122(1) TFEU; Art. 3 (voluntary demand

regulation organised the joint purchasing of gas. Tellingly, its first recital names the cause without circumlocution: the weaponisation of the gas supply.²²⁹ Then, in 2025, came armaments. Unemployment, energy, defence: all in a single treaty article. An escalation, this one, condensed into a few words, which is in reality the mirror of a broader problem, one that involves the constitutional anomaly that the pandemic opened and weaponisation then widened: three crises of a totally different nature and four colossal interventions, all governed by stretching a single legal basis.²³⁰

The ordinary route, it must be noted carefully, was neither closed nor untried. ASAP and EDIRPA, on the same defence-industrial ground, were adopted in 2023 under Articles 114 and 173(3) TFEU, with the Parliament as co-legislator.²³¹ As can well be grasped, twenty-two months later the amount is three hundred times that of ASAP, with the co-legislator vanished into the ether.²³² The five elements catalogued in section 2.2 (the anatomy of the securitising move) are all in place, starting from the first recital that supplies the existential threat in the plainest words available: “an existential challenge for the European Union”.²³³ Following this

reduction of fifteen per cent), Art. 4 (Union alert declared by the Council by way of implementing decision) and Art. 5 (mandatory demand reduction).

²²⁹ Council Regulation (EU) 2022/2576 of 19 December 2022 enhancing solidarity through better coordination of gas purchases, reliable price benchmarks and exchanges of gas across borders, OJ L 335, 29 December 2022, p. 1, adopted on the basis of Art. 122(1) TFEU; recital 1, on “the weaponisation of the gas supply”.

²³⁰ On this sequence see Mañko, *Legal Bases in Article 122 TFEU*, cit., p. 9, and Daniel Calleja, Tim Maxian Rusche and Trajan Shipley, *EU Emergency – Call 122? On the Possibilities and Limits of Using Article 122 TFEU to Respond to Situations of Crisis*, in “Columbia Journal of European Law”, 29 (2024), 3, pp. 520-560, at pp. 541-548.

²³¹ Regulation (EU) 2023/1525 of the European Parliament and of the Council of 20 July 2023 on supporting ammunition production (ASAP), OJ L 185, 24 July 2023, p. 7, adopted under Arts. 114 and 173(3) TFEU in accordance with the ordinary legislative procedure, in order to “support the ramp-up of the production capacity and timely delivery of relevant defence products” (Art. 4(1)); Regulation (EU) 2023/2418 of the European Parliament and of the Council of 18 October 2023 on establishing an instrument for the reinforcement of the European defence industry through common procurement (EDIRPA), OJ L, 2023/2418, 26 October 2023, adopted under Art. 173(3) TFEU as “a dedicated short-term instrument for increasing collaboration by Member States in the defence procurement phase” (recital 15). The Commission chose the ordinary procedure for ASAP “despite the urgency to adopt that Act to support Ukraine”: Calleja, Rusche and Shipley, *EU Emergency – Call 122?*, cit., p. 557.

²³² The comparison is between Art. 6 of Regulation (EU) 2025/1106, cit., and Art. 5(1) of Regulation (EU) 2023/1525, cit. (EUR 500 million), over the interval between 20 July 2023 and 27 May 2025.

²³³ Regulation (EU) 2025/1106, cit., recital 1. For the five elements see Buzan, Wæver and de Wilde, *Security: A New Framework for Analysis*, cit., pp. 29-31 and 40-41.

thread, the audience to which section 1.4 gave a domestic address now sits in the Council itself, with the Parliament receiving an annual report.²³⁴ Paradoxically, the extraordinary measure (used to circumvent the procedure), this time, is the legal basis itself, as one might acknowledge.

It is now obvious that what Article 122 displaces is not substantive review; it is the procedure and it does so by omission. Its first paragraph empowers the Council, on a proposal from the Commission, to decide “upon the measures appropriate to the economic situation”.²³⁵ Yet it says nothing of the Parliament. Its second, in fact, requires only that the President of the Council inform the Parliament of the decision taken.²³⁶ Receiving information after the event does not equate to participation in any case.²³⁷ This is why, read against the preceding chapter, the two displacements align, symmetrical and inverted. Under Article XXI, the securitising move displaces full substantive review, leaving the invoking member to judge necessity for itself.²³⁸ Under Article 122, by contrast, the substance stays reviewable and the procedure gives way.²³⁹ Article 346 TFEU, named in section 2.2 by anticipation, is the clause the regulation carefully leaves intact.²⁴⁰ Two orders (the two we have analysed), two displacements (the two ousters, of substance and of procedure), but only one mechanism, with exactly the same engine triggering these ruptures. In both cases, the existential threat is used as a crowbar to prise open the ordinary checks and balances.

On 20 August 2025, the Parliament brought its action, filing for annulment, currently pending as Case C-560/25. Its first plea regards the fact that the

²³⁴ Regulation (EU) 2025/1106, cit., Art. 15(1), under which the Commission “shall provide the European Parliament and the Council with an annual report on the use of financial assistance”. On the audience see Buzan, Wæver and de Wilde, *Security: A New Framework for Analysis*, cit., pp. 25-26.

²³⁵ Treaty on the Functioning of the European Union, cit., Art. 122(1).

²³⁶ Ibid., Art. 122(2), last sentence: “The President of the Council shall inform the European Parliament of the decision taken”.

²³⁷ Mañko, *Legal Bases in Article 122 TFEU*, cit., p. 7, noting that under Art. 122(2) TFEU the Parliament “is not engaged or even informed at any earlier stage”.

²³⁸ Panel Report, *Russia – Measures Concerning Traffic in Transit*, cit., paras. 7.130-7.138.

²³⁹ Mañko, *Legal Bases in Article 122 TFEU*, cit., p. 8, on the action for annulment available against Council acts adopted under Art. 122 TFEU.

²⁴⁰ Regulation (EU) 2025/1106, cit., recital 38, under which the Regulation is without prejudice to “the right of each Member State to protect its essential security interests in accordance with Article 346 TFEU”.

regulation concerns “the development of the Union’s industrial policy in the field of defence” under Article 173 TFEU. The second, in turn, alleges a failure to state reasons under Article 296 TFEU.²⁴¹ Whatever view one takes of the case, this thesis believes that the claim is less audacious than it appears. As the Court established in *Commission v Council*, the choice of a legal basis “may not depend simply on an institution’s conviction as to the objective pursued”.²⁴² Rather, it must rest upon “objective factors which are amenable to judicial review”.²⁴³ Crucially, the same judgment recalls that the Parliament’s participation, a procedural requirement, “reflects a fundamental democratic principle”.²⁴⁴

Washington was told by four panels that its own investigations identified no emergency, and yet complied with absolutely nothing.²⁴⁵ Brussels, however, chose a legal basis and was sued by its own Parliament. Even the single exit from the Union proved justiciable: withdrawal under Article 50 TEU proceeded by agreement (and not by communiqué), arbitration mechanism included.²⁴⁶ So, at this point a question spontaneously arises, asking to what extent emergency powers are converting integration into an instrument of geopolitical competition. It therefore admits a somewhat dichotomous, two-part answer: the conversion is complete but the judge is still in the room; the legal obligation endures. The same cannot be said, on the basis of what is argued below, of the next region.

²⁴¹ Case C-560/25, *European Parliament v Council*, cit., first plea (incorrect legal basis) and second plea, on “an infringement of the duty to state reasons”.

²⁴² Court of Justice, Case C-300/89, *Commission v Council* (Titanium dioxide), judgment of 11 June 1991, ECR 1991, p. I-2867, para. 10.

²⁴³ Ibid.

²⁴⁴ Ibid., para. 20.

²⁴⁵ Panel Reports, *United States – Certain Measures on Steel and Aluminium Products*, cit., paras. 7.142 and 7.147-7.149 (China), and the Notification of an Appeal by the United States, WT/DS552/16 and WT/DS556/21, cit.

²⁴⁶ Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, OJ L 29, 31 January 2020, p. 7, Part Six, Title III, and in particular Arts. 170-171, on arbitration; Consolidated Version of the Treaty on European Union, OJ C 326, 26 October 2012, Art. 50(2).

3.2.2 *The Indo-Pacific: Maximum Pressure, Minimum Law*

Historically speaking, ASEAN has had an economic dispute settlement mechanism since 1996, an enhanced one since 2004, and even a third, added by protocol to its own Charter in 2010. Ironically, however, no member state has ever invoked any of them.²⁴⁷ Southeast Asia embodies the one bloc that does not answer in legal form at all. The instruments, moreover, are neither rudimentary nor obsolete: on paper, they even seem designed to break the region's well-known culture of dispute avoidance.²⁴⁸ The Vientiane Protocol of 29 November 2004 actually reproduces the architecture of the Dispute Settlement Understanding almost clause by clause. It provides for negative consensus and a standing Appellate Body, while the Protocol to the Charter, signed at Hanoi on 8 April 2010, waited for Singapore's ratification in July 2017 to enter into force, more than seven years after its adoption.²⁴⁹ The disputes subsisted and were even litigated, but they were litigated in The Hague, in Hamburg and in Geneva.²⁵⁰ Moreover, it is evident that when even the newest instrument in the region declines to stand on its own feet, the region ends up borrowing its referee from Geneva. In fact, where the parties to a dispute under the Regional Comprehensive Economic Partnership fail to compose

²⁴⁷ Protocol on Dispute Settlement Mechanism, Manila, 20 November 1996; ASEAN Protocol on Enhanced Dispute Settlement Mechanism, Vientiane, 29 November 2004; Protocol to the ASEAN Charter on Dispute Settlement Mechanisms, Hanoi, 8 April 2010. That none of them has been invoked is recorded by Michael Ewing-Chow and Ranyta Yusran, *Dispute Settlement Mechanisms: Association of Southeast Asian Nations (ASEAN)*, in "Max Planck Encyclopedia of International Procedural Law", Oxford University Press, Oxford, entry last updated August 2019, paras. 3 and 31.

²⁴⁸ Ewing-Chow and Yusran, *Dispute Settlement Mechanisms*, cit., para. 19, reading the adoption of negative consensus as a possible sign of "ASEAN's intention to address the organization's well-known culture of dispute avoidance"; see also Walter Woon, *Dispute Settlement in ASEAN*, in "Korean Journal of International and Comparative Law", 1 (2013), pp. 92-104, at p. 100.

²⁴⁹ ASEAN Protocol on Enhanced Dispute Settlement Mechanism, cit., Arts. 2, 5, 9 and 12, on the administration of the mechanism by the Senior Economic Officials Meeting, on the negative consensus rule and on the standing Appellate Body, which ASEAN has yet to establish; Woon, *Dispute Settlement in ASEAN*, cit., pp. 97-99; Ewing-Chow and Yusran, *Dispute Settlement Mechanisms*, cit., paras. 18-19 and 22 and, on the entry into force of the 2010 Protocol, para. 61: "Singapore's ratification of the DSMP in July 2017 finally triggered its entry into force more than seven years after its adoption".

²⁵⁰ Ewing-Chow and Yusran, *Dispute Settlement Mechanisms*, cit., paras. 64-65 and 81-82, listing the intra-ASEAN disputes brought before the International Court of Justice, the International Tribunal for the Law of the Sea and the dispute settlement system of the WTO, among them *Sovereignty over Pulau Ligitan and Pulau Sipadan* (2002), *Land Reclamation by Singapore in and around the Straits of Johor* (2003), *Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge* (2008) and *Thailand – Cigarettes* (2011).

their panel, the appointment passes to the Director-General of the WTO.²⁵¹ It must be noted, indeed, that this is a harder datum than the absence of rules would be, and it is the point that the argument offered by this thesis is trying to make. A bloc which never wrote the rules has decided (and will decide) nothing. Conversely, a bloc which wrote them three times over (and then never once opened them) has decided.

In 2026 Beijing, resorting to a lever already examined earlier in this work, restricted rare-earth exports to Japan in order to deter its support for Taiwan in the event of military intervention.²⁵² The observation is narrow and needs one line only: this is the region in which an “emergency in international relations” within the meaning of Article XXI(b)(iii) is genuinely arguable. Put differently, this is exactly what the Commerce Department’s steel reports were found not to identify.²⁵³ When the export controls of 2025 reached suppliers across Southeast Asia,²⁵⁴ and tariffs of between twenty and forty per cent were announced for the region, the responses were bilateral, national and in some cases minilateral.²⁵⁵ Governments, indeed, negotiated their own reprieves in Washington.²⁵⁶ Singapore kept its export control statute anchored to the multilateral regimes rather than

²⁵¹ Regional Comprehensive Economic Partnership Agreement, in force since January 2022, Art. 19.11, paras. 7 and 8: where the panellists have not been appointed, any party to the dispute “may request the Director-General of the WTO to appoint the remaining panellists” and, failing that, the Secretary-General of the Permanent Court of Arbitration. On the date of entry into force see Abhilash Roy, *Outweighing the Eagle: Can the ASEAN–RCEP Axis Redefine Asia’s Trade Future?*, in “SSRN Electronic Journal” (2026), p. 3.

²⁵² Gracelin Baskaran and Meredith Schwartz, *Rare Earth Export Restrictions One Year Later*, CSIS Briefs, Center for Strategic and International Studies, Washington (DC), April 2026, p. 6: “China has already leveraged rare earth export restrictions against Japan in 2026 to deter support for Taiwan in the event of military intervention toward reunification”.

²⁵³ Panel Reports, *United States – Certain Measures on Steel and Aluminium Products*, cit., paras. 7.142 and 7.147-7.149 (China), where the reports of the Department of Commerce “do not purport to identify or address the existence of an ‘emergency in international relations’ within the meaning of Article XXI(b)(iii) of the GATT 1994”.

²⁵⁴ On the Chinese export controls of April and October 2025 and on their extraterritorial reach see MOFCOM, Announcements No. 18 and No. 61 of 2025, cit., and CSIS, *China’s New Rare Earth and Magnet Restrictions Threaten U.S. Defense Supply Chains*, cit.

²⁵⁵ Amos Yeo, *Supply Chains and Southeast Asia: The Sino-American Shadow*, in “Survival”, 67 (2025), 4, pp. 113-126, at p. 115, on the rates announced for the region, from twenty per cent on imports from Vietnam to forty per cent on those from Laos and Myanmar.

²⁵⁶ Ibid., pp. 115 and 117, on Vietnam’s concessions, on the negotiations over Indonesia’s tariff and on Washington’s preference for bilateral over multilateral engagement.

aligning it with the American one.²⁵⁷ Meanwhile, four ASEAN members took up places in BRICS+, the club we previously measured against the defined grid in section 1.5.²⁵⁸ As for ASEAN itself, what it had put on the table, already in 2024, was a framework on supply chain resilience, ambitious on paper, which is to say basically a commitment.²⁵⁹

At this point, then, one might think that ASEAN did not move a muscle in order to react to the pressure of the geoeconomic giants, perhaps out of political fear or passivity. The explanation, however, does not reside in a diagnosis of reticence, but rather in a strictly jurisdictional one. The pressure came from two states bound by no intra-ASEAN instrument; furthermore, the mechanisms the region did build bind only its members to one another.²⁶⁰ Exactly as in a hydraulic system of communicating vessels, where the universal level remains blocked and the clubs fail to assimilate the geopolitical shock, the pressure, still unabsorbed, would discharge upon the level below (the regional level), the last one still carrying obligation.²⁶¹ In Southeast Asia it discharged elsewhere, because there the regional level carries none in practice: its binding rules are never invoked. Integration here was not weaponised. It was walked around, through a detour that cost nobody anything, neither a political price nor a sanction.

²⁵⁷ Han-Wei Liu, *Singapore's Silicon Statecraft: Doctrinal Independence Through Substitution Under US Extraterritorial Export Controls*, forthcoming in "World Trade Review" (2026), pp. 22 and 25, observing that Singapore's regime "remains anchored to the major multilateral export control regimes" and that no domestic mechanism allows another State's technology-competition parameters to be absorbed into Singapore law.

²⁵⁸ Yeo, *Supply Chains and Southeast Asia*, cit., pp. 118-119, on the partner status offered in October 2024 to Indonesia, Malaysia, Thailand and Vietnam, and on Indonesia's accession as a full member in January 2025; Rio de Janeiro Declaration, cit., para. 3, listing Malaysia, Thailand and Vietnam among the partner countries.

²⁵⁹ Framework on ASEAN Supply Chain Efficiency and Resilience, ASEAN Secretariat, 2024, described in Yeo, *Supply Chains and Southeast Asia*, cit., p. 119 and note 45. On the distinction between commitment and obligation see Pauwelyn, Wessel and Wouters, *An Introduction to Informal International Lawmaking*, cit., p. 2.

²⁶⁰ Charter of the Association of Southeast Asian Nations, Singapore, 20 November 2007, Arts. 24-25; Ewing-Chow and Yusran, *Dispute Settlement Mechanisms*, cit., para. 3, on a framework designed for "all forms of intra-ASEAN disputes".

²⁶¹ On the blocked universal level see Mavroidis, *Adjudicating Trade Disputes*, cit., section 1.2; on the clubs, whose commitments entail that "[n]o offence is committed when a non-binding act is breached", Ruiter and Wessel, *The Legal Nature of Informal International Law*, cit., p. 163.

3.2.3 *The Global South: Weaponisation Without a Weapon*

In January 2020, Indonesia banned the export of nickel ore, in order to compel processing to take place onshore.²⁶² The European Union brought a claim, initiating dispute settlement proceedings and contesting both the ban and the related domestic processing requirement.²⁶³ On 30 November 2022 the panel found against Jakarta on basically every count. Namely, it ruled that the export prohibition and the domestic processing requirement breached Article XI:1, fell outside the shelter of Article XI:2(a) and were not justified under Article XX(d).²⁶⁴ Eight days later Indonesia appealed, and the notice it filed describes the system more plainly than any commentary could. There were no Appellate Body Members available to compose a Division, one from which Indonesia would await further instructions “once composed”.²⁶⁵ In fact, under WTO rules a “first-instance” panel report does not become binding until the appeal has been completed.²⁶⁶ But the “appellant” in question, Indonesia, puts up a show of respecting the rules, formally placing itself at the disposal of the Division, while being perfectly aware that no such Division can be composed. It is still waiting, frozen.²⁶⁷ The measures have never been withdrawn, the retaliation which WTO law would afford the European Union cannot be authorised,²⁶⁸ and the country has since become the centre of the

²⁶² David Guberman, Samantha Schreiber and Anna Perry, *Export Restrictions on Minerals and Metals: Indonesia's Export Ban of Nickel*, U.S. International Trade Commission, Working Paper ICA-104, Washington (DC), February 2024, p. 11, on the ban reinstated in full in January 2020 “in an effort to encourage investment into its downstream manufacturing industry”.

²⁶³ *Ibid.*, p. 13.

²⁶⁴ Panel Report, *Indonesia – Measures Relating to Raw Materials*, WT/DS592/R, circulated 30 November 2022, paras. 8.2-8.4.

²⁶⁵ *Indonesia – Measures Relating to Raw Materials*, Notification of an Appeal by Indonesia under Article 16.4 and Article 17 of the DSU, and under Rule 20(1) of the Working Procedures for Appellate Review, WT/DS592/6, 12 December 2022 (communication dated 8 December 2022), para. 3: “As there are no Appellate Body Members to compose a Division to hear Indonesia’s appeal at this time, Indonesia awaits further instructions from the Division, once composed”.

²⁶⁶ Understanding on Rules and Procedures Governing the Settlement of Disputes, *cit.*, Art. 16.4: once a party has notified its decision to appeal, the panel report “shall not be considered for adoption by the DSB until after completion of the appeal”.

²⁶⁷ Mavroidis, *Adjudicating Trade Disputes*, *cit.*, section 1.2, on the thirty-five panel reports appealed “into the void” since 2019, none of which has been heard.

²⁶⁸ Understanding on Rules and Procedures Governing the Settlement of Disputes, *cit.*, Art. 22, which makes the suspension of concessions subject to the authorisation of the DSB. The Union opened a consultation on

world's nickel processing industry.²⁶⁹ In this way, Jakarta was granted the only thing it needed: time.

The discussed device is the one dissected in sections 2.4 and 2.5; but, significantly, the position from which it is used is quite the opposite here. For Washington the void conferred impunity, the condemned measures remaining in force and widening thereafter. For Jakarta, instead, it conferred a postponement, nothing more, since a member unable to retaliate or reciprocate gains only time from paralysis.²⁷⁰ The window proved sufficient: by the time the legal “fiction” had become evident, the economic reality had already been irreversibly altered.²⁷¹ It follows that where the obligation can no longer be actioned, the outcome is settled by the position a state occupies along the chain, rather than by the rule addressed to it. It is the law that gives way to material force, a force that does not look to military might but derives from structural position. Indonesia lost the case and won the argument precisely because it holds a physical bottleneck (its near-monopoly on raw nickel).²⁷²

We now turn our magnifying glass to a completely different region, in both its structural and its contingent features. Africa, over those very years (2018-2019), was building, or at least trying to, what Geneva was letting fall.²⁷³ The AfCFTA Protocol on Rules and Procedures on the Settlement of Disputes has been in force since 30 May 2019. It replicates the architecture of the Dispute Settlement

countermeasures under its own Enforcement Regulation in July 2023, with no further developments as of February 2024: Guberman, Schreiber and Perry, *Export Restrictions on Minerals and Metals*, cit., p. 13.

²⁶⁹ Guberman, Schreiber and Perry, *Export Restrictions on Minerals and Metals*, cit., pp. 14-15, recording that since the full ban of 2020 “essentially all of its mine output is converted to nickel products domestically” and that in less than a decade the country came to account for about forty per cent of global primary nickel production.

²⁷⁰ The dispute is the only case compared in this chapter in which the appeal into the void is operated by a respondent holding no hub position within the meaning of Farrell and Newman, *Weaponized Interdependence*, cit., pp. 45 and 49-50. The comparison isolates the effect of the material position and not of the technique. On the Section 232 measures, maintained and later widened, see Presidential Proclamations 10947, 11021 and 11032, cit.

²⁷¹ Guberman, Schreiber and Perry, *Export Restrictions on Minerals and Metals*, cit., p. 28, on the growth of downstream production and exports coinciding with the 2020 ban.

²⁷² Yeo, *Supply Chains and Southeast Asia*, cit., p. 117: Indonesia “produces two-thirds of the world’s mined nickel and nearly half of its refined nickel”; see also *ibid.*, note 28.

²⁷³ Trade Law Centre (tralac), *AfCFTA: A tralac Guide*, 12th ed., Stellenbosch, May 2024, p. 1, on the Agreement presented for signature in Kigali on 21 March 2018 and in force since 30 May 2019.

Understanding, panels and an appellate body included.²⁷⁴ The date of the entry into force of the African protocol, sitting six months before the paralysis described in section 2.5, when the Appellate Body lost its quorum, shows that the continent did not act out of sheer desperation once the disaster had occurred.²⁷⁵ The members of the African Group were among the staunchest defenders of that adjudicative function. As if they had realised that Washington was letting the institution die, they took matters into their own hands, thus writing themselves an appellate body of their own, as the original ceased to sit.²⁷⁶

Together they answer the research question from underneath, overturning its perspective. Those that never received that loan (that pacific function) on the same terms are the ones now enterprisingly writing its terms for themselves: one through its ore, its raw mineral, and the other through a treaty. The original function is not being converted everywhere into a weapon or an instrument of geopolitical competition. Rather, we are left with a picture of a dichotomous reality; in some parts of the world, at least, it is being claimed, perhaps for the first time.²⁷⁷

²⁷⁴ Ibid., p. 9, recording that the Protocol “was adopted during Phase I of the AfCFTA negotiations and has been in force since 30 May 2019”, that the system is “modelled on the Dispute Settlement Understanding of the WTO” and that it “consists of panels and an appellate body”. See also tralac, *What to Expect from the AfCFTA Dispute Settlement Mechanism?*, Factsheet 5, July 2021, p. 1, on the replication of the approach of the DSU “regarding procedures, timeframes, and substantive provisions”.

²⁷⁵ Baroncini, *Saving the Right to Appeal at the WTO*, cit., note 38, on the expiry, on 10 December 2019, of two of the last three mandates.

²⁷⁶ Colette van der Ven and David Luke, *Africa in the World Trade Organization*, in D. Luke (ed.), *How Africa Trades*, LSE Press, London 2023, pp. 117-140, at p. 126, on the communication of June 2019 in which the African Group addressed the crisis of the Appellate Body; on the American antagonism towards the more recent developments of the DSU, tralac, *What to Expect from the AfCFTA Dispute Settlement Mechanism?*, cit., p. 4.

²⁷⁷ Van der Ven and Luke, *Africa in the World Trade Organization*, cit., p. 120, on the reading of multilateral rules as constraining “policy space to achieve industrialisation and economic transformation”, and p. 126, where the African Group recalls dispute settlement as a “central element in providing security and predictability to the multilateral trading system”.

3.3 Courts and the Fate of Actionability: A Comparative Synthesis

Bringing into a system the research matrix structured up to this point of the work, we register, against a single independent variable (global systemic and geopolitical pressure), four radically different values of the same dependent variable. Four cases, one pressure, four answers: an emergency statute, an emergency treaty article, an export ban and no legal instrument at all.²⁷⁸ Returning to the core of the thesis, section 1.4 asked why: this catalogue of reactions is not accidental; on the contrary, it is the answer to one thread of the research question. In this view, the techniques diverge, while the brakes converge, and they do so towards a single decisive factor: actionability.

We now draw the threads together, on the fate of this fourth property. In 2026, the constraint struck, acting as a decisive brake in the one place Geneva cannot reach. Tellingly, Geneva itself had already proven powerless in the face of US tariffs.²⁷⁹ Bound before a judge it could not switch off, Brussels securitised inside the law, remaining within the perimeter.²⁸⁰ Able to appeal into the void, deliberately exploiting the paralysis of the Appellate Body, Washington and Jakarta kept their measures.²⁸¹ With rules reaching neither the source of pressure (which came from actors outside the bloc) nor any docket, Southeast Asia literally walked around them.²⁸²

²⁷⁸ International Emergency Economic Powers Act, cit., 50 U.S.C. section 1701(a); Treaty on the Functioning of the European Union, cit., Art. 122(1); Guberman, Schreiber and Perry, *Export Restrictions on Minerals and Metals*, cit., p. 11; Yeo, *Supply Chains and Southeast Asia*, cit., pp. 115 and 117-119.

²⁷⁹ A panel examines the matter only “in the light of the relevant provisions” of the covered agreements: Understanding on Rules and Procedures Governing the Settlement of Disputes, cit., Art. 7.1; the judgment of 20 February 2026 turned instead on the domestic authority for the duties: *Learning Resources, Inc. v. Trump*, cit.

²⁸⁰ Regulation (EU) 2025/1106, cit., recital 1; Case C-560/25, *European Parliament v Council*, cit. On an economic nationalism which “does not necessarily operate outside the law; rather, it unfolds within it”, Estifanos Balew Liyew, *Goeconomics and the Return of Economic Nationalism in International Trade Law*, in “Discover Global Society”, 4 (2026), art. 148, pp. 1-20, at p. 7.

²⁸¹ Panel decisions appealed “into the void” leave disputes unresolved, which “undermines compliance incentives and emboldens unilateral action”: Liyew, *Goeconomics*, cit., p. 13.

²⁸² Ewing-Chow and Yusran, *Dispute Settlement Mechanisms*, cit., paras. 3 and 31.

Accordingly, in the four cases compared here, only two judges outside Geneva could still bind.²⁸³ Both were seized from within the respondent's legal order (by actors internal to the system) and asked first who may decide: who holds the power to decide upon the emergency?²⁸⁴ The appeal into the void, the tool of what recent scholarship calls *dejudicialisation*,²⁸⁵ reopened what Weiler named *selective exit* in his work *The Transformation of Europe*. It consists in keeping membership while escaping the obligation, or more specifically, in enjoying the benefits of the club without paying its legal dues.²⁸⁶ Europe began closing it in 1963 (with the historic judgment in *Van Gend & Loos*), when an importer contesting a customs duty was allowed to invoke the Treaty against its own State.²⁸⁷

Casting a glance over the global scene, at the other regional organisations, we find the Andean Tribunal. Among Europe's copies, it is the one whose docket private litigants actually fill, and this peculiarity is what keeps it among the busiest.²⁸⁸

²⁸³ *Learning Resources, Inc. v. Trump*, cit., Syllabus, on the plaintiffs, "two small businesses" and, in the case decided with it, "five small businesses and 12 States"; Case C-560/25, *European Parliament v Council*, cit., pending at the time of writing. For Washington and Beijing, the WTO's was, on Alter's count, the only compulsory international jurisdiction accepted: Karen J. Alter, *The Evolution of International Law and Courts*, iCourts Working Paper Series, No. 3, University of Copenhagen, Copenhagen 2014, p. 10.

²⁸⁴ *Learning Resources, Inc. v. Trump*, cit., on whether the emergency statute delegates to the President a power which the Constitution confers on Congress; Case C-560/25, *European Parliament v Council*, cit., on the legal basis and, with it, the participation of the Parliament. On "replacing international law with domestic law" as a response of powerful states to judicialisation, Ming Du and Delei Peng, *The Dejudicialization of International Dispute Settlement: A Paradigm Shift in International Economic Law?*, in "Journal of World Trade", 58 (2024), 6, pp. 895-918, at p. 909.

²⁸⁵ Du and Peng, *The Dejudicialization of International Dispute Settlement*, cit., pp. 897 and 915, the latter on the "asphyxiation strategy" which rendered "the appellate procedure inoperative for all WTO Members".

²⁸⁶ Joseph H. H. Weiler, *The Transformation of Europe*, in "Yale Law Journal", 100 (1991), 8, pp. 2403-2483, at p. 2412, on "the practice of the Member States of retaining membership but seeking to avoid their obligations under the Treaty". On the compulsory jurisdiction which had closed that option in the WTO of 1995.

²⁸⁷ *Ibid.*, pp. 2413-2415 and 2427, where the closure is "the process by which Community norms and policy hardened into binding law with effective legal remedies"; Court of Justice, Case 26/62, *N.V. Algemene Transport- en Expeditie Onderneming van Gend & Loos v Nederlandse administratie der belastingen*, judgment of 5 February 1963, ECR 1963 (English special edition), p. 1, at pp. 4-5 and 13, on the duty contested under Article 12 EEC and on "the vigilance of individuals concerned to protect their rights" as "an effective supervision". A year later the Court held that those obligations could not be "called in question by subsequent legislative acts of the signatories", unilateral action being granted only "by clear and precise provisions", among them Article 223 EEC, the forerunner of Article 346 TFEU: Court of Justice, Case 6/64, *Flaminio Costa v ENEL*, judgment of 15 July 1964, ECR 1964 (English special edition), p. 585, at p. 594.

²⁸⁸ Karen J. Alter, *The Global Spread of European Style International Courts*, in "West European Politics", 35 (2012), 1, pp. 134-154, cited from the pre-print version (Buffett Center for International and Comparative Studies, Working Paper No. 11-003, June 2011), pp. 7-8 and 13, listing the Andean Tribunal among eleven operational copies of the Court of Justice and among the busiest; Laurence R. Helfer and

Where economic claims stayed with public authorities, as in the ECOWAS Court and in ASEAN, none was brought.²⁸⁹ States themselves have strong disincentives to sue one another: concerns for retaliation and for reputation.²⁹⁰

We conclude this chapter by returning once again to the pivot of the entire work, our point of reference: the research question. How is the fragmentation of the multilateral order reshaping the law of regional integration, and to what extent are the securitisation and weaponisation of regional legal frameworks transforming their original economic and peace-oriented function into an instrument of geopolitical competition? By moving actionability out of Geneva, wresting it away from the WTO headquarters and leaving its survival to the courts below.²⁹¹ Where it survives, indeed, the conversion keeps a legal form; elsewhere, position replaces the rule.²⁹² As observed, Washington converted, bridled only at home; Brussels converted under review; Southeast Asia converted nothing; Jakarta and the African parties claimed the function instead.²⁹³

It has been shown how, in contemporary economic and political practice, the paralysis of the WTO Appellate Body has concretely and systemically corroded

Karen J. Alter, *Legitimacy and Lawmaking: A Tale of Three International Courts*, in “Theoretical Inquiries in Law”, 14 (2013), pp. 479-503, at pp. 482 and 494-495, on its access rules and docket.

²⁸⁹ Karen J. Alter, Laurence R. Helfer and Jacqueline R. McAllister, *A New International Human Rights Court for West Africa: The ECOWAS Community Court of Justice*, in “American Journal of International Law”, 107 (2013), 4, pp. 737-779, at pp. 757-758: non-compliance suits are open only to member states and Community officials, and none had been filed, the direct access granted in 2005 covering human rights claims rather than the members’ economic obligations. For ASEAN, Ewing-Chow and Yusran, *Dispute Settlement Mechanisms*, cit., para. 3.

²⁹⁰ “[C]oncerns for retaliation and reputation can prevent states from filing claims against other states”: Theresa Squatrito, *The Democratizing Effects of Transnational Actors’ Access to International Courts*, in “Global Governance”, 24 (2018), 4, pp. 595-613, at p. 604.

²⁹¹ On actionability as the fourth property of the form, and the condition of the other three, see sections 1.2 and 1.4 above; on the regional level as the last to carry an obligation capable of being invoked, section 1.5. The triad of two disputants and a dispute resolver is “the guarantor of reciprocity”: Du and Peng, *The Dejudicialization of International Dispute Settlement*, cit., p. 914.

²⁹² Nor is survival assured at the regional level: after rulings against Zimbabwe, the SADC Tribunal was suspended in 2011, and a protocol adopted in 2012 removed access for private litigants: Helfer and Alter, *Legitimacy and Lawmaking*, cit., p. 489; Alter, Helfer and McAllister, *A New International Human Rights Court for West Africa*, cit., p. 777. Judicialisation “is not a teleological process”: Du and Peng, *The Dejudicialization of International Dispute Settlement*, cit., p. 917.

²⁹³ The African claim remains incomplete: the investment protocol of the AfCFTA was adopted without its annex on dispute settlement, which “proved impossibly contentious”: Won L. Kidane, *The Case for an African Investment Court (AIC)*, UCT Arbitration and Dispute Resolution Unit, Working Paper 2026/01, Cape Town, February 2026, p. 5.

universal actionability, allowing, for example, Washington and Jakarta to operate in a vacuum of deterrence.²⁹⁴ This chapter has tested whether different blocs respond to the same systemic pressure with convergent or divergent legal logics. The result is a comparative synthesis which diagnoses that the law is not evaporating uniformly: the logic of the conversion diverges precisely where the constitutional constraint varies. The fragmentation of the multilateral order is reshaping regional integration by unloading the full weight of geopolitical competition onto its structures. In other words, from a legal point of view, at the global level the contest has shifted from the plane of the universal rule to that of relative force. This becomes a burden, and an unbearable one, born of a contest which the WTO is no longer equipped to arbitrate. Wherever it has reached, weaponisation has therefore mutated the original pacifying function of trade into an instrument of coercion, and perhaps irremediably, but the *form* this transformation assumes is dictated predominantly by the survival of a “judge”. Whether a power bound at home but no longer abroad is declining, or no longer needs the rules it wrote, falls to Chapter Four.²⁹⁵

²⁹⁴ See sections 2.4-2.5 above on the paralysis of the Appellate Body, and sections 3.1 and 3.2.3 above on the measures which survived it.

²⁹⁵ On a WTO likely to “move back to an increasingly power-based system for the foreseeable future”, Du and Peng, *The Dejudicialization of International Dispute Settlement*, cit., p. 916.

CHAPTER 4

SAVING MULTILATERALISM? REFORM, RESILIENCE, AND REINVENTION

Without the pretension of opening with useless abstractions, and so that the reader may be clear about which piece is missing to complete the logical framework of this work, this preamble proposes a surgical approach, juxtaposing, as a first step, two bare and blunt numbers. The World Trade Organization records three hundred and eighty-seven regional trade agreements in force.²⁹⁶ Since December 2019, however, it has also recorded thirty-five panel reports appealed to a body which cannot receive them.²⁹⁷ The first number is the law still being written; the second is the law which can no longer be applied. This juxtaposition, and the distance between them, is the subject of this chapter, visually defining the dichotomy which it will go on to explore. So far, this work has built an instrument, located the hinge through which actionability is withdrawn, and eventually found the conversion taking the shape of whatever judge survives.

The promise this chapter makes to itself is that of answering conclusively a critical point, a natural nuance of the research question: can multilateralism be reformed, or has a plurilateral and regionalised order become structurally entrenched? The need for this chapter therefore arises and resides in the necessity of a deconstruction of the classical narrative of institutional failure and of the alleged hegemonic decline. It becomes indispensable precisely in order to demonstrate how the disappearance of global actionability is not a simple rupture, but a stark transfer of costs, dismantling the illusions about the reforms under way.

²⁹⁶ World Trade Organization, Regional Trade Agreements Information System, cit., <https://rtais.wto.org>, recording 387 agreements in force out of 640 notifications received since 1948.

²⁹⁷ Mavroidis, *Adjudicating Trade Disputes*, cit., section 1.2, on the panel reports appealed “into the void” since the loss of quorum of 10 December 2019, none of which has been heard.

Within the wider context of the thesis, the sections which follow offer the pragmatic and procedural keystone to the whole theoretical construction. The diagnostic grid of four properties (and across four levels) built in the preceding chapters will be applied for the last time, showing that the only variable in movement is the identity of whoever holds the right to bring the legal action. Multilateralism will not be saved in the classical institutional sense in which the question is framed, but will be defended and restored only in the courtrooms. Before any of that can be attempted, however, what is broken must be settled first.

4.1 *Diagnosis: What Exactly Needs Saving?*

A power in decline has an interest in preserving the rules binding its rivals, not in dismantling them. The record, however, shows the opposite behaviour. While prominent scholarship often reads this as a symptom of hegemonic transition or internal crisis, the reading proposed here is not related to a declinist debate.²⁹⁸ Tellingly, between 2018 and 2026, the United States did not lose the protection of the rules it had written. On the contrary, it stopped needing that protection, because a position at the centre of the network, such as the American one (whatever one may care to say of it in the declinist debate), does the same work and asks no one for consent. In other words, Washington no longer needs those rules in order to constrain its adversaries: the cost of securitisation is simply transferred elsewhere.²⁹⁹

Up to this point we have analysed how the superpowers, in particular, withdraw from the judgment of international courts, “replacing” multilateral law with domestic law. The substitution, however, operates outwards and halts at the border: in February 2026 the constraint no panel had imposed bit swiftly, materialising in a matter of days (four), and it struck from within, at home.³⁰⁰ This is the reckoning, the point at which it is shown that the law, commercial law in this case, is not dead but has undergone a relocation. Perhaps, accordingly, a hegemon unreachable from

²⁹⁸ The same record sustains readings this thesis does not adopt, and they are registered rather than answered. Ikenberry, *The End of Liberal International Order?*, cit., pp. 9-10, diagnoses a “crisis of success” internal to the order; Lake, Martin and Risse, *Challenges to the Liberal Order*, cit., treat the challenge as systemic rather than authored; Chen and Wang, *Geopolitical Conflict, Geoeconomic Manoeuvring, and the Law of the Jungle*, cit., pp. 11-30, and Li, *Conceptualizing China-U.S. Rivalry*, cit., read the same years as a transition of power. The claim advanced in the text is narrower than any of these: not that the hegemon is or is not declining, but that the rules ceased to perform work it still needed.

²⁹⁹ On the hub position and on the levers it confers see Farrell and Newman, *Weaponized Interdependence*, cit., pp. 45 and 49-50, and section 2.3 above; on the bargain by which the leading state once accepted institutional limits on its own power in exchange for a durable order, Ikenberry, *Institutions, Strategic Restraint, and the Persistence of American Postwar Order*, cit., pp. 45 and 59; on the United States as the strongest challenger of the order it had guaranteed, Lake, Martin and Risse, *Challenges to the Liberal Order*, cit., p. 240. Where the cost is transferred is shown below in this section.

³⁰⁰ *Learning Resources, Inc. v. Trump*, cit., decided together with *Trump v. V.O.S. Selections, Inc.*; Executive Order 14389, *Ending Certain Tariff Actions*, cit. On the tariff base which took over the same day, Proclamation of 20 February 2026, cit., para. 13, imposing a surcharge effective 24 February 2026. On the statutory bases which survived the judgment, Liu, *No More IEEPA Tariffs?*, cit., pp. 106-107.

Geneva, but reachable from a courtroom in Washington itself, is not necessarily a hegemon in decline. It has, simply, changed the address at which it answers. So it becomes evident that the question is not what has been lost, but where exactly.

This is undeniably a critical point, one which touches the most sensitive nerves of this dissertation. Yet, it marks an inevitable logical progression. If the pathology is not the “end of law”, but the fact that the law has moved to where only a few can use it, then the cure cannot be to write new rules in Geneva.

Applied for the last time, now to levels, the grid returns the following.

Level	Indivisibility	Generalised principles	Diffuse reciprocity	Actionability	Who may bring the action
Universal	Yes: most-favoured-nation treatment	Yes	Diffuse	Suspended since 2019	Member states only
Plurilateral and club	No	Among the parties	Among the parties	Contractual and optional	Participating parties only
Regional	Inside the bloc	Yes	Among the members	Depends upon the judge	States; in Europe and the Andean area, private parties as well
<i>Domestic constitutional</i>	<i>Not applicable</i>	<i>Not applicable</i>	<i>Not applicable</i>	<i>Intact, and fast</i>	<i>Private parties and organs of the state</i>

The fourth row, as shown, is a result and not an oversight. It does not, in any case, belong to the international order at all, which is precisely why it is worth recording.³⁰¹ One column alone, visibly, moves with the fourth property: the last

³⁰¹ Ruggie, *Multilateralism*, cit., pp. 571-572, for the three properties from which the first three property columns are derived. The entries in the last row are not drawn from the international order, and they are recorded as the grid returns them rather than offered as a category of it.

one. It must be stated that the figures that follow measure the object and not the argument. Indonesia's export prohibition, for example, survived a panel report it had lost on every count.³⁰² Moreover, in under a decade the country shockingly came to hold somewhere around forty per cent of world primary nickel production.³⁰³ The Union, which paradoxically won, obtained neither withdrawal nor retaliation.

The disappearance of an enforceable obligation, or rather the collapse of an international tribunal, is usually described as an institutional failure. Such a disappearance, however, does not cancel the costs of a violation: on the record assembled here, it is better described as a transfer. The cost of a securitising measure (such as tariffs or export bans) is not removed when the competent multilateral forum, which could review it, stops functioning. It is moved, onto whoever cannot move,³⁰⁴ discharging upon them a paralysis which has become an instrument for the redistribution of harm and of power. A loss which works as a transfer is not repaired by rewriting the rule transferred away from. It is, instead, repaired, if at all, by restoring the ability to invoke it. Seen from the opposite direction, if the problem were merely a badly written or obsolete rule, the logical solution would consist simply in rewriting it.

Since the written rule is useless without the key to enter the courtroom, the relevance of the text of the obligation inevitably recedes into the background. The political reason behind this can properly be addressed as a convergence of two findings of the first chapter. The bargain which "purchased" domestic consent to

³⁰² Panel Report, *Indonesia – Measures Relating to Raw Materials*, cit., paras. 8.2-8.4.

³⁰³ Guberman, Schreiber and Perry, *Export Restrictions on Minerals and Metals*, cit., pp. 14-15, recording that since the full ban of 2020 "essentially all of its mine output is converted to nickel products domestically" and that the country came to account for about forty per cent of global primary nickel production.

³⁰⁴ On who wins and who loses under competing accounts of the same order, Roberts and Lamp, *Six Faces of Globalization*, cit. On rare-earth export restrictions, which have redistributed cost along the supply chain onto downstream users without the means to substitute, Baskaran and Schwartz, *Rare Earth Export Restrictions One Year Later*, cit. On the aggregate cost of export restrictions and on its incidence, Bown, *How Export Restrictions Threaten Economic Security*, cit.

external openness has been withdrawn, inevitably lapsing.³⁰⁵ Moreover, the electorate that emerged from it reads an international obligation as a cost rather than as insurance.³⁰⁶ Meanwhile, if we wish to level a criticism bearing upon institutional cynicism, the party that would repair the machinery profits from its breakdown.³⁰⁷

A reform which requires a government to bind itself again, voluntarily, has no constituency. As a consequence, a reform without a constituency does not happen. It is precisely from this convergence, indeed, that an insurmountable mountain arises, and the reason is purely political. A reform which changes who may sue does not require a government to want it. Put differently, if governments do not want to be put on trial, the resulting logical solution would certainly not be to ask them for it with new rules. What this thesis suggests in the subsequent sections is that it is possible to think of allowing someone else to drag them into court. A true reform, indeed, changes *who* may bring a legal action, a modification which circumvents the *placet*, the “willingness” to be sued. The importer before the Supreme Court and the Parliament before the Court of Justice asked nobody for permission.

Hence the test which governs what follows. A proposal is worth the name, on the account given here, if it changes who may bring a securitising act before a judge. Accordingly, proposals which do not are not reforms of the order; they are redrafting. The test is easiest to apply where the debate is loudest, and the debate is loudest about the institutions which were built to be universal.

³⁰⁵ Ruggie, *International Regimes, Transactions, and Change*, cit., p. 393, on the compromise of embedded liberalism; on its withdrawal see 1.1.1 and 1.4 above.

³⁰⁶ Goldstein and Sykes, *The Perils of Institutional Rigidity*, cit., pp. 481-482 and 487, on the erosion of political support for WTO rules in the United States; on sovereigntism as a crisis of legitimacy rather than of interest, Uzunçayır, *Take Back Control*, cit., p. 909.

³⁰⁷ See 1.3 above and Lake, Martin and Risse, *Challenges to the Liberal Order*, cit., p. 244; Du and Peng, *The Dejudicialization of International Dispute Settlement*, cit., p. 909, on the substitution of domestic for international remedies which follows.

4.2 Reforming the Universal Institutions: UN and WTO

Rules can be written and procedures amended, but not the property (actionability, a fundamental characteristic of multilateralism pictured as a form in section 1.2) whose restoration needs the consent of the member benefiting from its absence. It is evident that the universal level faces two problems, not one: who may bring a claim before a judge, and accordingly, who may say what the rule means. At Yaoundé, as specified in section 1.4, one hundred and sixty-five members out of one hundred and sixty-six supported incorporating the Agreement on Investment Facilitation for Development into Annex 4. Only one dissent sufficed to block its incorporation, leaving its parties outside.³⁰⁸ Such an agreement is no part of the WTO Agreement and, for that reason, it generates neither rights nor obligations within it. As aforementioned, admission consistently requires a Ministerial Conference decision, and one taken by consensus.³⁰⁹ So literally, amending a consensus requirement would necessitate, again, the assent of every member.

The second question is the one which corrodes more, the one more damaging in terms of the legitimacy of adjudication. The Marrakesh Agreement reserves to the members the exclusive authority to adopt authoritative interpretations. In thirty years, however, they have adopted none.³¹⁰ The reason is, simplistically, arithmetic, since an interpretation must be bought in a negotiation. Accordingly, the member which would have to buy it is convinced that it has already paid, at Marrakesh, for the reading the adjudicators took away.³¹¹ Thus, the crisis of this

³⁰⁸ World Trade Organization, *MC14 Chairperson's Summary*, WT/MIN(26)/35, cit.; World Trade Organization, *Members Participating in IFD Agreement Issue Joint Ministerial Declaration at End of MC14*, cit.; Hannah and Scott, *The Turning Point That Didn't Turn*, cit.

³⁰⁹ Marrakesh Agreement Establishing the World Trade Organization, cit., Arts. II:3 and X:9; under Art. X:2 amendments to Articles IX and X “shall take effect only upon acceptance by all Members”; Basedow, *The WTO and the Rise of Plurilateralism*, cit., pp. 411-431.

³¹⁰ Marrakesh Agreement, cit., Art. IX:2, reserving to the Ministerial Conference and the General Council “the exclusive authority to adopt interpretations”, by a three-fourths majority of the Members; Nicolas Lamp, *Arrested Norm Development: The Failure of Legislative-Judicial Dialogue in the WTO*, in “Leiden Journal of International Law”, 38 (2025), 3, pp. 570-596, at p. 571, and p. 573 for the crisis as “as much a story of WTO Members’ underreach” as of the adjudicators’ overreach.

³¹¹ Lamp, *Arrested Norm Development*, cit., pp. 581-583, on the member which “thinks that it has already paid for its rights”.

level, told as an excess of judicial power, is at least as much an abdication of the only power the membership kept. These two failures converge and have one common shape: a right which exists, belongs to states alone, and is never exercised.

The reform on the table within the WTO's headquarters, namely an advisory working group competent to pronounce upon those interpretations, addresses the second question, who may say what the rule means, and not the first (who has the right to activate those rules).³¹² It is worth naming, since it belongs to a family, a category this chapter needs. Borrowing from microeconomic theory and institutional economics, we understand how the arrangement before 1995 and the one after it are "corner solutions".³¹³ Under the first the losing party could actually veto the report; under the second, instead, the winner can veto the consensus to reject it. In other words, the consensus of all is now needed to block a ruling, so that whoever wins the case can, with its veto, let it through. In both cases, obviously, reasoning by extremes. What was never built is an interior solution, a middle way, leaving the adjudicator the outcome and the membership the meaning and therefore the last word.³¹⁴ Doctrine uses this dichotomy to discuss how rules are interpreted; this chapter, on the contrary, applies it to standing. It is the very same institutional problem, only confronted one door earlier, before even asking how the judge will interpret the rule.

Applied to jurisdiction, however, the argument needs only its evidence, namely appointments blocked since 2016, a ministerial conference closed without a statement, one member inviting the organisation to abandon most-favoured-nation treatment.³¹⁵ It should be noted that a compulsory judge will not return within the

³¹² Ibid., pp. 573 and 594-595, on the "Advisory Working Group" envisaged by the consolidated text (the "Molina text") annexed to JOB/GC/385 of 16 February 2024.

³¹³ Ibid., p. 591, reporting Michael Trebilcock's formulation: the trade regime went "from a system where the losing party could veto adoption of a Panel report to a system where the winning party could veto consensus in favour of rejection", and "these are 'corner solutions'".

³¹⁴ Ibid., where negotiators "have yet to find a way to design 'interior solutions'".

³¹⁵ Baroncini, *Saving the Right to Appeal at the WTO*, cit., note 38; Hannah and Scott, *The Turning Point That Didn't Turn*, cit., p. 3, and WT/MIN(26)/35, cit.; United States, *On WTO Reform*, WT/GC/W/984, cit., on which see Sacerdoti and de Stefano, *The WTO and Its Dispute Settlement System in 2025*, cit., p. 4.

horizon, at least the one this thesis can observe. Moreover, outside trade, the pattern repeats: an agreement, the WHO Pandemic Agreement (section 1.3), adopted in May 2025, awaits an annex which does not yet exist.³¹⁶

4.2.1 *Pragmatic Pathways: Plurilateralism, Minilateralism and Coalitions of the Willing*

We now move from diagnosis to what could be called the *pars construens* of this chapter, advancing what might be considered as a proposal. A smaller group might supply the judge the universal level cannot, and, despite a few turned-up noses, one has tried. The appellate arrangement of April 2020, formally notified as the Multi-Party Interim Appeal Arbitration Arrangement (MPIA), proves that actionability can be realistically re-housed, or hosted, by contract inside the universal frame, since its limit is size and not consensus.³¹⁷ This is essentially a plaster with which one tries to close the wound of the system, a patch, however, born of a consent voluntary in nature that exposes its limits. Whoever wishes to bog the system down simply chooses not to join (in this case, the MPIA).

While the concept of “critical mass” has traditionally governed market access, as demonstrated by Gallagher and Stoler,³¹⁸ transposing it and applying it to jurisdiction, as Zhou and Crochet already suggest,³¹⁹ would function as a powerful gatekeeper. In other words, it would serve as a *conditio sine qua non* (submission to the appellate body), that is, the acceptance of jurisdiction. What this thesis

³¹⁶ WHO Pandemic Agreement, cit., Arts. 12 and 31; Switzer, Strobeyko, Eccleston-Turner, Aubry and Rourke, *Negotiating Pathogen Access and Benefit-Sharing (PABS)*, cit., p. 2. The Security Council is not treated here: its reform turns upon a veto whose holders would have to consent to restricting it.

³¹⁷ Multi-Party Interim Appeal Arbitration Arrangement, JOB/DSB/1/Add.12, cit., https://www.wto.org/english/tratop_e/dispu_e/mpia_e.htm; DSU, cit., Art. 25; Zhou and Crochet, *Confronting Fragmentation*, cit., p. 281, and p. 290, on its dependence upon the agreement of the disputing parties.

³¹⁸ Gallagher and Stoler, *Critical Mass*, cit., pp. 375-392, and in particular p. 384.

³¹⁹ Zhou and Crochet, *Confronting Fragmentation*, cit., pp. 295-296, where a plurilateral appeal mechanism requires a “critical mass” involving “a majority of WTO Members or at least the major users of the dispute settlement system”.

proposes is merely the synthesis of these two existing realities. Nevertheless, by doing so, submission to an appellate mechanism would become the non-negotiable price of admission for states wishing to join the plurilateral packages they actively seek.³²⁰

At this point, however, we literally require a sobering dose of reality, since the clubs that are actually being built in practice over these last years supply no judge: they are indeed devoid of jurisdictional mechanisms. A technology coalition (Pax Silica), a preferential zone for critical minerals (FORGE), a Board of Peace.³²¹ The pragmatic pathway, suggested by a very substantial share of the literature, is perhaps not bearing the desired fruit. On the contrary, it is being taken in the direction opposite to the one scholarship recommends. Objectively, states are using this very pragmatic path to flee the system and to shelter themselves, some above all, from any legal control.³²²

Plurilateral arrangements keep general principles among the parties but inevitably destroy indivisibility at the boundary of the club. The legitimacy objection, indeed, has been pressed from inside the membership, and it is here that the transfer exacts its price a second time.³²³ Any exclusive club that rehouses a judge does so strictly for its own members. As a consequence, the plurilateral solution merely redistributes actionability along the exact same fractured lines that caused the initial problem. Moving further down the institutional ladder (taking into consideration, for example, “minilateral” formats such as the G7, the G20 or *ad hoc* alliances), the limitation becomes entirely structural. Minilateral frameworks

³²⁰ Ibid., pp. 295-297, propose a “critical mass-based, open plurilateral” appellate mechanism.

³²¹ Gustavo Romero and Stewart Patrick, *Retreat, Rebel, Replace, or Reform? Making Sense of Multilateralism Under Trump 2.0*, Carnegie Endowment for International Peace, Washington (DC), June 2026, pp. 11-12 (Board of Peace) and 14 (Pax Silica, a coalition on semiconductors and advanced technologies, and FORGE, the Forum on Resource Geostrategic Engagement).

³²² On the approach recommended see Zhou and Crochet, *Confronting Fragmentation*, cit., p. 295, recording that it “has received growing attention and support by trade scholars and policymakers alike”; on the Board of Peace, depicted “not only as a complement to the UN but as a potential replacement”, Romero and Patrick, *Retreat, Rebel, Replace, or Reform?*, cit., p. 11.

³²³ Kelsey, *The Illegitimacy of Joint Statement Initiatives*, cit., pp. 2-24; India and South Africa, WT/GC/W/819, cit.

generate political commitments rather than binding legal obligations, and a system, devoid of obligation, inherently cannot house the right to invoke one.³²⁴

³²⁴ Pauwelyn, Wessel and Wouters, *An Introduction to Informal International Lawmaking*, cit., p. 2; Vabulas and Snidal, *Organization without Delegation*, cit.

4.3 Defensive and Effective Multilateralism: The EU's Doctrine

The year 1963 is that of the historic judgment in *Van Gend & Loos* (already recalled in section 3.3), a milestone of European law which in a certain sense “duplicates” the keys of access for invoking the rule. Reaching the Court through the preliminary reference mechanism, it established the principle of direct effect.³²⁵ The Dutch transport company had been charged an allegedly unlawful customs duty by the Dutch authorities and, instead of waiting for another Member State to sue the Netherlands, knocked on the door of the national court to assert its own rights. We therefore understand how the Court of Justice did not invent an obligation: it extended the right to invoke one beyond the states which had signed the Treaty, reaching the importer who had paid the duty. Put differently, it turned inter-state commitments into law enforceable without waiting for a government to think the quarrel worth it.³²⁶ Here the object of this thesis stops being the patient and becomes the answer.

The anti-coercion instrument, the regulation on foreign subsidies, investment screening, the carbon border mechanism and the defence loan of 2025 are, put together, the EU's legislative arsenal. In other words, they are the only answer on the table which proceduralises securitisation instead of exempting it.³²⁷ We must recall, in fact, that at the global level national security continues to float in a bubble of *de facto* “exemption” wherever the state invokes the emergency.³²⁸ A doctrine

³²⁵ *Van Gend & Loos*, cit., pp. 4-5, on the duty contested under Article 12 EEC and on the question referred by the Tariefcommissie, and p. 12, on the Community as “a new legal order of international law”. The preliminary reference was provided by the Treaty (Article 177 EEC); what the judgment established was direct effect.

³²⁶ *Ibid.*, p. 13, on “the vigilance of individuals concerned to protect their rights” as “an effective supervision in addition to the supervision entrusted by Articles 169 and 170 to the diligence of the Commission and of the Member States”.

³²⁷ Regulations (EU) 2023/2675, 2022/2560, 2019/452, 2023/956 and 2025/1106, cit.; Marr, *A First Reading of Regulation (EU) 2023/2675*, cit.; Bohnert, *The Shift to Unilateralism in the European Union's Trade Policy*, cit.

³²⁸ GATT 1994, Art. XXI(b), on which see section 2.4 above. The panels have denied that the exception is entirely self-judging (Panel Report, *Russia – Measures Concerning Traffic in Transit*, cit., paras. 7.100-7.103), but the appeal “into the void” leaves the invoking member free of any binding ruling: section 2.5 above.

depending on the position it disciplines, however superior it may perhaps be considered, cannot be generalised. It binds its own members and travels as far as its market is able to bring its economic weight to bear. The Union has always tried to project abroad one domestic constitutional arrangement, its peculiar obsession with law, rules and multilateralism, a characteristic which the states now setting the agenda do not share.³²⁹ These powers possess an intrinsically different constitutional DNA, which at times allows them to wriggle free of the logic of law rather than let themselves be bridled by it. For all its refined doctrine, the Union has not exported guardrails capable of containing weaponisation; but what the doctrine did not supply, constitutional practice did, by accident.

What bridled the American tariff in 2026, obviously without in the least cracking the instrument from a political point of view (abundantly used on a daily basis), was not a prohibition but the shape of the statute. As demonstrated in section 3.1, the hampering was caused by the operation of a ceiling of fifteen per cent and a term of one hundred and fifty days, extendable by an Act of Congress alone. The surcharge proclaimed on 20 February 2026 inevitably expired on 24 July by operation of the clock.³³⁰ In Case C-560/25 before the Court of Justice (the defence loan based on Article 122 TFEU, examined in section 3.2.1), the Parliament contests not the substance of the defence loan, the geopolitical necessity of rearming, but the procedure. Put differently, it questions the use of an emergency instrument to sideline democratic participation.³³¹ Two orders, two brakes (the first already at work, the second pending before the judge), no prohibition. No court

³²⁹ Feride Aslı Ergül Jørgensen and Knud Erik Jørgensen, *The European Union and the Crisis of Multilateralism in an Era of Uncertainty and Power Politics*, in “Third World Quarterly”, 46 (2025), 15, pp. 1959-1978, at pp. 1970 and 1973, on the choice of multilateralism as reflecting the EU’s “own domestic settings”; the regime-type explanation proposed there is noted but not adopted, the operative variable here being access.

³³⁰ Trade Act of 1974, Section 122, cit., capping the surcharge at fifteen per cent and at one hundred and fifty days unless extended by an Act of Congress; Proclamation of 20 February 2026, cit. (Proclamation 11012, 91 Fed. Reg. 9339), paras. 13, 17 and (7). No extending Act was passed; the only initiatives recorded in the Senate sought to exempt imports from the surcharge or to repeal the authority: Congressional Record – Senate, 18 March 2026, p. S1273 (amendments to S. 1383 on imports from Canada, of coffee and of bananas), and 22 April 2026, p. S2017 (amendment to S. Con. Res. 33).

³³¹ Court of Justice, Case C-560/25, *European Parliament v Council*, cit., pending at the date of submission, first and second pleas; TFEU, cit., Art. 296.

will forbid the imposition of tariffs or the financing of arms; its baton, the law, merely demands that these actions respect a procedure, a time limit or the scrutiny of a judge. A passage, this one, which closes the circle opened in Chapter Three, joining the two shores of the Atlantic under a single legal logic.

Four elements, drawn from the two orders, bridle the exception: a quantitative ceiling, an automatic expiry, a renewal entrusted to the legislature and not to the author of the measure, and a statement of reasons amenable to judicial review.³³² None is new; this is just a peculiar combination.³³³ They bind the form, compelling it to be rigorous, temporary and measurable, and leave the motive untouched: it is not in any sense a cure, but the difference between a controlled derogation, an exception, and arbitrary power. In the vocabulary used above (section 4.2), they are an interior solution,³³⁴ a compromise arrangement. While the executive keeps the decision, the legislature and the judge pull the rope towards the terms on which it is held.

The demand, the need to regulate, to plant guardrails against incessant weaponisation, no longer comes from trade scholarship alone. Nowadays it inevitably becomes an urgency for anyone concerned with peace and global stability. An April 2026 report on the reform of the United Nations suggests exploring whether member states can agree on rules to govern the weaponisation of economic power, curbing it with immovable guardrails. Yet, when set against the harsh realities of the current geopolitical environment, such an aspiration appears decidedly naive.³³⁵

³³² Court of Justice, Case C-300/89, *Commission v Council* (Titanium dioxide), cit., para. 10, on a legal basis resting upon “objective factors which are amenable to judicial review”.

³³³ The ceiling, the term and the renewal reserved to the legislature from Section 122, cit.; the participation of the co-legislator and the reviewable statement of reasons from Arts. 173 and 296 TFEU, cit.

³³⁴ On “corner” and “interior” solutions see Lamp, *Arrested Norm Development*, cit., p. 591, drawing on Michael Trebilcock, and section 4.2 above.

³³⁵ Scott Barrett et al., *In Defense of Multilateralism: The UN We Must Aspire To*, Columbia SIPA Institute of Global Politics, New York, April 2026, p. 25, proposing to “explore whether an international consensus can be built on the rules that should govern the weaponization of economic power”; at p. 7 the recommendations are presented as a “realistic utopia”.

4.4 *Rebuilding Legitimacy: Inclusion, the Global South and the Private Litigant Utopia*

Countless debates, impeccable critiques, warnings, and so forth, have followed one another in the literature over recent decades, advocating or at times prophesying inclusion as the panacea for all ills.³³⁶ The cure currently prescribed to the system is therefore often representation, which in itself certainly never does any harm. However, as stated from the very outset of this dissertation, an inclusion which merely adds seats, without adding standing, changes the composition of a room; it does not, in any case, change the fate of an obligation. What the Global South has obtained, it has obtained by writing itself a judge and by holding a bottleneck, which are acts of access and not of representation.³³⁷ Despite the various pitfalls that the mere thought of placing the concept of private standing or direct effect³³⁸ beside the word “solution” inevitably brings with it, it is a tribute that must be paid to the rigorous development of this work. A succession of actual data, a whisper, a murmur, a conceptual temptation, which has accompanied the research question from the outset, leads us to this precise and inevitable logical solution.

Before answering questions such as whether the model that emerges from this analysis is truly so virtuous, or criticising the conceptual tool in full, it is necessary to take a reality check, an examination of conscience on what is happening in the world today. Looking at the bare geopolitical and economic reality of the present, and as this thesis has zealously sought to categorise throughout its work, we understand how, at the present stage, international relations suffer from serious pathologies. Starting from the shift from the “universal” rule to relative power,

³³⁶ Colgan and Keohane, *The Liberal Order Is Rigged*, cit.; Buchanan and Keohane, *The Legitimacy of Global Governance Institutions*, cit.

³³⁷ On the courts see 3.2.3 and 3.3 above; on the bottleneck, the Indonesian ban on the export of unprocessed nickel ore: Guberman, Schreiber and Perry, *Export Restrictions on Minerals and Metals*, cit.; Panel Report, *Indonesia – Measures Relating to Raw Materials*, cit.

³³⁸ The two notions, often used together, are distinct: direct effect concerns whether individuals may invoke a treaty norm before domestic courts; private standing concerns whether they may bring a claim themselves before an international or regional court. The argument that follows concerns both, as two routes by which the decision to litigate passes from the state to the private operator.

which is perhaps less a sudden rupture than the resurfacing of a tension that the rules-based order had never entirely resolved.³³⁹ In reality, the WTO might appear, from an utterly cynical and procedural point of view (there is no doubt that it remains by far the most authoritative and inclusive institutional forum), almost as a “dead man walking”.³⁴⁰ As previously established, the Appellate Body has been paralysed since December 2019 because of the United States’ veto on the appointment of its members, a veto made systematic during the first Trump presidency and never lifted since.³⁴¹ The dynamic of global trade increasingly mirrors the law of the jungle, where relative power rules, through the capacity for economic “blackmail” (*weaponisation*).³⁴² Multilateral treaties can barely contain all this; domestic and regional courts are used as the last trench.³⁴³ All these dynamics are no longer the spectre of something yet to come, but the exact X-ray of the world we live in today. Reality, to be precise, is perhaps rapidly confirming the thesis advanced here. The securitisation and weaponisation of regional integration law are actively converting, wherever they reach, its original economic and peace-oriented function into an instrument of geopolitical competition. A shift that is occurring with a speed and violence driven, first of all, by a United States trade policy that the literature itself struggles to describe as anything other than “unprecedented”.³⁴⁴ And we are speaking not only of legal or geopolitical abstractions, but of implications that find confirmation in the most recent facts and in the everyday life of all of us.

³³⁹ Trachtenberg, *The Rules-Based International Order*, cit.; Acharya, *After Liberal Hegemony*, cit.

³⁴⁰ Petros C. Mavroidis, *Tariffs, Deals and Multilateral Ideals: Can the World Trade Organization Survive?*, Bruegel Working Paper No. 25/2025, Bruegel, Brussels 2025. For the view that “the global trading system as we have known it is dead”, attributed to Michael Froman, see M. G. Quibria, *The WTO at a Crossroads: Crisis, Reform, and the Future of Multilateral Trade Governance*, in “SSRN Electronic Journal” (2025), p. 1.

³⁴¹ Zhou and Crochet, *Confronting Fragmentation*, cit., pp. 275-276; Lamp, *Arrested Norm Development*, cit., p. 571.

³⁴² Chen and Wang, *Geopolitical Conflict, Geoeconomic Manoeuvring, and the Law of the Jungle*, cit.; Farrell and Newman, *Weaponized Interdependence*, cit.

³⁴³ See 3.3 above and, for the clearest case, *Learning Resources, Inc. v. Trump*, cit., discussed below.

³⁴⁴ Mavroidis, *Tariffs, Deals and Multilateral Ideals*, cit., p. 1: “‘Unprecedented’ best captures what has happened in United States trade policy since President Donald Trump returned to the White House for a second term”.

The race to reorganise global supply chains (so-called *reshoring* or *friendshoring*) rewards political proximity over economic efficiency. Moreover, its first costs fall on those who had built their development on that efficiency.³⁴⁵ Tariffs and technology blocks raise production costs, and they are not paid by the state against which they are aimed: they operate directly on domestic importers and, through them, become a bill paid by consumers, at the supermarket and in the purchase of technological goods (cars, smartphones).³⁴⁶ The same happens with the weapons of the other side: within weeks of China subjecting seven medium and heavy rare earths to export licensing in April 2025, the automotive industry in the United States, Europe and Japan “reported supply disruptions that threatened to bring domestic manufacturing to a halt”.³⁴⁷ This is a point on which this work will not dwell, but it was necessary to touch upon the everyday, tangible repercussions. To give another example, if law bends to relative power, the green transition becomes a battlefield. Solar panels, batteries and electric vehicles cost more wherever the geopolitical blocs put spokes in each other’s wheels with tariffs and export bans. The European Union has imposed countervailing duties of up to 35.3 per cent on battery electric vehicles from China, while the critical raw materials on which the transition depends have themselves become an object of securitisation.³⁴⁸ Taken together, these fractures have a price, which a study by International Monetary Fund staff places between 0.2 and 7 per cent of global output, depending on how

³⁴⁵ Won-Ho Kim, *US Tariff Policy and a Transformation of Global Trade Architecture*, in “Asia and the Global Economy”, 5 (2025), art. 100120, p. 3, where “the shift toward ‘reshoring’ prioritizes political over economic efficiency”, with the example of the textile workers of Pekalongan, Indonesia, sent back to rice farming by factory closures.

³⁴⁶ Mary Amiti, Stephen J. Redding and David E. Weinstein, *The Impact of the 2018 Tariffs on Prices and Welfare*, in “Journal of Economic Perspectives”, 33 (2019), 4, pp. 187-210, at p. 187, where “the full incidence of the tariffs has fallen on domestic consumers and importers so far”; *Learning Resources, Inc. v. Trump*, cit., opinion of the Court, p. 17 (“tariffs operate directly on domestic importers”), and dissenting opinion of Justice Kavanaugh, p. 6, on importers who “may have already passed on costs to consumers”.

³⁴⁷ MOFCOM, Announcement No. 18 of 2025, cit.; Baskaran and Schwartz, *Rare Earth Export Restrictions One Year Later*, cit.

³⁴⁸ Commission Implementing Regulation (EU) 2024/2754 of 29 October 2024 imposing a definitive countervailing duty on imports of new battery electric vehicles designed for the transport of persons originating in the People’s Republic of China, OJ L, 2024/2754, 29 October 2024; Leonelli, *Critical Raw Materials, the Net-Zero Transition and the ‘Securitization’ of the Trade and Climate Change Mitigation Nexus*, cit.

deep the fragmentation of trade becomes.³⁴⁹ Here lies the link between the international and the everyday: when the rule gives way to relative power, the bill is paid not by the states that decide, but by the operators and citizens who hold no seat at the table and no key to the door.

It is in this light that this thesis yields to the temptation presented by the possibility of introducing private standing at the international level. There is an entire strand of the international academic literature that discusses private standing or the direct effect of WTO rules and rulings in domestic courts;³⁵⁰ this thesis therefore does not present itself at all as the bearer of a novelty, of a revolution. On the contrary, it approaches this possibility from a distinct angle, diverging from the traditional perspectives through which the literature has typically addressed it (constitutional law, economics and the effectiveness of international adjudication). It arrives at it as the direct logical consequence of the path that began with the analysis of securitisation; it arrives at it through the processing and analysis of empirical data, aware of all the critical issues it carries with it and of all the limits that prevent it from being a final solution.

Let us take stock of the situation for a moment and start again from the research question: how is the fragmentation of the multilateral order reshaping the law of regional integration? And to what extent are the “securitisation” and “weaponisation” of regional legal frameworks transforming their original economic and peace-oriented function into an instrument of geopolitical competition? The universal order, as we have seen, remains paralysed, and

³⁴⁹ Shekhar Aiyar et al., *Goeconomic Fragmentation and the Future of Multilateralism*, IMF Staff Discussion Note SDN/2023/001, International Monetary Fund, Washington (DC) 2023, p. 4.

³⁵⁰ For the constitutional reading, Ernst-Ulrich Petersmann, *Justice as Conflict Resolution: Proliferation, Fragmentation and Decentralization of Dispute Settlement in International Trade*, EUI Working Paper LAW No. 2004/10, European University Institute, Florence 2004, pp. 11-12; for the economic one, Alan O. Sykes, *Public versus Private Enforcement of International Economic Law: Standing and Remedy*, in “Journal of Legal Studies”, 34 (2005), 2, pp. 631-666; for effectiveness, Robert O. Keohane, Andrew Moravcsik and Anne-Marie Slaughter, *Legalized Dispute Resolution: Interstate and Transnational*, in “International Organization”, 54 (2000), 3, pp. 457-488, and Karen J. Alter, *Private Litigants and the New International Courts*, in “Comparative Political Studies”, 39 (2006), 1, pp. 22-49, cited from the pre-print version (Northwestern University School of Law, Public Law and Legal Theory Research Paper No. 05-18).

plurilateral and minilateral attempts (clubs such as AUKUS, the Quad, or other restricted groups) reproduce inequality, with securitisation thriving in this vacuum. The one shield still within reach, according to this logical construction, lies not in building new institutions (an approach that is not working), but in exploiting the domestic and regional level, where private parties can drag states into court. If, therefore, states entrench themselves behind the excuse of national security, knowing that no one will point the finger at them, they enjoy a safe harbour. Yet, allowing a private party struck by a measure such as a tariff or an export ban adopted in the name of national security to sue would indirectly “unblock” the system. The private operator does not make geopolitical calculations (it would be logically indifferent to retaliation and reputation); it cares only about the economic damage.³⁵¹ Far from being a laboratory hypothesis, this dynamic is already unfolding in practice. Tariffs which no international judge could reach (the consultations requested in Geneva by China, among others, having led nowhere) have been successfully struck down by small businesses (alongside twelve American states) in domestic courts. Crucially, these victories were secured on grounds of domestic constitutional law rather than through the WTO.³⁵² We therefore arrive at this point not only through the exclusion of other alternatives, but by changing perspective, moving the lens away from the paralysed international architecture. Obviously, the reader is not being offered science-fiction solutions, nor unrealistic rewritings of international treaties, but a surgical use of the courts and procedures that already exist, fantasising about the possibility of handing the keys to the door to whoever has every interest in opening it.

³⁵¹ Keohane, Moravcsik and Slaughter, *Legalized Dispute Resolution*, cit., p. 473: “[u]nder interstate dispute resolution, political calculations inevitably enter into the decision to sue”; Sykes, *Public versus Private Enforcement*, cit., p. 631, on standing reserved to governments as “a right to act as a political filter”; Alter, *Private Litigants*, cit., p. 3, where private actors are “especially likely to pursue cases that are either too politically ‘hot’ or a low priority for international commissions or states”.

³⁵² *Learning Resources, Inc. v. Trump*, cit., opinion of the Court, pp. 3-4 and 20: “IEEPA does not authorize the President to impose tariffs”. The same day the President imposed a temporary surcharge under Section 122 of the Trade Act of 1974 (Proclamation of 20 February 2026, cit.), a reminder of how narrow such a remedy remains. On the consultations requested by China, *United States – Additional Tariff Measures on Goods from China*, Request for Consultations by China, WT/DS633/1, 5 February 2025.

Now, if this solution rightly raises doubts, it is because what is being discussed is not all a bed of roses. Perhaps private standing could be framed differently, as a sectoral remedy, a relief for a specific symptom, capable of circumventing the institutional block and enforcing the rules where possible. The empirical data point in the same direction. Three courts align upon one variable as mentioned in the preceding Chapter. The Andean Tribunal is the most active copy of the Court of Justice because private parties fill its docket. The court of West Africa carries a full human rights docket and an almost empty economic one. Southeast Asia's organisation wrote three mechanisms and opened none.³⁵³ The constant is not composition, but as one can logically deduce, who may file, an argument that is by no means a mere European import. The state-centred design of the African protocol has been called a mistake from within the continent itself. The operators who carry the trade, in fact, cannot lodge a complaint, and several regional economic communities already give them the standing it withholds.³⁵⁴ Now clearly, a reform not urged from outside a continent but argued inside it is not a transplant.

Take a state party to the African free trade area banning the export of an unprocessed mineral to compel processing at home, and an operator harmed by it in another state party.³⁵⁵ Under the current protocol, *locus standi* remains the exclusive prerogative of state parties alone, so the operator must persuade its own

³⁵³ Helfer and Alter, *Legitimacy and Lawmaking: A Tale of Three International Courts*, cit.; Karen J. Alter, Laurence R. Helfer and Osvaldo Saldías, *Transplanting the European Court of Justice: The Experience of the Andean Tribunal of Justice*, in "American Journal of Comparative Law", 60 (2012), 3, pp. 629-664, at p. 629; Alter, Helfer and McAllister, *A New International Human Rights Court for West Africa*, cit., p. 740, on a court "largely unavailable to traders and other economic actors"; Ewing-Chow and Yusran, *Dispute Settlement Mechanisms*, cit.

³⁵⁴ Muhammed Tawfiq Ladan, *Trade Remedies and Dispute Settlement Mechanisms under the AfCFTA, WTO and ECOWAS Regimes*, National Institute for Legislative and Democratic Studies, Abuja, 13-14 April 2026, pp. 4 and 24: "[t]he State-centred design of the AfCFTA DSM is a mistake in depriving Non-State actors [...] the capacity to initiate proceedings". On the regional economic communities which allow individuals and companies to bring disputes, Alemayehu Yismaw Demamu, *A Framework of African Continental Free Trade Area Dispute Settlement Mechanism: Legal Challenges*, in "Journal of International Dispute Settlement", 15 (2024), 3, pp. 440-456, at pp. 448-449.

³⁵⁵ The hypothesis reproduces the pattern of the Indonesian nickel ban, found inconsistent with Article XI:1 GATT and then appealed into the void: Panel Report, *Indonesia – Measures Relating to Raw Materials*, cit.; *Indonesia – Measures Relating to Raw Materials*, Notification of an Appeal by Indonesia, cit.

government.³⁵⁶ The government weighs retaliation and reputation, the dispute is never brought, and industrial position settles what the treaty should have settled.³⁵⁷ With private access the operator files itself, or its national judge refers, and the measure is tested against the treaty in the time of a commercial dispute.³⁵⁸ Notwithstanding, private access does not guarantee a different outcome (the measure might well be found lawful). It simply guarantees that a judge decides it rather than a bottleneck. The substantive law is identical in both versions, the only difference is who holds the key to the door.³⁵⁹

In this venue the thesis will not deal with all the complexities relating to a possible private standing option, but will confine itself to setting them out. It is, indeed, a possibility that drags behind it a far from negligible weight, one it would hardly manage to shake off. The first is the price that any court pays for being opened: a court which becomes usable becomes contestable.³⁶⁰ The major players of the system, including the United States and the European Union, have explicitly denied the direct effect of WTO rules in their own domestic courts. The former by statute and the latter through the case law of its Court of Justice, and the reason is

³⁵⁶ Protocol on Rules and Procedures on the Settlement of Disputes to the Agreement Establishing the African Continental Free Trade Area, Kigali, 21 March 2018, Artt. 1, 3, 7, 9 and 21, para. 1. It gives no access to private operators and no preliminary reference. See Demamu, *A Framework of African Continental Free Trade Area Dispute Settlement Mechanism*, cit., p. 448, on private operators left to “lobbying their states of nationality to initiate proceedings”.

³⁵⁷ The pattern is not hypothetical. African members of the WTO have not appeared as complainants against one another, save for Tunisia against Morocco, and this “not because of the absence of trade disputes in Africa” but because they “do not want to litigate with other African State Parties”: Demamu, *A Framework of African Continental Free Trade Area Dispute Settlement Mechanism*, cit., p. 449. On private operators “made to push or lobby for their own Member States”, Ladan, *Trade Remedies and Dispute Settlement Mechanisms*, cit., p. 24.

³⁵⁸ Where private access exists, it has worked in this way. The Andean reforms of 1996 produced a system which “provided private parties with multiple avenues to challenge state noncompliance”: Alter, Helfer and Saldías, *Transplanting the European Court of Justice*, cit., p. 651. Before the COMESA Court of Justice a private company obtained the setting aside of a tariff reintroduced by Mauritius on goods meant to circulate duty free (*Republic of Mauritius v Polytol Paint & Adhesives Manufacturers Co. Ltd*, Application No. 1 of 2012, [2012] COMESACJ 13), and before the regional mechanisms “all the RECs-DSM cases were instituted by Private Individuals or Companies”: Demamu, *A Framework of African Continental Free Trade Area Dispute Settlement Mechanism*, cit., p. 449.

³⁵⁹ *tralac*, *AfCFTA: A tralac Guide*, cit., p. 9, on a mechanism modelled on the Dispute Settlement Understanding and open to State Parties alone.

³⁶⁰ Voeten, *Populism and Backlashes against International Courts*, cit.; Madsen, Cebulak and Wiebusch, *Backlash against International Courts*, cit.

mainly the defence of sovereignty and of negotiating room for manoeuvre.³⁶¹ We must then take into account the problem of collective action and of political economy: a very persuasive strand of the economic analysis of law explains why investment treaties allow private standing (Investor-State Dispute Settlement). Trade treaties (WTO), on the other hand, do not. The former regime requires a credible commitment of the state towards the individual investor, while in the latter governments reserve standing to themselves, as a political filter.³⁶² Ultimately, one must then consider the greatest risk, the fear of what may be defined as an excess of legalism. Several scholars have pointed out that opening international adjudication to individuals, granting them standing, would lead to a literal explosion of litigation.³⁶³ The broader and cheaper the access, the larger the docket, and the experience of investment arbitration (where private claims have exceeded twelve hundred and opened a crisis of legitimacy),³⁶⁴ shows what that explosion may look like.

In conclusion, far from turning this thesis into an exercise in the “acceptability” of private standing, in which one seeks to become the standard-bearer of a revolution, this work simply names it. One arrives, almost by *reductio ad absurdum*, at an uncomfortable proposition, namely that the state monopoly of jurisdiction is among the principal conditions of geopolitical impunity. After all, empirical analysis suggests that international systems have best withstood weaponisation

³⁶¹ Uruguay Round Agreements Act, Pub. L. No. 103-465, 108 Stat. 4809 (1994), section 102(c)(1), codified at 19 U.S.C. section 3512(c)(1), under which no person other than the United States “shall have any cause of action or defense under any of the Uruguay Round Agreements”; Council Decision 94/800/EC of 22 December 1994, OJ L 336, 23 December 1994, p. 1, last recital; Court of Justice, Case C-149/96, *Portuguese Republic v Council of the European Union*, judgment of 23 November 1999, ECR 1999, p. I-8395, paras. 36-47; Petersmann, *Justice as Conflict Resolution*, cit., pp. 11-12.

³⁶² Sykes, *Public versus Private Enforcement*, cit., p. 631; Du and Peng, *The Dejudicialization of International Dispute Settlement*, cit., p. 896, on investor-state arbitration as designed to “de-politicize” investment disputes by allowing claims “without the need for home state espousal”.

³⁶³ Keohane, Moravcsik and Slaughter, *Legalized Dispute Resolution*, cit., p. 474: “[t]he broader and less costly the access to an international court or tribunal, the greater the number of cases it will receive”, and p. 481, where legalisation “may even lead to more contention and conflict over the nature of the rules”.

³⁶⁴ Du and Peng, *The Dejudicialization of International Dispute Settlement*, cit., pp. 897 and 905-906, recording 1,257 publicly known investor-state claims at the end of 2022 and the ensuing legitimacy crisis.

where private parties were already permitted (or have been granted the right) to bring proceedings.

It is with this proposition, and not with a proposal, that the analysis closes. Saving multilateralism, if the expression still has a meaning, does not depend on adding seats to rooms that no longer decide, nor on building new institutions that the same states would paralyse. On the contrary, it depends on who holds the key to the door when a rule is broken. At this point, we must harbour no illusions: private standing is not that magical key, frequently serving as a vessel for intractable structural flaws. It is excluded by law where it would matter most, costly where it exists, and exposed to the very backlash it would seek to escape. Conversely, it serves as the diagnostic mirror through which the analysis reveals its core conclusion: an obligation that no one can enforce is, within the current geopolitical landscape, an obligation in name only.

CONCLUSION

This thesis has been rigorously governed, in all its facets, by its initial research question. In order to synthesise the overarching argument and demonstrate the theoretical yield of each analytical stage, we must return one final time to the core question, the *arche* of this inquiry. It asked how the fragmentation of the multilateral order is reshaping the law of regional integration, and, more specifically, where this shift ultimately leads. Beyond this first clause, the analysis examined to what extent the securitisation and weaponisation of regional legal frameworks are transforming their original economic and peace-oriented function into a *de facto* instrument of geopolitical competition. The genesis of this work lies in a profound structural paradox: the stark collision between the historical promise of economic interdependence (frameworks expressly designed to pacify) and the harsh empirical reality of modern statecraft, where these very same legal instruments are increasingly used to coerce.

Following a logical progression, each chapter has systematically unpacked a distinct dimension of the research question. Chapter One settled the first foundational premise by defining exactly *what* is fragmenting. It measured multilateralism not as a quantity, but as a specific legal quality, constructing an analytical grid to which any treaty's architecture can be subjected. Shifting the paradigm, the thesis translated Ruggie's three properties into rigorous tests of positive law. To these, it added a crucial fourth property, actionability, positing it as the indispensable condition upon which the original triad rests. The diagnosis returned by this recalibrated instrument is not one of death but of deep fragmentation. Universal rules survive stripped of their actionability. Informal clubs generate mere commitments rather than legal duties, thus leaving regional architectures as the sole remaining locus of binding obligation.

Chapter Two confronted the “transmission problem” by analysing the precise mechanisms through which macro-level geopolitical pressure crystallises into legal form. It began by dismantling a fundamental premise, demonstrating that the peace-oriented function of regional integration was never an intrinsic property, an inherent trait, but rather a structural loan advanced by a multilateral order that minimised the role of power in settling disputes. The progressive recall of this loan operates through a sequence of four causally linked steps, usually studied apart. Securitisation provides the discursive licence; asymmetric hub-and-spoke networks supply the material capacity; national security exceptions such as Article XXI of the GATT offer the legal hinge upon which the logic of security can lawfully displace binding trade disciplines. Lastly, the paralysis of appellate mechanisms, and the resulting enforcement void, guarantees geopolitical impunity.

Theoretical mechanisms, however robust, require empirical verification in order to answer how the fragmentation of the multilateral order is reshaping regional integration. Thus, Chapter Three functioned as the pragmatic core of the inquiry, employing regional frameworks as testing laboratories to ground the argument in state practice. This phase was essential to determine whether the weaponisation of regional law is an inevitable global destiny or a variable outcome dictated by internal constitutional design. The empirical yield was striking, since the comparison revealed that regional law does not evaporate uniformly. Confronting a single systemic pressure, indeed, the four systems compared responded with fundamentally divergent legal logics. Washington weaponised the tariff, bridled only at home; Brussels securitised inside the law, under judicial review; Southeast Asia walked around its own rules; Jakarta and the African parties actively claimed the original function instead. Overall, this comparative exercise showed that while legal techniques diverge, the brakes converge on actionability. Where a judge survives, the geopolitical conversion keeps a legal form; elsewhere, position replaces the rule.

Finally, Chapter Four evaluated the ultimate trajectory of this reshaping: whether it points towards multilateral reform or structural regional entrenchment. The evidence strongly leans towards the latter, given the persistent absence of a compulsory universal judge (with the WTO Appellate Body paralysed since December 2019). The analysis highlighted that international law has not simply vanished; rather, its enforcement has migrated to venues accessible only to a few, effectively shifting the cost of breach onto those who cannot litigate.

Building upon this diagnosis, the chapter invited a reflection on its inevitable consequence. Any proposed systemic reform becomes meaningful only if it alters *who* may bring a securitising act before a judge. Without such a change, mere textual redrafting is insufficient. The chapter also distilled four guardrails for emergency clauses: a quantitative ceiling, automatic expiry, renewal reserved to the legislature, and reasons open to judicial review. It closed by submitting that the state monopoly of jurisdiction remains a primary condition of geopolitical impunity.

This is where the path ends. Fragmentation has turned the law of regional integration into the last container of enforceable obligation and, for that very reason, into the seat of geopolitical competition. Wherever securitisation and weaponisation reach, its peace-oriented function is converted into leverage, and the multilateral order that lent it will not renew the loan within any horizon this thesis can observe. Breaking the state monopoly of jurisdiction would be the logical remedy, but clearly not a feasible one where it matters most. Washington bars private invocation of WTO law by statute, the Union through the case law of its Court, and the clubs now being built supply no judge at all. What remains feasible is narrower and already tested: embedding those guardrails into every domestic and regional emergency clause, a crucial brake tethering the exception to the law and preventing it from devolving into sheer arbitrary power.

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