

EXPLORING CLIMATE SECURITY TO ARTICLE XXI OF THE GATT

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I. INTRODUCTION

As fires rage across North America and the Arctic melts, it is indisputable that climate change is real, dangerous, and accelerating.¹ The decades long mission of the international community to halt the warming of the planet has largely failed.² Already, the impact of climate change can be felt around the globe in increasingly drastic and dangerous ways. Even more alarmingly, the best scientific estimates tell us there are only a handful of years left to prevent insurmountable damage.³ As the effects of environmental degradation grow more severe, the reality is stark: Climate change is no longer merely a cause for ecological concern, but instead presents a severe, tangible threat to the planet and all its inhabitants.

Historically, the international community's response to environmental problems originated from treaties, with a handful of multilateral declarations and many dozen bilateral agreements serving as the cornerstone for global climate cooperation.⁴ As those treaties have largely faltered in the face of substantive efforts to combat environmental degradation, international actors have grown increasingly creative.⁵ International environmental law now appears in a variety of types of

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1 Press Release, World Meteorological Soc'y, WMO Confirms 2019 as Second Hottest Year on Record, (Jan. 15, 2020), <https://public.wmo.int/en/media/press-release/wmo-confirms-2019-second-hottest-year-record>.

2 See generally Thomas Gehring, *Treaty-Making and Treaty Evolution*, in THE OXFORD HANDBOOK OF INTERNATIONAL ENVIRONMENTAL LAW 467 (Daniel Bodansky, Jutta Brunnée & Ellen Hey eds., 2018).

3 See Press Release, World Meteorological Soc'y, *supra* note 1.

4 See generally United Nations, *Report of the U.N. Conference on the Human Environment*, U.N. Doc. A/CONF.48/14, at 2-65 (1972) (otherwise known as the Stockholm Declaration); U.N. Conf. on Env't & Dev., *Rio Declaration on Environment and Development*, U.N. Doc. A/CONF.151/26/Rev.1 (Vol. 1), annex 1 (Aug. 12, 1992); Paris Agreement to the United Nations Framework Convention on Climate Change, Dec. 12, 2015, T.I.A.S. No. 16-1104 [hereinafter Paris Agreement].

5 For further discussion of the failings of traditional international environmental law, see, e.g., Samantha Franks, *Letting the Trees Speak: Nature's Rights Under International Law*, 42 MICH. J. INT'L LAW 3 (2021).

international law, including human rights law,⁶ humanitarian law,⁷ the law of the sea,⁸ space law,⁹ and trade law.¹⁰

Taken together, the understanding that climate change is a threat and the realization that international environmental law is a creative and burgeoning field results in an obvious conclusion: Climate change will change the shape of well-established norms in international law. This reality is particularly clear in international trade law. In recent years, the norms of international trade have already appeared increasingly unsteady. In the future, this unsteadiness will likely combine with the above factors to see an acceptance of climate change as a reason to derogate from established trade patterns.¹¹ The most likely way for these derogations to occur is through the invocation of Article XXI of the General Agreements on Tariffs and Trade (“GATT”).¹² Indeed, by applying the increasingly relevant field of climate security to international trade law, it seems clear that countries not only can but ultimately will claim climate change as a security threat under Article XXI, thus allowing for deviations in long standing trade law.

This paper will explore the path towards Article XXI’s expansion in three parts. In Part II, it will explore the expansion and use of Article XXI in recent years. In Part III, it will show how the National Security Council and various countries have begun to treat climate change as a national threat. In Part IV, it will explore what an invocation of Article XXI in the name of climate change might look like. Part V concludes.

⁶ See *infra* Section III.ii.

⁷ Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts, (Protocol I), art. 35, June 8, 1977, 1125 U.N.T.S. 3.

⁸ Convention on the Law of the Sea art. 194, Dec. 10, 1982, 1833 U.N.T.S. 397 (“States shall take, individually or jointly as appropriate, all measures consistent with this Convention that are necessary to prevent, reduce and control pollution of the marine environment from any source, using for this purpose the best practicable means at their disposal and in accordance with their capabilities, and they shall endeavour to harmonize their policies in this connection.”).

⁹ For a further explanation of the need of sustainability in space law, see SECURE WORLD FOUNDATION, <https://swfound.org/> (last visited May 19, 2021).

¹⁰ See *infra* Section III.i.

¹¹ Tatiana Lacerda Pazeris, *Trade and National Security: Rising Risks for the WTO*, 19 WORLD TRADE REV. 137 (2020) (explaining that it is only a matter of time before we see a climate change claim before the WTO).

¹² General Agreement on Tariffs and Trade art. XXI(b), Oct. 30, 1947, 55 U.N.T.S. 194 [hereinafter GATT].

II. THE EXPANSION OF ARTICLE XXI

At its core, the goal of international trade law is to foster peace through economic partnerships.¹³ The GATT was established in the wake of World War II, with the intention being in no small part to normalize relations between a tense, battered world.¹⁴ Because the goal of trade was not merely to create shared economic prosperity, but ultimately a more peaceful international system, trade law was built on the notion that the rules would be strictly upheld. In 1994, the GATT evolved to include the World Trade Organization (“WTO”) and became the system of trade recognized today.¹⁵

Derogations in the name of security are one of just a handful of exceptions to the strict structure of trade law under the GATT.¹⁶ Article XXI sets out the standard for security derogation, and states in its entirety:

Nothing in this Agreement shall be construed

- (a) to require any contracting party to furnish 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,

¹³ For the classic explanation of this concept, see, e.g., ADAM SMITH, *AN INQUIRY INTO THE NATURE AND CAUSES OF THE WEALTH OF NATIONS* (1776).

¹⁴ See Mona Pinchis-Paulsen, *Trade Multilateralism and U.S. National Security: The Making of the GATT Security Exceptions*, 41 MICH. J. INT’L L. 109 (2020).

¹⁵ Marrakesh Agreement Establishing the World Trade Organization, Apr. 15, 1994, 1867 U.N.T.S. 154.

¹⁶ For further understanding of the intentions behind the WTO, see Wesley A. Cann Jr., *Creating Standards and Accountability for the Use of the WTO Security Exception: Reducing the Role of Power-Based Relations and Establishing a New Balance between Sovereignty and Multilateralism*, 26 YALE J. INT’L L. 413 (2001). See also Dapo Akande & Sope Williams, *International Adjudication on National Security Issues: What Role for the WTO*, 43 VA. J. INT’L L. 365 (2003).

- (c) to prevent any contracting party from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.¹⁷

The exception was intended to be read narrowly and used rarely.¹⁸ As a result, for the first seventy years of the GATT's existence, it was invoked only a handful of times, resulting in inconclusive and nonbinding results.¹⁹ In recent years, states have breathed new life into Article XXI, bringing a rash of claims before the WTO in the name of national security.²⁰ Section (b) and (b)(iii) have proven the most contentious.

The WTO first defined the essential security interest in a landmark ruling in April 2019 between Russia and the Ukraine. In that case, Russia blocked trade routes between Ukraine, Kazakhstan, and the Kyrgyz Republic that required transit through Russia.²¹ Russia claimed this was necessary in light of the political unrest in the Ukraine and justified the breach of its WTO obligations under Article XXI.²² It further argued that a WTO dispute settlement panel was not authorized to review the security exception, because Article XXI should be read as self-judging.²³ Russia found proof for this argument in Section (b), which states that a state may derogate when “it considers [it] necessary.”²⁴ The panel rejected the self-judging argument, but found Russia's actions permissible under Section (b)(iii), accepting that the situation between the two states had risen to that of “war or other emergency in international relations.”²⁵ The panel went on to define “essential security interests” as interests “relating to the quintessential functions of the state, namely, the protection of its territory and its population from external threats, and the maintenance of law and public order internally.”²⁶

¹⁷ GATT, *supra* note 12, art. XXI.

¹⁸ See generally Pinchis-Paulsen, *supra* note 14.

¹⁹ *Id.* at 111; see generally Marsha A. Echols, *Right to Food, National Security and Trade: Resolving Regime Conflicts*, 20 UCLA J. INT'L L. FOREIGN AFFS. 163 (2016) (explaining that there was an attempted move during the extreme food insecurity of the early 2000s, which was largely unsuccessful).

²⁰ For a thorough overview of the American contributions to this phenomenon, see Rachel Brewster, *Analyzing the Trump Administration's International Trade Strategy*, 42 FORDHAM INT'L L.J. 1419, 1427–28 (2019).

²¹ Panel Report, *Russia—Measures Concerning Traffic in Transit*, ¶ 7.130, WTO Doc. WT/DS512/R (adopted Apr. 26, 2019).

²² *Id.*

²³ *Id.* ¶ 7.139.

²⁴ GATT, *supra* note 12, art. XXI.

²⁵ *Russia—Measures Concerning Traffic in Transit*, *supra* note 21, at 7.125.

²⁶ *Id.*

In the time since the Russia-Transit opinion, a handful of security exception cases have appeared before the WTO.²⁷ The security exception, once obscure, now remains centerstage in trade disputes. Among the most notable cases: The United States invoked Article XXI to justify tariffs on steel and aluminum, arguing that these goods were used in the production of self-defense.²⁸ Simultaneously, Saudi Arabia appeared before the WTO to argue that trade derogations in as a result of a diplomatic dispute Qatar should fall under the exception.²⁹ Japan quickly followed, arguing that restrictions on certain materials to South Korea were taken in light of understandings that South Korea could use those supplies for military production.³⁰ While the dispute panels of the WTO have now stalled, it is unlikely that the security exception, now unleashed, can be easily locked away again.

27 Jinguyan Zhou, *New WTO Ruling on National Security in Qatar-Saudi Arabia Case and its Impact on South Korea-Japan Dispute*, AM. SOC'Y INT'L L. (Sept. 3, 2020), <https://www.asil.org/insights/volume/24/issue/22/new-wto-ruling-national-security-qatar-saudi-arabia-case-and-its-impact>.

28 China (WT/DS544), India (WT/DS547), the European Union (EU) (WT/DS548), Norway (WT/DS552), Russia (WT/DS554), Switzerland (WT/556), and Turkey (WT/DS564) have brought actions against the United States. First Written Submission of the United States, *United States—Certain Measures on Steel and Aluminum Products*, WTO Doc. WT/DS544 (June 12, 2019), <https://ustr.gov/sites/default/files/enforcement/DS/US.Sub1.%28DS544%29.fin.%28public%29.pdf>; First Written Submission of the United States, *United States—Certain Measures on Steel and Aluminum Products*, WTO Doc. WT/DS547 (June 12, 2019), <https://ustr.gov/sites/default/files/enforcement/DS/US.Sub1.%28DS547%29.fin.%28public%29.pdf>; First Written Submission of the European Union, *United States—Certain Measures on Steel and Aluminum Products*, WTO Doc. WT/DS548 (May 1, 2019), https://trade.ec.europa.eu/doclib/docs/2019/august/tradoc_158326.pdf; Norway's Opening Statement at the First Substantive Meeting of the Panel with the Parties, *United States—Certain Measures on Steel and Aluminum Products*, WTO Doc. WT/DS552 (Nov. 6, 2019), https://www.regjeringen.no/contentassets/0f2915693bae4cd8be6010e29ff2c590/ds552_openingstatement.pdf; First Written Submission of the United States, *United States—Certain Measures on Steel and Aluminum Products*, WTO Doc. WT/DS556 (June 12, 2019), <https://ustr.gov/sites/default/files/enforcement/DS/US.Sub1.%28DS556%29.fin.%28public%29.pdf>; First Written Submission of the United States, *United States—Certain Measures on Steel and Aluminum Products*, WTO Doc. WT/DS564 (June 12, 2019), <https://ustr.gov/sites/default/files/enforcement/DS/US.Sub1.%28DS564%29.fin.%28public%29.pdf>. Mexico (WT/DS551) and Canada (WT/DS550) also opened cases, but mutually agreed solutions with the United States were later announced. *DS551: United States—Certain Measures on Steel and Aluminum Products*, WORLD TRADE ORG., https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds551_e.htm (last visited May 19, 2021); *DS550: United States—Certain Measures on Steel and Aluminum Products*, WORLD TRADE ORG., https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds550_e.htm (last visited May 19, 2021).

29 Cf. Panel Report, *Saudi Arabia—Measures Concerning the Protection of Intellectual Property Right*, WTO Doc. WT/DS567/R (adopted June 16, 2020); *DS576: Qatar—Certain Measures Concerning Goods from the United Arab Emirates*, WORLD TRADE ORG., https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds576_e.htm (last visited May 19, 2021).

30 Request for the Establishment of a Panel by the Republic of Korea, *Japan—Measures Related to the Exportation of Products and Technology to Korea*, WTO Doc. WT/DS590/4 (June 19, 2020).

III. AN EVOLVING UNDERSTANDING OF CLIMATE CHANGE

A. *The expansion of international environmental law*

In the last two decades, climate change has become increasingly prevalent in the international community—and yet, troublingly little has succeeded to curb its impact. The Paris Agreement, once lauded as a key success, faltered as the United States withdrew and other G-20 countries failed to come close to their stated goals.³¹ Similarly, the Sustainable Development Goals have proved overambitious.³² As the cornerstone treaties of international law failed to stop largescale environmental degradation, the United Nations has encouraged every international organization to think about the ways in which they might combat climate change.³³ As a result, international environmental law has begun to percolate into other fields of law. Three strands of law are particularly helpful for understanding how Article XXI might be invoked in the name of climate change.

i. *Trade Law*

Trade law already possesses at least a rudimentary understanding of the need to protect the environment. The WTO claims, “sustainable development and protection and preservation of the environment” are among its fundamental goals.³⁴ In fact, the WTO allows for trade-related measures aimed at protecting the environment through Article XX.³⁵ Under Article XX(b) and (g) of the GATT, members may take measures “necessary to protect human, animal or plant life or health” or “to conserve exhaustible natural resources provided that these measures are not used as an arbitrary or unjustifiable means of discrimination between countries.”³⁶ These provisions have proven largely toothless in ensuing disputes. However, they demonstrate a willingness on behalf of the WTO to address

³¹ See, e.g., Paris Agreement, *supra* note 4, art. 28.

³² Myron Ebell, *Report Finds All European Union Countries Failing Climate Targets*, COMPETITIVE ENTER. INST. (June 25, 2018), <https://cei.org/blog/report-finds-all-european-union-countries-failing-paris-climate-targets>.

³³ In 2009 the UNGA asked “the relevant organs of the United Nations, as appropriate and *within their respective mandates*, to intensify their efforts in considering and addressing climate change, including its possible security implications.” G.A. Res. 63/281, *Climate Change and its Possible Security Implications* (Jun. 11, 2009) (emphasis added).

³⁴ WORLD TRADE ORG., *An Introduction to Trade and the Environment in the WTO*, https://www.wto.org/english/tratop_e/envir_e/envt_intro_e.htm (last visited May 19, 2021).

³⁵ GATT, *supra* note 12, art. XX.

³⁶ *Id.*

environmental claims, and understanding that willingness is crucial to understanding the argument for Article XXI.

ii. Human Rights Law

The environment has historically been viewed as either part of the “global commons” and shared between all international actors or as sovereign territory of an individual state. In recent years, there has been a shift towards an *individual* right to a healthy environment. The idea is simple: Human beings have rights, and those rights hinge upon an inhabitable Earth. Thus, in order to sustain a full slate of political, social, and economic rights, the individual right to a healthy environment is first needed.³⁷ That right is now codified by more than one hundred constitutions across the world.³⁸ In state and regional courts, it has been tied to the right to life,³⁹ the right to privacy,⁴⁰ and the right of future generations.⁴¹ In 2019, the United Nations Human Rights Committee has recognized that increasing environmental threats may represent a human rights violation so severe that it can impose refugee status upon citizens of particular states.⁴² In spring of 2020, the Inter-American Court similarly recognized the right to a healthy environment as a fundamental human right and is central to all other rights.⁴³

In the context of security interests, the shift towards an individual right towards a health environment is noteworthy for two reasons: First, the claim itself is fairly novel, considered nonsensical only a few decades ago but quickly made mainstream by the increasing dangers of climate change. Second, both individual states and international bodies are charged with upholding human rights. As seas rise and weather grows more erratic and

37 For further discussion of this concept, see Ellen Hey, *The Universal Declaration of Human Rights in the Anthropocene*, 112 AM. J. INT’L L. 350 (2018).

38 Katarina Zimmer, *The Human Right That Benefits Nature*, BBC (March 2021), <https://www.bbc.com/future/article/20210316-how-the-human-right-to-a-healthy-environment-helps-nature>.

39 G.A. Res. 217A (III), Universal Declaration of Human Rights, art. 3 (Dec. 10, 1948).

40 López-Ostra v. Spain, App. No. 16798/90, Eur. Ct. H.R. (1994).

41 Juliana v. United States, 339 F. Supp. 3d 1062 (D. Or. 2018).

42 Hum. Rts. Comm., Views Adopted by the Committee Under Article 5 (4) of the Optional Protocol, Concerning Communication No. 2728/2016, U.N. Doc. CCPR/C/127/D/2728/2016 (2020).

43 Indigenous Communities of the Lhaka Honhat Association (Our Land) v. Argentina, Interpretation of the Judgment on Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 420 (Nov. 24, 2020) (only available in Spanish, with the Spanish case name “Indígenas miembros de la Asociación Lhaka Honhat (Nuestra Tierra) vs. Argentina”).

climate refugees become increasingly prevalent, the right to a healthy environment is likely to grow teeth.⁴⁴

B. Climate Security

Climate change intensifies long existing social and political fault lines and creates disparities across the world. As a result, the notion of “climate security” refers to the idea that climate change threatens international peace by exacerbating existing conflicts and destabilizing states, thus spurring new ones.⁴⁵ Climate security refers both to national security threats within a state and international security threats among nations.

Within a state, climate risks can be direct or indirect. Direct impacts impact a state’s “critical infrastructure” and threatens the functions of a government.⁴⁶ These direct impacts include once abstract climate considerations: rising sea water, extreme weather, and elimination of crucial resources.⁴⁷ Indirect threats “increase stresses on the critical resources underpinning a nation’s security, including water, food and energy.”⁴⁸ Put simply, climate impacts crucial resources for a population, which creates tensions within a state. Those tensions can prove destabilizing.⁴⁹ This reality has been recognized already by governments around the world.⁵⁰ While these kinds of threats are the individual purview of a singular state, every state in the world will face some version of climate security threats in the coming years.

44 For further explanation, see JANE MCADAM, CLIMATE CHANGE, FORCED MIGRATION, AND INTERNATIONAL LAW 127–28 (2012). See also Susannah Willcox, *A Rising Tide: The Implications of Climate Change Inundation for Human Rights and State Sovereignty*, 9 ESSEX HUM. RTS. REV. 1 (2012).

45 See Kurt M. Campbell & Christine Parthemore, *National Security and Climate Change in Perspective*, in CLIMATE CATAclysm: THE FOREIGN POLICY AND NATIONAL SECURITY IMPLICATIONS OF CLIMATE CHANGE (Kurt Campbell ed., 2008); see also Mark Nevitt, *Climate Change Denialism Poses a National Security Threat*, JUST SEC. (Sept. 20, 2019), <https://www.justsecurity.org/66239/climate-change-denialism-poses-a-national-security-threat/> (referring to the twenty-first century as “the climate-security century”).

46 *Is climate change a security risk?*, CLIMATE SEC. 101, <https://climatesecurity101.org/faqs/is-climate-change-a-security-risk/> (last visited May 20, 2021).

47 *Id.*

48 *Id.*

49 See Kendra Sakaguchi, Anil Varghese & Graeme Auld, *Climate Wars? A Systematic Review of Empirical Analysis on the Links Between Climate Change and Violent Conflict*, 19 INT’L STUD. REV. 622 (2017) (summarizing the existing empirical literature, noting that a “majority of studies find evidence that climate variables are associated with higher levels of violent conflict”).

50 See Daniel R. Coats, Dir. of Nat’l Intel., *Statement For The Record: Worldwide Threat Assessment of the U.S. Intelligence Community*, at 21–23 (Jan. 29, 2019), <https://www.dni.gov/files/ODNI/documents/2019-ATA-SFR---SSCI.pdf>.

On the global level, climate change is physically changing important geographic regions. For example: In the Arctic Sea, the melting of ice caps has led to the possibility of waterways and trade routes.⁵¹ Already, Russia and the United States dispute the ownership of these potential routes.⁵² The region is increasingly militarized, creating new opportunities for armed conflict. As climate change shifts the terrain of long-established territories and shifts power resources across the world, new conflicts in international relations will undoubtedly materialize.

IV. APPLYING CLIMATE SECURITY TO ARTICLE XXI

For some states, the climate crisis has already arrived. At least four Island Small Island Developing States (“ISDS”)—Tuvalu, Maldives Kiribati, and the Republic of the Marshall Islands—will likely be unlivable within the next three decades due to the rising sea levels and changing salt content of their soil.⁵³ Trade is the last thing on their mind: Instead, the governments must contend with rehabilitating their entire population. For these states, derogations in the name of security are easily understood. However, the implications of Article XXI may apply more broadly.

Returning to the text of Article XXI, it is easy to see how climate change might be invoked. The clearest path to such a derogation is analogous to Russia’s path in the Transit case. First: Section 2 allow a state to derogate if “necessary for the protection of its essential security interests . . . in time of war or other emergency in international relations.” Second: Applying the WTO’s standard, those essential security interests must “relate to the quintessential functions of the state”, including the protection of territory and the maintenance of law and public order. In order to make a claim, then, a state must prove that a particular good will contribute to climate insecurity.

Applied to national security, these claims could manifest in a variety of ways. As seen in the conversations not only about climate security, but the the protection of climate refugees, it seems likely that protection of territory from climate change will shape the debates of the twenty-first century. As

51 Marc Lanteigne, *The Changing shape of Arctic Security*, NATO REV. (June 28, 2019), <https://www.nato.int/docu/review/articles/2019/06/28/the-changing-shape-of-arctic-security/index.html>.

52 *Id.*

53 Curt D. Storlazzi, Stephen B. Gingerich, Ap van Dongeren, Olivia M. Cheriton, Peter W. Swarzenski, Ellen Quataert, Clifford I. Voss, Donald W. Field, Hariharasubramanian Annamalai, Greg A. Piniak & Robert McCall, *Most Atolls Will Be Uninhabitable by the Mid-21st Century Because of Sea Level Rise Exacerbating Wave-Driven Flooding*, 4 SCI. ADVANCES 1 (2018).

a result, a state could refuse to import certain goods or raise certain tariffs on others for its particular impact on an element of the environment, such as the ozone or the ocean. Individual actors rarely make a significant impact on the climate; for example, major corporations account for the vast majority of carbon emissions. A state could target such corporations through the structure of trade law in order to force a greener relationship. Similarly, the need to protect endangered or rare goods could lead to an invocation of Article XXII under the Russia-Transit standard. There is room for states to get creative, and if the current discourse surrounding Article XXI is any indicator, states will do just that. Applied to international security, the lens might be even broader.

While the security exception to Article XXI is often referred to as a “national” security exception, the text of the Article suggests a more expansive reading. Section (b)(iii) explicitly sets out that a state may derogate in the face of “international” tensions. This is important, because it is increasingly likely that the United Nations Security Council (“UNSC”) will eventually declare climate change a threat to international security.⁵⁴ By elevating climate change to an international threat, the UNSC will open the door to claims in the name of international security at the WTO. If a trade affects new waterways, or threatens to exacerbate existing climate conditions, it could be shaped by Article XXI.

There are, of course, complications. The WTO is an organization built to negotiate trade disputes; it is not equipped for lengthy, introspective looks into individual states’ security apparatuses. Moreover, the WTO itself is currently crippled, its Dispute Resolution Appellate Body defunct.⁵⁵ Bringing any claims proves difficult in such a situation. It is also important to ask where the WTO might draw the line. The link between climate change and any individual act is infamously attenuated. In order to ensure that states do not abuse the opportunity to use climate change as a reason to derogate from international trade, clearly set standards will be necessary from the WTO. There is precedent for such a thing: For example, the WTO’s standards set to regulate the trade of food during international shortages. If

⁵⁴ For a comprehensive view of the U.N. Security Council’s relationship to climate change thus far, see Karolina Eklöv, *A Short History of Climate Change and the UN Security Council*, WORLD F. (Jan. 19, 2020), <https://www.weforum.org/agenda/2020/01/a-short-history-of-climate-change-and-the-un-security-council/>.

⁵⁵ See Aditya Rathore & Ashutosh Bajpai, *The WTO Appellate Body Crisis: How We Got Here and What Lies Ahead*, JURIST (Apr. 14, 2020, 7:16 PM), <https://www.jurist.org/commentary/2020/04/rathore-bajpai-wto-appellate-body-crisis/>.

done carefully though, the WTO has an opportunity to use economic competition as a driver of climate friendly goals.

CONCLUSION

The inhabitants of the planet today are the first generation to feel climate change's impact, and the last generation with the chance to stop it. As the century inches forward and climate security becomes increasingly prevalent, the best way to combat climate change will be to make international environmental law ubiquitous across all international actors. The path towards a sustainable future must see environmental protections baked into every element of law. Trade law is no exception. In fact, trade law, with its roots in aspirations of international peace, is well-suited to adapt to the reality of the climate crisis. Article XXI provides an opportunity to do just that, reshaping the future of economic relations around greener goals.