

# COUNCIL OF COUNCILS

*An Initiative of the Council on Foreign Relations*



# The 2023 Council of Councils Annual Conference *Background Memos and Recommended Reading*

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# COUNCIL OF COUNCILS

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## Session One

# *The Governance of Artificial Intelligence*



Background Memo

*AI Governance: From Competition to Cooperation*

Council of Councils Annual Conference  
May 7–9, 2023  
Council on Foreign Relations, New York, NY

**Sergio M. Alcocer**, Mexican Council on Foreign Relations

Humanity is experiencing unprecedented changes, with technology at the core. States and private companies are rushing to be the most innovative and powerful through the development, adoption, and adaptation of technology. Virtually every field of society is transforming, including international relations and how countries project power beyond their borders. The present artificial intelligence (AI) technological innovation has the potential to significantly affect the way societies and citizens organize and relate to each other. Its exponential growth comes from the development of the other so-called exponential technologies, or fourth industrial revolution technologies, including cognitive and biological technology, information technology, and new materials technologies.

One of the aspirations of the Mexican Council on Foreign Relations (COMEXI) is to influence Mexican policy formulation on accelerating the development of a culture of innovation and utilizing exponential technologies, as well as preparing for the complexity and uncertainty that dominate future scenarios. At Mexico Exponential (M<sup>x</sup>), a think tank dedicated to developing public policy and strategies for embracing exponential technologies, discussions about governance for an exponential society have already been under way. Such conversations include how governments need to adapt to a society that is becoming more technologically advanced and informed, and what citizens are expecting from governments that have access to more and better data to solve everyday problems. Ethics and AI have been especially prevalent topics. Indeed, as AI applications range from medical to military, this fast-developing technology is bringing both opportunities and risks, which means that AI comes with governance challenges.

“Exponential technologies” refer to those that have the potential to substantially influence development, affect various aspects of a society, and drive transformative changes in multiple industries and fields in which, undoubtedly, AI plays a leading role. IBM defines AI as a technology that imitates the human mind’s capacities for problem-solving and decision-making through machines and computers. And, since no generalized agreements on its boundaries are in place, it can be said that AI is part of a family of exponential technologies that interact with others, such as machine learning, deep learning, and robotics, to name a few.

AI is generating new ways of learning, experiencing, and working, making its development both an economic issue and a commercial one. With AI-generated outputs and outcomes that include creative work, inventions, potential patentable knowledge, trade secrets, and branding ideas, AI gives new meaning to privacy, security, and intellectual property. AI is advancing with remarkable speed—and discovering and improving other technologies as it develops—and scientists and engineers cannot answer some questions it raises at the same pace.

However, technology is not just an economic or commercial affair; at a higher level, it is a force in international politics that exercises hard and soft power through its ability to invent, adopt, and adapt new technologies, an ability called innovation power. With a long tradition as a tool for nation-states to project power beyond their borders, technology—particularly AI—has a relevant role in geopolitics. In this new digital era, technology could very well determine whether the current world system will be replaced by something new.

Disruption and accelerated change cause governments and institutions to respond belatedly to changes; they generally issue or modify laws, rules, regulations, and procedures that are part of an obsolete regulatory system. In the case of representative democracies, they face the great challenge of responding nimbly to their societies, including the segments of their population that do not feel represented, like the youth. Yet the society-government dynamic is changing. The time to reexamine the relationship between the government and the governed and to design the new architecture—to modernize the state and its governance model—is now.

Regarding AI governance, regulating AI as a tool is unrealistic if not impossible. Instead, the focus should be on regulating its usage. On the one hand, AI is transforming the health sector by analyzing medical records and offering rapid and accurate diagnoses. On the other hand, private companies and governments are taking advantage of legal loopholes and testing AI autonomous weapons or surveillance software on civil populations. Inevitably, the countries that pioneered these new technologies are the ones that commonly define their regulations. And with more private companies pioneering technological innovations, governments should work alongside high-tech CEOs. A top priority should be ensuring that the Global South, where most of the world population lives, is not left behind.

The fact that the leading tech countries are at the top of the geopolitical game implies that their societies will likely be the first to see their jobs automated. In the following years, people will be forced to gain new skills to preserve their livelihoods. Even if estimations of the people and sectors that may be affected by tech exist, uncertainty about the real disruptive effects remain. The future is already here, and decision-makers should take a hands-on proactive approach to ensure that societies have the tools to benefit and adapt to the challenges of the fourth industrial revolution.

But first, securing fundamental human rights is paramount. Some governments—even those that claim to be democratic—are testing autonomous weapons and surveillance systems on civilians and then exporting the technology to authoritarian governments. These are clear and severe human rights violations. In this sense, one could say that competition in tech and AI is also a competition between systems and states, between values and ideologies.

Losing track of security vulnerabilities with open-source AI software, making it complicated to define who should be accountable for harmful or unexpected outcomes, is another concern. It needs to be clear that AI users are responsible for their AI use, and those users should be held liable for that use. Unethical and harmful use should be punished, and, more importantly, prevented.

But final users are not the only ones responsible: AI-developer companies should be regulated to ensure human rights protections and adherence to national and international legal frameworks. Google CEO Sundar Pichai says that given the potential harm that AI can cause, a global regulatory framework should be implemented. Nevertheless, mistrust between nations is causing a trend toward greater digital sovereignty. Top international institutions should encourage world leaders to sit at the table and develop concrete global regulations and agreements.

As mentioned above, it is common for pioneers to be the first to regulate, and indeed, the United States, China, and the European Union already have policies around AI in place. Some of the issues that these regulations address are data protection and consumer privacy. The EU is using a risk-based regulation approach wherein AI systems with unacceptable risks are banned, while others with different levels of risk could be subject to conformity assessments, audits, transparency, or with no effect on operation.

As AI keeps rising as a reshaping force in international relations, instead of following a trend toward technological decoupling, global leaders should strive for collaborative regulation of exponential technologies. Precedents for AI regulations already exist, and they reflect different values and ideologies that could reshape the world system. Therefore, the challenge itself is not about regulating AI use but about reaching global agreements to protect fundamental rights regardless of the state's social, cultural, economic, and political interests.

As unforeseen realities arise, the excessive enthusiasm for AI is coming to a period of disillusionment and doubt. As some high-tech CEOs now pledge to pause the development of AI software due to security concerns, it could take time until its relevance and costs are understood. One should remember that AI is not necessarily here to replace society, but could complement it. Moreover, government and industry leaders should take care to bypass the pitfalls of technology. As the physicist Federico Faggin says, "If we believe that consciousness or free will are algorithms, we will forget what distinguishes us from technology. Therefore, we will be indoctrinated by it."

For now, AI technologies are a clear source of economic and military strength that puts competition over cooperation, and consequences such as technological decoupling are having the opposite effect: whereas technology was intended to connect people, it is now distancing people from the possibility of achieving global governance to ensure the common good. Organizations that promote AI ethics are not enough: these topics should be at the center of top international organizations' discussions.



Background Memo

## *Opportunities and Challenges Facing China in Artificial Intelligence Governance*

Council of Councils Annual Conference  
May 7–9, 2023  
Council on Foreign Relations, New York, NY

**Lu Chuanying**, Shanghai Institutes for International Studies

As the ChatGPT frenzy sweeps the world, artificial intelligence (AI) products based on large language models and high computational resources have been booming, marking a milestone of the application and governance of AI. However, the security risks are increasingly varied and veiled, creating both opportunities for industrial development and challenges for managing AI.

### **AI and Large Language Model Development Trends**

OpenAI's ChatGPT attracted one hundred million users in the first two months after its release thanks to its wide applicability and powerful functions. On the one hand, the surge in user data testifies to people's enthusiasm for large language models such as ChatGPT. On the other hand, feedback from various platforms shows that people have mixed feelings about the technology and the effects of the AI era more broadly, mainly in the following aspects.

*First, AI-generated content represents the future of AI technology from a macro perspective, but it brings with it greater uncertainty.* In the field of AI research, artificial general intelligence (AGI) has always been the paramount goal. Whereas AI learns from data and is designed to operate within established parameters, the hope is that ultimately AGI will fully simulate human intelligence. Although current AI has not yet inaugurated the AGI era, its large language models framework has demonstrated preliminary potential for cross-modal creativity—a prerequisite for AGI. This capacity implies that AI generated content can transcend different forms to generate exploratory and combinatorial creativity, which is one of the essential conditions for achieving AGI.

Although current AI technology cannot fully simulate human intelligence, its technology has already shown remarkable human-like characteristics, such as object recognition and language understanding. Those human-like features harbinger broad possibilities for the application of AI; people expect these products to improve their lives and work—improving, for example, medical diagnoses, transportation, and natural language processing. However, the more AI technology develops, the more uncertainty it breeds. People worry that ma-



chines will surpass human intelligence and gain self-awareness; that machines will replace human labor, leading to a large amount of unemployment; or that machines will become uncontrollable, resulting in unpredictable, possibly dire consequences. On March 28, 2023, OpenAI cofounder Elon Musk and more than one thousand other AI experts signed a joint letter proposing to pause training more powerful AI due to the unexpected influence of large language models and focus on safety and ethical governance.

*Second, AI empowers multiple applications, but it also poses new security risks.* Large language model AI architecture can generate and process text as well as retrieve and integrate data, meeting the needs of multiple industries such as news, education, and finance. However, governments and the public are concerned about its future development. For example, whether AI-generated content can be copyrighted is uncertain: it derives from a large amount of data, making it difficult to justify its originality. For now, some countries have proposed that no AI-generated content merits copyright protection. The reality, however, is disheartening, presaging considerable challenges in the field of content governance.

More forebodingly, AI products can easily write malicious programs and create false information. This low-cost malfeasance will implicate massive new difficulties to the already thorny problem of internet content governance. Furthermore, AI can propagate large-scale, low-cost propaganda, effectuating ideological indoctrination and infiltration among the public. Even in its current iteration, ChatGPT selectively answers sensitive questions and offers unbalanced guidance to users. Over time, ChatGPT's political stance and ideology will subtly affect its billions of users, potentially developing into the largest propaganda machine for Western values and ideology. This uncertainty and risk seriously worries China.

*Third, AI plays a subtle role in value orientation.* Enterprises like OpenAI have not underestimated the new AI governance challenges and potential security risks posed by ChatGPT and other similar products, and they have taken preliminary preparations. For example, ChatGPT has installed an "undesirable content filter," which uses machine learning and natural language processing techniques to avoid presenting fraudulent information, hate speech, and viral website links to users. This filter has already played seen success. Darrell M. West, a researcher at the Brookings Institution, compared ChatGPT with Google's generative AI, Bard, and found that the former is more objective when dealing with politically and morally sensitive information.

OpenAI emphasizes that ChatGPT is only an AI language model and thus provides both positive and negative facts without making conclusive judgments. However, some articles have pointed out that ChatGPT's guidance on sensitive information is subtly leans toward environmentalism and left-wing liberalism, which tends to reflect the political stance of the OpenAI development team.

Governments have begun to strengthen AI governance. After the launch of ChatGPT, the U.S. National Institute of Standards and Technology released the first *Artificial Intelligence Risk Management Framework*. However, according to some scholars, this framework does not effectively govern data privacy and content review. The U.S. Congress should establish a permanent framework to provide for consumer protection, build public trust in AI systems, and create necessary regulatory rules for the AI product roadmap. The U.S. Department of Commerce has recently sought public opinion on how to formulate regulations to ensure the safety of AI and reduce potential hazards, and it is expected to introduce more regulation in the future.

On April 11, 2023, the Chinese government released its *Management Measures for Generative Artificial Intelli-*

*gence Services*, which clarifies the production, review, management, disclosure, and other procedures for generative AI content. This document exemplifies China's resolution to strengthen cyber content governance and rise to the technological challenge. However, the new framework lacks more comprehensive and professional governance measures for large language model AI.

On March 31, 2023, the Italian Data Protection Authority launched an investigation into ChatGPT for suspected violations of the EU General Data Protection Regulation (GDPR). It ordered OpenAI to stop processing local data in Italy until it completes a series of compliance checklists (by April 30 and May 15), including information and rule transparency, age restrictions, and removal of false information to the Italian public. Other European countries have taken notice of Italy's actions. The Data Protection Commission of Ireland and the French data privacy regulator, the National Commission on Informatics and Liberty, have also launched investigations into data privacy and false information concerning AI products to ensure that they meet GDPR requirements.

### **Embracing Innovative Governance Opportunities to Develop Large Language Models and AI**

Although inherent risks and concerns arise from the development of large language models and AI, these two cutting-edge tools also hold potential for empowering industrial development. Capitalizing on that potential necessitates turning risks into opportunities by adjusting and innovating governance methods. Specifically, policymakers should build more agile governance mechanisms, improve data quality, and establish an international dialogue

*Constructing an agile and forward-thinking governance ecology.* Compared with previous iterations of AI, current large language models and AI are more complex, ethically uncertain, and veiled in risk. The traditional thinking of "post-event governance" can neither identify the security loopholes in AI models and frameworks nor address the needs of ethical governance. AI based on reinforcement learning can easily evade the old-fashioned network content monitoring mechanism based on keyword recognition.

To adapt to this changing digital landscape, governments should adapt their AI governance policies to be more agile. They should deeply integrate AI developers and designers of large language models into the governance process, and stay connected to the private sector to updated on stay new research and development dynamics and market intelligence to be able to design a forward-looking governance framework. For example, the U.S. government should cooperate with OpenAI to gain a deeper understanding of how ChatGPT's content filter works. In turn, it should also offer guidance to enterprises on improving content filtering devices from the perspective of national and social security. The U.S. government should also close policy loopholes that companies fail to close, thus conducting more targeted governance of AI content.

*Strengthening data governance and improving data quality.* Currently, ChatGPT and other AI-generated content is still model-centric, which emphasizes the design and optimization of neural network models and focuses on getting the coding right, however, the quantity and quality of data will become a critical factor in the future development of AI generated content. From GPT-1, OpenAI's first-generation GPT, to the updated GPT-3, the number of model parameters has increased by about seventeen hundred fold, and the amount of pre-training data has increased by about nine thousand fold. At the same time, large language models have facilitated the transformation of semi-supervised learning to unsupervised learning. This model-centric AI can generate responses more flexibly and efficiently, but it encompasses two problems.

First, large models depend on big data, and data quality differs in massive databases, which can be affected by data poisoning and biased data, increasing the difficulty of governance. Second, in specific fields, generating large amounts of data for model training is impossible. To address this problem, Landing AI CEO and founder Andrew Ng proposed “data-centric AI.” This type of AI training pays more attention to high-quality data rather than large amounts of data and coding. This approach holds opportunities for the future development of AI. Although China did not get a head start in large language models, if it can attach more importance to data governance, improve data quality, design a set of standards to clarify the collection and training of professional data, and take the lead in pioneering data-centric AI development, it can not only avoid the current risks of large language models and AI but also unleash the empowering value of high-quality AI in more industries.

*Establishing an international dialogue on AI in the public and private sectors.* AI governance is a novelty, and all countries—without exception lacking in experience—should keep each other updated to cope with the uncertainty of this new technology. Establishing and improving international dialogues is a vital step in achieving effective AI governance. Countries can rely on existing multilateral mechanisms, utilize their platforms and resources, and establish specialized working groups and information sharing mechanisms. For example, countries should establish a new specialized expert group under the UN framework aimed at addressing AI governance issues. This group can be based on the practical experience of the AI Ethics Advisory Group, which can provide principle guidance for countries’ governance practices. Alternatively, countries can utilize the Organization for Economic Cooperation and Development’s accumulated research resources and experience in AI governance, and conduct themed research, which can provide policymakers with more comprehensive and transparent information.

Countries can also deepen bilateral governance cooperation using consensus as a guide and security as a benchmark—for example, by jointly establishing AI management standards, conducting collaborative AI compliance reviews, and collectively disclosing false information in AI. Bilateral governance cooperation can address the complex technical characteristics and challenges of AI, such as uncertainty, emergence, and differentiation. It can also facilitate the establishment of more scientific review standards and more perfect review mechanisms.

Strengthening track two cooperation between countries is also an effective way to achieve AI governance and provide governments with more scientific, objective, and systematic AI-generated-content governance guidance. Track two cooperation can pool the power of multiple parties and examine AI development trends from multiple dimensions such as technical risks, industry ecology, and social impact. Such a strategy would be conducive to improving governance capabilities and levels.



Background Memo

## *Artificial Intelligence and Governance*

Council of Councils Annual Conference

May 7–9, 2023

Council on Foreign Relations, New York, NY

**Paul Samson**, Centre for International Governance Innovation

Artificial intelligence (AI) constitutes a general-purpose technology, and perhaps one with transformative potential not seen since the Industrial Revolution. AI's power to spur both beneficial and harmful change is enormous. Now is the time to understand collective interests around AI and to find ways to build governance in the human and global interest.

Advances in user-friendly [generative AI](#), which can produce text, images, audio, and synthetic data, have unleashed a frenzy of new initiatives and captured mainstream attention. The best example is [ChatGPT, which](#) reached about one hundred million users in two months—an unprecedented feat that took TikTok around nine months and Instagram two and a half years. ChatGPT's popularity and its checkered performance (it can generate convincing but completely incorrect material at times) have opened the floodgates of debate on the benefits and risks associated with AI. It has raised long-standing ethical and legal concerns related to privacy and [harmful biases](#). It has also created new ones. No policy areas—not democratic integrity, labor markets, education, market competition, art creation, or science—will remain untouched.

Beyond domestic policy, AI will become increasingly central in geopolitics and international cooperation, changing the worlds of [finance](#), [climate change](#), [trade](#), [development](#), and [military operations and security](#). But even with that shift, only a patchwork of initiatives exists for data (the raw material of AI) and digital issues. Those initiatives are scattered across nations and do not provide a foundation for a unifying regulatory framework upon which to build international AI regulation.

Despite active and ongoing discussions over the last decade within the United Nations, Group of Twenty (G20), Organization for Economic Cooperation and Development (OECD), and elsewhere, no consensus has emerged among nations on how to approach the digital transformation taking place or on how to approach international data regulation. No global institution has a substantive mandate to develop a policy model or regulations for those issues, making it difficult to initiate an international framework. The hope was that the G20 would establish a starting point for global digital norms and standards on data and digital issues, and general [G20 AI principles](#) were agreed to in 2019; however, the G20 has made [no substantive progress](#) on governance to date. India's G20 presidency in 2023 is leading the way on [digital public infrastructure](#), par-

ticularly for developing countries, but land any action on governance will be challenging. The needs of developing countries will be integral to governance models, lest digitization and AI [further increase inequalities](#) between nations as well as within them. Africa, for example, can [benefit from AI](#) under the right conditions.

The European Union (EU) took a proactive stance by implementing the General Data Protection Regulation (GDPR) in 2018, which governs the collection, processing, and storage of EU citizens' personal data. Companies operating in the EU that fail to comply with the GDPR's rules face significant financial penalties. Furthermore, each EU member state is required to create a data protection authority to monitor and enforce the GDPR. That sweeping law created a so-called Brussels effect, where some non-EU countries followed aspects of GDPR in their own privacy legislation. Despite those developments, significant differences on first principles for [managing cross-border data and digital flows remain](#). At the philosophical level, the EU places a primary focus on individual data rights, while the United States is concerned about over-regulation stifling innovation, and China's model is massively state-centric.

The meteoric rise of ChatGPT has thrust the urgency of those policy issues into public light. Some AI experts and policymakers argue that, left unregulated, future AI developments could pose an existential risk to humanity, and that AI therefore requires international regulation efforts on par with mitigating global climate change. Those voices have called to [pause AI experimentation](#) at scale pending the establishment of clear governance rules, or even to "[shut it all down](#)" for fear of an extinction-level event.

Not surprisingly, AI's potential has become significant to national security and industrial policy planners at the center of national governments. China launched its [AI plan](#) in 2017 with the clear ambition of becoming the undisputed global leader by 2030 in AI technology, research, and markets, while also taking advantage of a centralized system to concentrate resources and leverage operational alignment. The United States, took an important strategic step with the [National Artificial Intelligence Initiative Act](#) of 2020. That act established the [National Artificial Intelligence Initiative](#), which ensures continued U.S. leadership across the whole range of AI research and development fields; prepares the U.S. workforce, economy, and society for the integration of AI; ensures federal agency coordination; and leads the world in using trustworthy AI systems in public and private sectors. In addition, the National Security Commission on Artificial Intelligence produced its [final report \[PDF\]](#) in 2022, concluding that the United States should act now on AI to protect its security and prosperity and safeguard democracy. Overall, the United States and China have some similar strategic objectives, fostering conditions for direct competition. Some of the competition is already apparent: the 2020 [CHIPS for America Act](#) calls for the United States to secure AI research and development and supply chains. China appears to be initiating [security reviews](#) of foreign tech companies for cyber risks to ensure its supply chains.

The EU is currently considering an ambitious [AI Act \[PDF\]](#) that would include stronger rules for data, transparency, accountability, and human oversight, and frame AI approaches to vital sectors such as health care, finance, energy, and education. The European Parliament is scheduled to vote on the draft act by the end of April 2023, although [some EU lawmakers](#) have called for further action on generative AI and for a summit of world leaders. The [Algorithmic Accountability Act](#) was reintroduced in the U.S. Congress in February 2022 and has many of the same core objectives as the EU's AI Act. The Joe Biden administration also released the [Blueprint for an AI Bill of Rights](#) in October 2022. [Other countries \[PDF\]](#), including Brazil, Canada, Japan, and Korea, are reviewing national AI legislation, as are several U.S. states. Over the past year, China has been instituting nationally [binding regulations in targeted areas](#), including an algorithm registry and rules for generative AI. Following the release of [Alibaba's generative AI](#) chatbot tool, Chinese regulators will now require

Chinese tech companies to submit generative AI products (e.g., online chats and deep-fake generators) for assessment before public release.

The OECD maintains an [AI Policy Observatory](#) that is tracking eight hundred AI policy initiatives across sixty-nine countries, although the observatory found that only a [handful of initiatives](#) were evaluated or reported on after the fact. A number of other international initiatives are also emerging, including the UN Educational, Scientific and Cultural Organization's work on [global ethics for science and technology](#), which shares information and helps build capacity; the UN [AI for Good](#) summits on AI resolutions to advance the Sustainable Development Goals; and the OECD [Principles on Artificial Intelligence](#), which provide a foundation for innovative and trustworthy AI that respects human rights and democratic values. However, none of those initiatives are advancing international regulation or building a concrete governance model, and they have not been empowered to do so.

Given that context, policymakers have limited options to pursue global governance for AI. The Group of Seven (G7) will discuss AI again in 2023, and the Japanese presidency hopes to agree to an international framework for AI regulation and governance. However, even the G7 is not of one mind on how to proceed to regulate in those areas. Essentially, [two schools of thought](#) have emerged: The first group, led by France, Germany, and Italy, takes a broad, law-based approach and is modeled on regulation under the EU's AI Act. Canada could also land in that first group depending on how its [legislation](#) evolves. The second group, led philosophically by the United States, Japan, and the United Kingdom, looks to identify more narrow points that require regulation and to achieve legislation via softer legal tools, although the U.S proposed Algorithmic Accountability Act would constitute harder regulation if passed. If the G7 can reach agreement on a framework for international AI regulation, it could then broaden collaboration by expanding to the G20 and beyond. However, even the G7 struggles to reach agreement given the high-level and political nature of the discussions among ministers and leaders on such a technical topic, and the many different elements of AI itself.

A complementary approach, which would be more bottom-up, could have potential based on the lessons of the global financial crisis and the creation of an informal coordinating group, the Financial Stability Board. A G7 leader-empowered [digital stability board](#) or another informal, technical-driven group could build multi-stakeholder processes to coordinate work on prioritizing standards for AI and ensure it keeps up with the latest changes in technology. That approach would not require establishing a new organization or reforming the mandates of existing ones. Most of the pieces are already in place, and existing bodies could be leveraged, including the [Forum on Information and Democracy](#) and groups such as the Open Community for Ethics in Autonomous and Intelligent Systems ([OCEANIS](#)), which was created by the [Institute of Electrical and Electronics Engineers](#), standards development organizations, and the private sector. The new body could also build on existing work, such as that of the EU-U.S. Trade and Technology Council's [Joint Roadmap on Evaluation and Measurement Tools for Trustworthy AI and Risk Management](#) [PDF] and the OECD's [Framework for the Classification of AI Systems](#), among others. The [Global Partnership on Artificial Intelligence](#), launched via the French and Canadian presidencies of the G7, could also play a role in bridging ideas into practice.

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## Session Two

# *Holding Those Responsible for War Crimes Accountable*



Background Memo

## *Circle of Terror Crimes: The Need for Tiered Justice Responses to Boko Haram*

Council of Councils Annual Conference  
May 7–9, 2023  
Council on Foreign Relations, New York, NY

**Fonteh Akum**, Institute for Security Studies

In April 2014, the terrorist group Boko Haram raided the Government Girls Secondary School in Chibok, Borno State, in Nigeria, kidnapping over 276 young girls between the ages of 16 and 18. Its kidnapping of another 110 girls in Dapchi in 2018 proved that deliberately targeting girls was part of Boko Haram’s campaign against secular education.

Its broader tactics have included kidnapping across national borders, laying siege to villages, deliberately targeting civilians, robbing banks, breaking into prisons, and destroying state property. In an insurgency that has raged for fourteen years, accountability for those crimes remains elusive.

Attaining justice and accountability for crimes committed by parties involved in the Boko Haram insurgency requires overcoming four interconnected contextual and operational challenges. In the absence of a peace agreement or all-out victory, the end goal would be to balance punitive and restorative justice as a means to degrade the terrorist group, provide redress to victims, and enhance possibilities for effective stabilization and peace-building.

### **Boko Haram’s Emergence and Evolution**

The Boko Haram insurgency in northeastern Nigeria worsened after the extrajudicial assassination of the group’s founder, Mohamed Yusuf, while in police custody in July 2009. Fourteen years later, the crisis has regionalized, expanding to the riparian countries bordering the Lake Chad Basin—Cameroon, Chad, and Niger. Conservative estimates of fatalities caused by the Boko Haram insurgency are approximately forty thousand. Meanwhile, the insurgency is consistently in the top five deadliest terror theaters globally.

To counter terrorism, the Lake Chad Basin countries and Benin reconstituted the Multinational Joint Taskforce with authorization from the African Union in 2015. Additionally, local vigilante groups such as the Civilian Joint Task Force have emerged to support counterterrorism efforts in Nigeria. Community watch groups also exist in other Lake Chad Basin countries.



In 2016, Boko Haram splintered due to a combination of internal wrangling and external military pressure into the Jama'atu Ahlis al-Sunnah Lidda'adati wal-Jihad led by Abubakar Shekau and the Islamic States West Africa Province led by Abu Musab al-Barnawi. Since then, both groups have coordinated with regional and global terrorist networks. They have both also used slightly coercive and socially appealing methods to gain an advantage against each other, as well as against national armies and their vigilante allies.

## **Responding to Calls for Accountability**

Fourteen years into the insurgency, demands for prosecution have been made at the local, national, and international levels. The International Criminal Court (ICC) provides a plausible alternative for high-level prosecutions. The court's founding treaty, the Rome Statute, grants the ICC jurisdiction over four main crimes, including war crimes and crimes against humanity, and is unequivocal about what constitutes these crimes, which could also be useful for prosecuting terrorist offenses.

The ICC's Office of the Prosecutor concluded preliminary examination of the situation in Nigeria in 2020. The next step is to request authorization from the Pre-Trial Chamber to open a full investigation into alleged crimes committed by Boko Haram and the Nigerian Security Forces since 2009 and 2011 respectively. National-level attempts at prosecution have been carried across the Lake Chad Basin with varying levels of success. In the case of regional terrorist groups, and where national and international efforts have failed to deliver justice for communities, four challenges require further deliberation.

First, courts have a numbers problem. Estimates of the composition of all factions of Boko Haram vary widely, but the number of potential prosecutions almost certainly exceed state capacity, as evidenced in the inadequacy of mass trials to deal with alleged terrorist offenses. Nigeria's [mass trials](#) for terror suspects in 2017 and 2018 had four judges adjudicating over five thousand cases. Furthermore, offers of amnesty from Niger and Cameroon, as well as Operation Safe Corridor in Nigeria, have led to the surrender of close to four thousand individuals across the Lake Chad Basin. Neither the trials nor defections have seriously hampered Boko Haram's capacity to recruit and continue its insurgency. However, the number of cases will clearly overwhelm even the most prepared penitentiary and legal systems, hence the need for effective screening, eyewitness accounts, and evidence collection processes as an entry point into judicial processing. The scope and plethora of crimes committed raise the importance of well-structured transitional justice systems that ensure crimes are punished and rehabilitation is negotiated between offenders and communities for reintegration.

Second, the geographic scope of the insurgency across remote areas in four countries poses crucial challenges for evidence collection, witness identification and protection, and effective prosecution. While Boko Haram has claimed responsibility for some vile attacks on communities, serious human rights violations have also been reportedly committed during counterterrorism operations. In December 2022, for example, Reuters reported that the Nigerian military had conducted a secret forced abortion program in the northeast since 2013, ending at least ten thousand pregnancies without the consent or prior knowledge of the women and girls concerned, which could amount to war crimes and crimes against humanity. To ensure that justice reduces incentives for conducting terrorist activities and delivers on stabilization and peace, the clear categorization, prioritization, and prosecution of crimes committed are vital.

Third, the wide battlespace and differentiated legal and illegal treatment of alleged terrorists and their associates create different incentives for where these individuals decide to turn themselves in to state authorities. Of the three states most affected by Boko Haram in Nigeria, two—Borno and Yobe—have Sharia as well as customary courts. Meanwhile, the Boko Haram-affected regions of Cameroon, Chad, and Niger operate under their national antiterrorism laws. The decision by Niger and Cameroon to offer amnesty to their nationals who joined Boko Haram has largely been guided by governmental directives. These often preceded the operational plans for the implementation of the said governmental directives, thereby complicating the legal landscape. Gaps in geography and legal frameworks challenge the effective implementation of screening, prosecution, rehabilitation, and reintegration.

Fourth, the duration of the Boko Haram insurgency makes it imperative to clearly define the category of victims, as well as ensure that victims' rights are a critical consideration in seeking redress. The range of Boko Haram's methods and tactics have left communities traumatized, and therefore a victim-centered approach underpinned by reparations, restitution, and psycho-social support is critical.

## **Conclusion**

Ultimately, restorative transitional justice measures will have to be accompanied by prosecution. The duration and scale of abuses require comprehensive and multipronged tools that can contribute to national and regional approaches to restoring peace underpinned by a nuanced understanding of timing, awareness, context, and stakeholders. Of the four Lake Chad Basin countries, Cameroon is the only one that has not ratified the ICC's Rome Statute. That does not provide a hurdle to the spectrum of legal recourses in dealing with the Boko Haram insurgency. The real hurdle is developing a tiered legal and transitional justice approach adapted to the widespread, enduring, and evolving scourge Boko Haram has posed to the communities of the Lake Chad Basin.



Background Memo

*Prosecuting Putin*

Council of Councils Annual Conference  
May 7–9, 2023  
Council on Foreign Relations, New York, NY

**Steven Blockmans**, Centre for European Policy Studies

The publication of an international arrest warrant against Russian President Vladimir Putin on March 17, 2023, by the Second Pre-Trial Chamber of the International Criminal Court (ICC) has caused a stir. Although the institution is far from immune to criticism—it has long been accused of being “strong with the weak and weak with the strong”—this is a major change in the court’s policy, as it is the first warrant ever issued against the sitting leader of a permanent member of the UN Security Council. In some respects, this is a gamble, given the many obstacles that stand between this historic event and a possible conviction of Putin. But this arrest warrant also makes the ICC newly relevant, as until now, the main perpetrator of the war of aggression against Ukraine has escaped any form of accountability.

**The ICC’s Potential Return to Grace**

The publication of the arrest warrant against Putin raises questions as to the basis on which such a warrant could be issued, given that Russia is not a signatory of the Rome Statute, which established the ICC in 2002. More importantly, it remains to be seen how such a mandate could be effectively implemented under current circumstances. Some of these questions can be answered, although uncertainties will remain.

The first question is that of jurisdiction; namely, the ability of the ICC to address the actions of a leader from a state that has not ratified its statute. This question is particularly vexing for Russia, which is one of the few signatory states to have formally withdrawn its signature from the Rome Statute, thus depriving it of any legal effect. In international law, a state signing a statute without ratifying it does not (in principle) constitute a commitment, it merely signifies objective recognition of the situation created by the treaty and only generates a general obligation of good faith toward it. By neutralizing the effect of its signature, Russia intended to signify its rejection of the very existence of the court. The designers of the ICC anticipated such critiques: unlike other international jurisdictions, the ICC has been set up as an independent international organization whose objective existence cannot be denied by states and nonstate parties.

A parallel could be drawn with the European Union. The United States, Argentina, and Australia are obviously not members as they are not parties to the founding treaties, but they cannot contest the EU’s very existence. It is imposed on them as an objective reality. The same applies to Russia in relation to the ICC.

Yet this is far from sufficient to enforce the ICC's jurisdiction over the Russian president. Acknowledging an international court's existence does not mean that a state recognizes being under its jurisdiction. Neither Russia nor Ukraine are parties to the Rome Statute, but there is a loophole: In 2014, Ukraine agreed to give the court jurisdiction over crimes within its jurisdiction committed on Ukrainian territory. This is a possibility recognised by Article 12(3) of the Rome Statute. On this basis, thirty-nine signatory states decided to refer the situation created by Russia on Ukrainian territory since February 2022 to the ICC prosecutor's office. The group includes all EU member states. This procedure, however, does not change the state of the law: Russia is not liable for any obligation to the ICC. But insofar as the crimes for which Putin is being prosecuted were committed on Ukrainian territory, the court's jurisdiction is well established. The problem is therefore one of implementation, not principle.

The ICC does not conduct trials in absentia and has no powers to arrest suspects. Only the states that are party to the Rome Statute (there are 123 of them) are legally bound to cooperate with the court. In principle, this means that Putin's presence would automatically obligate local authorities in signatory states to arrest him. The few precedents show, however, that such an obligation is rarely respected. For example, former Sudanese President Omar al-Bashir has been under an arrest warrant since 2009, but has been able to travel untroubled in a number of ICC member states. Some states are also maintaining an ambiguous relationship with Russia, suggesting they are unlikely to make such a politically sensitive arrest, a position explicitly expressed by the Hungarian government. While making such an arrest is the only legal course of action available, the warrant does create problems for Putin.

The foremost are political in nature. By issuing an arrest warrant, the ICC has cast a shadow on Putin's international standing (even if Chinese President Xi Jinping's recent trip to Moscow softened his isolation). It also seriously discredited his humanitarian claims: the invasion of Donbas was officially aimed to liberate the Russian-speaking minority from an alleged genocide by the Ukrainian government, though this dubious claim was used by Ukraine to bring Russia before the International Court of Justice. Third, it prevents any normalization of relations with states that have ratified the Rome Statute. Yet, this, regrettably also narrows the path to a negotiated end to the war. For EU member states and like-minded countries it is extremely problematic to consider peace negotiations with a head of state who has been issued an ICC arrest warrant. To them, the arrest warrant confirms that the war in Ukraine will not be resolved with Putin; it will only be resolved by, or after, his departure from power.

This prospect raises a second legal obstacle to the implementation of the arrest warrant. As a sitting head of state, Putin in principle enjoys protection in the form of immunity, long recognized under international law. The question would undoubtedly be different if he were ousted from power, as his protection would be considerably weaker. But the question of immunity remains a critical issue for the effective implementation of the mandate. The ICC has indicted two sitting leaders before: Sudanese then-President Omar al-Bashir and Libyan leader Muammar Qaddafi. Qaddafi was later murdered by his people, while al-Bashir remained in office for another decade until being toppled by a coup, and was then prosecuted in Sudan. Before the recent outbreak of violence, the Sudanese government had been discussing handing him over to the ICC. Serbian President Slobodan Milosevic was the first head of state to ever be indicted for war crimes and face trial before the International Criminal Tribunal for the former Yugoslavia. The immunity of heads of state is therefore not absolute and is gradually being revised to hold them accountable for the most serious of human rights violations. Still, history shows how difficult it is to bring a head of state in office to trial.

## **Building Multilateral Strength Through International Criminal Justice**

The chances of the ICC arrest warrant being effectively executed are slim, especially if Putin remains in power. But these charges have no statute of limitations. Anybody who is charged with war crimes could face arrest at any point in their life, and Putin could well die an outcast. Slobodan Milosevic, Ratko Mladic, and Radovan Karadzic were fugitives for more than a decade before they were eventually brought to justice. If the burden of defending or protecting war criminals becomes too great, then a future Russian government could turn Putin over to the court. No doubt, there will in the future be efforts to entice the Russian government to turn him over.

In any case, the publication of the arrest warrant, along with the resolutions adopted by an overwhelming majority of the UN General Assembly, clarifies the situation and bestows pariah status on Putin. Moreover, the warrant and the accusations therein are warnings to leaders of other countries, and support the cause of human rights advocates across the world.

This is a welcome step forward. Exceptional at Nuremberg, international criminal justice is gradually becoming normalized and generalized. Since it now addresses the leader of a permanent member of the Security Council, it is further expanding its mandate. Small steps forward on such an important issue could seem slow, but they are by far the most effective way of achieving international cooperation. To prevent a further splintering of the multilateral system, the supporters of international criminal justice should commit to providing the ICC with information to help the prosecutor-general draw up a list of charges, rather than investing time and treasure in the creation of special tribunals, which are likely to be supported by fewer countries around the world. Nevertheless, it will take time to collect evidence of possible crimes and to make sure it is collated and preserved. However, at some point, it could form the basis to prosecute Putin if he ultimately falls from power.



Background Memo

*Holding Those Responsible for War Crimes Accountable*

Council of Councils Annual Conference

May 7–9, 2023

Council on Foreign Relations, New York, NY

**Johannes Thimm**, German Institute for International and Security Affairs

The Russian attack on Ukraine has focused renewed attention on the issue of accountability for war crimes. Russia’s invasion violates international law on two levels. In terms of *ius ad bellum* (the rules that govern when war is permissible), it is incompatible with the prohibition on the use of force as it constitutes an act of aggression against the sovereignty and territorial integrity of another state. With regard to *ius in bello* (the rules that govern the conduct of warring parties), numerous violations of international humanitarian law and human rights law have been reported, including civilian executions, illegal detentions, torture, indiscriminate or deliberate targeting of civilian infrastructure, the systematic use of sexual violence, and the forcible transfer of children. The situation encountered by Ukrainian troops after the liberation of the town of Bucha early in the war has become a symbol of the atrocities committed by Russian troops, but many other cases exist, such as the mass graves containing hundreds of bodies discovered in Iziium in September 2022. The UN Human Rights Council’s Independent International Commission of Inquiry on Ukraine has [concluded](#) [PDF] that many of the atrocities likely constitute war crimes.

A wide range of organizations has documented atrocities, including the Ukrainian authorities, nongovernmental organizations, delegations from other governments, and international organizations. While this has resulted in a timely and comprehensive collection of evidence, the multiplicity of actors has raised questions of coordination and responsibility. Even beyond such organizational issues, the question of prosecuting war crimes is by no means straightforward.

**Three Major Challenges to Effective Accountability**

Three interrelated issues complicate these efforts. The first challenge stems from what is often referred to as the peace vs. justice debate. A common concern is that war crimes prosecutions could be detrimental to a negotiated settlement, if those responsible are at risk of prosecution. Whatever the outcome of the war, unless Vladimir Putin’s regime collapses, a complete Russian defeat that would enable parties outside Russia to arrest or extradite the Russian leadership is unlikely. Any attempt to include accountability for war crimes as a condition of a negotiated settlement has little chance of success.

Arrest warrants issued by other states or international organizations will have the limited effect of preventing alleged perpetrators from traveling abroad for fear of arrest. A related problem is that the existence of an arrest warrant for Russian President Putin and other officials complicates international diplomacy and puts states hosting international negotiations in an impossible situation. The planned BRICS (Brazil, Russia, India, China, and South Africa) summit in August is just one example. As a state party to the International Criminal Court (ICC), the host, South Africa, is legally obligated to extradite President Putin to the ICC. Russia has already threatened South Africa, which has avoided taking sides in the conflict, [with retaliation](#) in the event of an arrest.

The second set of questions concerns the appropriate forum for prosecuting the perpetrators. Options include a Ukrainian court, a special international tribunal, a hybrid of the two, or the ICC, but each has its political and legal difficulties. The choice of venue involves legal issues too complex to analyze exhaustively here. A few points to illustrate the challenges are highlighted below.

Neither Russia nor Ukraine is a state party to the ICC. Because Ukraine [accepted](#) [PDF] the ICC's jurisdiction over crimes committed on its territory in 2014, the ICC's prosecutor can investigate certain crimes committed in the present war. However, with respect to the crime of aggression, the ICC can only exercise jurisdiction over state parties unless authorized by the UN Security Council, which precludes the possibility of indicting Russian officials. But waging an aggressive war is both the original sin and the most serious crime—the precondition for all the atrocities that result from the attack. It is also the crime for which it would be easiest to prove the Russian leadership's responsibility, and to avoid a situation in which lower ranks are held accountable for acts committed, while the higher ranks escape prosecution. For this reason, many experts believe it would be unsatisfactory to prosecute other crimes while leaving the aggression unaddressed.

The Joe Biden administration has therefore [expressed support](#) for an internationalized Ukrainian tribunal with a mandate to prosecute the crime of aggression. However, the Ukrainian constitution as it stands [prohibits](#) special domestic tribunals. One idea is to give such an effort additional legitimacy by authorizing it through a vote in the UN General Assembly.

Moreover, according to customary international law, crimes against humanity are part of *ius cogens*, or peremptory norm, and are subject to universal jurisdiction. Many countries, including Germany, already have national laws that allow them to prosecute these crimes.

The third set of challenges concerns double standards in the administration of international criminal law. The West, and especially Europe, pays more attention to what happens next door than to what happens in other parts of the world. This observation applies to war in general and to war crimes in particular. The criticism that conflicts outside the West are not treated with the same urgency is certainly valid—recent civil wars in Ethiopia and Yemen surpass Ukraine in the total number of victims.

More damaging, however, is the refusal of powerful countries—including proponents of democracy and the rule of law—to subject their own actions to international legal scrutiny. The restrictive nature of the ICC's jurisdiction over the crime of aggression stems from fears that the court could also investigate Western interventions as violations. And the inability to control the court has led powerful states to repeatedly try to undermine it. Even the United States at times has employed what scholar David Bosco has called “active marginalization” in his book *Rough Justice*.

## Recommendations

As long as the war in Ukraine continues, a strong dose of pragmatism is needed. Ultimately, the question of prosecuting war crimes, including the crime of aggression, is a political one. If accountability for war crimes becomes the sticking point preventing a negotiated settlement of the conflict in Ukraine, ending the violence to save lives should take precedence over achieving justice for those already lost. However, the possibility of prosecuting crimes should not be ruled out. Any endorsement of impunity would be unacceptable to Ukraine and would undermine the progress made since the Nuremberg trials. The goal should be to leave the door open for future prosecution.

Flexibility should also guide efforts to work through technical legal issues, such as which crimes should be prosecuted under which jurisdiction and in which venue. There remains no perfect resolution to the challenges outlined above. Any successful prosecution is likely to involve a mix of tools and perhaps some creative lawyering. An example of such a pragmatic approach is the [arrest warrant](#) issued by the ICC for President Putin and Commissioner for Children's Rights Maria Alekseyevna Lvova-Belova for the unlawful deportation and transfer of children. Unlike the crime of aggression, those alleged crimes fall within the ICC's jurisdiction. Rather than targeting low-level soldiers or officials, the charges [target President Putin](#), whose responsibility is relatively easy to establish because he is [on record](#) supporting the transfer and adoption of children. The removal of children from their home country cannot be justified on the grounds of military necessity. And it serves as a reminder that Putin's war is ultimately about denying Ukraine's nationhood.

Over the next decade, the goal should be to strengthen the international criminal justice system by filling in the gaps that the war in Ukraine has exposed. The fact that accountability for war crimes is so central to the discussion about Ukraine is encouraging, and it has already led to some changes. In the U.S. Senate, which has always [opposed](#) [PDF] an ICC that the United States cannot fully control, a number of senators from both parties are now [encouraging](#) President Biden to support the court's investigation—even if the Pentagon still [has reservations](#). Nevertheless, the prospect of the United States fully embracing the ICC or any other institution outside its control is still a long way off. Ultimately, the legitimacy and credibility of the international criminal justice system depends on the elimination of double standards. A few years ago, the ICC was criticized for only investigating cases in Africa. The arrest warrant for President Putin serves to counter this impression. However, only if Western countries are willing to subject their own behavior to international scrutiny can they credibly argue against accusations of hypocrisy. The international response to the war in Ukraine has made the West aware that its perspective is less accepted than many had assumed. Perhaps the momentum generated by the war in Ukraine can be used to move the international criminal justice system a step closer to true universality.



# COUNCIL OF COUNCILS

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## Session Three

### *Reversing the Breakdown of the Global Development Model*



Background Memo

## *Reversing the Breakdown of the Global Development Model*

Council of Councils Annual Conference  
May 7–9, 2023  
Council on Foreign Relations, New York, NY

**Tim Sargent**, Centre for International Governance Innovation

This is an excellent moment to take stock of the United Nations’ 2030 Agenda for Sustainable Development. Launched in September 2015 at the UN Sustainable Development Summit, the centerpiece of the 2030 Agenda is the seventeen Sustainable Development Goals (SDGs), with 169 associated targets. Building on the earlier Millennium Development Goals (MDGs), the SDGs were meant to serve as the overarching framework for the global development paradigm, not just for governments, but for “all stakeholders, acting in collaborative partnership.” This year marks the halfway point for the agenda—long enough to see whether it is succeeding, but not too close to the goalpost of 2030 for course corrections to be unrealistic.

Another reason to take stock is that the world is in a different place now compared to 2015. The past few years have seen the election of U.S. President Donald Trump, the United Kingdom’s departure from the European Union, the global COVID-19 pandemic, the Russian invasion of Ukraine, and a resurgence of inflation, to name but five things that few predicted back in 2015.

At one level, where things stand with the SDGs is difficult to say given the sheer number of targets, but my overall impression, which I think is not in dispute, is that the world is *not* on track to meet most of the goals, particularly in sub-Saharan Africa.<sup>1</sup> The 2022 report faults COVID-19 and the war in Ukraine and calls for “an urgent rescue effort for the SDGs.”<sup>2</sup> Although those two factors have certainly not helped, the 2019 Report by the UN secretary-general also pointed to a lack of progress and urged the world to do better: “Progress has been slow on many Sustainable Development Goals[;] the most vulnerable people and countries continue to suffer the most and [...] the global response thus far has not been ambitious enough.”<sup>3</sup>

The United Nations and the whole world are heavily invested in the SDGs. The Group of Twenty, for example, makes regular reference to the SDGs in its communiqués, and governments worldwide routinely cite them in their policy pronouncements. Especially given the comparative success of the MDGs, failure to achieve the bulk of the SDGs would be more than simply an embarrassment to governments and international organizations; it would call into question the world’s ability to act together to fix important collective problems. Inasmuch as that ability is currently in question, especially after the pandemic and Russia’s invasion of Ukraine, failure to achieve meaningful progress on those goals would have grave repercussions in both the

Global North and the Global South. It could discredit any future concerted global action, particularly on improving life for the world's poorest people.

Blaming governments for that failure is easy, but the real problem lies with the SDGs themselves. Whereas the MDGs had 8 goals and 21 targets, largely focused on extreme poverty and health in poor countries, the SDGs have 17 goals and 169 targets—covering everything from raising industry's share of economic output to reducing homicide rates and from achieving universal access to electricity to cutting greenhouse gas emissions. The scope and application of the SDGs are far too broad to serve as a useful guide for governments and nongovernmental organizations seeking to use scarce resources wisely.<sup>4</sup>

Furthermore, the goals and targets cover not just low-income countries but all countries—developing and developed. As a result, the SDGs incorporate advanced country priorities that have no real place in what should be a strategy to help the poorest people in the world. Climate change is a good example—a problem that advanced countries and middle-income countries need to address, not the world's poorest countries, which neither created the problem nor are they significant contributors to it. Inequality is another example: excessive CEO pay in advanced countries, though a worrisome problem, is hardly relevant to the least-developed countries. Although industrialization will likely increase inequality in those countries (as per the well-known Kuznets curve, which often describes the relationship between economic growth and environmental quality)—SDG target 9.2 *requires* countries to promote industrialization.

Simply scrapping the SDGs and starting from scratch would be politically impossible. Even if that were a way forward, the world would take years to come up with a completely new set of goals and targets. Instead, the United Nations should prioritize choosing a short list of the existing goals and targets that are achievable by 2030, easily measurable, attractive across the political spectrum, affordable, and built on what is known to work. The focus should be, as it mostly was for the MDGs, on attacking sickness and malnutrition and promoting education in the poorest countries. Investments in those areas have high rates of social return and the potential to save lives and drastically improve the living standards for millions of people in countries that cannot finance those investments themselves.<sup>5</sup>

In addition to focusing on a short list of achievable goals and targets, determining how to actually implement them will be important. Ample research into effectively delivering development assistance exists, and outlining principles to inform both donors and recipients would be helpful. Furthermore, thinking about implementation also forces realism about what goals and targets are achievable and where the benefit-cost ratio will be the highest.

One principle is to avoid saddling low-income countries with more debt. It is fashionable these days to talk about crowding-in private sector money by having the public sector take on the riskier tranche of debt, with private sector creditors taking on the less risky tranche. Although that approach can make sense for middle- and high-income countries, low-income countries' ability to repay even senior creditors will always be in question given their vulnerability to commodity price and interest-rate swings.

A second principle is to be conscious of local institutions and actors. Ultimately, countries will not implement development policies if they are seen as undermining influential groups in society. For example, much basic learning could be moved online, reducing or eliminating the need for teachers. However, such a move would

inevitably prompt intense opposition from teachers concerned about their jobs. Training teachers to use digital tools and incorporate them into the implementation of digital learning is a more viable strategy.

A third principle is to focus on things that countries cannot do for themselves. Many experts often criticize traditional food aid because it can crowd out local farmers. A better approach is to develop new, hardier varieties of staple food crops. Such research capacity largely exists in the advanced countries, but little incentive to research crops suited to areas such as sub-Saharan Africa exist because the commercial returns are too low. Financing that research would be a cost-effective way of improving food security that would benefit both local farmers and consumers.

Declaring victory on the SDGs will be difficult given how far so many of them are from completion with only seven years to go. The risk is that as 2030 draws closer, the United Nations will simply kick the can down the road, postponing the completion date to 2040 or 2050. A better approach is to focus on ten or so targets that are realistic and affordable, and which, if achieved, would make a real difference to the world's poorest people. Principles that reflect lessons learned about the best ways to implement development assistance should accompany those focused goals. The alternative is that many people around the world will continue to lose faith in the ability of the United Nations and national governments around the world to deal with the world's problems, with all that that implies for the humanity's future.

## Endnotes

1. United Nations, "Sustainable Development Goals Progress Chart 2022," UN Statistics Division, Department of Economic and Social Affairs, <http://unstats.un.org/sdgs/report/2022/Progress-Chart-2022.pdf>. The Sustainable Goals progress chart for 2022 shows progress for thirty-six of those targets, twenty of which the world is either far or extremely far from achieving; for sub-Saharan Africa, the figure is twenty-six out of thirty-three. Those SDGs that are a moderate distance from the target are seeing limited or no progress or a deteriorating trend.
2. United Nations, "Sustainable Development Goals Progress Chart 2022."
3. United Nations, "Special Edition: Progress Toward the Sustainable Development Goals," report of the secretary-general to the High-Level Political Forum on Sustainable Development, UN and Economic Security Council, E/2019/68, May 8, 2019, <http://unstats.un.org/sdgs/files/report/2019/secretary-general-sdg-report-2019--EN.pdf>.
4. The SDGs were heavily criticized for that overbreadth at the time. See "The 169 Commandments," *The Economist*, May 26, 2015, <http://economist.com/leaders/2015/03/26/the-169-commandments>.
5. See "Progress Toward the Sustainable Development Goals," report of the secretary-general, supplementary information, UN Economic and Security Council, E/2022/55, 28, [http://unstats.un.org/sdgs/files/report/2022/E\\_2022\\_55\\_Statistical\\_Annex\\_I\\_and\\_II.pdf](http://unstats.un.org/sdgs/files/report/2022/E_2022_55_Statistical_Annex_I_and_II.pdf). A good example of a target that meets those criteria is 3.1: "By 2030, end preventable deaths of newborns and children under 5 years of age, with all countries aiming to reduce neonatal mortality to at least as low as 12 per 1,000 live births and under-5 mortality to at least as low as 25 per 1,000 live births." Although ending *all* preventable deaths is not possible, desirable though that would be, reducing under-five mortality to twenty-five per one thousand (to take just one of the measures) is a realistic target. Under-five mortality was forty-two deaths per one thousand in 2015 and thirty-seven deaths per one thousand in 2020. With a push, the world could get to twenty-five, especially if the focus is on the minority of countries that account for most of those deaths. Furthermore, cheap and effective ways to reduce mortality can be quite straightforward to implement (e.g. promoting better sanitation in institutions where women give birth.) See Copenhagen Consensus Center, "Maternal and Newborn Health," *Halftime for the Sustainable Development Goals 2016–2030*, <http://copenhagenconsensus.com/halftime-sustainable-development-goals-2016-2030/maternal-and-newborn-health>.



Background Memo

*A Larger World Bank Group for a More Integrated Sustainable Development Agenda: Constraints and the Way Out*

Council of Councils Annual Conference  
May 7–9, 2023  
Council on Foreign Relations, New York, NY

**Ye Yu**, Shanghai Institutes for International Studies

The 2030 UN Agenda for Sustainable Development called on multilateral development banks (MDBs) to undergo a paradigm shift to play a critical role in mobilizing the private sector for global development. In this context, the World Bank achieved a historic capital increase in 2018 for its International Bank for Reconstruction and Development (IBRD), which serves middle-income countries, and its International Finance Corporation (IFC), which serves the private sector. The World Bank also initiated market-oriented financing for its International Development Association (IDA). In short, the World Bank is expected to become bigger and better and elicit more development results.

However, the 2018 capital increase was only designed for a mid-scale crisis that would occur once in a decade. The multiple global crises today have undermined the 2030 Agenda's sustainable development goals (SDGs) and significantly exposed the World Bank's scale limits. With global interest rate hikes, the developing world is facing higher financing costs and greater growth challenges. In response, the new Group of Twenty (G20) agenda is enhancing the capacities of the World Bank and other MDBs. For example, the Indian G20 presidency this year established a dedicated MDB expert panel. At the end of 2022, the World Bank itself also released a new Evolution Roadmap (hereinafter referred to as the roadmap), initiating a new round of debate on its vision, mission, and financial and operational models.<sup>1</sup>

**World Bank Supply-Side Constraints**

The roadmap states that the World Bank is exhausting its crisis buffer and will once again face a financial cliff in 2024. Yet a meaningful resource expansion for the World Bank faces various constraints.

First, market discipline has limited the Capital Adequacy Framework reform efforts. The framework, submitted to the G20 finance ministers by an independent panel, recommends how several hundred billion dollars in additional lending can be mobilized. This increase has been a G20 priority since at least the global financial crisis in 2008. In line with the framework, the IBRD's equity-to-loans ratio was already lowered from 37 percent in 2008 to 20 percent in 2014, and it is reported to be further reduced to 19 percent under the roadmap.

However, this move can only add about \$5 billion of new World Bank resources annually. Moreover, tightening financial markets do not leave much room for such measures.

Second, capital increases face political constraints. On the one hand, major donors are all facing growing domestic financial expenditure pressure, making it politically difficult to increase foreign aid. The United Kingdom was once the largest donor to IDA, but it has cut multilateral aid significantly since Brexit. The Russia-Ukraine conflict and the energy crisis it triggered have also severely damaged European economic growth, reducing EU countries' willingness and ability to increase their contributions. As for the United States, the Joe Biden administration filled the gap left by the United Kingdom by increasing U.S. contributions to the twentieth IDA replenishment cycle in 2021. It remains to be seen whether the United States will continue to increase its support as it continues to confront inflationary pressures and Congressional Republicans scrutinize its aid budget. Emerging donors also face many challenges at home. However, the incentive mismatch for a new general IBRD capital increase is a more fundamental obstacle for the World Bank's resource mobilization, as the established donors are concerned about the dilution of their voting power. This option has so far remained off any official agenda.

Third, traditional donor countries are increasingly using non-core funding mechanisms, harming the unity of the World Bank. According to the Organization for Economic Cooperation and Development (OECD), despite consolidating the funding structures of the World Bank and the United Nations around 2018 and 2019, shareholders continue to call for new trust funds to push for their own foreign policy priorities. After the COVID-19 pandemic broke out, the G20 launched the World Bank hosted Financial Intermediary for Pandemic Prevention, Preparedness, and Response. Countries are also calling on the IBRD to promote new climate financing funds. However, this measure not only involves a complicated division of labor and coordination with the UN Framework Convention on Climate Change (UNFCCC), but also exacerbates the fragmentation of the World Bank.

### **Intensified Demand-Side Competition**

Because both fiscal and market-oriented measures cannot promise the substantial new resources of an MDB, many experts are raising serious concerns about the intensified competition in the World Bank's resource allocations.

The first such area of competition is between World Bank climate financing and poverty reduction. The Biden administration has pledged to double its annual public climate financing to developing countries by 2024 to over \$11 billion, and direct MDBs to set ambitious climate finance targets. The International Monetary Fund (IMF) also launched a new Resilience and Sustainability Trust, while incorporating climate change considerations into its mainstream policies. However, the push by the United States and others for the World Bank to add sustainability as its third mission alongside poverty reduction and shared prosperity has caused grave concerns among African and other developing countries. Chinese scholars are also concerned that this move could deflect from the most urgent needs of developing countries.

The second area of competition for World Bank resources is between middle-income countries and low-income countries. The World Bank's climate ambition will lead to a shift of resources to middle-income countries. The roadmap pointed out that "while the 2018 capital increase for IBRD and IFC interpreted 'serving all clients' as reorienting lending towards [low-income countries], the need to make progress on global challenges

would require a rebalancing of this strategy to identify opportunities to better respond to [middle-income country] clients.” China and other emerging countries have always advocated that the World Bank should continue to maintain cooperation with middle-income countries. However, the World Bank itself has warned that the pandemic could push more than one hundred million people back to extreme poverty at a time when low-income countries are facing rising debt risks. If the World Bank shifts resources toward middle-income countries, it will run against the spirit of international development equity.

The third area of competition is for World Bank resources between crisis-oriented needs and development needs. In a globalized world, regional and global financial crises have become more frequent, as evidenced by the Asian financial crisis in 1997 and the global financial crisis in 2008. The frequency of geopolitical conflicts and health and humanitarian crises has also increased. The World Bank and MDBs are required to do more in addressing global challenges and to make up for the shortcomings of the IMF and the global financial safety net. Those shortcomings have seriously affected the developing countries’ development needs, such as infrastructure construction.

Additionally, with an eye to the future, the world should pay more attention to the effects of geopolitical conflicts on the World Bank’s resource allocation for low-income countries. Two examples come to mind. First, the intensified strategic competition between the United States and China has spread to the World Bank. A Boston University study found that countries closely tied to the Belt and Road Initiative get fewer resources when applying for IMF assistance.<sup>2</sup> Second, Ukraine’s postwar reconstruction could conflict with international development in the next five to ten years. Since the outbreak of the Russia-Ukraine conflict, both MDBs and the IMF have broken their own policy restrictions to provide unconventional support to Ukraine. According to *devex*, the World Bank promised to provide \$3 billion for Ukraine, \$1 billion coming from IDA resources, which are intended for the lowest-income nations.<sup>3</sup> The World Bank has also mobilized a total of \$20.6 billion from donors for Ukraine through trust funds as of March 9, 2023. On March 31, 2023, the IMF board approved a new \$11.6 billion loan program as part of the \$115 billion rescue plan aimed at helping Ukraine overcome wartime economic difficulties, including helping it to repay its foreign debts and maintain its debt sustainability. On March 23, 2023, the World Bank, in conjunction with the United Nations, the European Union, and the Ukrainian government, assessed that rebuilding Ukraine would take ten years and cost up to \$411 billion.

## **Recommendations**

- *The World Bank should utilize all options to substantially increase its financing.* Over the next few years, financial reform measures can help alleviate certain pressures, but in light of the demand gap, they will fall short. To meaningfully increase its ability to mobilize resources, the World Bank should expand the capital base of its core institutions, including supporting the IBRD’s capital increase and the IDA’s twenty-first round of capital increase. Amid mounting domestic budget pressure in major economies, the IMF should explore expanding Special Draw Rights, and transferring them to the World Bank and other MDBs. This move would be the most cost-effective way to boost resources for international financial institutions considering the current political and economic difficulties.
- *Major World Bank shareholders should protect the poorest against further marginalization as the bank faces more competitive demands.* The World Bank’s reform agenda should be put in the context of current setbacks to alleviating extreme poverty and worsening indebtedness in low-income countries. Major shareholders should increase cash contributions to the upcoming twenty-first IDA replenishment, which would enable

the World Bank to provide more concessional resources to low-income countries and help them manage the currency risks. This measure is vital to ensure that the G20's Common Framework for debt treatment of low-income countries moves forward more quickly, given that the World Bank insists on its preferred creditor status and refuses to participate in the process directly.

- *The World Bank should reframe climate change efforts as an integrated part of a host country's development and should consolidate the development finance system.* The World Bank's global climate agenda, which is primarily driven by donor countries, has caused broad concerns in the developing world. Traditional OECD donors have established numerous thematic vertical funds focusing on climate change and other global challenges. This effort is largely driven by incentives to demonstrate the additionality and ability to get results, but it also leads to a divided climate and development agenda and an increasingly fragmented development finance system, which is not in the interests of developing countries. China holds a more ambivalent view of climate and development and supports a climate financing strategy tailored to the host countries' own priorities and conditions. The World Bank should persuade its donors to focus on increasing its core capital, rather than setting up new climate financing facilities that further complicate its institutional structure and division of labor vis-à-vis the UNFCCC.
- *The World Bank should leverage its independent, orchestrating role in an increasingly divided world.* Trust between major World Bank shareholders has fallen to historical lows in the past few years. Simultaneously, their competition for influence at the bank has increased. The World Bank should take advantage of its autonomous fiscal space, partnership with the private sector, professional knowledge, and entrepreneurship in fostering whole-package deals in its complex agenda of international development, climate finance, and debt treatment, among others. The renewed leadership of the World Bank is a great opportunity for this shift to happen.

## Endnotes

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# COUNCIL OF COUNCILS

*An Initiative of the Council on Foreign Relations*



## Session Four *Revitalizing the World Trade Organization*



Background Memo

*Revitalizing the World Trade Organization*

Council of Councils Annual Conference  
May 7–9, 2023  
Council on Foreign Relations, New York, NY

**Seungjoo Lee**, East Asia Institute

Revitalizing the World Trade Organization (WTO) will build confidence in the global trading system. However, since the 2000s, many have criticized the WTO for its limited ability to establish rules and enforcement mechanisms for emerging trade issues. The root of the problem can be traced to a backlash to globalization.

Reframing globalization to reflect twenty-first century realities is the first step to addressing this issue. Globalization has yielded great achievements while at the same time exposing the limitations of the global economic order. It has wrought many benefits through expanding free trade and promoting economic integration, rapidly reducing border barriers and onerous regulatory environments in the process. In doing so, it has facilitated deep integration, which has been a decisive factor in improving the efficiency of production by geographically expanding global value chains.

However, the adverse effects of globalization based on deep integration are significant. At the domestic level, widening income inequality has exacerbated social conflict and political polarization. These changes have led to the weakening of the domestic political and institutional foundations of trade liberalization. Meanwhile, globalization has fractured the ideological underpinnings of the postwar global economic order of embedded liberalism, which was built on a balance between the expansion of free trade and the maintenance of domestic policy autonomy. Moreover, recent moves away from trade liberalization by the United States and other industrialized nations—the architects of the postwar global economic order—have been an unparalleled shock to that order.

Given the changes at both the domestic and international levels, restoring consensus on trade liberalization requires a two-pronged effort. First, it is necessary to rebuild a new ideological and institutional foundation for a consensus on globalization that reflects the realities of twenty-first century trade. A starting point for rebuilding the foundations of trade liberalization is to move away from the dichotomy of hyper-globalization and protectionism and move toward reglobalization.

Second, building inclusive cooperation mechanisms is essential. In addition to governmental actors, twenty-first-century trade requires the participation of nongovernmental actors, not only because they are the ones who implement multilateral agreements, but also because they best understand the gap between twenty-first

century trade realities and twentieth century rules. Governance that allows for more active participation of non-governmental actors in trade liberalization negotiations is crucial. This framework will both narrow the gap between rules and reality, and build trust in the implementation of agreements.

### **The WTO and Nonmarket Economies**

The WTO needs to de-politicize the issue of non-market economies (NMEs) as much as possible by encouraging them to transition to market economies while upholding the principles of inclusiveness and transparency. Market economies are countries that trade based on the principles of supply and demand with minimal government intervention. Non-market economies, on the other hand, are a threat to the free trade order because they rely on government intervention in the market to create significant market distortions, and because they tend to restrict trade and investment with foreign countries. According to the U.S. Department of Commerce, there are twelve nonmarket economies. The WTO needs to encourage those countries to transition to market economies by providing them with appropriate incentives. The transition to market economies could pave the way for further expansion of free trade—and, by extension, peace on a global scale.

The acceptance of nonmarket economies (NME) is politicized largely because it boils down to whether or not to recognize China as a market economy. The imperative is to depoliticize the issue as much as possible while facilitating the transition to market economies through more inclusive and transparent processes and procedures. To this end, WTO members should strengthen the working group that assists NMEs in their transition to market economies. This working group currently provides technical assistance on a range of issues, including trade policy, market access, and regulatory reform. In the future, this working group should conduct monitoring and periodic assessments of the transition to market economies and provide broader advice based on these assessments. These efforts will increase the transparency of the NMEs' transition and prevent politicization.

### **Emerging Issues and the WTO's Governance**

One of the obstacles to progress in WTO multilateral trade negotiations is the lack of transparency in the decision-making process. The WTO's consensus-driven decision-making is based on multilateralism norms and has been effective in imparting democratic legitimacy, but the limited publicly available information about multilateral negotiations is a problem. The WTO can strengthen trust among its members by increasing the transparency of its decision-making and sharing information more proactively on critical issues. This move would be a fundamental condition for addressing a range of issues facing the organization, including multilateral trade negotiations and dispute settlement mechanisms.

The protracted problems surrounding the appointment of judges are not only a challenge for the dispute settlement mechanism—one of the core pillars of WTO governance—but also a crisis for the organization. To address these issues, the WTO should undertake an analysis of the problem's root causes, including the functioning of its Appellate Body.

Meanwhile, the WTO needs to identify the vulnerabilities of global value chain-based trade and build governance mechanism to resolve them. The importance of global value chains in international trade is growing. However, the outbreak of COVID-19 in 2020 exposed the vulnerability of supply chains, which are at the heart of twenty-first-century trade. Structural vulnerabilities in supply chains, especially those designed and

operated with a focus on efficiency, have led to both supply chain disruptions and to the destabilization of the global trade order. Structural vulnerabilities in supply chains are a systemic problem that cannot be solved by any one country, but amid rising nationalism and protectionism, most countries have prioritized shoring up their own vulnerabilities. The dilemma is that individual country-level efforts to manage supply chain vulnerabilities can spill over to other countries, further exacerbating supply chain instability.

Given these challenges, the WTO should devote significant resources to stabilizing the global trade order by improving the structural vulnerabilities of supply chains. Establishing an early warning system for supply chains at the global level is far more effective than individual country's efforts. Over the next few years, the WTO should build the governance needed to monitor supply chains; over the next decade, it should work toward building an early warning system.

In addition, the WTO should further support capacity-building in developing countries. The conflict between developed and developing countries in the WTO has emerged as a new rift over multilateral trade negotiations. Developing countries are pushing for special treatment and demanding a fairer trade order. Resolving this conflict will require empowering developing countries. Such efforts will not only expand the common interests between developed and developing countries, but also contribute to the stability of the global trade order.

### **Economic Security and the Future of Free Trade**

National security can be an exception to the non-discrimination principle, but its application should be kept to a minimum. In practice, using national security to further national mercantilist goals is a problem. Given that national security is often ambiguous, states should keep national security claims to a minimum.

In particular, in the context of U.S.-China strategic competition and the global spread of COVID-19, the national security exception should be used carefully. Many countries have recognized supply chain disruptions as a national security issue and an economic efficiency issue. To mitigate their vulnerability, major countries have sought to secure their trade and high tech industries.

Given these measures, preventing over-securitization is vital. Indeed, in the name of national security, many countries have sought to reduce their external dependence by pursuing greater technological and economic sovereignty. In doing so, many of them have mobilized protectionist policies to protect and foster domestic industries. Excessive securitization can undermine the rules-based order, requiring an active response from the WTO.

To prevent over-securitization, the WTO should establish transparent and predictable standards on the conditions under which national security provisions can be triggered. Specifically, the WTO should clearly set out what measures can be recognized as national security exceptions and establish mechanisms to assess whether they are proportionate to the extent of the threat to national security.



Background Memo

## *China and the WTO: The Possible Return to Liberalization*

Council of Councils Annual Conference

May 7–9, 2023

Council on Foreign Relations, New York, NY

**Wang Zhongmei**, Shanghai Institutes for International Studies

### **The Challenges of Multilateral Trade Governance**

Since 2008, the World Trade Organization (WTO) has stagnated. Only a small part of the broader Doha Development Agenda (also known as the Doha Round) yielded results, producing the Trade Facilitation Agreement and an expanded Information Technology Agreement. The United States has dealt a serious blow to the multilateral trading system by obstructing the selection of WTO Appellate Body members since 2019, thus hobbling the trade dispute settlement system. Although WTO members including the European Union and China have established the Multi-Party Interim Appeal Arbitration Arrangement, resolving most disputes is still not possible, which has created a situation wherein members can only “appeal into the void,” with no judges able to hear appeals. Simultaneously, over the past few years unilateral trade measures and trade wars between WTO members have been increasingly arbitrary, chaotic, and hegemonic.

Ever since 2000, free trade agreements (FTAs) between two or more nations, such as the Trans-Pacific Partnership, the Transatlantic Trade and Investment Partnership, and the Trade in Services Agreement, look more attractive than the WTO’s Doha Round. Some even consider that these plurilateral arrangements could replace the WTO as the main force in global trade governance. The actual result is that FTA benefits have fostered a bloc-segmented trade landscape, which has intensified competition between blocs and discriminates against those outside. As far as eliminating cross-border costs and promoting market integration are concerned, FTAs can never replace the WTO. Furthermore, U.S.-China decoupling and strategic competition will cause a high level of uncertainty and geopolitical risk in global trade—uncertainty that can only be eased within a multilateral framework. As a result, the WTO could embrace a higher stage after experiencing a downward spiral.

### **Recent Progress at the WTO**

To address the significant differences among WTO members exposed by the Doha Round, countries have pushed forward with issue-specific plurilateral agreements, which have become the norm rather than the exception. The eleventh WTO ministerial joint statement officially launched negotiations on e-commerce, in-

vestment facilitation for development, services, and other issues. These negotiations, known as the joint statement initiatives (JSIs), are often referred to as open plurilateral agreements, with other WTO members welcome to join the negotiations at any time. JSIs on investment facilitation and services also state that they will implement negotiated results based on the principle of most-favored-nation treatment, which means that non-members can also benefit.

In December 2021, sixty-seven WTO members adopted a declaration announcing the successful conclusion of negotiations on services, which abolished cumbersome domestic procedures that hindered foreign investment in sectors such as transportation, logistics, finance, and tourism. As of the end of 2022, fifty-five WTO members, including the United States, China, and the European Union ratified the agreement. As for the negotiation on investment facilitation, which is also being pushed forward plurilaterally, members plan to finalize the agreement text for negotiations by mid-2023.

Multilateral negotiations are more difficult than plurilateral negotiations. In June 2022, however, the twelfth WTO Ministerial Conference reached an unprecedented package of agreements. Although several agreements avoided sensitive issues, some schedules of commitments have nevertheless been reached on a final plan. Among them, the Agreement on Fisheries Subsidies was the first multilateral agreement at the WTO in nine years. This agreement establishes rules prohibiting subsidies for illegal, unregulated, and unreported fishing activities, but members are still unable to reach agreement on curbing subsidies that boost overfishing and cause overcapacity of fishing fleets. To facilitate further negotiations, the agreement stipulates that unless WTO members reach consensus to expand its scope to include these other subsidies, it will expire in four years. The temporary compromise is designed to promote more substantive constraints, but whether this step-by-step approach is effective remains to be seen.

The willingness of major members to support the WTO is worth noting. When put in perspective, the United States' attitude on a series of WTO issues, especially the dispute settlement body, can be seen essentially as challenging the jurisdiction of multilateral institutions over specific trade matters. This also includes special and differential treatment (SDT) provisions, which give developing countries special rights. The United States simply wants to see the final identification of developing countries, the granting of SDT provisions, and recognition of market economy status returned to each member's unilateral judgment: this route is more convenient for the United States, a major importing market, allowing it to take unilateral measures and coerce its trading partners. The United States' criticism of SDT and the dispute settlement mechanism cannot conceal its actual intention to obstruct and frustrate the promotion of the multilateral process.

### **China's Current Stance**

At an October 21 press conference for the eighth review of China's trade policies and practices, Wang Shouwen, the Chinese vice minister of commerce and deputy international trade representative, emphasized that China is a follower and supporter of WTO rules. This is evident in many facets of Chinese WTO commitments. The Chinese central government cleared more than 2,000 laws, regulations, and departmental rules to align with WTO rules, and local governments cleared more 190,000 local policies and regulations. China's overall level of import tariffs only stands at 7.4 percent, which is lower than the average level of developing members, and close to the level of WTO developed-economy members. The Chinese services industry has opened up nearly 120 of its sub-sectors, above and beyond the 100 called for in China's accession commitments. No WTO complainant has ever filed a retaliation against China for refusing to accept a WTO dispute

resolution. This record should sufficiently demonstrate that over the past twenty years, China has fully implemented and abided by WTO rules.

At the October 2020 WTO General Council Meeting, Chinese Trade Representative Zhang Xiangchen specifically pointed out that according to the agreement on its accession to the WTO, China only retains fourteen specific SDT clauses, accounting for just 9 percent of all the 155 SDT clauses. Among these fourteen clauses, six are obligations waivers that developed countries should traditionally perform, such as providing documents in the official WTO languages upon request, and the other eight are truly so-called priorities, such as the relatively high tariffs on certain products. Zhang clearly stated that China has always been restrained in using SDT clauses, is well aware of its responsibilities as a major trading country, and has made contributions according to its actual capabilities with full knowledge of the situation on the ground.

The Doha Round was the first multilateral negotiation that China participated in, and the past two decades have witnessed China's growth from a cautious newcomer to a major WTO participant. China has taken a consistent, basic stance—namely, “not changing the basic principles of the WTO,” “putting development at the core” of its considerations, and “maintaining the role of the WTO as a main channel.” It has been particularly firm in responding to the demands of WTO developing country members. China is a participant in the Trade Facilitation Agreement and Information Technology Agreement negotiations; it has also participated in almost all plurilateral negotiations (except for the Fossil Fuel Subsidy Reform initiative), and it has contributed substantially to the investment facilitation and Plastic Pollution and Environmentally Sustainable Plastic Trade negotiations.

At the WTO Mini-Ministerial Conference in Davos in January 2023, Wang Shouwen unequivocally stated China's four concerns and priorities for the WTO. The first is to promote the reform of the dispute settlement mechanism—preserving core features such as neutrality, enforceability, and two-tiered adjudication—with the aim of installing a complete and well-functioning mechanism by 2024. The second is to conclude the investment facilitation negotiations in the first half of 2023 and end e-commerce negotiations within the year so that WTO rules can keep pace with the times. The third is for the WTO to respond to climate change through trade and investment liberalization, and to oppose trade restrictions and subsidy competition. And the fourth is to solve the problem of excessively subsidized agriculture and the distortions it brings to international food prices, and to help deal with the global food crisis. Obviously, these concerns are focused on the most worrying differences and contradictions at present, and China hopes to boost cooperation and reach settlement through multilateral resolutions as soon as possible.

## **Recommendations**

- Rebuilding the confidence of all WTO members is crucial. To do this, the WTO should make substantive progress in two aspects. WTO members should reach agreement on reforming the dispute settlement mechanism as soon as possible. Members also should negotiate the next stage of multilateral issues such as fisheries subsidies or promoting the expansion of the scope of plurilateral agreements.
- Achieving the abovementioned breakthroughs necessitates reforming the existing WTO decision-making mechanisms. Although the WTO should still adhere to the principle of decisions by consensus, weighted voting can nevertheless be used as an exception to this principle. Weighted voting should only be used when all members have been unable to reach consensus on major decisions related to urgent issues or other relevant issues after a considerable period of negotiation. When making significant decisions

through weighted voting, the concerns of the minority of members raising objections should be heard and respected.

- Disputing settlement reform should be directed toward speediness, efficiency, simplicity, low-cost, and attainability. More means of facilitation could be introduced, such as online arbitration tribunals and online document disclosure. The scope of “customary rules of interpretation of public international law” should be clarified, which the Appellate Body has been directed to in the past. The Appellate Body could be expanded to reduce workloads and promote efficiency; however, it still requires stable composition and consistent judgment.
- SDT reform should proceed with the following aims: It should avoid evolving into a provision that only applies to the least developed members, while still retaining and upgrading specific SDT mechanisms applicable to the least developed members. It should incorporate design-flexible SDT tools suitable for every trading sector. It should avoid grading based on linear criteria such as per capita income or trade volume, and it should encourage voluntary graduation. It should achieve development-friendly coordination between the WTO and international financial institutions. And finally, it should ensure that SDT provisions provide developing members with the necessary means to leverage trade liberalization.
- A trade coordination mechanism for emergencies should be established under the WTO framework. This mechanism could help alleviate the energy and food crises caused by the COVID-19 pandemic, the Russia-Ukraine conflict, inflation, and other factors.
- Under the premise of adhering to core trade negotiations, expanding the scope of WTO issues is also necessary. In the past decade, a large number of new issues have emerged, including supply chain security, digital economy, investment measures, green subsidy competition, research and development support, technical standards, artificial intelligence, environmental standards, labor standards, anti-corruption, and anti-bribery. All these new issues could be included in the WTO framework. Even if they can only be promoted in a plurilateral way, the inclusivity of the rules framework under the WTO will still exceed that of the current major alliance camps, thus being more beneficial to global trade.