# 1NC

## Off

### 1NC – T “Antitrust Law”

#### Antitrust laws are enforced by the DOJ and FTC – plan has the FMC enforce laws.

DOJ N.D. “Business Resources”. https://www.justice.gov/atr/business-resources

The antitrust laws are enforced by both the Antitrust Division and the FTC’s Bureau of Competition. All criminal antitrust enforcement is handled by the Antitrust Division.

#### Vote neg for limits and ground – allowing non DOJ and FTC enforcement opens the floodgates to areas with designated expert regulators like airlines, telecom, banking that explode the topic and avoid core neg prep.

### 1NC – Adv CP

#### The United States federal government should:

* apply competition regulations to ban global ocean carriers from colluding to set unfair prices and service terms;
* adopt a naval strategy of active suasion;
* substantially increase domestic shipbuilding capacity and investment in the commercial naval industry;
* provide a port security grant program to the highest amount for large scale security upgrades to harden critical maritime infrastructure and supply;
* fully staff and fund the CBP and port staff until supply chain bottlenecks are eliminated.

#### FMC solves the case without using the FTC.

Szakonyi, 21 – JOC Executive Editor

(Mark Szakonyi, "Biden endorses shipping reform, urges FMC to challenge alliances," JOC, https://www.joc.com/maritime-news/container-lines/biden-endorses-shipping-reform-urges-fmc-challenge-alliances\_20211118.html, 1-12-2022)//Neo

The Biden administration noted that although container lines enjoy antitrust immunity, the FMC can challenge alliances if they are found to violate the US Shipping Act by causing an unreasonable increase in transport costs or unreasonable decrease in service. The White House said the Department of Justice is ready to assist, noting that both agencies have been cooperating more as directed through a July 9 executive order. “Today a system of global alliances dominates global shipping where nine carriers that have been organized into three alliances control about 80 percent of the global shipping market and 95 percent on the critical east-west trade lanes,” the White House said. “Alliances only controlled 29 percent of the market as recently as 2011. This lack of competition leaves American businesses at the mercy of just three alliances.” During a July 11 press briefing, White House Press Secretary Jen Psaki said the alliances — highly integrated vessel-sharing agreements among the largest global carriers — have led to higher shipping costs through record container rates and higher storage fees, known as detention and demurrage in the industry. Alliance members, which handle approximately 90 percent of US imports from Asia, according to IHS Markit, compete with each other and are forbidden to market alliances together, as the agreements allow only operating cooperation. The FMC in 2016 allowed the creation of the alliances of THE and OCEAN, after allowing the 2M alliance to move forward in 2014. The alliances have allowed member container lines to pool their cargo to make better use of their vessels. They have also tempered container lines’ instincts to inject capacity to chase market share given that alliance deployment is agreed upon among alliance members. The halving of the 20 major east-west carriers, thanks to consolidation and one carrier’s collapse, has also strengthened carriers’ control of capacity. But skepticism about the alliances has been mounting, as shippers and industry watchers question whether they are still competitive in the current environment free of vessel overcapacity. The DOJ has long criticized the antitrust immunity enjoyed by carriers and has publicly raised concerns each time the FMC has allowed an alliance to take effect.

#### Port security grant program solves cyber resiliency.

Testimony of Christopher J. Connor, President and CEO American Association of Port Authorities, 1-19-22, U.S. House Committee on Homeland Security Subcommittee on Border Security, Facilitation, and Operations Assessing the State of America’s Seaports January 19, 2022

Maritime Cybersecurity

Another vulnerability compounded during the pandemic has been maritime cybersecurity. Cyber-attacks against maritime targets in the U.S. has increased a staggering 400% over the past year. As port staff shifted to working from their home networks, and cargo backups and a stalled cruise industry meant that ship systems remained on port networks for much longer than usual, opportunities grew. At the same time, our country relied even more heavily on the maritime supply and crippling strikes laid bare the efficacy of attacking critical infrastructure, providing even greater incentives to bad actors.

The pandemic revealed what was already a growing problem. The 4 largest shipping companies in the world have been hit by ransomware in the last 4 years. Through the proliferation of the Industrial Internet of Things, more and more ship and port systems are connected to each other or the internet. A critical attack on any of these systems could have devastating economic consequences or even lead to the loss of life. The maritime transportation system needs resources to harden their IT systems to prevent attacks and to respond appropriately when an attack does occur.

The Port Security Grant Program (PSGP) is the main method by which ports and related groups can make large scale security upgrades. PSGP was created shortly after 9/11 as Congress realized that ports – as critical infrastructure – were vulnerable to threats. In the ensuing years, PSGP funding has dwindled to a fourth of its highest appropriated amount and much of that funding does not go to public port authorities, as originally intended. While the nature of threats has changed since 2001 the magnitude of those threats has not. We ask Congress to return PSGP to its highest level and ensure that ports are the main recipient of PSGP award

#### Solves supply chain AND COVID/labor shortage is an alt cause.

Testimony of Christopher J. Connor, President and CEO American Association of Port Authorities, 1-19-22, U.S. House Committee on Homeland Security Subcommittee on Border Security, Facilitation, and Operations Assessing the State of America’s Seaports January 19, 2022

Ports are hubs of commerce. As such, a wide range of activities converge on the port. Ships arrive and depart, cargo is loaded and offloaded, passengers embark and disembark, trains and trucks move goods around the port and to and from destinations outside. All these elements must work together, or our supply chain will falter, putting millions of jobs and trillions of dollars of economic activity at risk. Because of this, ports are natural targets for those who wish to disrupt our way of life.

Over the past two years, as people shifted their spending from travel and dining out to ecommerce, the importance of a well-functioning supply chain was made even more evident. Between an explosion in Lebanon, a ship stuck in the Suez Canal, and cargo congestion here at home, the maritime transportation system has been in the news frequently and the world has seen the consequences of a breakdown in that system. The global pandemic not only highlighted the importance of our supply chain, but it also exposed the vulnerabilities and exacerbated existing problems. I am proud to say, however, that throughout the pandemic America’s seaports never closed and today they are moving more cargo than ever before. As we grapple with new, fast-spreading variants, we must continue to prioritize critical infrastructure – like ports – to make sure that issues like testing shortages don’t impact our ability to move goods.

As waterborne trade continues to grow, ports are eager to make the necessary upgrades to their facilities to alleviate some of our current challenges and make investments in the future. While traditional infrastructure is dominating the headlines, the importance of improving security at our maritime gateways must also be a focus of this Congress. It is important to note that while ports have a vested interest in secure cargo and passenger movement, it is the duty of the Federal Government to fund and staff customs inspection facilities. The brave men and women of our law enforcement agencies are vital partners in port security. We are grateful to them for their commitment throughout the challenges of this pandemic and we continue to advocate that they have the resources they need to carry out their missions.

Screening Staff Shortages

Even before the pandemic, shortages of Customs and Border (CBP) officers and agriculture specialists was a chronic problem at seaports of entry. CBP’s own Workplace Staffing Model shows a deficit of 1,700 officers. This deficit can have a significant impact on processing times, adding an additional bottleneck to already overloaded ports, and limiting our ability to keep up with long term growth in trade and travel.

As with everything else, the pandemic added another layer of complexity to cargo screening. Social distancing rules meant that only a limited number of officers could work in each processing facility at one time while quarantine protocols restricted swaths of officers from working if they had been exposed to the virus. CBP was also not immune from the pandemic’s deadly effects and, tragically, over 30 CBP officers lost their lives.

To help alleviate some of the screening congestion, officers were reassigned from cruise and airport screenings but with the resumption of cruising and foreign travel, coupled with increased levels of trade, we are concerned about processing capacity. With our major gateway ports full, shippers have looked to smaller ports as a “relief valve” of sorts. These ports have reported difficulties getting officer coverage when they need it most.

CBP also allowed ports to enter into reimbursable services agreements to pay for officer overtime. This was intended to be a temporary fix but is becoming the norm at more and more ports around the country. Last year one medium sized port in California paid over $1 million for overtime out of a budget of roughly $20 million. These overtime expenses represent a significant portion of our ports’ already tight budgets and limit their ability to make long-term capital investments. This also puts a strain on CBP officers. As you can imagine, consistently working 12-to-16-hour shifts leads to fatigue and increases in human error which leave our ports of entry more exposed to bad actors.

We ask Congress to fully staff CBP to ensure an effective workforce and efficient cargo movement.

### 1NC – FTC DA

#### The plan’s new scope trades-off with FTC’s ongoing outreach to globally coordinate investigations---that crushes cooperative controls of AI

Matthew Boswell 19, Commissioner of Competition of the Competition Bureau Canada; Laureen Kapin, Practiced Consumer Protection Law with the U.S. Federal Trade Commission, Molly Askin, Counsel for International Antitrust at the U.S. Federal Trade Commission’s Office of International Affairs, Fiona Schaeffer, Antitrust Partner at Milbank LLP, Maria Coppola, Counsel for International Antitrust at the U.S. Federal Trade Commission, Marcus Bezzi, Executive General Manager at the Australian Competition and Consumer Commission (ACCC), “FTC Hearing #11: The FTC’s Role in a Changing World,” 3/26/19, https://www.ftc.gov/news-events/events-calendar/ftc-hearing-11-competition-consumer-protection-21st-century

MR. BOSWELL: Oh, okay. Well, I'll go back to what has been a common theme, which is supporting the ongoing personal relationships between people around the world. You know, people move in and out of jobs. You have to keep those relationships, and it can be expensive. And it can be to certain outside parties hard to justify to expend those resources on having people attend, for example, ICN workshops so that they know people around the world, they're sharing best practices, we’re not reinventing the wheel. Somebody has come up with a good way to do something, we should have those relationships where we can learn it, but it costs money to invest and to always invest in relationships.

MS. KAPIN: Well, I want to thank everyone. I think we heard a recognition that we should recognize the value of infrastructure, some common protocols and definitions and best practices can also help us overcome the challenges for international cooperation. But first and foremost, what I heard echoed was the recognition that this human glue really is the stuff that lets us stick together and accomplish our common goals. So, Molly?

MS. ASKIN: I think one thing I've also heard is the importance of the networks that we have seen evolve over, if we’re looking at the past 25 years, either be founded in the first instance or have changed in their mission to really be able to be nimble enough to address some of these important issues and give agencies a forum for interaction that can facilitate both the tools and the relationships. So thank you all very much for participating. And we are now going to go into a 15- minute break and return for the next panel at 11:30. Thank you.

MS. KAPIN: Thank you.

CONSUMER PROTECTION AND PRIVACY ENFORCEMENT COOPERATION

MS. FEUER: Okay, it’s about one minute early, but we’d like to get started. I’m Stacy Feuer. I’m the Assistant Director for International Consumer Protection and Privacy here at the FTC’s Office of International Affairs. This entire morning we’ve heard about a number of very interesting enforcement developments and challenges all over the world. Now we’re going to take a deeper dive into enforcement cooperation in the area of consumer protection and privacy. One of the most interesting aspects of our work here at the FTC on international consumer protection and privacy matters is the very wide range of issues we cooperate on, everything from telemarketing scams to online subscription traps to cross-border data transfer mechanisms, and to other privacy law violations. Equally remarkable to me is the incredibly wide range of authorities that we cooperate. So, for example, we cooperate with not only consumer protection agencies but data protection authorities, criminal regulators, and sometimes telecommunications and financial regulators. Our panelists that we have here today represent these different strands of our enforcement cooperation activities. They will highlight the issues involved in some of these different cooperation strands, and I will introduce them individually as we move through this panel. I do want to remind you at the outset that we have comment cards available, and please do send up questions. We’ll try and be a little interactive and ask some of your questions during the panel and not just wait until the end. So please ask away. So we’ve segmented our panelists into mini- groups so as to better draw out some of the cooperation strands. I’ll turn first to James Dipple- Johnstone who is the Deputy Commissioner at the UK’s Information Commissioner’s Office and ask him, and then followed by Deputy Assistant Secretary Jim Sullivan from the Department of Commerce’s International Trade Administration for their thoughts about cooperation and particularly focusing on the privacy sphere. We are so pleased that you are both here. So, Commissioner Dipple-Johnstone, can you begin?

MR. DIPPLE-JOHNSTONE: Yes, and thank you, Stacy, and thank you to FTC colleagues for your invite and the opportunity to speak with you today. I’m looking forward to our discussion of these important issues, and it was interesting to hear the different perspectives from the previous panel. A little bit about the Information Commissioner’s Office first, given there’s a range of different types of organizations on the panel, in case it helps with my comments later on. With the implementation of the GDPR, which has already been referenced this morning, I’m pleased to hear, and the new equivalent legislation in the UK, the ICO has been through a significant growth process over the past 12 to 18 months. We’ve taken on new powers, and as has been mentioned this morning, as many other organizations, we’ve been through a capability growth over the past few months, which has begun to see us work more internationally and deal with more complex and challenging caseload. This reflects in part the importance the UK Government places on data protection and consumer protection, but also the seriousness of some of the recent scandals we’ve seen, for example, that involving Cambridge Analytica recently. In granting powers, the UK Parliament has gone further than many other EU legislatures to ensure that the ICO has both the funding through its funding regime to give us the financial resources, but also the new powers to do its work in the digital age. There was significant national debate in the UK about these new powers, many of which are actually quite intrusive and are more common in law enforcement agencies than in a traditional data protection authority and the balances in checks and balances being put in place to go with those powers through the UK’s Information Rights Tribunal who oversee our work and our individual case judgments. I couldn’t come here and talk to you without recognizing there’s quite a lot of difference within the ICO as well. As well as our data protection remit, we have a remit for access to information. So one part of the office is working very hard around keeping privacy concerns and how data can be safeguarded and secured and only disclosed where appropriate; another side of the office is hearing appeals about how to make public information more widely available. We have around 700 officers and new powers to seize equipment, search premises, examine algorithms in situ for bias to make sure that they are working effectively, and audit company systems and processes. We also have powers which were touched upon this morning as well, around the power to compel provision of information from wherever and whomever holds it, which is quite a wide remit for an office of our type. We deal with around 50,000 citizen complaints each year and undertake around 3,500 investigations across different parts of our office. And we cover both the commercial sector, but also the public and law enforcement sector. In many ways, as colleagues are, we're learning as we go with these powers and these new resources. And one of those key areas of learning has been that which has been touched upon this morning. And that’s the importance of working collaboratively with others internationally. Many of the most significant files on my desk -- and I have responsibility for the enforcement and investigation arms of the office -- in the last 12 months, we’ve engaged with 50 international colleagues on various different files. And most of the major cases we have on at the moment are involving international colleagues, either as joint investigations, seconding staff to and from other offices, or sharing information and intelligence about the work we're doing. As our citizens become more aware and concerned about the use of data and as the digital economy becomes the economy, people expect this kind of international engagement. And with this in mind, we value hugely the UK's positive relationship with its colleagues on this side of the Atlantic, the FTC, but also our colleagues in Canada who have been speaking this morning. We value the different networks we're involved in. There have been mention of some of those networks already, but in particularly GPEN, the Global Privacy Enforcement Network, but also those networks which involve looking at unsolicited communications, which continues to be a significant part of my office's work. We learn a huge amount from these relationships, as well as the sort of human glue that was described this morning, just the opportunity to discuss tactics, approaches, to understand how each other work is a real positive that comes out of that work and allows us to do our jobs more effectively. To support this, we have a number of legal gateways to share and receive information. These are backed by strict protections within UK domestic law, which bite both collectively on the organization but also the individual officials within that. They are backed by criminal sanctions, and nothing focuses the mind like those. In the course of our investigation, we could use one or any of MOUs, MLATs, and we’ve heard about the challenges with the time scales that MLATs take. Membership arrangements, such as GPEN or the International Conference of Data and Privacy Commissioner arrangements or, indeed, Convention 108. This very much depends on the exchange of information, what's involved, who it’s going to, who’s asked for it, and what we need to do our work. Of particular note are the DPA 2018, which is the Data Protection Act in the UK. That contains formal information gateways. That allows us to share information for law enforcement purposes or for regulatory purposes where there’s an overlap and there’s a public interest. Of relevance to the FTC in particular is Schedule 2 of the DPA. That sets out the conditions for public interest and information- sharing within the UK law. And I understand the UK has been working through these for a number of years from the 1998 act and now into the 2019 act and working with colleagues at the FTC through the SAFE WEB Act provisions and the criteria for sharing information there with foreign enforcers. And that's been a huge positive. Just in the short time I've been with the Office over the last two years, there have been a number of cases that we've been working on, on sharing information and understanding. And, of course, this goes alongside our EU work. We mustn’t forget that. We are a competent authority under the GDPR, the EU provisions for the one-stop-shop mechanism. And around a fifth of those cases in the mechanism over the past year have involved the UK as either a lead supervisory authority or a concerned supervisory authority. Many of the big issues we are grappling with is privacy authorities, algorithmic transparency, adtech, microtargeting and profiling of citizens, part of the bread and butter of those cases we're working through. And our ability to work with international colleagues, in particular the FTC, has been really helpful in us discharging our role, notably on the Ashley Madison file, but also on other confidential matters more recently, where we found the insight afforded by our bilateral arrangements with the FTC help us fill in the missing pieces. They help us make better investigations. We know that the FTC has helped us by using its SAFE WEB powers to obtain information for us, in particular with some of the -- I think you call them robocalls here, but unsolicited communications in the UK, and that information has been hugely beneficial in protecting UK citizens. And we hope the reciprocal has been helpful to the FTC and colleagues here. And I’m mindful of time, but in closing, I'd just like to say we're very keen in the ICO to continue to use these positive engagements and continue to build them, particularly as you come to look at the renewal of the SAFE WEB Act. Thank you. MS. FEUER: Thank you very much. Deputy Assistant Secretary Sullivan, how does the issue of privacy enforcement cooperation come within your purview at the Department of Commerce?

MR. SULLIVAN: So in my role, I'm in the International Trade Administration, which is one of the agencies at the Commerce Department, and one of the offices that I oversee is responsible -- they are the US Government Administrator for and our interagency lead on different privacy frameworks -- international privacy frameworks, including both privacy shield frameworks, the EU and US Privacy Shield and the Swiss-US Privacy Shield. We're also very actively engaged in promoting the expansion of the Asia-Pacific Economic Cooperation and Cross-Border Privacy Rule system, APEC CBPR as it’s called. And we work extremely closely with the FTC on those issues around the world as we see a growing number of countries grappling with privacy while trying to balance innovation at the same time, which as everyone here knows, I'm sure it's not always the easiest formula. So that's a quick summary of what we do at Commerce. I'll leave it at that for now.

MS. FEUER: Great, great. Well, it's interesting to hear you both speak about the importance of enforcement cooperation in the privacy area, James, for your agency on many, many individual files and Jim as the sort of overarching systemic systems for cross-border transfers. So I want to follow up with a few questions. So, James, sort of the elephant in the room, we've heard a lot this morning in the first panel about privacy as a "barrier" to regulatory enforcement cooperation. And I’m wondering what your view is of that statement or assertion and what kinds of tools do agencies need to cooperate effectively given some of these limitations and, of course, in privacy enforcement investigations?

MR. DIPPLE-JOHNSTONE: Yes, yes. And it's not something we've -- you know, which is uncommon to us. We get that call often. I mean, we want to be clear, we're not the “ministry of no.” But, actually, what’s really important in this space is to do that groundwork and that thinking about what information do you need, how is it going to be transmitted, how is it going to be secured, what purpose is it going to be used for. And we often find there are many avenues and routes to be able to share information. We also get the -- interesting when we ask for information, we sometimes get from colleagues internationally, we can't because of privacy. And, oh, that's an interesting concept. How do we work through that? We've often found there is a way through. Sometimes where these arrangements are being agreed internationally and where, for example, it was mentioned this morning about the challenge with the advent of the GDPR, IOSCO working with colleagues at the EDPB and needing to sort of tease through that, it can sometimes be tough to be the first going through that process, but once those processes are in place, people understand how they work, those relationships are built, that common understanding is built. Things do flow a lot quicker and a lot easier in subsequent cases. And so very much it’s that sort of keep talking, keep engaging. And, importantly, I've recently come back from an international conference working group, where one of the key challenges has been that with the scale and pace of change internationally with enforcement agencies and enforcement bodies, some of which, again, was referenced this morning, just keeping pace of who can do what where and with what data is really important. So if those international networks can really help their members understanding where the right levers are and how their respective national laws work, that can only be a good thing.

MS. FEUER: Thank you. Well, Secretary Sullivan, in your experience, how important has the issue of enforcement cooperation been with the foreign governments and stakeholders that you have negotiated these international data transfer mechanisms with, and how important are the powers that the FTC has in those discussions?

MR. SULLIVAN: So, again, I'm going to refer to the three frameworks that I cited just a moment ago. And both the enforcement power and the international cooperation authority granted to the FTC under the SAFE WEB Act are both integral to the functioning of those frameworks, I think. Without them, they would lack legitimacy or credibility. You have to have some teeth behind these frameworks so that folks know that companies are going to be held accountable for the pledges and the promises and commitments they're going to make to comply with the principles or the practices that they have pledged to comply with in accordance with these frameworks. I don't know how that would be possible without what we just cited to, both the powers to enforce but also to coordinate with other enforcement agencies cross-border.

MS. FEUER: Thanks. As a follow-up, I asked you about how important this is for foreign governments, but I'm wondering what you hear from your industry stakeholders here in the US.

MR. SULLIVAN: I don't want to generalize. We certainly hear a lot. I think there's a strong recognition among most of the stakeholders that we engage with, sort of along the lines of what I just said. I mean, first of all, what would be the incentive to comply with something that really didn't have any teeth? I think they know increasingly how important it is to align their practices with these frameworks, given a lot of the developments. We’ve seen recently, and it's I think -- they generally -- and I am generalizing -- they do want to see strong frameworks that are actually enforceable and, they do want to see, as I think James just alluded to, greater collaboration because that’s going to lead to more consistent best practices or principles and approaches to a lot of these issues as opposed to just this fragmented, diverse, ad hoc approach to a lot of these same dilemmas that we're all facing.

MS. FEUER: Thank you. I want to ask my fellow panelists, while we're talking about privacy, whether there was anything that they want to add in sort of response to what Commissioner Dibble-Johnstone and Secretary Sullivan were talking about. So does anyone want to -- it looks like Marie-Paule wants to hop in.

MS. BENASSI: Yes. What I would like to say is that we should make a difference between issues related to privacy and to the confidentiality of investigations. And very often, indeed, it is quite a common answer to refuse cooperation, to say, oh, no, we cannot share information because of problems of privacy. But in the European Union, first of all, I think we have solved this, and I think that our GDPR itself helps a lot to clarify that authorities can exchange information, including information which contains personal data. And so this enables, in principle, very seamless type of cooperation in the European Union, because for law enforcement purposes, we can exchange this information between authorities in one member state or in other member states. And this -- I think in this way, the GDPR is an enabler. And when we look into the implementation of the GDPR for international cooperation, we should also look at it in the same way as an abler and enabler, because if it is respected; then exchange of information for law enforcement purposes should be facilitated. And, for example, we are also doing adequacy decisions, for example, with some other countries in order to also create the seamless facilities, including for law enforcement purposes.

MS. FEUER: Thank you. Anyone else? Kurt.

MR. GRESENZ: So I agree with Marie-Paule's sentiments there. You know, the issue that we encountered at the SEC as a civil agency with administrative investigatory powers, while the Department of Justice was out in front with an umbrella agreement to facilitate cooperation in the criminal sphere under the public interest mechanism, which is something that James talked about at the beginning, it was less clear how that applies in the civil or administrative context. So the step that IOSCO took to negotiate what is the first administrative arrangement under the GDPR will enable the second step of what Marie-Paule talked about, which are transfers of personal data from the EU to jurisdictions and authorities outside the EU. And now with that process, as Jean-François in the earlier panel talked about, having been blessed by the European Data Protection Privacy Board, we in the security space are looking forward to the data protection authorities in the 28, possibly 27, EU members states adopting that and approving that and so it can be the standard with the securities authorities who are IOSCO members.

MS. FEUER: Thanks. So I want to shift us now from what has been a privacy-heavy conversation to more of a focus on consumer protection. Our second pair of panelists represent two of the different strands of the kind of consumer protection enforcement cooperation we do here. So to hear about the EU enforcement model, we'll have Marie-Paule Benassi from the European Commission’s DG Justice, and to hear about our cross-border work with our Canadian criminal counterparts, we'll hear from Jeff Thompson, Acting Superintendent in Charge of the RCMP's Canadian Anti- Fraud Centre. So, Marie-Paule, can you start us off?

MS. BENASSI: So thank you, Stacey and thank you for the FTC to invite me. So, first of all, I would like to remind you that the European Union is currently counting 28 member states, and it's very well known for being something very complicated, and I would like to try to break that myth. But unfortunately, I think, or fortunately for a better understanding of the complexity of the Union, I think that Brexit and the interest which this is bringing in the headlines is also maybe shedding some light on why it is so complicated. So we have an integration of EU-level and national laws, a model, and this is where I think it’s simple. It's based on a very simple principle. We have one EU law in a certain domain, and it tries to harmonize national laws using key high-level principles. What is not harmonized is how this law is implemented. So it is -- except in a very few cases, it is implemented nationally. It is enforced nationally, and we try to do this in a way which preserves the diversity of the enforcement model in the member states. And so in the area of consumer protection, it is how it works. And the European Commission for which I'm working has no direct enforcement power. It is the member states which have the enforcement powers. So when I speak of enforcement, it means enforcement of the law towards businesses and other possible subjects because the European Commission is in charge of checking that the member states are enforcing the laws correctly, but we are not directly involved to stamp out illegal practices. In the area of consumer protection, so we have a strong role. And this role has been strengthened in the recent past. What is our role? Our role is to facilitate the cooperation of the member states because this is a EU, I would say, a harmonized law, and we want it to be implemented in a consistent manner in all the member states. And to do this, the only solution is cooperation. So we have a long tradition of cooperation inside the European Union and now we are doing it via a law which is called the Consumer Protection Cooperation Regulation. This law is establishing the framework for cooperation. So we start by first saying even if the member states are very different, they should have similar type of powers, so investigative powers. For example, the power for mystery shopping, the power to request information on financial flows, the power to obscure illegal content online. Another thing, also, is the framework for cooperation. So we have two types of cooperation now in our new legislation. One is what we call the bilateral cooperation, the more traditional cooperation, where one member state asks -- requests enforcement cooperation from another member state. But now we have this new system which is E- level coordination. And there, the European Commission has a new role because we have a role of market surveillance. And from this role, we can ask the member states to check some practices that we think are likely to be illegal. And if the member states find that there is sufficient evidence to start an investigation, then the Commission is coordinating this investigation. We also have a new power in terms of intelligence I mentioned. And we are also doing coordination of priorities. So, in fact, the role which we have is quite strong. And the new model, which we are going to implement from January next year, in fact, is already functioning, maybe in a lighter way. And it's working. So we have in the past done some coordinated actions, which are concerning. For example, illegal practices by big companies operating at the level of the European Union. Today, we are publishing a press release on an action done in the field of car rental, for example. So with the authorities, we have been working together with the authorities to find -- to analyze bad practices of the five leaders of this sector, and we wrote a common position asking these companies to change their practices. They made commitments, and now we have been monitoring the commitments and concluding that finally these companies are implementing these commitments. This is a negotiated procedure, so this is another element I would like to stress. These EU-level actions are not based on strong enforcement means because they don't exist at the European level. They are based on a coordinated approach and the cooperation with the traders. If the traders refuse to cooperate, do not cooperate sufficiently, or do not follow their commitments, then what is going to happen is coordinated enforcement action by the member states. And we have just added something very recently which is a system of fining that can be applied for this kind of EU-level infringement and coordination of the fines. And this is a big -- it's not yet completely finalized, but it's going to be a big step forward because in certain member states, they don't even have a fining system for consumer offenses. So we are building the system. So for the future, what is -- what can we do? We can do international agreements. So there is a possibility on the basis of this framework to agree international cooperation agreements with certain countries. And the framework which I've described can be applied also with the said countries to the extent possible, of course, depending on the type of base laws that exist in the member states. And what I could say is that we would like to start discussing on the basis of this new regulation with the FTC, if we can progress such an agreement. Why an agreement would be necessary? Because it's important that the formal part is there. Because as we heard from various speakers, the formal part is an enabler also for an efficient cooperation. This system, however, has several challenges. One of the challenges, as I said, it’s based on negotiation with traders. So it doesn't work when there is fraud, fraudulent operators. This is really required to develop additional cooperation, for example, with police forces because in most of our EU member states, they don't have this possibility of going against fraudulent operators. They need the cooperation of police, so this is an area where we need to develop in the future. And then relation with competition, relation with data protection, these are the future avenues for our cooperation. Thank you.

MS. FEUER: Thank you very much, Marie- Paule. And that was the perfect segue to Jeff Thompson, who is from the RCMP's Canadian Anti-Fraud Centre. And, Jeff, maybe you can sort of talk us through a little bit about what some of the tools and challenges you face and we face in cooperating on US- Canada cross-border fraud matters.

MR. THOMPSON: Sure. Thank you, Stacy. It's a pleasure to be here today to talk about international cooperation and consumer protection. Since the start of my career, I've learned that cross- border fraud was an evolving criminal market that cannot be tackled by any one country alone and even more so today. Consumer Sentinel reporting shows more than 1.4 million reports were received in 2018, up from 433,000 in 2005. Similarly, the Canadian Anti- Fraud Centre data shows annual losses to fraud continues to increase, reaching 119 million in 2018, a 495 percent increase since 2005. So it's easy to say that mass marketing fraud and cross-border fraud continues to be a threat to the economic integrity of Canada and the US, furthermore, if you consider technology, voice-over- net protocols, social media, virtual currencies, money service businesses, and other key facilitators that continue to provide criminals and criminal organizations behind a scam opportunities to operate across multiple international jurisdictions. And as we heard this morning, while this is an evolving threat, there is good news. There are, indeed, existing strategies that do exist and tools that provide an effective approach to attack on this criminal market. In fact, as we heard this morning again, the history between Canada and the US is long. It dates back to 1997, when Former President Clinton and Prime Minister Chretien met at the first US Cross- Border Crime Forum. It was at this meeting that telemarketing fraud first got identified as a major Canada-US cross-border crime concern. And it also made a number of recommendations, including the establishment of a multiagency task force, the development of consumer reporting and information- sharing systems, enforcement actions, and better public education and prevention measures. Since then, both US and Canada cooperate to implement and refine a number of these strategies, and while all recommendations made are important, I'm going to focus my discussion on the existing multiagency task force, or in today's terms, strategic partnerships. This case and work that the partnerships have done showcase an effective enforcement approach. They highlight intelligence-led policing and integrated policing models, along with providing insight into some of the tools and approaches to consumer protection. So if we consider the cross- border fraud partnerships as an intelligence-led approach, what we see is a group of key stakeholders joining efforts to achieve a common enforcement objective, namely, reducing fraud. To give you a practical idea of this, I think back to some of my early meetings at the Toronto Strategic Partnership. I did not fully recognize or appreciate the significance of the discussions held around the table. Members from several different agencies and organizations discussed top reported scams, scam trends, top offenders, current investigations, and gaps and challenges in enforcement options. Oftentimes, this intelligence-led approach was started by members from the Federal Trade Commission or the Canadian Anti-Fraud Centre, bringing intelligence developed from their respective central databases, Consumer Sentinel and the Anti-Fraud Centre database. This dialogue helped identify the new and emerging scam trends and discussion around the key facilitators to the scams. It also helped to coordinate joint priority setting, identify lead agencies, investigative assistance, and actions required to complete the files, and in many cases helps with deconfliction amongst the agencies. Sharing information around the table was a key factor, and as long as there’s a willingness to share, there is a way to share. There is also a common trust and understanding amongst the partners to share information within the confines of law. Thus, the partnerships serve as an intelligence-led approach in as far as they create a platform to share and synthesize information from multiple perspectives. Turning now to consider the partnerships as an integrated policing approach, we begin to realize that criminals and criminal markets can be disrupted through civil, regulatory, or criminal investigations and that different agencies and different laws all play a role. If we dissect again the Toronto Partnership, we have a minimum of eight different organizations: the Federal Trade Commission, the Royal Canadian Mounted Police, the United States Postal Inspection Service, Toronto Police, the Ontario Provincial Police, the Ministry of Consumer and Government Services, the Competition Bureau of Canada, and the Ministry of Finance. The FTC alone has 70 different laws that it enforces. Who really knew that the Ministry of Consumer and Government Services enforces numerous consumer protection laws such as the Loan Brokers Act, which can be used to go after the advance-fee loan scammers? Or that, again, as we heard this morning, CASL legislation also has clauses that allow for foreign enforcement to request assistance from respective Canadian law enforcement partners? At the heart of an integrated policing model is a give-and-take approach. And in the US-Canada cross-border partnership context, this approach is formalized by MOUS. As recent as 2017, the Federal Trade Commission and the Royal Canadian Mounted Police formalized an MOU that identifies best efforts that participants can use to further the common interest of combating fraud. The language used highlights the foundation of information-sharing and cooperation. Participants shall share materials, provide assistance to obtain evidence, exchange and provide materials, coordinate enforcement, and meet at least once a year. So, again, if we take a practical view, the strategic partnership model against cross-border fraud uses intelligence-led and an integrated policing approach that allows investigators from Canada and the US to move beyond simply coming together to talk about cross-border fraud concerns to developing investigative plans that identify investigative steps and processes needed to gather that evidence. Each participant brings a range of tools that can be leveraged to ensure the effective cooperation. One such tool that we’ve heard plenty of today is the US SAFE WEB Act. From a Canadian-US perspective or from the Canadian perspective, I mean, it provides us an avenue to formally seek investigative assistance in the US from the FTC. It also formally acknowledges by name some of the regional partnerships that exist today. This act alone has assisted strategic partnerships in countless cases, at least 22 by my count since 2007, and as we’ve heard, a lot more. These cases have led to arrests -- civil arrest charges, civil forfeitures, and, most importantly, victim restitution, which in the Canadian context is often rare to see. This includes Operation Telephony, which involved more than 180 actions brought by the Federal Trade Commission, including actions in Canada and the US, and it also includes the Expense Management Case that we heard about in the last panel involving $2 million that was eventually turned over to the FTC for consumer redress. And while there's a history of success and continuing work and outcomes to look forward to, we know that the criminals adapt. Today's frauds typically involve solicitations coming from one country targeting consumers in another country and funds going to yet another one. Mass marketing fraud is truly a transnational crime. We know that in a number of cases, the criminals and criminal groups involved are deeply rooted in Canada and the US and that moreso today, the work being done by these partnerships exposes these international networks who are also providing each other an opportunity to leverage our international networks to tackle this problem collectively. And we’re already doing this to some extent. The International Mass Marketing Fraud Working Group is another example of how Canada and the US cooperation has extended beyond North America. As recently as March 7th, this group announced -- or the US Department of Justice announced the largest ever nationwide elder fraud sweep, and the International Mass Marketing Fraud Working Group played a role. At least eight different countries were engaged. At the same time, there are other challenges, such as the willingness of other countries to identify mass marketing fraud as a transnational threat, whereas in many cases fraud or financial crime is not a priority. And this even holds true today to some extent. The parties and law enforcement agencies are subject to change, and the ability of any one agency to solely lead a partnership can be impacted by this change. Albeit, there's still partnership models that work in which chairs to partnerships rotate and changing priorities are acknowledged. In May of 2018, the RMCP coordinated a national mass marketing fraud working group meeting whereby we acknowledged the changing nature of mass marketing fraud and sought to renew our efforts. We also sought input from key US stakeholders. The Federal Trade Commission and the United States Postal Inspection Service were at these meetings. And while work continues to renew this renewal, such as the emergence of a Pacific partnership to replace Project Emptor, there's still work to be done. So in concluding, there’s a long and successful history of Canada-US enforcement in consumer protection, and that demonstrates effective cooperation through integrated and intelligence-led approaches and that this continued cooperation is integral to combating this transnational crime today. Thank you.

MS. FEUER: Thank you very much, Jeff. So I think that we now have a couple of very interesting issues out on the table about consumer protection and enforcement cooperation, both the EU model of the CPC network and the FTC Canada model, which focuses on these seven strategic partnerships that exist in Canada. So I want to ask a few questions of our panelists, Marie-Paule and Jeff Thompson, and then I do want to turn back to Secretary Sullivan. But, first, Marie-Paule, I did want to ask you one thing. I know that the CPC network uses a technological tool to facilitate the cooperation among the 28 member agencies. I'm wondering your thoughts about how well that works and how it might work in a more multilateral context.

MS. BENASSI: Thank you, Stacy, for this. So, first of all, I think I would like to make two types of tools. One is the system which we use to network, and I would say this is based on technologies of collaborative websites. And we have been using them now since several years and we are quite confident that it is safe for exchanging information and including information on containing personal data, for example, on businesses or on witnesses, and also it can be adapted. But currently, the CPC system doesn't contain a lot of cases. So it's growing organically, I would say. And it's also very much used to exchange information, best practices, for example. In the future, we are building something which is going to be a case management system and it will contain several modules, including a module for our external [indiscernible]. So we are going to open this to various entities -- NGOs, entities. And so we are going to build doors, in fact, in such a way that the two systems can communicate, but without having [indiscernible] you know, for -- so that the stakeholders will only see their external areas. And I'm quite confident that we can build the same type of modules for international cooperation with our technology. But what I would like to say is that we are also developing technologies for online enforcement tools. And what we want is to create, for example, a system where we would have an internet lab that could be used by the various member states, and we are also building capacities of administration in the EU countries. We are developing training, and we think also that this kind of tools could benefit from pooling of expertise from various agencies, including in an international context.

MS. FEUER: Thank you. So I want to turn -- before I turn back to Jeff Thompson, I want to turn back to Secretary Sullivan and ask what are the tools that can be used to facilitate cooperation under the various cross-border mechanisms? And why are they important?

MR. SULLIVAN: So in terms of why they’re important, I mean, again, a lot of this is probably self-evident to those in this room, but the data explosion we've seen is only going to continue. And we now have these cross-border data flows that really do benefit stakeholders across our societies and our economies. So you’ve seen these cross-border data flows help enable consumers, for example, to access more and better services and products. They help our companies to increase the efficiency of operations and innovation, and they help nations in terms of their competitiveness and their ability to help create jobs and facilitate economic growth. So this is all great. The problem we're dealing with is that different counties now take very different approaches to how they regulate these data flows specifically on privacy. And so what I wanted to just touch on a bit was what we do, the Commerce Department, in conjunction and partnership with the FTC to deal with this issue, this dilemma. How do you continue to facilitate these cross-border data flows when you are dealing with countries that have all adopted varying approaches, legal regimes, or policy priorities. I touched on the three frameworks, and I just quickly wanted to go through some of the tools within those frameworks, if I could, which from our perspective are absolutely critical to digital trade because, again, right now, there is no single comprehensive binding multilateral approach governing these cross-border data flows. So you know, again, I'm repeating myself a bit but we have stakeholders that we meet with all the time coming in, telling us about this constantly shifting and evolving and rapidly accelerating policy landscape that they have to deal with. So in response to this challenge, one approach that we've taken, as I alluded to earlier, for example, is the APEC CBPR system. And it's basically a voluntary enforcement code of conduct based on internationally recognized data protection guidelines. It establishes principles for both governments and for businesses to follow to protect personal data and to allow the data flows between APEC economies. To join this system, an APEC economy has to designate a third party called an accountability agent. And that accountability agent is empowered to audit a company's privacy practices and take enforcement action as necessary in some instances, but if that accountability agent cannot do that, resolve a particular issue, an APEC economy, their domestic enforcement authority serves as a backstop for dispute resolution. And in the United States, the FTC is our designated regulator, obviously, and enforcement authority for the CBPR system. And they enforce the commitments that are made by the CBPR participating companies to comply with the principles that they have committed to comply with. I do want to note all CBPR participating economies also have to join the cross-border privacy enforcement arrangement, CPEA, to ensure cooperation and collaboration among their designated enforcement authorities. To date, if memory serves, I know the FTC has brought four enforcement actions against companies for making deceptive statements about their participation in CBPR, and it’s also used its authority under the SAFE WEB Act to enhance cooperation with other privacy and data protection regulators within APEC. So, again, as I noted at the outset, FTC enforcement and international cooperation are absolutely critical to the credibility, to the integrity, and the success of the CBPR system. There are currently eight economies in APEC of the 21 economies participating in the system: the US, Japan, Mexico, Canada, South Korea, Singapore, Australia, and Chinese Taipei. And the Philippines is currently working on joining the system as well. I want to underscore that if this system were to scale across APEC, the framework would help underpin over a trillion dollars in digital trade. So we regard that as a very big priority and, again, we cannot emphasize enough just how critical the FTC is to that framework. And it's also a similar dynamic with the EU. It's been, the FTC, extremely integral to the success of both privacy shield frameworks. We all know, and it’s been touched on, about a year ago, GDPR was put into effect in Europe. And like the predecessor directed before it, it imposes certain restrictions on the ability of companies to transfer certain data from Europe to other jurisdictions, so we have Privacy Shield. And, again, like CBPR, it's a voluntary enforceable mechanism that companies can use to promise certain protections for data transferred from Europe to the United States, and the FTC enforces those promises made by Privacy Shield-participating companies in its jurisdiction. Again, I talked about how big APEC was and how these data flows underpin trade there. The EU is actually the largest bilateral trade investment relationship with the US in the world. That, too, is valued at over a trillion dollars. And I know the Transatlantic economy accounts for about 46 percent of global GDP, about one-third of global goods trade, and the highest volume of cross-border data flows in the world. And the Privacy Shield program is absolutely key to underpinning this economic relationship. We have about 4,500 companies now participating in the program. They've all made these legally enforceable commitments to comply with the framework, and they range from startups and small businesses to Global 1000 and Fortune 500 companies across every sector, from manufacturing and services to agriculture and retail. And I do want to note that about 3,000 -- nearly 3,000 -- of those companies are actually SMEs, so it’s not just the big tech companies that we're talking about. So to help protect data against improper disclosure or misuse, the Commerce Department and the FTC do work together, and they move swiftly to ensure that participating businesses who join Privacy Shield and certify under Privacy Shield are complying with their obligations. And over the last two years, Commerce, for example, has implemented a buying arbitration mechanism and new processes to enhance compliance oversight and reduce false claims. And by the same token, the FTC has enforced companies’ Privacy Shield declarations and commitments by bringing several cases pursuant to Section 5 of the FTC Act, which prohibits unfair and deceptive acts. We also refer false claims participation in the program to the FTC, which have often resulted in FTC settlement agreements. And under those agreements, the FTC can obtain certain remedies such as remediation measures and compliance monitoring that are, I think, generally otherwise unavailable in an enforcement action. And to date, the FTC has brought about four false claims cases. So, again, as with CBPR and APEC, the FTC has been just an essential element in bridging the gap between the EU and the US approaches to privacy. And, again, I'll just end by saying you're not going to get buy-in legitimacy or credibility without that enforcement power and that collaboration and cooperation that we're all talking about today. So thank you.

MS. FEUER: Thank you very much. I want to turn back to Jeff for a minute. So everyone has done, I think, a really fantastic job of outlining the tools. And, Jeff, you talked about these partnerships, and I guess I'd like to know a little bit more about the partnerships in terms of their status today, whether you think that they kind of could be adapted for a more, I guess, global enforcement model and whether you have any ideas about how cross-border cooperation and consumer protection matters could be improved.

MR. THOMPSON: Sure. Thanks, Stacy. So, yeah, the status of the partnerships -- as I mentioned, the partnerships stem from a 1997 meeting. There were three partnerships created across Canada -- one in Vancouver, one in Toronto, Ontario, and one in Montreal, Quebec. At one point in time, we saw this increase to seven Canada-US cross-border partnerships, but that wasn't maintainable for a number of reasons, primarily being there wasn't a lot of enforcement work in Atlantic Canada and Saskatchewan, for instance. So, I mean, things changed. And, again, as I said, priorities change. So right now we have three partnerships, including the new Pacific partnership which replaced Project Emptor. The Montreal Canada project, Project Colt is also defunct currently, but I mentioned we're working on renewing these efforts and coordinating something there. So, right now, as it stands, there’s the Alberta Partnership and the Toronto Strategic Partnership, and the Montreal Partnership. As far as improvements go, one area for I think more global enforcement cooperation that we discuss a lot at the office is disruption. And by disruption, I'm not talking about actual enforcement action. I'm talking about cooperation with private sector partners, using the data that we capture in our central fraud databases to block, say, shut down foreign numbers, to get bank accounts blocked. In Canada, we're sharing information with banks and credit card providers to go after the subscription traps, the continuity schemes, the counterfeit sales of other goods online and nondelivery goods. So the information we house that there's other alternatives to enforcement, and those are some of the areas that need to be improved on internationally.

MS. FEUER: Thank you very much. I now turn to Kurt Gresenz, who is the Assistant Director at the SEC’s Office of International Affairs. And, Kurt, as we heard earlier from Jean-François Fortin, securities enforcement collaboration is truly global and truly impressive, I have to say. I'm interested in hearing more from your perspective to inform our thinking about the cooperation in the areas that fall within the FTC's jurisdiction.

MR. GRESENZ: Thank you, Stacey. Let me start out by giving the disclaimer I’m required to give, that these are my views, only my views, and not necessarily those of the Securities and Exchange Commission, its Commission, or its staff, which I like doing because that frees me up now to say what I would like to say, which hopefully follows what the SEC would say. Okay, so let me start out with building on some of the themes that have been talked about. One of the reasons, I think, that we have been successful in forging a pretty broad alliance of securities authorities around the world that are cooperating is by virtue of the fact that the IOSCO principles of securities regulation are part of what national economies are assessed against as part of the financial sector assessment program that is done by the IMF. So essentially when the IMF and team comes into a jurisdiction to grade you on your financial resiliency and financial regulation, they're going to look at the IOSCO principles. And the IOSCO principles say that your securities has to have certain minimum powers and also the ability to share information across borders for enforcement purposes. And I think that has been one of the key tools that has caused one of the things that Jean-François talked about from early adoption, say two dozen countries in 2002 under the MMOU to where we are now as 121, that it's an easy way to getting a failing grade by not being signed up to the MMOU. And national legislatures have, for the most part, made the amendments to their domestic law to enable them to meet the MMOU standards. So in the scale of cooperation, Jean- François talked about over 5,000 requests that were made under the MMOU last year. The SEC is, as you might expect, a big user of those, probably 600 to 800 of those were ours. So we have an incentive in that process working smoothly. And where the parallels are, I think, for me is when I talk to my colleagues at the FTC, we're talking about consumer protection. And the concept of investor protection is essentially the same concept. The investor is our consumer. And one of the focuses of our enforcement priorities is on the mom-and-pop investor, the retail investor who really is somebody that will benefit from an active securities authority acting in their stead. In the securities context, one of the things Jeff talked about was he mentioned you have people set up in one country, you have targeting of investors somewhere else and then you have sending the funds elsewhere. I would actually build on that. In an ICO case for example, the entities might be incorporated in two or three different jurisdictions. The investors might be targeted in the UK, Australia, and the US. They might be storing their documents in a fourth or fifth jurisdiction or in the cloud so it’s very difficult to, you know, figure out where those are to begin with. So those are the challenges, and building through those, and I think we've had a good discussion of the privacy challenges, but two things I want to mention that also came up in the earlier points is one is what I call regulatory arbitrage, which somebody called regulatory competition. Cooperation works very well, but we also have to be cognizant that there are competing policy concerns with how we approach our enforcement tasks. So for example, a sophisticated fraudster is going to have some basic awareness of what the regulatory scope is in a given jurisdiction. And these people may set up shop in particular places and do things in particular places for taking advantage of whatever the legal system is there, and often that legal system may be one that is less conducive to cross-border sharing. So then as we advance down the path of the investigation, either related to that or other things, regulators move at different speeds. They may have different approaches as to how they approach witnesses. Are we going to go let everybody know in advance? I will tell you that from an SEC investigative perspective, which I'm sure people around the room and at this table would share, that people acting in a manner that is entirely consistent with their own investigative processes and procedures, but that may be contrary to what somebody is doing elsewhere. Those are things that are going to almost always result in people wanting to control their own investigation, perhaps at the expense of greater coordination. And I think that's where, you know, discussion is certainly important. And I don't know if this is really privacy. Maybe this goes to confidentiality. Also, different authorities have different legal requirements when it comes to what types of information they have to disclose in a particular setting. So let's say that we transmit files to an authority who assigned assurances of confidentiality and then we read a newspaper report that talks about things that we disclosed on a confidential basis, and then we drill down and it turns out that, well, yes, they kept it confidential but not from a lawful request, and it might be a Freedom of Information Act request or something like that. So that’s obviously going to be something that maybe you don't anticipate on the front end, but it might chill information exchanges going forward. And then the case of the ambitious prosecutor, he or she who may leak to the press. I know that that’s always a source of great consternation, whether it's the SEC or DOJ or elsewhere, when you read confidential details that are unattributed by a source who’s not authorized to speak about something that you thought you transmitted in confidence. So I do want to talk about those. I think the last thing I want to talk about in challenges is one of the things that we are dealing with frequently at the SEC, and I think we sort of have a little bit of a handle on it, and I know it must be something that the FTC confronts, also, but the law has been unsettled for a number of years as it relates to the Electronic Communications Privacy Act and what type of records we can get from internet service providers, and maybe who a subscriber is, who is the identity of a particular account. Maybe that’s something that is reachable, but what about the cases where you know there's communications and you want those communications, and maybe there's impediments there. I know that the criminal authorities can go through a warrant process for things like that. What is the recourse of an administrative agency where we don't necessarily have recourse to a criminal mechanism to show just cause, due cause, probable cause, reasonable suspicion, whatever the standard is. So cooperation works, but we have to be, I think, vigilant of the challenges to that, and like we’ve already talked about in the GDPR space, how do we get to a solution that works for most people most of the time.

MS. FEUER: Thank you very much. So let me ask you one follow-up, which is about your statutory authority which underlies your ability to cooperate. I know that you have some tools that you've had since the 1970s that are somewhat similar to what we have in SAFE WEB. And I'm wondering how they actually underpin what you do and how effective you think having that statutory authority has been.

MR. GRESENZ: So there are three sections that I'll talk about. And absent these three things, we would not be able to meet the IOSCO principles, which means we wouldn't be able to sign the MMOU, which means the Treasury Department would be unhappy when we were adjudged to be noncompliant in an FSAP in these areas. The first one is what I call our access request authority, and what this says is the Commission has discretion to share confidential file materials with any person, provided that person demonstrates need and can make appropriate provisions of confidentiality. And I think more or less that tracks what the FTC can do, although maybe the Safe Web is restricted to regulatory authorities, where the SEC, in theory, has discretion to share with any person. Our Commission has delegated that authority to exercise the discretion to the staff in the area where I work with, which is cross-border enforcement cooperation. Now, typically, my office will look at any request for access for SEC files that comes from a foreign authority, and we will make a baseline determination of whether sharing is appropriate with that organization or not. Obviously, if they’re an MMOU signatory, that question is easier. So that's the first one, the ability to give access to materials and files. The second one is to use our compulsory power on behalf of a foreign authority. And I think, again, here, there's probably parallels all down the line with the FTC's existing authority, is we have to make sure that there's -- well, for us to start with, the requesting authority has to be a foreign securities authority, which means do they enforce laws that fall within their securities regulation. Number two, the authority has to be able to provide reciprocal assistance. And, again, if it’s an MMOU party, that's already written in and baked into our principal cooperation mechanism. The sharing has to be consistent with the public interest of the United States, and we go through that process of the deconfliction process with the US Department of Justice. So that's something else that is taken care of. And one interesting fact here is it's not necessary for the conduct to be a violation of US law. So, for example, if it's illegal in Country X but it may not be illegal here, we do have the authority to assist in appropriate circumstances. The third piece after the access request and the compulsory authority, you know, of course, you list three and then you forget the third one. Let me come back to that one. I should have made a note when I was thinking about this.

MS. FEUER: Okay. Well, that's great. So we have a lot here to work with to start us off on questions, and there are so many strands to the strands that we've brought out that it's hard to know where to start, but I am going to start with two questions that have come in. And the first really builds on, Kurt, what you were just talking about, that your investigative assistance power doesn't require the law violation to be a law violation in the United States if it is a law violation in another country. And we actually have a question on that. And this is, I think, to the consumer protection and privacy areas where I think laws diverge more than they do in the securities arena. But the question is this, when an act or practice would violate consumer protection law in a consumer's home country but it isn’t against the law in the seller's country, should agencies cooperate? When there is a conflict of laws, what should consumer and privacy agencies do? And I'm going to throw that out to the panel and see who hops on it. James?

MR. DIPPLE-JOHNSTONE: Is it helpful to say just in terms of our experience at the ICO's offices for that very reason is our legal gateways are framed with a public interest test? And that's a very widely drawn public interest test, so it doesn't need to be a specific offense in the UK for us to be able to cooperate and exchange information, for that very reason is there is quite a variety.

MS. FEUER: So that's helpful to know. By way of background, the FTC's -- yes, I work for the FTC -- the FTC’s authority to obtain investigative assistance for foreign counterparts relates to unfair or deceptive acts or practices, as well as violations of laws that are substantially similar to those that the FTC enforces. So we have a little bit more defined statutory language, although as you can see here, it allows to us cooperate with a wide variety of agencies. Anyone else want to opine on this first question from our audience? Marie-Paule?

MS. BENASSI: Yes, thank you. It's a very important and interesting question. So in the European Union, we have laws which are harmonized, fully harmonized, or minimum harmonization. So our system of cooperation for enforcement actions are based on the minimum harmonization, when it is minimum harmonized. So it means that you cannot take an enforcement action for a violation which goes beyond the minimum harmonization and which would not be the same in one -- in your member state where the trader is established compared to the member states of the consumer. But requests for information and other types of assistance I think can function. And what we see when we work with cooperation in an informal setting with other jurisdictions outside of the European Union is that very often the principles -- at least the principles are quite the same. And so it’s on this basis, I think, that in many cases exchange of information can be possible.

MS. FEUER: Jeff.

MR. THOMPSON: Yeah, I think this touches a little bit on what I was referring to with disruption as well. Enforcement is not the only answer where we can't enforce the law in another country or a law doesn't exist that prohibits a certain action. However, we may be able to work with, again, private sector partners or other agencies to block these services from being offered in Canada. Binary options was a great example in Canada where we worked with credit card companies, and Canadian law prohibits the sale of securities if somebody is not registered. So, therefore, there was no binary options. Companies registered in Canada, therefore, any sales to Canadians are against our laws. So we're able to work with Mastercard and Visa and the credit card companies to prevent any Canadian transactions for binary options.

MS. FEUER: So that’s very interesting. So there are really a range of options here from a very broadly defined public interest standard to the European Union's concept of minimally or maximally harmonized laws, which essentially means whether every EU country has the exact same law or whether they have more leverage and freedom to implement laws differently. To the example that Jeff has given with disruption and also being able to cooperate across the civil and criminal divide, because we obviously cooperate with the RCMP as a criminal agency, and many of our colleagues, for example, the UK ICO, has criminal authority as well as civil authority. Kurt, I saw you want to say one more thing here.

MR. GRESENZ: Yes, I was actually thinking about a topic that you and I have talked about. So one of the questions that can come up in the work that I do is there might be a hesitation on the part of some of our foreign counterparts to work with us in some cases if they are afraid that an SEC outcome will foreclose them from acting. And I think this is the result of different legal interpretations of what amounts to double jeopardy. So you know, in the US, depending, we have different sovereigns for different purposes. What some of my colleagues overseas have said that essentially should the SEC take some action, even administrative action against an actor where the conduct is based on something the foreign authority is looking at that that could potentially preclude the foreign authority from doing any action at all? So that's in one direction we have to be sensitive to that. You know, the question there is let's say we ask for help in a case and they're looking at it and they say, well, we don't want to tell you because you're going to take action and then we're going to be left with nothing. And, again, we would work through that stuff, but it's a real issue. You know, from our side, we take Foreign Corrupt Practices Act violations seriously. And from an economic perspective, my personal view is there's a really good strong reason to do that. That's not always the approach that some foreign jurisdictions take. And we have from time to time encountered hesitancy to help us on our FCPA investigations on the SEC side, not speaking for the Department of Justice, because of a view that well, you know, I don't understand how that falls into a securities violation. It could be just code for, well, we don't really look at it in that way from our country. So we don't think we can help you. Again, people have to decide are they going to step up and are they going to help.

MS. FEUER: Right. So really interesting question and really interesting responses. I want to turn to another question that sort of focuses on one of the hot topics of today, which is this. Congress is considering passage of a comprehensive data protection and privacy law. How might that change or affect the relationship between US regulators and those in Europe and elsewhere, particularly as it relates to privacy investigations and litigation? And I'm going to put James on the spot first.

MR. DIPPLE-JOHNSTONE: Okay. Well, I think in many ways, you know, we should look at the opportunities. There are many countries around the world which are looking either at their first data protection act or privacy act or enhancing the one they’ve got. And I think the key things are to make sure that, you know, as referenced by the international conference, that there are those opportunities to collaborate and cooperate to ultimately do what we’re all there to do, which is to keep our citizens safe. And this will continue to be a theme as we go forward. Countries like India are looking at the data protection bill, going through their Parliament and their legislative process. They will be significant, given the scale and size of their economies and their country. So we should look for the opportunities to work better together.

MS. FEUER: And I thought you were going to mention GPEN again.

MR. DIPPLE-JOHNSTONE: Well, GPEN provides a great opportunity to do that, both in terms of the cooperation, but also more importantly the technical challenges, the assistance. One of the great things GPEN does, if I can make a plug for it, is coordinate around sweeps, so looking at upcoming threats and risks that might affect privacy authorities and sharing that load out and sharing that learning out in terms of all of us looking consistently at threats within each of our nations and then bringing together the results of that for a common discussion.

MS. FEUER: So any other observations on the question? It focuses on whether changes in privacy laws might affect cooperation, but I think the question is really broader. As we talked about this morning, many countries are in the process of updating their laws, whether it be consumer protection laws, privacy laws, securities laws, maybe? And so I wonder how this whole issue of changing laws, changing standards affects the way or the opportunities or the challenges for cooperation. And I'll throw that out to whoever wants to go first. Secretary Sullivan.

MR. SULLIVAN: So I'll just say, we in the International Trade Administration have been working with the National Telecommunications Information Administration and the National Institute of Standards and Technology, also sister agencies at the Commerce Department, to evaluate what, if anything, the Federal Government should do to address some of the privacy concerns that have certainly captured a lot of attention in the last couple of years. I think this goes back to what I was talking about. This is my personal opinion. I think we're probably quite a long ways off from any global standard. I think -- you know, you talked about India, Brazil. A lot of countries, you know, many have been looking to GDPR as an example, but no one is replicating GDPR exactly. There are still these differences, and those are going to continue because, as I think I said earlier, different countries have different cultural norms and legal traditions and histories, and they have different policy priorities that are all going to, you know, result in differences of kind if not degree. Again, I sound like a one-trick pony, but this goes back to the APEC CPBR system because what that basically is, is it takes these internationally recognized norms that we all agree on, which came from the OECD guidelines and the fair information principles before that and said let's all agree to these baselines, because you are going to have these differences. And we have to find a way to bridge these differences between these different regimes that countries have. I think, again, you know, there are aspirations for a single global standard. I don't think that’s about to happen anytime soon, so we’ve got to figure out, you know, how these different regimes can be made to work together. The approach in APEC is this interoperability approach, which I really think has a lot of appeal, is very well developed, and has been embraced, as I said, by a lot of countries in APEC, and we’ve heard a lot of interest from other countries around the world because it really is very flexible and can be adapted. On the one hand, it definitely protects privacy, but it can deal with technology because we in government are always going to be one step behind in regulation and legislation to begin with, but in this space in particular with the technology evolving so quickly, I really think there’s great appeal there.

MS. FEUER: Thanks. Anyone else? Marie-Paule?

MS. BENASSI: I agree with what James Sullivan said. I think it's going to be really incredibly difficult to sort of have a very harmonized universal framework for that data protection but also for consumer protection. And in the European Union, we are -- we have these principle-based laws and even in case of maximum harmonizations, there remain some differences. So our reply is to work on common enforcement actions and develop these actions in a way that they have become also guidance in a way. So -- and they are less theoretical than the law because they are applied to practical problems, practical practices. And in the future, what we want to do is to do more of these actions where, in fact, we have -- we publish the common position of the CPC network in the form of a guidance that can be applied by all the different operators in a certain industry. The other point I wanted to mention is notice and action procedures. So in the European Union, we have a law which is called the E-Commerce Directive, and which provides that marketplaces and social networks do not have a duty to monitor illegal practices, but they have a duty to act upon notification against an illegal practice. And this means, for example, withdrawing the account, obscuring the information. One of the problems of these operators, because we are now discussing a lot with them, is that, first of all, the domain of laws, which should apply, which is enormous and then it's -- for them, it's very difficult in a way to have an efficient action when the domain of law is so big and also the enforcement type are very big. And so I think that also cooperation on common notice and action procedures at the international level with a certain level of recognition, so this is what Jeff is saying about this disruption, so looking into also other type of models which are more based on practical enforcement tools, systems.

MS. FEUER: Thank you. Anyone else? So in the few minutes we have remaining, what I'd like to do is turn to each of the panelists and, similar to the first panel today, ask for a one-, maybe two-minute takeaway of what you see as the most important tools for international cooperation, what you see as your main challenges, and how you might remedy them. So I'm going to put Kurt on the spot and ask our SEC colleague to start first.

MR. GRESENZ: So when you started with tools, I did remember the third tool that was so important that I forgot it, but it actually is very important. So we have two provisions of law which help us protect information we receive from foreign authorities. The first one is a statutory protection that protects from any third parties any materials that we receive from foreign securities authorities. So outside of the litigation context, that essentially gives us ironclad protection for SEC files for enforcement purposes. But more recently, we added a legal amendment, a new tool that protects in litigation any material that would be privileged in the foreign jurisdiction. So let's say, for example, we get confidential financial intelligence from a foreign authority, and as a condition of receiving that, the foreign authority makes a good faith representation that this is for intelligence purposes, and it is privileged from disclosure in our jurisdiction. Under Section 24(f) of our 34 act, that protection would carry over into US law, and there is an absolute privilege it would stand discovery, for example, that it will carry over the foreign privilege to US law. And it could be anything. It could be financial intelligence, it could priest-penitent. I mean, if there is a privilege that is recognized in the foreign jurisdiction and we receive materials pursuant to that privilege without waiver, then there's no examination behind the statute for the court to make. It just has to be the representation. So that, I think, gives us added teeth when it comes to representations that we, in fact, can protect things in our files. So, you know, the takeaway for me is the big difference that I see is it looks like what we do in the security space is much more concentrated. You know, we know exactly who the players are. We see them all the time. There's crossover to some criminal authorities and other domestic agencies, but by and large, we seem to be in a more narrow lane. And I think my takeaway would be that listening to my colleagues here is there's a lot of lanes running in parallel and overlapping and overpasses and other sides that I think that we just don't have that much of in the security space in my view.

MS. FEUER: Thanks. And that raises two interesting points. I think this afternoon we'll have a panel on competition enforcement, and I think there might be a few less lanes, although I know there are some. And, also, your mention of your statutory ability to protect information, we have an analog in the SAFE WEB context for information provided by foreign law enforcement agencies when they ask for confidentiality that gives a privilege against FOIA disclosure. So turning now to Jeff, your top takeaway.

MR. THOMPSON: At the end of the day, what I got out of this is, I mean, there's an increasing abundance of information in the world, and we need to be able to prioritize our enforcement efforts. So it's processing all that information that’s certainly a challenge, and there’s all kinds of technology tools to help us. But not only that, it’s setting the right priorities and working smarter. So the intelligence- led approach, where we’re using the central fraud databases such as Consumer Sentinel or Anti-Fraud Centre to start driving enforcement action in a more targeted and effective manner.

MS. FEUER: Thank you. So intelligence is key to international cooperation. Marie-Paule?

MS. BENASSI: So I wanted to say two things. The first thing Jeff said it already, which is about prioritization. And I think that fraud is becoming internet fraud, all the different facets of it, and its internationalization, I think, is becoming a very big problem in terms of the harm caused to consumers and collectively in the world. And also in this respect, the role of the big platforms, you know? And if we don't prioritize and don't find efficient ways, building also on what this platform can do, I think is going to become more and more difficult to prevent fraud. And we see organized crime moving into these kind of activities, which seems to be giving them the possibility to earn a lot of money very easily. But then we have a different type of problem which we didn't discuss much, because also we have a bit -- had discussions a bit in silos here, but which is how to tackle the new types of misleading practices which are developing and which are based on the data economics. So on this we need to build links between competition, data protection, and consumer protection in order to understand this and see how -- what are the impact on consumers in terms of also the possible harm and also for businesses, possible lack of competition that this type of new data models are creating.

MS. FEUER: Thank you. Secretary Sullivan.

MR. SULLIVAN: So, again, for me, my perspective, the biggest challenge we're dealing with right now is the fragmentation or the vulcanization of the internet around the globe. You're seeing rising delocalization, which, again, I think that just impoverishes everybody, those within the country that have imposed delocalization measures, those that have overly strict restrictions on data flows. I think certainly we share a legitimate and strong desire for consumer privacy with a lot of other countries. And as I noted earlier, we take different approaches. I do think we need to be very wary because these issues, the way we're headed and in the coming years, we're going to be looking at, you know, more and more connected devices that are transmitting data, and this data has to be protected on the one hand, but it can lead to such tremendous opportunities. I mean, in the public sphere, in terms of smart cities and efficiencies and health breakthroughs and precision medicine and detecting disease patterns. And we want to be very wary of going too far in one direction, I think. So I agree with you about the balancing of these interests. And, again, I'll go back to my -- I really think, you know, the EU, for example, and the US do take different approaches, but we ultimately share, at eye level, the very same goal. And I think interoperability between GDPR on the one and CBPR on the other could be a very positive development. I know there was a referential a few years ago with BCRs, binding corporate rules, which is an EU proof mechanism for data transfers and mapping it relative to CBPRs. And, again, these all derive from the same OECD guidelines, and I think there's a lot of overlap. And I know GDPR allows for certification mechanisms, and I think there's a tremendous opportunity there for us to make these systems work together and make sure that we are extending privacy protections around the globe, while at the same time making sure that we're not quashing or squashing innovation and, again, doing damage to our long-term interests. So I think interoperability would be my solution there. And as, again, I've said a couple times already, you know, the FTC is probably the preeminent privacy data protection authority, as it were, in the world going back to the 1970s, has been a great partner as we go around the world and talk to countries on this. And so we should continue to do that. And I hope we can partner with other like- minded countries to that end.

MS. FEUER: Thank you. And the clock is quickly counting down, so I’ll ask Commissioner Dipple-Johnstone to say a final word.

MR. DIPPLE-JOHNSTONE: I will be very quick, then. I mean, I can almost echo the comments of others. I think it’s that keeping updated and keeping pace with vast changes in the landscape and technology and making sure that we don't become the ministries of no, that we support innovation in a very practical sense. And as part of that, it’s making sure we make the right links both internationally with each other but also in each of our respective homes with the other agencies and authorities we have to work with so that the offer we can make internationally is the right one.

MS. FEUER: So thank you very much to the panel for some incredibly thought-provoking ideas. Before we break for lunch, I just want to mention that the Top of the Trade on the 7th floor has catering available for you to purchase. There's a handout on the table just outside with information about nearby restaurants. If you leave the building, you will have to go through security again unless you are an FTC employee. And be mindful that there is a small group of protesters outside the building, so leave ample time to get back in for our fascinating afternoon panels. Thank you. (Applause.)

AFTERNOON SESSION

COMPETITION ENFORCEMENT COOPERATION

MS. COPPOLA: Okay. I’m getting the green light from Bilal Sayyed, our head of Policy. So I think we should get started. Thank you all for coming to this afternoon’s panel. Today, we’re going to talk about enforcement cooperation on the competition side. You’ve just heard, in the break before lunch, about cooperation on the consumer side. It has a very different nature on the competition side. So we’ll be talking about that this afternoon. I’d like to introduce my panelists briefly. Starting with -- going in alphabetical order, Nick Banasevic. Nick is from the European Commission’s DG Competition where he heads the unit that covers IT, internet, and consumer electronics. So we’ve had the very good fortune to cooperate with Nick on a number of cases. Next to Nick is Marcus Bezzi. He is the Executive Director at the Australian Competition and Consumer Commission, where, among other things, he oversees all of the ACCC’s international engagements. So I also have had a great time working with him, even though very often the calls were extremely early for us and extremely late for him. We still have a terrific relationship. Then we have Fiona Schaeffer, who is an Antitrust Partner at Milbank LLP. She has practiced on both sides of the Atlantic. So she brings unique perspective in that sense and has lot of experience in multijurisdictional mergers in particular. Then just to my left -- I was a little thrown off because I thought it was alphabetical and that’s why I was -- yeah, you didn’t look like Jeanne, anyway. So Jeanne Pratt, who is Senior Deputy Commissioner from the Canadian Competition Bureau. She oversees their abuse of dominance and mergers and noncartel horizontal conduct matters. She also has experience at the ACCC. So I’m sure that she will bring that to the discussion today. So those are our panelists and you’re going to hear from them, not from me. Just by way of background, a lot of the cooperation issues that are relevant to the competition enforcement discussion were addressed in this morning’s session. So we’ll try to get into a little bit more granular level so that we don’t repeat what was discussed this morning. Just I guess to set the stage in thinking about cooperation in general, we engage in enforcement cooperation for a number of reasons. Often, we find that it will improve our own analyses. It allows us to identify issues where we have a common interest, it allows us to avoid inconsistent outcomes, and perhaps, most importantly, for the outcome to coordinate remedies. So with that in mind, I have asked the panel to start off -- we’re trying to understand strengths and weaknesses of enforcement cooperation, get some advice for the FTC. So before we delve into specific questions, I’ve asked each of the panelists to deliver the headline of their story. What is your elevator speech? Starting with Nick.

MR. BANASEVIC: Thank you, Maria. Thank you to you and to the FTC. It’s really a great pleasure to be here and, hopefully, share some interesting insights. My elevator ride is 27 floors up and it takes about half a minute. So I don’t know if that’s how long I’ve got. But I think my five-second message is don’t neglect cooperation, it can really bring benefits. Of course, I think the first instinct that we have and what we’re responsible for by definition is our own jurisdiction, and the bread and butter of that is doing individual cases and that’s what we focus on. That’s, as I say, the bread and butter of our work. Beyond that we have our policy, guidance, soft law role which is complementary to the actual case enforcement. I think my core message and, hopefully, I’ll illustrate it during the panel is, although you’re not going to necessarily spend the majority of your time, although you might spend a lot in an individual case on cooperation, I think it’s trying really -- in terms of what agencies can gain and benefit mutually. Don’t view it as add-on activity, something extra that you have to do. It can really bring organic benefits to either an individual case -- and, hopefully, I’ll give some examples -- and also to policy to avoid misunderstandings, to converge where possible. It’s really something that should be fostered over the years. I’ve known Maria and her colleagues and colleagues at the DOJ for many years, and it’s really very useful in terms of building trust, facilitating relationships, and understanding where each of us are coming from. So from my perspective, I’ve had very good experiences over the years and I will give some more insights as we go on.

MS. COPPOLA: Thanks. Marcus?

MR. BEZZI: Well, if Nick had been standing next to me in the elevator, I would say I agree with all of that. I’d also say -- make the point that was made a lot this morning, that commerce is now more global than ever and, indeed, that’s a trend that’s significantly enhanced by the digital economy. And the corollary of that is that enforcers have to respond to the pace of change and globalization by working more closely together. We have to be more joined up and timely. And we need to do this for three reasons. Firstly, because I believe that in doing so, we will facilitate more efficient commerce. It will actually be better for the commercial parties if we are more joined up. Secondly, it will make us better at our jobs. We’ll be more effectively able to police compliance with laws in our jurisdictions. And, finally, because we’ve got scarce resources and working closely together is likely to prevent us from reworking issues, from seeking to reinvent the wheel or overlapping each other’s work. It will make us more efficient. Thanks.

MS. COPPOLA: Great.

MS. SCHAEFFER: Well, hopefully, we’re not in a Dutch elevator so there’s room for me as well. I certainly agree with everything that both Nick and Marcus have just said. I particularly like the idea that cooperation is not the icing on the cake, but, hopefully, the glue, as Kovacic would say, or the icing in the middle. What does cooperation mean? It doesn’t mean achieving the same result on the same timetable in every transaction or investigation. That’s not cooperation. That’s utopia. And that’s never going to exist. But I do think it can and often does mean a greater understanding of the issues, an enhanced understanding, as you said, Maria, for your own investigation and how to address concerns. And it, hopefully, can be used to maximize all of the efficiencies in the process given the substantive constraints and the procedural limitations that each jurisdiction has to live within. So I think from a private practitioner perspective, I agree there is a lot to be gained from cooperation. And I would love to use this panel to talk about practical ways that we can enhance cooperation, again using Kovacic’s human glue analogy, more at that human level than at the formal, procedural MLAT kind of level that I think we’ve all worked with or had our frustrations with over the last decade or so, and have found that it is these informal connections and understandings that have facilitated greater cooperation more than the very formalistic process.

MS. PRATT: Well, I agree with everything that everyone said. The only thing I would add is I don’t think cooperation is only good for enforcement agencies, I think it’s good for business. It allows competition law enforcement agencies to benefit from the experience of one another, reach conclusions quicker, and with less probability of conflict and ultimately, hopefully, increased timeliness and effectiveness of the outcome. But it’s -- as all of these people have said, it’s more than about sharing information, it’s that human glue. It’s having the trust amongst agencies to be able to have productive discussions, to be able to exchange theories of harm, to talk about what they’re hearing from the marketplace, to sort of be in a united front with the businesses so that they understand that it is in their benefit and it will be more efficient for them to cooperate with all of us together. And so I think the result, hopefully, is that investigations aren’t longer, are more focused, and the probability of outcomes being conflicting outcomes is minimized, and ultimately for all of us, the predictability, consistency, and effectiveness of outcomes across jurisdictions is maximized. The Canadian Competition Bureau, as you heard from Commissioner Boswell this morning and as you heard from some of my colleagues from the RCMP, I think Canada generally is a strong advocate for international cooperation and we’re always looking for opportunities to cooperate further, including with respect to not just merger cases, but unilateral conduct cases as well.

MS. COPPOLA: Thanks, Jeanne. Okay. So there’s a lot of human glue. So we seem to all agree that there’s a lot of great things that come out of cooperation, cooperation is very important. I guess drilling down to the next level, what can parties expect for agencies, and I guess for Fiona, what can agencies expect at a more detailed level from cooperation. Why don’t we start with Marcus this time.

MR. BEZZI: Thanks, Maria. Well, there are things like sharing case theories, if waivers are given there will be sharing of information. If we use our formal processes, they can expect them to take a long time. In our experience, MLATs -- well, I’ll just relate one story. We used an MLAT in a criminal matter recently and were absolutely stunned to get a result from the process in one year or a little bit less than one year. That’s the fastest that anyone can ever think of. Mostly, they take two years, three years, four years. We’ve got 19th Century formal cooperation procedures, 19th Century timetable for our formal cooperation procedures. So really we spend most of our time on the informal. And I must say, I listened to some of the sessions this morning and heard people talking about the IOSCO MMOU. I was very envious hearing about how quickly their processes work. They really do seem to operate at a more reasonable speed given the speed of commerce today. I should say that in mergers, the informal cooperation works extremely well and we don’t have to rely upon the formal. A lot of the time in Australia, we use the processes to coordinate remedies and people can reasonably expect us to do that in a fairly efficient way. I think that is a good aspect of the current system.

MS. COPPOLA: Thanks. Jeanne, do you want to –

MS. PRATT: Sure. I mean, we cooperate very closely with the Federal Trade Commission and with the US Department of Justice and the DG Comp. Those are the three jurisdictions or three agencies that we cooperate most with. And if you’re a party either on the merger side or on the conduct side, you can expect that we would have in-depth discussions related to investigative approach, theories of harm, market definition, concerns expressed by market contexts in the various jurisdictions and, frankly, our analysis of the data and evidence that we’ve seen. In some cases, you will see us do joint market interviews of joint market context. We’ll have sometimes joint calls with the parties and we’ll coordinate that interaction with the parties to make sure that the risk of uncertain or conflicting messages is minimized. And where cross border competition concerns are identified, you can expect the Canadian Competition Bureau to engage agencies in remedy discussions, because we need to make sure that those remedy discussions are considered in the broader context, including the need for remedies in one or more jurisdictions and whether a remedy in one jurisdiction may actually be sufficient to address concerns in another, so that we may not need our own consent agreement in Canada. We also look at whether a common monitor should be appointed or looking at the consistency of the language around preservation of assets or hold separate arrangements. And in some cases that cooperation with the Canadian Competition Bureau may ultimately lead to us accepting a remedy that is proposed from a sister agency and it can, where appropriate, ensure the most efficient and least intrusive form of remedy for market participants. So we do cooperate very deeply with our agency. And that, again, is based on a strong foundation of trust that has been built over 20 years of cooperating with the counterparts with whom we cooperate most frequently.

MS. COPPOLA: Thanks, Jeanne, very much. I’m very sorry to have to ask Nick to add to that because I think you about covered the universe. But, Nick, what do you think that parties can expect from cooperation and thinking specifically about your perspective from a shop that deals with conduct matters?

MR. BANASEVIC: I agree with everything so far. So not –

MS. COPPOLA: Okay. Can we be clear? You have to disagree at some point. This would be like dreadfully boring if you –

MR. BANASEVIC: In the post-panel, perhaps. No, but I think, as Jeanne said -- and perhaps -- and this is something I think we’ll develop perhaps as a difference in terms of incentives in conduct in mergers. Most of what my experience, in terms of what parties have incentive-wise, is in conduct. I’ve worked on a few mergers where the incentives have been aligned. We’ve had issues with parties where sometimes they don’t want to give waivers in conduct cases because they feel that that would somehow not be beneficial to them. That is, of course, their prerogative. My personal view is that actually, you know if they’ve got a good story to tell, there’s no issue with giving away, but because it’s precisely those things that we can discuss openly with them and with our colleagues, our sister agencies. But I think exactly the kinds of things that -- whether or not there is a waiver, because I think even without a waiver we’re able to, from our perspective, in terms of what we can gain, talk about theories of harm in the abstract and general levels, test, test theories, test realities. So I think if we’re doing that anyway, there is an interest for parties to give us a waiver. Again, that’s my personal view. But as I say, we’ve had some cases where we haven’t had waivers. To switch, in terms of what -- because I think we do have that responsibility ourselves to parties. And, again, maybe it’s more in mergers that it happens that they have these incentives where they’re aligned in terms of timing, coordination. In terms of what we can expect as an agency, just to develop a bit what I was saying at the beginning, I think, again, it’s not that we must always dream of having the uniform solution worldwide. We all have different legal traditions, different systems. Having said that, I think where we can achieve at least a high level of convergence where possible, I think that’s something that is desirable. So I think we, in terms of both policy development -- and then when we’re doing cases, I think it is invaluable and we each have a lot to gain in terms of, again, coming back to some of the things I’ve said in terms of case specifics, theories of harm, making sure that we’ve got a reality check on whether something is correct or not, testing these theories with each other, and if appropriate, moving the cases forward in the same or similar direction. If not, at least understanding the background to where we’re each coming from and why we may take a different approach. And I found that invaluable over the years in many cases, and I’ll develop that a bit more a bit later.

MS. COPPOLA: Thanks. I think that the last point you mentioned, this idea that the effects of case cooperation are not just contained to the case itself, but to a longer-term story of deepening the understanding between agencies is really important. Fiona?

MS. SCHAEFFER: Sure. Well, I think from the parties’ perspective -- and my comments are primarily in the context of merger reviews -- the goals of what can realistically be achieved from cooperation include reducing duplicative effort, reducing the burdens of investigation, convincing the agency, through cooperation, that just because there is a hill there to climb doesn’t mean that everyone has to climb it. One can climb and report, assuming, of course, it is a similar hill. We hope to have consistent, if not identical, outcomes and that includes, where possible, hopefully convincing an agency that they don’t need to have the same remedy as everyone else just because someone else has a remedy. We don’t have to have every jurisdiction reviewing, believing that it needs to have its pound of flesh in order to believe that it’s conducted an effective review. And that, of course, involves some levels of trust between the different agencies as well, that the enforcement of a remedy in one jurisdiction is going to be sufficiently robust to protect others. And, you know, that may not always be the case and it may vary by jurisdiction. We hope, also, that through cooperation we will, if not have a shorter overall timetable, certainly not a longer one. I think that is sometimes a concern that private parties feel is that a potential cost of cooperation is that you may be put on, in essence, the timeline of the slowest jurisdiction, rather than promoting efficiency throughout the process. I guess a word on waivers just to Nick’s point. In principle, I agree that knowledge is power and I like everyone at the table to have a similar level of knowledge, if we have good substantive points and arguments and documents to share, or even if not so good. The agency can do a better job armed with that knowledge than if there is some game-playing and trying to orchestrate the process and manage who knows what. I do think that that calculus is quite different in merger versus conduct cases. And it’s not a question of giving different agencies the same level of knowledge, necessarily, although in some cases it can be. But I think for us there is a bigger concern in conduct cases that information provided to one regulator and then shared more broadly increases the risk of discovery obligations and private class action consequences that aren’t so much of a practice concern in a merger context. So it’s not the sharing within the agencies necessarily that is the biggest challenge there; it’s what can be done with the information once it is within multiple agencies. We know that we’re dealing with jurisdictions that have very different levels of confidentiality protection, and in some instances, for example, are required to give third parties due process or other government agencies access. So I think there’s a greater feeling of concern about being able to manage the flow of that information in the conduct arena.

MS. COPPOLA: Thanks, Fiona. I think we’ll come back to that point about information exchange in a moment. But I think, before that, I want to pick up on Marcus’ point about keeping pace. I don’t know that -- the 19th Century might be a bit of an exaggeration, but I think even 20th Century tools are not fit for purpose. Last night, I was watching All the President’s Men with my 12-year-old son and they were trying to find the phone number for someone and they had a room full of phone books, and he just kind of said, what’s that, what are they doing? Anyhow, what types of things, what kind of -- what would a tool look like that was fit for the 21st Century? Are these more in the realm of informal cooperation? What tools do you use? What tools do you wish you had? What can we learn from you?

MR. BEZZI: Would you like me to go first?

MS. COPPOLA: Yes. That’s why I’m looking at you. I’m sorry. (Laughter.)

MR. BEZZI: Well, where do I start. So informal -- I’ll start on the informal. And, look, I should say 95 percent of the cooperation that we’re involved in -- probably more than 95 percent is informal and it’s very effective and it involves engagement with the various agencies that we’ve got excellent relationships with. We have many counterpart agencies that we’ve got second generation cooperation agreements with or first generation cooperation agreements with. And they help to create a formal framework in which we can engage in informal cooperation. And I should actually just go back a step. The formal arrangements really do enhance the informal. We have a very formal arrangement with the United States. We have a treaty with the US. I think we’re the only country that has an antitrust cooperation treaty with the US. We rarely use it. I think the number of times it’s been formally used you could probably count on probably less than two hands. But I believe that it promotes the use of waivers, it promotes the cooperation of witnesses, the cooperation of parties with our investigations, and it really facilitates and creates the atmosphere in which informal cooperation works very, very well. So what does that actually mean? It means that we can have case teams that have regular phone calls if we’ve got a common investigation or we’re investigating common or related issues. We can talk about case theories. We can talk about practical things like when we’re going to interview common witnesses. We can talk about lines of inquiry that have not been successful that have been a waste of our time and suggest to each other perhaps don’t bother going there, it won’t lead anywhere or, actually, look here, it’s a better place to look. Those sorts of discussions happen between case teams and they are really valuable. The exchange of information when we’ve got waivers -- confidential information when we’ve got waivers is very, very useful. I should emphasize that we very, very rarely -- in fact, I can’t think of a single occasion that we’ve done it using a waiver, but we very rarely exchange evidence. I can think of two cases where we’ve done that using formal processes. If we want evidence, we will go to the source and get the evidence from the source if we possibly can. It’s much more valuable to us that way, anyway. So I think you said, what would be better? Well, some of the processes that exist under IOSCO where -- and, indeed, exist under the antitrust treaty that we have with the US -- where we can ask counterpart agencies to compel testimony, we can ask counterpart agencies to compel the production of evidence or production of information and to do so in a very timely way, to put in a request that can be responded to in days or weeks rather than months or years. Those sorts of things are things that we aspire to. We get a lot of it informally, I should emphasize that. I don’t want to understate the importance of the informal. But having a more formal framework which would enable more of that -- and I think they have in IOSCO context -- would really be a facilitator of even greater informal cooperation.

MS. COPPOLA: I think we heard on the consumer protection and privacy panel that some of that investigative assistance is already happening on that side. So it’s –

MR. BEZZI: Very much so, yes.

MS. COPPOLA: Since we’re all -- many of us have it housed in the same agency, you would hope that we can have that transfer over to the competition side. Jeanne, could you pick up a little bit on the informal cooperation point and tools?

MS. PRATT: Yeah, I’ll try not to do –

MS. COPPOLA: So we can just –

MR. PRATT: I, again, agree with everything that Marcus said. And I think what I would say is it only works -- those informal cooperation tools, again, only work if you’ve got trust in the legitimacy, the competence, the candor and, frankly, the ethics of your counterparts in the other agency. And you can’t develop that necessarily in the context of just having a case discussion. You’ve got to take the time to have the conversations to understand different frameworks, to understand how they go about doing their work. And, frankly, that in our experience has led to us getting to learn some of the lessons from our colleagues so that we don’t have to repeat the same mistakes and, hopefully, we have also shared some of those with our foreign counterparts. So some of the mechanisms that we use outside of informal cooperation on a case to try and do that are the case team leader meetings that you heard Commissioner Boswell talk about this morning, which I find incredibly useful because it is our officers who are doing the work, that are leading those cases, that will take some time out to talk about how they do their work, what issues they are facing. Sometimes it’s talking about a particular case development or a lesson learned that they have from their jurisdiction. And that builds relationships amongst our staff, it builds trust, it builds confidence in our counterpart’s abilities as economists and lawyers doing the same type of work. Exchanges are another tool. And as was mentioned this morning, I am the very lucky candidate who got to go to the ACCC for a full year and see how they do their merger work, and I benefitted greatly as an individual. But I also I think benefitted the Bureau because we got to see not just how a particular case unfolds, but how you actually manage the organization, how you do your work, what tools you use and, frankly, seeing how something can be so different in some areas, but there’s a lot of commonality in the analysis that we do in mergers.

MR. BEZZI: We loved having you, too, Jeanne. It was great having you.

MS. PRATT: It was a tough winter in Ottawa, I have to say. The other thing that we have found valuable is taking some time out, maybe more publicly, to have workshops on particular issues. The FTC and the DOJ and the Competition Bureau in 2018 had a joint workshop on competition in residential real estate brokerage. And, you know, we had eight years of litigation in the real estate industry surrounding the use and display of critical sales information through digital platforms that wasn’t resolved until years after the US. But because we had taken so long, there had been a lot of evolution in the law and the economy. And so some of the lessons that we learned along the way were also informative to update since the fight in the US. So the only other formal thing that I think I would I say, not the informal, is we have a gateway provision in the Canadian Competition Act, Section 29. So when we’re doing mergers, we don’t ask for waivers in Canada. As long as we’re working on a case and we feel that that cooperation is necessary for enforcement of the Competition Act in Canada, we feel that that gives us the ability to have that conversation with our counterparts. So if you -- and I think this would be particularly useful in the unilateral conduct side where you may be looking at different incentives. The merging parties may want to get through our process as quickly as possible. They, I think, have come to see more of the benefits of our cooperation to get them where they need to get to with less conflict and quicker results. But, you know, that kind of a gateway provision could allow us to have discussions on the unilateral conduct side because the discussion is only as good as the two-way communication allows.

MS. COPPOLA: Thanks. The senior level exchange, I think, would be a big hit here if the destination was Australia. But I guess kidding aside, it’s interesting because what you learn there, you’re coming back and you’re in charge so you can actually implement the changes. So that must have had a terrific effect. Okay, Nick, just thinking a bit more about cooperation in conduct investigations. I almost said antitrust investigations because I was looking at you. What kind of practical experience tips do you have that you would like to share?

MR. BANASEVIC: So I’m going to go back in time a bit and give you a couple of examples of very intense cooperation with the FTC and the DOJ. Actually, let me first say, to go back a step even, for us, cooperation starts at home in the sense that we’ve got the European Competition Network, which in -- I don’t know if “unique” is the word, but it’s the network of us, the European Commission with all the national member state competition authorities in the EEA, the European Economic Area, all applying European competition law. And so we first need to cooperate at home in terms of both just allocating cases and, of course, generally the European Commission does the cases that are over a broader geographic scope, whereas the national agencies tend to focus on more national ones and in terms of substance coordination as well. Beyond that, I think we have extensive international cooperation with all the major competition authorities around the world, including Canada and Australia. But to give the two examples that, for me, have been personally particularly instructive over the years, going back to the beginning of the century is first the Microsoft case with DOJ, where, as background, you remember that the D.C. Circuit Court of Appeals affirmed a monopoly maintenance finding here under Section 2. And that was while our case was still ongoing in Europe. We had an interoperability and a tying abuse, tying of Media Player. And then there was a remedy implemented in the US that changed the way that some things were done. So it had a kind of factual impact on some of the things that we were doing in our case while it was still ongoing. And the issues were also -- even though the liability case here was little bit different, through the remedy, there was an interoperability element as well. So the kinds of issues were very similar. We met, I think, for a period of a few years twice a year. We would come here once a year and the DOJ would come to see us in Brussels. And it was invaluable just to exchange theories, to understand where each side was coming from, and to develop a trust and understanding over the years. So I think it’s fair to say that even though the issues were different, there wasn’t always perfect agreement, but it was a relationship that we valued and that really brought a lot in terms of understanding where we were coming from and in my view, at least, having a solution that was not necessarily exactly the same, didn’t lead to an overt situation of conflict, which, again, in my view was greatly facilitated by these contacts. The second example is the kind of policy and case area standard essential patterns. This goes back to even Rambus with the FTC where we had a similar case ourselves in Europe. But more generally and more recently, or five, six years ago, I guess, this issue of injunctions based on standard essential patterns. The FTC -- I think it was 2013 you had the consent decree with Motorola and we had a prohibition decision against Motorola a year earlier on the same kind of issue. And, again, take a step back or try and remember, this is a very -- I don’t know if “novel” is the word, but it was a controversial area of law. And perhaps it still is. For us in Europe, at least, we adopted a prohibition decision, which said that injunctions against willing licensees, based on standard essential patterns where you’ve given a commitment to license on FRAND terms, are an abuse. That was confirmed by our Supreme Court, the European Court of Justice, in a separate case, but the principle was confirmed. But it was, and still is, a subject that attracts a great deal of attention and a great deal of controversy. There were many people -- and that debate still goes on. But there were many people saying, how can you possibly do this? There are some people saying that. But against that background of that -- again, I’m not sure if “novel” is the word, but a very complex, important issue, it was really invaluable to have both the case coordination with the FTC on Motorola, where we had regular contact in terms of meetings and calls, and then on the policy level with both the FTC and the DOJ, where essentially we were on the same page in terms of developing this policy and this approach towards how we deal with the specific issue of injunctions based on standard essential patterns. I think particularly because it was an area that was so complex and controversial, my personal view is that we all mutually benefitted from being able to really share these experiences and insight. So those are two examples and there are many more, but it’s really, for me, a manifestation of just concrete case teams talking to each other regularly, being open, exchanging ideas, evidence if appropriate, if you have the waiver, and it’s been a great benefit.

MS. COPPOLA: Yeah, I think interplay of the case level and the policy level is a really good point that really deepens greatly the discussion and understanding. Fiona, we’ve heard kind of rah-rah-rah cooperation and lots of pluses on cooperation. You’ve talked about how cooperation doesn’t mean getting to the finish line at the exact same time. What are some of the practical limitations on cooperation from a private practitioner’s perspective?

MS. SCHAEFFER: Well, I think we start out with very different procedural frameworks in different jurisdictions. We happen to have probably two of the closest jurisdictions here in Canada and the US, on process. But others look quite different in terms of the amount of prefiling work in a merger context that needs to be done, the time that that will take, the uncertainty around when you actually get on the clock in say Europe or China versus in the US. And all of that leads to, you know, in many cases, if not an impossibility, certainly, all of the stars would have to align for the timing to actually be the same. So we are working with different processes, different timetables, and I think we have to accept that the timing is not going to be the same. The question is, can we make it sufficiently compatible that we can have substantive discussions at a similar time frame, particularly on remedies. That will, you know, minimize inefficiencies and maximize the ability to have a consistent compatible remedy. And even when you’ve done all of those things and there’s been I think an earnest, concerted goodwill effort to align those discussions, you’re inevitably going to have cases where, you know, something surprising happens like one jurisdiction decides, yes, we like the remedy package that everyone else has agreed to, but lo and behold, we think there ought to be a different purchaser in our jurisdiction, which shall remained unnamed, than in the rest of the world, which as you can imagine when you’re dealing with products that are sold around the globe under one brand name can be pretty challenging. I’m not sure that cooperation could have changed that result. But you’re always going to have these unpredictable aspects of a multijurisdictional merger review that can occur right up until the end. What can we do to enhance practical day-to- day cooperation, I think your earlier question. A lot of the time when we talk about cooperation, it’s really in a bilateral context. You’ve got parties speaking with Agency A, parties speaking with Agency B, parties speaking with Agency C, and then similar conversations happening between those agencies who are essentially, you know, in some cases, playing Chinese whispers, but reporting on conversations they’ve had trying to find common approaches, common understandings. I wonder sometimes can we expedite -- streamline those conversations to have fewer bilateral conversations and more multilateral conversations in the same room. Just as when we are faced with a conduct or a merger investigation ourselves, trying to understand better the facts, what’s going on, where, we often have multijurisdictional, multicounsel calls. I don’t see why we couldn’t do more of that involving multiple agencies on the same video conference or the same phone call. There is a limit, of course, where you get these huge conversations that, you know, are impossible to schedule, and no one says anything because there’s 100 people on the line. So yes, that level of cooperation can be unwieldy, but I think we can do more to explore having simultaneous conversations. I think there’s been a mindset probably maybe more in the minds of -- well, maybe equally in the minds of the companies and counsel, as well as agencies, that everyone needs to have their kind of process, everyone needs to have their separate meeting, everyone needs to have the merger explained to them, you know, Australian or in Canadian or in -- (Laughter.)

MS. SCHAEFFER: But I don’t think that that’s necessarily the case, not for all meetings or forms of cooperation. So that’s something I think we could do more with.

MS. COPPOLA: That’s a really interesting idea. I mean, we’ve heard earlier, and on this panel, that there’s a lot of joint third party calls. I know at the FTC we have limited experience with joint party calls, but that’s a really neat idea and it’s certainly very 21st Century if it’s video. So thinking I guess -- so those are some of the practical limitations on the practitioner’s side. Thinking about some of the practical limitations on the agency’s side, it seems like the one that has appeared a few times in this discussion is confidentiality. Nick has already talked a little bit about what we can exchange when we don’t have waivers. So what falls within the realm of public or agency nonpublic information, so, as he said, theories of harm, market definition, kind of basic thinking on remedies. But, of course, those discussions are much more robust when we’re saying because of evidence of X, Y, and Z. Marcus, you had mentioned that you have an information gateway in Australia. What does that mean and what can the FTC learn from that?

MR. BEZZI: So an information gateway is a legislative provision that enables our Chairman to make a decision to release material that we’ve obtained through some confidential process either a compulsory power, exercise of a compulsory power, requiring compelled production of information, or otherwise, and it enables us to release that information without the consent of the party whose information it is. So it’s something we don’t do lightly and it’s something we don’t do often. And it’s something we’ll only do if there are -- if we’re really 100 percent confident that people are going to comply with the conditions that are imposed on the release of the information. So if we’re dealing with a trusted agency, and we are confident that they will maintain the confidentiality of the information that we disclose, then we have got the capacity to release it. As I say, it doesn’t happen very often. There will be more than just a set of conditions imposed. There’s usually a fairly rigorous process that we put in place to ensure that the conditions are complied with. So there’s reporting. And after the agency that’s received the information has finished with it, we’ll require them to give the information back. And I should say this is a very similar provision to a provision that the CMA has in the UK and that Canada has. And it, as I say can be -- it’s more useful in being there than in being used, if I could put it that way.

MS. COPPOLA: Right, right. Thanks, Marcus. I think, Jeanne, I’ll have you answer next because he’s just talked about your information gateway. Does this have an impact on kind of target parties, third parties’ willingness to provide information, and what kind of notice do they get before you share the information? What are some of the consequences?

MS. PRATT: Yeah, I mean with great -- it’s -- we have to take that very, very seriously. So when we’re using our gateway provision, we have very transparent policies to stakeholders. It’s written in a confidentiality bulletin what the conditions of sharing are. Every time we do a market contact, it is disclosed to that market contact that we do have the information gateway, that we may use it obviously in an international merger context, that we may share it with our counterpart agencies and discuss it where they have waivers. So I think the lesson for us is transparency is really important to maintain your reputation because without our reputation to maintain the confidential information, we won’t be able to do our job and the effectiveness of our agency is diminished. It’s fundamental, frankly, to how we do our job. So in our confidentiality bulletin, we do set out the conditions quite clearly and we do say that we will seek to maintain the confidentiality of information through either formal international instruments or assurances from a foreign authority. And the Bureau also requires as a condition that the foreign authority’s use of that information is limited to the specific purpose for which it was provided. So our information gateway provides that we can use it for enforcement of the Act, which, for us, means if we’re working on a common case with an agency with whom we have a foreign -- or an instrument and we’ve got those certainties that that is when we will do so. Where there is no bilateral-multilateral cooperation instrument in force, the Bureau does not communicate information protected by Section 29 unless we are fully satisfied with the assurances provided by the foreign authority with respect to maintaining the confidentiality of the information and the uses to which it will be put. And this, again, is where trust becomes key for us, we’re not going to put our reputation and our effectiveness on the line if we are not certain that those conditions will be satisfied. In assessing whether to communicate the information and the circumstances, we do also consider the laws protecting confidentiality in the requesting country, the purpose of the request, and any agreements or arrangements with the country or the requesting authority. If we are not satisfied that it will remain protected, it is not shared. Likewise, when foreign authorities are typically communicating confidential information to the Bureau, they are doing so on the understanding that the information will be treated confidentiality and used for the purposes of administration and enforcement of the Act. I should mention, too, we do have another provision in our Act which ensures that all inquiries conducted by the Competition Bureau are conducted in private and that provides some legislative certainty that it will be maintained in confidence on our end. So I guess I would say the gateway for us, while similar to Australia, I think has been used a little bit different and that mostly is a result of practice, our transparency, the market having a lot of faith in our practices and procedures, to maintain confidentiality. And without it, I don’t think it would be as effective.

MS. COPPOLA: Thanks very much. Nick, turning to the European Commission, I mean, you have sort of the highest level of information sharing and investigative assistance with the ECN and you also have things like the second generation agreement that you have with Switzerland. Do you want to share a little bit of your experience with those?

MR. BANASEVIC: Sure. Again, the ECN is -- again, I don’t want to say it’s the highest level of cooperation, but everything is open there.

MS. COPPOLA: Right, right.

MR. BANASEVIC: There’s automatic transmission of everything, there is -- I mean, that’s a consequence of what the EU or the EEA is in a sense. So it’s critical that we share up front information just about who’s got what case so that we can allocate them most efficiently and to coordinate on issues of substance because we’re all applying the same law. In terms of outside the ECN and outside the EEA, I -- as a general point, I think the main issues have been outlined in terms of maybe there being different incentives -- I’m talking outside Switzerland, which I’ll mention briefly now in terms of different incentives maybe between mergers and conduct. I take Fiona’s point about -- concern about disclosure in another jurisdiction. I understand that. I think the instances that I have referred to in some conduct cases have rather been a concern about not wanting agencies to discuss theories of harm even. So that’s a different thing. And in terms of Switzerland, actually, I think it resonated. I mean, we have a second generation agreement with Switzerland, which means in practice that we can transmit evidence between us without consent. Obviously, we’re talking about where the same conduct has been investigated. And what we found -- and this resonated when Marcus was talking about it -- is actually we haven’t needed to use -- to invoke those provisions. And it’s actually encouraged that that framework, and maybe the trust or the mechanics of how things work, have encouraged information provision without needing to use the formal provisions under the agreement. So I think that’s an interesting point.

MS. COPPOLA: Right, yeah, yeah. Fiona, you’ve touched on this a tiny bit already, but what are -- can you bring out a little bit some of the concerns that agencies might have either about these types of agreements or about granting waivers in the nonmerger context? What are some of the red flags?

MS. SCHAEFFER: From a merging party’s perspective or from an investigated party’s perspective?

MS. COPPOLA: From both.

MS. SCHAEFFER: Yeah, I think there is -- certainly in terms of the exchange of confidential information as opposed to permitting agencies to discuss case theories, I think there is an understandable sense that if an agency really needs that kind of information and has a right to obtain that kind of information domestically, then they should just ask the parties for it directly rather than get it -- you know, it sounds a bit pejorative -- but through the back door. I do think, on the merger side, the incentives are greater to provide it anyway. But I think, also, at the same time, the actual exchange of confidential information is relatively rare and I think its use is overrated. I think the biggest benefit that I’ve seen from cooperation from a private party’s perspective -- and I suspect the agencies might agree with this -- is just being able to discuss the case, the theories, the investigation, the legal analysis, the basic understanding of how the products work, what third party concerns are without, you know, revealing any confidential information. And all of that dialogue I’ve found in all of the deals I’ve worked on, and maybe I’ve just been lucky, but I can’t recall a single case where we facilitated cooperation and we suddenly found that Agency C, that had been going on its normal course of business and investigating without big concerns, suddenly had a new theory of the case that was going to put them into an extended review. I’ve always had the opposite. Namely, Agency C, when we have facilitated contact with Agency A and B, typically has been relieved to know that Agency A and B is investigating these particular various areas, that it doesn’t necessarily have to cover all of the same ground. And I have found that it’s expedited, not prolonged, the review or started new lines of attack that didn’t exist before. And I think that could also hold true, although it’s less tested in conduct cases where some of the theories of harm are just more wacky or radical. And I think agencies that have been at it for a longer period of time, in that investigation or generally, may be able to help other agencies understand what are the real issues here, what are some of the false paradigms or paths that, you know, we looked at five years ago but discovered really weren’t productive.

MS. COPPOLA: Right, right. Sometimes that thinking can go the other way, too. The learning can go the other way. I think I want to circle back on your point on forbearance. But before I do that, does anyone have any reactions to what Fiona was saying about information sharing and thinking of it as a backdoor way when it’s done -- the confidential information between agencies?

MS. PRATT: Well, I think it’s -- I guess from my perspective it would -- I’ve never seen that risk become realized. Because each of our agencies are very concerned about the confidential forecast that we have, that we want to minimize the risk of that because, otherwise, it would be a reputational risk for us doing our job.

I do think a lot of the value, unless you are doing a joint investigation where there is evidence that you need in another jurisdiction, most of the value of that cooperation can come from not providing confidential, competitively-sensitive third party information. So if you have waivers or you have a gateway provision, that facilitates that cooperation quite well.

MR. BEZZI: I agree with that. I mean, parties know -- if ever we are using an information gateway, and it happens rarely, but they know. It’s not done secretly; it’s done in their knowledge; it’s done transparently.

MS. COPPOLA: Fiona, I may have misinterpreted you. When you were talking about backdoor, I think you meant even in the presence of waivers. You didn’t mean out extralegally, right?

MS. SCHAEFFER: Yeah, I meant exchange of confidential information, where there are waivers, but the agency couldn’t get the information directly.

MS. COPPOLA: Right, right. Nick, do you have anything you wanted to add here?

MR. BANASEVIC: Nothing spectacular.

MS. COPPOLA: Okay. I have one question from the audience, but before we -- and I encourage other questions. So now is the time to write them. But before we get to that, I wanted to talk, I think because at the end of the day, the immediate goal in a particular case of cooperation is making sure that you don’t have conflicting remedies, that you have remedies that are, if not identical, at least interoperable. And we’ve heard some discussion today that, you know, there’s been a lot of agencies, more agencies looking at things than there used to be. And sort of the question about should we be giving more attention to cooperation, in the form of forbearance, than coordination. And, Fiona, if you could start that discussion for us.

MS. SCHAEFFER: Sure. Well, we were having a discussion at lunch and Marcus mentioned the magic pudding story. I said to Marcus, will this audience understand the magic pudding story? And looking around the room, I see there are bemused faces. Well, it’s a story we all told our children growing up in Australia where, as a child, I really enjoyed it. The magic pudding just never stopped producing pudding until the entire town was flooded with porridge and pudding everywhere. Well, no agency is a magic pudding. Agencies have limited resources. They can’t just keep on producing. And I think from an agency perspective, as well as from the parties’ perspective, one always ought to ask what are the incremental benefits of this additional investigation we’re doing over -- you know, on top of what five other agencies are doing? What are the incremental benefits of a remedy that is the same or virtually identical to what another agency has obtained as opposed to taking our limited resources and using them for investigations and transactions that these other five agencies couldn’t review? And it’s been interesting to me just to look at how different agencies have been allocating their resources over time. Brazil is an agency that comes to mind. When I come to think about some of the cartel investigations, the merger investigations they focused on maybe ten years ago, my anecdotal perception is that there was a lot more of an international dimension to them than there is today. I think some of the larger Brazilian investigations have involved, in more recent times, transactions in the educational sector and the health care sector, in the domestic financial services sector. And their bang for their buck in those investigations I think is significantly higher than it would be if they were another me-too in a global transaction. Having said that, is it realistic to say if the US is looking at a deal or the EU is looking at a deal or Canada and they’ve got remedies, that everyone else should just back off? No, of course not. But I think at each stage of the investigation, it’s useful for the agencies to ask themselves, what is the incremental value and what are the areas of this transaction that may be specific to our jurisdiction that the other people aren’t covering? What are the holes that we need to fill potentially for our jurisdiction that the others aren’t worrying about as opposed to retreading the same ground? And as counsel to parties to transactions and conduct investigations, we ought to be asking ourselves those same questions about what are the specific impacts of this transaction or our conduct on this jurisdiction.

MS. COPPOLA: Mm-hmm, mm-hmm. That’s very interesting. Thank you, Fiona. Marcus, what did you say to the magic pudding discussion and what are your thoughts on the topic more generally?

MR. BEZZI: Well, exactly, we are not a magic pudding. We have limited resources. We’ve got to use them intelligently. So we’ve got to focus on the things that are most important within our jurisdiction.

Fiona raised the cartel issue and international cartels. We could all spend all of our time doing international cartels and nothing else. But -- and they’re important, don’t get me wrong. Many international cartels have a big impact in Australia. But we’ve explicitly said in our enforcement and compliance policy, which sets out our priorities for enforcement and is adjusted each year, that we will focus on international cartels that have an impact on Australians and Australian consumers. It’s the detriment in Australia that is the focus. If there’s no detriment in Australia, then we’ll let other agencies deal with those cartels.

Similarly, in mergers, we will focus on the detriment in Australia. We’ll focus on a remedy that can fix the problems we have identified in Australia, and if it happens that that remedy has already been devised somewhere else and the remedy somewhere else will completely fix the problem in Australia, then what we can do is accept what’s called an enforceable undertaking, which is essentially a statutory promise, which requires the parties to give effect to whatever the commitment that’s being given outside Australia is, give them -- they are required to give that commitment to us in Australia, and that essentially is -- deals with the problem that we’ve got jurisdiction to deal with.

MS. COPPOLA: Right. That allows you to have something that you can enforce of there is a –

MR. BEZZI: We’ve got something that we can enforce.

MS. COPPOLA: Right.

MR. BEZZI: And we’re recognizing that our resources will be managed in a better way.

MS. COPPOLA: Better focused. Right, right.

Jeanne?

MS. PRATT: Well, I guess speaking -- the Canadian approach in mergers in particular, we actually have accepted and gone probably one step further than what Marcus was saying and not even put a consent agreement in place in Canada because we have been satisfied that the remedy mostly in the United States addresses our concern.

The only way we get there, though, is, again, to have really close cooperation. We need to understand the scope of the issues, we need to understand the scope of the remedy, and, frankly, we also need to have trust in the agency that they are going to enforce that remedy at the end of the day, which we have full faith in the US Department of Justice and the US Federal Trade Commission to do that.

One of the primary reasons that we do use comity and forbearance is because we think it allows a more effective and streamline remedy that’s least intrusive to business, avoids conflict, and simultaneously allows us, as a very small agency north of the 49th Parallel, to focus our scarce enforcement resources.

So two examples I would give, we had one where we accepted the US FTC’s remedy in the GSK/Novartis merger in 2015. So we were satisfied there. We didn’t even need a me-too registered consent agreement. We were fully satisfied that the scope of the remedy addressed our concerns and would address the anticompetitive effects on the Canadian market.

The second one, which is more recent, was a case we cooperated on with the US Department of Justice, UTC/Rockwell last year, which was an aerospace systems review, and in that case just to underscore the importance of the cooperation to get us to the comity, we cooperated closely with the US DOJ and the DG Comp throughout the review.

There were waivers in place in both those jurisdictions by all the parties. We shared information and conducted some joint market calls. We discussed issues of market definition, presence of global effective remaining competition and remedies. And we determined that there were likely a substantial lessening of competition in two product markets for pneumatic ice protection system and trimmable horizontal stabilizers actuators, THSAs.

And Rockwell’s relevant business -- they were located primarily in the US and Mexico and these products were distributed on a global basis. So we got to a place where we didn’t have any assets relevant to the remedy in our jurisdiction and we were fully satisfied that the remedy addressed our concerns.

The other side of comity, which, you know, I’m not sure the parties appreciated at the time, Commissioner Boswell talked about our simultaneous filing of litigation in the Staples/Office Depot merger a couple of years ago. Part of that was we did not see the need to file an injunction the same day because we knew that there would be an injunction proceeding by the FTC. So the parties did actually benefit because they didn’t have to face an injunction proceeding north of the border as well as south of the border. We benefitted greatly from cooperation in that case.

Again, we had one of our Department of Justice lawyers come and was seconded and was actually part of the FTC counsel team to see how the injunctive process worked, to see the evidence go in, and at the end of the day, the injunction in the United States took care of the issues in Canada. So they still benefitted. They probably didn’t like it because it was in the form of litigation, but it could have been worse.

MS. COPPOLA: You know, in GSK/Novartis, it’s interesting, we did a lot of trilateral calls in that case with the EC, Canada, and the US. And that’s not obvious in a pharmaceutical case where you expect the markets to be very different. But, certainly, in trying to understand the markets, I think the third parties were very happy to have one call and not three. So that’s an interesting case.

Nick, we haven’t heard from you yet on remedies coordination or forbearance. Is there anything you want to add?

MR. BANASEVIC: The first thing I want to say is I’m going to look up, after this panel, what a trimmable horizontal actuator is.

(Laughter.)

MS. SCHAEFFER: I was going to say, that’s what you need cooperation for. It takes three agencies to understand that.

MS. COPPOLA: Right.

MR. BANASEVIC: And there was another adjective there as well. But, anyway, for us, I mean, if you look at mergers and conduct, of course, we have an obligatory notification system in mergers, once you reach certain thresholds. I mean, you have to reason every decision whether it’s a clearance of remedies or a prohibition. So there’s no discretion as such in that sense. But, of course, there’s great benefit in the cases that we’re looking at more closely and we’ve got many examples that have been mentioned in terms of coordinating on the substance, on the timing, and, if appropriate, the remedies and the potential impact and how that might read across. Where we have the discretion in terms of choosing which cases we do and which cases we don’t,

with scarce resources that any public body has by definition, is a number of things, but not least the impact -- the potential impact in our market, in our jurisdiction. We’re responsible for a jurisdiction of 500 million people.

So I think it’s likely if we believe that there is an issue in that market that we are going to want to look at it more closely, even if there are similar investigations going on or not around the world. So I think that’s the first thing to say.

That being said, I think I understand as well the argument, particularly in the sector for which I’m responsible, the high-tech sector, companies operate globally, so the issue is raised, well, could you have different solutions in different jurisdictions? I actually think this risk of diversion is somehow overblown in terms of just perception. It’s not that this is going around willy- nilly in every case in every sector. I think that’s slightly a perception issue and, actually, more generally illustrates my core point in the benefits of really having up front, preemptively with partner agencies, discussions about the approach to be taken.

Again, it’s not that one can or need guarantee precisely the same outcome, given the differences possibly in even conduct. I mean, some of our markets are national for some of the products even if the companies are operating globally. But I think there is a great benefit in this up-front shaping, sharing thoughts to, to the extent possible, minimize the risk of divergences.

MS. COPPOLA: We have a question from the audience about the ongoing investigations of the tech platforms. The EC, the Japan Fair Trade Commission, are already investigating these firms. What’s important to effectively investigate, including cooperation? Another question, what you can expect from the FTC, but as I’m not a speaker, but a moderator, I think I will punt that to what can you expect from the investigating agencies. And, Nick, according to this week’s Economist, you guys are the determinators. So I’m going to let you answer that question.

MR. BANASEVIC: Is that a type of actuator? A determinator?

MS. COPPOLA: There’s these like big guns and, yeah, sledgehammers.

MR. BANASEVIC: I’m not allowed to say anything about ongoing cases, so –

MS. COPPOLA: Right.

MR. BANASEVIC: So what was the –

MS. COPPOLA: The question was, how can -- I think the question is, how can those agencies effectively investigate? What kind of joint –

MR. BANASEVIC: I think I have to go back to my examples from the past. I think that’s the most instructive thing. I mentioned two. There have been others where in the US and in the -- particularly the same cases or the same issues have been looked at. In some, we’ve had waivers; in others, we haven’t. I don’t want to monopolize the last 2 minutes and 30 seconds.

MS. COPPOLA: Right.

MR. BANASEVIC: It’s really been of tremendous use. And it’s my opening statement, it’s not an add-on. It can really -- for these big cases where they’re very important, sensitive, and you want to get it right, there’s just a great benefit in sharing experiences, knowledge, with colleagues who have the same -- who want to get it right as well and get the best result. So it’s a very good thing that we shouldn’t have just as just a bolt-on.

MS. SCHAEFFER: Can I just add on to that? Maybe the Cooperation 2.0 for digital platform investigations is not necessarily between antitrust agencies, but between antitrust agencies, consumer protection, and privacy agencies. Because -- and I think the term “forbearance” might come in there as well, in that not everything involving a digital platform is necessarily an antitrust issue.

And we certainly have a lot of intermelding of privacy and consumer protection concerns, as we see with the Australian ACCC report. And how do we jointly investigate those issues or maybe have antitrust not be the primary investigation and enforcement mechanism there?

MS. COPPOLA: We are very close to the end of the session. So I guess, Marcus and Jeanne, starting with you, and if there’s time, we’ll move on to Fiona and Nick. What are your last words of advice for the FTC in the area of enforcement cooperation?

MS. PRATT: I’m not sure I have advice. I think, as you’ve heard, I have found or we have found that gateway provision in our legislation to be particularly useful and, you know, it might be interesting to consider that in your context and whether it’s appropriate.

And I would just want to lastly say thank you very much for having us here. I know the FTC can continue to rely on the Canadian Competition Bureau’s commitment to continuing to build upon the solid cooperation foundation that we have and in particularly dynamic fast-moving markets that we have today. I think the business case for cooperation is only getting stronger and will only get better from here.

MR. BEZZI: So I won’t advise the FTC, but the advice that I’ll give to the ACCC is that we need 21st Cooperation and mutual assistance frameworks.

MS. COPPOLA: Thanks.

Nick, Fiona, anything to add?

MR. BANASEVIC; I’ve said it all, I don’t want to repeat. I think it’s don’t underestimate it, use it, and benefit from the interactions and the knowledge you can have with colleagues.

MS. COPPOLA: Well, thank you all very much for your insights. These have been tremendous. Coming into the panel, I wasn’t sure I would learn anything since I spend most of my day engaged in enforcement cooperation. But I did. So bravo. Thanks so much for participating. I think we’ll move on to the next panel now.

(Applause.)

(Brief break.)

INTERNATIONAL ENGAGEMENT AND EMERGING TECHNOLOGIES: ARTIFICIAL INTELLIGENCE CASE STUDY

MS. WOODS BELL: Hello, everyone. Welcome back from break. I’m Deon Woods Bell. I’m a lawyer in the Office of International Affairs at the Federal Trade Commission. I’m so excited to be here today.

It is my extreme pleasure to introduce Julie Brill. Julie is Corporate Vice President and Deputy General Counsel for Global Privacy and Regulatory Affairs at Microsoft. Of course, everybody in the building knows her as a former Commissioner and friend of the Federal Trade Commission. She’s widely recognized for her work on internet privacy and data security issues related to advertising and financial fraud.

She’s received so many awards we could not list them all in her bio, nor could I enumerate them here today. One of my favorite is the Top 50 Influencers on Big Data in 2015. And one of my favorite memories is working together with her in Brussels on these same issues. Thank you, and please welcome Julie.

(Applause.)

MS. BRILL: Thank you, Deon. I remember that event, too, and it was great to work with you there. And it’s really an honor to be here today to contribute to today’s important discussions on the FTC’s international role in a world transformed by digital technology.

I am particularly excited to begin this session today that focuses on artificial intelligence. We have a truly distinguished panel, some of whom are -- here they come -- of experts from around the world, who will explore the implications of artificial intelligence at a time when innovative technology calls for innovative thinking about policy and regulation.

Today’s discussion comes at a critical moment. During the past few years, how people work, play, and learn about the world has been transformed. Industries have been reinvented. New ways to treat diseases emerge almost every day. Driving all this change are groundbreaking technologies like cloud computing that enable us to collect and analyze data scale that has never before been possible. But what we have experienced so far is just the beginning.

Rapid progress in the field of artificial intelligence has delivered us to the threshold of a new era of computing that will transform every field of human endeavor. Already, almost without us noticing, AI has become an essential part of our day- to-day lives. It powers the apps that help us get from place to place, predict what we might want to buy, and protects our systems from malware and viruses.

This is just a hint of what’s possible. Artificial intelligence has the potential to improve productivity, drive economic growth, and help us address some of the most pressing challenges in accessibility, health care, sustainability, poverty, and much more. Yet, history teaches us that change of this magnitude has always come with deep doubts and uncertainty.

I believe that if we are to realize the promise of artificial intelligence, we must acknowledge these doubts and work to build trust, trust that technology companies are working not just to maximize profits, but to improve people’s lives; trust that we use the personal data we collect safely, responsibly, and respectfully. But as we are learning the hard way, in the technology industry, trust is fragile.

In the wake of the Cambridge Analytica scandal and the spectacle of tech industry experts being hauled before Congress to answer for their business practices, people wonder if technology and technology companies can be trusted. The truth is that technology is neither inherently good nor bad. Cloud computing and artificial intelligence are just tools that people can use to be more productive and effective, basically the equivalent of the first Industrial Revolution’s steam engine. But it is also true that because technology has never been more powerful, the potential impact, both positive and negative, has never been greater.

So where does trust come from? It begins when companies like Microsoft, that are at the forefront of the digital revolution, acknowledge that in this time of sweeping change, we must consider the impact of our work on individuals, businesses, and societies. Today, we must ask ourselves not just what computers can do, but what they should do. This means there may be times when we have to be willing to decide that there are things that they should not do as well.

To guide us as we weigh these decisions at Microsoft, we have adopted six ethical principles for our work on artificial intelligence. It starts with transparency and accountability. We know that trust requires clear information about how AI systems work, coupled with accountability for the people and companies who develop them. We believe strongly in the principles of fairness which means AI must treat everyone with dignity and respect and without bias.

Our fourth principle encompasses reliability and safety, particularly when AI makes decisions that affect people. We also are strongly committed to the principles of privacy and security, for people’s personal information. And we believe that AI solutions should be built using inclusive design practices that affect the full range of experiences of all who might use them.

Now, while these principles are at the center of every decision we made about artificial intelligence research and development, we also know that the issues at stake are simply too large and too important to be left solely to the private sector. Trust also requires a new foundation of laws.

Here in the United States, right now, one area of the law demands our attention above all others. That area is privacy. Because so much of who we are is expressed digitally and so much of how we interact with each other and the world is captured and stored in digital form, how people think about privacy has changed. For more than a century, our understanding of this most fundamental human right has been shaped by the definition set forth by the great American legal thinker and fathers of the FTC, Louis Brandeis, who defined privacy as the right to be let alone. That right will always be important. But, by itself, it is no longer sufficient.

Now, modern privacy law must embrace two essential realities of life in the digital age. The first is that people expect to use digital tools and technologies to engage freely and safely with each other and with the world.

The second is that people expect to be empowered to control how their personal information is used. Whether we protect these two things is one of the critical challenges of our time. What we need is a new generation of privacy policies that embrace engagement and control without sacrificing interoperability or stifling innovation.

This is why we were the first company to extend the rights that are at the heart of the European general protection regulation, and we extended those to our customers around the world, including the right to know what data is collected, to correct that data, and to delete it or take it somewhere else. And over the last year, we’ve seen

the rise of a global movement to adopt frameworks that enhance consumer control mechanisms modeled on those required by Europe’s GDPR.

With participants here from India, Kenya and Brazil, this panel of distinguished guests is a perfect illustration of this important trend. Brazil’s general data protection law, which goes into effect a year from now, includes provisions that extend new privacy rights to individuals and mandates new requirements for notification, transparency, and governance for organizations. All of these requirements that will be new in Brazil are tightly aligned with GDPR.

In India and Kenya, new privacy laws modeled on GDPR are also currently moving through the legislative process.

Here in the United States, the California Consumer Privacy Act includes provisions that give people more control over their data. And Washington State is considering legislation based on consumer rights protected by GDPR as well.

As part of Microsoft’s commitment to privacy, we offer a dashboard where people can manage their privacy settings. Since May of last year, more than 10 million people around the world have used this tool, with the number growing every day. I think it is telling that while millions of people around the world are using our tool, our data demonstrates that US citizens are the most active in controlling their data. All of this should serve as a wakeup call for US companies and the US Government.

At Microsoft, we believe it is time for United States to adopt a new legal framework for access and use of data that reflects our new understanding of the right to privacy. To achieve this, I believe a strong US framework -- frankly, a strong privacy framework anywhere in the world -- should incorporate four core elements, transparency through robust standards that include and appropriate privacy statements within user experiences, individual empowerment that grants people meaningful control of their data and privacy preferences, corporate responsibility that is built on rigorous assessments that weigh the benefits of processing data against the risk to individuals whose data may be processed, and strong enforcement and rule-making. And, here, that means in the United States that should be all embedded at the US Federal Trade Commission.

While updated privacy laws are essential to building trust, new uses for artificial intelligence are emerging that will require special consideration for their own specific regulations. Facial recognition is a prime example. This technology has shown that it can provide new and positive benefits when used to identify missing children or diagnose diseases. But there is a real risk that -- there is a real risk which includes the danger that it will reinforce social bias and be used as a surveillance tool that encroaches individual freedom.

This is why Microsoft has called on the US Government to regulate facial recognition with a focus on preventing bias, preserving privacy, and prohibiting government surveillance in public places without a court order. It is also one of the reasons we have testified in support of the Washington State privacy bill, which includes provisions that address many of these important concerns about facial recognition technology.

We need laws that place appropriate guardrails to ensure that companies don’t take unfair advantage of individuals or violate people’s fundamental rights. That is the essence of trust. We believe that guardrails can be designed in ways that facilitate global interoperability and promote innovation so we can all work together to continue to harness the potential of the digital revolution to improve people’s lives and drive economic growth.

This will require a commitment from all of us to engage in ongoing discussions and consultations that span governments and sectors. This means it’s essential for the US Government and its agencies, including the FTC, to engage in a broad range of discussions with other governments on digital issues like we are doing with the honored guests here today.

Just as important are gatherings like this that will bring people together from around the world to explore policy approaches to new emerging technologies like artificial intelligence. More than 100 years ago, when Brandeis defined the right to be let alone in his famous Law Review article, The Right to Privacy, he described, with great eloquence, the ongoing process by which rights evolve as humanity progresses and how the law adopts and adapts in response.

“Political, social, and economic changes entail the recognition of new rights,” Brandeis wrote, “and the law in its eternal youth grows to meet demands of society.” Brandeis was moved to write this article because of the impact of photography, mechanical printing presses, and other disruptive new technologies of his time.

Today, we stand at the beginning of a new era of disruption and change, a time of technology- driven transformation that will require the recognition of new rights and the development of new laws to meet the demands of our societies. It’s a task that will ask us to convene in hearings like this one and in forums, meetings and conferences around the world to grapple openly and honestly with a host of issues that will touch on virtually every aspect of our lives and our businesses.

We, at Microsoft, look forward to being a part of these conversations and to working in close partnership with all of you to make sure that technology moves forward within a framework of respect for human dignity and with the goal of serving the greater good. Thank you.

(Applause.)

INTERNATIONAL ENGAGEMENT AND EMERGING TECHNOLOGIES: ARTIFICIAL INTELLIGENCE CASE STUDY (PANEL)

MS. WOODS BELL: Thank you. Thank you very much, Julie, for those remarks. You outlined very well the tremendous potential of AI and that’s one of the reasons why we’re here today, to discuss them even further.

Well, I’m still Deon Woods Bell. And my co- moderator here is Ellen Connelly, an Attorney Adviser in the Office of Policy and Planning. And, together, we want to welcome you to our panel on international engagement and emerging technologies focusing on artificial intelligence.

You’re in for a treat. As Julie described, we have quite a panel assembled for you here today. This session is a follow-on to the hearings in November, which focus on the same topic. And following the November meetings, colleagues here at the FTC -- and a lot of influence from Ellen here -- said we should go deeper, we should focus on international issues. So today, we’re thrilled to have this impressive group of international officials, practitioners, and academics here and on the line from Harvard.

During this panel, we’ll touch upon a variety of issues and we’ll go deeper and let you see what these colleagues have to offer. We won’t go into great detail on their bios, but we couldn’t resist showing off a little bit for you and letting you know who they are.

On the line from Harvard is Chinmayi Arun. She’s a fellow at the Harvard Berkman Klein Center for Internet & Society, and she’s the Assistant Professor of Law at the National Law University in Delhi. Her chair is there and her picture will soon be on the line as she can hear us right now.

Next, we have, again, he’s still James Dipple-Johnstone. You saw him earlier. He’s a Deputy Commissioner from the UK’s ICO, and prior to the ICO, he was in the Solicitor’s Regulatory Authority where he had been Director of Investigation and Supervision, and he’s not from the ministry of no.

(Laughter.)

MS. WOODS BELL: Next, Francis Kariuki, Director General of the Competition Authority of Kenya. Mr. Kariuki is the founding member and the current Chairman of the African Competition Forum. He’s also an expert in FinTech.

Next over to Marcela. She’s a partner at VMCA Advogados in Brazil focusing on data protection and antitrust. She’s served as Advisor and Chief of Staff for the President of Brazil’s famous CADE.

Over to Isabelle. She’s President and Member of the Board Autorité de la Concurrence, as she was previously the President of the Sixth Chamber of the Conseil d'État, the French Supreme Administrative Court, and other governmental capacities.

And last but not least, we have Omer Tene. Omer is a Vice President and Chief Knowledge Officer at the International Association of Privacy Professionals. He wears so many hats, we couldn’t list them either. He’s an Affiliate Scholar at Stanford and Senior Fellow at the Future of Privacy Forum.

So, before we get started, we want you to be open to looking to questions. We have our colleagues here. We’re going to have short introductory comments from each colleague, and then after this, we’ll have a moderated panel discussion, and we hope that you enjoy.

MS. CONNELLY: Great. So I will start us off by giving each of our panelists a chance to make a brief introductory statement to describe for us the key competition, consumer protection and privacy issues that they see emerging around the artificial intelligence field. We will start with Chinmayi.

MS. ARUN: Thank you for having me. It’s such an honor to be a part of this panel, and I’m happy to see that the FTC is listening to voices from around the world.

If I were to give you the three or four big highlights of how I would think about AI and the right to privacy in data sets in India, it would be -- the first would be in terms of global companies, usually American companies, operating in India versus Indian companies operating both in India, as well as elsewhere in places like Kenya.

The second would be in terms of data because, as you know, it’s a very big country and it provides large and rich data sets that can be complicated in ways that I’m going to describe to you shortly.

The third is that perhaps some of you have heard that there has been a rich and, again, contentious conversation about the right to privacy in India in the context of state surveillance, but also in the context of state protection. So we’ve had a major case on the right to privacy, and we’ve also got a data protection bill, which is very interesting, so I’m going to describe the highlights of that for you.

And the final -- because we’re discussing this in such an international context is this sort of almost a clash of jurisdictions that arises from the Indians, for example, floating proposals of data localization in certain contexts, but also the ways in which India is coping with norms that are emerging from the US and from Europe.

So the first is very simple, which is that as you know the major technology platforms, like Facebook and WhatsApp and Google, are used extensively in India and they have huge user bases in India, but there are also many Indian citizens that access them and have their data on them. Although I will focus a little bit more on the information platforms, it’s good to know that Airbnb, Uber, and other technology platform companies are also offering services in India.

So our legislation, our new privacy act, our proposed amendment to our information technology act are all coping now with the very real idea that there are many Indian citizens whose lives are affected by these technologies that are designed elsewhere based on rules from elsewhere. At the same time, they’re also trying to keep Indian companies competitive because there are Indian companies offering similar services in India.

Our NITI Aayog, which is sort of our version of the planning commission, has described India as the AI garage for 40 percent of the world, and they’ve got a strategy paper on AI. As you know, the big data set question, it’s complicated because, again, India is looking at it as a way towards machine learning, but there are also concerns of data protection and privacy that arise in that context.

And the big tension really is that, on one hand, the policymakers want to leverage this and have this data and sort of learn from it and, on the other, of course, there’s the question of the privacy rights of Indian citizens and especially of marginalized citizens, people who are not able to assert their rights in the consumer forum.

And the final -- so none of this is law yet, but both in the proposed privacy legislation and in the proposed IT amendment act, the question has arisen of whether foreign companies with a sizable user base in India should be asked to localize data in India. So both these proposed legislations have suggested that these companies might be made to host their data sets in India, and I think that that also is cause for concern if they’re thinking about it from a privacy and data protection point of view.

I’m going to stop here. I just wanted to flag all of this in case anyone has questions later. Thank you so much.

MS. CONNELLY: Thank you very much for those really interesting comments.

We’ll move down the line and next up is James.

MR. DIPPLE-JOHNSTONE: Thank you very much and thank you. It’s an honor to be here on this panel with you today.

So I’ve got four issues. And I think the first, which has already been very ably covered, which is that about public trust and the risk of losing public trust in the rollout of AI systems and the role of regulators needing to work together both within country, but also internationally, which is my second theme.

This is an emerging area, one where I don’t think we still have a clear picture of what AI’s impact on our societies will be. And with that in mind, it’s important that regulators keep themselves up to date, keep relevant and work together with others. And that’s very much the approach we’ve taken in the UK. The ICO has a remit in some of the technology, but actually, we work very closely with, for example, colleagues at the Competition and Market Authority, the Financial Conduct Authority, the Center for Data Ethics and Innovation and the Alan Turing Institute to look at the common issues that face us all and how we can improve our regulation.

An important third issue is to look at not only whether the data’s held -- and when we talk about big data sets, we sometimes think of the big tech companies, but in the UK context, the state has large and valuable data sets, too. The UK National Health Service and the UK Education Service have very comprehensive data sets with millions of data points, which would be of value to a number of organizations around the world.

And we are seeing increasing use of AI in the public sector as a model of efficiency and to help us all strive to meet our budget considerations. AI is being looked at for use to decide whether UK citizens are likely to commit crimes, which crimes should be investigated, who’s likely to reoffend, who’s likely to pay their rent on time. And that is beginning to introduce issues of fairness, accountability, and transparency.

And so that’s why, as a regulator, we are really keen to keep abreast of developments. So we are putting a lot of effort into doing that. We are recruiting post-doctoral researchers to help us look at how to regulate AI. We’ve taken new powers to examine AI’s use and look at AI systems in practice and in operation and we’ve reconfigured the office to set up an entire part of the office that will just focus on innovation and technology.

I said it this morning; I’ll keep saying it. We’re not the ministry of no, but we think the GDPR provisions around data protection impact assessments and our work around, for example, regulatory sand boxes and innovation hubs with other regulators. We’re trying to encourage early dialogue to tease through some of these issues together, because I’m not sure any one of us has the perfect answer for all the scenarios.

MS. CONNELLY: Thank you.

Francis?

MR. KARIUKI: Thank you, Ellen and Deon. It’s a pleasure for me to be here and to share my thoughts in regard to AI.

And my view is as a competition and consumer protection regulator, what am I worried about? And I have about four issues, and these are transparency and information asymmetries. What I would like to say is that AI has both created positive and external -- externalities. And in terms of competition and consumer protection, there’s an argument which has been found that they bring more efficiency in terms of prices and greater transparency compared to the traditional retail sales channels, and this is an inquiry which has been conducted in Europe and it has shown that. And, also, they provide additional benefits on these platforms. For example, AI [indiscernible], such platforms could improve choice and value for consumers.

However, the other challenge of -- an encountered challenge in regard to we don’t appreciate the criteria behind the decisions of AI, they are only known to the designer of these systems, and, therefore, the merchant or the consumer may not be aware of how the system has been created and it’s allocating the prices. So there’s the risk of intentional design of the systems in favor of certain participants in the market.

And this could be quite catastrophic in the continent I come from where there’s a lot of market concentration, and, therefore, the companies which are in Africa then can expand their space by being biased against the consumers in Africa.

The other areas that’s also barriers or pathways to entry are, in Kenya, I’ve seen some positive externalities especially AI has enabled new innovations, where in Kenya we have seen recent expansion of financial services for people who are not included in the financial services. And, therefore, companies have been enabled to expand financial services through lending positions for previously people who were not captured in the financial services and also in the insurance sector.

The challenge I see also from the AI is the line between open and proprietary data. AI often creates what is called, in fair data, an individual that is not perhaps -- not factual but opinion based, and, therefore, we may not get an optimal position for the product which is being offered or the prices which are being offered in the market. And, therefore, the challenge going forward is how do we determine data which is a product and which data is an input, and this choice of where the line is will have significant competitive implications as we move.

Besides information asymmetry, I’ve seen AI can also be used in consumer protection issues, discrimination based on other social issues like the region where people come from or even race, as I had mentioned earlier, and these are some of the things where we need, as regulators, both competition and consumer, to look before we fly, because right now is that we are flying blindly and we might be flying into a storm.

MS. CONNELLY: Thank you.

Marcela?

MS. MATTIUZZO: So first of all, thank you, Deon and Ellen, for the invitation for the FTC, to you both for inviting me personally, but also Brazil to be a part of this discussion.

A lot of the points that have been raised here focus on procedural challenges of AI. What I would like to also mention is perhaps the difficulty in both attaining international convergence in these topics, not necessarily laws that are exactly the same, but that point in the same direction, and also convergence within the many fields of law that are connected to AI.

So here, at the FTC, we’re naturally discussing antitrust, consumer protection, and privacy. And even when we’re speaking only of these three areas of law, we can already see that sometimes the objectives of these policies are not always totally convergent.

So, what I would like to -- just to give an example, I guess, that is comparing privacy and antitrust that to me is very clear. What technology has enabled today is for many companies to unilaterally access information and AI has also allowed that information, this data, to be combined and used efficiently for many purposes. So now we can know who bought something, how that person bought it, and so forth, and create, for example, consumer profiles.

Perhaps from an antitrust point of view, one of the solutions to a potential problem of unilateral abuse of this information would be to share the databases with other companies. So we would have many companies that have the access to the same set of data and, therefore, of course, we can have problems of collusion. But leaving that aside, we would have a level playing field.

If, however, we look from the consumer or data protection side of the discussion, we may come to a very different conclusion. And we may come to realize that, perhaps, consumers don’t want their data shared across different platforms and shared across many companies. So, naturally, both objectives pursued by either antitrust or privacy and consumer protection agencies, in the case of Brazil specifically as I hope to make clear throughout my interventions, we are at very different development stages. When it comes to antitrust and consumer protection, we are much more developed and, as you may be aware and former Commissioner Julie Brill already mentioned, in regards to data protection legislation, our specific legislation was approved just last August, August 2018, and has not yet come into force.

So building policy that brings all of these areas of law together in a coherent fashion to address AI challenges seems to me to be a particularly important goal and a particularly important topic for us to focus on.

MS. CONNELLY: Thank you, Marcela. Isabelle?

MS. DE SILVA: Thanks a lot to the FTC for the invitation. I’m really glad to be here.

I would like to say that, for me, the main point is that we think data, artificial intelligence, algorithm, are really key to the competitive process and that is why we must look at it closely. Of course, those processes affect also the way the state is being run. They also affect and they change society, but for us, the main issue is how do they affect the competitive process and the way companies do business?

So what we see is that we really need to invest a lot more than before in understanding what is going on in the market, in the companies, and also to use all our different tools, legal tools, to gain a better understanding and also to give better vision to the market, and I will try to illustrate this with some examples.

So first of all, we use sector inquiries. That is a tool that is common among agencies. But how do we use it? We really take a lot of time to understand a specific market that we deem to be interesting or a process. So that’s what we did with online advertising last year, and, of course, we had very interesting dialogue and followup with Australia, who has finished a very interesting report on online advertising.

And in this way, we get a lot of information from companies. They are sometimes reluctant to give information, but we have the legal framework that enable us to get a lot of information.

And also we give information back to the market. I think this is really something interesting because some sectors are moving so fast that even the companies engaging in the sector don’t always have the big picture, and that is something that has been deemed very useful in the field of what we did about programmatic advertising and the way it’s being run because it’s a very complex and new ecosystem.

Another type of tool we are using very much is the joint studies with other agencies. That’s what we did with the CMA about closed ecosystem in 2014, what we did with the German agency in 2016 about big data, and what we are doing right now about algorithm still with the German agency.

So what is the interest of this? It’s really to show the impact we see that algorithms have on the competitive process and maybe I will tell about a little bit more about this later. This is really something where we draw about, of course, what the experts have written about algorithm, but also in a very practical manner how do companies use algorithm and how does it change the way they do business in the market?

And, finally, another tool that we use is the conference or hearings like you have today at the FTC, but really focusing on what is new, for example, in the field of algorithm. Last year, we had lots of meetings with scientists, sociology experts about what is new about algorithm and also about companies. For example, we had meetings with Google and Facebook to know how they use algorithm in a very precise and detailed matter to help us to understand how it’s being used.

#### Upside AND downside risks of AI are existential---effective governance is key

Themistoklis Tzimas 21, Faculty of Law at the Aristotle University of Thessaloniki, “Chapter 2: The Expectations and Risks from AI”, in Legal and Ethical Challenges of Artificial Intelligence from an International Law Perspective, Springer, 2021, pp. 9–32 Open WorldCat, https://doi.org/10.1007/978-3-030-78585-7

Therefore, it is only natural to be at least skeptical towards a future with entities possessing equal or superior intelligence and levels of autonomy; the prospect even of existential risk looms as possible.7

AI that will have reached or surpassed our level of intelligence make us wonder why would highly autonomous and intelligent AI want to give up control back to its original creators?8 Why remain contained in pre-deﬁned goals set for it by us, humans?

Even AI in its current form and narrow intelligence poses risks because of its embedded-ness in an ever-growing number of crucial aspects of our lives. The role of AI in military, ﬁnancial,9 health, educational, environmental, governance networks-among others—are areas where risk generated by AI—even limited— autonomy can be diffused through non-linear networks, with signiﬁcant impact— even systemic.10

The answer therefore to the question whether AI brings risk with it is yes; as Eliezer Yudkowski comments the greatest of them all is that people conclude too early that they understand it11 or that they assume that they can achieve it without necessarily having acquired complete and thorough understanding of what intelli- gence means.12

Our projection of our—lack of complete—understanding of the concept of intelligence on AI is owed to our lack of complete comprehension of human intelligence too, which is partially covered by the prevalent and until now self- obvious, anthropomorphism because of which we tend to identify higher intelligence with the human mind.

Yudkowski again however suggests that AI “refers to a vastly greater space of possibilities than does the term “Homo sapiens.” When we talk about “AIs” we are really talking about minds-in-general, or optimization processes in general. Imagine a map of mind design space. In one corner, a tiny little circle contains all humans; within a larger tiny circle containing all biological life; and all the rest of the huge map is the space of minds-in-general. The entire map ﬂoats in a still vaster space, the space of optimization processes.”13

Regardless of what our well-established ideas are, there are many, different intelligences and even more signiﬁcantly, there are potentially, different intelli- gences equally or even more evolved than human.

From such a perspective, the unprecedented—ness of potential AI developments and the mystery surrounding them emerges as not only the outcome of pop culture but of a radical transformation of our—until recently—self—obvious identiﬁcation of humanity with highly evolved and dominant intelligence.14

The lack of understanding of intelligence and therefore of AI may be frightening but does not lead necessarily to regulation—at least to a proper one. We could even be led into making potentially catastrophic choices, on the basis of false assumptions.

On top of our lack of understanding, we should add a sentiment of anxiety as well as of expectations, which intensiﬁes as an atmosphere of emergency and of expected groundbreaking developments grows. The most graphic description of this feeling is the potential of a moment of singularity, as mentioned above according to the description by Vinge and Kurzweil.

As the mathematician I. J. Good–Alan Turing’s colleague in the team of the latter during World War II—has put it: “Let an ultraintelligent machine be deﬁned as a machine that can far surpass all the intellectual activities of any man however clever. Since the design of machines is one of these intellectual activities, an ultraintelligent machine could design even better machines; there would then unquestionably be an “intelligence explosion,” and the intelligence of man would be left far behind. Thus the ﬁrst ultraintelligent machine is the last invention that man need ever make, provided that the machine is docile enough to tell us how to keep it under control.”15 This is in a nutshell the moment of singularity.

The estimates currently foresee the emergence of ultra or super intelligence—as it is currently labelled—or in other words of singularity, somewhere between 20 and 50 years from today, further raising the sentiment of emergency.16 We cannot even foretell with precision how singularity would look like but we know that because of its expected groundbreaking impact, both states and private entities compete towards gaining the upper hand in the prospect of the singularity.17

Despite the fact that such predictions have been proven rather optimistic in the past18 and therefore up to some extent inaccurate, there are reasons to assume that their materialization will take place and that the urgency of regulation will be proven realistic.

After all, part of the disappointments from AI should be blamed on the fact that certain activities and standards, which were considered as epitomes of human intelligence have been surpassed by AI, only to indicate that they were not eventu- ally satisfactory thresholds for the surpassing of human intelligence.19 Partially because of AI progress we realize that human intelligence and its thresholds are much more complicated than assumed in the past.

The vastness’s of deﬁnitions of intelligence, as well as its etymological roots are enlightening of the difﬁculties: “to gather, to collect, to assemble or to choose, and to form an impression, thus leading one to ﬁnally understand, perceive, or know”.20

As with other relevant concepts, the truth is that until recently our main way to approach intelligence for far too long was “we know it, when we see it”. AI is an additional reason for looking deeper into intelligence and the more we examine it, the most complicated it seems.

The combination of lack of complete understanding of intelligence, the unpredictability of AI, its rapid evolution and the prospect of singularity explain both the fascination and the fear from AI. Once the latter emerges, we have no real knowledge about what will happen next but only speculations, which until recently belonged to the area of science ﬁction.

We are for example pretty conﬁdent that the speed of AI intelligence growth will accelerate, once self—improvement will have been achieved. The expected or possible chain of events will begin from AI capacity to re-write its own algorithms and exponentially self—improve, surpassing human intelligence, which lacks the capacity of such rapid self—improvement and setting its own goals.21

We can somehow guess the speed of AGI and ASI evolution and possibly some of its initial steps but we cannot guess the directions that such AI will choose to follow and the characteristics that it will demonstrate. Practically, we credibly guess the prospects of AI beyond a certain level of development.

Two existential issues could emerge: ﬁrst, an imbalance of intelligence at our expense—with us, humans becoming the inferior species—in favor of non-biological entities and secondly a lack of even fundamental conceptual communication between the two most intelligent “species”. Both of them heighten the fear of irreversible changes, once we lose the possession of the superior intelligence.22

However, we need to consider the expectations as well. The positive side focuses on the so-called friendly AI, meaning AI which will beneﬁt and not harm humans, thanks to its advanced intelligence.23

AI bears the promise of signiﬁcantly enhancing human life on various aspects, beginning from the already existing, narrow applications. The enhanced automation24 in the industry and the shift to autonomy,25 the take—over by AI of tasks even at the service sector which can be considered as “tedious”—i.e. in the banking sector—climate and weather forecasting, disaster response,26 the potentially better cooperation among different actors in complicated matters such as in matters of information, geopolitics and international relations, logistics, resources ex.27

The realization of the positive expectations depends up to some extent upon the complementarity or not, of AI with human intelligence. However, what friendly AI will bring in our societies constitutes a matter of debate, given our lack of unanimous approach on what should be considered as beneﬁcial and therefore friendly to humans—as is analyzed in the next chapter.

Friendly AI for example bears the prospect of freeing us from hard labor or even further from unwanted labor; of generating further economic growth; of dealing in unbiased, speedy, effective and cheaper ways with sectors such as policing, justice, health, environmental crisis, natural disasters, education, governance, defense and several more of them which necessitate decision-making, with the involvement of sophisticated intelligence.

The synergies between human intelligence and AI “promise” the enhancement of humans in most of their aspects. Such synergies may remain external—humans using AI as external to themselves, in terms of analysis, forecasts, decision—making and in general as a type of assistant-28 or may evolve into the merging of the two forms of intelligence either temporarily or permanently.

The second profoundly enters humanity, existentially—speaking, into uncharted waters. Elon Musk argues in favor of “having some sort of merger of biological intelligence and machine intelligence” and his company “Neuralink” aims at implanting chips in human brain. Musk argues that through this way humans will keep artiﬁcial intelligence under control.29 The proposition is that of “mind design”, with humans playing the role that God had according to theologies.30

While the temptation is strong—exceeding human mind’s capacities, far beyond what nature “created”, by acquiring the capacity for example to connect directly to the cyberspace or to break the barriers of biology31—the risks are signiﬁcant too: what if a microchip malfunction? Will such a brain be usurped or become captive to malfunctioning AI?

The merging of the two intelligences is most likely to evolve initially by invoking medical reasons, instead of human enhancement. But the merging of the two will most likely continue, as after all the limits between healing and enhancement are most often blurry. This development will give rise, as is analyzed below, to signif- icant questions and issues, the most of crucial of which is the setting of a threshold for the prevalence of the human aspect of intelligence over the artiﬁcial one.

Human nature is historically improved, enhanced, healed and now, potentially even re-designed in the future.32 Can a “medical science” endorsing such a goal be ethically acceptable and if yes, under what conditions, when, for whom and by what means? The answers are more difﬁcult than it seems. As the World Health Organi- zation—WHO—provides in its constitution, “Health is a state of complete physical, mental and social well-being and not merely the absence of disease or inﬁrmity”.33

Therefore, why discourage science which aims at human-enhancement, even reaching the levels of post-humanism?34 Or if restrictions are to be imposed on human enhancement, on what ethics and laws will they be justiﬁed? How ethically acceptable is it to prohibit or delay technological evolution, which among several other magniﬁcent achievements, promises to treat death as a disease and cure it, by reducing soul to self, self to mind, and mind to brain, which will then be preserved as a “softwarized” program in a hardware other than the human body?35

After all, “According to the strong artiﬁcial intelligence program there is no fundamental difference between computers and brains: a computer is different machinery than a person in terms of speed and memory capacity.”36

While such a scientiﬁc development and the ones leading potentially to it will be undoubtedly, groundbreaking technologically-speaking, is it actually—ethically- speaking—as ambivalent as it may sound or is it already justiﬁed by our well— rooted human-centrism?37

Secular humanism may have very well outdated religious beliefs about afterlife in the area of science but has not diminished the hope for immortality; on the contrary, science, implicitly or explicitly predicts that matter can in various ways surpass death, albeit by means which belong in the realm of scientiﬁc proof, instead of that of metaphysical belief.38

If this is the philosophical case, the quest for immortality becomes ethically acceptable; it can be considered as embedded both in the existential anxiety of humans, as well as in the human-centrism of secular philosophical and political victory over the dei-centric approach to the world and to our existence.

From another perspective of course and for the not that distant philosophical reasons, the quest for immortality becomes ethically ambiguous or even unacceptable.39 By seeking endless life we may miss all these that make life worth living in the framework of ﬁniteness. As the gerontologist Paul Hayﬂick cautioned “Given the possibility that you could replace all your parts, including your brain, then you lose your self-identity, your self-recognition. You lose who you are! You are who you are because of your memory.”40

In other words, once we begin to integrate the two types of intelligence, within ourselves, until when and how we will be sure that it is human intelligence that guides us, instead of the AI? And if we are not guided completely or—even further—at all by human intelligence but on the contrary we are guided by AI which we have embodied and which is trained by our human intelligence, will we be remaining humans or we will have evolved to some type of meta-human or transhumant species, being different persons as well?41

AI promises tor threatens to offer a solution by breaking down our consciousness into small “particles” of information—simplistically speaking—which can then be “software-ized” and therefore “uploaded” into different forms of physical or non-physical existence.

Diane Ackerman states that “The brain is silent, the brain is dark, the brain tastes nothing, the brain hears nothing. All it receives are electrical impulses--not the sumptuous chocolate melting sweetly, not the oboe solo like the ﬂight of a bird, not the pastel pink and lavender sunset over the coral reef--only impulses.”42 Therefore, all that is needed—although it is of course much more complicated than we can imagine—is a way to code and reproduce such impulses.

Even if we consider that without death, we will no more be humans but something else, why should we remain humans once technologies allow us be something “more”, in the sense of an enhanced version of “being”? Why are we to remain bound by biological evolution if we can re-design it and our future form of existence?

Why not try to achieve the major breakthrough, the anticipated or hoped digita- lization of the human mind, which promises immortality of consciousness via the cyberspace or artiﬁcial bodies: the uploading of our consciousness so that it can live on forever, turning death into an optional condition.43

Either through an artiﬁcial body or emulation-a living, conscious avatar—we hope—or fear—that the domain of immortality will be within reach. It is the prospect of a “substrate-independent minds,” in which human and machine consciousness will merge, transcending biological limits of time, space and mem- ory” that fascinates us.44

As Anders Sandberg explained “The point of brain emulation is to recreate the function of the original brain: if ‘run’ it will be able to think and act as the original,” he says. Progress has been slow but steady. “We are now able to take small brain tissue samples and map them in 3D. These are at exquisite resolution, but the blocks are just a few microns across. We can run simulations of the size of a mouse brain on supercomputers—but we do not have the total connectivity yet. As methods improve, I expect to see automatic conversion of scanned tissue into models that can be run. The different parts exist, but so far there is no pipeline from brains to emulations.”45

The emulation is different from a simulation in the sense that the former mimics not only the outward outcome but also the “internal causal dynamics”, so that the emulated system and in this particular case the human mind behaves as the original.46 Obviously, this is a challenging task: we need to understand the human brain with the help of computational neuroscience and combine simpliﬁed parts such as simulated neurons with network structures so that the patterns of the brain are comprehended. We must combine effectively “biological realism (attempting to be faithful to biology), completeness (using all available empirical data about the system), tractability (the possibility of quantitative or qualitative simulation) and understanding (producing a compressed representation of the salient aspects of the system in the mind of the experimenter)”.47

The technological challenges are vast. Technologically speaking, the whole concept is based on some assumptions which must be proven both accurate and feasible.48 We must achieve technology capable of scanning completely the human brain, of creating software on the basis of the acquired information from its scanning and of the interpretation of information and the hardware which will be capable of uploading or downloading such software.49 The steps within these procedures are equally challenging. Their detailed analysis evades the scope of this book.

Some critical questions—they are further analyzed in the next chapters—emerge however: how will we interpret free will in emulation? What will be the impact of the environment and of what environment? How will be missing parts of the human brain re-constructed and emulated? What will be the status of the several emulations which will be created—i.e. failed attempts or emulations of parts of the human brain—in the course of the search for a complete and functioning emulation? Will they be considered as “persons” and therefore as having some right or will they be considered as mere objects in an experimental lab? How are we going to decode the actual subjective sentiments of these emulations? Essentially, are emulations the humans “themselves” who are emulated or a different person? Even further what will human and person mean in the era of emulation?

From a different perspective, the victory over death may be seen as a danger of mass extinction, absorption or de-humanization. In this new, vast universe of emulations will there be place for humans?50

From the above—mentioned discussion, it becomes obvious that at a large extent, the prospect of risk or of expectation is a matter of perspective, for which there is no unanimous agreement in the present. This may be the greatest danger of all, for which Asimov warned us: unleashing technology while we cannot communicate among us, in the face of it.

The existential prospect as well as the risks by AI may self-evidently emerge from technological advances but are determined on the basis of politico—philosophical or in the wider sense, ethical assumptions. This is where the need for legal regulation steps in. Such a need was often underestimated in the past in favor of a solely technologically oriented approach—although exceptions raising issues other than technological can be found too.51 The gradual raising of ethic—political, philosoph- ical and legal issues constitutes a rather recent development, partially because of the realization of the proximity of the risks and of the expectations.

The public debate is often divided between two “contradictory” views: fear of AI or enthusiastic optimism. The opinions of the experts differ respectively.

Kurzweil, who has come with a prediction for a date for the emergence of singularity—until 2045—expects such a development in a positive way: “What’s actually happening is [machines] are powering all of us,” Kurzweil said during the SXSW interview. “They’re making us smarter. They may not yet be inside our bodies, but, by the 2030s, we will connect our neocortex, the part of our brain where we do our thinking, to the cloud.”52

In a well-known article—issued on the occasion of a ﬁlm—Stephen Hawking, Max Tegmark, Stuart Russell, and Frank Wilczek shared a moderate position: “The potential beneﬁts are huge; everything that civilization has to offer is a product of human intelligence; we cannot predict what we might achieve when this intelligence is magniﬁed by the tools AI may provide, but the eradication of war, disease, and poverty would be high on anyone’s list. Success in creating AI would be the biggest event in human history. . . Unfortunately, it might also be the last, unless we learn how to avoid the risks.”53

### 1NC – Sunsets CP

#### The Congress of United States should:

* impose a general sunset on antitrust exemptions for global ocean carriers after five years, indexed to begin 4 years and 9 months prior to date.
* order the GAO to report on the continuing need for antitrust exemptions for global ocean carriers.
* require the Senate and House Judiciary Committee to hold hearings on the exemption if the GAO finds its continued existence warranted
* require that the congress forward a law, signed by the president, to establish that the exemption should be renewed

#### Solves the case.

Anne McGinnis, JD Michigan, ’14, "Ridding the Law of Outdated Statutory Exemptions to Antitrust Law: a Proposal for Reform," University of Michigan Journal of Law Reform 47, no. 2 (Winter 2014): 529-[vi]

Once in place, exemptions are rarely revisited,112 and powerful industries continue to lobby for new ones.113 For example, regardless of whether the McCarran-Ferguson Act remains warranted or not, every attempt to repeal the Act has failed. In fact, every recent attempt to reform any current statutory exemption has failed.114 The harm, or, at the very least, the ineffectiveness of many of these statutory exemptions is neither partisan nor heartily contested by antitrust experts.115 But efforts to repeal exemptions rarely gain traction. Interest groups advocating for an exemption may be powerful and strongly motivated, but groups advocating against an exemption are often fragmented and have little stake in pursuing repeal."'1

Any effective solution must do two things. First, it must provide a way to review the statutory exemptions currently in place to determine whether they are still necessary and beneficial to society. Second, it must switch the default from one where a statutory exemption, once enacted, remains on the books until Congress acts affirmatively to repeal it to one where a statutory exemption is presumed to expire after a short period of time unless Congress believes that it is still necessary. Further, any solution must be an efficient use of congressional time and must break the institutional stagnation that has prevented the review and repeal of statutory exemptions to date.

This Note's proposed solution is a federal law containing four provisions. Specifically, this Note urges Congress to adopt legislation that (1) imposes a general sunset on all statutory exemptions after five years, (2) orders the Government Accountability Office (GAO) to prepare a report on the continuing need for each statutory exemption currently in place, (3) requires the Senate and House Judiciary Committees to hold hearings on any exemption that the GAO finds still warranted, and (4) provides that, if the committees find that an exemption should be renewed after the hearings, they forward a law overriding the sunset provision for that exemption to the floor of each house to be voted on, signed by the President, and put into effect.117

A. The Sunset Provision

Perhaps the most critical aspect of this Note's proposed reform is the five-year general sunset provision that would apply to all statutory exemptions currently in place.118 This provision switches the default from one where every exemption remains in effect indefinitely to one where irrelevant and harmful exemptions are automatically stripped from the law absent an affirmative act by Congress. This provision will force the proponents of a statutory exemption to once again make their case for why the exemption is appropriate.

B. The GAO Report

The provision requiring a GAO report on each existing exemption is also critical. Few, if any, hearings have been held on the vast majority of exemptions currently in place. Many exemptions have not been reconsidered in decades, and no one knows how effective most statutory exemptions actually are in accomplishing their stated goals. To reform this area of the law, more information is desperately needed. The purpose of the GAO report is to uncover this information.

The GAO report should ask and answer several questions. First, it should determine whether the conduct immunized by a given statutory exemption could result in antitrust liability today. As explained in Part I, antitrust law has changed immensely over the past sixty years in response to evolving economic theory and market conditions. Many behaviors that were once per se illegal are now firmly analyzed under the rule of reason and rarely, if ever, found to violate antitrust laws." 9 Even many behaviors formerly deemed anticompetitive under the rule of reason are, when explained through modern economic theory, likely to be found legal.120 If the conduct exempted would not actually violate modem antitrust law, then the exemption is unnecessary and should not be renewed.121 Second, the GAO should determine if the behavior covered by the exemption actually occurs today, regardless of whether it would be subject to antitrust liability. Some amendments, like the Anti- Hog Cholera Serum Act'2 2 and parts of the Defense Production Act, 23 are irrelevant today not because the conduct would be permissible under contemporary antitrust laws but because the problem they were designed to address no longer exists. 24 Conduct that does not occur does not deserve an exemption, and any existing exemption should be allowed to lapse. Even if future conduct might warrant an exemption, it is better to repeal the current exemption and require Congress to enact a new one that is tailored to the circumstances at that later date.

Third, the GAO should ask what justifications were given for the exemption's original passage. Was the exemption passed to remedy some apparent market failure? Was it designed to protect conduct that Congress deemed socially desirable, despite its anticompetitive effect? Was it designed to replace antitrust regulation with direct governmental regulation? Was it purely a reaction to an administrative or court decision finding liability where Congress believed the behavior was in fact procompetitive? To appropriately judge the success or failure of any given exemption, it is essential to know the intent behind its enactment.

Fourth, the GAO should ask, in light of the findings made in the third inquiry, whether the exemption has served its intended purpose and whether it is still needed today. Has the exemption successfully achieved the aims that it was ostensibly enacted to achieve? Has it actually fostered the socially desirable behavior that it was designed to encourage? Has the exemption enhanced or harmed consumer welfare? What does the affected market look like today in comparison to when the exemption was passed? If the exemption was enacted to enable direct regulation, is there still a regulatory scheme providing oversight?

C. Hearings and Renewal of Recommended Exemptions Only

The GAO would then compile this information in a report and clearly recommend whether or not to renew the given exemption. This report would be submitted to the Senate and House Judiciary Committees. If the report recommends that a given exemption be extended, then both committees must, under this Note's proposed law, hold a hearing on the exemption. If, after the hearing, the committees find that the exemption should be renewed, then the committees must forward a provision overriding the sunset for the exemption to the floor of each house to be voted on and signed by the President. In contrast, if the report recommends that the statutory exemption be allowed to expire, and Congress does not decide on its own to hold hearings or override the sunset provision, then the exemption will expire at the end of the five-year sunset period.

D. Summary of the Reform Proposal

This reform is not perfect. It requires Congress to act-a requirement not easily fulfilled in today's era of partisan deadlock. Moreover, it places a heavy burden on the GAO and undoubtedly comes with costs, some of which will go toward studying exemptions that, for all practical purposes, cause no harm today. However, many statutory exemptions currently in effect are undermining the competitiveness and efficiency of the United States economy and, to date, no piecemeal reform has worked. Therefore, this Note suggests a bolder, most holistic approach.

This reform allows non-partisan experts in antitrust law to examine existing exemptions and make recommendations regarding their continued utility. It then places the burden on supporters of an exemption to demonstrate, to the GAO and to Congress, why the exemption is still necessary. Because this solution requires minimal congressional action, it will hopefully limit the risk of political deadlock. Further, because it would mandate full committee hearings only on exemptions that remain useful, it would allow the docket of exemptions to be cleared with little wasted congressional time. Additionally, because the solution would require Congress to act affirmatively to retain a statutory exemption, the default would switch from perpetuating every exemption-regardless of effectiveness- to automatic sunset of all exemptions absent clear congressional intent to preserve specified ones.

Overall, this reform is designed to jump start the debate on whether the more-controversial exemptions currently in effect, like the McCarran-Ferguson Act, should be repealed. At the same time, this reform eliminates less controversial, irrelevant exemptions from the United States Code without wasting Congressional time or expense on an exemption-by-exemption repeal.

CONCLUSION

Antitrust law is designed to be an overarching check against anticompetitive conduct that harms the free market system. Statutory exemptions to antitrust laws are supposed to provide some relief from this check in cases where natural monopolies or market failures make the application of antitrust law to a specific industry or to particular conduct harmful to competition, or where Congress has decided that some social policy goal is more important than robust competition. However, many of the statutory exemptions currently on the books no longer serve their intended purpose. Some are merely irrelevant, while others actively harm society by transferring wealth to private individuals and hampering beneficial competition. It is time for holistic reform. If enacted, this Note's four-part legislative solution would make significant progress toward ridding the law of such stale or harmful exemptions, bringing antitrust law back to its bedrock principle of protecting economic liberty by preserving competition.

#### The plan crushes rule of law and democracy promotion, the counterplan revives it – lack of congressional review is nontransparent, unaccountable and technocratic.

Spencer Weber Waller, Chair of Competition Law @ Loyola University of Chicago, ’19, "Antitrust and Democracy," Florida State University Law Review 46, no. 4 (Summer 2019): 807-860

Professor Harry First and I examined the democratic underpinnings of antitrust law in our 2013 article Antitrust's Democracy Deficit.35 In that article, we explained how the dramatic decrease in "antitrust's political salience," until very recently, affected the "antitrust enterprise," and "connect[ed] this shift to our concern for the political values that we believe underlie" all forms of competition law.3 6 "We connect[ed] free markets with free people, favoring open markets, . . . the opportunity to compete, ... [and] ... the connection between free markets and democratic values and institutions."3 7 We also argued that "a balance of institutional power is necessary to advance the goals that free markets embody."3 8

We characterize [d] the result of this shift toward technocracy as antitrust's democracy deficit . . . draw[ing] upon the concept of a democracy deficit from the literature analyzing and critiquing the European Union (EU) and the World Trade Organization (WTO). The term has generally been used to refer to policymaking by unaccountable and nontransparent technocratic institutions far removed from democratic (or national) control.... The concern for democratic decision-making has also been reflected in a new interest in global administrative law and the importance of basic principles of transparency and due process as a way to control the administrative state. This interest in administrative law principles has likewise led to a closer examination of how well antitrust conforms to due process and institutional norms.

Our concern over antitrust's move away from more democratically controlled institutions toward greater reliance on [unaccountable] technical experts [was] not just animated by a theoretical preference for democracy. . . . A preference for democratic institutions implicitly assumes that more democratically arranged institutions will, in general, produce preferable antitrust policies and outcomes. We think this is particularly true today, when the imbalance between democratic control and technocratic control has put antitrust on a thin diet of efficiency, one that has weakened antitrust's ability to control corporate power.39

"[C]oncern about a democracy deficit does not lead to a full-throated embrace of . .. populism" in either its historical or more contemporary form. 4 0 One scholar has recently characterized antitrust populism as emphasizing social divides by using exaggerated claims. 41 He goes on to describe both a historical liberal strain of antitrust populism that is pro small business, and a more recent dominant conservative populist strain that questions the efficacy of antitrust itself.4 2

In Antitrust's Democracy Deficit, Harry First and I express our favoring of antitrust enforcement conducted by knowledgeable and committed public servants deciding cases in accordance with the law and due process, rather than directly by public opinion or the ballot box. 4 3 "Rather, we think that by redressing the democracy deficit we can move the needle back toward policies that reflect more general political understandings and views of antitrust policy." 44 These policies would improve the institutions and outcomes for antitrust law in the process. 45

First and I began our Article, Antitrust's Democracy Deficit, by charting the democracy deficit as shown through the conduct of the major antitrust system institutions, such as the courts, Congress, and public enforcers and by comparing the state of antitrust enforcement in the United States with the evolving enforcement regime found in Europe. 4 6 Second, we examined the link between technocracy and ideology, in particular, how a technocratic approach supports a radical laissez-faire ideology for antitrust enforcement. 47 First and I concluded our article with our thoughts on why antitrust would benefit from increased democracy. 4 8

This article expands on that work in an important way. The question of whether and how the promotion of democracy is an instrumental goal of antitrust law is an important one. There is an equally important issue of how antitrust can be enforced in a democratic manner (reflecting the values of a democratic market based society, as is the case in the countries belonging to the Organization for Economic Co-operation and Development) regardless of which values any particular individual or society believes are paramount in the antitrust laws themselves. That is the issue discussed below.

#### Extinction.

George Eaton 20. Senior online editor of the New Statesman. Citing Noam Chomsky, Laureate professor in the Department of Linguistics at the University of Arizona and professor emeritus at MIT, Ph.D. in linguistics from Penn. “Noam Chomsky: The world is at the most dangerous moment in human history”. The New Statesman. Sept 17 2020. https://www.newstatesman.com/politics/2020/09/noam-chomsky-the-world-is-at-the-most-dangerous-moment-in-human-history

Noam Chomsky has warned that the world is at the most dangerous moment in human history owing to the climate crisis, the threat of nuclear war and rising authoritarianism. In an exclusive interview with the New Statesman, the 91-year-old US linguist and activist said that the current perils exceed those of the 1930s.

“There’s been nothing like it in human history,” Chomsky said. “I’m old enough to remember, very vividly, the threat that Nazism could take over much of Eurasia, that was not an idle concern. US military planners did anticipate that the war would end with a US-dominated region and a German-dominated region… But even that, horrible enough, was not like the end of organised human life on Earth, which is what we’re facing.”

Chomsky was interviewed in advance of the first summit of the Progressive International (18-20 September), a new organisation founded by Bernie Sanders, the former US presidential candidate, and Yanis Varoufakis, the former Greek finance minister, to counter right-wing authoritarianism. In an echo of the movement’s slogan “internationalism or extinction”, Chomsky warned: “We’re at an astonishing confluence of very severe crises. The extent of them was illustrated by the last setting of the famous Doomsday Clock. It’s been set every year since the atom bombing, the minute hand has moved forward and back. But last January, they abandoned minutes and moved to seconds to midnight, which means termination. And that was before the scale of the pandemic.”

This shift, Chomsky said, reflected “the growing threat of nuclear war, which is probably more severe than it was during the Cold War. The growing threat of environmental catastrophe, and the third thing that they’ve been picking up for the last few years is the sharp deterioration of democracy, which sounds at first as if it doesn’t belong but it actually does, because the only hope for dealing with the two existential crises, which do threaten extinction, is to deal with them through a vibrant democracy with engaged, informed citizens who are participating in developing programmes to deal with these crises.”

Chomsky added that “[Donald] Trump has accomplished something quite impressive: he’s succeeded in increasing the threat of each of the three dangers. On nuclear weapons, he’s moved to continue, and essentially bring to an end, the dismantling of the arms control regime, which has offered some protection against terminal disaster. He’s greatly increased the development of new, dangerous, more threatening weapons, which means others do so too, which is increasing the threat to all of us.

“On environmental catastrophe, he’s escalated his effort to maximise the use of fossil fuels and to terminate the regulations that somewhat mitigate the effect of the coming disaster if we proceed on our present course.”

“On the deterioration of democracy, it’s become a joke. The executive branch of [the US] government has been completely purged of any dissident voice. Now it’s left with a group of sycophants.”

Chomsky described Trump as the figurehead of a new “reactionary international” consisting of Brazil, India, the UK, Egypt, Israel and Hungary. “In the western hemisphere the leading candidate is [Jair] Bolsonaro’s Brazil, kind of a small-time clone of President Trump. In the Middle East it will be based on the family dictatorships, the most reactionary states in the world. [Abdel al-]Sisi’s Egypt is the worst dictatorship that Egypt has ever had. Israel has moved so far to the right that you need a telescope to see it, it’s about the only country in the world where young people are even more reactionary than adults.”

He added: “[Narendra] Modi is destroying Indian secular democracy, severely repressing the Muslim population, he’s just vastly extended the terrible Indian occupation of Kashmir. In Europe, the leading candidate is [Viktor] Orbán in Hungary, who is creating a proto-fascist state. There are other figures, like [Matteo] Salvini in Italy, who gets his kicks out of watching refugees drown in the Mediterranean.”

### 1NC – CIL CP

#### The United States federal government should substantially increase prohibitions on anticompetitive business practices by the private sector by prohibiting global ocean carriers from colluding to set unfair prices and service terms by expanding the scope of its interpretive obligations under customary international law.

#### Competes and solves – it renders the same conduct equally unlawful but expands CIL rather than antitrust statute. That signals U.S. adherence to international economic law.

Banks ’12 [Ted; 2012; Scharf President, Compliance & Competition Consultants; Denver Journal of International Law & Policy, “40th Anniversary Edition: The International Law of Antitrust Compliance,” 368]

Introduction

It was not so long ago that the concept of international criminal law was an idea with which lawyers struggled. In 1987, Ved Nanda and M. Cherif Bassiouni put together what may have been the first one-volume compendium of information on antitrust, securities, extradition, tax, and other subjects that made up the developing area of international criminal law. Today, it is well-accepted that there are certain standards of behavior that are the norm in practically all nations, and through national laws and multinational treaties, these principles are entering the realm of customary international law.

Developments in the area of competition law, or antitrust as it is known in some countries, have been particularly dramatic. Countries understand that the encouragement of competition is a key to economic development, and national laws have been enacted where they did not exist before, along with enforcement cooperation agreements among increasing numbers of countries. 1 Enforcement of criminal antitrust laws takes place against both individuals and businesses, 2 and while it is clear that there are situations where business entities must be held responsible for actions of their employees, there are other situations where the intent of the corporation may be contrary to the actions of the employee. Throughout the world, in competition law, as well as in other areas of law, there is a consensus that it is appropriate for companies to adopt compliance and ethics programs to utilize management techniques to foster compliance with law. So, as standards of corporate [\*369] conduct become more universal, they reflect adherence to what is essentially an international law - the international law of competition. At the same time, more national authorities recognize that companies are expected to have compliance programs, and that a bona fide compliance program reflects a corporate intent not to violate the law, and therefore should be a positive factor in how authorities treat such companies, including as a mitigating factor for any penalty that might be imposed based on the ultra vires act by an employee.

It is well accepted that compliance and ethics programs are an expected part of corporate activity, and while no program can always guarantee human behavior, these programs do work to mitigate violations of law. Indeed, it can be said that it is now a standard for companies to have compliance programs or at least some elements of such programs such as codes of conduct. We submit that this growing recognition of the purpose of compliance and ethics programs has reached broad-based acceptance and should now be recognized in the competition law field by the United States and other governments as a standard of international law.

The Concept of Organizational Liability

Under many legal regimes, a corporation cannot be criminally punished for the actions of its employees, and until relatively recently (at least if you consider a century relatively recent), under the common law, a corporation was viewed as a legal fiction, 3 which could not be held liable for the criminal conduct of its employees. In the United States, it was not until 1909, in New York Central & Hudson River Railroad v. United States, 4 that the Supreme Court ruled that because the great majority of business transactions were conducted by corporations, it was time to abandon the "old and exploded doctrine" that a corporation was not indictable. 5 The Court reasoned that, as a matter of public policy, because a corporation could be held civilly liable, criminal liability should also follow. 6

This concept of corporate liability has been extended to the point where the business is often held liable for acts of employees even if the [\*370] company was not aware of the violation, 7 prohibited the conduct that led to the violation, 8 or there was no actual benefit to the corporation through the acts of the employee. 9 So even if none of the three justifications for corporate liability are present, i.e., knowledge, benefit, or authority, corporate liability for the acts of an employee - in addition to the liability of the employee - may still be found. A number of reasons have been given for this approach, but a consistent argument is that this type of liability will have an in terrorem effect on the corporation and force the entity to make certain that employees obey the law. 10 As a practical matter, it also reflects the reality that employees working through a corporation, whether or not their actions are authorized, can cause harm far beyond the abilities of one person. Therefore, according to this line of reasoning, it is appropriate that the entity be punished criminally (and pay civil damages).

The usual rule in the United States and other common law countries is that a corporation is liable for acts of agents and employees acting within the scope of their employment and, in most cases, with the intent to benefit the company. 11 This approach derives from the common law doctrine of respondeat superior, which held that a master is generally liable for the actions of servants, but may escape liability if the servant acts outside the scope of employment (i.e., takes action for [\*371] which there is no actual or apparent authority). 12 The concept of apparent authority, the authority that outsiders would normally assume the agent to possess judging from his or her position in the company and the circumstances surrounding previous instances of conduct, is often the foundation for a finding of corporate liability. 13 Employees are assumed to be acting within the scope of their employment 14 if they are doing acts on the corporation's behalf in the performance of their general line of work. 15 An agent must be "performing acts of the kind which he is authorized to perform, and those acts must be motivated - at least in part - by an intent to benefit the corporation." 16 It is not necessary that the acts actually benefited the corporation, only that they were intended to do so.

The court decisions and statutes that led to these multiple bases for finding enterprise liability grew up in an era where there was recognition of the power of the "faceless" corporation and the need to control its activities. Courts would impute knowledge or intent to the corporation, even where there was no benefit to the enterprise by the wrongful acts of the employee and the activities did not benefit the corporation, although some courts are willing to consider whether the violation was foreseeable. 17 In other situations, liability might be imputed to a corporate officer or director for failure to exert their authority to ensure that the corporation (i.e., acting through employees) did not do wrong. 18

But it is also an inescapable fact of our human existence that people are fallible, and that in some cases people will ignore instructions and do things that they were expressly forbidden to do. By holding a corporation liable for virtually anything that any employee does, a situation of strict liability is created that may, in fact, be outside the scope of many laws that require an intent to violate the law. [\*372] Notwithstanding the desire to control the power of the corporation, there are limits to what it can do. The efforts of the corporation to control the actions of employees are a valid consideration in determining whether the corporation should be held liable for the actions of an employee, as was noted in the instructions to the jury after the trial of Arthur Andersen in connection with the Enron debacle:

If an agent was acting within the scope of his or her employment, the fact that the agent's act was illegal, contrary to the partnership's instructions, or against the partnership's policies does not relieve the partnership of responsibility for the agent's acts. A partnership may be held responsible for the acts its agents performed within the scope of their employment even though the agent's conduct may be contrary to the partnership's actual instructions or contrary to the partnership's stated policies. You may, however, consider the existence of Andersen's policies and instructions, and the diligence of its efforts to enforce any such policies and instructions, in determining whether the firm's agents were acting within the scope of their employment. 19

The key here is "diligence." Was a compliance program something that existed only on paper, 20 or were there indicia of sincerity on the part of the corporation that showed that it legitimately tried to enforce its policy of compliance? The diligence of the corporation in enforcing its policy should be a key factor in determining if it is the kind of program that should entitle the corporation to some measure of mitigation from legal penalties imposed as a result of the actions of an employee that disobeyed the policy. 21

[\*373] Competition law imposes certain standards of behavior that are accepted because of an understanding that society benefits from competition. Therefore, in most cases, cartels are prohibited, as is abuse of market power or dominance. There is a recognition in many areas of law that transparency is beneficial, and thus bribes or secret rebates are prohibited for their disruptive impact on competition, as well as their inherent corruptness.

But how do these standards become accepted? It is not sufficient only to implement national laws and multinational agreements. Enforcement authorities recognize that there must also be private action to enforce policies within corporations and to demonstrate that noncompliance with law will not be tolerated. As will be discussed below, there are benchmarks of what is an "effective" compliance and ethics program that have received broad-based acceptance. Standards of international competition law cannot have their desired impact without international standards and efforts for compliance. Companies need to be able to know that what they do to implement compliance standards does matter so that they will make a diligent effort to prevent cartel behavior from happening. If a company has taken serious action to enforce its standards, such as by discharge of employees who violate the law, 22 this level of corporate compliance, which is expected by enforcement authorities, should be recognized when deciding how to treat corporations, including charging and penalty decisions.

So, there is a combination of factors at work here. Competition law standards are virtually universal in their acceptance. 23 To get those standards to actually be implemented by corporations, there need to be corporate compliance and ethics programs in place. Standards of culpability recognize that factors such as intent, knowledge, and benefit are relevant to findings of corporate liability. A number of countries do specifically encourage compliance and ethics programs, including in the antitrust area. 24 Therefore, this growing, worldwide acceptance, combined with universal necessity, has established an international law not just for antitrust, but for antitrust compliance. The countries that do not formally recognize the value of bona fide compliance programs as relevant to corporate liability, perhaps seduced by the possibility of collecting huge fines from a corporate piggy-bank, are out-of-step with the reality of what is necessary to truly promote the principles of competition law.

#### U.S. commitment prevents the disintegration of international economic law – extinction.

Arcuri ’20 [Alessandra; 2020; Full Professor of Inclusive Global Law and Governance at the Erasmus School of Law, Journal of International Economic Law, “International Economic Law and Disintegration: Beware the Schmittean Moment,” vol. 23]

Introduction

There was a time when national sovereignty was out of fashion. In the nineties, international lawyers were engaged in imaging the global order beyond the nation-state. Theories to make this order possible were proliferating: from Global Administrative Law to global constitutionalism.1 International Economic Law (IEL) played an important role in the journey toward the global order. Our markets could be integrated through an almost brand new organization, the World Trade Organization (WTO). The WTO was created and endowed with a powerful set of new agreements, promoting the harmonization of health and safety law—through the Sanitary and Phytosanitary (SPS) Agreement—and technical regulation—Technical Barriers to Trade (TBT) Agreement—and establishing (relatively uniform) Intellectual Property Rights regimes worldwide (the TRIPS Agreement). The WTO also included a brand new dispute settlement system, considered by many as a manifestation of the rule of law at the international level. Similarly, organizations such as the World Bank and the International Monetary Fund (IMF) were indirectly spreading (de-)regulatory policies throughout the developing world.2 Globalization, nudged by a global technocratic elite, was alive and kicking, back then.

Today we face a crisis of the regime of international economic law and, more broadly, global economic governance. The system appears broken for its incapacity to face some of the most daunting challenges of our time: the widespread and dramatic process of environmental degradation and the unacceptable inequalities between poor and rich. On its face, the phenomenon of far-right populists, partly reflected in Brexit and Trump politics, and spreading across the Atlantic is shaking the system of international economic law, by hailing nationalist policies. The idea that the nation-state may be a desirable source of disintegration of the global (legal) order is gaining traction across the political spectrum. It appears clear that the answer to the legitimacy crisis of the system of international economic law and governance offered by progressives3 resorts also to entrusting the nation state with more political space—a space that allegedly has been unduly constrained by the global economic order.

Not only politicians but also progressive academicians, such as Professor Dani Rodrik, have defended the importance of national sovereignty,4 as one of the necessary paradigms to fix our broken world order. The gist of the reasoning is simple: global institutions went too far in eroding national sovereignty, which is the real basis for democratic liberal regimes. Without the nation-state, environmental, industrial, and redistributive policies cannot be realized. As Rodrik put it: ‘So, I accept that nation-states are a source of disintegration for the global economy.’5

This article critically engages with the idea that the nation-state is a legitimate force of disintegration of the international economic order, with particular attention to trade and investment agreements. There are disparate circumstances, from the realm of food safety regulation to the regulation of capital flows,6 in which it is arguably desirable that domestic institutions (re-)gain more power. Most importantly, the nation-state is today an important site of democracy and, only for that reason, it is worth defending. Yet, in times of raising authoritarianism, it is crucial to reflect on some of the limits of the nation-state and on the necessity to develop alternative paradigms for integrating economies and societies.

This article presents a two-fold critique of the idea that an expansion of national sovereignty is going to achieve a better socio-economic world order per se. The first critique is internal, showing that the nation-state does not possess intrinsic characteristics to facilitate democracy, equality, and sustainability. The second is external and focuses on the necessity to look reflexively at the goals of the system of international economic law, to re-imagine it as capable to address questions of inequality and environmental degradation.

In a more pragmatic fashion, this article posits that more nation-state may be a misleading and possibly dangerous response to today’s daunting challenges. It is misleading in so far as it promises solutions that nation-states alone cannot deliver. It is dangerous in so far as the rhetoric of the nation-state paradoxically facilitates the turn toward an expansion of the ‘rule of exception’ and, eventually, authoritarianism. Above all, in advocating for disintegration through the nation-state, we need to reckon with our haunting past where economic autarchy has been deeply intertwined with the ascent of fascism and Nazism. If today the nation-state may appear as a beacon of democracy, the role of nationalism in generating the nemesis of democracy should not be neglected. In short, and at the risk of oversimplification, ‘America first’ echoes too closely fascist slogans.7

I. A PROGRESSIVE DEFENSE OF THE NATION-STATE AND THE RISK OF A ‘SCHMITTEAN MOMENT’

Let me start by rehashing the two interconnected and equally formidable challenges we are facing today: the question of environmental degradation and the unacceptable level of inequalities whereby a large part of the population in the world lives in poverty (both in developing and developed countries, but still overwhelmingly concentrated in so-called developing countries) vis-à-vis a small elite enjoying incredible wealth. Economic integration that does not deal with these challenges is not only doomed to fail; it is a type of economic integration that we should not aspire to.

It is plausible that Brexit and the disintegrationist economic policy of Trump have been partly enabled by the growing inequalities in the Anglophone nations. It is no brainer that a large fraction of Brexiteers and Trump voters are the ‘left behind.’8 In wealthy countries, the working class often felt left behind by thriving globalization, which has benefited only the elites. The—often labelled—‘populist turn’ rests on the idea that the ‘other’, the ‘foreigner’ has stolen ‘our’ welfare and a more nationalistic policy is needed to protect the losers of the current state of affairs. This is evident from Trump’s slogan ‘Buy American, Hire American.’ It is worrying how this type of nationalism is entrenched in racism and in the othering of the non-American.

However, as mentioned earlier, the case for more nation-state has also been made by ‘progressive’ politicians and intellectuals. Among progressive economists, Dani Rodrik stands out for having defended the nation-state with compelling arguments. Let me quote him at length: ‘When it comes to providing the arrangements that markets rely on, the nation-state remains the only effective actor, the only game in town. Our elites’ and technocrats’ obsession with globalism weakens citizenship where it is most needed—at home—and makes it more difficult to achieve economic prosperity, financial stability, social inclusion, and other desirable objectives.’9 Not only is the nation-state the only game in town, when it comes to issues of redistribution, social security and safety, the nation-state is also desirable because it can deliver institutional diversity which is needed to realize the social contract: ‘Developing nations have different institutional requirements than rich nations. There are, in short, strong arguments against global institutional harmonization.’10 The nation-states can meet different preferences, and ‘[i]nsufficient appreciation of the value of nation-states leads to dead ends.’ Rodrik also concedes that international market liberalization is the offspring of well-functioning nation-states rather than international institutions: ‘Domestic political bargains, more than GATT rules, sustained the openness that came to prevail.’11 Against this background, Rodrik defends ‘economic populism’ in so far as it constitutes a form of resistance to ‘liberal technocrats’ imposing undue restraints on domestic economic policy.12 The rigid focus on price stability in low-inflation environments is a clear example of global or EU-driven policies largely insensitive to the effects on employment and paradoxically even growth.13

Many of Rodrik’s arguments are compelling, such as his critique of the economic profession’s misleading analysis of trade and investment agreements. Some of his reform proposals, such as the strengthening of green industrial policy,14 are arguably desirable. Most crucially, the nation-state may be at present one of the most developed sites of democracy, albeit an imperfect one. When global institutions constrain nation-state policies formed following democratic decision-making, this may legitimately be seen as a threat to democracy. Rodrik’s work has had a wide echo in legal circles, as evidenced by the publication of a book with the goal of reimagining trade and investment law, 15 which is opened by several chapters all commenting—in overwhelmingly positive terms—on Rodrik’s Straight Talks on Trade. The nation-state and, more generally, sovereignty is (re-)gaining traction also among progressive political theorists. In times of economic and existential uncertainties, sovereignty is there to offer protection ‘from unfettered markets and from permanently incumbent austerity’ and it constitutes a ‘refusal of a “liquid society” and of its very solid … inequalities.’16 Some of the most lucid analyses of the current international economic order point at the dramatic consequences of an increase of capitalist power that has incapacitated states to act in defense of its own people.17 The attention on sovereignty is also partly reflected in recently negotiated provisions of new trade and investment agreements, where states are explicitly endowed with a ‘right to regulate.’ Despite the unclear practical implications of such jargon, its symbolic value is unambiguously bearing witness to the shared view that states ought to maintain (or regain) political space. Against this background, Trump’s claims to defend the Ohio steel workers by whatever trade measures it takes may appear more acceptable. Could we then read in this reinvigorated faith in sovereignty a ‘Grotian moment’?18

Without indulging on this question, this article posits that we should beware the ‘risk’ of entering a ‘Schmittean moment’.19 This term is here used to refer to a major shift toward an ideal of unfettered national sovereignty as the chief paradigm to re-orient the international (economic) order. Under such ideal, any international normative benchmark is brushed away by an allegedly more intellectually honest ‘political’ dimension, which can find its realization only in the decisionist state.20 To understand the risk of a ‘Schmittean moment’, it is important to recognize that the move toward more nation-state is partly animated by the legitimate concerns over the existing international legal order; legitimate concerns, which have eloquently been articulated by Schmitt himself.

Carl Schmitt’s work offers a lucid critique of the ‘exclusionary character of liberal universalism.’21 His critique exposes the hypocrisy underpinning many universalisms, most prominently the legal canon of ‘just’ war.22 In fact, it is the very core of the contemporary international legal project that gets questioned: ‘The concept of humanity is an especially useful ideological instrument of imperialist expansion, and in its ethical-humanitarian form, it is a specific vehicle of economic imperialism. Here, one is reminded of a somewhat modified expression of Proudhon’s: whoever invokes humanity wants to cheat.’23 This argument has direct relevance for the domain of international economic law. In an endnote to this claim—discussing the extermination of Indians in North America—Schmitt explains the danger to use certain moral canons as exclusionary devices: ‘As civilization progresses and morality rises, even less harmless things than devouring human flesh could perhaps qualify as deserving to be outlawed in such a manner. Maybe one day, it will be enough if people were unable to pay its debts.’24 This consideration is of extreme actuality in relation to the current international legal order, which seems to have crystallized structures of annihilation of debt states, and their very peoples.25 In decrying how the economical is rescinded by the political, Schmitt unveils the absent ‘presence’ of (mostly American) politics in the economy. In short, Schmitt’s analysis cogently engages with the problem of depoliticization that the international liberal order yields.26 It is at this juncture that the thoughts of Schmitt and Rodrik may intersect. In some sense, Schmitt’s critique resonates with the critique of ‘hyper-globalization’ articulated by Rodrik:27 ‘one type of failure arose from pushing rule making onto supranational domains too far beyond the reach of political debate and control.’28

Before elaborating on this intersection, it is key to rehash some flaws of Schmitt’s analysis. While he has certainly a point in showing how liberal universalism can be used to arbitrarily exert hegemonic power in the name of humanity (and has so been used in such way by the US and other predominantly Western countries), the alternative he implicitly propounds rests on a nostalgia for a mythical past—a golden age based on the jus publicum Europaeum. Regrettably, this age has been golden only for some; the jus publicum Europaeum for all its glory was made of colonial relations, exploitation, and violence. It has also been noted how Schmitt’s historical analysis, which portrays the times of the jus publicum Europaeum as times where war gets domesticated by the modern state eclipses the fact that the ‘development of the modern state apparatus … helped bring about unprecedented capacities for organized state violence, even if such violence was no longer typically unleashed against fellow Europeans.’29 His conception of sovereignty, which finds essential realization only in the ‘unlimited jurisdictional competence’ normalizes the rule of exception. A related trouble with Schmitt’s core normative ideas is the totalizing enemy-friendship antithesis: ‘the distinction of friend and enemy denotes the utmost degree of intensity of a union or separation, of an association or dissociation.’30 This is particular fatal to an ideal of nonviolent international law, as it denies even the aspiration of solidarity beyond borders.31 In other words, Schmitt conceptualization of the international legal order crystallizes nation-state borders in deeper existential structures, leaving no hope for common projects of different communities inhabiting the earth. In exposing the violence of allegedly humanitarian projects, Schmitt is de facto hollowing out the concept humanity, reducing its essence to violence in potentia: ‘the entire life of a human being is a struggle and every human being symbolically a combatant. The friend, enemy, and combat concepts receive their real meaning precisely because they refer to the real possibility of physical killing.’32 In denouncing the hypocrisy of moralism, Schmitt seems to negate the possibility of morality altogether. The Nomos of the earth, starting with the act of appropriation—nehmen (take)—and continuing with dividing the land—nemein (divide)—does not engage with the morality of the first act of appropriation nor with its division. And this is also what Hanna Arendt contests to Schmitt: ‘to remove justice from the content of the law.’33

### 1NC – Politics DA

#### The United States Congress should pass an internal binding resolution that prohibits the defense appropriations bill from coming to a vote.

#### Congress is inching towards full year defense funding – will pass now.

Politico 1-5-22 https://www.politico.com/news/2022/01/05/defense-spending-stuck-budget-boost-526557

Congress has overwhelmingly backed a $25 billion increase to President Joe Biden's Pentagon budget, but the battle over defense spending is far from over. Biden last week signed annual defense policy legislation that calls for significantly boosting his $715 billion Pentagon blueprint to $740 billion. But the just-enacted National Defense Authorization Act doesn’t actually provide any money, and lawmakers have until mid-February to reach a deal to fund the Pentagon and other federal agencies for the rest of the fiscal year. There are, however, signs that Congress is inching toward a deal, after POLITICO first reported that House Democratic appropriators are preparing to agree to a larger defense budget than either they or Biden wanted. In the meantime, though, the Defense Department — and all other federal agencies — are stuck at even lower budget levels agreed to during the Trump administration because they are funded through a temporary measure. "We can stand here … and declare our unwavering support for our troops and their families. We can claim to support a strong national defense,” Senate Appropriations Chair Patrick Leahy (D-Vt.) said in a floor speech last month. “But until we put our money where our mouth is and provide the funding we say we support, then those words ring hollow. It's only rhetoric." The government is now operating under a continuing resolution that runs out on Feb. 18. Lawmakers need to pass spending legislation before then or risk trapping agencies at last year’s levels, a prospect that’s particularly unpopular in the halls of the Pentagon. House Democrats plan to shine a light on the dire budget situation next week when top Pentagon officials testify on the impact of temporary funding on the military. While Democrats appear ready to accept a defense boost, top Republicans are also insisting on “parity” between spending on the Pentagon and non-defense programs as well as ground rules for handling contentious policy riders — including whether to renew the Hyde Amendment that bars federal funds for abortion. The top Senate Appropriations Republican, Sen. Richard Shelby (Ala.), spoke with Leahy about a spending deal on the floor Wednesday, and said negotiations are headed in the right direction. “We're still talking, and we're not there yet. We also are aware that we've got a Feb. 18 deadline,” Shelby told POLITICO. “Could we meet it? Probably not, but I'd like to see us do it." A full-year spending package is within reach, he added, if Democrats and Republicans can agree on the balance of defense and domestic spending along with policy riders. "If we could cut a deal, and it's something we could live with, that's what this place is about,” Shelby said. “And that's what we have to do sometimes. But it has to be something that would be palatable to our caucus and theirs too — maybe not everything everybody wants.” Senate Minority Leader Mitch McConnell underscored the framework of “basic traditional riders, no poison pills and parity for defense and non-defense” for a spending deal on Tuesday. “To the extent that the Democrats are willing to meet those conditions, then I would think we’d have a chance of getting an omnibus appropriation Feb. 18,” McConnell told reporters. The Pentagon side of the ledger may well be the least contentious part of the deal to clinch. Signs so far point to more defense cash if a full-year spending deal emerges.

#### Antitrust trades off – assumes bipartisanship.

Carstensen 21 – Fred W. & Vi Miller Chair in Law Emeritus, University of Wisconsin Law School [Peter C. Carstensen, “The “Ought” and “Is Likely” of Biden Antitrust,” 2021, *Concurrences*, No. 1, https://www.concurrences.com/en/review/issues/no-1-2021/on-topic/the-new-us-antitrust-administration-en#carstensen]

14. Similarly, despite bipartisan murmurs about competitive issues, the potential in a closely divided Congress that any major initiatives will survive is limited at best. In part the challenge here is how the Biden administration will rank its commitments. If it were to make reform of competition law a major and primary commitment, it would have to trade off other goals, which might include health care reform or increases in the minimum wage. It is likely in this circumstance the new administration, like the Obama administration’s abandonment of the pro-competitive rules proposed under the PSA, would elect to give up stricter competition rules in order to achieve other legislative priorities.

15. Another key to a robust commitment to workable competition is the choice of cabinet and other key administrative positions. Here as well, the early signs are not entirely encouraging. In selecting Tom Vilsack to return as secretary of agriculture, the president has embraced a friend of the large corporate interests dominating agriculture who has spent the last four years in a highly lucrative position advancing their interests. Given the desperate need for pro-competitive rules to implement the PSA and control exploitation of dairy farmers through milk-market orders, the return of Vilsack is not good news. Who will head the FTC and who will be the attorney general and assistant attorney general for antitrust is still unknown, but if those picks are also centrists with strong links to corporate America the hope for robust enforcement of competition law will further attenuate!

16. In sum, this is a pessimistic prognostication for the likely Biden antitrust enforcement agenda. There is much that ought to be done. But this requires a willingness to take major enforcement risks, to invest significant political capital in the legislative process, and to select leaders who are committed to advancing the public interest in fair, efficient and dynamically competitive markets. The early signs are that the new administration will be no more committed to robust competition policy than the Obama administration. Events may force a more vigorous policy—I will cling to that hope as the Biden administration takes shape.

#### Passing defense budget crucial to prevents war in Ukraine – PC is key

Clevenger 2-3-22

(Andrew, https://rollcall.com/2022/02/03/congress-should-pass-defense-budget-to-deter-putin-senators-say/)

One of the most powerful messages Congress could send to deter Russian President Vladimir Putin from invading Ukraine would be to pass a defense appropriations bill, two members of the Senate Armed Services Committee said Thursday. Speaking at an event hosted by the Wilson Center, Mississippi's Roger Wicker, the second most senior Republican on the Armed Services Committee, said funding for the Defense Department could be part of a larger omnibus spending bill. He urged President Joe Biden to get personally involved, and to call House and Senate leadership to a meeting as soon as possible to iron out any lingering differences over spending levels. “Everybody agrees that working off of defense appropriations from a year and a half ago are completely inadequate and sends exactly the wrong signal not only to Vladimir Putin but to our friends and potential adversaries all over the world,” he said. “I hope what is about to happen would build a fire under us. Let’s get our national defense spending up to date.” New Hampshire Democrat Jeanne Shaheen, a senior member of both the Armed Services and Foreign Relations committees, agreed. “You’re absolutely right,” she said. “Putin’s thinking, ‘Boy, they can’t even pass a budget, never going to be able to unite against our actions,’ and China is looking at that as well.” Funding deadline The government is currently funded via a continuing resolution, which locks in spending at the levels established by the previous fiscal year’s spending bills. The current continuing resolution is set to expire on Feb. 18, meaning Congress will either have to enact new spending bills, pass another continuing resolution, or face a government shutdown.

#### Ukraine war escalates – extinction.

Grover ’18 [John; July 11; M.S. in Conflict Analysis and Resolution from George Mason University, B.A. in Government and Legal Studies from Bowdoin College, fellow at Defense Priorities and assistant editor at the National Interest; The American Conservative, “Admitting Ukraine Into NATO Would Be A Fool’s Errand,” <https://www.theamericanconservative.com/articles/admitting-ukraine-into-nato-would-be-a-fools-errand/>; RP]

This week, President Trump is meeting with allied heads of state at a summit of the North Atlantic Treaty Organization (NATO). Among the many items on the agenda is the question of enlarging NATO to include other countries such as Ukraine. Although Russian aggression in Ukraine has been rightly condemned, those who urge for NATO to accept Ukraine as a full member are making a grave mistake.

If Ukraine joined NATO, it would become an even more unstable hotspot that America would be obligated to defend. Why should the U.S. risk war with a nuclear-armed Russia in Moscow’s backyard? NATO is a military alliance to defend Europe, not a democracy-promotion machine intended to reorder the political equilibrium in every European country. Though Washington may wish it, NATO cannot solve every problem nor can it smooth over all local flash points.

It’s easy to understand why some wish to bring Ukraine under the alliance’s security umbrella. After all, NATO has deterred Soviet and Russian aggression for nearly 70 years, and good Westerners who watched the Maidan protests have had their heart strings pulled. But expanding NATO means that if Ukraine asks for help in its current war, America’s sons and daughters will be called upon to die. If Trump and other administration officials asked American voters whether that’s something they want, the answer would be a firm “no.”

Furthermore, calls for Ukraine to join NATO forget that deterrence works because it relies on mutually assured destruction (MAD) and on some level of respect for each side’s national interests. When one side communicates that it no longer cares about the other’s security concerns, the likelihood of war skyrockets. For instance, in 1962, when Moscow put missiles in Cuba, America reacted very forcefully to get the Soviet Union to remove them—even though doing so brought the world to the brink. Furthermore, in 1983, when NATO staged its largest-ever exercises under Reagan—known as [Able Archer 83](https://nsarchive2.gwu.edu/nukevault/ebb533-The-Able-Archer-War-Scare-Declassified-PFIAB-Report-Released/)—the Soviet Union thought it was a cover for an attack and nearly launched their own nuclear strikes as a result.

These same dynamics apply to Ukraine and the question of NATO accession. Although obviously the United States would never deliberately attack Russia, it doesn’t look that way from Moscow. Whether anyone likes it or not, Putin believes that Russia is reacting defensively and fears the possibility of a NATO-led overthrow of his government. He saw what happened when the Western-backed Maidan toppled Ukrainian President Viktor Yanukovych and thinks America might be tempted to do the same to him. As a result of this—and of Putin’s [general revisionism](https://www.amazon.com/Mr-Putin-Operative-Fiona-Hill/dp/0815723768)—Russia is [the spoiler](https://www.beyondintractability.org/casestudy/grover-minsk-II-accords) for any Ukrainian conflict and would likely escalate the use of force to keep Ukraine out of NATO.

This is why U.S. deterrence wouldn’t apply as easily to Ukraine if it did start the process of joining NATO. If Russia was willing to annex Crimea and invade eastern Ukraine as a de facto veto on Ukraine’s NATO aspirations, it would certainly do far worse if official accession plans were announced. So far, NATO has pledged that Ukraine will one day join, but no such plans have been implemented. Additionally, it would likely take several years of reforms in accordance with a membership action plan before Ukraine could join NATO, which would give Russia time to react.

### 1NC – T-Prohibit

#### ‘Prohibiting’ a practice requires per se illegality.

Lee Mendelsohn 6, Director at Edward Nathan, “KIPA Conduct Amounts to Price Fixing”, Business Day (South Africa), 6/12/2006, Lexis

The first step in any competition law analysis is to define the relevant market. There are two components to an analysis of the relevant market, namely the relevant product market and the geographic market.

The relevant product market consists of those products and services that operate as a competitive constraint on the behaviour of the suppliers of those products and/or services.

The relevant product market is determined by ascertaining whether a small but significant non-transient increase in pricing of the product in question would cause buyers to substitute the product with another product or would cause suppliers of other products to begin producing the product in question.

The relevant geographic market is determined by ascertaining whether a small but significant non-transient increase in pricing of the product in question would cause buyers to purchase the product from other geographic areas, alternatively suppliers of the product in other geographic areas to supply those products into the area in question.

For the purposes of this case study, we are instructed to accept that each medical speciality constitutes a relevant product market and that the relevant geographic market for each of them is Kleindorpie.

The Competition Act provides that "an agreement between, or concerted practice by, firms, or a decision by an association of firms, is prohibited if it is between parties in a horizontal relationship and if … it involves … directly or indirectly fixing a purchase or selling price or any other trading condition".

An "agreement" is defined as including a contract, arrangement or understanding, whether or not legally enforceable. The term agreement is very widely defined. A "horizontal relationship" is defined as a "relationship between competitors".

The prohibition on the fixing of a purchase or selling price or any other trading condition is one of the so-called "per se" prohibitions which are included in our Competition Act. The prohibition is automatic and absolute and the fixing of prices or other trading condition cannot be justified on the basis of any technological, efficiency or other procompetitive gains that could outweigh the potential anticompetitive effect of the fixing of the price or trading condition. If the capitation plan of KIPA falls within the restrictive horizontal practice prohibiting price fixing and the fixing of other trading conditions, such practice will be a contravention of the act.

#### Limits---many standards, requiring distinct answers, make the topic unmanageable.

#### Ground---fringe standards dodge links and allow bidirectional permissiveness.

**1NC – LPE K**

**The 1AC’s justifies antitrust as an intervention to correct agricultural “market failures” – that relies on perfect competition.**

Nathan **TANKUS** Research Director Modern Monetary Network **AND** Luke **HERRINE** PhD Candidate @ Yale Law, JD NYU & Former Clerk Second Circuit of Appeals **’21** “Competition Law as Collective Bargaining Law” <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3847377> p. 1-3

­ “[T]oo often discourse about ‘the market’ conveys the sense of something definite—a space or constitution of exchange...when in fact, sometimes unknown to the term’s user, it is being employed as a metaphor of economic process, or an idealisation or abstraction from that process.” – E.P. Thompson2 Introduction To those who study governance of the labor relationship, it is obvious that the relationship between business and labor must be governed, and that stability in this social relation is something valued by labor, business, and society writ large.3 Strangely, the idea that governance is necessary and price stability is good are both obscure interlopers to the study of competition law. To bridge the gap between these two areas of law--and incidentally give labor a greater role and stature in theorizing competition law--we aim to provide a general “market governance” framework for understanding how markets are governed in the context of the legal rules that allow and disallow certain forms of coordination. This framework draws from multiple heterodox traditions in political economy, but is particularly oriented toward building out the emerging framework of Neochartalist microeconomics.4

[Insert Footnote 4 – Turner]

Neochartalism, or Modern Monetary Theory (MMT), began as a macroeconomic framework for understanding how legal institutions produce and reproduce money and monetary value, particularly the acceptance of monetary objects in payments of taxes and court-ordered obligations. In developing over the last twenty-five years, Neochartalism has become an interdisciplinary perspective for understanding and reinterpreting a variety of social phenomena. Some scholarship, particularly the path-breaking work of the late economist Fred Lee (who we rely on in conceptualizing issues in this chapter) builds up a microeconomic framework that is uniquely consistent with--and reliant on--MMT insights. We hope others choose to follow Lee and ourselves in making contributions to Neochartalist Microeconomics and expanding the reach of Neochartalism in a variety of subfields that remain dominated by mainstream microeconomics.

While it is beyond the scope of the current chapter to identify all the ways in which our current perspective accords with unique insights of Neochartalism, our focus on potential financial and market instability, money prices and money income as a focus of analysis rather than relative prices and “real variables'' reflect our Neochartalist lens. Our focus on the legal construction of markets also adds to Neochartalism’s emphasis on the legal construction of a monetary production economy in general. Our focus on inherent and irreducible mediated social interdependence also accords with the scholarly perspective that Neochartalist humanities scholars bring to Neochartalism e.g. SCOTT FERGUSON, DECLARATIONS OF DEPENDENCE: MONEY, AESTHETICS, AND THE POLITICS OF CARE (2018).

[End footnote 4]

Arriving at a theory of market governance requires rejecting **economic common sense**. Far too much economics scholarship--both among orthodox scholars and their critics--treats “**perfect competition**” as the analytical (and often normative) baseline for all markets, including labor markets. Under perfect competition, prices (including wages) are arrived at entirely via the uncoordinated matching of bids and asks, assumed to result in settled equilibriums represented by intersecting supply and demand curves. If all markets are **perfectly competitive** (and certain other conditions obtain), then each input and output has its **proper price** which sends “signals” throughout the economy and results in a perfectly “efficient” allocation of resources. From this perspective, coordination, especially coordination over prices (again, including wages), appears as an **unnatural intervention**, a way for those acting collectively to collect “rents” above the “real” value of their contribution to society. If coordination is to be justified, it is usually to correct for some other deviation from perfect competition: workers might bargain collectively to capture some of a monopsonist's rents, for example. And, indeed, many of those trained in economics who advocate for collective bargaining or other worker-empowerment measures appeal to one or more “market failures”.5 In doing so, they reproduce the idea— intentionally or not—that if competition were finally left to do its work it would reveal the prices that reflect the allocation of goods and services that perfectly matches relative scarcity, that markets would work “better” if they were moved “closer” to (or to “resemble” or “approximate”) the “competitive” ideal.6 Collective bargaining is a distortion, but it is the best we can do in our distorted world.

But here's the rub: collective bargaining is not a distortion of a preexisting “labor market”. More generally, coordination between market participants (over price or other matters) is not in itself a distortion of any market. There is not and has never been a market without coordination, including over prices.

**Neoclassical paradigm will destroy humanity and the biosphere.**

Anne **FREMAUX** PhD Political Ecology & Philosophy @ Grenoble ‘**19** *After the Anthropocene: Green Republicanism in a Post-Capitalist World* p. 1-3

If the main starting point of this book is the severe environmental crisis we are facing and the natural planet-wide collapse toward which we are heading, today’s ecological reality is powerfully connected to other issues such as growing socioeconomic inequalities, the erosion of democratic institutions, the organized apathy of citizens, the loss of power of nation-states in favor of corporations, the progressive disappearance of the notion of common good, and the economic colonization of the social, cultural, and political life by economic objectives. The global ecological crisis reveals these interlinked disasters caused by the core components of capitalism that include: an excessive exploitation of nature, the rise of industrialism, the self-destructive over- confidence in human-technical power, the arrogant anthropocentric mind- set, and denial of ecological limits, as well as the narrow rationalism and materialism that develop within a reductionist predominant form of science.

Neoliberalism as a ‘global system’ threatens societies as a whole and more especially the core values of social communities and democracy, such as justice, ‘common decency,’ civic virtue, or citizenship. In neoliberal patterns, economic efficiency, market values, employability, consumer freedom, and instrumental rationality are favored over democratic participation, civic values, personal autonomy, active citizenship, intellectual development (‘enlightenment’1), and moral rationality (reasonability2). Institutions dedicated to the common good are systematically turned into competitive structures to satisfy the interests of markets and greedy elites. Pluralism is disappearing under the assault of a one-dimensional consumer pattern which treats humans and non-humans as commodities under the hegemony of private interests. Civil society, an essential element of the agonistic and critical democracy defended in this book, is losing out to ‘spectator democracy.’ Indeed, citizens are more and more passive and self-centered in part because existing political and **democratic structures leave them with few opportunities to participate** and make collective decisions. As a consequence, the link between democratic politics and citizens is being critically weakened. Neoliberal individuals end up being overtaken by lassitude and resignation, indifference, and loss of interest for the shared common world. What defines neoliberal society is, indeed, a widespread disaffection for democracy and social bonds entailed by the loss of political agency and self-determination. In such a system, propaganda is necessary to manufacture consent3 and to shape the fundamental values to ensure that individuals see themselves as consumers, workers, or owners of capital, rather than citizens, spiritual or relational individuals, friends, or members of social and ecological communities. In order to be fully operational, such a system must also rely on high doses of cynicism and the value of relativism cultivated by deconstructive postmodern views.

Neoliberal competitive market-state systems have colonized all aspects of life, but mainly, they have subjugated nature and used it as an ‘unlimited’ spring of profit and resources intended to feed the logic of growth. The globalized neoliberal framework behaves as if nature were only a neutral background for **profit**-seeking and economic development. In order to push back the ecological limits that are more and more visible, neoliberals argue that those limits can be transcended through decoupling and technological innovations (Chapter 5). Indeed, constructivist neoliberal governments act as if the biosphere were a mere component of the socioeconomic sphere. As an anti-ecological ideology, neoliberalism denies the existence of natural limits and promotes **unlimited material wants** vs. limited resources, a cult of endless consumption (consumerism), and techno-fixes (techno-optimism) as the solution to social and ecological problems. The appropriation and commodification of nature undertaken by this form of economic ideology and the freedom it enshrines—understood mainly as the legitimate exercise of extractive power—entail that the environment is viewed only as an instrumental source of raw material and sinks of fossil fuels rather than as an ethically valuable physical, biological, and chemical context of life. Inevitably, this type of economy has supported an insatiable extraction that is today overwhelming ecosystemic capacities. Neoclassical economics is certainly the instrumental form of rationality ‘that most actively opposes the ethical valuation of the environment’ (Smith, 2001: 26).

The neoliberal capitalist agenda, associated with an arrogant anthropocentrism and the technological optimism of many political leaders, experts, techno-scientists, academics, and citizens, has transformed nature and people into raw materials (‘natural’ and ‘human resources’). It has replaced democratic and republican institutions—defined by their concern for the common good—by structures aiming at facilitating the activities and profits of corporations and markets. It has deprived Western political structures of substantial democratic energy by turning citizens of wealthy liberal nations into demoralized and nihilist homo oeconomicus (‘neoliberal citizens’), that is, passive consumers as opposed to active citizens. More than that, neoliberalism, through mass media, entertainment, information, and educational systems, has incrementally converted all the spheres, activities, and dimen- sions of life into economic ones (‘economization’ or ‘marketization’ of life). Private and public institutions are used as ways to transmit the values of capitalism.4 As an unethical and unsustainable model of commercialization, ultraliberal capitalism supports crass commodification, intensifies ine-ualities and transforms everything in its way—from non-human nature to human beings—into replaceable, dispensable and disposable products. As a global threat, neoliberalism leads to ‘**environmental stresses** (water shortages, deforestation, soil erosion or climate change), **food and energy insecurity**, peak oil, rising **poverty** and **inequalities** within and between societies, increasing passivity of citizens within democracies and the inexorable rise of corporate power within and over the democratic state’ (Barry, 2008: 3).

The price we, humans, are socially, politically and ecologically paying and will continue to pay in the future for the triumph of the neoliberal ideology is disproportionate with anything humankind has experienced so far (see Fig. 1.2). However, human relatively recent history already shows that the popular passivity and political apathy (mentioned above) fostered by cynical and disempowering systems of ideas have the potential to favour the rise of dictatorial regimes in which a father figure or ‘strong man’ could take upon the conduct of public affairs. At a time when chauvinistic, racist, anti-elitist, and macho-ist parties are dangerously rising in all Western countries, this fear is taking a serious turn, which includes the risk of an authoritarian ecology.

**We should use the framework of challenge-driven political economy instead of a competitiveness framework.**

Mariana **MAZZUCATO** Inst. for Innovation & Public Purpose @ University College (London) **AND** Rainer **KATTEL** Inst. for Innovation & Public Purpose @ University College (London) **’20** “Grand Challenges, Industrial Policy, and Public Value” Non-paginated

Twenty-first-century policymaking is increasingly defined by the need to respond to major social, environmental, and economic challenges. Sometimes referred to as ‘grand challenges’, these include threats like climate change, demographic, health, and well-being concerns, as well as the difficulties of generating sustainable and inclusive growth. Against this background, policymakers are increasingly embracing the idea of using industrial and innovation policy to tackle these ‘grand challenges’. Examples of challenge-led policy frameworks include the United Nation’s Sustainable Development Goals (SDGs; Borras,­­ 2019), the European Union’s Horizon Europe research and development programme (Mazzucato, 2018a), and the UK’s 2017 Industrial Strategy White Paper (HM Government, 2018).

Challenge-driven policy frameworks are emerging in parallel to well-established modernization and competitiveness frameworks**.** While 1 2 modernization, and in particular competitiveness frameworks, rely on the idea that government should first and foremost fix market failures,3 a challenge-driven agenda does not have such clearly defined theoretical origins and analytical lenses. As Richard Nelson argued in 1977 in his seminal book The Moon and the Ghetto, getting man to the moon and back is not the same as solving the problem of ghettos in American cities. Put differently, the nature of our knowledge about socio-economic challenges differs from our perception of strictly technical challenges. We can discover answers to technical puzzles; socio-economic issues do not have a single correct discoverable solution. Such issues require continuous discussion, experimentation, and learning.

We believe challenge-led growth requires a new conceptual and analytical framework that has at its core the idea of confronting the direction of growth with growth that is, for example, more inclusive and sustainable. Such a framework should focus on market shaping and market co-creating (Mazzucato, 2016). This is a question of both theory and policy practice. In theory, challenge-driven innovation policy questions both established neoclassical and evolutionary concepts (Schot and Steinmueller, 2018). In policy practice, directed policies require rethinking what is meant by ‘vertical policies’.

Industrial policies have always been composed of both a horizontal and a vertical element. Horizontal policies have historically been focused on skills, infrastructure, and education, while vertical policies have focused on sectors like transport, health, energy, or technologies. These two traditional approaches roughly embody differing schools of economics: neoclassical economics-inspired horizontal policies focusing on supply-side factors and inputs; and evolutionary economics-inspired policies putting emphasis on demand-side factors and systemic interactions (Nelson and Winter, 1974; Hausmann and Rodrik, 2006 for a synthesis). Although certain sectors might be more suited to sectorspecific vertical strategies, the ‘grand challenges’ expressed in SDGs are cross-sectoral by nature and hence we cannot simply apply a vertical approach to them. Both neoclassical and evolutionary approaches to industrial policy have relied on the idea that the best policy outcome is economy-wide development, without specifying its nature. In policy this has led to managing economies according to **GDP** growth rates, **competitiveness indices** and rankings, or other macro indicators (e.g. exports, patents) (Drechsler, 2019). Yet, many SDGs are only indirectly related to the economy and hence many of the key issues around SDGs have not been theorized in the context of innovation and industrial policy (see, e.g., Zehavi and Brenzitz, 2017).

In this chapter we argue that through well-defined goals, or more specifically ‘missions’, that are focused on solving important societal challenges, policymakers have the opportunity to determine the direction of growth by making strategic investments, coordinating actions across many different sectors, and nurturing new industrial landscapes that the private sector can develop further (Mazzucato, 2017; Mazzucato and Penna, 2016). The result would be an increase in cross-sectoral learning and macroeconomic stability. This ‘mission-oriented’ approach to industrial policy is not about top-down planning by an overbearing state; it is about providing a direction for growth, increasing business expectations about future growth areas, and catalysing activity—self-discovery by firms (Hausmann and Rodrik, 2003)—that otherwise would not happen (Mazzucato and Perez, 2015). It is not about de-risking and levelling the playing field, nor about supporting more competitive sectors over less (Aghion et al., 2015), since the market does not always know best, but about tilting the playing field in the direction of the desired societal goals, such as the SDGs. However, we argue, to achieve this requires a **new analytical framework** based on the idea of **public value** and a policymaking framework aimed at shaping markets in addition to fixing various existing failures. Indeed, we argue that if we want to take grand challenges such as the SDGs seriously as policy goals, market shaping should become the overarching approach followed in various policy fields.

## Supply Chains

### 1NC – AT: Supply Chains

#### Growth is unsustainable and biosphere destruction is existential – try-or-die for immediate economic collapse.

Marques 20 – associate professor at the Department of History, University of Campinas (Unicamp), Brazil (Luis, The Current Pandemic Occurs in the Most Important Year in Human History Will the Next Zoonoses Surface in Brazil? <https://www.unicamp.br/unicamp/noticias/2020/05/05/pandemia-incide-no-ano-mais-importante-da-historia-da-humanidade-serao-proximas#sdendnote1sym> May 5 2020)//gcd

The year 2020 will be remembered as the one in which the pandemic caused by the SARS-CoV-2 virus precipitated a profound rupture in contemporary societies’ ability to function. It will also probably be remembered as a moment of rupture from which our societies will never completely recover. The current pandemic has intervened at a point in which three structural crises in the relation between contemporary hegemonic societies and the Earth system are reciprocally reinforcing one another, converging towards a global economic regression, even though we may see sporadic conjunctural spurts of recovery. These three crises are, as science has reiterated, the climate emergency, biodiversity’s ongoing annihilation, and the collective sickening of organisms intoxicated by the chemical industry.1 The increasingly devastating impacts arising from the synergy among these three systemic crises will henceforth leave even the richest societies more unequal and more vulnerable. They, therefore, will be less apt to recoup their past performance. It is precisely these evermore frequent partial losses in functionality in societies’ relationship with the environment that essentially characterize the ongoing process of socioenvironmental collapse (Homer-Dixon et al. 2015; Steffen et al. 2018; Marques 2015/2018 e 2020). 1. The Year of the Pandemic is the Most Crucial Tipping Point in Human History Because of its global extension and the trail of death left in its wake, officially having more than 250 thousand victims in a little over four months, the current pandemic is an event whose gravity will be difficult to exaggerate, even more so as new outbreaks might still occur over the next two years, according to a report by the University of Minnesota’s Center for Infectious Disease Research and Policy – CIDRAP (Moore, Lipsitch, Barry & Osterholm 2020). Even graver still than the immense death toll is the moment the pandemic has inserted itself into human history. Other pandemics, including some even more deadly, occurred in the twentieth century without profoundly affecting societies’ ability to recover. What makes this pandemic unique is that it has brought together diverse systemic crises threatening humanity and has done so precisely at the point when we can no longer postpone decisions that will crucially, and very quickly, affect our planet’s inhabitability. Science has linked the possibility of stabilizing global mean warming to one inescapable fact: CO2 emissions must reach their peak in 2020 and begin to decline rapidly and immediately. The IPCC outlines 196 scenarios through which we may limit global mean warming to about 0.5°C above current global mean warming in relation to the pre-industrial period (1.2°C in 2019). Tom Rivett-Carnac and Christiana Figueres remind us that none of these scenarios allow for the peak in greenhouse gases to be put off past 2020 (Hooper 2020) – and none express that deadline more assertively than Thomas Stocker, IPCC codirector from 2008 to 2015:2 “Both delay and insufficient mitigation efforts shut the door on limiting global mean warming permanently. The year 2020 is crucial for the definition of global ambitions on emissions reduction. If CO2 emissions continue to rise beyond that date, the most ambitious goals will become unachievable.” In 2017, Jean Jouzel, former IPCC vice president, warned that, “to maintain some chance of staying below 2°C, the peak in emissions must be reached no later than 2020” (Le Hir 2017). In October of the same year, commenting on the release of the IPCC’s special report, Global Warming 1.5°C, Debra Roberts, codirector of its Work Group 2, reinforced that perception. “The next few years are probably the most important in our history.” And Amjad Abdulla, representative of the Small Islands Developing States (SIDS), added during climate negotiations, “I have no doubt that historians will look back at these findings as one of the defining moments in the course of human affairs” (Mathiesen & Sauer 2018). In The Second Warning: A Documentary Film (2018), promoting the Scientist’s Warning to Humanity: A Second Notice, a manifesto released by William Ripple and colleagues in 2017 and endorsed by almost twenty thousand scientists, the philosopher Kathleen Dean Moore makes the above mentioned declaration hers. “We are living in a hinge point. The next couple of years will be the most important years in the history of humanity.” In April 2017, a group of scientists coordinated by Stephan Rahmstorf released The Climate Turning Point. In its Preface, they reiterated the Paris Agreement’s most ambitious goal (“holding the increase in the global average temperature to well below 2°C above pre-industrial levels), clarifying that, “This goal is deemed necessary to avoid incalculable risks to humanity, and it is feasible – but realistically only if global emissions peak by the year 2020 at the latest”. That document gave birth to Mission 2020 (https://mission2020.global/), created by various scientific and diplomatic leaders. It defined basic goals in six milestones—energy, transport, land use, industry, infrastructure, and finance— to turn the greenhouse gas emissions curve downward and place the planet on a trajectory consistent with the Paris Agreement. “With radical collaboration and stubborn optimism we will bend the curve of global GHG emissions by 2020, enabling humanity to flourish,” wrote Christiana Figueres and colleagues at the presentation of the Mission 2020. At his side, Atónio Guterres, fulfilling his mission to encourage and coordinate the efforts of global governance, warned in September 2018 that “we are careening towards the abyss… We face a direct existential threat. If we do not change course by 2020, we risk missing the point where we can avoid runaway climate change, with disastrous consequences for people and all the natural systems that sustain us.”3 Well, 2020 has finally arrived. Taking stock in 2019 of progress made toward reaching Mission 2020’s goals, the World Resources Institute (Ge et al., 2019) wrote that “in most cases action is insufficient or progress is off track”. In short, none of the goals has been reached and, last December, COP25 definitively swept away our last hope of an imminent reduction in global GHG emissions, largely due to the US, Japanese, Australian, and Brazilian governments (Irfan 2019). 2. The Pandemic Enters the Picture But then along comes Covid-19, displacing, paralyzing, and delaying everything, including COP26. And in a little over three months it has solved, through chaos and through suffering, what more than three decades of facts, science, campaigns, and diplomatic efforts to reduce GHG emissions showed themselves incapable of doing (In 1988, the Toronto Conference had recommended “specific actions” in this regard). Instead of a rational, gradual, and democratically planned economic degrowth, the abrupt economic degrowth imposed by the pandemic now appears to be, according to Kenneth S. Rogoff, “the deepest dive on record for the global economy for over 100 years” (Goodman 2020)”. On April 15, Carbon Relief estimated that the economic crisis should provoke a shrinkage estimated at about 5.5% in global CO2 emissions in 2020. On April 30, the International Energy Agency’s Global Energy Review 2020 – The impacts of the Covid-19 Crisis on global energy Demand and CO2 Emissions goes even further and estimates that: “Global CO2 emissions are expected to decline even more rapidly across the remaining nine months of the year, to reach 30.6 Gt for the 2020, almost 8% lower than in 2019. This would be the lowest level since 2010. Such a reduction would be the largest ever, six times larger than the previous record reduction of 0.4 Gt in 2009 due to the financial crisis and twice as large as the combined total of all previous reductions since the end of World War II.” (<https://www.iea.org/reports/global-energy-review2020/global-energy-and-co2-emissions-in-2020>). Figure 1 indicates how this reduction in global CO2 reflects the drop in global primary energy demand, compared to previous drops. Figure 1 – Rate of Change of Global Primary Energy Demand, 1900-2020 Source: International Energy Agency (IEA), Global Energy Review 2020 The impacts of the Covid-19 crisis on global energy demand and CO2 emissions, Abril 2020, p. 11 The drop in global CO2 emissions projected by IEA for 2020 is equal to or even a slightly more than the 7.6% annual reduction the IPCC considers absolutely necessary to contain warming below catastrophic levels (Evans 2020). IEA’s report, however, quickly warns that, “as after previous crises (…), the rebound in emissions may be larger than the decline, unless the wave of investment to restart the economy is dedicated to cleaner and more resilient energy infrastructure”. (https://webstore.iea.org/download/direct/2995 Barring rare exceptions, the facts up to this point do not let us break with previous energy and socioeconomic paradigms. Despite the collapse in the price of oil, or precisely because of it, petroleum companies are moving at breakneck speed to take advantage of this moment, securing, for example, investments of US$1.1 billion to finance completion of the infamous Keystone KX pipeline that will link Canadian oil to the Gulf of Mexico (McKibben ). Examples of this type of opportunism abound, including in Brazil, where the ruralist caucus has taken advantage of these circumstances to benefit from Medida Provisória (Provisional Measure) 910 that gives amnesty to land-grabbers and raises the threat level against indigenous peoples even higher. As Laurent Joffrin has stated so clearly in his Lettre politique (Le monde d’avant, em pire?), published April 30 in the newspaper Liberation, the post pandemic world “runs the risk of furiously looking like the world before at least in the short term, but in an degraded version.” And Joffrin adds, “the ‘world after’ will not change by itself. As for the ‘world before’, its future will depend on patient and arduous political struggle”. Political and arduous, undoubtedly, but there is definitely no more time for patience. However, a reduction of almost 8% in global CO2 emissions in just one year has made no dent whatsoever in the cumulative curve of that gas’s atmospheric concentrations, as measured at Mauna Loa, Hawaii. Emissions broke another record in April 2020, reaching 416.76 particles per million (ppm), 3.13 ppm over 2019, one of the largest jumps since measurements began in 1958. This is not merely one more number in the jungle of converging climatic indicators. It is the decisive number. “It is worth recalling”, said Petteri Taalas, WMO Secretary-General of the World Meteorological Organization, “that the last time the Earth experienced a comparable concentration of CO2 was three to five million years ago. Back then, the temperature was 2-3C warmer [above the pre-industrial period], and sea level was 10 to 20 meters higher than now” (McGrath 2019). We are not only 35 ppm shy of reaching 450 ppm, a level of atmospheric concentration of CO2 largely associated with a mean global warming of 2 o C above the preindustrial period, a level that can be reached, maintaining the current trajectory, in little more than 10 years. What awaits us around 2030, maintaining the globalized capitalistic economic system’s mechanism – existentially dependent on its own expansive reproduction, is no less than a disaster for humanity as a whole, but also for innumerous other species. The word disaster is not hyperbole. The previously mentioned 2018 IPCC Report (Global Warming 1.5°) projects that the world at 2°C mean above the pre-industrial period will have almost six billion people exposed to extreme heat waves and more than 3.5 billion people subject to water scarcity, among many other hardships. Disaster is a word that more appropriately defines the world on the horizon to which we are headed in the next ten years (or twenty, it matters little), and it is precisely the word used by Sir Brian Hoskins, chair of the Grantham Institute for Climate Change and the Environment, at the Imperial College in London: “We have no evidence that a 1.9C rise is something we can easily cope with, and 2.1 is a disaster.” (Simms 2017)

#### Crisis now locks in the transition.

Schiller-Merkens 20 – Senior Research Associate at the Faculty of Management and Economics at Witten/Herdecke University, Germany (Simone, MPIfG Discussion Paper 20/11 Scaling Up Alternatives to Capitalism A Social Movement Approach to Alternative Organizing (in) the Economy  Max Planck Institute for the Study of Societies)// gcd

Signs of hope Despite these two major obstacles that will most likely arise in processes of scaling up alternative organizing, there are also signs of hope that an upward scale shift can happen, and that a social transformation toward a democratic, egalitarian and sustainable economy will not remain an utopian dream but the “real utopia” that Wright (2013a) had envisioned. As just mentioned, the formation of new collective identities associated with alternative organizing will certainly allow its further diffusion, thereby increasingly institutionalizing the underlying moral values within the economy. Furthermore, in several capitalist countries, we witness an increasing politicization of the youth, most visibly in the mass protest of the Fridays for Future movement. While this movement does not directly mobilize against capitalism, it addresses issues that are seen as severe outcomes of the current economic system (and it has recently started to also target corporations). Its more confrontational tactics of capitalist critique – as well as the protest actions of other movements – complement the constructive tactics of alternative organizing initiatives as they raise the public interest in and awareness for alternatives, or at least underscore the urgency to act. While not ofering alternatives themselves, protest movements produce important cultural work on which prefgurative initiatives can build in their own activism for alternative organizing. Furthermore, the current pandemic crisis can provide a chance for a more fundamental transformation of our economy – although in the face of people’s sufering, it appears rather inappropriate to speak of a crisis as a sign of hope. As mentioned above, crises are destabilizing events that can alter the political opportunities for social change (McAdam and Tarrow 2019; Wright 2019). We currently see many initiatives that perceive the crisis as such – as a chance for change – and mobilize accordingly through online meetings and debates on, for instance, transformative responses to the crisis, the need for a social transformation of the economy, or responsible capitalism. Many of them point to the role of neoliberal austerity policies in the severeness of the crisis, and also question the rudimentary public engagement when it comes to issues around education, unemployment, and care work. Social scientists also raise their voice and call for a fundamental rethinking of the state’s functions and duties, asking for rediscovering its role for creating value for society.14 And indeed, the public spending and injections into the economy since the Covid-19 pandemic have risen to a scale that has been formerly unthinkable. Even strong supporters of capitalism nowadays favor state interventions. We currently also witness an increase of collective action based on principles of solidarity and mutuality which demonstrates the crucial role of civil society mobilization for coping with deep crises (della Porta 2020). It reflects what already happened in the aftermath of the financial crisis, namely an increase of organizing relationships in alternative ways through direct social action (Bosi and Zamponi 2015; della Porta 2015). While the current collective action mostly develops in the private sphere of neighborhood relations, there are also campaigns in the economic realm that focus on supporting local commerce that sufers from the lockdown. In the long run, these immediate reactions to the crisis can be a basis for reforming economic relations around ideas of local production and consumption, and therefore an opportunity for prefgurative organizations and communities to raise awareness for such ideas and practices. However, it remains to be seen whether these troubled times will provide the window of opportunity for a greater social transformation. At least, the people now perceive the future as more uncertain than before, and this has already made state actors to also listen to the alternative claims and ideas of actors who challenge the capitalist system or, more moderately, call for far-reaching socialist interventions into the economy. Whether this political opportunity will lead into a greater social change toward a more just economy will depend on the potential of the alternative organizing initiatives to mobilize a broader movement and to efectively counter any countermobilization by opposing actors in the economy.

#### No trade impact.

Victoria Pistikou et al. 21, Assistant Professor, International Political Economy, Democritus University of Thrace; Eftychia Tsanana, Lecturer, Economics, University of Macedonia; Thomas Poufinas, Faculty Member, Economics, Democritus University of Thrace, "A Financial Analysis Approach on The Impact of Economic Interdependence on Interstate Conflicts," Theoretical Economics Letters, Vol. 11, No. 5, 09/03/2021, Sci-Hub.

This indicates that the increase of economic interdependence does not lead to a decrease of the interstate conflict as captured by defense expenses. On the contrary the increase of exports of country 1 to country 2 leads to an increase of the expenses of both countries. Hence, both countries seem to consider the conflict as vivid even though some trade activity is built. This may be attributed to the fact that the defense expenses of these countries are not necessarily related to the particular interstate conflict with the investigated pair in the dyad. It could also be due to the fact that the economic crisis has potentially led to a decrease of both the economic activity and the defense expenses in some cases. This explains partially the results. Furthermore, country 1 is not always the stronger economy. In addition, it is not necessarily the country that has initiated the conflict. These findings indicate that the topic needs to be further investigated so as to incorporate more dyads and potentially additional proxies of interstate conflict and economic interdependence in order to realize whether the latter impacts the former.

[Table omitted]

The impact of the independent variables and their explanation is summarized in Table 4.

In political terms, policymakers may find these empirical results interesting as they show that they cannot rely solely on the strengthening of bilateral trade in order to end or reduce the conflict. In addition, according to other studies, establishing a free trade area may be the way for fostering economic ties and interdependence with potential rivals, however, it will be difficult to have a critical impact on conflict if this cannot happen in bilateral level without any degree of economic integration. Therefore, we cannot expect, at least for the mentioned cases, de-escalation or elimination of the conflict caused by increased economic activity between the rivals. Therefore, other routes need to be explored so that an interstate conflict can be reduced or eliminated through trade.

6. Conclusions and Further Research

In the present analysis, a study of the impact of economic interdependence on interstate conflict was attempted with the use of a sample that consisted of three dyads of countries facing a similar context of interstate conflict: India-Pakistan, Russia-Ukraine and Yemen-Saudi Arabia. The results show that only exports from country 1 to country 2 have an impact on the level of defense expenses either for country 1 or for country 2. This indicates that economic interdependence does not necessarily reduce interstate conflicts, since both countries 1 and 2 increase the defense expenses even though exports from country 1 to country 2 increase. Our contribution in the current literature relies upon the correlation between defense expenses and bilateral trade and is in the direction of the research of Seitz et al. (2015). There has been a big diversity of dependent variables employed in the relevant studies, such as trade expectations (Copeland, 1996), common interests (Li and Sacko, 2002), interaction between domestic politics and the international system (Kapstein, 2003), income ratio (Martin et al., 2008), Preferential Trade Agreements (Herge et al., 2010; Long, 2008), trade (Barbieri and Levy, 1999; Long and Leeds, 2006), Militarized Interstate Disputes (MIDs) (Copeland, 1996; Oneal and Russett, 1999; Gartzke et al., 2001; Powers, 2004; Martin et al., 2008; Li and Reuveny, 2011). As all studies, it has certain limitations that primarily stem from data availability; three dyads where analyzed and certain proxies were used. Consequently the results depend purely on the span of the dataset. Our future research venues include the extension to additional dyads to more variables that are relevant to the interstate conflict as well as the economic interdependence, provided data become available. Furthermore, as indicated by the anonymous reviewers, it is worth investigating whether the strength of defense can affect the mutual trade of two countries. In addition, as recommended by the anonymous reviewers it would be interesting to apply game theoretical approaches in order to establish the hypotheses around economic interdependencies prior to the investigation of the correlation of the latter to the interstate conflict.

#### Downturn won’t cause war – prefer post-COVID evidence.

Walt ’20 [Stephen; Robert and Renée Belfer professor of international relations @ Harvard University; 5/13/20; "Will a Global Depression Trigger Another World War?"; Foreign Policy; https://foreignpolicy.com/2020/05/13/coronavirus-pandemic-depression-economy-world-war/]

One familiar argument is the so-called diversionary (or “scapegoat”) theory of war. It suggests that leaders who are worried about their popularity at home will try to divert attention from their failures by provoking a crisis with a foreign power and maybe even using force against it. Drawing on this logic, some Americans now worry that President Donald Trump will decide to attack a country like Iran or Venezuela in the run-up to the presidential election and especially if he thinks he’s likely to lose. This outcome strikes me as unlikely, even if one ignores the logical and empirical flaws in the theory itself. War is always a gamble, and should things go badly—even a little bit—it would hammer the last nail in the coffin of Trump’s declining fortunes. Moreover, none of the countries Trump might consider going after pose an imminent threat to U.S. security, and even his staunchest supporters may wonder why he is wasting time and money going after Iran or Venezuela at a moment when thousands of Americans are dying preventable deaths at home. Even a successful military action won’t put Americans back to work, create the sort of testing-and-tracing regime that competent governments around the world have been able to implement already, or hasten the development of a vaccine. The same logic is likely to guide the decisions of other world leaders too. Another familiar folk theory is “military Keynesianism.” War generates a lot of economic demand, and it can sometimes lift depressed economies out of the doldrums and back toward prosperity and full employment. The obvious case in point here is World War II, which did help the U.S economy finally escape the quicksand of the Great Depression. Those who are convinced that great powers go to war primarily to keep Big Business (or the arms industry) happy are naturally drawn to this sort of argument, and they might worry that governments looking at bleak economic forecasts will try to restart their economies through some sort of military adventure. I doubt it. It takes a really big war to generate a significant stimulus, and it is hard to imagine any country launching a large-scale war—with all its attendant risks—at a moment when debt levels are already soaring. More importantly, there are lots of easier and more direct ways to stimulate the economy—infrastructure spending, unemployment insurance, even “helicopter payments”—and launching a war has to be one of the least efficient methods available. The threat of war usually spooks investors too, which any politician with their eye on the stock market would be loath to do. Economic downturns can encourage war in some special circumstances, especially when a war would enable a country facing severe hardships to capture something of immediate and significant value. Saddam Hussein’s decision to seize Kuwait in 1990 fits this model perfectly: The Iraqi economy was in terrible shape after its long war with Iran; unemployment was threatening Saddam’s domestic position; Kuwait’s vast oil riches were a considerable prize; and seizing the lightly armed emirate was exceedingly easy to do. Iraq also owed Kuwait a lot of money, and a hostile takeover by Baghdad would wipe those debts off the books overnight. In this case, Iraq’s parlous economic condition clearly made war more likely. Yet I cannot think of any country in similar circumstances today. Now is hardly the time for Russia to try to grab more of Ukraine—if it even wanted to—or for China to make a play for Taiwan, because the costs of doing so would clearly outweigh the economic benefits. Even conquering an oil-rich country—the sort of greedy acquisitiveness that Trump occasionally hints at—doesn’t look attractive when there’s a vast glut on the market. I might be worried if some weak and defenseless country somehow came to possess the entire global stock of a successful coronavirus vaccine, but that scenario is not even remotely possible. If one takes a longer-term perspective, however, a sustained economic depression could make war more likely by strengthening fascist or xenophobic political movements, fueling protectionism and hypernationalism, and making it more difficult for countries to reach mutually acceptable bargains with each other. The history of the 1930s shows where such trends can lead, although the economic effects of the Depression are hardly the only reason world politics took such a deadly turn in the 1930s. Nationalism, xenophobia, and authoritarian rule were making a comeback well before COVID-19 struck, but the economic misery now occurring in every corner of the world could intensify these trends and leave us in a more war-prone condition when fear of the virus has diminished. On balance, however, I do not think that even the extraordinary economic conditions we are witnessing today are going to have much impact on the likelihood of war. Why? First of all, if depressions were a powerful cause of war, there would be a lot more of the latter. To take one example, the United States has suffered 40 or more recessions since the country was founded, yet it has fought perhaps 20 interstate wars, most of them unrelated to the state of the economy. To paraphrase the economist Paul Samuelson’s famous quip about the stock market, if recessions were a powerful cause of war, they would have predicted “nine out of the last five (or fewer).” Second, states do not start wars unless they believe they will win a quick and relatively cheap victory. As John Mearsheimer showed in his classic book Conventional Deterrence, national leaders avoid war when they are convinced it will be long, bloody, costly, and uncertain. To choose war, political leaders have to convince themselves they can either win a quick, cheap, and decisive victory or achieve some limited objective at low cost. Europe went to war in 1914 with each side believing it would win a rapid and easy victory, and Nazi Germany developed the strategy of blitzkrieg in order to subdue its foes as quickly and cheaply as possible. Iraq attacked Iran in 1980 because Saddam believed the Islamic Republic was in disarray and would be easy to defeat, and George W. Bush invaded Iraq in 2003 convinced the war would be short, successful, and pay for itself.The fact that each of these leaders miscalculated badly does not alter the main point: No matter what a country’s economic condition might be, its leaders will not go to war unless they think they can do so quickly, cheaply, and with a reasonable probability of success. Third, and most important, the primary motivation for most wars is the desire for security, not economic gain. For this reason, the odds of war increase when states believe the long-term balance of power may be shifting against them, when they are convinced that adversaries are unalterably hostile and cannot be accommodated, and when they are confident they can reverse the unfavorable trends and establish a secure position if they act now. The historian A.J.P. Taylor once observed that “every war between Great Powers [between 1848 and 1918] … started as a preventive war, not as a war of conquest,” and that remains true of most wars fought since then. The bottom line: Economic conditions (i.e., a depression) may affect the broader political environment in which decisions for war or peace are made, but they are only one factor among many and rarely the most significant. Even if the COVID-19 pandemic has large, lasting, and negative effects on the world economy—as seems quite likely—it is not likely to affect the probability of war very much, especially in the short term. To be sure, I can’t rule out another powerful cause of war—stupidity—especially when it is so much in evidence in some quarters these days. So there is no guarantee that we won’t see misguided leaders stumbling into another foolish bloodletting. But given that it’s hard to find any rays of sunshine at this particular moment in history, I’m going to hope I’m right about this one.

#### Renewables don’t solve warming.

Gunderson et al. ’18 [Ryan; Sociology @ Miami; Diana Stuart; PhD Environmental Studies and Earth Science @ Northern Arizona; Brian Petersen; PhD Environmental Studies, Sustainable Communities @ Northern Arizona; “Ideological obstacles to effective climate policy: The greening of markets, technology, and growth,” *Capital & Class* *42*(1), 133-160]

National climate policies and international climate agreements to reduce carbon emissions, exhibited by Article 10 of the Paris Climate Agreement, often focus on technological fixes that further extend the capitalist logic underpinning carbon emissions rather than the root causes leading to climate change. This represents an ideological, not a pragmatic, reasoned response because, as argued below, techno-optimists displace the technical potential-productive relations contradiction by viewing technology as neutral and disinterested, or, malleable and applicable independent of social context. In other words, techno-optimism in climate policy and its failure to reduce GHG emissions partially results from an assumption that displaces a cause of climate change – the use of technology to increase resource throughput for capital accumulation onto technology itself. Techno-optimism in environmental thought comes in at least three distinct variants. First, those supporting ecological modernization focus on technology and the shift in the responsibility for environmental outcomes from a command-and-control state to a more central role for the market and other non-state actors (Mol 1995). Second, reformists, namely environmentalists and environmental non-governmental organizations, seek solutions that fit within existing institutions (Demaria et al. 2013) rather than calling for alternatives to the reigning capitalist system. Regarding climate change, this means finding market approaches that facilitate and promote alternative technologies as a means to address climate change, a position captured by market logic that fails to see the futility in a platform predicated on growth-based alternative energy production. Finally, policy elites and corporatists favor a neoliberal approach to governance that privileges entrepreneurial motives to meet societal needs by diminishing or eliminating governmental regulation and oversight to the greatest extent possible. Unlike ecological modernization proponents who see a role for government in a shift to new technology, this perspective seeks to drastically reduce or even eliminate government intervention in the market and instead rely on technological solutions to address climate change that come from the private sector. Techno-optimists point to alternative energy, energy efficiency, and/or geoengineering as potential advancements that could help ameliorate the negative consequences posed by climate change. Although technological advances **theoretically** hold the potential to address the challenges posed by climate change, these approaches have **limited viability in contemporary societies.** By producing energy without fossil fuels, alternative energy appears as the most obvious means by which to reduce GHG emissions globally. However, alternative energy sources such as wind and solar do not **necessarily lead** to diminished fossil fuel derived emissions, at least at the levels needed to effectively address climate change. York (2012) shows that although alternative energy production has increased, it has not proportionally displaced fossil fuel emissions from energy production. In contrast, on average one unit of alternative energy production displaced only one-quarter of a unit of fossil fuel produced energy and only one-tenth of a unit of fossil fuel generated electricity. This does not bode well given energy demand projections. The US Energy Information Administration projects a 48% increase in global energy consumption by 2040 and that despite significant investment in renewable energy fossil fuels will supply greater than 75% of total energy (Showstack 2016). As energy demand increases, especially for electricity, renewable energy production would have to grow at a rate faster than any energy technology in history to meet climate stabilization goals (Hook et al. 2012). An additional problem relates to efficiency and energy use. As William Stanley Jevons identified in the 1860s, increased efficiency (coal-powered steam engines in this case) **can lead to an increase in total consumption.** This counter-intuitive outcome has come to be known as Jevons paradox. A rebound effect refers to situations in which energy efficiency gains are lost due to increased resource use due to those gains (Santarius 2012). There are different levels of rebound effects. Rebound effects above 100% are termed ‘backfire effects’ or ‘backfires’, which means total resource use is higher after the improved efficiency was implemented due to improvements in efficiency. Although the exact mechanisms that lead to this outcome remain unclear (Santarius 2012; Sorrel 2007; York & McGee 2016), **many empirical examples confirm the overall trend.** These include the findings that countries with high levels of efficiency tend to have higher rates of carbon dioxide emissions, electricity consumption, and energy use (York & McGee 2016; for reviews, see Alcott 2005; Polimini et al. 2008; Santarius 2012). These findings undermine the claims made by techno-optimists that greening technology alone can stabilize the global climate. Perhaps the strongest manifestations of techno-optimism in proposed climate policy are found in geoengineering strategies, which also fail to address or acknowledge the limitations of technological interventions for addressing climate change. Geoengineering represents a technological approach to alter the Earth’s climate system in an attempt to alleviate the impacts of climate change (Boucher et al. 2013). Geoengineering interventions include injecting aerosols (sulfur) into the atmosphere to reflect incoming solar radiation and fertilizing the ocean to sequester carbon, among many others. These and other geoengineering approaches have the potential to contribute to climate stabilization, but they also pose significant risks. For example, injecting sulfur into the atmosphere, modeled on volcanic eruptions, would reduce incoming solar radiation, but it would require continued effort (Keith 2013), has the potential to significantly affect weather patterns and agricultural production (Robock 2008), and could lead to prolonged droughts (Ferraro et al. 2014). More importantly, however, this intervention could prevent actions to reduce GHG emissions. Doing so would reduce the need to reduce GHG emissions, potentially leading to dramatic temperature rise should the intervention stop (Robock et al. 2010). Similarly, iron fertilization in the open oceans could detrimentally affect food webs and ecological functions (Strong et al. 2009) and lead to harmful algal blooms (Allsopp et al. 2007), among other serious risks. Proponents of renewable energy, energy efficiency, and/or geoengineering have put forth seemingly viable options to address the challenges posed by climate change. These approaches, however, are aligned with the current socio-economic order that created the climate crisis. They are not alternatives to it. The reliance on technology as the solution to the climate change problem comes in different variants, but all reflect an ideological position: they conceal the technical potential-productive relations contradiction. More specifically, they displace the contradiction by presupposing that technology is neutral and disinterested, free to be used and shaped by rational individuals uninfluenced by social-structural context. This assumption is problematic for a number of reasons (for review in environmental context, see Whyte et al. forthcoming). As Marcuse (2011) points out, the ends that technology serve are prepared by the ‘pregiven empirical reality’ (p. 152), or, ‘in line with the prevalent interests in the respective society’ (Marcuse 2001: 44). In other words, technology embodies the values and power of the society for which it functions. In world-system and ecological context, Hornborg (1992, 2001, 2009) uses the term ‘fetishism’ to describe the common illusion of the autonomy of productive technologies, which conceals various socio-ecological processes, such as unequal exchange and the Global North’s forgotten dependence on land. Techno-optimists wrongly view old technologies as the cause of climate change and can be reformed, rather than interpreting ‘dirty’ and ‘green’ technologies in social-structural context. The latter allows one to see that the potential of reducing GHG depends on changing the social structures and interests that condition them. For example, the Jevons paradox may partially result from capitalism’s aim to maximize profits through two routes: (1) reduce costs of production and (2) produce/ sell more, requiring resource use (York & McGee 2016). Improvements in efficiency reduce costs, thereby increasing profits, which are reinvested to expand production, requiring higher rates of resource use. By displacing the technical potential-productive relations contradiction in this way, climate policy that depends on the greening of technology reproduces existing systems to the exclusion of social alternatives. Focusing on technological solutions in a marketbased system omits consideration of both more effective alternatives (discussed below) and, perhaps more importantly, ignores the institutionalized social relations that led to the problems forming in the first place. In all cases, techno-optimist perspectives implicitly or explicitly rely on the market for solutions. Even if proponents are unaware, climate policy that depends on green technology represents a continuation of a larger project to serve capitalist interests. It does so by relying on technology rather than social change to reduce carbon emissions, thereby allowing the fossil-fuel-based economy to continue unfettered. Technological solutions devised to alter social processes that lead to reduced emissions hold great potential (Keary 2016) but simply focusing on technology as the solution to climate change represents an ideological rather than a practical solution. Few proponents of renewable energy, energy efficiency, and/or geoengineering prioritize total energy reduction or technologies that might guide social behaviors in a new direction. Instead, they focus on techno-fixes designed to increase economic growth and hold assumptions that displace the technical potential- productive relations contradiction. This represents an ideological approach orchestrated to fit ‘solutions’ into an existing economic paradigm rather than looking for effective, long-term alternatives.(11-13)

## Naval Industries

### 1NC – AT: Naval Industries

#### China rise inevitable – primacy is self-defeating and causes war.

Joshua R Itzkowitz Shifrinson, IR @ BU, ’21, “Neo-Primacy and the Pitfalls of US Strategy toward China” The Washington Quarterly 43 (4), 79-104

It Is Difficult to Stop China’s Continued Rise

Second, neo-primacy’s logic rests on shaky foundations, as the United States’ opportunity to reclaim preeminence is extremely small, and the effort will likely prove both counterproductive and dangerous. Baldly, if the United States was unable to keep China from becoming a near-peer competitor in the first place via classic primacy, it is even less likely that the United States has the wherewithal to put the Chinese genie back in the bottle and now push China from the great power ranks via neo-primacy.

States generally balance when confronted with a direct external threat. This tendency is significant in the US-China context because, under neo-primacy, the United States would effectively declare itself a direct threat to China at a time when US analysts acknowledge China has a growing capacity to oppose American plans and ambitions.53 Though China is not poised to dominate East Asia, it can thus be expected to devote its own considerable resources toward keeping pace with US efforts to arrest China’s rise and/or shift the relative distribution of power in the US favor. The odds of major crises would then increase as Washington and Beijing maneuver for position, in turn raising the odds of escalatory spirals, miscalculation, and war.54

Trends in military spending and recent economic developments suggest China’s capacity to oppose neo-primacy and a US drive to reclaim untrammeled preeminence. On one level, China currently devotes a smaller share of its economic wealth to military purposes than the United States, yet it has still managed to reduce American military advantages. This implies that Beijing could do quite a bit to frustrate American policy simply by allocating more to international purposes; if the United States feels pressured by a China that spends 2 percent of its GDP on defense, a China that spends 3 or 4 percent of GDP on defense—roughly what the United States has spent since the Cold War—would present a still larger problem and place the United States in an even worse position.55

Nor is it just military spending that underlines neo-primacy’s limitations. After all, ongoing efforts to decouple the US and Chinese economies—designed partly to limit Chinese growth—has pushed Beijing toward fostering a self-sustaining domestic economy able to withstand “sustained acrimony with the United States.” Given this, it is reasonable to infer that additional economic efforts to outpace Beijing will generate countervailing Chinese responses.56 Considering, too, that China’s economy has grown at a faster rate than the United States’ (even during COVID-19) and that the country has worked to narrow the USChina technological gap,57 the PRC’s ability to keep pace with the United States cannot be discounted.58 Shifts in the distribution of power since the Cold War make neo-primacy self-defeating by enabling China to match US efforts while risking US national security along the way. In this sense, neoprimacy risks exacerbating the very problem it seeks to address.

#### US quest for supremacy causes miscalculation. Transition wars are unlikely because parity is a destination, not a midway point.

Jared Morgan McKinney, Professor of IR @ Nanyang Tech (Singapore), ‘19, How to avoid a contest for supremacy in East Asia, Comparative Strategy, 38:4, 316-326,

A second discourse framework also emerged around the time of the pivot to Asia: the so-called Contest for Supremacy currently said to be underway in Asia between China and the United States.4 This essay contends that such a contest is based on a faulty theory of international relations and will create the very conditions in which hegemonic war is most likely. Strategists and military officers should stop thinking in terms of hegemonic competition to be number one and restore a forgotten tradition described by adjectives such as balance, parity, equilibrium, and stability.

Power transition theory and American grand strategy

The frame of a contest for supremacy, the increasingly dominant way to conceive of Sino American rivalry, is based (even if often subliminally5 ) on power transition theory (PTT). At the heart of this theory is the belief that there is a “dominant power” that hierarchically structures international systems, and that war becomes probable when an unsatisfied rising power approaches, or transcends, the power capability of the dominant power.6 As constituted by its authors, PTT proposed a twofold theory of peace: avoid parity or satisfy the rising power’s ambitions.7 The essential proposition of PTT—that parity comes with many dangers—has been today restated prominently by Graham Allison under the moniker “Thucydides” trap.”

Within America’s grand strategy discourse, there have been two prevailing “solutions” to the prospect of a rising China disturbing the repose of the United States, the world’s dominant state or “unipole.” The first, traditionally called “liberalism,” has been to “socialize” and integrate China into the U.S.-led system.9 The most important stage in this process was for China to gradually become democratic. The various means to achieve this end—e.g., free trade, industrialization, or the rise of a middle class—differed, but all reflected forms of “modernization” theory descended from Enlightenment thought.10 Liberalism complemented, and did not contradict, the second “solution,” which was simply to prevent power parity. This has typically gone by the name “balancing” 11 and it has been unambiguously included in America’s National Defense/ Security Strategies since at least the early 1990s.12

Both responses are increasingly seen as inadequate.13 China’s refusal to be socialized into America’s system has “defied” the expectations of liberals.14 Meanwhile, balancers increasingly warn that China is likely not just to reach parity with the U.S., but to surpass it in Asia.15 In consequence of the failure of the two “solutions” to China’s rise, fear is increasingly becoming the driving emotion behind America’s strategic disposition in the Indo-Pacific. What the U.S. fears is perfectly clear. In the words of noted Asia scholar Lowell Dittmer, “America’s Asia is becoming China’s Asia.”

16 This fear is widely held.17 Insofar as a strategist accepts the theoretical assumption that the international system is hierarchical and constituted by the rise and fall of dominant/ hegemonic states,18 this fear is warranted. Historical evidence indicates that war becomes more likely in conditions of power parity,19 and a world without U.S. dominance is likely to be more illiberal in noticeable ways.20 So much for the better angels of our nature.21 Given this dilemma, America’s new consensus is that it is time for the U.S. to “get tough” and to “stand up” to China.22 That this requires unlearning the lessons of the First World War (i.e., the danger of inadvertent escalation) is simply a cost to be paid in the quest to win the contest for supremacy.23 If the choice is either to compete in Asia to maintain America’s hegemony or to cravenly leave24 for the sake of peace—surrendering it to the Chinese—only the first option realistically matches America’s (supposedly) deeply rooted attachment to the region25 and deepseated phobia of appeasement.26 Honest balancers, such as John Mearsheimer, acknowledge that staying in the region to compete for hegemony comes with a very serious risk of major-power war. Even if neither side sought intentionally to cause such a war, the “lessons” of the First World War suggest that competitive risk-taking can occasionally get out of hand, and a great war—neither quite intentional nor quite accidental—can materialize.27 What should be “almost unthinkable” in an age of nuclear weapons28 remains quite possible, for, as the annals of history demonstrate, political leaders are not consistently “prudent, enlightened, far-sighted, and peaceloving.” 29 Far from coolly calculating interests, leaders are well known to act intuitively and emotionally,30 to choose war even when it is “materially inefficient,” 31 to prefer catastrophic defeat to humiliation,32 to be obsessed with national prestige,33 and to fight for status.34 This is the “stuff” of international politics, and anyone who blindly implies the contrary has not seriously grappled either with the historical record or the ever-growing body of scholarship on the many paths to war.35

Risking major-power war may make sense if the only alternative is U.S. dominance or Chinese dominance.36 But this is a false dichotomy. In fact, PTT is fundamentally flawed both conceptually and historically. Conceptually, the theory ignores the obvious possibility that approximate parity can be a destination just as well as it can be a mere waypoint. Making international politics about “supremacy” is as likely to create a contest for supremacy as it is to describe one. Historically, PTT vastly overstates the evidence supposedly in its favor. Hegemonic wars do take place.37 However, such wars seem to require certain structural conditions. These include the emergence of technologies that can give certain states a large lead, the existence of powerful enabling ideologies (e.g., monotheism38 or Nazism39) and the material significance of land and mass labor in generating wealth and power.40 That being said, PTT’s most common illustrations for “hegemonic war”—the Peloponnesian War and the First World War—only support the theory in the vaguest of manners. In 431, Athens can be said to have acted from hubris and Sparta from honor;41 in 1914, Russia—not Germany—was seen as the rising and unstoppable colossus.42 In both cases, war developed out of a confluence of international structures, the actions of allies/clients, and chance. It is far from clear that the theory of “hegemonic war” actually explains anything about these cases.43

More to the point, the Long Nineteenth Century (1815–1914), which witnessed, in the words of Karl Polanyi, “a phenomenon unheard of in the annals of Western civilization, namely, a hundred years’ peace,” 44 is the best example of parity as a destination. The old canard that the century’s peace rested on “British hegemony,” despite its continuing repetition in the IR literature,45 can no longer be seriously held.46 To the contrary, it resulted from a special form of the balance of power, which Richard Little has theorized as an “associative balance” 47 and Paul Schroeder has called “shared hegemony.” 48 This associative balance was intentionally constructed upon a territorial settlement that satisfied the basic needs of the system’s major powers.49 This “formally instituted” peace was maintained through an intricate system of diplomacy called the Concert of Europe.50 The point, which need not be prolonged here, is that there is a conceptually and historically extant alternative to the contest for supremacy, and that this alternative is partially responsible for the most peaceful century in modern European history. This, one would think, would be worthy of serious contemporary attention.

#### Chinese hegemony key to global stability. Primacy research reflects Eurocentric selection bias.

David Kang, Professor of IR @ USC, ‘20 “THOUGHT GAMES ABOUT CHINA” ISSN: 1598-2408 , 2234-6643; DOI: 10.1017/jea.2020.18 Journal of East Asian studies. , 2020, Vol.20(2), p.135-150 Cambridge University Press.

China is not a rising eighteenth-century European state competing desperately for power in a multipolar system. China is a massive and ancient country with an enduring civilizational influence. From the time of the Han dynasty (206 BCE–220 CE), although Chinese power waxed and waned over the centuries, East Asia was a hegemonic system, not a multipolar balance of power system as existed in Europe. As MacKay (2016, 474) observes:

Western Europe = Austria, Belgium, Denmark, Finland, France, Germany, Italy, Netherlands, Norway, Sweden, Switzerland, UK (12 W. Europe) Data From: The Maddison Project (2013)

For more than two millennia … a relatively consistent idea persisted of what Imperial China was or should be. When China was ascendant, as during the Han and Ming dynasties, this identity justified Chinese regional dominance. When China was in decline, it provided a source of aspiration. When foreigners occupied the country, as did the Mongols under the Yuan dynasty and the Manchus under the Qing dynasty, they justified their rule by claiming the Mandate of Heaven (tianming) for themselves.

Every other political actor that emerged in the past two thousand years emerged within the reality or idea of Chinese power (Pines 2012). Korea, Japan, Vietnam, the peoples of the Central Asian steppe, the societies of Southeast Asia—all had to deal with China in some fashion and decide how best to organize their own societies and to manage their relations with the hegemon. The reality of Chinese power and Chinese ideas and debates about the proper role of government and state-society relations and the different ways to conduct foreign relations were a fact of life in East Asia. Surrounding peoples could choose to embrace or reject the idea and fact of China, but they had to engage it no matter what they chose.

Thus, even a cursory glance at East Asian history would reveal that the conditions for power transition almost never obtained in East Asian history. China was a hegemon and predominant through much of East Asian history, with virtually no other contender ever coming close to being a peer competitor of China in the past thousand years. China alone comprised 22.6 percent of the world’s GDP and 22 percent of the world’s population in 1000 CE, dwarfing Western Europe’s shares (Table 1).

Compared to any European hegemon, Chinese hegemony in East Asia lasted much longer. Why not look at the far more long-enduring Chinese hegemony for clues about how China might behave while ascendant? Contrary to assumptions that the European experience of constant warfare and continuously rising and declining great powers is universal, East Asia shows a clearly different pattern of long-enduring hegemony. Over the centuries, China expanded in some directions but crafted enduringly stable relations with many countries, as well. As Dincecco and Wang (2018, 342) observe about China, “The most significant recurrent foreign attack threat came from Steppe nomads … external attack threats were unidirectional, reducing the emperor’s vulnerability.” Rarely does anyone ask, however, why these threats were unidirectional and arose mainly from nomads, rather than from powerful states such as Japan, Korea, and Vietnam. Explaining how and why these historical patterns developed over time will likely provide better insight into China’s priorities and how East Asia as a region dealt with China than looking at European history (Kang, Nguyen, Shaw, and Fu 2019).

Indeed, the fact that the historical East Asian system was hegemonic did not rule out the rise and fall of particular regimes. If they did not result from power transitions, then what was the cause? Table 2 provides an overview of the causes of the rise and fall of these dynasties. Strikingly, only three out of twenty dynastic transitions before the nineteenth century came as a result of war. Perhaps the biggest lesson to draw from East Asian histofry are the dangers of internal challenges rather than external threat (Kang and Ma 2017). Also notable is the startling longevity of these countries. In stark contrast to the European experience, there were centuries when most of these countries did not face existential threats from external powers. These four countries—recognizably the same countries today—spent centuries living with each other and interacting with each other, but only rarely fighting with each other. Turning to the question of Chinese intentions, and viewed through the lens of history, China is not a rising power with unknown aims and ambitions. It is a massive and ancient country that is returning to power and stability after a tumultuous century.

An obvious rejoinder is that all the world is Westphalian now, and China is interacting on a global, not regional scale, so even if the theory only applied in Europe at certain times in history, the theory is applicable today. As I argued long ago (Kang 2003, 67), “A century of chaos and change, and the increased influence of the rest of the world and in particular the United States, would lead one to conclude that a Chinese-led regional system would not look like its historical predecessor.” However, states that developed over millennia in vastly different cultural and structural situations than those of Europe perhaps remain different today. There is a robust scholarship that argues that history does not end, and that the past continues to influence politics and society in the present. For example, Seo-hyun Park (2017, 12) uses the term “usable past” for the fact that states create and sustain collective identities and memories and that they join international orders that are not created on a blank canvas.

It is simply not possible to answer these questions without directly addressing the reality of China itself. The question is, how much of this “usable past” influences and informs China today, and how much has changed. Arguably, pre-Qing regimes were more similar to each other than to today’s CCP, given the massive shocks of modernization, the leveling of traditional culture during the Cultural Revolution, and the transition to single party rule. Stated differently, is China still the same China? These shocks may have made China Westphalian, or they may have made China more like a standard autocratic single party regime. Perhaps most likely, China’s behavior may be partially like other countries and partially a function of its own past (Perry 2008).

After all, few contemporary countries have survived over millennia as recognizably the same country as have those in East Asia. Few autocratic single party regimes can call upon the historical and cultural resources that the CCP can. Few countries are massive and centrally located in their regions. Directly researching what has changed and what China is like today would perhaps be a more useful starting point for explaining and predicting Chinese behavior and relations with the United States, rather than the generalizations the four authors reviewed here seek to make based on European historical experience.

Indeed, one of the most intense debates in the contemporary scholarly literature concerns whether China poses a threat to the contemporary Western liberal order (Acharya 2014). As Allan, Vucetic, and Hopf (2018, 839–869) summarize it: “how strong is the US-led Western hegemonic order and what is the likelihood that China can or will lead a successful counterhegemonic challenge?” If China is so different in its identity or goals that it is at best a partial member of the contemporary order, then it follows that it is not clear that China will follow behavioral patterns that only occurred within that order. But if China is completely Westphalian now, and the liberal international order is not simply Western—can China simultaneously be so different that is poses a fundamental threat to that same order?

It is here that MacDonald and Parent, Schake, and Goddard, by focusing on domestic politics, political choices, and national interests and ideas and values, have provided us with all the elements of a truly insightful view of China. Schake’s argument rests on a number of unique American traits. If she is right—that power transitions rest on a host of domestic contingencies—then we cannot predict what will happen without closely examining Chinese traits. But the logical conclusion is thus the opposite of what Schake and Goddard conclude: We have no reason to believe China will behave like a European rising power and fight a power transition war or claim hegemony like the US did. As Allan et al. (2018, 843) argue, “if hegemony is simply leadership of a rule-based order conditioned by elite beliefs, then in the abstract it can incorporate any rising power. But if hegemony is a thick phenomenon … then the substantive ideational content of the order, rather than its abstract form, is crucial.”

China cannot simultaneously be unproblematically and completely Westernized and Westphalian, and yet also pose a fundamental challenge to that same Western, Westphalian order. There is insufficient room in this brief essay to adequately address the extent to which China’s past affects its present. My point is that although it can be argued whether the most relevant characteristics of China today are its capabilities relative to other Great Powers, whether China’s foreign policy is most centrally a function of its institutional makeup as an autocratic single party regime, or whether China’s most relevant characteristics are its history, aims, or nationalism, much social science scholarship points in the direction of looking directly at China itself. Merely recognizing these debates means that it is not clear that power transition theory is the best lens to view China today, and it is not clear that power transition theory can be applied uncritically to contemporary US–China relations.

#### No hegemony impact.

J.M. Mckinney, PhD Candidate @ Nanyang, and Nicholas Butts, CSIS, LLM @ Peking, Msc @ LSE, MPA @ Harvard, ’19, “Bringing Balance to the Strategic Discourse on China’s Rise” https://www.airuniversity.af.edu/Portals/10/JIPA/journals/Volume-02\_Issue-4/McKinney.pdf

One of the most repeated ideas in international affairs discourse today is that after World War II the United States created a “free and open international order” and that this order has been responsible for keeping the Indo-Pacific “largely peaceful” for the last 80 years.4 China is then typically said to be promoting a vision “incompatible” with this order—something that should make us worry, as it may herald the return of violent power politics.5

Michael Lind has summarized the perspective:“in my experience, most members of the U.S. foreign policy elite sincerely believe that the alternative to perpetual U.S. world domination is chaos and war.”6 It is indeed true that the years since World War II have been peaceful when compared with most of European history and that violence of all kinds has declined.7 This phenomenon has been dubbed the “New Peace,” and the United States certainly played some role in bringing it about.8

However, there is no consensus among scholars to what extent US actions—or more abstractly, the supposed “order”—contributed to the decline in war and violence. Existing academic explanations stress the role of nuclear weapons restraining states from major war;9 the evolution of territorial norms (as well as regimes and institutions, like the United Nations);10 the development of globalized markets and “trading states”;11 the longer-term spread of reason, sympathy, and feminization alongside the rise of stronger states;12 the settlement of territorial disputes after World War II;13 the spread of democracies;14 the declining utility of war as a rational instrument of statecraft;15 and hegemonic stability, which emphasizes (in its liberal form) how the United States helped create global institutions and shape norms16 and (in its “realist” form) how US power has deterred or compelled rivals to behave.17 This is not the place to judge between the various explanations, but it should be clear that they are diverse and the overall explanation is likely multivariate. Only the realist version of hegemonic stability directly supports the narrative of the free and open international order. Christopher Fettweis has recently sought to test the theory by looking at the changing pattern of global peace/violence relative to US military spending, frequency of intervention, and selection of grand strategy across four presidential administrations (Bush Sr. to Obama). He found no relationship at all. “As it stands,” he concluded, “the only evidence we have regarding the relationship between US power and international stability suggests that the two are unrelated.”18 If US officials and strategic pundits are going to claim that peace is dependent on an abstract order created and maintained by American power, they need to provide serious evidence for their claims. Until then, while we can be thankful that the United States contributed to postwar institutions like the United Nations, helped delegitimize colonialism, and did not abuse its power (as much) as many other states would have, policy makers and scholars should be highly skeptical of more sweeping claims.

Laying aside the question of how the New Peace came about, another oft repeated notion is that China is determined to undermine the contemporary international order, according to Friedberg, by corrupting, subverting, and exploiting it.19 The proof for this claim is generally said to be China’s “militarization” of the South China Sea (SCS) through “salami-slicing” and “grey-zone tactics,”20 and occasionally, a retired Chinese official or Global Times commentator is quoted as representative of China’s official (even if unarticulated) policy and intentions. In the abstract, such claims are alarming—in context, and in balance, rather humdrum. In fact, the evidence of any Chinese intention to destroy, or even merely undermine and exploit, the current order is slight. China is certainly using its growing military power to defend its claims in the SCS and even—on occasion— to coerce its neighbors. It uses protectionist economic policies to boost the prospects of Chinese companies and reduce competition. It employs economic statecraft to serve its interests abroad. And it certainly is opposed to America’s policy of global democracy promotion. However, none of these positions fundamentally challenge the existing order, none of them radically depart from America’s own actions when it was a rising power in the nineteenth century, and none of them obviously surpass America’s own contemporary record of order subversion.

When the United States was a rising power, it took half of Mexico and considered taking the rest, it colonized the Philippines and Hawaii, and it unilaterally seized the maritime choke points of the Caribbean (Puerto Rico and Cuba).21 The United States used tariffs—which by 1857 averaged 20 percent22 and by the end of the nineteenth century were “the highest import duties in the industrial world”23—to protect its industries. It stole intellectual property,24 and it ideologically challenged the governments of the “Old World.” Today, despite no longer being a rising power, the United States has launched two disastrous invasions, tortured prisoners, and dispatches drone strikes at a whim with little international legal authority.25 The point is not that two wrongs make a right; it is that international order is much more resilient than critics seem to realize,26 and it is utopian to expect any rising Great Power to act in a way that uniformly satisfies one’s moral scruples, evolving, in Friedberg’s words, “into a mellow, satisfied, ‘responsible’ status quo power.”27

Friedberg or Harris might object that America’s rise took place in the context of a different order. This is perfectly true, but the more important point is that the long nineteenth century (1815–1914)—the era of America’s rise—was the first iteration of the New Peace.28 The implication is that relative peace can and has coexisted with limited wars, property and territorial thefts, acts of coercion, and aggressive assertions of status. This does not mean any of these are desirable— they are not—but it shows that they need not be fatal to the system. Insofar as there is a lesson from that first period of relative peace, it is that Great Power confrontation is the one thing that is fatal. Accepting this does not mean capitulating in every instance, as implied by some,29 but it does mean rediscovering the rules of Great Power competition30 alongside the art of strategy.31

Focusing only on areas that China’s rise violates the scruples of the established powers, moreover, downplays the extent to which China, has, in fact, conformed to the existing order. As a RAND Corporation report published in 2018 concludes, China has been a supporter—albeit a conditional one—of the international order: “Since China undertook a policy of international engagement in the 1980s . . . the level and quality of its participation in the order rivals that of most other states.”32 The way in which Xi Jinping, following his 2017 Davos speech in defense of globalization, has been heralded as the most prominent champion of international order and defender of globalization underscores the fact that there are different elements of this order, and that China supports many, if not most, of them. Even in places where China is supposedly “altering” the current order, Beijing tends to simultaneously affirm that order. China’s Asian Infrastructure Investment Bank, for instance, actually mirrors existing structures, and China has intentionally copied elements and “best practices” of the World Bank and Asian Development Bank. China is playing the same game, even if it is seeking a bigger role within it.33

#### Chinese leadership stops global secessionist conflicts.

**Griffiths ’16** [Ryan; Senior Lecturer in the Department of Government and International Relations @ University of Sydney; “States, Nations, and Territorial Stability: Why Chinese Hegemony Would Be Better for International Order”; http://www.tandfonline.com/doi/full/10.1080/09636412.2016.1195628]

I began the article by claiming that the Pax Sinica would be better for international order. In making this claim I define “better” in narrow terms emphasizing territorial stability, which can be assessed in several ways. How often do either external aggressors or internal separatists shift sovereign borders through violence? What is the frequency of secessionist civil war? How much international discord is there on the topic of secession and recognition? This is the ledger I use when comparing the Pax Sinica with the post-1945 American-led order. There are many other factors, to be sure, and critics might point to a number of ways in which Chinese hegemony would be worse. For example, they may question the support for human rights under Chinese leadership. I do not argue that Chinese hegemony would be better in all ways—there are pros and cons to any order—but I contend that there are net benefits where territorial stability is concerned. Analyzed under these terms the key differences between the American order and the imagined Chinese order have to do with the politics of secession and sovereign recognition. International order matters because it determines diplomatic practices and shapes behavior. It sets the rules of the game. The American-led order over the last seventy years has attempted to balance the norms of territorial integrity and self-determination by establishing rules for what nations are eligible for independence. But, as Fabry notes, that is an enormously challenging project because developing clear rules that separate the lucky from the unlucky requires that states derive agreed-upon criteria in a constitutive process.73 Given the politics and conflicting principles of international life (and the evolving nature of normative arguments), inconsistency, ambiguity, and accusations of hypocrisy are unavoidable. The resulting political space creates uncertainty for states and nationalist movements over when self-determination applies and when it should be subordinated to territorial integrity. Incidents like the Ukrainian crisis cast a shadow over separatist crises elsewhere. The leadership in Azerbaijan detects double standards in American policy, wondering why it “punishes Russia for annexing Crimea, but not Armenia for similar behavior in Karabakh.”74 Such uncertainly can makes states feel vulnerable, as it has in Azerbaijan, change the incentives for key actors, and increase the chance of conflict. Secessionist civil war is a common feature of contemporary times. Scholars estimate that at least half of the civil wars since 1945 have involved secessionism, and Barbara F. Walter argues that secessionism is the chief source of violence in the world today.75 Erica Chenowith and Maria Stephan find that secessionism is one of the few (if only) forms of political protest where violent tactics are more effective than nonviolent.76 Meanwhile, Tanisha Fazal and I identify fifty-five secessionist movements as of 2011 and record that many of these movements feel they have a reasonable chance of gaining independence in light of the somewhat flexible practices surrounding recognition.77 Given the strategic environment in which secessionists operate, where violence can be effective and where sovereignty is thought to be obtainable, it should come as no surprise that conflict is common. In regard to territorial stability, the concern of contemporary times is not traditional territorial conquest, but the threat posed by state fragmentation.78 This is where Chinese hegemony ought to improve international order.

#### Secessionism causes extinction – multiple hotspots.

Depner ’19 [Wolfgang; Doctoral Candidate @ University of British Columbia – Okanagan and Co-Editor of Readings in Political Idealogies since the Rise of Modern Science, Lectured in International Politics and Philosophy at the University of British Columbia, “Disputed Territories”, Diplomat & International Canada, October-December 2019, p. 41-46]

Problems of territoriality lie at the heart of global politics, especially among those who subscribe to realist theories of international relations. If we accept their argument that the international community consists of independent states that exist in an environment of anarchy thanks to the absence of a global authority, then any study of their relations inevitably focuses on their boundaries. As philosopher Max Weber said, a state is a “human community that claims the monopoly of the legitimate use of physical force within a given territory.”

Or as Jeremy Larkin, lecturer in international relations at Goldsmiths, a college of the University of London, puts it: “All states, regardless of historical and geographical variables, are assumed to have some physical extension in space, to occupy an identifiable place on the surface of the Earth, to have borders that clearly distinguish inside from outside and self from others.”

But if ability to “distinguish inside from outside and self from others” appears as an element of statehood, it is a necessary but insufficient condition for it. Equally necessary is Weber’s point about the exercise of exclusive authority — the concept of sovereignty — within that territory. It is one thing to claim a set of boundaries, it is another to control the space within them, as the Communist government of mainland China has discovered in Hong Kong, where protesters have challenged its authority. (Whether this authority is legitimate is another question.) But if these points have “assumed the status of a common-sensical, self-evident truth,” as Larkin writes, it has not always been this way.

As he writes, the concept of territoriality in modern international relations is a social construct that only fully emerged in the period after the end of the 30 Years’ War (1618-1648). When married with the ideas of national self-determination (late 18th and early 19th Centuries) and social Darwinism (late 19th, early 20th Century), it subsequently contributed to the catastrophes that defined the first half of the 20th Century.

They, in turn, have inspired international institutions and instruments that attempt to ameliorate territorial conflicts, in line with the liberal school of international theory.

This said, powerful actors with nationalistic agendas in North America, Asia, Europe and the Middle East have since regained the upper hand in this conflict between realism and liberalism by either emphasizing their own territorial integrity, or worse, revising the borders of others.

This list of the 10 most important unresolved territorial disputes draws attention to this dynamic.

To be clear: Territorial disputes have always been, and will be, features of international systems, and every dispute described in this list has had a long history dating back decades, if not centuries, as in the case of the ethnic-religious conflicts that continue to rile the ”near abroad“ of Russia.

But their saliency has risen in what Ian Bremmer, president of Eurasia Group, and Nouriel Roubini, professor at New York University, have described as a G-Zero World, in which no nation is either willing or capable of guiding the international system, be it through the punishment of pariahs or the provision of public goods.

In this world, deprived of global leadership and defined by increasingly dysfunctional global institutions and instruments, states will increasingly find themselves on their own, a condition some actors actually encourage.

As cacophony replaces co-operation, conflict will become more likely, and many observers have already argued that we currently find ourselves in the middle of a new Cold War between the declining United States and emerging China, with neither side concerned about any collateral damage that they might be causing to the larger international system.

So what stands out about the list? As already mentioned, many of these conflicts have had a long history, often involving key historical events themselves. Second, they unfold within larger conflicts. For example, the conflict between China and Taiwan is not just about the status of Taiwan.

It is also about the conflict between China and the United States. Third, these territorial conflicts serve domestic purposes. For example, when Israeli Prime Minister Benjamin Netanyahu promised to annex the West Bank — the very core of a future Palestinian state — earlier this year, he did so for electoral purposes and greater security. He tried the same gambit when Israelis went to the polls again in September.

Domestic politics also explain the recent move by Indian Prime Minister Narendra Modi to strip the Indian part of Kashmir of its previously enjoyed autonomy rights in playing to his nationalistic base. Another example concerns Russia.

It finds itself in the middle of multiple territorial disputes with its neighbours, but has shown little interest in solving them, partly because Russian President Vladimir Putin uses them to stoke nationalist sentiments against the West, thereby distracting the Russian public from domestic problems. This is partly because Putin continues to see Russia as a genuine global power. This said, it is also important to acknowledge that these territorial claims reflect — at least in the minds of those who pursue them — attempts to resolve genuine security problems. Finally, none of these conflicts is “local.” Any prolonged tensions in the South China Sea would not just reverberate through the immediate region, but also impact other parts of the world, be it through global stock markets, or, less abstractly, by disrupting global supply lines.

1. China-Taiwan (and fallout from Hong Kong protests)

It’s a global drama by any measure: the fate of the sometimes violent anti-mainland China protests in Hong Kong that have sometimes sent more than a million defiant citizens into the streets. And it resonates with special significance among the 24 million or so residents of Taiwan.

When the former British Crown colony returned to mainland China in 1997 under the formula of “one country, two systems,” Hong Kong also became a possible model for the future of Taiwan, which Beijing considers a breakaway province. Chinese President Xi Jinping himself raised it in January 2019, when he called on Taipei to start unification talks on that basis.

Taiwanese leaders, starting with President Tsai Ing-wen, rejected his demand and questioned Beijing’s commitment to the “one country, two systems” approach. Months later, events in Hong Kong have confirmed these fears, and Chinese actions in Hong Kong have confirmed the worst suspicions of those who also read Xi’s speech as a veiled threat of invasion should Taiwan ever declare independence.

First, the good news. According to a report to the U.S. Congress — the latest China Military Power Report — China currently lacks the means to invade Taiwan. While mainland China’s People’s Liberation Army (PLA) continues to “improve training and acquire new capabilities for a Taiwan contingency,” the report finds “no indication that China is significantly expanding its landing ship force necessary for an amphibious assault on Taiwan.”

Now, the bad news. Cross-strait relations between China and Taiwan have become increasingly prickly because of recent developments, starting in January 2019, when Ing-wen challenged the 1992 Consensus, an agreement that acknowledges the existence of one China. But it also allows for their varying interpretation on China’s legitimate government.

This ongoing historical conflict followed the Chinese civil war from 1945 to 1949 in which the Communists, led by Mao Zedong, defeated the Nationalists’ Kuomintang Party under Chiang Kai-shek, whose government, assets, partial military and followers moved to Taiwan (then called Formosa). According to the interpretation by the U.S. Council on Foreign Relations, the core of the 1992 Consensus consists of the “tacit agreement” that Taiwan will not seek independence. By questioning the 1992 Consensus, Ing-wen leaves open the possibility that Taiwan could declare independence, one of the scenarios that the PLA had previously identified as a reason for the use of force. While presidential elections in 2020 will test the popularity of Ing-wen and her diplomatic ideas, China has already signalled its displeasure by accusing Taiwan of “pursuing a path of separatism” while refusing to rule out China’s use of force. All of this has happened after Taiwan purchased military equipment worth more than $2.2 billion from the United States, and began a diplomatic charm offensive during which Ing-wen met with the United Nations ambassadors of the countries that recognize Taiwan, despite pressure from China.

While not a member of the United Nations, Taiwan maintains an unofficial consular office not far from the UN and formal diplomatic ties with 16 UN members, mainly from Latin America, the Caribbean and the Holy See. Taiwan also maintains unofficial ties with 50-plus other UN members. This said, the number of countries that recognize Taiwan as the sole representative of China has been dropping. (Taiwan, for its part, recognizes every UN member except for China and North Korea.)

Taiwan can continue to count on U.S. support, which intensified when then- U.S.-president-elect Donald Trump accepted a congratulatory call from Ing-wen in December 2016. The 10-minute phone call upended almost four decades of American policy, because no American president had spoken with a Taiwanese leader since 1979, when the United States withdrew diplomatic recognition of Taiwan under the “One China” policy that accepts mainland China (the People’s Republic of China) as the sole government of China. Trump, being Trump, then bragged about the phone call on Twitter and further raised doubts when he said that the United States did not have to follow the policy.

Interpretations of this move varied, from deliberate provocation of Beijing to rookie mistake to clever negotiating ploy. Beijing downplayed the incident, arguing that Trump had fallen for a “little trick” played by Taiwan, but it now appears it was part of a larger strategy aimed against China that has relied, for the most part, on economic tools.

But Taiwan remains the one place where U.S. and Chinese military forces are the most likely to clash. U.S. Navy ships routinely transit the Strait of Taiwan on the premise that they are international waters, but they’re also signalling to China that the United States won’t accept efforts to push it out of the region. China routinely conducts live-fire exercises in the area, and while China has committed itself to peaceful unification, it has never ruled out the use of force.

2. Strait of Hormuz Region

As the only route to the open ocean for one-sixth of global oil production and one-third of the world’s liquefied natural gas (LNG), the 39-kilometre-long Strait of Hormuz, lying between Iran and Oman, is the world’s single most important oil passageway.

As events during the summer of 2019 have shown, conflicts along this global chokepoint can rattle markets and raise the spectre of war throughout the Middle East.

Perhaps lost in this tableau of tension is the disputed status of three local islands near the Strait. While Abu Musa, Greater Tunbs and Lesser Tunbs add up to fewer than 26 square kilometres of sand and scrub, they screen the entrance into the strait.

Iran has, on several occasions, threatened to close the Strait of Hormuz if the United States or Israel launch a military attack against its nuclear installations, and the islands would likely play a significant role in any Iranian counterstrike against shipping.

The origin of this dispute dates to the late 19th Century, and for decades, Iran and United Arab Emirates claimed sovereignty over the islands, with Iran seizing them in 1971, just before the UAE formally declared itself an independent state. Since then, Iran has militarized them with small boat harbours, airstrips and, as reported by Forbes, “presumably, a full suite of missiles, radars and other surveillance gear.”

These islands, themselves part of a broader network of forward maritime outposts, have allowed Iran to “advance a strategy of bravura and bluster” that extends its influence.

“Ultimately, Iran has been too successful in demonstrating that small maritime holdings,” Forbes notes, “when combined with continuous bellicose provocation, are force multipliers.”

Regional and international efforts to resolve this territorial conflict have been ongoing and actually resumed in late July 2019, when a UAE delegation travelled to Iran. The development marked an easing of tensions between the countries, which have also found themselves on opposite sides of the civil war in Yemen, with Iran backing Houthi rebels in Yemen, while the UAE has joined Saudi Arabia in sending money and men in support of Yemen’s official government.

These talks have coincided with a scale-back of UAE’s involvement in Yemen, suggesting that the recent run of tensions in the region marked a peak, if only for the present.

3. Israel-Palestine territories (West Bank/Jerusalem/Gaza) and Israel-Syria (Golan Heights)

To sample the current opinions of some Israeli historians about the future of their country is to drink deeply from a well of despair.

In commemorating the late liberal Israeli author Amos Oz, Israeli authorhistorian Tom Segev argues in The New Yorker that the prospects for a viable peace between Israelis and Palestinians have been fading since 1993, when the Oslo Accords inspired Arab terrorism and the assassination of Israeli prime minister Yitzhak Rabin in November 1995 by an ultranationalist opposed to a Palestinian state existing next to Israel. Within months of “one of history’s most effective political murders,” Benjamin Netanyahu started to steer Israel towards its current settlement policies in the West Bank. Almost 25 years later, Israeli settlers in the Occupied Territories now number nearly half a million, “in effect foreclosing on the idea of a twostate solution,” Segev writes.

Israeli historian Ilan Pappé agrees with the futility of pursuing a two-state solution in arguing for a pacifistic and humanistic alternative to Israel in the form of a binational state with a socialist economic system and equal rights for all its citizens, contrary to the current apartheid-like state, as he describes Israel. If Pappé is pro-Palestinian, fellow historian Benny Morris predicts a future in which demographic developments will render Jews a persecuted minority in their own state, with the lucky ones able to escape to the United States.

For all their differences, these perspectives are pessimistic about the current viability of the land-for-peace formula behind the Oslo Accords, the idea that Israel would eventually withdraw to the borders of 1967 in exchange for formal recognition by a future Palestinian state.

While the two-state solution enjoys broad formal support in the United Nations General Assembly and among key powers in Asia and Europe, developments, namely the expansion of Jewish settlements in the West Bank, the very location of a future Palestinian state, and divisions among Palestinians themselves, have steadily worked against it.

As Canadian Michael Lynk, the special rapporteur appointed by the UN Human Rights Council recently said, the UN considers Israeli settlements illegal. But factionalism between Fatah — the more moderate Palestinian authority in the West Bank — and Hamas — the radical Palestinian authority in the Gaza Strip with a long history of deadly attacks against Israelis — has played into the hands of those who see the Palestinians as obstacles to peace and progress.

So what is to be done? The latest efforts, as proposed by Jared Kushner, the son-inlaw and senior adviser of Donald Trump, focus on peace through prosperity as part of a larger, yet-to-be-released Middle East peace plan described as the ”deal of the century.”

Critics, including The Wall Street Journal, hardly a liberal outlet, argue that this idea ignores the facts on the ground. They question the impartiality of the United States after its 2017 decision to formally recognize Jerusalem as Israel’s capital, a major diplomatic affront to the Palestinians who also claim it.

Ordinary Palestinians in the West Bank, for their part, face difficult choices. Violent resistance appears ineffective in the face of superior Israeli forces, yet few see other alternatives. The prospect of peace through prosperity as promised by current negotiations might be appealing, but many are not buying the hype for any number of reasons. They include infrastructure deficiencies, barriers to the movement of goods and people and the absence of predictable rules. Ultimately, many Palestinians see current efforts as a cynical bribe to buy off a long-cherished dream.

As for the Golan Heights, Israel continues to occupy it for security reasons, and like the West Bank and Gaza, it remains a flashpoint of tensions, as Syria recently reiterated its right to recover the Heights.

4. India-Pakistan (Kashmir)

“We want revenge, not condemnation. It is time for blood, the enemy’s blood.” So spoke Arnab Goswami, one of India’s most prominent television journalists after a male suicide bomber had killed more than 40 Indian paramilitary soldiers on Feb. 14, 2019 in Pulwama, a city in the Kashmir region.

The suicide bomber was a member of Jaish-e-Muhammad (JeM), a Pakistanbased group that aims to unite the Indian portion of Kashmir with Pakistan through attacks on symbols of the Indian state. Goswami and other bellicose moderators baying for blood received their wish days later when India, having accused Pakistan of harbouring the group, launched airstrikes on Feb. 26 against what it says was a JeM training facility beyond the de-facto border that divides India-administered Kashmir from Pakistan- administered Kashmir following a war between the two countries in 1971.

Developments escalated quickly from there. A Pakistani counterstrike on Feb. 27 sparked an aerial battle that led to the downing of two Indian jets and the capture of an Indian pilot by Pakistani forces. Video footage showing the pilot bloodied and bruised only heightened tensions and fear of a full-out war between two nuclear powers prompted calls for restraint from leaders around the world.

Both sides eventually de-escalated their rhetoric by sending signals of restraint. Pakistan, for example, quickly released a new video of the captured pilot showing him cleaned and sipping tea before eventually releasing him. But the episode was nonetheless a terrifying reminder of the incendiary potential that the Kashmir conflict bears.

The split itself dates back to the hasty and poorly planned partition of the Indian subcontinent in 1947. Once a princely state, Kashmir found itself free to choose between India and Pakistan following partition. Both governments soon pressured Kashmir, which eventually sought military help from India, after rebels sponsored by Pakistan seized control of western Kashmir. India agreed to the aid, but only after Kashmir had formally become India’s.

Two years of war followed, ending with a ceasefire sponsored by the United Nations.

Kashmir was also the primary cause of conflict between the two countries in 1965 and 1999. The 1971 war that led to the independence of Bangladesh also flared up in Kashmir.

So Kashmir has been a fault-line, if not the fault-line, of Indo-Pakistani rivalries since 1947, with both claiming full control of the region for apparent reasons.

For India, Kashmir is the place to showcase the rights of Muslims within Indian society, as its 45-per-cent share of Kashmir is the only Indian region where Muslims constitute a majority, at 60 per cent of the local population. This is also the reason Kashmir is so important to Pakistan and its self-image as the Muslim homeland on the subcontinent.

The respective regions of Kashmir under Indian and Pakistani control are also far from homogeneous, with groups on either side of the border chafing under their respective governments. Finally, China also plays a small but important part through its own claims to the region.

While these political complications are familiar, the complexity of their interactions has changed. Modern information technologies can quickly condense and convert news of local tensions in the region into national grievances with global consequences. Fed by nationalistic furor, decision-makers on both sides might soon find themselves prisoners of cascading events that they might have started, but can no longer stop.

## Maritime Cybersecurity

### 1NC – AT: Cyber

#### No cyber impact.

Lewis ’20 [James Andrew; 8/17/20; senior vice president and director of the Strategic Technologies Program at the Center for Strategic and International Studies; "Dismissing Cyber Catastrophe," https://www.csis.org/analysis/dismissing-cyber-catastrophe]

More importantly, there are powerful strategic constraints on those who have the ability to launch catastrophe attacks. We have more than two decades of experience with the use of cyber techniques and operations for coercive and criminal purposes and have a clear understanding of motives, capabilities, and intentions. We can be guided by the methods of the Strategic Bombing Survey, which used interviews and observation (rather than hypotheses) to determine effect. These methods apply equally to cyberattacks. The conclusions we can draw from this are:

Nonstate actors and most states lack the capability to launch attacks that cause physical damage at any level, much less a catastrophe. There have been regular predictions every year for over a decade that nonstate actors will acquire these high-end cyber capabilities in two or three years in what has become a cycle of repetition. The monetary return is negligible, which dissuades the skilled cybercriminals (mostly Russian speaking) who might have the necessary skills. One mystery is why these groups have not been used as mercenaries, and this may reflect either a degree of control by the Russian state (if it has forbidden mercenary acts) or a degree of caution by criminals.

There is enough uncertainty among potential attackers about the United States’ ability to attribute that they are unwilling to risk massive retaliation in response to a catastrophic attack. (They are perfectly willing to take the risk of attribution for espionage and coercive cyber actions.)

No one has ever died from a cyberattack, and only a handful of these attacks have produced physical damage. A cyberattack is not a nuclear weapon, and it is intellectually lazy to equate them to nuclear weapons. Using a tactical nuclear weapon against an urban center would produce several hundred thousand casualties, while a strategic nuclear exchange would cause tens of millions of casualties and immense physical destruction. These are catastrophes that some hack cannot duplicate. The shadow of nuclear war distorts discussion of cyber warfare.

State use of cyber operations is consistent with their broad national strategies and interests. Their primary emphasis is on espionage and political coercion. The United States has opponents and is in conflict with them, but they have no interest in launching a catastrophic cyberattack since it would certainly produce an equally catastrophic retaliation. Their goal is to stay below the “use-of-force” threshold and undertake damaging cyber actions against the United States, not start a war.

This has implications for the discussion of inadvertent escalation, something that has also never occurred. The concern over escalation deserves a longer discussion, as there are both technological and strategic constraints that shape and limit risk in cyber operations, and the absence of inadvertent escalation suggests a high degree of control for cyber capabilities by advanced states. Attackers, particularly among the United States’ major opponents for whom cyber is just one of the tools for confrontation, seek to avoid actions that could trigger escalation.

The United States has two opponents (China and Russia) who are capable of damaging cyberattacks. Russia has demonstrated its attack skills on the Ukrainian power grid, but neither Russia nor China would be well served by a similar attack on the United States. Iran is improving and may reach the point where it could use cyberattacks to cause major damage, but it would only do so when it has decided to engage in a major armed conflict with the United States. Iran might attack targets outside the United States and its allies with less risk and continues to experiment with cyberattacks against Israeli critical infrastructure. North Korea has not yet developed this kind of capability.

#### No blackouts impact and no attacks that can take down the grid.

Lewis ’20 [James Andrew; 8/17/20; senior vice president and director of the Strategic Technologies Program at the Center for Strategic and International Studies; "Dismissing Cyber Catastrophe," https://www.csis.org/analysis/dismissing-cyber-catastrophe]

A catastrophic cyberattack was first predicted in the mid-1990s. Since then, predictions of a catastrophe have appeared regularly and have entered the popular consciousness. As a trope, a cyber catastrophe captures our imagination, but as analysis, it remains entirely imaginary and is of dubious value as a basis for policymaking. There has never been a catastrophic cyberattack.

To qualify as a catastrophe, an event must produce damaging mass effect, including casualties and destruction. The fires that swept across California last summer were a catastrophe. Covid-19 has been a catastrophe, especially in countries with inadequate responses. With man-made actions, however, a catastrophe is harder to produce than it may seem, and for cyberattacks a catastrophe requires organizational and technical skills most actors still do not possess. It requires planning, reconnaissance to find vulnerabilities, and then acquiring or building attack tools—things that require resources and experience. To achieve mass effect, either a few central targets (like an electrical grid) need to be hit or multiple targets would have to be hit simultaneously (as is the case with urban water systems), something that is itself an operational challenge.

It is easier to imagine a catastrophe than to produce it. The 2003 East Coast blackout is the archetype for an attack on the U.S. electrical grid. No one died in this blackout, and services were restored in a few days. As electric production is digitized, vulnerability increases, but many electrical companies have made cybersecurity a priority. Similarly, at water treatment plants, the chemicals used to purify water are controlled in ways that make mass releases difficult. In any case, it would take a massive amount of chemicals to poison large rivers or lakes, more than most companies keep on hand, and any release would quickly be diluted.

#### Hardening and monitoring check critical infrastructure

Melendez ’20 [Steven – Fast Company, “‘We’re always ready’: Would the U.S. win a cyberwar with Iran?,” 1-15-20, https://www.fastcompany.com/90450348/were-always-ready-would-the-u-s-win-a-cyber-war-with-iran]

The good news, experts say, is that the worst-case scenario is highly unlikely. Iranian military leaders know that a violent cyberattack on civilian targets would likely result in serious retaliation from the United States and its allies. “The strategy that I see right now is they want to retaliate without dragging themselves into an all-out war with the U.S.,” said Carmel, the chief strategy officer at Cybereason. When Iran first retaliated for Soleimani’s death, for instance, it appeared to pick U.S. military targets in Iraq that did not result in any casualties, effectively capping the cycle of escalation. That same strategic thinking would likely guide Iran in any future cyberattack, Lewis suggested. “If they turned out the lights in an American city, they would probably expect a violent U.S. response,” he said. “If they wipe the data from another casino, they might think they could get away with it.” Of course, U.S. forces are always hunting for evidence of digital incursions—and are reportedly increasingly willing to use offensive cyberpower to prevent or preempt attacks. “It wouldn’t surprise me if Cyber Command is monitoring the Iranians to see if they should interfere,” said Lewis. In such cases, the costs of electronic snooping—probing U.S. systems for potential vulnerabilities—can escalate quickly. At the same time, Carmel said, U.S. organizations have begun to invest more in technology to detect and stop cyberattacks sooner rather than later. With enough time and effort, practically any computer system can be hacked, but more robust monitoring and defensive capabilities have limited the number of soft targets, and increased the resources required to cause widespread damage. “America’s a really big country, and so there’s millions of targets, and some of them are really tough,” noted Lewis. “Some of the ones the Iranians would want to hit like the really big banks, they probably wouldn’t have the capability.”s

#### Blackouts happen all time---no cascading effect AND a litany of alt causes

Hassan Haes-Alhelou et al. 19., Mohamad Esmail Hamedani-Golshan, Takawira Cuthbert Njenda, and Pierluigi Siano. \*Department of Electrical and Computer Engineering, Isfahan University of Technology, Iran. \*\*Department of Electrical Power Engineering, Faculty of Mechanical and Electrical Engineering, Tishreen University, Lattakia. \*\*\*Department of Management & Innovation Systems, University of Salerno, Italy., 2-20-2019, "A Survey on Power System Blackout and Cascading Events: Research Motivations and Challenges," MDPI, <https://www.mdpi.com/1996-1073/12/4/682> \*numbers edited for easier reading

In this section, we consider some of the blackouts that have occurred in the USA. Table 4 shows the total number of blackouts recorded in the USA from 2008 to 2015 [54,56]. The least amount of power outages was 2169 [2100], recorded in 2008 and it left 25.8 million people stranded. The following year, 2840 outages were recorded and 13.5 million people were affected [54]. This was the least number of people affected as recorded from 2008 to 2015 [56]. Out of the 3149 outages that occurred in 2010, 17.5 million people were affected [54]. The highest recorded number of people affected was 41.8 million when 3071 outages occurred in 2011. In 2012, 2808 outages were recorded leaving 25.0 million people without power. Of the 3236 power outages that occurred in 2013, 14.0 million people were affected. The largest number of power outages occurred in 2014 and 14.2 million people were affected [56]. Lastly, in 2015 out of the 3571 recorded power outages a total of 13.2 million people were affected [56]. The numbers are just not mere statistics but indicate the severity of the recorded power outages. Even though Table 4 focuses on the number of outages and the people affected, the impacts of these outages can be far reaching [57]. USA is used as a case study example but different countries across the globe experience similar power outages with some resulting in the total collapse of the power system. Table 5 shows the summary of the recorded outages in 2015 [56]. Of the 3571 recorded outages a total of 13,263,473 customers were affected. In total, the outages lasted for approximately 122 [120] days in terms of lost time [54]. An average of 3714 people were affected per each outage that occurred and each outage lasted for at least 49 min [54]. The loss in monetary value amount to billions of US$ [54].

Of the 3571 outages recorded in 2015, we also considered the top ten states with the highest number of recoded outages [54]. In Figure 3, it can be seen that California was the most affected with 417-recorded outages which is about 25% of the recorded outage. Indiana had the least amount of recorded outages amounting to 100 in the same year. From the analysis of blackouts, the major cause was weather conditions. Therefore, the areas with the highest number of outages indicated areas that had more abnormal weather conditions. In what follows, we show the major causes and events that might lead to a blackout situation. We firstly highlight the significant causes that led to blackouts in USA in 2015. As explained earlier, power outages affect millions of customers and have serious further economic effects [54,56,58,59]. Generally, the causes of power outages range from natural disasters, aging power systems, and maloperation of protection systems or operators. Some of the major causes of power system blackouts as recorded in the USA in 2015 are described in what follows. On 17 November, a windstorm with a speed of about 70 mph destroyed electrical power lines leaving nearly 180,000 customers affected [54,56]. Trees falling on electrical power lines further worsened the effect. A storm which was classified as more severe than Hurricane Sandy left 280,000 people without power after destroying electrical power infrastructure on 23 June [54]. During the same period, 250,000 customers were affected in the Philadelphia region [54]. A power outage, which was caused by an underground fire on 15 July, left 30,000 people without power [54]. Further investigations indicated that the problem was aging equipment. An increased demand of power on 20 September when the weather temperatures were very high led the utility to curtail some loads in order to balance the generation and demand. About 150 MW of power was curtailed, leaving 115,000 San Diego customers without power [57]. On 7 April, a metal said to have broken loose from a power line at a switching station led to the interruption of power supply from two power stations [56]. Thousands of people were affected in Washington DC and Maryland. On 14 July, Birmingham experienced severe power cuts due to bad weather. A frosty storm which hit Oklahoma city on 28 November led to power cuts which affected 110,000 residents [54]. The main reason was that power lines were coated with ice to an extent that they became heavy and broke. Similarly, on 14 February, a cold front which brought severe winds of over 50 mph left 103,000 customers in need of power [56]. On 24 December, 60 mph winds led to power cuts leaving nearly 105,000 homes and businesses without power.

#### Alt Cause – vulnerability to data interruptions.

GlobalData Energy ’18 [Contributor to Power Technology, “Will data shortages cause the blackouts of the future?”, 3/6/18, https://www.power-technology.com/comment/will-data-shortages-cause-blackouts-future/]

Recently, the FT reported on a crisis brewing at National Grid and threatening to hit the reliability Great Britain’s electricity system. Interestingly, this crisis is not for the lack of power, it is a result of disruption in the flow of data. In the past, the electricity system was very centralised, with the vast majority of power produced by big generation plants (mostly coal and nuclear). This power was then channelled via the high-voltage transmission network, which is owned and operated by National Grid, which is also responsible for the proper functioning of the entire electricity system. In order to fulfil its role as a system operator, National Grid has to balance supply with generation across the UK, and make sure there is enough power to cover the highest demand peaks. It therefore relies on accurate data and modelling, to forecast both generation and demand. Why data? Why now? The problem stems from a significant change in how the grid works. The significant growth in low carbon technologies like wind, solar and combined heat and power (CHP) is important for reducing carbon emissions from the electricity system, and ensuring the long-term viability of the energy system. Many low-carbon generation resources are much smaller in scale, and are connected to the distribution networks—those that link the transmission network to most homes and businesses at a much lower and safer voltage. These networks are not operated by National Grid, and do not have as much visibility and monitoring as the transmission network. As a result, National Grid is less able to access the data on generation and peak demand within the distribution network. The data exists, and is held by a number of stakeholders, but one of the most important ones is ElectraLink, which is a company specialising in data transfer, and data analysis for the UK utilities industry. The company sells summaries of this data, in the form of its Renewable Energy Insight service, which was launched towards the end of 2016. At the time, it claimed to be removing the “renewables blind spot”. It seems that the data provided by this service is not available fast enough or at a sufficient level of granularity. National grid has reportedly entered protracted negotiations with ElectraLink to get the raw data, but it is not clear why this has not succeeded. Data is becoming as important as power for running the electricity grid Data sharing will be vital for the future operation of the utilities across the electricity, gas and water. Many in the utilities industry agree, and are exploring ways to support wider and smoother data sharing. This includes distribution network companies, like Northern Powergrid, that today announced plans to use smart meter data to reduce energy losses. The UK’s Energy Networks Association, which is the industry body representing all power and gas network companies in the UK are also promoting data sharing in the energy sector heavily, through its Open Networks scheme. On the technology side, GridKey—an analytics platform for substation data that is owned by Lucy Electric — recently announced that it collected 85 billion data points in its collaboration with UK DNOs. Another project, run by EA Technology and Western Power Distribution, is trying to build an open platform, dubbed Open LV, to share distribution network data across all UK utilities. As illustrated by National Grid, this data sharing is increasingly important for keeping the lights on. The future reliability of the energy system will depend on having the right protocols, technology infrastructure, and mindset that makes this sharing possible. However, there is also a tension between privacy and security requirements and data sharing. For examples, one of the key reasons that ElectraLink used to justify not sharing the data with National Grid is compliance with UK privacy regulations (the GDPR) that has been recently introduced. Issues like this will increasingly hinder open data sharing and need be resolved for this vision of a data-driven grid to become a reality.

# 2NC

## CP – Advantage

### 2NC – Heg

#### Their internal link card in the conclusion advocates for increasing domestic shipbuilding capacity and investing in the commercial naval industry.

1AC Greenwood and Miletello 11/4 (Jeremy Greenwood and Emily Miletello, Federal Executive Fellow - The Brookings Institution, Coast Guard Fellow - U.S. Army Center for Law and Military Operations, THE Brookings Institute, “To expand the Navy isn’t enough. We need a bigger commercial fleet.”, <https://www.brookings.edu/blog/order-from-chaos/2021/11/04/to-expand-the-navy-isnt-enough-we-need-a-bigger-commercial-fleet/>, November 4, 2021)

**With the withdrawal from Afghanistan complete, the long-awaited pivot to the Pacific might actually be taking shape. The AUKUS submarine agreement most recently highlighted the critical state of the maritime theater of operations in maintaining a “ free and open Indo-Pacific.” However, we can’t be so naïve as to think that a military buildup alone will win in this new era of strategic competition. Increasing shipbuilding capability and investing in the American commercial fleet would not only mitigate threats to our supply chain, but would also serve as an important hedge to China’s increasingly pervasive and aggressive maritime ambitions. As it stands now, our reliance on foreign vessels for critical trade is a national security risk both in terms of our inability to engage in sustained conflict abroad should that become necessary, but also in terms of supply chain vulnerabilities that will continue to plague us at home. We need not, and of course cannot, end globalization to protect our supply chain. But we can drastically increase the number of U.S. flagged merchant vessels sailing the world’s oceans and strengthen our domestic shipbuilding base to preserve our freedom of action in times of crisis. Without the ability to move and sustain our forces by sea wherever and whenever needed — a major deterrent against aggression — the U.S. (and its allies) will lose the capacity to ensure regional stability and peace. This maritime nation should not outsource its maritime needs. Continuing to do so requires that we rely on flag states that are increasingly vulnerable to the influence of foreign adversaries, most notably China. We must invest in our Merchant Marine and shipbuilding capability now, and undertake meaningful legislative efforts to make the U.S., at the very least, a less inconvenient flag state**

#### The United States federal government should adopt a naval strategy of active suasion.

**1AC Hanacek ’18** (Lieutenant Hanacek, a surface warfare officer, currently is pursuing a master’s degree in systems engineering analysis at the Naval Postgraduate School. He previously served as the electronics materiel officer/communications officer on board the USS Jackson (LCS-6) and as strike and combat information center officer on board the USS Lake Champlain (CG-57), “Presence Is Not Deterrence”, <https://www.usni.org/magazines/proceedings/2018-04/presence-not-deterrence>, April 2018)

– Samford’s card ends –

The United States instead could pursue a naval strategy based on active suasion. Rather than relying on the global presence of military assets to hopefully deter potential aggression, the United States could conduct foreign affairs through a framework of defense and reciprocity. Rather than keeping forces positioned around the world capable of bringing force to bear on an adversary within 24 hours, it could lengthen response time to one or two weeks. How would that affect our ability to respond to global threats?

From a geographic position, the effects would be far reaching. Loosening the leash on presence means fleet assets could spend less time “drilling holes in the ocean”—sailor speak for an uneventful patrol—and more time conducting valuable training exercises both at home and with foreign partners. It would mean more time between deployments, better adherence to deployment schedules, a lighter burden on our sailors and their families, and more thorough maintenance of our ships. Loosening presence requirements would go a long way toward normalizing fleet operations and creating a better warfighting force.

How would changing presence requirements affect the political and tactical positions of United States? For one, it would keep our forces abroad in a more tactically effective position. As Captain Wayne Hughes points out in his seminal work, Fleet Tactics and Coastal Combat, the inherent advantage of naval warfare lies in the offense. He also emphasizes the Admiral Horatio Lord Nelson adage that a ship’s a fool to fight a fort, meaning a ship is in a disadvantaged situation when within range of a capable land-based threat, particularly when targeting solutions can be maintained constantly. With this in mind, consider how we conduct the majority of our fleet activities while deployed. We spend an inordinate amount of time on littoral patrols that often accomplish little more than showing the flag, all while leaving our ships in highly vulnerable positions—a situation further exacerbated by the degraded level of fleet-wide training and maintenance. We create unrealistic timelines that have sacrificed overall operational readiness in the name of accomplishing one of the most mundane mission sets.

Of course, some missions are significantly more important than just showing the flag, but even these do not require the level of presence we currently employ. Freedom of navigation patrols, undoubtedly an important mission, need be conducted only occasionally to establish their legal merit. Ballistic missile defense requirements are limited to certain key areas of the world, and the current technological limitations of interceptor missiles leave the mission in the shadow of the more important nuclear counterstrike deterrent. Submarine patrols still will be critical in maintaining local underwater supremacy and maintaining the sea lanes, but the limited contributions surface combatants make toward achieving these missions are hardly worth the high operating expenses they occur.

There will be challenges in convincing regional partners that the United States will honor its defensive commitments. But given the inherent weakness of defensive naval operations, regional defense should not be relegated to mere presence-based force buildup. Rather, it can be accomplished more effectively through more exchange programs, increased support for the development of allied capabilities, and occasional exercises that display the ability of U.S. forces to respond to threats on an acceptable timeline. The United States could decrease its presence to the minimum amount of force required to convince regional partners it still has “skin in the game” and to provide limited defensive support.

As an example of how active suasion might decrease the strain on the U.S. Navy while simultaneously increasing its value as a deterrent, consider the defense of Taiwan. The Taiwanese military publicly assesses itself capable of self-sufficiency for up to 45 days. With a 14-day sail from San Diego and a 7-day sail from Hawaii, a well-prepared U.S. task force would be able to provide support to Taiwan in ample time should circumstances necessitate. Short of an outright surprise assault, China could obtain only a limited added advantage during this transit time that it would not already have had as the escalating party.

Meanwhile, keeping the bulk of a U.S. relief task force in the eastern Pacific creates a more difficult targeting solution for hostile forces and increases our potential axis of attack. In addition, the transit time works to the United States’ advantage by allowing it to leverage the full range of hard and soft power assets at its disposal. This includes the ability to conduct international coalition building and employ economic sanctions, which are far more likely to deter conflict than the unilateral threat of force alone.

All of this, of course, would be dependent on assuring Taiwan and other regional partners that the United States is willing and ready to fulfill its international obligations. This idea—that the absence of actual U.S. forces does not and will not constitute a power vacuum or an unwillingness to intervene when appropriate—is a critical aspect of U.S. foreign policy that should be communicated at every level of diplomatic discourse, regardless of how the nation frames its deterrent strategies.

## Adv 1

### 2NC – OV

#### 3. Turns case – regrowth locks in reactionary nationalism that makes any global problem solving impossible – flips environmental sustainability and naval power.

Marques 20 – associate professor at the Department of History, University of Campinas (Unicamp), Brazil (Luis, Pandemics, Existential and non-Existential Risks to Humanity, <http://dx.doi.org/10.1590/1809-4422asoc20200126vu2020L3ID> Ambiente & Sociedade São Paulo. Vol. 23, 2020)//gcd

The current pandemic offers the chance for a civilizational turn, probably the last chance before environmental imbalances spin beyond societies’ control. The project of globalized capitalism, the only possible one for it, is to continue advancing blindly in its logic of destruction. Pollution and greenhouse gas emissions are already nearly within normal ranges in China again and James Temple (2020, p. 56) analyzed how: the threat of rapidly accelerating climate change will remain. And we’ll be living in a much poorer world, with fewer job opportunities, less money to invest in cleaner systems, and deeper fears about our health, our financial futures, and other lurking dangers. These are ripe conditions to further inflame nationalist instincts, making our global challenges even harder to solve. But it is still possible to choose another path and to abandon the ecocidal and suicidal logic upon which we have built our societies and our world views. Even though much more improbable, that choice is the only one possible if we wish to significantly increase our chances of adapting to a global warming of at least 1°C above the current level of warming, which will occur in the next quarter century. For that, we will need to redefine the objectives and the elementary way economic activities function, a redefinition based on three fundamental principles: (1) A low-carbon energy and food system, based principally on vegetable nutrients, produced by a varied organic agriculture, respectful of wildlife habitats. That new agriculture centered on food self-sufficiency for territories will reduce the recurrence of plagues and epidemics, as well as limiting their impact; (2) A new international juridical-political order, overcoming the retrograde and militaristic notion of absolute national sovereignty in favor of global governance, the only way to coordinate our struggle against the principal global emergencies: climate, destruction of biodiversity, pollution, and unsanitary conditions; (3) And, finally, a redefinition – of a philosophical and spiritual character – of humankind’s position in the biosphere, abandoning anthropocentrism in favor of biocentrism.

#### 4. Only climate change causes extinction – not nuclear war.

Miller-McDonald 19 – Sam obtained a Master of Environmental Management at Yale University studying energy politics and grassroots innovations in the US (“Deathly Salvation TFW nuclear war may be the only way to stop human extinction”, The Trouble, 1-4-19, <https://www.the-trouble.com/content/2019/1/4/deathly-salvation>, accessed 7-16-19)// kel$

We’ve tied ourselves in a perfect Gordian knot. The global economy is a vast machine, operating beyond the control of even the most powerful individuals, and it has a will of its own to consume and pollute. It’s hard to believe that this massive metal beast will be peacefully undone by the people who survive by it, and we all survive by it in some way, often against our wills; it bribes and entraps us all in ways large and small. But a wrench could clog the gears, and maybe only a wrench can stop it. One wrench that could slow climate disruption may be a large-scale conflict that halts the global economy, destroys fossil fuel infrastructure, and throws particulates in the air. At this point, with insane people like Trump, Putin, Xi, May, and Macron leading the world’s biggest nuclear powers, large-scale conflagration between them would probably lead to a nuclear exchange. Nobody wants nuclear war. Rather, nobody sane and prosocial wants nuclear war. It is an absolute horror that would burn and maim millions of living beings, despoil millions of hectares, and scar the skin of the earth and dome of the sky for centuries, maybe millennia. With proxy conflict brewing between the US and Russia in the Middle East and the Thucydides trap ready to ensnare us with an ascendant China, nuclear war looks like a more realistic possibility than it has since the 1980s. A devastating fact of climate collapse is that there may be a silver lining to the mushroom cloud. First, it should be noted that a nuclear exchange does not inevitably result in apocalyptic loss of life. Nuclear winter—the idea that firestorms would make the earth uninhabitable—is based on shaky science. There’s no reliable model that can determine how many megatons would decimate agriculture or make humans extinct. Nations have already detonated 2,476 nuclear devices. An exchange that shuts down the global economy but stops short of human extinction may be the only blade realistically likely to cut the carbon knot we’re trapped within. It would decimate existing infrastructures, providing an opportunity to build new energy infrastructure and intervene in the current investments and subsidies keeping fossil fuels alive. In the near term, emissions would almost certainly rise as militaries are some of the world’s largest emitters. Given what we know of human history, though, conflict may be the only way to build the mass social cohesion necessary for undertaking the kind of huge, collective action needed for global sequestration and energy transition. Like the 20th century’s world wars, a nuclear exchange could serve as an economic leveler. It could provide justification for nationalizing energy industries with the interest of shuttering fossil fuel plants and transitioning to renewables and, uh, nuclear energy. It could shock us into reimagining a less suicidal civilization, one that dethrones the death-cult zealots who are currently in power. And it may toss particulates into the atmosphere sufficient to block out some of the solar heat helping to drive global warming. Or it may have the opposite effects. Who knows? What we do know is that humans can survive and recover from war, probably even a nuclear one. Humans cannot recover from runaway climate change. Nuclear war is not an inevitable extinction event; six degrees of warming is. Given that mostly violent, psychopathic individuals manage the governments and industries of the world, it may only be possible for anti-social collective action—that is, war—to halt, or at least slow, our inexorable march toward oblivion. A courageous, benevolent ruler might compel vast numbers of people to collective action. But we have too few of those, and the legal, political, and military barriers preventing them from rising are immense. Our current crop of villainous presidents, prime ministers, and CEOs, whether lusting for chaos or pursuing their own petty ends, may inadvertently conspire to break the machine now preventing our future. When so bereft of heroes, we may need to rely on humanity’s antagonists and their petty incompetence to accidentally save the day. It is a stark reflection of how homicidal our economy is—and our collective adherence to its whims—that nuclear war could be a rational course of action.

#### 5. Growth alone causes extinction:

#### A) Chemical emissions.

Cribb ’17 (Julian Cribb 17, principal of JCA, Fellow of the Australian Academy of Technological Sciences and Engineering, former Director, National Awareness, CSIRO, “The Poisoner,” Surviving the 21st Century Chapter 6)

There are two essential points about the Earthwide chemical flood. First it is quite new. It began with the industrial revolution of the late nineteenth century, but expanded dramatically in the wake of the two world wars—where chemicals were extensively used in munitions—and has exploded in deadly earnest in the past 50 years, attaining a new crescendo in the early twenty-first century. It is something our ancestors never faced—and to which we, in consequence, lack any protective adaptations which might otherwise have evolved due to constant exposure to poisons. Second, the toxic flood is, for the most part, preventable. It is not compulsory—but is an unwanted by-product of economic growth. Though driven by powerful industries and interests, it still lies within the powers and rights of citizens, consumers and their governments to demand it be curtailed or ended and to encourage industry to safer, healthier products and production systems. The issue is whether, or not, a wise humanity would choose to continue poisoning our children, ourselves and our world. Regulatory Failure Despite the fact that around 2000 new chemicals are released onto world markets annually, most have not received proper health, safety or environmental screening—especially in terms of their impact on babies and small children. Regulation has so far failed to make any serious curtailment of this flood: only 21 out of 144,000 known chemicals have been banned internationally, and this has not eliminated their use. At such a rate of progress it will take us more than 50,000 years to identify and prohibit or restrict all the chemicals which do us harm. Even then, bans will only apply in a handful of well-regulated countries, and will not protect the Earth system nor humanity at large. Clearly, national regulation holds few answers to what is now an out-of-control global problem. Furthermore, the chemical industry is relocating from the developed world (where it is quite well regulated and observes its own ethical standards) and into developing countries, mainly in Asia, where it is largely beyond the reach of either ethics or the law. However, its toxic emissions return to citizens in well-regulated countries via wind, water, food, wildlife, consumer goods, industrial products and people. The bottom line is that it doesn’t matter how good your country’s regulations are: you and your family are still exposed to a growing global flood of toxins from which even a careful diet and sensible consumer choices cannot fully protect you. The wake-up call to the world about the risks of chemical contamination was issued by American biologist Rachel Carson when she published Silent Spring in 1962, in which she warned specifically about the impact of certain persistent pesticides used in agriculture. Since her book came out, the volume of pesticide use worldwide has increased 30-fold, to around four million tonnes a year in the mid-2010s. Since the modern chemical age began there has been a string of high-profile chemical disasters: Minamata, the Love Canal, Seveso, Bhopal, Flixborough, Oppau, Toulouse, Hinkley, Texas City, Jilin, Tianjin. Most of these display a familiar pattern of unproductive confrontation between angry citizens, industry and regulators, involving drawn-out legal battles that deliver justice to nobody. By their spectacular and local nature, such events serve to distract from the far larger, more insidious and ubiquitous, universal toxic flood. Chemists and chemical makers often claim that their products are ‘safe’ because individual exposure (e.g. in a given product, like a serve of food) is too low to result in a toxic dose, a theory first put forward by the mediaeval scholar Paracelsus in the sixteenth century. This ‘dose related’ argument is disingenuous, if not dishonest—as modern chemists well know—for the following reasons: Most chemicals target a receptor or receptors on certain of your body cells, to cause harm. There may be not one, but hundreds or even thousands of different chemicals all targeting the same receptor, so a particular substance may contribute an unknowable fraction to an overall toxic dose. That does not make it ‘safe’. Chemicals not known to be poisonous in small doses on their own can combine with other substances in water, air, food or your body to create a toxin. No manufacturer can truthfully assert this will not happen to their products. Chemical toxicity is a function of both dose and the length of time you are exposed to it. In the case of persistent chemicals and heavy metals, this exposure may occur over days, months, years, even a lifetime in some cases. Tiny doses may thus accumulate into toxic ones. Most chemical toxicity is still measured on the basis of an exposed adult male. Babies and children being smaller and using much more water, food and air for their bodyweight, are therefore more at risk of receiving a poisonous dose than are adults. Chemicals and minerals are valuable and extremely useful. They do great good, save many lives and much money. No-one is suggesting they should all be banned. But their value may be for nothing if the current uncontrolled, unmonitored, unregulated and unconscionable mass release and planetary saturation continues. Chemical Extinction Two billion years ago, excessive production of one particular poisonous chemical by the inhabitants of Earth caused a colossal die-off and threatened the extermination of all life. That chemical was oxygen and it was excreted by the blue-green algae which then dominated the planet, as part of their photosynthetic processes. After several hundred million of years, the planet’s physical ability to soak up the surplus O2 in iron formations, oceans and sediments had reached saturation and the gas began to poison the existing life. This event was known as the ‘oxygen holocaust’, and is probably the nearest life on Earth has ever come to complete disaster before the present (Margulis and Sagan 1986). Since it developed slowly, over tens of millions of years, the poisonous atmosphere permitted some of these primitive organisms to evolve a tolerance to O2—and this in time led to the rise of oxygen-dependent species such as fish, mammals and eventually, us. The takehome learning from this brush with total annihilation is that it is possible for living creatures to pollute themselves into oblivion, if they don’t take care to avoid it or rapidly adapt to the new, toxic environment. It’s a message that humans, with our colossal planetary chemical impact, would do well to ponder. While it is unlikely that human chemical emissions alone could reach such a volume and toxic state as to directly threaten our entire species with extinction (other than through carbon emissions in a runaway global warming event) or even the collapse of civilisation, it is likely they will emerge as a serious contributing factor during the twenty-first century in combination with other factors such as war, climate change, pandemic disease and ecosystem breakdown. Credible ways in which man-made chemicals might imperil the human future include: Undermining the immune systems, physical and mental health of the population through growing exposure to toxins Reducing the intelligence of current and future generations through the action of nerve poisons on the developing brains and central nervous systems of children, rendering humanity less able to solve its problems and adapt to major changes; and by increasing the level of violent crime and conflict in society, which is closely linked to lower IQ. Bringing down the economy through the massive healthcare costs of having to nurse, treat and maintain a growing proportion of the population disabled by lifelong chronic chemical exposure. By poisoning the ecosystem services—clean air, water, soil, plants, insects and wildlife—on which humanity depends for its own survival and thereby contributing to potential global ecosystem breakdown By augmenting the global arsenal of weapons of mass destruction and hence the risk of their use by nations or uncontrollable fanatics.

#### B) Methane.

Malcolm Light 19, PhD in Geology from the University of London, Earth System Scientist, 1-7-2019, "Global Extinction Within 18-34 Months," Artic News, https://arctic-news.blogspot.com/2019/01/global-extinction-within-18-34-months.html, Accessed 12-7-2021, LR + ao

Humanity is facing the final, western corporate capitalist, fossil fuel initiated, catastrophic Arctic methane hydrate destabilization and Permian style methane blowout - firestorm that will culminate in 1 to 4 years (2020 to 2023).

We will all be boiled alive like lobsters in a massively humid atmosphere and converted into stardust.

Recent data from the Arctic confirm an exponential rise in the temperature anomaly of the Arctic stratospheric methane which is now 65 degrees C above the normal, while it was only 20 degrees C above the normal, 6 to 8 years ago.

Using this data and the recent Piomas (2017) estimates of the minimum Arctic ice shelf volume it is now possible to estimate the timing of the Arctic - Permian style methane blowout firestorm more accurately and the events in the Figure 1. below and tabulated beneath it.

1. An Arctic blue oceanic event is possible in 2020 due to the fast rise in Summer temperatures (Piomas - Zhang and Rothrock, 2003, Wipneus, 2017, Carana, 2016)

2. The start of the Arctic Permian style methane blowout event can begin as early as July 15, 2020 at the end of Summer in the Northern Hemisphere if the Mean Yearly Global Warming Potential of Methane is used (119.3959 from Goddard Space Flight Centre Data, NASA 2012)

3. The Major Arctic Permian Style, Methane Blowout - Firestorm Event which will cause the release of some 50 Gt of methane from the Arctic shelf and slope (Shakhova, 2010), a 10 Degree Centigrade Rise in Mean Global Atmospheric Temperatures causing a Catastrophic Permian Style Global Extinction Event, is timed to begin on 4th September, 2021 using an Atmospheric Methane Global Warming Potential of 100. This is an end Summer event for the Northern Hemisphere.

4. There is a 95% Probability that the Arctic Ice Shelf will have Zero Volume by the 5th of September 2022 (Piomass - Zhang and Rothrock, 2003, Wipneus, 2017, Carana, 2016) which is an end Summer event and exactly one year after the Catastrophic Permian Style Global Extinction Event.

This indicates a total 12 month delay in the atmospheric heat being transferred to the tropical ocean currents (e.g the Gulf Stream) and then being conducted north to heat up the Svalbard current which then destabilizes the shelf and slope methane hydrates in the Arctic ocean releasing methane to the atmosphere.

The Goddard Space flight Centre Arctic shelf data (NASA 2012) indicate a 7 month delay in Summer ocean heating and the release of methane from the Arctic shelf and slope.

The Arctic ice shelf is being melted from below so the ocean needs to be heated first by the methane in the tropical stratosphere and this heat is then transferred by ocean current to the Arctic over at least 7 months. Ice also has a large latent heat of melting adding an additional several months to the delay time for the total Arctic ice shelf melt.

5. From the 24ᵗʰ of December 2022, Worldwide Catastrophic Weather Systems are now entirely controlled by the Arctic Atmospheric Global Warming Veil. The data is derived from the converging amplitude envelope of the 11 year moving average of the GISS maximum surface temperature anomalies from which the final mean convergence point being was determined (NASA GISS Data).

WHAT YOU NEED TO DO

The start date of the Permian style global extinction event may be only 18 to 19 months away. This says that you must complete your bucket list of unfulfilled dreams before July to August 2020. A bucket list is a list of unfulfilled actions you need to complete before you die ("kick the bucket").

Do not worry about dying as it comes to all of us in the end, only this time we will all be going together. The Earth will soon after this lose all its oceans and become "Venus Like".

Empathy is organic evolution's key to group survival in a uncaring inorganic universe. Enjoy yourselves and be excellent to each other in these last days and hours on the only remaining habitable planet in this solar system.

CONCLUSIONS

The Earth is a giant convecting planet, the underlying molten magma being heated by deep seated radioactivity and the oceans and atmosphere are its cooling radiator which allows the Earth the facility to vent this heat into open space (Windley, 1984; Allen and Allen, 1990). Mother Earth has carefully held the atmospheric temperature within a stable range necessary for oceans to exist for at least 4 billion years and nurtured the earliest bacteria to evolve into today's space faring humans (Calder, 1983).

The fouling up of the Earth's cooling radiator from Human emissions of greenhouse gases derived from fossil fuels will be counteracted by Mother Earth in her characteristic fashion by emitting vast volumes of deadly methane into the atmosphere from the Arctic regions. This will lead to the total extermination of all harmful biological species that produce greenhouse gases in the same way that Mother Earth did during the Permian and other extinction extinction events. In this case however we have totally tipped the balance with our extreme carbon dioxide and methane emissions so that there will be no chance of recovery for the Earth in this time frame, because the methane release will cause the oceans to begin boiling off between 115°C and 120°C (Severson, 2013) in 2080 and the Earth's atmosphere will have reached temperatures equivalent to those on Venus by 2096 (460°C to 467°C)(Wales, 2013; Moon Phases, 2013).

#### C) Phosphorus overconsumption causes extinction.

Faradji & De Boer ‘16 (Charly Faradji and Marissa De Boer, Doctor of Philosophy Student and  Researcher and European Project Manager of SusPhos at the VU University in Amsterdam, the Netherlands, “How the great phosphorus shortage could leave us short of food,” Phys.org. February 17, 2016, https://phys.org/news/2016-02-great-phosphorus-shortage-short-food.html) // S.Y.

You know that greenhouse gases are changing the climate. You probably know drinking water is becoming increasingly scarce, and that we're living through a mass extinction. But when did you last worry about phosphorus? It's not as well-known as the other issues, but phosphorus depletion is no less significant. After all, we could live without cars or unusual species, but if phosphorus ran out we'd have to live without food. Phosphorus is an essential nutrient for all forms of life. It is a key element in our DNA and all living organisms require daily phosphorus intake to produce energy. It cannot be replaced and there is no synthetic substitute: without phosphorus, there is no life. Our dependence began in the mid-19th century, after farmers noticed spreading phosphorus-rich guano (bird excrement) on their fields led to impressive improvements in crop yields. Soon after, mines opened up in the US and China to extract phosphate ore – rocks which contain the useful mineral. This triggered the current use of mineral fertilisers and, without this industrial breakthrough, humanity could only produce half the food that it does today. Fertiliser use has quadrupled over the past half century and will continue rising as the population expands. The growing wealth of developing countries allows people to afford more meat which has a "phosphorus footprint" 50 times higher than most vegetables. This, together with the increasing usage of biofuels, is estimated to double the demand for phosphorus fertilisers by 2050 Today phosphorus is also used in pharmaceuticals, personal care products, flame retardants, catalysts for chemical industries, building materials, cleaners, detergents and food preservatives. Phosphorus is not a renewable resource Reserves are limited and not equally spread over the planet. The only large mines are located in Morocco, Russia, China and the US. Depending on which scientists you ask, the world's phosphate rock reserves will last for another 35 to 400 years – though the more optimistic assessments rely on the discovery of new deposits. It's a big concern for the EU and other countries without their own reserves, and phosphorus depletion could lead to geopolitical tensions. Back in 2008, when fertiliser prices sharply increased by 600% and directly influenced food prices, there were violent riots in 40 different developing countries.

#### 6. Growth-driven tech innovation causes extinction.

Pueyo 19 – Dept. Evolutionary Biology, Ecology, and Environmental Sciences, Universitat de Barcelona (Salvador, Limits to green growth and the dynamics of innovation. 3 May 2019 https://arxiv.org/pdf/1904.09586.pdf)//gcd

Albeit normally overlooked, the need to adapt the tempo of technological innovation to the tempo of institutional adaptation was already discussed in Meadows et al. (1972). These authors gave instances of geographic regions where the Green Revolution had improved people’s lives and others in which the social side effects had been clearly detrimental, which they attributed to preexisting institutional differences. In their words, such experiences show that social side-effects must be anticipated and forestalled before the large-scale introduction of a new technology (...). Such preparation for technological change requires, at the very least, a great deal of time. Every change in the normal way of doing things requires an adjustment time, while the population, consciously or unconsciously, restructures its social system to accommodate the change. While technology can change rapidly, political and social institutions generally change very slowly. Much more recently, even the literature on long-term implications of artificial intelligence (AI), which, in general, is extremely technophile and pro-growth (Pueyo, 2018), has been warning of the need to slow down the investment in AI development as compared to the investment in means to prevent its potentially irreversible impacts (e.g., Bostrom, 2014), which, however, are thought of as mostly technical means. Arguably, these would be useless in the absence of deep institutional changes (Pueyo, 2018). The very challenges that recipes such as green growth pretend to solve were created by technological innovations in combination with economic institutional arrangements, and the adequate institutional changes are indeed lagging behind, whether they are those promoted under the umbrella of green growth, degrowth or any other. Unfortunately, accelerating innovation is acceleratingly posing new challenges, from an exploding diversity of chemicals with deleterious or yet unknown impacts on health and the environment (UNEP, 2019) to new technologies usable for mass destruction, as was already the case of nuclear energy and appears to be the case of developments not just in AI but also in several other emergent technologies such as nanotechnology or new methods of genetic engineering (see, e.g., Sutherland et al. (2016) for a review of emergent threats, focusing on their significance for biodiversity). If the institutional capabilities to manage such risks does not evolve at a commensurate speed, there will be an accumulation of serious threats for civilization and the rest of the biosphere that will not be solved by increases in eco-efficiency or by new energy sources. Subtler social consequences of accelerating innovation are becoming ever more pervasive. Technological acceleration, combined with market competition, are motors of what sociologists call social acceleration (Rosa and Scheuerman, 2009; about the link to innovation, see, e.g., L¨ubbe, 2009, p. 169-170), leading some aspects of society to change at accelerating rates and forcing people to adapt. An example is the mounting pressure over workers to increase their adaptability and allied capabilities, collectively known as employability (Chertkovskaya et al., 2013). Due to what the economic literature refers to as bounded rationality, the human capacity to process change, to adapt and to become adaptable have limits which will be overcome if the pressure grows exponentially. As put by L¨ubbe (2009, p. 175), Processes of growing up, just like processes of growing old, become precarious if the quantity of cultural resources that have consistent validity over the short duration of an average life dissolves with disorienting consequences. This phenomenon holds some analogy to ecosystem degradation, which, in part, is due to limited capacities to track anthropogenic changes (e.g., Devictor et al., 2012) rather than the inherent implications of, say, a given temperature. The pressure over people’s lives is not just due to the speed of change in general but also to the fact that much cutting-edge innovation pursues efficiency in the absorption and use of a limited resource as is human attention. This phenomenon was already conceptualized by Simon (1971) as attention economy and it is becoming increasingly difficult to escape its influence8 . If models like the one in this paper apply, even approximately, in this case, exponential growth will be linked to a roughly exponential increase in efficiency in the use of this resource (up to saturation), i.e., efficiency in shaping preferences and behavior to the benefit of firms. Such considerations become all the most important when taking into account the incipient innovation in the very patterns of innovation. The disruption of traditional innovation curves is underway because of design automation, which has been already going on for some time (Lavagno et al., 2006). In the field of evolvable hardware there are instances of evolutionary algorithms developing highly effective devices whose functioning was elusive for human engineers (Bostrom, 2014, p. 154). The substantial progress that most experts expect for AI after some decades (M¨uller and Bostrom, 2016; Dafoe and Russell, 2016) is likely to result in deep changes in all aspects of society, including the generalization of such second-order innovation. When this occurs, the model in this paper and the ensuing results will no longer hold, because that transformation will open the doors to endogenous superexponential innovation. Superexponential innovation is the condition noted in sec. 3 to sustain absolute decoupling beyond some point, but only until the physical limit cf is reached, and if rebound (Schneider, 2008) is avoided. What this entails in terms of ultimate limits to growth will depend on the significance of such enhanced innovation for less clear-cut issues such as those dealt with in sec. 4.2. However, if this growth is to be green or, more generally, serve the human interest, the problems dealt with above in this same section become even more relevant. Even more important than human capacity to adapt to accelerated changes would be the human limited capacity to take complex decisions, which, in a system based of competition among economic units such as firms, is likely to mean, as noted in Pueyo (2018), an unavoidable, massive automation of decisions, which would become ever more unintelligible and could fully dissociate the directions taken by economies from human interests. This section points to some widely ignored but crucial aspects for any economic recipe intended to serve the human interest as green growth is supposed to (as well as for recipes intended to serve the interests of other sentient beings). The first suggestion that emerges is that innovation, however desirable it might be, would need to take place at some pace commensurate with the capacities of people to adapt and of institutions to pre-adapt. Given the strong two-way causal relation generally assumed to exist between innovation and growth, this is a reason to abandon the logic of indefinite growth. The second suggestion is that, given the formidable forces that technology is unleashing and their potential to produce mass destruction or mass dystopia, the most basic institutional change that is needed is a transition from a system based on competition and microeconomic growth imperatives (see Richters and Siemoneit, 2018) to a system that favors solidarity and sufficiency, as previously discussed in Pueyo (2018). Pueyo (2018) also suggests that the broad spectrum of the potentially affected by such impacts creates some hope for collective action in this direction. Such a radical change will also be a form of social acceleration, but transient and oriented by a common purpose, distinct from a state of permanently accelerated and largely meaningless change.

#### 7. So does complexity – systemic risk turns case.

Manheim 20— University of Haifa School of Public Health (David, The Fragile World Hypothesis: Complexity, Fragility, and Systemic Existential Risk, Futures, Volume 122, 2020, 102570, ISSN 0016-3287, <https://doi.org/10.1016/j.futures.2020.102570.)//> gcd

The key question so far is whether fragility increases over time as systems are built. The answer to that question depends on a combination of factors that can push in either direction. These include increasing complexity of systems, the economic incentives for efficiency over robustness and the resulting levels of investment in resilience, the failure rates of individual components and systems, as well as the way in which systems-of-systems (and systems-of-systems-of-systems) are interrelated, and the extent to which systems and their interdependencies are designed to be robust. Even the claim of inevitable fragility in individual systems makes several assumptions about how fragility increases. Before looking at the systemic question of how fragility could lead to collapse, we will outline these assumptions. Note that these are in fact assumptions, rather than claims - if any one of them is false in ways that are outlined, it would refute the hypothesis. The third assumption is particularly critical, and will be explored further in the next subsection. First, for fragility to matter, the current trend of efficiency-increasing and resilience-decreasing technologies must continue to apply to at least one critical system, such as agriculture, communication, or transport. If this is wrong, and future white-ball / safe exploration technologies are ones that favor robustness over efficiency in all such critical domains, the trend would reverse. For instance, distributed fault tolerant computing arguably increases both efficiency and robustness. Most new technologies move in the opposite direction, but if enough resilience increasing technology is found, the balance could shift. Second, the argument for increasing fragility assumes that economic growth continues to absorb human effort in a way that does not lead to overabundant resources. In Eric Drexler's ’Paretotopia‘ scenario, increased resources are unmatched by increased demand. Drexler (2019) In that future case, resources are abundant enough that robustness is easy to achieve. This second scenario also assumes the absence of supercharged competition that uses the newly abundant resources. This would not occur, for example, in Hanson's proposed default “Em” scenario, where human-based intelligences are simulated computationally, leading to a reduction rather than an increase in surplus that could be redirected to robustness for lack of other needs. Hanson (2016) Third, it assumes that fragility is relatively hard to identify, such that at least some failures will be unanticipated. This has been true historically, but it is possible that future developments would reverse this trend, making the search for increased robustness itself efficient enough to counterbalance the more general and destabilizing increased fragility that new technology allows. If failures do become easy to anticipate, more expensive general resilience can be replaced with more specific redundancies targeted to the exact failure modes identified. 4.1. Non-Obvious Fragility As mentioned, hard-to-identify fragility is a key assumption. Broadly speaking, non-obvious fragility is the result of planning for efficiency, instead of designing for redundancy, fault tolerance, or even provable safety. This is a fairly general fact about any control system. Paattilammi and Makila (2000) The concrete result of the current optimization shows clear signs of producing fragile results. One example is the proliferation of disposable technology, such as fragile smartphones designed to be replaced rather than fixed or upgraded. Failure of these optimized devices is normal, and while mitigating failure is important, it is often the case that risk must be accepted, rather than avoided. Perrow (2011) This type of fragility is obvious and anticipated, rather than non-obvious and worrying. For example, individual computers are fragile, and components fail frequently. For this reason, in high-reliability computer systems, a variety of mechanisms are in place to compensate, including redundant online systems for data storage, Chen, Lee, Gibson, Katz, and Patterson (1994) or methods to address other hardware failures. Wang, Zhang, and Xu (2017) The fact that computer networks are not fragile, and the fragility that does exist is well understood, seems to be a counterexample. But the resilience itself is planned, in contrast to ecological systems where it is emergent - as we will discuss in detail below. This means that fault-tolerant designs are built to be tolerant of expected faults. Not only that, but resilience itself is optimized, for example, to minimize the number of backups or other costs needed to have a planned level of reliability. Rodrigues-da Silva and Crispim (2014) This creates fragility to unexpected faults, and allows the systems to operate through anticipated contingencies, but not to anything beyond that point. 4.2. Sociotechnical Resilience Fragility of systems is not based purely on the lack of resilience of technical systems. In fact, fragility of optimized technical systems is compensated for by the greater robustness of sociological systems. The combined sociotechnical system, then, is the level at which fragility should be considered. To reduce the fragility of sociotechnical systems, organizations can attempt to build more resilience at the organizational level. This can involve information sharing, distributed decision making, and better risk assessment. If done well, these attempts provide a sociotechnical system that compensates for technical and operation risk, but is again very different from emergent resilience. Langeland, Manheim, Mcleod, and Nacouzi (2016) Unfortunately, the interaction between humans and technology can often multiply risks, rather than mitigate them. Yeo and Ren (2009) Another reason to think that sociotechnical resilience will not fully compensate for technological fragility is the reduced human involvement in technical systems. As automation increases, Danzig notes that humans are increasingly necessarily out-of-the-loop. Danzig (2018) He further argues that when there is competition, this dynamic is a necessary result of continued optimization. To conclude the discussion of single-system fragility, we note that inevitable fragility of systems is not actually required for the hypothesis presented. As this section argued, it does seem plausible that in expectation, new technologies will be more fragile than those they replace. However, systemic risk can exist given the much weaker claim that specific critical systems are relied upon, and technological improvements relevant to those systems alone exhibit sufficient fragility to cause a cascading collapse. Before discussing the interaction between systems, however, it is worth considering how these human, technical, or sociotechnical systems differ from naturally resilient biological systems.

### XT 3 – AT: Trade

#### Trade doesn’t stop wars – causes populism and their studies lack causation.

Gonzalez-Vincente ‘20 [Ruben; University Lecturer in Global Political Economy @ Leiden University, PhD in Geography @ University of Cambridge; “The liberal peace fallacy: violent neoliberalism and the temporal and spatial traps of state-based approaches to peace,” *Territory, Politics, Governance* 8.1, p. 100-116; AS]

Yet, decades of neoliberal integration have not brought Fukuyama’s prophecy closer to its realization. Across the world, liberal market integration has facilitated convivial relations among key countries and paid important dividends to elites, yet it has also resulted in the concentration of wealth in ever fewer hands, rising inequalities within countries (although not between them) and higher concentration of wealth at the top, and increased risks and vulnerability as the logic of market competitiveness takes hold of many aspects of our lives (Anand & Segal, 2015; Lynch, 2006). The relation between the United States and China or the processes of economic integration in the European Union are clear examples of these trends. In these places as well as others, inequalities, precarization and economic insecurity have given way to a populist and nationalist momentum that can be interpreted both as a popular response to the extreme and diverse forms of violence engendered by processes of market integration, or as a manoeuvre to channel discontent towards the ‘other’ in order to protect elite interests (Gonzalez-Vicente & Carroll, 2017). By prescribing ever more market globalization to counter populist politics and avoid conflict, liberal elites add fuel to the fire as they sever the very conditions that led to the disfranchisement of significant segments of the population in the first place. Thereby, it is crucial to understand how the argument for capitalist peace fails to factor in the crisis-prone and socially destructive tendencies of capitalism, particularly in a context of unfenced global competitiveness along market lines.2

Two of the underlying problems in the liberal peace argument stand out. The first has to do with the statistical selection of fixed points in time that suggest correlations between growth in trade and diminished conflict – while failing to discern mechanisms of causation (Hayes, 2012). A wider temporal lens is needed to situate the contemporary rise of mercantilist and illiberal politics in the context of neoliberal globalization, representing the same sort of ‘counter movement’ that Polanyi had warned of in his reading of the 19th-century downward spiral towards war – aided in our contemporary case by the demise of the traditional left (Blyth & Matthijs, 2017; Carroll & Gonzalez-Vicente, 2017). The second problem relates to liberal international political economy and IRT’s scalar fixation on inter-state matters and hence their inability to factor in violence in the absence of war. I turn now to these two points.

#### Trade causes nuclear war.

Spaniel & Malone ’19 [William Spaniel, Department of Political Science, University of Pittsburgh. Iris Malone, Department of Political Science, Stanford. The Uncertainty Tradeoff: Re-Examining Opportunity Costs and War. March 5, 2019. https://wjspaniel.files.wordpress.com/2019/03/uncertainty-tradeoff-final.pdf]

This paper’s main contribution is to identify the precise conditions under which the probability of war increases despite rising opportunity costs. We show that, unlike other mechanisms, rising opportunity costs may counter-intuitively make war more likely because it also increases the difference between reservation points for unresolved versus resolved opponents. As a result, these informational asymmetries can lead states to screen their opponents and risk war. This new finding reshapes our understanding about the relationship between opportunity costs and war. It introduces a more nu-anced mechanism about when and how this relationship operates, sometimes contrary to expectations.

Our work advances economic interdependence theories of war in several ways. First, it provides new insight on the causes of war at odds with traditional cases where opportunity costs increased, yet conflict still erupted. Second, it demonstrates how and when competing effects of economic instruments predominate, driving changes in the probability of conflict. In contrast to previous work, we identify specific conditions under which increasing opportunity costs shifts the probability of conflict, consistent with the empirical evidence. Finally, it demonstrates the important, but subtle, effects of changing instruments, like trade flows, in the presence of uncertainty. The model advances a growing line of research that various sources of uncertainty have disparate effects on crisis bargaining.

This paper has more general implications for trade-conflict research. It complements growing calls to disaggregate the effects of instruments like trade (Martin et al. 2008). Empirical analyses must carefully trace what precisely parties do not know about each other to draw the correct inference. It also suggests states should be careful in interpreting how other states value or benefit from mutual trade flows. A free trade agreement championed by one state may be perceived as relatively less beneficial in another state. This uncertainty may undermine the credibility to abide by the agreement in the long-run.

We also highlight the need for future research to consider screening incentives in trade deals themselves. Although the proposer benefits from greater trade—both from the direct economic benefit and indirect ability to steal more surplus from the receiver— trade can harm unresolved receivers and incentivize screening. This could generate some constraints in the deals a state is willing to sign, in fear that the rearranged incentives under uncertainty could hurt its ability to effectively bluff later. A more unified approach to trade and crisis negotiations would yield additional interesting insights.

Moving forward, the results speak to other lines of research in international relations theory predicated on changing costs of conflict. We couched our results in the interdependence literature due its clear application. However, the comparative static speaks to cases where the receiver’s costs increase more generally.23 Framed this way, the results have clear implications for other literatures. For example, standard nuclear deterrence theory argues that possessing nuclear weapons increases the costs of war for potential challengers due to the risk of a retaliatory nuclear response (Morgenthau 1961, 280; Gilpin 1983, 213-219). The logic of alliance formation similarly relics on the assumption that entering these pacts induces peace by raising an opponent’s costs of conflict (Morrow 1994). Together, these mechanisms assume raising the costs of war should decrease conflict. Our results demonstrate this effect is likely more conditional than previously realized. We find increased costs of conflict can exacerbate issues with uncertainty over resolve even if both states possess destructive weaponry. This promises to shed new insights into how raising costs affects deterrence and coercive bargaining in other contexts.

### 2NC – AT: War

#### 2. Aggregate data from the recession refutes all of their warrants

Daniel Drezner 14, professor of international politics at the Fletcher School of Law and Diplomacy at Tufts University, “The System Worked: Global Economic Governance during the Great Recession,” World Politics 66, No 1 (January 2014), 123-64

The final significant outcome addresses a dog that hasn’t barked: the effect of the Great Recession on cross-border conflict and violence. During the initial stages of the crisis, multiple analysts asserted that the financial crisis would lead states to increase their use of force as a tool for staying in power.42 They voiced genuine concern that the global economic downturn would lead to an increase in conflict—whether through greater internal repression, diversionary wars, arms races, or a ratcheting up of great power conflict. Violence in the Middle East, border disputes in the South China Sea, and even the disruptions of the Occupy movement fueled impressions of a surge in global public disorder.¶ The aggregate data suggest otherwise, however. The Institute for Economics and Peace has concluded that “the average level of peacefulness in 2012 is approximately the same as it was in 2007.”43 Interstate violence in particular has declined since the start of the financial crisis, as have military expenditures in most sampled countries. Other studies confirm that the Great Recession has not triggered any increase in violent conflict, as Lotta Themnér and Peter Wallensteen conclude: “[T]he pattern is one of relative stability when we consider the trend for the past five years.”44 The secular decline in violence that started with the end of the Cold War has not been reversed. Rogers Brubaker observes that “the crisis has not to date generated the surge in protectionist nationalism or ethnic exclusion that might have been expected.”45

### 2NC – AT: Decoupling

#### 1. Only absolute negative decoupling is sufficient – Jevon’s paradox, middle income growth and production shifts.

Zywert and Hensher 20 – Martin Hensher is an Associate Professor of Health System Financing & Organisation, Deakin University. Katherine Zywert is a PHD student in the School of Environment, Resources and Sustainability, University of Waterloo (Can healthcare adapt to a world of tightening ecological constraints? Challenges on the road to a post-growth future BMJ 2020; 371 :m4168)// gcd

Decoupling growth and resource use Historically, the growth of economic activity was accompanied by increasing consumption of natural resources, alongside rising negative effects on the natural environment.2 In more recent years, however, hopes have risen that it may be possible to “decouple” or “dematerialise” GDP growth from environmental harms. Decoupling may be absolute or relative. Relative (or weak) decoupling occurs when the rate of GDP growth is higher than the rate of growth in material and energy consumption and environmental impacts.6 Absolute (or strong) decoupling occurs when continued economic growth is accompanied by an absolute decrease in use of materials and energy and in environmental impacts.6 If humanity is to minimise the extent of future warming from climate change it must achieve sufficient absolute decoupling—sufficient to bring humanity back within the planetary “safe operating space.” 3 6 The United Kingdom has achieved an absolute decoupling of CO2 emissions from economic growth over the past decade, with emissions falling by 29% between 2010 and 2019 even while the economy grew. Yet this has not been sufficient to put the UK on track to meet its required carbon targets—a further 31% reduction is needed by 2030, but government projects only a further 10% cut.7 At a global scale, several planetary boundaries have already been breached.3 For example, the rate of species extinction is tens to hundreds of times faster than the average for the past 10 million years, with around 25% of animal and plant species at risk of extinction, breaching biosphere integrity and posing serious risks to food security.8 Other boundaries are also at significant risk of breaching, most notably climate and atmospheric CO2 concentrations.3Box 1 summarises three competing visions of a sustainable economy that might deliver sufficient absolute decoupling. Empirical studies provide strong evidence that many high income countries have already achieved relative decoupling of GDP growth from material throughput.6 12 13 Some high income countries may also have achieved absolute decoupling for short periods,7 although this seems to have been counterbalanced by strongly coupled growth in fast growing middle income countries, driving overall increases in material and environmental effects.9 Hopes that global greenhouse gas emissions had peaked in 2015 and 2016 were dashed when they resumed their upward trajectory in 2017. Recent studies suggest that absolute decoupling in high income countries was more illusory than real. Real material effects were hidden by moving industrial production to the developing world,6 inflation of GDP through growth of the non-productive financial sector,6 13 and “rebound” effects whereby improvements in resource efficiency allow greater quantities to be produced and consumed as costs decrease.12 14 Meanwhile, initial attempts to estimate how much material throughput needs to be reduced to remain within planetary boundaries are also not reassuring. Few countries satisfactorily meet basic needs without using natural resources at levels well beyond safe biophysical boundaries.15 Thus, several studies conclude that sufficient absolute decoupling of economic activity from environmental impacts is simply not consistent with continued GDP growth, whether “green” or otherwise.

#### 2. No uniqueness for decoupling – peer review consensus of 835 studies say success cherrypicks data.

Ehrenreich ‘21 [Ben Ehrenreich. Journalist, author of Desert Notebooks: A Roadmap for the End of Time. “We’re Hurtling Toward Global Suicide.” The New Republic. 3-18-21. <https://newrepublic.com/article/161575/climate-change-effects-hurtling-toward-global-suicide> //shree]

A strange sort of faith lies at the core of mainstream climate advocacy—a largely unexamined belief that the very system that got us into this mess is the one that will get us out of it. For a community putatively committed to scientific empiricism, this is an extraordinary conviction. Despite reams of increasingly apocalyptic research, and despite 25 years of largely fruitless international climate negotiations, carbon emissions have continued to rise, and temperatures along with them. We are at nearly 1.2 degrees Celsius of warming already—more than 2 degrees Fahrenheit over preindustrial averages—and three-tenths of a degree away from blowing the Paris accord’s aspiration to limit warming to a still-calamitous 1.5 degrees Celsius. Scientists now expect us to hit that threshold in about 10 years, and large swaths of the Arctic have been in actual flames for two summers running, but most governments with the option to do so are still feeding the beast that got us here.

Even with the grim opportunity presented by the Covid-19 pandemic, which slowed the economy so much that growth in fossil fuel production dropped an almost unprecedented 7 percent last year, governments—ours very much included—have so far dumped much more stimulus spending into high-carbon industries than into renewable energy. It’s as if our economic system, and the politics it breeds, will not allow us to diverge from the straight path to self-obliteration.

The faith nonetheless persists: The market will provide. It has not done so yet, but renewables are perhaps finally cheap enough—cheaper at last than conventional energy sources—that the transition is now inevitable. So the credo goes. The change that is coming will be largely technological: a bold new era of “green growth.” Modern societies erected on dirty coal and oil can be jacked up and shifted to cleaner forms of energy like an old house in need of a new foundation. Government may have a larger role in this transition than neoliberal dogma has recently allowed, but its primary task will still be to encourage innovation and feed the markets by shepherding the resulting growth.

It is no coincidence that some version of this faith, so all-pervasive now that it does not register as a piety, has been reshaping the planet for almost precisely as long as fossil energy—first coal, then oil—has been altering the atmosphere. Capitalism is guided by a carbon creed, an ecstatic vision of a market that chugs along eternally, needing only new inputs—the earth itself, commodified as minerals, or water, housing, health care, or almost any living thing—to spew out wealth that can be shoveled back into the machine, converting more and more of the biosphere into zeros in a digital account: more fleshless, magical money that can be invested once again. If appetites are bottomless, and apparently they are, shouldn’t growth be endless too?

The market’s grip on the political imagination so effectively blinds us to alternatives that we are unable fully to grasp that this is the basic script that the new administration is following. Even the Green New Deal does not substantively diverge from it. The climate crisis, an existential threat to planetary life, must be sold to Wall Street and the public at large as a growth opportunity. On January 31, John Kerry, acting as Biden’s new climate envoy, enthused to CNN’s Fareed Zakaria about “literally millions of jobs” that would soon be created, about all the “new products coming online,” and about oil companies’ newfound passion for “carbon capture and storage and so forth.” The private sector, he said, “has already made the decision that there is money to be made here, that’s capitalism, and they are investing in that future.” If that makes you nervous, it shouldn’t, Kerry insisted. The changes ahead would be like the analog-to-digital shift of the 1990s, only better: “the important point, Fareed, for people to really focus on is it’s a very exciting economic transition.”

If Kerry struck a cheerier tone than that of the doomsaying consensus in the scientific community, it wasn’t just a question of polishing a turd. “Green growth” is mainstream climate discourse. A “green transition” that does not significantly alter existing economic structures—or their vast inequities—is still, for most climate advocates, the only imaginable way forward. Kerry was speaking a made-for-TV version of the sole language available to him—one that in its most basic assumptions excludes the possibility of fundamental social transformation, and of any heresy that casts doubt on the Great God Growth. The one thing all those thousands of scientists agree on is our only hope—that the economic structures that mediate our relation to the planet must be profoundly altered—is the one thing that Kerry and Biden are quite careful not to consider at all.

In climate policy jargon, the crucial concept is “decoupling.” The notion lies deep in the hidden heart of the “sustainable development goals” held dear by international bodies such as the United Nations and the World Bank: Economic growth can be safely divorced from the ecological damage that it has heretofore almost universally wreaked. If the train of capital appears to be hurtling us toward the abyss, we can cut the engine loose and cruise someplace more comfortable: same train, same speed, different destination. Like millions of clean-tech jobs and a crisis-induced transition magically unlocking unimaginable wealth, it is an attractive and reassuring idea. The only problem is that there is next to no evidence that anything analogous has ever occurred, or that it is likely to occur in the future.

Examples of successful decoupling tend to involve shifts in the location rather than the nature of industrial production: Rich countries green their economies by offshoring the manufacture of the goods they consume to China and countries in the global south, which they can then chastise for their lax emissions standards. But Earth’s atmosphere is not divided by national boundaries. Greenhouse gases cause the same degree of global warming no matter where they are produced, and to the extent that this kind of decoupling is a meaningful measure of anything, it is only of the colonial relations that still set the terms for the shell game of global capital.

What policy wonks call “absolute decoupling”—the only kind that would do the climate any good—turns out to be a fantasy akin to a perpetual motion machine, a chimera of growth unhindered by material constraints. One recent analysis of 835 peer-reviewed articles on the subject found that the kind of massive and speedy reductions in emissions that would be necessary to halt global warming “cannot be achieved through observed decoupling rates.” The mechanism on which mainstream climate policy is betting the future of the species, and on which the possibility of green growth rests, appears to be a fiction.

This fiction is nonetheless fundamental to the very math used by international climate institutions. In 2018, the Intergovernmental Panel on Climate Change’s benchmark Special Report on Global Warming of 1.5oC—which announced in no uncertain terms that global emissions must be decreased by nearly half by 2030 and reach net zero by 2050 to avoid cataclysm at an almost unthinkable scale—set out a number of possible scenarios for policymakers to consider. It relied on algorithmic models linking greenhouse gas emissions and their climate impacts to various socioeconomic “pathways.” Whatever other variables they accounted for, though, all of the scenarios envisioned by the IPCC assumed the continuation of economic growth comparable to the past half-century’s. Even as they acknowledged levels of atmospheric carbon unseen in the last three million years, they were unable to conceive of an economy that does not perpetually expand. Fredric Jameson’s oft-cited dictum that it is easier to imagine the end of the world than the end of capitalism was baked into the actual modeling.

At the same time, all but one of the ­IPCC’s scenarios that envision us successfully limiting warming to 1.5 degrees Celsius rely on the use of technology to remove carbon from the atmosphere after the fact. (The one exception involves converting an area more than half the size of the United States to forest. None of the scenarios imagines that we can reach the 1.5 degrees Celsius target by cutting emissions alone.) But the technology in question is at this point largely speculative. “No proposed technology is close to deployment at scale,” the report’s authors concede, and “there is substantial uncertainty” about possible “adverse effects” on the environment. The international body, in other words, is more willing to gamble on potentially destructive technologies that do not currently exist than to even run the math on a more substantive economic transformation.

A version of this same wager animates the Biden climate plan, which, as Canada, the European Union, the U.K., and South Korea all have, commits to “net-zero emissions no later than 2050.” (China plans to reach the same goal by 2060.) This sounds like great news, and is without doubt worlds better than the status quo ante of no ambitions at all. But “net zero” is a slippery notion. It does not mean zero at all. To avoid exceeding 1.5 degrees Celsius of warming, emissions need to fall 7.6 percent every year for the next 10 years. Even with the pandemic-induced slowdown, global emissions shrank only 6.4 percent in 2020. Since, as Biden reassured a nervous oil industry during the campaign, “We’re not getting rid of fossil fuels for a long time,” net-zero calculations assume some degree of “overshoot”—i.e., they stipulate that we’re not going to be able to cut emissions fast enough, and that we’ll therefore have to rely on those same untested carbon removal technologies to eventually bring us to zero.

But a planet is not a balance sheet. The climate has tipping points—the collapse of the Antarctic and Greenland ice sheets and the Himalayan glaciers, the deterioration of Atlantic Ocean currents, the melting of the permafrost, the transition of the Amazon from rain forest to savannah. We are perilously close to hitting some of them already: In February, 31 people were killed and 165 went missing when a chunk of a Himalayan glacier broke off, releasing an explosive burst of meltwater and debris. In the most nightmarish scenario, which could be tripped with less than 2 degrees Celsius (3.6 degrees Fahrenheit) of warming, those tipping points could begin to trigger one another and cascade, locking us in, as one widely cited study put it, to “conditions that would be inhospitable to current human societies and to many other contemporary species.” Without major emissions cuts, we may reach 2 degrees Celsius of warming before 2050.

That’s a heavy risk to bet against, but there it is, pulsing away inside the net-zero promises that not only politicians but corporate boards have been proudly rolling out. Over the last two years, more and more corporations in fossil fuel–intensive industries—BP, Shell, Maersk, GM, Ford, Volkswagen, at least a dozen major airlines—have made similar pledges. Shell’s plan alone would require tree planting over an area nearly the size of Brazil. By the estimate of the NGO ActionAid, “there is simply not enough available land on the planet to accommodate all of the combined corporate and government ‘net zero’ plans” for offsets and carbon-sinking tree plantations. To save this planet, it appears we’ll need another one. This is what currently counts as pragmatism.

### 2NC – Unsustainable

#### 3. Zootonic disease, climate change, and ecological devastation.

Marques 20 – associate professor at the Department of History, University of Campinas (Unicamp), Brazil (Luis, Pandemics, Existential and non-Existential Risks to Humanity, <http://dx.doi.org/10.1590/1809-4422asoc20200126vu2020L3ID> Ambiente & Sociedade São Paulo. Vol. 23, 2020)//gcd

This article develops the conclusions of a previous one, published in the Jornal de Unicamp on May 5 of this year (MARQUES, 2020), as well as in the journal Cosmos e Contexto (also with a translation into English1 ). We should, therefore, recap its final paragraph before continuing on to the heart of what will follow: once the pandemic has passed, it will no longer be plausible to expect a new cycle of economic growth. Some will certainly occur, but it will be conjunctural and soon be truncated by the climatic, ecological, and health chaos generated by the three systemic crises befalling contemporary societies with ever greater force: the climate emergency, decline in biodiversity, and industrial pollution. The varied developmentalist agendas typical of twentieth century ideological clashes are no longer current, even though, zombie-like, they have persisted into the twenty-first century. We can and should applaud the 17 Sustainable Development Goals, but it is increasingly clear that none of them will be achieved by 2030. Given that our wildlife habitat-destroying, globalized food system foments zoonoses, it is very possible that the coming decade will be marked by other pandemics. It certainly will be marked by a deepening of all the socioenvironmental crises that were already afflicting us before the current health crisis. The unavoidable reality is that the global post-pandemic political agenda will be defensive, adaptive, and will gravitate around the survival of societies, in a world hereafter ever more hostile, as it will be hotter, more economically dysfunctional, more unequal, more biologically impoverished, much more polluted, and, for all these reasons, sicker, even in the improbable absence of other pandemics. In this context, survival is not a minimal program. Survival today requires us to struggle for something more ambitious than the twentieth century’s social democratic or revolutionary programs. It supposes redefining the very meaning and purpose of economic activity, which, in the final instance, is to say redefining our position as a society and as a species within the realm of the biosphere. We must insist upon these crises’ economic dimension: post-pandemic globalized capitalism will no longer grow – except briefly, locally, and always at lower rates –, impeded as it is by those growing imbalances in the Earth system caused precisely by that growth. An era of structural stagnation with crises of forced economic degrowth has begun. The 2007-2008 global financial crisis was its prelude and, since then, globalization’s brutal mechanism has begun to jam. There are many symptoms of this: the final dissociation between financial markets and the real economy; the spread of poverty even in industrialized countries; the Greek and Brexit crises; the ascension of extreme rightwing movements and governments with clearly fascist characteristics throughout the world, spreading from India to the USA, Europe, and, obviously, Brazil; the Sino-American trade war, with the growing risk of a war that is not just economic. Taking stock of the global economic recovery a decade after the 2008 financial crisis, an IMF working paper (CHEN; MRKAIC; NABAR, 2019, p. 2) rightfully recognized that: Output losses after the crisis appear to be persistent, irrespective of whether a country suffered a banking crisis in 2007–08. Sluggish investment was a key channel through which these losses registered, accompanied by long-lasting capital and total factor productivity shortfalls relative to precrisis trends. 1. An era of ecosystemic disservices That deceleration of the global economy is not only, nor above all, the result of internal dysfunctions of capitalism’s modus operandi. Since the end of the twentieth century, and even more clearly through the second decade of this one, the perception that we were approaching a threshold beyond which the planet’s so-called “ecosystemic services” will become “ecosystemic disservices” has forcefully emerged. The current pandemic is one of those disservices. That perception has shown itself, for example, in the 2013 manifesto, “Scientific Consensus on Maintaining Humanity’s Life Support Systems in the 21st Century,” proposed by Anthony Barnosky et al.2 (2012), and signed by more than 1,300 scientiwsts, researchers, members of NGOs, students, and the general public, in more than 60 countries: Earth is rapidly approaching a tipping point. Human impacts are causing alarming levels of harm to our planet. As scientists who study the interaction of people with the rest of the biosphere using a wide range of approaches, we agree that the evidence that humans are damaging their ecological life-support systems is overwhelming. The two manifestos promoted by William Ripple and colleagues in 2017 and 2019, with more than fifteen thousand signatures, as well as the “SOS of 700 Scientists,” published in 2018 by the newspaper Libération, point toward a global socioeconomic system that has turned against itself as a result of its suicidal relationship with the environment. In an interview given in 2017 to the NGO We Love Earth, Dennis Meadows insisted on the fact that various socioenvironmental imbalances caused by economic growth were guiding globalized capitalism to a process of collapse: We are in a period of collapse now, which will intensify. (…) When you have a physical growth in a finite planet, pressures are going to mount to stop the growth

. And climate change is one of these pressures. (…) If we solved climate change, if we could somehow push a magic button and eliminate greenhouse gases, then, by continuing with our growth, we would just have to see bigger pressures in other sectors: water scarcity, or epidemics, or warfare... At this moment, the most evident pressure is the pandemic, but it is not, in itself, the most threatening. Far more lethal pandemics have occurred in the past. The so-called Spanish Flu from 1918-1919, left nearly fifty million dead; the 1957-1958 influenza A virus subtype H2N2, commonly referred to as the Asian flu pandemic, caused an estimated two million to four million deaths worldwide in a world with approximately one third of today’s population (CLARK, 2008); the 1968 flu pandemic, the Influenza A virus subtype H3N2, also known as Hong-Kong flu, killed an estimated one million people all over the world; and the HIV/AIDS has claimed the lives of more than 32 million people since 1981. However, none of these worldwide health crises profoundly affected societies’ resilience. There are three reasons why the current pandemic has struck the world more brutally and more enduringly than those previous ones. First, it is operating in a world in which extreme globalization of the economy, begun in the 1980s, has made its industrial, agricultural and livestock business, and service chains much more interdependent and, therefore, much more vulnerable to disruption. Second, the near real time global bombardment of information (and misinformation) via the internet about its impact and about the number of lives being cut short is a factor of emotional stress that is not irrelevant. Very few of today’s seniors still remember either the 1957-1958 or the 1968 pandemics. But the trauma of the pandemic begun in 2020 will probably be forever imprinted on the memory of those who survive it. And, third, the current epidemic is occurring at a moment in which the growing malfunctioning of the global machine alluded to above forces societies to expend much more of their energy just to minimally remain functional in a now extremely grave framework of socioenvironmental, political, and psychological systemic crises. 2. The concurrence of nine combined regressions These crises demand undelayable, globally orchestrated political reactions of our societies that are, at the same time, being divided into two evermore hardened and incommunicative groups. On one hand, the state-corporative establishment, determined to maintain the machinery of business as usual at all costs, is advancing its pawns on the international chessboard to guarantee that nothing changes in post-pandemic energy and food systems. On the other, the perception of scientists and growing sectors of society that we have reached a limit beyond which we can no longer advance, given that the harmful effects of globalized capitalism increasingly supersede their benefits. Observation of the concurrence of combined regressions in human security contribute to that perception: (1) after decades of progress in the struggle against food insecurity, the number of people battling acute hunger and suffering from malnutrition has been on the rise over the last four years (FAO, 2019, p. 6). According to the fourth annual Global Report on Food Crises (GRFC, 2020), around 183 million people in 47 countries were classified as being in Stressed (IPC/CH Phase 2) conditions, at risk of slipping into Crisis or worse (IPC/CH Phase 3 or above) if confronted by an additional shock or stressor. The current pandemic is precisely this additional shock; (2) the six most recent years (2014-2019) and the current one have been the hottest of the last twelve millennia; (3) the globalized food system drove the loss of 3.61 million km2 of tree cover between 2001 and 2018, according to Global Forest Watch; (4) the heavily subsidized industrial fishing system is now sacrificing the oceans’ future (PAULY, 2019); (5) the catastrophic decline in biodiversity is annihilating vertebrate populations (Living PIanet Index, 2018) and may lead to the extinction of one million species over the next few decades (IPBES, 2019); (6) acidification and eutrophication of the oceans and of various bodies of fresh water is creating marine dead zones and threatening ruptures of trophic chains in the aquatic environment; (7) industrial pollution poisons, sickens, and kills tens of millions of people worldwide each year (WHO Report on Cancer, 2020, for instance); (8) growing geopolitical tensions are seen, with the intensification of endemic conflicts focused on water and energy resources and the anguishing resumption of the nuclear arms race. The International Campaign to Abolish Nuclear Weapons (ICAN) estimates that the nine nuclear armed countries spent US$ 72.9 billion (US$ 35.4 billion was spent by the U.S. alone) on their 13,000+ nuclear weapons in 2019, an increase of US$ 7.1 billion compared to 2018 (ICAN, 2019); (9) democracy and tolerance are increasingly threatened by waves of more or less orchestrated fake and hate news, by flareups of fascism, irrationality, and physical and psychic violence.

### XT 5 – AT: Renewables Good

#### Renewables fail---technology, economic, and political problems

Robert Lyman 16, an energy economist and former public servant in Canda with 27 years experience in the field and a decade of experience as a diplomat"WHY RENEWABLE ENERGY CANNOT REPLACE FOSSIL FUELS BY 2050", Friends of Science, May 2016, www.friendsofscience.org/assets/documents/Renewable-energy-cannot-replace-FF\_Lyman.pdf

A number of environmental groups in Canada and other countries have recently endorsed the “100% Clean and Renewable Wind, Water and Sunlight (WWS)” vision articulated in reports written by Mark Jacobson, Mark Delucci and others. This vision seeks to eliminate the use of all fossil fuels (coal, oil and natural gas) in the world by 2050. Jacobson, Delucci et. al. have published “all-sector energy roadmaps” in which they purport to show how each of 139 countries could attain the WWS goal. The purpose of this paper is to examine whether the 100% goal is feasible. While a range of renewable energy technologies (e.g. geothermal, hydroelectric, tidal, and wave energy) could play a role in the global transformation, the world foreseen in the WWS vision would be dominated by wind and solar energy. Of 53,535 gigawatts (GW) of new electrical energy generation sources to be built, onshore and offshore wind turbines would supply 19,000 GW (35.4%), solar photovoltaic (PV) plants would supply 17,100 GW (32%) and Concentrated Solar Power plants (CSP) would supply 14,700 GW (27.5%). This would cost $100 trillion, or $3,571 for every household on the planet. Western Europe has extensive experience with investments in renewable energy sources to replace fossil fuels. By the end of 2014, the generating capacity of renewable energy plants there was about 216 GW, 22% of Europe’s capacity, but because of the intermittent nature of renewable energy production, the actual output was only 3.8% of Europe’s requirements. The capital costs of renewable energy plants are almost 30 times as high as those of the natural gas plants that could have been built instead; when operating costs are also taken into account, onshore wind plants are 4.6 times as expensive as gas plants and large-scale PV plants are 14.1 times as expensive as gas plants. Wind and solar energy is not “dispatchable” (i.e. capable of varying production quickly to meet changing demand), which results in serious problems – the need to backup renewables with conventional generation plants to avoid shortfalls in supply, and the frequent need to dump surplus generation on the export market at a loss. The current energy system in the United States, Canada and globally is heavily dependent on fossil fuels – they generally supply over 80% of existing energy needs in developed countries and over 87% in the world as a whole. Currently, wind and solar energy sources constitute only one-third of one per cent of global energy supply. The financial costs of building the 100% renewable energy world are enormous, but the land area needed to accommodate such diffuse sources of energy supply is just as daunting. Accommodating the 46,480 solar PV plants envisioned for the U.S. in the WWS vision would take up 650,720 square miles, almost 20% of the lower 48 states. This is close in size to the combined areas of Texas, California, Arizona, and Nevada. A 1000-megawatt (MV) wind farm would use up to 360 square miles of land to produce the same amount of energy as a 1000-MV nuclear plant. To meet 8% of the U.K.’s energy needs, one would have to build 44,000 offshore wind turbines; these would have an area of 13,000 square miles, which would fill the entire 3000 km coastline of the U.K. with a strip 4 km wide. To replace the 440 MW of U.S. generation expected to be retired over the next 25 years, it would take 29.3 billion solar PV panels and 4.4 million battery modules. The area covered by these panels would be equal to that of the state of New Jersey. To produce this many panels, it would take 929 years, assuming they could be built at the pace of one per second. The WWS roadmap for the U.S. calls for 3,637 CSP plants to be built. It would be extremely difficult to find that many sites suitable for a CSP plant. Packed together, they would fill an area of 8,439 square miles, about the area of Metropolitan New York. They would require the manufacture of 63,647,500 mirrors; if they could be manufactured one every ten seconds, it would take 21 years to build that many mirrors. A central component of the WWS vision is the electrification of all transportation uses. This is technically impossible right now, as the technologies have not yet been developed that would allow battery storage applicable to heavy-duty trucks, marine vessels and aircraft. Even in the case of automobiles, despite taxpayer subsidies of $7,500 per vehicle and up, the number of all-electric vehicles sold has consistently fallen far short of governments’ goals. The costs of electrifying passenger rail systems are so high that no private railway would ever take them on. Electrification of a freight railway system makes even less sense, and would cost at least $1 trillion each. The diversion of crops to make biofuels already is raising the cost of food for the world’s poor. The World Resources Institute estimates that if this practice is expanded, it will significantly worsen the world’s ability to meet the calorie requirements of the world’s population by 2050. Scientists and governments have been guilty of the “Apollo Fallacy”; i.e. of thinking that the space race is a model for the development of renewable energy. The Apollo program cost billions of dollars to demonstrate U.S. engineering prowess during the Cold War; costs, and commercial considerations, were secondary considerations, if they counted at all. The proponents of WWS grossly under-estimate the costs of integrating renewable energy sources into the electricity system. The additional costs of backup generation, storage, load balancing and transmission would be enormous. The WWS scenario calls for 39,263 5-MW wind installations in Canada at a cost of $273 billion for the onshore wind generation alone. Building a national backbone of 735 kV transmission lines would cost at least CDN $104 billion and take 20 years to complete. The WWS includes a call to shut down all coal, oil and natural gas production. It implies the closing of all emissions intensive industries, such as mining, petrochemicals, refining, cement, and auto and parts manufacturing. The political and regional backlash against such policies in a country like Canada would threaten Confederation. In short, the WWS vision is based on an unrealistic assessment of the market readiness of a wide range of key technologies. Attaining the vision is not feasible today in technological, economic or political terms.

### 2NC – AT: CCS

#### CCS is net carbon positive – it’s grossly inefficient, causes upstream emissions, pollution, and leakage

Kubota ‘19 (Taylor Kubota; Citing Mark Z. Jacobson, professor of civil and environmental engineering @ Stanford AND senior fellow at the Stanford Woods Institute for the Environment; 10/25/19; "Study casts doubt on carbon capture"; *Phys*; <https://phys.org/news/2019-10-carbon-capture.html>) \*Upstream emissions = emissions, including from leaks and combustion, from mining and transporting a fuel such as coal or natural gas

One proposed method for reducing carbon dioxide (CO2) levels in the atmosphere—and reducing the risk of climate change—is to capture carbon from the air or prevent it from getting there in the first place. However, research from Mark Z. Jacobson at Stanford University, published in Energy and Environmental Science, suggests that carbon capture technologies can cause more harm than good. "All sorts of scenarios have been developed under the assumption that carbon capture actually reduces substantial amounts of carbon. However, this research finds that it reduces only a small fraction of carbon emissions, and it usually increases air pollution," said Jacobson, who is a professor of civil and environmental engineering. "Even if you have 100 percent capture from the capture equipment, it is still worse, from a social cost perspective, than replacing a coal or gas plant with a wind farm because carbon capture never reduces air pollution and always has a capture equipment cost. Wind replacing fossil fuels always reduces air pollution and never has a capture equipment cost." Jacobson, who is also a senior fellow at the Stanford Woods Institute for the Environment, examined public data from a coal with carbon capture electric power plant and a plant that removes carbon from the air directly. In both cases, electricity to run the carbon capture came from natural gas. He calculated the net CO2 reduction and total cost of the carbon capture process in each case, accounting for the electricity needed to run the carbon capture equipment, the combustion and upstream emissions resulting from that electricity, and, in the case of the coal plant, its upstream emissions. (Upstream emissions are emissions, including from leaks and combustion, from mining and transporting a fuel such as coal or natural gas.) Common estimates of carbon capture technologies—which only look at the carbon captured from energy production at a fossil fuel plant itself and not upstream emissions—say carbon capture can remediate 85-90 percent of carbon emissions. Once Jacobson calculated all the emissions associated with these plants that could contribute to global warming, he converted them to the equivalent amount of carbon dioxide in order to compare his data with the standard estimate. He found that in both cases the equipment captured the equivalent of only 10-11 percent of the emissions they produced, averaged over 20 years. This research also looked at the social cost of carbon capture—including air pollution, potential health problems, economic costs and overall contributions to climate change—and concluded that those are always similar to or higher than operating a fossil fuel plant without carbon capture and higher than not capturing carbon from the air at all. Even when the capture equipment is powered by renewable electricity, Jacobson concluded that it is always better to use the renewable electricity instead to replace coal or natural gas electricity or to do nothing, from a social cost perspective. Given this analysis, Jacobson argued that the best solution is to instead focus on renewable options, such as wind or solar, replacing fossil fuels. Efficiency and upstream emissions This research is based on data from two real carbon capture plants, which both run on natural gas. The first is a coal plant with carbon capture equipment. The second plant is not attached to any energy-producing counterpart. Instead, it pulls existing carbon dioxide from the air using a chemical process. Jacobson examined several scenarios to determine the actual and possible efficiencies of these two kinds of plants, including what would happen if the carbon capture technologies were run with renewable electricity rather than natural gas, and if the same amount of renewable electricity required to run the equipment were instead used to replace coal plant electricity. While the standard estimate for the efficiency of carbon capture technologies is 85-90 percent, neither of these plants met that expectation. Even without accounting for upstream emissions, the equipment associated with the coal plant was only 55.4 percent efficient over 6 months, on average. With the upstream emissions included, Jacobson found that, on average over 20 years, the equipment captured only 10-11 percent of the total carbon dioxide equivalent emissions that it and the coal plant contributed. The air capture plant was also only 10-11 percent efficient, on average over 20 years, once Jacobson took into consideration its upstream emissions and the uncaptured and upstream emissions that came from operating the plant on natural gas. Due to the high energy needs of carbon capture equipment, Jacobson concluded that the social cost of coal with carbon capture powered by natural gas was about 24 percent higher, over 20 years, than the coal without carbon capture. If the natural gas at that same plant were replaced with wind power, the social cost would still exceed that of doing nothing. Only when wind replaced coal itself did social costs decrease. For both types of plants this suggests that, even if carbon capture equipment is able to capture 100 percent of the carbon it is designed to offset, the cost of manufacturing and running the equipment plus the cost of the air pollution it continues to allow or increases makes it less efficient than using those same resources to create renewable energy plants replacing coal or gas directly. "Not only does carbon capture hardly work at existing plants, but there's no way it can actually improve to be better than replacing coal or gas with wind or solar directly," said Jacobson. "The latter will always be better, no matter what, in terms of the social cost. You can't just ignore health costs or climate costs." This study did not consider what happens to carbon dioxide after it is captured but Jacobson suggests that most applications today, which are for industrial use, result in additional leakage of carbon dioxide back into the air. Focusing on renewables People propose that carbon capture could be useful in the future, even after we have stopped burning fossil fuels, to lower atmospheric carbon levels. Even assuming these technologies run on renewables, Jacobson maintains that the smarter investment is in options that are currently disconnected from the fossil fuel industry, such as reforestation—a natural version of air capture—and other forms of climate change solutions focused on eliminating other sources of emissions and pollution. These include reducing biomass burning, and reducing halogen, nitrous oxide and methane emissions. "There is a lot of reliance on carbon capture in theoretical modeling, and by focusing on that as even a possibility, that diverts resources away from real solutions," said Jacobson. "It gives people hope that you can keep fossil fuel power plants alive. It delays action. In fact, carbon capture and direct air capture are always opportunity costs."

## Adv 2

### XT 4 – AT: Hegemony

#### Aversion to war, not Pax Americana, explains relative peace.

Mueller, PhD, 20

(John, a senior research scientist at the Mershon Center for International Security Studies and a member of the Department of Political Science at Ohio State University. He is also a senior fellow at the Cato Institute “Pax Americana” Is a Myth: Aversion to War Drives Peace and Order THE WASHINGTON QUARTERLY ▪ FALL 2020 https://www.tandfonline.com/doi/pdf/10.1080/0163660X.2020.1813398?needAccess=true)

Analysts have advanced a number of explanations to explain the remarkable decline of international war.7 Two, often but not always related, claim that the decline can be greatly attributed to the activities of the United States. The first holds that the United States has provided worldwide security and thus order, perhaps aided by the attention-arresting fear of nuclear weapons. This is often grandly labeled “the American Global Order” or “Pax Americana,” and it relates to hegemonic stability theory in many of its forms. The second explanation contends that the United States was vital to construct international institutions, conventions, and norms; to advance economic development; and to expand democracy—and that these processes have ordered the world and crucially helped to establish and maintain international peace. Along these lines, neoconservative writers Lawrence Kaplan and William Kristol argue that “in many instances, all that stands between civility and genocide, order and mayhem, is American power,” while former US national security advisor Zbigniew Brzezinski contended that “if America falters,” the likely outcome would be “outright chaos” and “a dangerous slide into global turmoil.” 8 Three prominent political scientists speculate that, absent the pacifying effect of the US presence, Europe might become incapable of securing itself from various threats materializing from somewhere or other, and that this could be destabilizing within the region and beyond while making Europeans potentially vulnerable to the influence of outside rising powers. They also worry that Israel, Egypt, and/or Saudi Arabia might do something dangerous in the Middle East, and that Japan and South Korea might obtain nuclear weapons.9 The United States, as Princeton’s John Ikenberry writes, is the “guarantor of the world order.” 10 These two explanations essentially rest on a counterfactual that is rarely carefully assessed by its advocates: if the United States had withdrawn from the world after 1945, things would have turned out much differently and, most likely, far worse. Thus, Jake Sullivan, a foreign policy advisor in the Obama White House, simply declares that “the fact that the major powers have not returned to war with one another since 1945 is a remarkable achievement of American statecraft.” 11 And analyst Bradley Thayer contends that US leadership “reduced friction among many states that were historical antagonists—most notably France and West Germany,” while political scientists Bruce Russett and John Oneal conclude that it was a US-supported European security community that made armed conflict between France and Germany “unthinkable.” 12 Others might look at the condition differently. The French and the Germans had once been extremely good at getting into wars with each other, but since 1945 there seems to have been no one in either country who has advocated resuming the venerable tradition. This difference reflects the fact that over the course of the 20th century, a significant shift in attitudes toward international war took place—a change that scarcely needed the United States to provide a militarized security environment built around nuclear fears or norms, institutions, economic exchange, and democracy. This change can perhaps be quantified in a rough sort of content analysis. Before World War I, it was common, even routine, for serious writers, analysts, and politicians in Europe and North America to exalt war between states as beautiful, honorable, holy, sublime, heroic, ennobling, natural, virtuous, glorious, cleansing, manly, necessary, and progressive. At the same time, they declared peace to be debasing, trivial, rotten, and characterized by: crass materialism, artistic decline, repellant effeminacy, rampant selfishness, base immorality, petrifying stagnation, sordid frivolity, degrading cowardice, corrupting boredom, bovine content, and utter emptiness.13 After the war, in stark contrast, such claims and vivid contentions are almost never heard. Historian Arnold Toynbee points out that World War I marked the end of a “span of five thousand years during which war had been one of mankind’s master institutions.” In his study of wars since 1400, Luard observes that “the First World War transformed traditional attitudes toward war. For the first time, there was an almost universal sense that the deliberate launching of a war could now no longer be justified.” And defense analyst Bernard Brodie agrees that “a basic historical change had taken place in the attitudes of the European (and American) peoples toward war.” 14 It is not completely clear why World War I was such a turning point. There had been plenty of massively destructive wars before, many of them fought to the point of complete annihilation. And there were plenty that were futile, stupid, and disgusting—mud, leeches, and dysentery were not invented in 1914. It is true that international warfare had actually declined somewhat in Europe during the previous century (although European states had fought scores of colonial wars) and that there had been considerable economic growth there.15 However, even as they were enjoying the benefits of peace, Europeans continued to consider war, as military historian Michael Howard puts it, to be “an acceptable, perhaps and inevitable, and for many people a desirable way of settling international differences.16 One notable change, however, was that World War I was the first war in history to have been preceded by substantial, organized antiwar agitation.17 Although it was still very much a minority movement and largely drowned out by those who exalted war, its gadfly arguments were unavoidable, and this may have helped Europeans and North Americans look at the institution of war in a new way after the massive conflict of 1914–18. At any rate, within half a decade, war opponents, once a derided minority, became a decided majority. There were, however, two countries that, in different ways, did not get the message. One was Japan—a distant, less developed but increasingly powerful state that had barely participated in World War I. Many people there could still enthuse over war in a manner than had largely vanished in Europe: it was, as German historian Alfred Vagts points out, the only country where old-style militarism survived the Great War.18 It took a cataclysmic war for the Japanese to learn the lessons almost all Europeans had garnered from World War I. The second country was Germany. In contrast to Japan, however, it appears that only one person there was willing to embrace international war, but he proved to be crucial—he was a necessary, though not, of course, a sufficient, cause for the war. As political scientist Robert Jervis has noted, few scholars believe that World War II would have occurred in Europe “had Adolf Hitler not been bent on expansion and conquest,” while military historian John Keegan stresses that “only one European really wanted war: Adolf Hitler” and historian Gerhard Weinberg concludes that Hitler was “the one man able, willing, and even eager to lead Germany and drag the world into war.” 19 Indeed, notes another historian, Harvard’s Ernest May, “understanding of Hitler’s aims and policies was clouded … by a general unwillingness to believe that any national leader might actually want another Great War.” 20 World War I made large majorities in Europe and North America into unapologetic peace-mongers, at least with regard to international war. Whether one sees Hitler as a necessary cause or not, World War II reinforced that lesson in those places (probably quite unnecessarily), and it converted the previously militaristic Japanese in Asia.

#### Decline doesn’t cause war – bipolar stability, institutions, norms.

Paudel, MA Candidate, ’20 (Sirish, https://moderndiplomacy.eu/2020/09/03/decline-in-us-hegemony-will-this-result-in-hegemonic-war-or-not/)

One of the contemporary issues in international relations is that the current hegemon, the United States, has undergone a relative decline. It is argued that American hegemony that emerged aftermath the Second World War is undergoing a decline and with the rise of a potential challenger in China looming, one major issue concerning IR scholars is whether or not the relative decline of US hegemony will result in a hegemonic war. Hegemonic wars occur when a rising challenger – revisionist power – isn’t content with the current international order and wants to change it so as to become a preponderant force and dictate terms of a new world order. This article assumes that although the US is in a relative decline it is still a dominant power and the rising power is content with the current status quo so no war occurs between the dominant and the rising power. In order to support the argument that a hegemonic war does not occur, this article provides explanation using several theoretical perspectives. Structural Realism and Balance of Power To begin with, prominent neorealist Kenneth Waltz contends that the end of the Cold War has changed the structure of international politics from bipolar to unipolar with the US being the dominant power. According to Waltz, days of US being unipolar force in world politics is numbered and slowly the world is moving towards bipolarity or multipolarity because changes in the structure of international system brings about changes in state behavior. It does not matter how much self-restraint and self-control a preponderant power is in its conduct of international relations; states are always wary and fear the dominant power and thus he maintains that balancing is universal. [1] In order to explain why, he has resorted to the Balance of Power (theory). In most basic sense, international politics is a state of anarchy where there is no central government and states rely on themselves to protect their autonomy and perpetuate their survival. Balance of Power contends that states involve in a balancing act to check the powers of preponderant force so that no any single state has enough power to become a global hegemon. [2] With the relative decline of US, China and America can enter into bipolar relationship much like the US and the USSR during the Cold War. Since Waltz himself posits bipolarity as the most stable of international configurations, it can be argued that act of balancing between the US and China brings the international distribution of power into an equilibrium and averts the risk of war. Socialization of Hegemonic Power Most scholars posit that hegemons use threats and rewards to get compliance from secondary states. Contrary to popular wisdom, scholars Ikenberry and Kupchan have contended that in addition to material power, hegemons also have the power of socialization to achieve compliance from secondary states. They call this the socialization process which involves ‘altering of the belief systems’ of elites. Basically, hegemons project their vision of international order through normative principles (norms and values) and not by material incentives; elites in secondary states internalize them, and devise policies that are compatible to the hegemon’s ideal of the international order. The authors contend that the world order thus created can sustain even when hegemon undergoes a decline because the world order created is relatively inexpensive to maintain in the sense that altering of states preferences are by virtue of ideals rather than use of coercion. Thus, by virtue of socialization of hegemonic power, relative changes in hegemon’s distribution of material power (military and economy) does not put strain on the international system. So, on viewing the world from the lens of socialization, it can be argued that the expansion of US normative principles on liberal economic norm to its former allies and enemies aftermath the second world war that led to the formation of the current liberal economic world order provides an explanation as to why in spite of US’ relative decline there is continuity for America’s liberal economic order. [3] The rising challenger China can be considered to have been socialized – it has accepted US led international norms, and participates in various International Organizations. Thus, it makes less sense for China to wage war against the hegemon whose ideals it has internalized. Hegemonic Stability Theory According to this theory, a hegemon creates a stable international economic order characterized by market openness but its decline results in global instability. This hegemonic effect of open trade benefits all participants, especially, weaker states that do not have any burden of public goods. In this sense, global economic stability is born out of hegemony and provides provision of collective public goods and in doing so facilitates a stable international system. The motivation to create an economic openness lie in the interest of the hegemon – it has the largest economy and so benefits most from open markets. In addition, only hegemons have the material capability (political and military) to provide public goods and induce other states to embrace open trade. [4] By virtue of the Hegemonic Stability Theory, the hegemon is an important element in creation and maintenance of the international system. As stated earlier, open trade benefits all participants, even the rising challengers that are accommodated in the system. In contemporary world politics, China is the fastest rising power and it is also reaping the benefits of the open economic order created by the US. By participating in the globalized economy, China has earned a comparative advantage in labor-market and its economy has been growing. On top of that China is an export-based economy and thus, it has very little incentive to jeopardize this benefit by engaging with the hegemon and thereby disrupting the order. In his article, Artur Stein has argued that decline in hegemony does not bring about a complete collapse of the trade regime as long as hegemonic power is committed to economic openness. Taking these two points in consideration, it can be argued that it is not in the interest of China to challenge US hegemony. On account, likelihood of war is averted. [5] Robert Keohane and Institutionalist Approach In After Hegemony, Robert Keohane uses an institutional approach to explain inter-state cooperation. He posits that states have common interest and in order to realize it requires achieving mutually beneficial agreements which is where international regimes come in. These regimes foster cooperation by making it easier to reach mutually beneficial inter-state agreements. They help overcome the problem of lack of qualitative and asymmetrical information, through institutional embeddedness reduces transaction costs, legal costs reduce incentive to cheat thereby reducing uncertainty and building confidence among states. Since hegemonic leadership is required to create regimes in the first place, even after the erosion of hegemony, they have high stakes and play important role in fostering cooperation (US role in the IMF and WTO). Because cooperation fosters absolute gain, all participants are benefitted. [6] By this approach, states see cooperation more beneficial than conflict. Thus, it can be argued from institutionalist approach that international regimes foster cooperation thereby reducing likelihood of conflict in the event of hegemonic decline. Conclusion The article provided four distinct perspectives with regards to declining US hegemony and potential of a hegemonic war. Using these approaches the article concludes that in spite of decline in American hegemony there will not be a significant change in the current structure of the international system mainly due to power differentials between the US and its nearest challenger China. The US is undergoing a relative decline but still, it is the largest economy boasts strongest military and has highest political leverage. In sum, prospect of a hegemonic war in contemporary world politics is only a far-fetched dream.

#### Hegemony doesn’t solve wars, and transition doesn’t cause them.

Fettweis ‘17 [Christopher, Professor of Political Science @Tulane University, IR PhD @University of Maryland, “Unipolarity, Hegemony, and the New Peace,” *Security Studies*, 2017, Vol. 26, No. 3, p. 423-451]

The perception of US power, and the strength of its hegemony, is to some degree a function of grand strategy. If indeed US strategic choices are responsible for the New Peace, then variation in those choices ought to have consequences for the level of international conflict. A restrained United States is much less likely to play the role of sheriff than one following a more activist approach. Were the unipole to follow such a path, hegemonic-stability theorists warn, disaster would follow. Former National Security Advisor Zbigniew Brzezinski spoke for many when he warned that “outright chaos” could be expected to follow a loss of hegemony, including a string of quite specific issues, including new or renewed attempts to build regional empires (by China, Turkey, Russia, and Brazil) and the collapse of the US relationship with Mexico, as emboldened nationalists south of the border reassert 150-year-old territorial claims. Overall, without US dominance, today’s relatively peaceful world would turn “violent and bloodthirsty.”

Liberals fear restraint as well, and also warn that a militarized version of primacy would be counterproductive in the long run. Although they believe that the rule-based order established by United States is more durable than the relatively fragile order discussed by the neoconservatives, liberals argue that Washington can undermine its creation over time through thoughtless unilateral actions that violate those rules. Many predicted that the invasion of Iraq and its general contempt for international institutions and law would call the legitimacy of the order into question. G. John Ikenberry worried that Bush’s “geostrategic wrecking ball” would lead to a more hostile, divided, and dangerous world.74 Thus while all hegemonicstability theorists expect a rise of chaos during a restrained presidency, liberals also have grave concerns regarding primacy.

Overall, if either version is correct and global stability is provided by US hegemony, then maintaining that stability through a grand strategy based on either primacy (to neoconservatives) or “deep engagement” (to liberals) is clearly a wise choice.75 If, however, US actions are only tangentially related to the outbreak of the New Peace, or if any of the other proposed explanations are decisive, then the United States can retrench without fear of negative consequences. The grand strategy of the United States is therefore crucial to beliefs in hegemonic stability.

Although few observers would agree on the details, most would probably acknowledge that post-Cold War grand strategies of American presidents have differed in some important ways. The four administrations are reasonable representations of the four ideal types outlined by Barry R. Posen and Andrew L. Ross in 1996.76 Under George H. W. Bush, the United States followed the path of “selective engagement,” which is sometimes referred to as “balance-of-power realism”; Bill Clinton’s grand strategy looks a great deal like what Posen and Ross call “cooperative security,” and others call “liberal internationalism”; George W. Bush, especially in his first term, forged a strategy that was as close to “primacy” as any president is likely to get; and Barack Obama, despite some early flirtation with liberalism, has followed a restrained realist path, which Posen and Ross label “neo-isolationism” but its proponents refer to as “strategic restraint.” 77 In no case did the various anticipated disorders materialize. As Table 2 demonstrates, armed conflict levels fell steadily, irrespective of the grand strategic path Washington chose.

Neither the primacy of George W. Bush nor the restraint of Barack Obama had much effect on the level of global violence. Despite continued warnings (and the high-profile mess in Syria), the world has not experienced an increase in violence while the United States chose uninvolvement. If the grand strategy of the United States is responsible for the New Peace, it is leaving no trace in the evidence.

Perhaps we should not expect a correlation to show up in this kind of analysis. While US behavior might have varied in the margins during this period, nether its relative advantage over its nearest rivals nor its commitments waivered in any important way. However, it is surely worth noting that if trends opposite to those discussed in the previous two sections had unfolded, if other states had reacted differently to fluctuations in either US military spending or grand strategy, then surely hegemonic stability theorists would argue that their expectations had been fulfilled. Many liberals were on the lookout for chaos while George W. Bush was in the White House, just as neoconservatives have been quick to identify apparent worldwide catastrophe under President Obama.78 If increases in violence would have been evidence for the wisdom of hegemonic strategies, then logical consistency demands that the lack thereof should at least pose a problem.

As it stands, the only evidence we have regarding the relationship between US power and international stability suggests that the two are unrelated. The rest of the world appears quite capable and willing to operate effectively without the presence of a global policeman. Those who think otherwise have precious little empirical support upon which to build their case. Hegemonic stability is a belief, in other words, rather than an established fact, and as such deserves a different kind of examination.

## Adv 3

### XT 1 – AT: Cyber

#### Won’t go nuclear.

Tucker ’18 [February 2, 2018 Patrick Tucker is technology editor for Defense One. He’s also the author of The Naked Future: What Happens in a World That Anticipates Your Every Move? (Current, 2014). Previously, Tucker was deputy editor for The Futurist for nine years. https://www.defenseone.com/technology/2018/02/no-us-wont-respond-cyber-attack-nukes/145700/]

The idea that the U.S. is building new low-yield nuclear weapons to respond to a cyber attack is “not true,” military leaders told reporters in the runup to the Friday release of the new Nuclear Posture Review.

“The people who say we lowered the threshold for the use of nuclear weapons are saying, ‘but we want these low-yield nuclear weapons so that we can answer a cyber attack because we’re so bad at cyber security.’ That’s just fundamentally not true,” Gen. Paul Selva, vice chairman of the Joints Chiefs of Staff, said Tuesday at a meeting with reporters.

It’s an idea that military leaders have been pushing back against since the New York Times ran a Jan. 16 story headlined, “Pentagon Suggests Countering Devastating Cyberattacks With Nuclear Arms.”

When would the U.S. launch a nuclear attack in response to a non-nuclear event? The Defense Department says the threshold hasn’t changed since the Obama administration’s own nuclear posture review in 2010, but a draft of the new review that leaked online caused a bit of drama in its attempts to dispel “ambiguity.”

The new review gives examples of “non-nuclear strategic attacks,” Robert Soofer, deputy assistant secretary for nuclear and missile defense policy, told reporters on Thursday. “It could be catastrophic attacks against civilian populations, against infrastructure. It could be an attack using a non-nuclear weapon against our nuclear command-and-control [or] early-warning satellites. But we don’t talk about cyber.”

In his own conversation with reporters, Selva broadened “early warning” systems to include ones that provide “indications of warning that are important to our detection of an attack.” He also emphasized, “We never said ‘cyber.’”

There’s a reason for that. While cyber attacks on physical infrastructure can be very dangerous, they are unlikely to kill enough people to provoke a U.S. nuclear response.

An National Academies of Science and Engineering analysis of the vulnerability of U.S. infrastructure makes that point. A major cyber attack could cut off electrical power, resulting in “people dying from heat or cold exposure, etc.,” said Granger Morgan, co-director of the Carnegie Mellon Electricity Industry Center and one of the chairs of the report.  “A large outage of long duration could cover many states and last for weeks or longer. Whether and how many casualties there could be would depend on things like what the weather was during the outage.”

It’s a huge problem but not an event resulting in tens of thousands of immediate deaths.

Contrast that with a nuclear attack on a city like Moscow, even one using a device of 6 kilotons, much smaller than the ones the United States used against Japanese targets in World War II. The immediate result: there would be 40,000 deaths, according to the online nuclear simulation tool NukeMap.

Russia has demonstrated a willingness to take down power services with cyber attacks, as they did in Ukraine on Christmas Eve 2015. But these attacks were brief and occured in the context of actual fighting.

In other words, the worst cyber physical attack that top experts believe credible likely does not meet the threshold that the Defense Department has set out for deploying a nuclear weapon.

### XT 2 – AT: Grid

#### Hardening and monitoring check critical infrastructure

Melendez ’20 [Steven – Fast Company, “‘We’re always ready’: Would the U.S. win a cyberwar with Iran?,” 1-15-20, https://www.fastcompany.com/90450348/were-always-ready-would-the-u-s-win-a-cyber-war-with-iran]

The good news, experts say, is that the worst-case scenario is highly unlikely. Iranian military leaders know that a violent cyberattack on civilian targets would likely result in serious retaliation from the United States and its allies. “The strategy that I see right now is they want to retaliate without dragging themselves into an all-out war with the U.S.,” said Carmel, the chief strategy officer at Cybereason. When Iran first retaliated for Soleimani’s death, for instance, it appeared to pick U.S. military targets in Iraq that did not result in any casualties, effectively capping the cycle of escalation. That same strategic thinking would likely guide Iran in any future cyberattack, Lewis suggested. “If they turned out the lights in an American city, they would probably expect a violent U.S. response,” he said. “If they wipe the data from another casino, they might think they could get away with it.” Of course, U.S. forces are always hunting for evidence of digital incursions—and are reportedly increasingly willing to use offensive cyberpower to prevent or preempt attacks. “It wouldn’t surprise me if Cyber Command is monitoring the Iranians to see if they should interfere,” said Lewis. In such cases, the costs of electronic snooping—probing U.S. systems for potential vulnerabilities—can escalate quickly. At the same time, Carmel said, U.S. organizations have begun to invest more in technology to detect and stop cyberattacks sooner rather than later. With enough time and effort, practically any computer system can be hacked, but more robust monitoring and defensive capabilities have limited the number of soft targets, and increased the resources required to cause widespread damage. “America’s a really big country, and so there’s millions of targets, and some of them are really tough,” noted Lewis. “Some of the ones the Iranians would want to hit like the really big banks, they probably wouldn’t have the capability.”s

# 1NR

## LPE K

### 2NC – AT: McAfee

#### McAfee is an idiot.

**Korhonen, 19**—PhD from Aalto University School of Business and a M.Sc. from Helsinki University of Technology (Janne, “Book review: McAfee (2019), More from Less,” https://jmkorhonen.net/2019/11/15/book-review-mcafee-2019-more-from-less/, dml)

This is an interesting book which **could** be a good book if its key message – that technology and capitalism will decouple economic growth from resource use in time to prevent serious ecological disruption – were **supported by research**. This, **unfortunately**, is **not** **the case**.

Decoupling is not exactly a subject that has never been studied before. There exists a **voluminous body of** **research** that has used **better methods** and **covers far more ground**, both **theoretically** and **empirically**, than this book. The conclusions of this research stream are **fairly clear**, as a recent, comprehensive and well-worth-the-read overview of decoupling research (Parrique et al. 2019) shows: while **some** decoupling is **beyond doubt happening**, there is **no** **sturdy** **evidence** that could permit us to believe that **necessary** decoupling is going on. If we wish to continue our present course and economic growth patterns, we would need to see decoupling that is 1) **absolute**, 2) **deep** **enough**, 3) **fast** **enough**, 4) **permanent**, and 5) **global**. This is **not what research shows**.

This book’s central message is **basically** **demolished** by a **single** **open access** **article** in PNAS (Wiedmann et al. 2015). Using **far** **more** **sophisticated** **methods**, **informed by past research** on the topic, and covering the value chains and countries **far more extensively** than this book, the researchers concluded that if the total materials footprint of industrialized countries, USA included, has decoupled at all, the amount of absolute decoupling is **insignificant**. I **cannot** **find any reference** to this **rather** **fundamental piece** of research in the book, **nor** can I find **any references to any recent studies** that are **more critical** about decoupling claims. In fact, I **can’t find solid evidence**, either in **references** or in the **text**, that the author is **even aware** of such research. As such, I **do not believe** that the book’s thesis **could ever be published in a reputable** **peer reviewed** **journal**: existing research **has already covered this ground repeatedly**, with **better methods**, and in a **more critical fashion**.

## Sunsets CP

### 2NC – Process

#### Their standard eliminates all counterplans because any action can theoretically result in the plan

Wood 13 (Jamie - Avatel Executive Vice President, “The Butterfly Effect – What a Fascinating Theory!”, 6-10, https://avatel.wordpress.com/2013/06/10/the-butterfly-effect-what-a-fascinating-theory/)

Every action or decision has some kind of effect on something or someone, if only in an indirect way. How we approach these decisions or actions we take can have a huge impact, not just on those directly involved, but on others we could hardly fathom would be affected. You never know what little action may be the tipping point for another action and or reaction. butterfly effect When you hear the words “The Butterfly Effect”, most of you will probably think of the movie. That was about the chaos theory, meaning one series of events leads to another and the effect of changing the course of those events. Actually the term “The Butterfly Effect”, was a phenomenon proposed in a doctoral thesis written in 1963 by Edward Lorenz. It states that a butterfly, by flapping its wings in one place and time is able to create a major weather event in another place and time, eventually having a far-reaching ripple effect on subsequent events. The butterfly effect suggests that cause and effect are applicable in the universe even if the pattern is indecipherable and the precise cause of our predicaments, rooted far away in time and space, are ultimately unfathomable. More than just an esoteric science, the chaos theory works off the concept that the relation between any two things is rarely linear in nature, that any reaction is usually the result of an accumulation of causative factors small and large, intentional and accidental.

## CIL CP

### 2NC – AT: PDB

#### 2. Conflict – the U.S. needs to signal that it’s willing to void federal statutes. The perm creates statutory support for CIL, deflecting the precedent of independent enforceable obligations.

Kundmueller ‘2 [Michelle; May 1; Attorney specializing in constitutional law, candidate for a J.D. and M.A. in Political Theory from the University of Notre Dame, B.A. from Flagler College; Journal of Legislation, “Note: The Application of Customary International Law in US Courts: Custom, Convention, or Pseudolegislation?” vol. 28]

III. Uses, Abuses, and Implications of Customary International Law in Domestic Law

Debates over the role of customary international law in domestic courts continue to produce differing opinions about the role of customary international law within the U.S. legal structure. While there is general agreement that customary international law plays some role, the extent of this role remains unclear. Three of the most important of the unanswered questions are covered in this section of this Note: (1) whether customary international law has the potential to trump federal legislation, (2) whether customary international law is federal law without empowering legislation from Congress, and (3) which political branch holds ultimate control over the interpretation of customary international law. The resolution of these issues will determine the power of customary international law in U.S. legal systems. In doing this, it may also change the balance of power between the respective federal branches by expanding the judiciary's ability to overrule federal law. In the final analysis, the answers to the preceding questions will determine whether customary international law or Congress controls in domestic legislation. The following section examines some currently viable theories about the power of customary international law in the U.S. legal system.

A. Dominance of Customary International Law over Federal Law

Jordan J. Paust, who has authored a book and several law review articles on the subject of customary international law, asserts that the incorporation [\*366] of this body of law into domestic law is required by the Constitution. He claims that "customary international law has been directly incorporable, at least for civil sanction and jurisdictional purposes, without the need for some other statutory base." 20 According to Paust, "the Founders clearly expected that the customary law of nations was binding, was supreme law, created (among others) private rights and duties, and would be applicable in United States federal courts." 21

Based on his claims of constitutionally mandated incorporation of customary international law, Paust delineates the areas of domestic law that this affects. In some applications, customary international law enhances the power of the "Executive under Article II, section 3 to 'take care that the Laws be faithfully executed.'" 22 In other applications, customary international law restricts the Executive: "Supreme Court and other opinions have also recognized that while exercising Presidential war powers, the Executive is bound by customary international law." 23 In addition to affecting the President and therefore indirectly the Legislative branch, Paust claims that customary international law directly shapes Congressional power because it "can limit the exercise of an otherwise appropriate Congressional power and thus can function partly as an aid for interpreting the extent of constitutional grants of power." 24 The power of customary international law also affects the courts, where it "may be relevant to an adequate interpretation of various sorts of Congressional power in order to functionally enhance such powers." 25 Finally, Paust claims that the "latter process of incorporation might include an enhancement of the power of Congress under Article I, section 3, clause 18 to enact legislation 'necessary and proper for carrying into Execution . . . all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.'" 26

Because customary international law thus pervades the federal government, alternately limiting and expanding the powers of the respective branches, it becomes a defining body of law in relationship to the federal government. Hence, Paust writes, "in the case of an unavoidable clash between fundamental human rights supported by customary international law and a federal statute, the human rights (which have a constitutional status) [\*367] must prevail." 27 In normal conflicts between codified (treaty) international law and federal statute, the last-in-time rule applies; this rule dictates that whichever law was most recently enacted controls. 28 Paust claims that this rule dictates that, in conflicts between customary international law and federal statutes, customary international law always controls. 29 As Paust theorizes, "customary international law would necessarily be 'last in time,' since custom is either constantly re-enacted through a process of recognition and behavior involving patterns of expectation and practice or it loses its validity and force as law." 30 By this reasoning, custom is always a controlling authority in the face of a directly conflicting federal statute.

The extent to which Paust claims that customary international law influences and controls domestic law leads to the question of who, within the U.S. legal system, decides upon the content, interpretation, and manner of application of international law. While all three branches of the federal government will have some indirect control in forming customary international law, it also limits the scope of each. Hence, whichever branch is empowered to control the application and interpretation of this body of law within the domestic legal structure will be that much stronger, relative to the coordinating branches. In Paust's view, the judicial branch is responsible to "identify, clarify, and apply" this body of law. 31 In response to concerns that this role improperly changes the balance of powers, he asserts that "it is precisely because the federal judiciary has both the power and responsibility to identify and apply customary international law in cases otherwise properly before the courts that there is no violation of the separation of powers when federal courts apply international law while interpreting federal statutes." 32

In an article on human rights law and domestic courts, Richard B. Lillich explores the role and the ramifications of customary international law in United States law. Like Paust, Lillich bases his understanding of the role of customary international law on the finding that "customary international law, while not mentioned in the Constitution, is part of the law of the land to be determined and applied by the courts whenever appropriate in making a decision." 33 Based on this, Lillich states that "the starting point in ascertaining what international human rights norms have been received into customary international law--and therefore are rules of decisions for domestic [\*368] courts--commonly is thought to be the Universal Declaration of Human Rights . . . ." 34 The status of the Universal Declaration of Human Rights as a source of the customary international law rests solely on its position as evidence of existing customary international law. Lillich admits that, while the Universal Declaration of Human Rights resolution was adopted without a dissenting vote by the U.N. in 1948, it is not legally binding as a treaty, as it has never been ratified. 35

Thus, to the extent Lillich is correct that the Universal Declaration of Human Rights reflects--at least in part--customary international law, and to the extent that both Paust and Lillich are correct that customary international law is part of United States law which should be enforced and interpreted by the courts, it should also "be directly enforceable in domestic courts." 36 Most customary international law claims in U.S. courts have been based on a statute which provides for such a claim. The most common example of this is the Alien Tort Statute, which dates back to the Judiciary Act of 1789 and provides for federal jurisdiction over "any civil action by an alien for a tort only, committed in violation of the law of nations of a treaty of the United States." 37 The point of Lillich's suggestion is that, while there is nothing wrong with providing statutorily for the incorporation of customary international law, as has been done in the past, it is unnecessary or redundant.

The implications of Lillich's claim that customary international law may and ought to be directly incorporated into United States law even without statutory support are far reaching. He advocates that judges ought to use human rights law--and implicitly all of customary international law--without statutory support. Not only could claims be brought in federal and state courts without the benefit of enabling statutes, but, under the mirror principle, the United States has an obligation, enforceable domestically, to live up to the provisions of customary international law. 38 Beyond this direct effect, which has the potential to permit the voiding of a federal statute on the grounds that it conflicts with customary international law (as defined and recognized by the judiciary), Lillich predicts that customary international law should have the "greatest impact on domestic law in the future by influencing the courts' approach to constitutional and statutory standards." 39 This means that the Constitution, federal law, and state law should be interpreted in light of customary international law. As Lillich states, "litigants and judges already have invoked the Universal Declaration [of Human Rights] for precisely this purpose." 40 Lillich hails this new world of customary international law's direct and indirect incorporation into United States law as offering "significant as well as virtually limitless possibilities for achieving greater protection of the rights of individuals." 41

#### 3. Specifically true for antitrust – courts won’t decide on CIL grounds if an equally applicable domestic rule exists.

Meessen ’84 [Karl M; Professor of Law at the University of Augsburg, American lawyer, specializing in the field of European Commission Law, International Competition, International Trade, International Commercial Arbitration. Member of Norr, Stiefenhofer & Lutz; October 1984; “Antitrust Jurisdiction under Customary International Law”; The American Journal of International Law, Vol. 78, No. 4; TV]

To date, international antitrust cases have only been brought before domestic courts. Those courts, of course, have to apply domestic law. International law is applicable only to the extent that domestic law so provides. Also, when a domestic court has to decide an individual case, it need not determine whether a certain rule is part of domestic law or of international law as long as it is satisfied that the rule exists. Before a domestic court, proof of the existence of a rule of unwritten law is brought by citing as many domestic precedents as possible. Again, it seems to be immaterial whether those precedents reflect customary international law or only domestic rules of conflict of laws. Thus, there seem to be good reasons to subscribe to Lowenfeld's preference for some blend of public law, public international law and private international law.34

In international antitrust practice, however, there are cases where it does matter whether an assumed rule is one of international law or of conflict of laws. Domestic law may attribute a different rank to the two sets of rules. In Germany, for instance, rules of general international law prevail over any statutory law.35 Similarly, within European Community law, secondary legislation enacted by organs of the Communities is void if it violates general international law.36 And, on the level of relations between sovereign states, domestic rules of conflict of laws cannot, of course, be relied upon at all.

The two legal systems interact in the process of forming new rules of unwritten law. Rules of conflict of laws may be part of state practice and thereby contribute to the formation of customary international law, and rules of customary international law may be referred to when ascertaining or interpreting principles of conflict of laws. But, in contrast to reciprocal influences on the contents of new rules, their actual creation follows entirely different lines.

First, the emphasis in the creation of conflict-of-laws rules is on judge-made law. Domestic courts are easily accessible and may give regular guidance on the development of the law, whereas international adjudication is the exception rather than the rule. Customary international law is mainly formed by the-it is hoped, parallel, but usually divergent-practice of some 160 independent states, acting through their legislative, executive and/or judicial branches.

Second, the role of legal publicists in the creation of new rules is different as well. In conflict of laws, theoretical approaches may be conceived specifically for adoption into judge-made law. The function of scholars of international law offers less opportunity for creative thinking: they may compile and analyze state practice, but they cannot replace it with their own concepts.

Finally, the perspective for analysis is different, too. The- perspective of conflict of laws lies within a state. It is directed to domestic interests, both public and private. Foreign interests are relevant only insofar as they form part of the state's foreign policy, for instance, if they reflect considerations of reciprocity. The perspective of international law stands above the sovereign states. It demands neutrality vis-a-vis the interests of particular states and it implies that, in general, the interests of the individual have to be articulated by sovereign states.

These three differenceshould be kept in mind when state practice is surveyed and analyzed in the next two sections of this paper. They all derive from the same plain truth: domestic rules of conflict of laws make up part of one lawmaking system organized by one constitution and usually based on a broad consensus of values and interests. The decentralized making of international law does not enjoy any of those benefits and is therefore bound to offer a more modest yield of legal rules. But, as should also be remembered, modest answers of international law may often be supplemented by richer ones of conflict of laws.

### 2NC – AT: PDCP

#### A) They’re only Sherman, Clayton, and the FTC.

Pfaffenroth ’21 [Sonia K, Justin P Hedge, and Monique N Boyce; July 1; Partner at Arnold and Porter, Former Deputy Assistant Attorney General for Civil and Criminal Operations for the Antitrust Division of the US Department of Justice; Counsel at Arnold and Porter; Senior Associate at Arnold and Porter; Mondaq, “United States: A Comparison Of Proposed Antitrust Legislation In 2021: Federal And New York State,” https://www.mondaq.com/unitedstates/antitrust-eu-competition-/1086194/a-comparison-of-proposed-antitrust-legislation-in-2021-federal-and-new-york-state#:~:text=At%20the%20federal%20level,%20there,;1%20(2)%20the%20Federal]

At the federal level, there are **three core antitrust laws**: (1) the Sherman Act, in which Section 1 outlaws "every contract, combination, or conspiracy in [unreasonable] restraint of trade," and Section 2 outlaws any "monopolization, attempted monopolization, or conspiracy or combination to monopolize";1 (2) the Federal Trade Commission Act, which prohibits "unfair methods of competition" and "unfair or deceptive acts or practices";2 and (3) Section 7 of the Clayton Act, which prohibits mergers and acquisitions where the effect "may be substantially to lessen competition, or to tend to create a monopoly."3 Criminal violations of the Sherman Act carry a maximum penalty of a $100 million fine for corporations, and a maximum penalty of 10 years in prison and a $1 million fine for individuals. A prevailing plaintiff in a civil suit can recover treble damages and attorneys' fees. But federal law currently does not provide for civil penalties when the government brings an antitrust case, only injunctive relief.

#### C) CIL displaces U.S. law.

Henkin ’87 [Louis; February 1987; University Professor at Columbia University; Harvard Law Review, “The Constitution and United States Sovereignty: A Century of Chinese Exclusion and its Progeny,” vol. 100]

The relationship between international and United States law, then, cannot be determined by declaring international law to be common law and therefore inferior to legislation. It has to be determined by reference to some principle that would locate the United States on the monist-dualist spectrum. In fact, one could advance persuasive arguments that customary international law supersedes any United States law and should be given effect even when it conflicts with a subsequent act of Congress. The law of nations, including both treaties and customary international law, is binding on the United States. The framers of the Constitution respected the law of nations, and it is plausible that they expected the political branches as well as the courts to give effect to that law. 100 Other countries have accepted the supremacy of international law: their courts give effect to international law over domestic legislation. 101 Our legal system subordinates treaties to subsequent congressional acts, because the Court has determined that the supremacy clause imposes that hierarchy. But no similar textual basis exists for subordinating customary international law. Customary international law is universal and lasting and has better claim to supremacy than do treaties, which govern only the parties and can be readily terminated or replaced by those parties.

#### D) Custom is a distinct, internationally derived basis – it’s silent on domestic law.

Hepburn ’18 [Jarrod; 2018; McKenzie Postdoctoral Research Fellow at Melbourne Law School, University of Melbourne, DPhil, MPhil and BCL from Balliol College, University of Oxford; American Journal of International Law, “Domestic Investment Statutes in International Law,” vol. 112]

\* ‘FILs’ = Foreign Investment Laws

The Effect of Domestic Limitations Clauses

Many cases and commentators have held that domestic statutes of limitation do not apply to claims before international tribunals. 300 This principle is perhaps confined to situations where an international tribunal is ruling on an alleged breach of international law. Most of the cases addressing the issue have related to international law breaches: of investment treaties (in Wena v. Egypt, Biedermann v. Kazakhstan, Maffezini v. Spain, Bogdanov v. Moldova, and Energoalians v. Moldova) or custom (in the Gentini and Spader arbitrations). 301 The Wena tribunal even specified that, in its view, domestic time-bars "do not necessarily bind a claim for a violation of an international treaty before an international tribunal." 302 If FIL protections are treated as unilaterally assumed international obligations, as considered in Part III, then FIL claims are equivalent to claims under treaty or custom, and domestic time-bars would not be applied. But the cases just cited arguably say nothing about claims before international tribunals for breaches of domestic law. 303 If, therefore, FIL protections are treated as domestic law obligations, the application of domestic time-bars might be plausible.

#### A) ‘Scope’ refers to the breadth of competition law.

Buccirossi ‘9 [Lear and Eui; September 2009; Researchers for the Directorate General for Economic and Financial Affairs of the European Commission; Competition Policy Indexes, “Measuring the Deterrence Properties of Competition Policy: The Competition Policy Indexes,” https://tinyurl.com/sbpbv553]

Also Hilton and Deng have tried to provide a quantitative summary measure of competition law. Their objective has been to gauge the size of the overall “competition law net” by collecting information on the breadth of the law and on its penalty and defence provisions in 102 countries over the time period January 2001 to December 2004. 47 Their scope index differs from the CPI in that it tries to provide a summary description of the areas covered by competition law rather than an evaluation of its quality. Indeed, the scope index does not attempt to measure how the law is effectively enforced, nor the degree of independence of the CA or the quality of the law. 48

#### B) ‘Expanding the scope’ requires broadening the number of activities the law applies to.

Collins, 21 [Collins English Dictionary; copyright updated 2021; Collins Cobuild, “Expand the Scope,” https://www.collinsdictionary.com/us/dictionary/english/expand-the-scope]

**expand** **the** **scope** These examples have been automatically selected and may contain sensitive content that does not reflect the opinions or policies of Collins, or its parent company HarperCollins. I wanted to work internationally and expand the scope of my possibilities. Times, Sunday Times Labour has called for the government to expand the scope of the test to include consideration of the impact of any merger on research and development and science. Times, Sunday Times Most opponents are small-government conservatives who are outraged at any attempt to expand the scope of government, particularly when it involves their personal healthcare decisions. Times, Sunday Times The move was cited by the developer to be to expand the scope of indie videogames, and not as a market strategy. Retrieved from Wikipedia CC BY-SA 3.0 https://creativecommons.org/licenses/by-sa/3.0/. Source URL: https://en.wikipedia.org/wiki/Afterfall: InSanity Such results expand the scope of asymmetric hydroboration to more sterically demanding alkenes. Retrieved from Wikipedia CC BY-SA 3.0 https://creativecommons.org/licenses/by-sa/3.0/. Source URL: https://en.wikipedia.org/wiki/Metal-catalysed hydroboration **Definition** of 'expand' expand (ɪkspænd) Explore 'expand' in the dictionary VERB If something expands or is expanded, it becomes **larger**. [...] See full entry COBUILD Advanced English Dictionary. Copyright © HarperCollins Publishers **Definition** of 'scope' scope (skoʊp) Explore 'scope' in the dictionary UNCOUNTABLE NOUN [NOUN to-infinitive] If there is scope for **a particular** **kind of** **behaviour** **or activity**, people have the opportunity to **behave** **in this way** or **do that** **activity**. [...]

### 2NC – AT: Deficit

#### There exist plenty of potential nascent international competition law norms for the US to invoke.

Waller ’99 [Spencer Weber; Associate Dean and Professor of Law, Brooklyn Law School; 1999; “An International Common Law of Antitrust”; <https://lawecommons.luc.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1495&context=facpubs>; New England Law Review; TV]

I will focus primarily on treaty and custom to suggest that we already live in a world with certain identifiable international competition rules constituting international law. While the concept of establishing international law by treaty is straightforward, the concept of customary international law is not. The Restatement (Third) of the Foreign Relations Law of the United States defines customary law as "a general and consistent practice of states followed by them from a sense of legal obligation."' " Whether or not this particular definition captures every nuance of the meaning of customary international law, it is broadly consistent with the holding of the International Court of Justice on the subject and the writings of international law scholars. ' 2

There is already substantial treaty law within the WTO system that has explicit competition law components, although nothing amounting to a unified whole. These provisions can be found in the General Agreement on Trade and Tariffs (GATT) covering trade in goods, as well as the newer Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS), the Agreement on Technical Barriers to Trade (TBT), the Agreement on Trade Related Investment Measures (TRIMS), the General Agreement on Trade and Services (GATS), the various sector agreements negotiated pursuant to the GATS, and other parts of the WTO family of agreements.' 3 At least some of these agreements contains explicit rules governing the behavior of private parties in addition to governmental units.

Other functioning competition systems derived from treaties include: the elaborate competition rules and enforcement system of the European Union, less developed rules within the North American Free Trade Area, a fascinating but little known set of rules governing trans-border competition enforcement in the Australian New Zealand Free Trade Area, new rules in the free trade area between Canada and Chile, the competition protocol in the Mercosur agreement, and the ongoing negotiation of competition issues in the Free Trade of the Americas Agreement. Other treaties to consider include: the soft law of the resolutions of the United Nations relating to restrictive business practices, multinational enterprises, and the transfer of technology, the multiplying web of cooperation treaties between antitrust enforcement agencies, and the thousands of Bilateral Investment Treaties and other systems for the resolution of disputes between investors and host governments. 1 5

Turning to state practice, the question of any customary international law in the area depends on the nature of state practice in the competition field and the rules that states have adopted out of a sense of obligation. Customary international law thus bears much in common with the common law and also has the classic advantage of the common law's emphasis on solving problems first and figuring out the rules later.

There has been a rush to embrace and adopt competition law across a wide range of geographies, stages of development, former and present ideological frameworks, and political circumstances. Gesner Oliveira, the head of the Brazilian Antitrust Enforcement Agency, has been a leader in characterizing a common set of stages in the development of competition law for new antitrust regimes. He has contended that systems develop from a modest program of domestic enforcement relying on technical assistance from abroad to a robust enforcement system that actively cooperates at the international level and participates in the work of regional and international organizations in cooperating, harmonizing competition law, and creating core principles of true international competition law.' 6 There is a growing body of state practice, as well as both soft and hard international law, that supports this characterization of the state of international competition rules arising out of the work of international organizations such as: the EU, the European Economic Area, the Europe Agreements between the EU and the countries of Eastern and Central Europe, the Organization of Economic Co-operation and Development, the Asian Pacific Economic Cooperation, the Strategic Impediments Initiative talks between the United States and Japan and their aftermath, Mercosur, NAFTA, and others.

The hardest part of the customary international law game is inducing which specific rules have achieved such widespread acceptance arising out of a sense of obligation that they should be deemed binding rules of customary international law. Without entering into a fruitless debate as to which specific rules of competition law have achieved such status (i.e., anti-cartel rules, monopolization, etc.), let me suggest that a strong case can be made that international law requires th

at if a nation chooses to have competition rules, it must enforce those rules in a non-discriminatory manner.

Treaty and customary international law provides two frameworks in which to measure this non-discrimination principle: namely the familiar rules of both "national treatment" (NT) and "most favored nation" (MFN). NT rules prohibit treating foreign products, services, or producers less favorably than domestic producers, while MFN rules prohibit treating one trading partner less favorably than another trading partner enjoying MFN privileges.

These are familiar concepts within the WTO system and exist in virtually every trade agreement between nations. Even the current existing versions of NT and MFN obligations within the WTO will cover many classic competition problems, although certainly there will be situations where individual cases may not fit well within the existing rules.

The current system can be used to resolve a variety of competition problems and build a body of law that can point the way toward more elaborate codes, if feasible and desirable, in the future. For example, either under or over-enforcement of seemingly neutral competition based on the domestic or foreign status of the petitioners or the respondents would be captured within most definitions of either NT or MFN. A similar argument can be made that it is a violation of non-discrimination principles to exempt export cartels in any antitrust system with a general anti-cartel policy for its own domestic economy. It also should be a violation to exempt exporters from antitrust rules and at the same time seek to impose liability on foreign firms for harm solely to exporters. Similarly, a nation with its own antitrust rules and notions of extraterritoriality, in theory or in practice, would arguably be in violation of one or both of these principles if it sought to use blocking statutes or similar devices to shield its firms from antitrust liability imposed by foreign systems which use similar notions of jurisdiction to prescribe.

#### It’ll be fully enforced – everyone complies.

Baum ’18 [Lawrence; 2018; Professor of Political Science at Ohio State University, Ph.D. in Political Science from the University of Wisconsin-Madison; *The Supreme Court*, p. 206-208]

Summing Up: The Effectiveness of Implementation

We know far too little to make confident judgments about how well judges and administrators carry out Supreme Court decisions, even if that question is simplified to the question of compliance and noncompliance. Still, a few generalizations are possible.

When judges and administrators address issues on which the Supreme Court has ruled, most of the time they readily apply the Court’s ruling. They often do so even when that requires them to depart from positions on legal policy they had adopted before the Court’s decision. These actions typically get little attention because they accord with most people’s assumption that judges and administrators will follow the Court’s lead and carry out its decisions fully.

Contrary to this assumption, however, implementation of the Court’s policies is often quite imperfect. For Supreme Court decisions, like congressional statutes, the record of implementation is mixed. Some Court rulings are carried out more effectively than others, and specific decisions often are implemented better in some places or situations than in others.

Implementation of the Court’s decisions is most successful in lower courts, especially appellate courts. When the Court announces a new rule of law, judges generally do their best to follow its lead. And when a series of decisions indicates that the Court has changed its position in a field of policy, lower courts tend to follow the new trend. For this reason, Court decisions that require only action by lower courts tend to be carried out more effectively than decisions that involve other policymakers.36

But even appellate judges sometimes diverge from the Court’s rulings. Seldom do they explicitly refuse to follow the Court’s decisions. More common is what might be called implicit noncompliance, in which a court purports to follow the Supreme Court’s lead but actually evades the implications of the Court’s ruling.

The higher frequency of implementation problems for Supreme Court decisions in the executive branch reflects several conditions. One condition is that administrators are likely to feel less obligation to follow the Court’s lead than do judges. Another is that carrying out the Court’s decisions is more likely to create practical problems for administrators. Even so, the Court enjoys considerable success in getting compliance from administrative bodies.

Responses by Legislatures and Chief Executives

Congress, the president, and their state counterparts also respond regularly to Supreme Court decisions. Their responses shape the impact of the Court’s decisions, and some responses by Congress and the president affect the Court itself.

### 2NC – AT: Not Binding

#### Empirics and statistics disprove – CIL is legally binding AND uniformly followed.

Sekulow ’20 [Jay; Spring 2020; Chief Counsel at the American Center for Law & Justice and at the European Centre for Law & Justice, PhD from Regent University, JD from Mercer University, and Robert Weston Ash, Senior Counsel at the American Center for Law & Justice, Master of International Public Policy from the School of Advanced International Studies (SAIS) of the Johns Hopkins University, JD from Regent University; South Carolina Journal of International Law and Business, “The Issue of ICC Jurisdiction Over Nationals of Non-Consenting, Non-Party States to the Rome Statute: Refuting Professor Dapo Akande's Arguments,” vol. 16]

I. General Overview of Applicable International Law

International law can be defined as "the system of rules, principles, and processes intended to govern relations at the [\*9] interstate level, including the relations among states, organizations, and individuals." Article 38 of the Statute of the International Court of Justice (ICJ) lists three primary and several secondary sources of international law. The three primary sources are: (1) "international conventions . . . establishing rules expressly recognized by the contesting states" (commonly referred to as "conventional international law" and generally binding on the parties to the respective convention); (2) "international custom, as evidence of a general practice accepted as law" (commonly referred to as "customary international law" and generally binding on all nations); and (3) "the general principles of law recognized by civilized nations." Secondary sources of international law include "judicial decisions," "teachings of the most highly qualified publicists of the various nations," as well as principles of equity and fairness. For purposes of this analysis, we will focus primarily on the relationship and interaction between conventional international law and customary international law as they apply to the jurisdictional reach of treaty-based, international criminal courts on nationals of non-consenting, non-party States.

Conventional international law is found in conventions, treaties, and similar negotiated agreements between and among States as well as agreements between States and other international actors (like the United Nations or NATO), and it is only binding on the parties to such agreements. Accordingly, it is a consent-based legal regime. Customary international law, on the other hand, is law based on custom that develops over an extended period of time and is considered binding on all States. Although it is not necessarily written law, customary international law is nonetheless considered "law" because States generally comply with its requirements because they believe that they have a legal obligation to do so. "To establish a rule of customary international law, State practice has to be virtually uniform, extensive and representative." We would point out that this is not the case with the Rome Statute. Although approximately two-thirds of all States have acceded to the treaty, one-third of all States--including three permanent members of the UNSC--representing two-thirds of the globe's population have not. It is difficult to understand how such statistics support "virtually uniform, extensive and representative" State practice. Further, "[n]ot all state practice results in customary law . . . . Consistent state practice becomes law when states follow the practice out of a sense of legal obligation encapsulated in the phrase opinio juris sive necessitatis."

#### Judicial incorporation is distinct – it’s not mere common law, but constitutionally grounded interpretations of the Supremacy Clause---extensive legal histories confirm that norm of custom is binding AND applied.

Paust ’99 [Jordan; 1999; Law Foundation Professor, University of Houston Law Center; Michigan Journal of International Law, “Customary International Law and Human Rights Treaties Are Law of the United States,” vol. 20]

II. The Bradley-Goldsmith Errors and Fallacies

It is astonishing, therefore, to read a co-authored claim that the overwhelming patterns of expectation that customary international law is law of the United States, part of our law, and federal law is merely a "modern position" developed in the last twenty years. n26 Equally bizarre and unreal is the notion that customary international law was not incorporated by the federal judiciary for federal decision-making or, as Professors Curtis Bradley and Jack Goldsmith claim, that "throughout most of this nation's history, CIL [customary international law] did not have the status of federal law ... [and] lacked the supremacy, jurisdictional, and other consequences of federal law." n27

Contrary to their ahistorical assertions, actual patterns of use of customary international law throughout our history demonstrate that what they term the "modern position" was generally endorsed long ago and has been evidenced fairly consistently in the continuous use of customary international law both directly and indirectly by federal courts for more than 200 years. n28 More specifically with respect to their concern about human rights, n29 such rights were of fundamental importance to the Founders and there has been significant attention to a rich and wide array of human rights ever since the formation of the United States. n30 In fact, Chief Justice Marshall recognized in 1810 that our judicial tribunals "are established ... to decide on human rights." n31 Federal courts had been using human right precepts prior to Chief Justice Marshall's affirmation of judicial authority and responsibility, and have done so ever since. n32 Further, what Professors Bradley and Goldsmith consider to be "new" law regulating "a state's treatment of its own citizens," n33 including customary legal rights of individuals against states, especially human rights, is not new. Indeed, it is partly what our nation and much of the Bill of Rights, especially the Ninth Amendment, were founded upon. n34 Moreover, one should not confuse the supposed lack of direct remedies of individuals at the international level prior to World War II with a lack of individual rights under international law and various remedies in domestic legal processes. n35 Although rare, such remedies at the international level had been recognized. n36

Much of Professor Bradley and Goldsmith's reasoning rests on an erroneous premise that customary international law was and is merely "general common law." n37 Because customary international law is not mere "common law" but part of the "law of the land" and "laws of the United States" within constitutionally-based judicial authority and responsibility, n38 their nearly obsessive focus on Erie R.R. Co. v. Thompkins, n39 and Swift v. Tyson, n40 neither of which addresses international law or has had any demonstrated impact on actual patterns of federal court use of customary international law, is significantly flawed and misleading. Additionally, use of what are merely "common law," "law merchant," or "maritime" and "admiralty" cases and arguments of others who rely on such cases are seriously misplaced. n41 For example, Bradlely and Goldsmith reference United States v. Hudson & Goodwin, n42 a case that addresses mere "common law" and makes no mention of the law of nations or international law. n43 Further, Bradley and Goldsmith's references to cases and opinions using the phrases "laws of the United States," "law of the land," and "our law," are incomplete and potentially misleading. n44

Their disfavored theory requires that "all law applied by federal courts ... be either federal law or state law" n45 and recognition that "if CIL [customary international law] is not federal law, then there is no basis for the federal judiciary to enforce CIL...." n46 If so, the inescapable fact of continued use of customary international law in the federal courts and overwhelming patterns of supportive expectation, regardless of customary international law's domesticated name or classification (which clearly has not been merely "state law"), speak loudly with respect to the general validity of their theory and its erroneous premise. Moreover, this use continued after Erie and its supposedly relevant reasoning. Additionally, if Erie, which is not on point, requires that mere "common law" have some sort of authorization, n47 such a need is met with respect to customary international law given its constitutional bases in Articles III and VI

of the U.S. Constitution as well as in other constitutional provisions and various federal statutes (also providing subject matter jurisdiction). n48

A thorough inquiry into actual patterns of legal expectation documented in numerous federal court opinions demonstrates that customary international law has long been incorporated by the federal judiciary for federal decision-making and that the sweeping claim of Professors Bradley and Goldsmith that customary international law lacked supremacy consequences, n49 lacked jurisdictional consequences, n50 and lacked "other consequences of federal law" n51 is erroneous. Further, if general common law lacked such consequences and did not bind the states, use of the law of nations by state courts at various times in our history, often with recognition that such law is binding, and related recognitions by the federal judiciary also stand in opposition to claims that customary international law was mere common law and was not considered binding. n52 Similarly, if "general common law" was not considered part of the "Laws of the United States," n53 it is telling that customary international law certainly was. n54 One case that Professors Bradley and Goldsmith cite, Ker v. Illinois, n55 actually declares that a state court "is bound to take notice" of the law of nations, "as ... is ... the courts of the United States." n56 Another case cited, Huntington v. Attrill, n57 actually recognizes that questions of international law involve concurrent duties since they "must be determined in the first instance by the court, state or national, in which the suit is brought," and adds both that such questions can be brought in federal courts and that the federal court "must decide for itself, uncontrolled by local decisions." n58

There are simply no known federal cases ruling that states can violate customary international law, and although, as Professors Bradley and Goldsmith point out, there are rare cases (late in our history) denying merely Supreme Court jurisdiction to review state rulings (a denial that is no longer authoritative), n59 at least two such cases actually reaffirm that state courts are "bound to take notice" of and are bound "as fully" to apply customary international law. n60 Not one of the cases noted declares that international law is not part of the law to be applied in lower federal courts. Indeed, these cases recognize that federal courts have the same duties as states with respect to cases that originate in federal courts. That others make broad, historically indefensible statements concerning such rare and specific rulings and ignore other recognitions even in such cases, is regrettable but of no authoritative support for even more erroneous generalities.