# Empagran 1AC (Kansas MS, NDT)

### 1AC---Development ADV

#### Advantage 1 is Development:

#### The Supreme Court’s ruling in *Empagran* denied standing to foreign plaintiffs seeking remedy for antitrust injury sustained abroad.

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In F. Hoffman LaRoche Ltd. v. Empagran S.A., 542 US 155 (2004), the Supreme Court limited access to American courts by foreign plaintiffs suing under the Sherman Act based on foreign transactions. Jurisdiction over foreign antitrust claims is governed by the Foreign Trade Antitrust Improvements Act (“FTAIA”). However, rather than parsing this opaque and poorly drafted statute, the Court drew on the doctrine of prescriptive comity and held that where a statute is vague, it should be construed narrowly so as not to interfere with the prerogatives of co-sovereigns. Alternatively, the Court concluded that if the conduct in question would have been beyond the reach of the Sherman Act prior to the enactment of FTAIA, it would not be cognizable under the FTAA because that statute was designed to limit—not expand—jurisdiction over foreign claims. The Court found that there were no pre-FTAIA cases to support jurisdiction.

On remand, the D.C. Circuit ruled that even if foreign plaintiffs could show that “but for” participation of U.S. firms in the conspiracy, they would not have been injured, their claims would still be barred. The FTAIA contemplates that (1) the illegal foreign have a “direct, substantial and reasonably foreseeable effect” on U.S. commerce; and (2) such adverse effect on foreign commerce gives rise to claims by foreign plaintiffs. Incidental or “but for” linkage does not suffice; proximate cause is the standard.

Moreover, foreign claims based on foreign transactions are also barred under the doctrines of standing and antitrust injury. Antitrust courts have traditionally denied standing to firms that were neither competitors nor consumers in the U.S. market. Similarly, the doctrine of antitrust injury limits the universe of antitrust plaintiffs to those who have suffered injury of the kind that the antitrust laws are met to protect against and that flows from that which makes the conduct unlawful. The U.S. antitrust laws were not meant to protect plaintiffs who were not participants in the U.S. market. Empagran may not eliminate antitrust actions by foreign purchasers, but the decision is a major hurdle to their successful prosecution.

IN EMPAGRAN, 1 THE SUPREME COURT construed the Foreign Trade Antitrust Improvements Act 2 (FTAIA) to severely limit the extraterritorial reach of the Sherman Act. In the wake of Empagran and the D.C. Circuit’s subsequent ruling on remand in that case, 3 foreign plaintiffs asserting claims under U.S. antitrust laws for injuries based on transactions consummated abroad have been largely shut out of federal courts. Foreign plaintiffs, however, have not abandoned their efforts to obtain relief in American courts for anticompetitive acts committed in the international arena. Rather, they have turned to claims under various state laws, including state antitrust laws, state unfair trade practice laws, and common law relief under theories of unjust enrichment and restitution.

This article analyzes the viability of these state law claims and concludes that state law remedies are likely to be unavailable for injuries based on transactions consummated abroad, for the same reasons the FTAIA bars antitrust claims under federal law. Additionally, these state law claims are barred by the Supremacy Clause of the U.S. Constitution, the Foreign Commerce Clause, the Due Process Clause, and the doctrine of prescriptive comity.

Background

Historically, U.S. courts have been hesitant to apply American antitrust laws to conduct occurring outside of the country. In American Banana Co. v. United Fruit Co., the Supreme Court ruled that the Sherman Act must be “confined in its operation and effect to the territorial limits over which the lawmaker has general and legitimate power.”4 As American traders became increasingly involved in the international arena, courts began to relax the hard-line view of American Banana. In Alcoa, the Second Circuit held that the Sherman Act does proscribe extraterritorial acts that are “intended to affect imports [into the United States] and did affect them.”5 At the same time, Alcoa made clear that “[w]e should not impute to Congress an intent to punish all whom its courts can catch, for conduct which has no consequences within the United States.”6 Still, the court made no attempt to identify the point at which foreign acts were qualitatively and quantitatively sufficient to affect domestic commerce to confer jurisdiction on U.S. courts.

Congress enacted the FTAIA in 1982 to clarify the reach of the Sherman Act in matters involving foreign commerce. The statute, however, was inartfully drafted and led to more confusion than clarity among courts and litigants. The Supreme Court in Empagran granted certiorari to resolve a dispute among the circuits on construction of the FTAIA. 7 The D.C. Circuit had concluded that the FTAIA allowed subject matter jurisdiction over claims by plaintiffs located in the Ukraine, Australia, Ecuador, and Panama, each of whom alleged that they had suffered injuries from a global price-fixing cartel when they bought vitamins for delivery outside of the United States. The Supreme Court vacated, holding that the FTAIA bars the exercise of subject matter jurisdiction over Sherman Act claims by foreign plaintiffs claiming illegal conduct that “significantly and adversely affects both customers outside the United States and customers within the United States” if “the adverse foreign effect is independent of any adverse domestic effect,” that is, if “the conduct’s domestic effects did not help to bring about that foreign injury.”8

The Court articulated a two-pronged rationale for its interpretation of the FTAIA. First, under principles of prescriptive comity, ambiguous statutes—and the FTAIA is, at the very least, ambiguous—should generally be interpreted so as to “avoid unreasonable interference with the sovereign authority of other nations.”9 The Court concluded that the Sherman Act may not supersede a foreign nation’s determination of how best to protect its citizens in cases where foreign conduct causes foreign injury independent of domestic injury and that foreign injury alone gives rise to foreign plaintiffs’ claims. 10 The Court further observed, citing amici filings by foreign governments, that allowing foreign plaintiffs to proceed with treble damage claims under these circumstances “would unjustifiably permit their citizens to bypass their own less generous remedial schemes, thereby upsetting a balance of competing considerations that their own domestic antitrust laws embody.”11

Second, the Court found plaintiffs’ argument for expansive construction of the FTAIA unpersuasive. As a threshold matter, the FTAIA was meant to limit—not to expand—the reach of the Sherman Act in matters involving foreign commerce. Moreover, the Court found no case decided prior to the enactment of the FTAIA that would have upheld the exercise of jurisdiction over similar foreign claims. 12 Although the Court acknowledged that plaintiffs’ argument favoring jurisdiction presented “the more natural reading of the statutory language,” considerations of comity and history made clear that plaintiffs’ reading “is not consistent with the FTAIA’s basic intent.”13 Instead, the Court adopted the narrower reading championed by defendants because “[t]hat reading furthers the statute’s basic purposes, it properly reflects considerations of comity, and it is consistent with Sherman Act history.”14 The Court emphasized that its holding “assumed that the anticompetitive conduct here independently caused foreign injury; that is, the conduct’s domestic effects did not help to bring about that foreign injury.”15

On remand, the plaintiffs argued that their injury was not unrelated to the anticompetitive effects of the cartel on U.S. commerce, urging that but for defendants’ price-fixing activities in the United States, the international cartel would have collapsed. The plaintiffs maintained that, given the fact that vitamins are fungible and readily transportable, without U.S. participation in the conspiracy, foreign purchasers would have bought vitamins in the United States at competitive prices, instead of dealing with the cartel at supracompetitive prices. By incorporating the U.S market, the cartel cut off that avenue of arbitrage. Accordingly, the plaintiffs argued that the domestic effect of the cartel caused the plaintiffs’ foreign injury.

The D.C. Circuit disagreed. The court did acknowledge that the plaintiffs had painted a plausible scenario that but for supracompetitive prices in the United States resulting from cartel activities in the United States, they would not have been injured. 16 Nevertheless, the court held that “ ‘but-for’ causation between the domestic effects and the foreign injury claim is simply not sufficient to bring anticompetitive conduct within the FTAIA exception.”17 Rather, the statutory formulation calls for “a direct causal relationship, that is, proximate causation,” between domestic effects and foreign injury, a standard that is not satisfied by establishing a mere “but-for ‘nexus.’”18 The proximate cause standard under the FTAIA has proven to be a formidable barrier to foreign plaintiffs who seek to bring antitrust suits under U.S. law in American courts.

#### Where foreign entities are unwilling or unable to prosecute cartels, the presumption against extraterritoriality leaves developing economies defenseless to anticompetitive predation and widens gaps in international cartel enforcement.

Michaels 16, \*Ralf Michaels, the Arthur Larson Professor of Law at Duke University School of Law; (2016, “SUPPLANTING FOREIGN ANTITRUST”, <https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=4808&context=lcp>)

Why should American law supplant, for example, Canada’s or Great Britain’s or Japan’s own determination about how best to protect Canadian or British or Japanese customers from anti-competitive conduct engaged in significant part by Canadian or British or Japanese or other foreign companies?1

Thus asked Justice Breyer in his 2004 opinion in F. Hoffman-La Roche, Ltd. v. Empagran, SA,2 a case brought in U.S. federal court as a class action on behalf of purchasers of certain vitamin products on foreign (non-U.S.) markets against members of a cartel. The question was, of course, rhetorical. There seems to be, at least prima facie, no good reason to impose U.S. antitrust law on other highly developed countries with their own functioning antitrust regimes, especially without or even against these countries’ will.3

But the question was also strangely misplaced. Although Canada, Great Britain, and Japan—the countries Breyer named—had urged the Court to dismiss the claims by foreign plaintiffs,4 the countries from which the named plaintiffs stemmed—Ecuador, Panama, and Ukraine—had remained silent.5 These last three countries are representatives of less developed countries, many of which do not have very effective antitrust regimes.6 With this in mind, Breyer’s question would better have read something like this: Why should American law supplant, for example, Ecuador, Panama, or Ukraine’s antitrust regimes, insofar as these countries are unable to protect their customers from anti-competitive conduct engaged in significant part by foreign companies?

This question is harder to dismiss. Arguably, supplanting these countries’ ineffective competition regimes would serve a purpose. The question would not be one of superseding foreign regimes when there are none. The question would be one of filling regulatory gaps. Vis-à-vis countries with functioning antitrust regimes, the question is which of several countries should regulate the cartel. Vis- à-vis countries without functioning antitrust regimes, the question is whether the cartel is regulated at all. If the developed country does not regulate, no other country does. Hence, the issue is not whether to defer to a foreign antitrust agency. Instead, the question is whether to defer to the cartel’s impunity. This policy decision would require quite a different justification.

Developing countries would likely do better if they had effective antitrust regimes, and other articles in this issue discuss what is required for success. But we also need solutions for situations in which developing countries do not (yet) have such regimes, or in which they are for other reasons incapable of dealing with an international cartel. This is the situation this article addresses. It develops an argument for when and why a developed country’s antitrust regime should supplant the regime of a developing country. The question is, essentially, when and why the developed country should take over, in part, regulation of the developing country’s market.

Some limitations should be mentioned. First, the article focuses on the regulation of cartels. Although supplanting antitrust law might well work also for other issues—for example, merger control or abuse of a dominant position— these issues would require different considerations, which the article does not address. Second, for purposes of the article, a developed country is defined as a country with, and a developing country as a country without, a functioning antitrust regime. The analysis is therefore not directly applicable to developing countries that have effective regimes. By contrast, some of the arguments may be applicable to small developed countries with limited resources.7

Part II begins by laying out the tension between the need for antitrust in developing countries and the obstacles these countries face in building their own regimes. It then argues for the possibility of one country’s antitrust institutions regulating another country’s market, as long as a jurisdictional basis exists. Part III discusses this idea of supplanting antitrust, its legal background, and the factors relevant for its justifiability. Part IV applies the idea of supplanting antitrust in three constellations: multinational cartels that affect markets in both developed and developing countries; transnational cartels in which cartels from developed countries target markets in developing countries; and domestic cartels that remain confined within the boundaries of the developing country. Part V discusses a number of possible objections.

II DEVELOPING COUNTRIES AND ANTITRUST REGULATION

A. Challenges

Once, establishing antitrust regimes was thought not to benefit developing countries.8 That view is no longer prevalent. Today, more than half of the developing countries in the world have antitrust regimes.9

Having laws on the books represents, however, only a first step. A greater problem for many developing countries lies in building institutions 10 and enforcing existing antitrust laws. Here, the data are somewhat unclear. Levenstein and Suslow found in 2004 that actual enforcement of existing antitrust law was widely lacking.11 Waked, by contrast, suggests that developing countries do allocate resources to the enforcement of antitrust laws, though the degree depends on, amongst others, general macroeconomic development, openness to trade and imports, and level of corruption.12 Büthe and Aydin identify several factors that constrain developing countries: limits in financial resources and expertise, unsupportive or hostile political–legal environments, limitations to legal culture, a lack of competition culture, and underdeveloped markets 13

The enforcement problem is exacerbated for transboundary cartels with actors from outside the developing countries targeting the country’s markets.14 Often, less developed countries do not even appear to recognize the impact these cartels have on their economies.15 If cartel members act outside the country, agencies have difficulties detecting and scrutinizing the cartel.16 Where they do, the global market power of firms is often badly matched by the antitrust regimes of developing countries.17 Even if developing countries have the resources and expertise to regulate small and midsize local cartels, they may well be unable to regulate bigger and transnational or multinational cartels.18 It may often be preferable for them to allocate scarce resources to the regulation of domestic cartels.

#### Instead, foreign plaintiffs were encouraged to rely on trickle-down enforcement from developed antitrust regimes---that form of patchwork enforcement creates impunity for a host of transboundary and multinational cartels.

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III. PART III: SHORTCOMINGS OF THE STATUS QUO

The current regulatory patchwork works relatively well for the key developed countries. The established competition agencies could overcome the hurdles of transnational cases if they so choose.[48](javascript:;) They have the necessary financial and human resources and expertise. This state of affairs may explain why the developed world stopped investing efforts in finding a multilateral solution to the problem of transnational anticompetitive conduct such as international cartels.

Even when foreign violators do not have assets in the developed states, they are unlikely to react to unfavourable enforcement outcomes by exiting the market because such markets are too important. The economic weight of a market helps to realize the potential of extraterritoriality. Economies that are less important from the violators’ perspective face a particularly uphill and unequal battle when challenging anticompetitive conduct.

In this regulatory context, the smaller and less developed countries are advised to focus their enforcement on domestic violations.[49](javascript:;) When it comes to transnational violations, such as international cartels, they are often recommended to rely on the enforcement efforts of developed regimes.[50](javascript:;) That is, they are to depend on what can be called ‘trickle-down enforcement’. The implicit argument is: should an international cartel be investigated and sanctioned by one or more developed agencies, it will be disbanded and cause no further competitive harm. In other words, enforcement by more developed agencies can generate positive externalities, or spill-over effects for other regimes. Hence, there is an opportunity for enforcement free-riding. While this certainly happens, this proposition assumes that transnational violations affect developed and developing countries in a similar manner. This may be true when it comes to violations affecting virtually all world markets; in such casesprosecution effectively deals with the totality of the underlying anticompetitive conduct. For example, in the case of the Southeast Asian cartel of LCD screen manufacturers, enforcement by a number of agencies led to the restoration of competition.[51](javascript:;) Similarly, the operation of the vitamins cartel was global and attracted significant attention of enforcers in several jurisdictions.[52](javascript:;) However, not all transnational violations are omnipresent with sufficient impact on key economies to provoke vigorous enforcement and a complete discontinuation of the harmful practice. For example, the American Soda Ash Export Cartel (ANSAC), a U.S.-based export cartel, was found in breach of EU competition law in 1990.[53](javascript:;) However, this decision did not lead to its abandonment. ANSAC reorganized its activities in relation to the EU and continued operating in a business-as-usual manner in other markets. In 1996 it was challenged in India. The case failed due to the lack of an explicit textual basis in Indian law allowing for extraterritoriality. The judgment was rendered under severe pressure exerted by the United States. In 1999 the same cartel was challenged in South Africa, where—after nearly ten years of litigation—ANSAC settled.

Enforcement in the EU, India and South Africa did not lead to the break-up of ANSAC, which continues operating in various markets. This case underlines the gaps in the current regulatory framework. It shows that enforcement free-riding will not necessarily work. There may be no trickle-down benefit to countries that forego domestic enforcement.

Moreover, reliance on enforcement activities of developed countries by other states is not always an option. While some transnational violations are truly global, many types of anticompetitive conduct are more limited in scope, depending on the nature and characteristic of the goods or services involved. There may be regional arrangements (for example, a regional cement cartel) or arrangements that affect only a specific group of countries (for example, a cartel concerning a good which is no longer sold in the developed economies, but which is still offered in developing countries). In such cases there would be no enforcement by developed agencies to piggy-back on and therefore no trickle-down benefit, given that markets in developed economies would not be affected.

Due to the existing gaps in the regulatory framework, the recommendation to focus on domestic violations has had perhaps unintended, and somewhat perverse, consequences. Domestic infringements—which typically do not lead to transfer of wealth abroad—are pursued while transnational violations escape scrutiny, despite generally causing much greater harm [54](javascript:;) and often leading to outflow of wealth from the domestic economy. Even in cases of successful reliance on enforcement by agencies of other states (for example, in cases of truly global cartels) the transfer of wealth is not remedied. The rents extracted through supra-competitive prices are not even partially remedied by fines imposed on the violators, given that no sanctions are imposed in relation to the harm to the domestic market. Rather, the benefit is the prevention of future harm. This is only a partial success, but even this is not present in cases in which the foreign enforcement is either not robust enough to lead to discontinuation of the anticompetitive conduct in question or when such enforcement is simply missing. Hence, passive reliance on trickle-down enforcement is unsatisfactory.

Furthermore, even if free-riding on enforcement by other states can prevent future harm, this setup provides no deterrence, which is considered crucial in modern competition law. Transnational violators can feel safe and act with impunity. Any sanctions they may face will relate only to harm caused in the enforcing jurisdictions. Hence, there is no reason for them not to continue with existing—and not to create new—anticompetitive arrangements that extract wealth from markets in states that do not challenge transnational violations.[55](javascript:;) The situation is particularly grim in the case of anticompetitive practices that do not affect any major jurisdiction enforcing competition law robustly, since there will be no agency to piggy-back on and no possibility of a trickle-down benefit. The violation may remain completely off the radar should domestic agencies focus solely on domestic conduct. Moreover, even if the viability of a particular anticompetitive arrangement requires it to be global in scope, prospective violators may still find it profitable, even after taking into account any sanctions they may face in the key jurisdictions that actively challenge such transnational violations. Profits extracted from the non-enforcing jurisdictions may offset ‘related’ costs, that is sanctions imposed in the relatively few jurisdictions which do pursue such cases. This argument was made before the US Supreme Court in Empagran.[56](javascript:;) Such sanctions—especially if only financial in nature—can be seen as no more than just a selectively imposed tax on transnational anticompetitive activities. The availability of individual criminal sanctions in the form of imprisonment in some countries changes that dynamic, but does not fundamentally resolve the problem.

#### Cartels undermine good-faith market competition---that’s a precondition for recurrent economic development.

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Just as Olympics athletes are expected to compete in fair play, firms operating in competitive markets are supposed to seek an edge by building their own strengths, through R&D investments, product differentiation, advertising as well as capital- and cost-efficiencies. As firms invest in tangible assets (factories, employees) and intangible ones (brand recognition), they innovate, generate returns on investment, and over time, create long-term value. Such good faith competition is positive for the bottom line – but also for society as a whole. Sustained economic growth translates into job creation, increased per capita income, higher standards of living and effectively, reduced poverty.

Looking beyond the purely economic aspect, let’s recall that the United Nations’ 2030 Agenda for Sustainable Development includes eradicating poverty as an indispensable requirement for sustainable development. But this can only happen in fair markets, where all players are engaged in honest rivalry. Some firms may be tempted to collude to obtain extra profits, harming consumers and hindering innovation. This is why regulators must ensure the fair functioning of markets.

The advantages of good faith competition

Innovation, boosted by investment in R&D, is an essential driver of economic progress that benefits consumers, businesses, and the economy as a whole. But for this rivalry scenario to work (and assuming, as per traditional microeconomic theory, that firms are heterogeneous and pursue a profit-maximizing strategy), fair market competition is a prerequisite. Indeed, both national and supranational authorities, including the European Commission, the EU’s competition watchdog, state that fair competition (their raison d’être, after all) stimulates innovation, growth and jobs. It also ensures consumers receive higher-quality products at better prices and companies are competitive in global markets.

In fair markets, economic growth need not be explosive to boost per capita income, but it does need to be sustained over the long term, as the example of the US demonstrates: according to [an important textbook on economic growth](https://mitpress.mit.edu/books/economic-growth-second-edition), US GPD per capita grew at a yearly rate of 1.8% between 1870 and 2000, resulting in a tenfold increase, from $3,340 to $33,330 measured in 1996 dollars.

Arguably, designing good faith competition markets is a natural mechanism to promote sustainable economic growth – and achieve economic well-being.

The heavy cost of corporate misconduct

When firms coordinate to restrict competition, then prices, outputs and innovation are all adversely affected. The extra value extracted by the cartel is pocketed by the firm – at the expense of the consumer. Indeed, research on cartel overcharge shows a significant increase in price attributable to collusion ([Connor 2010](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1610262); [Smuda 2014](https://econpapers.repec.org/article/oupjcomle/v_3a10_3ay_3a2014_3ai_3a1_3ap_3a63-86..htm); [Boyer and Kotchoni 2015](https://link.springer.com/article/10.1007%2Fs11151-015-9472-1)). To give an idea of the scope of such market failures, a [specific database](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1610262) detailing information for price-fixing cartels between 1990 and 2017 shows that the affected sales total about $85 trillion both in Europe and North America.

One example of market manipulation is the truck cartel. Over 14 years, MAN, Volvo/Renault, Daimler, Iveco, and DAF, which together account for around 9 out of every 10 medium and heavy trucks produced in Europe, colluded on pricing and on passing on the costs for meeting environmental standards to customers. They were fined a record €3 billion by the European Commission in 2016. The later €880m fine imposed by the EC to Scania, which the manufacturer has appealed, would increase the total fine to almost €4 billion.

The need for regulation to ensure fair markets

How can such harmful corporate misconduct be prevented? An essential tool to improve good faith competition is efficient competition law. Antitrust is the most important public policy to protect public good and shelter consumers from predatory business practices. To mitigate market failures, government intervention can be legitimised on the basis of public interest, while another stream of thought promotes reliance on well-functioning courts.

In anti-trust cases, victims can initiate damage actions, either as “follow-on” (after the antitrust watchdog has proven the infringement) or as “stand-alone” (from scratch) actions. But in stand-alone actions, the burden of proof rests on the claimants, making such actions costly and risky – in other terms, not much of a deterrent for colluding companies.

Indeed, [a study commissioned by the EU in 2004](https://ec.europa.eu/competition/antitrust/actionsdamages/comparative_report_clean_en.pdf) found that damage actions were still underdeveloped. This prompted the adoption of a new EU directive in 2014 to facilitate follow-on actions. Among the provisions of the new regulation are the presumption that cartels cause harm, and the harmonisation across member countries of a 5-year time frame after the infringement has ceased for plaintiffs to have time to bring action. But quantifying damage is still a complex, expensive and time-consuming task, all the more so when data is from a single case. This has been seen as an opportunity by funds like Therium Capital or Burford Capital to create profit-sharing structures to enter litigation processes and facilitate claimants’ damage actions.

Most recently, in December 2020, the EU took an additional step in protecting consumers’ collective interests with Directive 2020/1828, which facilitates representative actions.

In a nutshell, private enforcement is the necessary complement for public enforcement to dissuade firms from colluding and to support good faith competition.

Helping find the right balance

We have so far argued in favour of strong competition law to promote long-term sustainable growth and its corollary economic well-being. But what about the other interrelated dimensions of sustainable development, i.e. social and environmental progress? There is an open discussion on the balance between the three pillars of sustainable development. For instance, [the Doughnut Economy model](https://www.penguin.co.uk/books/110/1107761/doughnut-economics/9781847941398.html) includes planetary and social boundaries for economic growth. There are multiple potential trade-offs between economic growth and social and environmental impacts, and each generation will have to decide what the right balance is. But whatever the chosen balance is, we argue that good faith competition is still a minimum requirement to promote long-term sustainable growth that helps reduce poverty and improve people’s standard of living and well-being around the world.

#### The upside of market competition outweighs and solves alt causes to economic development.

Khameni 7, \*R. Shyam, Advisor, Competition Policy, in the Financial and Private Sector Development Vice-Presidency of the World Bank Group, Washington D.C., 2007, (“Competition Policy and Promotion of Investment, Economic Growth and Poverty Alleviation in Least Developed Countries,” (<https://documents1.worldbank.org/curated/en/397801468174885108/pdf/413340FIAS1Competition1Policy01PUBLIC1.pdf>)

A persistent challenge that faces the governments of least-developed countries as well as policy advisors at the Bretton Woods Institutions, the United Nations, and aid agencies is: how to foster sustainable broad-based economic growth, development, and poverty reduction. During the past two decades or more, various policy approaches have been explored. In the “first-generation reforms,” the World Bank Group and the International Monetary Fund (IMF), among others, focused on promoting the macroeconomic stability and trade integration of countries. Second-generation reforms moved from the broad policy environment to encourage more microeconomic changes, namely, improvements in the administrative, legal, and regulatory functions of the State. Of late, particular emphasis has been placed on the role of the public sector in establishing an “investment climate” conducive to promoting private sector-led investment, growth, and poverty alleviation.

The quality of a country’s investment climate determines the risks and transaction costs of investing in and operating a business. These risks and costs are in turn determined by the legal and regulatory framework, barriers to entry-exit, and conditions prevailing in markets for labor, finance, infrastructure services, and other productive inputs. Essentially, the quality of the investment climate will determine the mobility and speed with which resources can be redeployed from lower to higher productive uses. For this to occur effectively, the nature and degree of competition in markets plays a pivotal role. In this regard, there is significant economic evidence suggesting that private investment has grown faster in countries with better investment climates. Also, economies with competitive domestic markets tend to attract more domestic and foreign direct investment, have higher levels and rates of growth in per capita gross domestic product (GDP), and lower rates of poverty.1

Promoting effective competition is often argued on grounds that it spurs firms to focus on efficiency and improve consumer welfare by offering greater choice of higher-quality products and services at lower prices. However, it also promotes greater accountability and transparency in government-business relations and decision making, and contributes to reducing corruption, lobbying, and rent-seeking behavior. Additionally, by lowering barriers to entry, it provides opportunities for broad-based participation in the economy and for sharing in the benefits of economic growth. Without effective competition, firms are more likely to possess considerable market power, which enables them to earn excess profits and wield political influence to tilt public policy in their favor. There are also likely to be distorted price and profit signals and increased risk of misguided investment and output decisions, which can lead to economy-wide repercussions.

The merits and benefits of fostering open and competitive markets have been recognized in many countries that have adopted various macro- and microeconomic reforms. However, there is wide variation in the economic growth and development of nations. Casual observations indicate that there is also a wide variation in the nature and extent of competition prevailing within and across countries. Moreover, notwithstanding the merits and benefits of competition, there is no consensus or widespread support for promoting competition within and across countries—especially developing nations. This stems in part from the lack of understanding or appreciation of what effective competition can tangibly contribute to the betterment of the lives of ordinary citizens, and in part from ideological differences and the influence wielded by vested interest groups in both government and the economy at large. Although the differences in the economic growth and development of nations cannot purport to be explained by the differences in the prevailing degrees of competition, this paper argues that it is one of the important, if not critical explanatory factors. It is well established that least-developed economies are encumbered by limitations of human and physical capital, governance and institutional structures, and other resource constraints. But they are also prevented from achieving their potential by various types of public policy-based and private sector anticompetitive business practices. The primary message of this paper is that these countries need to take concrete, consistent, and coherent measures to integrate and promote effective competition policy as part of their overall government economic and regulatory framework. An effective competition policy should be viewed as the “fourth cornerstone” of this framework— along with sound monetary, fiscal, and commercial (international trade) policies.

#### Development deflates wars globally.

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The connections between development and peace are firmly supported by social science research. All the standard indicators of economic development, including per capita income, economic growth rates, levels of trade and investment, and degree of market openness, are significantly correlated with peace. Virtually every study on the causes of war finds a strong connection between low income and the likelihood of armed conflict. Economist Edward Miguel describes this link as “one of the most robust empirical relationships in the economic literature.” Irrespective of all other variables and indicators, poverty as measured by low income bears a strong and statistically significant relationship to increased risk of civil conflict.

No one has made this point more convincingly over the years than Paul Collier. He and his colleagues have shown that civil conflict is heavily concentrated in the poorest countries. The risk of civil war is strongly associated with joblessness, poverty and a general lack of development. They famously [conclude](https://openknowledge.worldbank.org/handle/10986/13938), “The key root cause of conflict is the failure of economic development.” They also make the reverse point. Raising economic growth rates and levels of per capita income may be “the single most important step that can be taken” to reduce the likelihood of armed conflict.

War is reverse development. It undermines economic well-being and reduces income levels. War may bring profit for the few, those ‘masters of war’ as Bob Dylan called them, but it creates economic misery for many. Once started, war becomes a self-sustaining system, an “economy of war” Mary Kaldor calls it in New and Old Wars, a feeding trough for profiteers, warlords and mobsters that becomes exceedingly difficult to stop.

War reduces life expectancy and destroys education and public health systems. It tears apart the social fabric. The [World Development Report 2011](http://siteresources.worldbank.org/INTWDRS/Resources/WDR2011_Full_Text.pdf) calculates the cost of a major civil war as equivalent to more than 30 years of typical growth for a medium-size developing country. Trade levels take 20 years to recover. The negative economic impact of conflict helps to explain why countries at war are often caught in a deadly conflict trap, why the chief legacy of a civil war is another war.

#### Civil wars escalate to great power war---AND causes disease and terrorism.

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Civil wars can impact the wealthiest and most powerful countries in the world. The most consequential potential impacts are transnational terrorism and pandemic diseases, global crises that could be caused by intrastate conflict. Civil wars might also lead to large-scale migration, regional instability, and potential great-power conflict. And high levels of intrastate violence and loss of government control can often give rise to massive criminality, though this is most effectively addressed through domestic law enforcement rather than international initiatives.

The nature of civil wars varies. The most important distinction is between civil strife that is caused by the material or political interests of the protagonists and civil strife that is caused by transnational ideological movements. The latter, if successful, might threaten regional stability and even the stability of the contemporary international system that is based on sovereign statehood. Transnational ideological movements, which in the contemporary world are almost all associated with particular versions of Islam, base legitimacy on the divine and reject both existing boundaries and secular authority. While transnational movements claiming divine authority are more threatening to the existing international order, it is very difficult for such movements to secure material resources. Institutions that control these resources, primarily states but also international organizations, ngos, and multinational corporations, are manifestations of the extant global order. When combatants in civil wars are motivated by material incentives and accept the principles of the existing international order, then the “standard treatment” for addressing civil strife–un peacekeeping plus some foreign assistance–is the most effective option if combatants believe that they are in a hurting stalemate, and if there is agreement among the major powers. If, however, combatants reject the existing order, then the standard treatment will not work.

Finally, based on most, but not all of the essays in these two issues of Dædalus, the opportunities for external interveners are limited. Countries afflicted by civil strife cannot become Denmark or be placed on the road to Denmark; they cannot be transformed into prosperous democratic states. The best that external actors can hope for is adequate governance in which there is security, the provision of some services especially related to health and possibly education, and some limited economic growth. This is true whether the standard treatment is applied or if one side can win decisively. More ambitious projects aimed at consolidated democracy, sustained economic growth, and the elimination of corruption are mostly doomed to fail and can be counterproductive regardless of whether the combatants are interested in seizing control of an existing state or are motivated by some alternative, divine vision of how political life might be ordered. National political elites in countries afflicted with civil strife will be operating in limited-access, rent-seeking political orders in which staying in power is their primary objective. National elites will not accept accountability, legal-rational bureaucracies, or free and fair elections, all of which would threaten their power.

The essays in these two issues of Dædalus and the literature more broadly identify six threats from civil strife that might directly impact the wealthy and more powerful polities of the world, or the nature of the postwar liberal international order. The first two–pandemic diseases and transnational terrorism–are potentially the most consequential, although neither poses the kind of existential threat presented by war among nuclear armed states.

Pandemic diseases. As the essay by Paul Wise and Michele Barry points out, since 1940, some four hundred new diseases have emerged among human populations.2 Most of these diseases have been zoonoses: disease vectors that have jumped from animal populations, in which they may be benign, to human populations, in which they might cause serious illness. Most of these outbreaks have occurred in a belt near the equator, where human beings intermingle more closely with animals, such as bats and monkeys. The main impact of civil wars is, however, not in increasing the number of new diseases, but rather diminishing the capacities of health monitoring systems that could identify, isolate, and possibly treat new diseases. Effective detection requires constant monitoring, which is extremely difficult in areas that are afflicted by civil war. Epidemics, or at least disease outbreaks, are inevitable given the ways in which human beings impinge more and more on animal habitats, but allowing an epidemic to evolve into a pandemic is optional. If effective detection and monitoring are in place, a disease outbreak will not turn into a pandemic that could kill millions. So far, the world’s population has been spared such an outbreak. If, however, a disease can be transmitted through the air, and if civil strife or something else prevents effective monitoring, the likelihood of a pandemic increases.

Transnational terrorism. Terrorism, which in recent years has primarily, but not exclusively, been associated with Islamic jihadism, can arise in many different environments. At the time of the September 11 attacks, Al Qaeda and its leader Osama bin Laden were resident in Afghanistan, a very poor, land-locked country. Before that, Bin Laden had found refuge in Sudan. Most of the participants in the September 11 attack, however, were born in the heart of the Arab world, namely in Saudi Arabia, and had resided for a number of years in Germany. The perpetrators of the July 7 attacks on the mass transit system in London were Muslims of Somali and Eritrean origin, raised and schooled in the United Kingdom. The bomber, whose efforts to bring down an airliner headed for Detroit were frustrated by a courageous and alert passenger, was a Nigerian citizen who had spent time with jihadi ideologues in the Middle East. The attacks in Paris and Nice in 2015–2016 were carried out by individuals born in North Africa, but who had lived for many years in Western Europe. The murders of fourteen peo- ple in San Bernardino, California, were perpetrated by a U.S. citizen born in Chicago, whose parents were from Pakistan and who was educated at California State University, San Bernardino, and his wife, who was born in Pakistan but spent many years in Saudi Arabia. The massacre at the Orlando, Florida, night club in 2016 was carried out by the American-born son of a man who had emigrated from Afghanistan and had lived for many years in the United States.

While terrorism associated with Islamic jihadism is hardly an exclusive product of safe havens in countries afflicted by civil strife or poor governance, the existence of such safe havens does, as Martha Crenshaw argues, exacerbate the problem.3 Safe havens are environments within which would-be terrorists can train over an extended period of time. A number of terrorists, even those raised in Western, industrialized countries, have taken advantage of such training. Transnational terrorist organizations might or might not secure weapons of mass destruction; they might or might not develop more effective training; their operatives might or might not be discovered by intelligence services in advanced industrialized democracies. Civil war and weak governance, however, increase the likelihood that transnational terrorist groups will find safe havens, and safe havens increase the likelihood of attacks that could kill large numbers of people.

Global pandemics and transnational terrorism are the two most serious threats presented by civil wars. The probability that either will significantly undermine the security of materially well-off states is uncertain, but both are distinct sources of danger. Civil wars and weak governance increase the likelihood that large numbers of people could be killed by either threat. Neither is an existential threat, but both could have grave consequences for advanced industrialized democratic states. Hundreds of thousands or millions of people could die from a pandemic outbreak resulting from an easily transmissible disease vector or from a transnational terrorist attack that could involve dirty nuclear weapons, an actual nuclear weapon (still quite hard to obtain), or artificial biologics (increasingly easy to produce).

Either a global pandemic or terrorist attack, possibly using weapons of mass destruction, would almost certainly lead to some constraints on the traditional freedoms that have been associated with liberal democratic societies.

Migration, regional instability, and greatpower conflict. Civil wars are also dangerous because they could lead to greater refugee flows, regional destabilization, and great-power conflict. Not every civil war has the potential for generating these global crises, but if generated, they would be a product not just of civil strife but also of policy choices that were made by advanced industrialized countries. In this regard, they should be contrasted with possible pandemics and transnational terrorism that, arguably, would occur regardless of the policies adopted by wealthy democratic states.

As Sarah Lischer’s essay shows, the number of migrants–especially people displaced by civil wars–has increased dramatically in recent years.4 Most of these migrants have been generated by three conflicts, those in Afghanistan, Syria, and Somalia. The wave of migrants entering Western Europe has destabilized traditional politics and contributed to the success of Brexit in the uk, the increased share of votes secured by right-wing parties in a number of Western European countries, and the electoral gains of a number of right-wing parties in Eastern Europe. Anxiety about immigration contributed to Donald Trump’s victory in the United States. European countries, even those on the left like Sweden, have responded to rising numbers of refugees by tightening the rules for potential migrants. The European Union reached a deal with Turkey in 2016 to provide financial resources in exchange–among other things–for an increase in acceptance of refugees. At the same time, the sheer number of refugees in Jordan and Lebanon can potentially undermine government control in those countries.

The impact of civil wars in one country can spread to surrounding areas. isil’s ambitious campaigns have afflicted Syria and Iraq. Civil strife in Somalia has, as Seyoum Mesfin and Abdeta Beyene write, influenced the policies of Ethiopia.5 The farc insurgency in Colombia impacted Venezuela and Ecuador. Conflict in the Democratic Republic of the Congo (drc) drew in several neighboring states. Some regional conflicts have resulted in millions of deaths, most notably the war in the drc, with limited impact on and attention from wealthy industrialized countries. Wars in the Middle East, however, have been more consequential because they have led to the involvement of Russia and the United States, they are closer to Europe and have therefore generated more refugees, and Middle Eastern oil is a global commodity on which much of the world depends. Regional destabilization in the Middle East does matter for the West; regional destabilization in Central Africa may only matter for those who live in the neighborhood.

Direct confrontation between major powers has not occurred since the end of World War II. In well-governed areas, where civil wars are absent, the likelihood of great-power conflict is small. Territorial conquest has been delegitimized (though Russia’s annexation of Crimea stands as a recent exception to this norm). The existence of nuclear weapons has removed uncertainty about the costs of a confrontation between nuclear-armed states with assured second-strike capability. Great-power confrontations are, however, more likely in areas that are afflicted by civil strife, because instability and appeals from local actors could draw in major state actors with vested interests. This is especially true for the Middle East. Moreover, in countries on the periphery of Russia that were formerly part of the Soviet Union, especially those with sizeable Russian ethnic populations, the government in Moscow has demonstrated that it can increase the level of internal unrest. There is no guarantee of stability, even in countries that might have been stable absent external support for dissident groups that would otherwise have remained quiescent.

#### Pandemics risk extinction---simulations, empirics, and surging connectivity prove.

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Several epidemics, such as the Black Death and the Spanish flu, have threatened human life throughout history; however, it is unclear if humans will remain safe from the sudden and fast spread of epidemic diseases. Moreover, the transmission characteristics of epidemics remain undiscovered. In this study, we present the results of an epidemic simulation experiment revealing the relationship between epidemic parameters and pandemic risk. To analyze the time-dependent risk and impact of epidemics, we considered two parameters for infectious diseases: the recovery time from infection and the transmission rate of the disease. Based on the epidemic simulation, we identified two important aspects of human safety with regard to the threat of a pandemic. First, humans should be safe if the fatality rate is below 100%. Second, even when the fatality rate is 100%, humans would be safe if the average degree of human social networks is below a threshold value. Nevertheless, certain diseases can potentially infect all nodes in the human social networks, and these diseases cause a pandemic when the average degree is larger than the threshold value. These results indicated that certain infectious diseases lead to human extinction and can be prevented by minimizing human contact.

1. Introduction

The emergence of a pandemic is one of the various scenarios frequently discussed as a human extinction event, and it is listed as one of the global catastrophic risks in studies regarding the future [1,2,3]. In particular, several pandemics, such as the Black Death [4,5], Spanish flu [6], and those caused by smallpox [7], severe acute respiratory syndrome (SARS) [8], and Ebola [9], have affected a large population throughout history. The risk of pandemics increases with an increase in population mobility between cities, nations, and continents, thereby threatening humankind [10,11,12]. It is essential to analyze the epidemic spread in society to minimize the damage from epidemic disasters; however, extinctive epidemic spreading experiments have limitations in real-world situations, as they predict stochastic effects on the spread without considering the structure of human society. Network-based approaches have been proposed to overcome these limitations and perform epidemic spreading simulations by considering the network structure of numerous real-world connections [13,14,15]. These methods use various models of epidemic spreading, such as the susceptible–infectious–susceptible (SIS) [16,17,18], susceptible–infectious–recovered (SIR) [19,20,21], and Watts threshold models [22]. While these methods are mathematically convenient, they are epidemiologically unrealistic for various infections because they require exponentially distributed incubation and infectious periods [23,24,25]. Moreover, previous epidemic studies did not perform quantitative assessment of the pandemic risk depending on the network connectivity in individuals and fatality rate of various diseases [26].

In the present study, we applied an SIR epidemic model to a scale-free network with Monte Carlo simulation to identify the quantitative relationship between infectious diseases and human existence. Our fundamental hypothesis states that when the epidemic spreads to all nodes of the network and the fatality rate is 100%, it can increase the pandemic risk. To address this, we initially constructed a scale-free network to simulate a society. Moreover, for the epidemic spreading simulation, an SIR model was applied to the network to describe the immune state of an individual after infection. From the simulation study, we found that the mean degree of a scale-free network was an essential factor in determining whether epidemics threaten humans. This approach provides important insights into epidemic spreading analysis by investigating the relationship between epidemic and scale-free network parameters. Furthermore, it highlights the necessity of determining information flow during an epidemic.

2. Materials and Methods

We designed an epidemic simulation process to identify the relationship between pandemic risk and network parameters. This study was performed in four steps (Figure 1): (i) generating a scale-free network model to reflect real-world conditions; (ii) applying an SIR model to the scale-free network for epidemic spreading simulations; (iii) adapting the Monte Carlo method to reflect the stochastic process in the node status of the SIR model; and (iv) iteratively performing simulation for every parameter set and analyzing the results. We have provided the source code and sample results of epidemic simulation in Supplementary Materials.

Figure 1. Overview of epidemic simulation process based on the Monte Carlo method. (A) We generated scale-free networks for a fixed population (N = 1,000,000) and various node degrees (k = 2, 5, 7, and 10). (B) Epidemic spreading was simulated by applying a susceptible–infectious–recovered (SIR) model to the scale-free network. We set the epidemic parameters, β and γd. β represents the spreading rate of epidemics, and γd is the reciprocal of γ and reflects the time interval between infection and recovery. Randomly, 0.05% of nodes were initially infected. (C) We adapted the Monte Carlo method to determine the status of the transition from the infection node to immunization node. Repeated simulations were performed until a steady state was achieved. (D) For every parameter set, 10,000 simulations were performed.

2.1. Network Generation Based on a Scale-Free Model

We constructed a network model for the epidemic spreading simulation (Figure 1). The nodes and edges of the network represent people in the society and their physical contacts, respectively. We used a scale-free network model, which follows the preferential attachment property observed in numerous real-world networks, such as social networks, physical systems, and economic networks [27,28,29]. In the scale-free network, when a node is added to the network, its likelihood of connecting to existing nodes increases with an increase in the node’s degree. Hub nodes, which lead to fast and vast spreading of epidemics, exist. Two characteristic parameters, including N and k, affect the form of scale-free networks. The parameter N denotes all nodes in the network. In the real world, N indicates the whole population size. The parameter k is the average degree of the network, which determines the degree of the newly attached node for each step during network generation. Following the characteristics of the network model, we generated scale-free networks representing human contacts for epidemic spread. The scale-free network was generated by the Barabasi–Albert graph distribution, in which the network is constructed from a cycle graph with three vertices, followed by the addition of k edges at each construction step [30]. The k edges are randomly attached to the vertex based on the degree distribution of the vertex. After network generation, we investigated the degree distribution properties of the network (Figure 2). The results indicate that the degree distributions have similar tendency for networks with varying number of nodes and edges. This study constructed scale-free networks with the largest number of nodes considering computational complexity (N = 1,000,000).

Figure 2. Degree distribution of the scale-free network. We analyzed the degree distribution of the network based on the number of nodes (N) and mean degree (k).

2.2. Epidemic Spreading Based on the SIR Model

For the epidemic spreading simulations, we applied an SIR model to the generated scale-free network. The classical SIR model can be expressed by the following nonlinear differential equations [21]:

where S, I, and R represent susceptible, infected, and recovered compartments, respectively, in the whole population. S represents people who have not been infected yet but can be infected in future. I represents infected people who can spread the epidemic to susceptible people through physical contact. R denotes people who have recovered or died from the epidemic and who no longer participate in the epidemic spreading process. The sum of the S, I, and R values represents the whole population size N. Epidemics have two parameters in the SIR model, transmission rate (β) and recovery rate (γ), which arise from the basic reproduction number R0 (Figure 1B). The basic reproduction number is the number of infections caused by one infective node [31,32,33]. If the R0 is more than 1, the infection can spread in a population, whereas if R0 is less than 1, the infection cannot spread. We express the basic reproduction number as R0 = β/γ, where β represents the spreading rate of epidemics between infective nodes and adjacent susceptible nodes and γ represents the probability of recovery from infection [34]. We mainly used γd, which is the reciprocal of γ and reflects the time interval between infection and recovery.

2.3. Investigation of Epidemic Status Based on the Monte Carlo Method

The epidemic simulation was performed for a time series event by constructing epidemic status matrix (z) to represent the status of the nth node at time step t. For each node, the value of epidemic status matrix at time step t can be 0, 1, or 2, indicating that a node is susceptible, infective, or recovered, respectively. We initially (t = 0) set every value of epidemic status matrix to 0 because all nodes are susceptible before the epidemic spreads. At the initial infection stage, randomly selected 0.05% of nodes were infected. At every time period, we performed immunization and observed the infection stages (Figure 3).

At the immunization stage, we identified infective nodes and determined whether these nodes would be recovered in the next time step. To calculate the transition probability of infected and recovered phenomena, the Monte Carlo method was applied [35,36]. When infection and recovery parameters are provided, it is possible to investigate whether a node transitions from an epidemic state to another state. To accomplish this, we compared the method revealing the change in each population in every compartment over time (Figure 4).

The final steady state of the epidemic spreading simulation model indicates the total number of casualties of the epidemic who either are dead or have recovered from the disease. Infective nodes at time t (zn [t] = 1) are transformed to recovered nodes at time t + 1 (zn [t + 1] = 2) when 1/γd is larger than a random real number between 0 and 1. We determined whether the neighbor nodes of the infection node would be infected by identifying susceptible nodes adjacent to the infective nodes at time t (zn [t] = 0, with the adjacent infective node) (Figure 5). When β is larger than a random real number between 0 and 1, a susceptible node becomes an infective node at time t + 1 (zn [t + 1] = 1); this scenario represents epidemic spread. For each time step, we recorded the number of susceptible, infective, and recovered nodes during epidemic spread.

2.4. Simulation Parameters

We carried out simulation trials for various mean degrees of networks (k = 2, 5, 7, and 10). Each network considered the following epidemic parameters: β ranges from 0.05 to 0.95 and γd ranges from 1 to 10. The Monte Carlo model was repeatedly simulated to observe saturation of the recovery process. Considering that the simulation pipeline contains random processes such as initial infection and Monte Carlo trials, we performed the simulation iteratively until the status of nodes remained unchanged. After simulation, time series data from every simulation were interpolated in the time domain.

The fatality rate determines the ratio of deceased and recovered individuals in the final population [37,38,39]. If the fatality rate is below 100%, the recovered population contains both dead and recovered individuals. Such a situation does not always cause a pandemic. In this simulation, we assumed a 100% fatality rate. To accomplish this, we enumerated the recovered nodes as dead for considering the pandemic risk.

3. Results

Through our method, we obtained epidemic spreading data with various network and epidemic parameter sets. In the present study, we focused on the case where the epidemic infects all nodes and defined this phenomenon as “extinctive spread”. Diseases causing extinctive spread are potential candidates of high pandemic risk. In the real world, extinctive spreading indicates that the disease will infect every person in the society. From the simulation data, we calculated the extinctive spread score by dividing the total number of simulation trials by the number of extinctive spread cases. Thereafter, we identified that the number of extinctive spread cases is mainly influenced by spreading speed, which is determined by β, γd, and k (Figure 6).

The extinctive spread region (brown area in Figure 6) is expanded as the value of mean degree of network (k) is increased, thereby indicating that the area of extinctive spread becomes noticeably wider in a dense network than in a sparse network. Thus, the more contact between people, the higher the risk of epidemics. Moreover, high γd and high β cause extinctive spread across a large region, indicating that the high spreading rate and short time interval between infection and recovery are risk factors of epidemic diseases. In contrast, the infective nodes recover before they transmit the disease to their neighbors in low β and low γd scenarios, thus disconnecting the network and preventing extinctive spread. This occurs because the infective nodes need more time to transmit the disease in low β and high γd scenarios. Therefore, the disease begins to subside due to a lack of new infective nodes.

Furthermore, we investigated the range of β and γd for existing epidemics of the common cold [40,41] and fatal diseases, namely, cholera [42,43], Marburg [44,45], Ebola (Congo and Uganda) [46,47,48,49], SARS [50], and MERS [51] (Table 1). We selected diseases with relatively well-known epidemic parameters, such as average duration of infection and basic number of reproductions from previous studies. Transmission rates were calculated using the mean duration of infectious periods and basic reproduction numbers of the epidemics. Different studies reveal multiple values of infectious period and transmission rate for some of these diseases; we considered these values separately [40,41,42,43,46,47,48,49]. For example, the infectious period of a common cold is from 3 to 7 days and that of Ebola is 6.5 days. Next, we placed the possible regions of these epidemics as a disease band for various k values (colored lines in Figure 6). When k > 5, fatal diseases have an opportunity to cause a pandemic. Even when k = 5, diseases such as cholera and Ebola (Congo) can be threatening in regions of low γd and high, thus demonstrating that the knowledge of network parameters of the society and the characteristics of epidemic diseases can aid in quantifying the risk of epidemics.

4. Discussion

Many previous studies have made stochastic SIR models to analyze the dynamics or stability of epidemic diseases. They investigated the distribution of susceptible, infected, and removed populations for specific epidemic disease spreading, such as cholera, SARS, Marburg, and MERS, based on mathematical modelling [52,53,54,55]. However, they did not conduct a quantitative assessment of pandemic risk taking into account physical contact between people. To solve this limitation, we performed epidemic spreading simulations by applying an SIR model to scale-free networks with Monte Carlo simulation. In the simulation, we consider various connectivity and disease characteristics on scale-free networks. For each network and epidemic parameter set, the probability of extinctive spread was calculated. The results revealed that certain infectious diseases can lead to extinction. Moreover, even if the disease band extends over the extinctive spread regions, it does not indicate that human extinction results from the disease, as the fatality rate is below 100%; however, in the case of 100% fatality, the disease can cause a human extinction event. The risk of infectious disease is influenced by the network structure. A dense network has a higher risk of spreading infectious disease than a sparse network, as we observed in the extinctive spreading maps. According to our results, when the average degree of human social networks is below the risk threshold, i.e., less than 4 in this study, human society is safe from an extinctive outbreak based on our knowledge regarding the epidemic parameters of the infectious disease. Nevertheless, in other cases, human extinction is possible. For example, if the population is 1,000,000 and there are 4 or more instances of physical contact between people, human extinction events may occur, depending on the fatality rate of the epidemics. Hence, physical contact between people is closely related to an extinction event of infectious diseases. Eventually, from a public health perspective, lowering the average contact level of society is an appropriate way to increase the robustness of strategies against the occurrence of extinction. In the real world, reducing network density can be accomplished by epidemic prevention activity, such as isolation and quarantine treatment. This action prevents epidemic risk to the society, thereby avoiding human extinction.

Additional considerations may improve our analysis. First, large population size and various proportions of initial infective nodes were not considered in the experiments. We have confirmed that the result was consistent when the proportion of initial infective nodes was 0.05% of the total population; however, this can vary depending on the distinct proportion of initial infective nodes in a different population. To achieve robust results, we need to perform additional experiments for various parameters; however, we could not address this issue due to computational complexity. Second, we did not consider numerous known epidemic diseases. We calculated the transmission rates of epidemic diseases using the known infectious periods and reproduction numbers of the epidemics from evidence in the literature. In the present study, we only considered five epidemic diseases, since the information on infectious periods and reproduction numbers of diseases was mostly unavailable for other epidemic diseases. Third, this study only considers the SIR model on scale-free networks in epidemic simulation. Since the dynamics of epidemic diseases can be varied in different models or networks, it is important to experiment in various simulation environments to confirm the robustness of the results. Nevertheless, these limitations can be considered in future experiments or using improved computational methods. With these further improvements, our approach can be used as a computational tool to analyze the risk of epidemic diseases.

5. Conclusions

In this study, we analyzed the risk of epidemic diseases by creating an epidemic simulation on a scale-free network. Based on the simulation results for various epidemic parameters, we confirmed that certain infectious diseases can lead to extinction and can be prevented by minimizing human contact. We believe that identifying potential candidate diseases that may lead to human extinction is crucial in addressing epidemic prevention activities such as quarantine.

#### Terror goes nuclear, digital AND biological---extinction.

**Alispahic 21** — Bakir Alispahic, University of Sarajevo, Faculty of Criminalistics, Criminology and Security Studies; 2021; “Special War and Terrorism”; *Technium Social Sciences Journal*, Vol. 17; University of Kansas Libraries, Hein Online

2.5.1. Nuclear terrorism

The process of arming in fear of the other is a vicious circle into which many countries of the world have fallen. Given the hostility and anarchy in the international system, it is to be expected that certain states that have nuclear programs will access plans for their use through the actions of terrorist organizations that are allegedly not affiliated with any official government. A nuclear terrorist attack is when a terrorist organization uses nuclear devices with the aim of causing numerous human casualties and great material destruction (Alispahid, 2007). In this way, with one nuclear device, it is possible to completely destroy any city. In addition to the destructive power possessed by nuclear warheads, the accompanying phenomenon is gamma and beta rays, whose radiation kills everything that survives the initial explosion. Everyone is familiar with the images of deformities of Chernobyl workers and rescuers in Ukraine after the reactor explosion, and the very thought that a nuclear device could be used by terrorists causes great fear and panic, both to the civilians and the military leadership of every country.

2.5.2. Chemical terrorism

Unlike nuclear terrorism, which is significantly destructive and deadly, and which leaves long-term consequences both for the place where it took place and for the region, chemical terrorism is of a more localized type. The most striking terrorist attack occurred in early 1995 when members of the Japanese group - the sect 'Supreme Truth' (Aum Shinrikyo) released poisonous gas (sarin) on several different targets, such as subway stations in Tokyo and Yokohama, when about ten thousand people died and five thousand were injured (Alispahid, 2007). Although nuclear and chemical terrorism are not on the same destructive level, chemical terrorism is still extremely dangerous and poses a major threat to the target state. Chemical terrorism can be divided into two categories:

1) Attacks aimed at causing great damage; terrorist organizations release chemical poisons into places where large numbers of people usually gather, into watercourses, or into places that are not ventilated, leading to many casualties;

2) Chemical attacks with the aim of intimidating, blackmailing or causing economic damage, for example by injecting toxic chemicals into certain products, such as food (Alispahid, 2007).

A covert and invisible attack will take a large number of lives before the cause is discovered. In this way, terrorist organizations get enough time to hide and to publicly take responsibility for the attack and the killed from a safe and secure place through the media. The use of chemical reagents and other substances is far more economical and efficient than just procuring or even making a nuclear bomb. Chemical bombs or chemical agents also produce a large number of casualties, but without damaging infrastructure and ancillary facilities.

2.5.3. Biological terrorism

Biological terrorism implies the use and spread of different types of biological weapons (such as different types of microbes) in populated areas in order to influence people's morale and cause numerous casualties (Alispahid, 2007). The previous year 2020 was marked in the world as one of the worst due to the spread of the COVID-19 virus pandemic. The government's restrictive measures, as well as the danger of the virus itself, provided a clear picture that states are unable to fight biological weapons. The situation caused by the corona virus itself destroyed or weakened many economies, industries, interpersonal relations and many other things. It has become obvious that in the event of a biological attack, the capacity of the state authorities to limit spreading of the virus or microbe is rather questionable.

With the use of biological weapons, relatively large-scale lethal effects are achieved, and in one attack it is possible to infect a large number of people who will further transmit microbes and viruses, and thus cause an increase in the number of victims of the attack itself.

2.5.4. Computer terrorism

Computer terrorism is a relatively new phenomenon in the domain of security threats. With the development of technology, and its dominance and omnipresence in human life, conditions have been created for its abuse. Man's dependence on the computer as a device and its system applications have opened a new front for the aggressive actions of states and terrorist organizations as extended arms of an aggressive state. The term computer terrorism means an unauthorized and illegal intrusion or threat of intrusion into computer systems, networks or information stored, with the aim of influencing governments, states or the population in achieving political goals (Alispahid, 2007).

The growing dependence on computer technology, both of the ordinary man and the state, allows aggressive actors to attack in the virtual, cyber world as well. Social networks, which have become an integral part of our everyday life, hide a lot of information about users, and unauthorized access to this information can be used for various coercive purposes. Also, technical and technological projects such as hydro or nuclear power plants are fully computerized and depend on the correct and protected operation of computerized automatic control systems. Penetration and successful implementation of a virus or other malicious program in such protected systems can have huge and unforeseeable consequences for humans and infrastructure.

Unlike conventional terrorist attacks that use traditional and direct methods of taking human lives, computer terrorism directed against critical infrastructure is a completely different, indirect method of destroying manpower and infrastructure. As Muhid (2019) states: 'Cyberattacks targeting critical infrastructure are much more devastating when it comes to the damage done in human lives, lost infrastructure, time and financial resources lost by infrastructure downtime and the resources needed to have the critical infrastructure repaired and put back into operation. The advantage of cyber-attacks on critical infrastructure is reflected in the secrecy of the attack and often the victim himself does not know that he was the target of the attack and the attack itself can be characterized as an accident or negligence in handling control systems. Also, computer terrorism is not only reflected in the attack on critical infrastructure and physical facilities, but also in the attack on certain Internet services that provide services such as online banking or communication. One of the most effective methods of attacking such online services is the DoS (Denial of Service)13 attack, which significantly affects the needs of users who are unable to perform the necessary tasks, which can directly affect their lives. Attacks on communication or financial services in modern times represent a significant blow to both the user and the owner of the service.

The Internet, as an integral part of human life, is also a place where terrorist organizations operate, using it as an advertising space to recruit and propagate their own ideas, thus winning the hearts and minds of certain sections of society, while producing fear in others. This is possible because there is no universal censorship that would thwart or destroy any attempt by terrorist organizations to advertise their goals and endeavors. Social networks, such as Twitter, Facebook or Instagram, rarely censor users who publish advertising content of terrorist organizations. In the midst of the fight against ISIL, its members were often active on social media, posting videos of executions of prisoners or military actions taken. They also used social networks as a means of recruitment through which they invited the 'oppressed' and 'endangered' to join them in the 'higher goal' of creating a caliphate and pan-Islamism. Computer terrorism is not something that can be ignored, because our physical and material life is closely connected to the abstract cyberspace that exists outside the physical world. Inadequate response to the threat of computer terrorism puts millions of people in danger, and in the future, it may become the main weapon of cyber terrorists who have 'passed' from the material to the intangible, cyber world.

#### Independently, development failure causes cascading risks that cumulatively outweigh any single risk---extinction.

Cernev et al. 20, \*Tom Cernev is with the Australian National University; \*Richard Fenner, Centre for Sustainable Development, Cambridge University Engineering Department, UK; (January 2020, “The importance of achieving foundational Sustainable Development Goals in reducing global risk”, https://www.sciencedirect.com/science/article/abs/pii/S0016328719303544?via%3Dihub)

4. Risks from failure to meet the SDGs

4.1 Cascading failures

Figure 3 demonstrates that cascade failures can be transmitted through the complex inter-relationships that link the Sustainable Development Goals. Randers, Rockstrom et al (2018) have suggested that where meeting some SDGs impact negatively on others, this may lead to “crisis and conflict accelerators” and “threat multipliers” resulting in conflicts, instability and migrations. Ecosystem stresses are likely to disproportionately affect the security and social cohesion of fragile and poor communities, amplifying latent tensions which lead to political instabilities that spread far beyond their regions. The resulting “bad fate of the poor will end up affecting the whole global system “(Mastrojeni, 2018). Such possibilities are likely to go beyond incremental damage and lead to runaway collapse.

The World Economic Forums’ Global Risks Report for 2018 shows the top five global risks in terms of likelihood and impact have changed from being economic and social in 2008 to environmental and technological in 2018, and are closely aligned with many SDGs. The report notes “that we are much less competent when it comes to dealing with complex risks in systems characterised by feedback loops, tipping points and opaque cause -and -effect relationships that can make intervention problematic”. The most likely risks expected to have the greatest impact currently include extreme weather events natural disasters, cyber attacks, data fraud or theft, failure of climate change mitigation and water crises.

These are represented in Figure 3 by the following exogenous variables. “Climate change” drives the need for Climate Action (SDG 13), “Cyber threat” may adversely impact technology implementation and advancement which will disrupt Sustainable Cities and Communities (SDG 11); Decent Work and Economic Growth (SDG 8) and the rate of introduction of Affordable and Clean Energy (SDG 7), with reductions in these goals having direct consequences in also reducing progress in the other goals which they are closely linked to. “Data Fraud or Threat” has the capacity to inhibit innovation and Industrial Performance (SDG 9), reducing competitiveness (and having the potential to erode societal confidence in governance processes). “Water Crises” (linked with climate change) have a direct impact on Human Health and Well Being (SDG 3) as well as reducing access to Clean Water and Sanitation (SDG 6) and reducing agricultural production which increases Hunger (SDG 2). The causal loop diagram also highlights “Conflict” as a variable (driven by multiple environmental-socio-economic factors) which together with regions most impacted by climate degradation will lead to an increase in migrant refugees enhancing the spread of disease and global pandemic risk, thus impacting directly on Human Health and Well Being (SDG 3).

4.2 Existential and Catastrophic Risk

The level and consequences of these risks may be severe. Existential Risks (ER) have a wide scope, with extreme danger, and are “a risk that threatens the premature extinction of humanity or the permanent and drastic destruction of its potential for desirable future development” (Farquhar et al., 2017,) essentially being an event or scenario that is “transgenerational in scope and terminal in intensity” (Baum & Handoh, 2014). With a smaller scope, and lower level of severity, global catastrophic risk is defined as a scenario or event that results in at least 10 million fatalities, or $10 trillion in damages (Bostrom & Ćirković, 2008). Global Catastrophic Risk (GCR) events are those which are global, but they are durable in that humanity is able to recover from them (Bostrom & Ćirković, 2008; Cotton-Barratt et al., 2016) but which still have a long-term impact (Turchin & Denkenberger, 2018b).

Achieving the Sustainable Development Goals can be considered to be a means of reducing the long-term global catastrophic and existential risks for humanity. Conversely if the targets represented across the SDGs remain unachieved there is the potential for these forms of risk to develop. This association combined with the likely emergence of new challenges over the next decades (Cook et al., 2014) means that it is of great value to identify points within the systems representations of the Sustainable Development Goals that could both lead to global catastrophic risk and existential risk, and conversely that could act as prevention, or leverage points in order to avoid such outcomes. This identification in turn enables sensible policy responses to be constructed (Sutherland & Woodroof, 2009).

Whilst existential threats are unlikely, there is extensive peril in global catastrophic risks. Despite being lesser in severity than existential risks, they increase the likelihood of human extinction (Turchin & Denkenberger, 2018a) through chain reactions (Turchin & Denkenberger, 2018a), and inhibiting humanity’s response to other risks (Farquhar et al., 2017). It is necessary to consider risks that may seem small, as when acting together, they can have extensive consequences (Tonn, 2009). Furthermore, the high adaptability potential of humans, and society, means that for humanity to become extinct, it is most likely that there would be a series of events that culminate in extinction as opposed to one large scale event (Tonn & MacGregor, 2009; Tonn, 2009).

Whilst the prospect of existential risk, or global catastrophic risk can seem distant, the Stern Review on the Economics of Climate Change estimated the risk of extinction for humanity as 0.1% annually, which accumulates to provide the risk of extinction over the next century as 9.5% (Cotton-Barratt et al., 2016). With respect to identifying these risks, it is known that in particular, “positive feedback loops… represent the gravest existential risks” (Kareiva & Carranza, 2018), with pollution also having the potential to pose an existential risk.

### 1AC---Slow Growth ADV

#### Advantage 2 is Slow Growth:

#### Stagnant development stalls global economic recovery.

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Covid-19 has demonstrated that we need to confront deep flaws in the global economic system. But without strong economic growth, the world will struggle to emerge from the [pandemic](https://www.wired.com/tag/covid-19), let alone reform the global economy in ways that are better for all. In 2022, global economic growth will stall, with expansion in many developed and developing economies falling short of the key threshold of 3 percent that is needed to double per capita income in a generation.

Next year, rebooting global economic growth will also be difficult as large regions of the world remain unvaccinated and global trade and investment continue to be disrupted.

To further complicate matters, the tools governments have traditionally employed to jump-start recovery have already been used extensively, and policy’s ability to drive growth is reaching its limits. Interest rates have been stuck at historically low levels in the US and UK, and at negative interest rates in Europe and Japan. Many countries are heavily indebted. In 2020, the debt-to-GDP ratio in the US and the UK was over 100 percent.

These rising rates of national debt are likely to constrain public spending and governments’ ability to deliver public goods such as education, health care, infrastructure, and national security, further reducing the possibility for meaningful economic growth.

Even before the pandemic, factors were impeding economic growth. In 2022, these will continue: the proliferation of automation and technological advancements, which may lead to mass unemployment; demographic shifts, including rapid population growth; [climate change](https://www.wired.com/tag/climate-change); and worsening inequality.

The arrival of the global pandemic has intensified many of these concerns, complicating governments’ abilities to drive economic growth in an equitable and sustainable way. Unequal vaccination rates across the world—largely between the developed and developing world—further entrench inequality and delay economic recovery. In Africa, which is home to almost 20 percent of the world’s population, vaccination rates are hovering around 1 percent. It is likely that people in many parts of the emerging world will remain largely unvaccinated throughout 2022, heightening their exposure to new and more infectious variants.

Given the integrated nature of the world economy, the fact that next year emerging economies will still not experience the economic rebound already seen in many developed regions in 2021 means global growth will remain low and slow. Many developed economies have enjoyed a reboot built on the back of mass vaccination and government stimulus packages. However, this recovery will not be sustainable without emerging economies recovering too. Developed countries cannot maintain their economic standing if they can’t sell goods and services abroad.

Next year, we will see even more clearly how intertwined the fate of the global economy is and realize that any hope of a global economic recovery cannot be achieved as long as developed and developing countries remain on two different tracks.

#### BUT, faster development causally resuscitates global economic growth.

Woetzel et al. 18, \*Dr. Jonathan Woetzel is a director of the McKinsey Global Institute, where [Anu Madgavkar](https://www.mckinsey.com/our-people/anu-madgavkar) is a partner, [Jeongmin Seong](https://www.mckinsey.com/our-people/jeongmin-seong) is a senior fellow, and James Manyika is chairman and director; Kevin Sneader is the global managing partner of McKinsey and is based in the Hong Kong office, [Oliver Tonby](https://www.mckinsey.com/our-people/oliver-tonby) is a senior partner in the Singapore office, [Andres Cadena](https://www.mckinsey.com/our-people/andres-cadena) is a senior partner in the Bogota office, [Rajat Gupta](https://www.mckinsey.com/our-people/rajat-gupta) is a senior partner in the Mumbai office, [Acha Leke](https://www.mckinsey.com/our-people/acha-leke) is a senior partner in the Johannesburg office, Hayoung Kim is a consultant in the New Jersey office, and Shishir Gupta is a specialist in the McKinsey Knowledge Center in Gurgaon; (September 11th, 2018, “Outperformers: High-growth emerging economies and the companies that propel them”, https://www.mckinsey.com/featured-insights/innovation-and-growth/outperformers-high-growth-emerging-economies-and-the-companies-that-propel-them)

What would happen if the 53 emerging economies with middling or underperformance could match the historical productivity gains of the 18 outperformers? It would require them to lift their annual average productivity growth from the 1.4 percent rate between 2000 and 2015 to 4.2 percent, the average annual rate achieved by the outperformers. To estimate the impact, both for the emerging economies and for the global economy, we simulated this increase using a [macroeconomic model](https://www.mckinsey.com/business-functions/strategy-and-corporate-finance/our-insights/shifting-tides-global-economic-scenarios-for-2015-25).

The effects are striking: for developing economies, the overall per capita GDP growth rate could rise to 4.6 percent. This could push their average per capita GDP more than 50 percent above the consensus forecasts for 2030 and lift 200 million people to the consuming class and 140 million more people out of poverty—an increase of almost two full percentage points of the global population.

The global economy would experience a bounce, growing at an average of 3.5 percent a year, compared with consensus forecasts of 2.8 percent. That growth could directly add $11 trillion to global GDP by 2030. About $8 trillion of that would come directly from the 53 hitherto middling and underperforming emerging economies.

The remaining $3 trillion would come indirectly, as increased economic activity and income in the 53 nations affect global demand in advanced and outperforming emerging economies. The $11 trillion boost to global output amounts to roughly 10 percent of the world’s economy and would be equivalent to adding another China.

How credible is such a scenario? Tripling productivity growth rates is certainly an ambitious goal, but the precedent has already been set: this is what the 11 recent outperformers achieved between 1995 and 2015 compared with the baseline period of 1980 to 1995.

Geographic regions all have strengths and weaknesses in common—and all have the potential to strengthen their pro-growth cycles.

Across the varied global landscape, we can identify some individual countries that are aspiring newcomers to our list of outperformers. These are countries that are putting in place and strengthening their economic fundamentals, in accordance with the elements of our heat map. Some of them are already achieving GDP per capita growth that exceeded 3.5 percent in 2011 to 2016.

Five countries—Bangladesh, Bolivia, Philippines, Rwanda, and Sri Lanka—have exceeded the 3.5 percent annual per capita growth rate in 2011 to 2016 and also rank in the top 25 percent of our performance index.

A second cluster of countries consists of Kenya, Mozambique, Paraguay, Senegal, and Tanzania. These countries have moved into the top quartile of our economic performance scores, reflecting improvement in key productivity, income, and demand drivers, but they have not yet achieved consistent 3.5 percent GDP per capita growth.

Finally, two other countries achieve the 3.5 percent GDP growth benchmark, but their economic performance is less stellar, which puts them in the second quartile. They are the Republic of Côte d’Ivoire and Dominican Republic (Exhibit 5).

For the 18 outperformers we identified, meanwhile, congratulations are in order—but complacency is not. Even the best-performing regions in our analysis have room for economic improvement across a range of indicators.

As the global landscape evolves, developing countries will face changing trends that may make their passage to outperformance more challenging than, and in any case different from, the outperformers that went before them. Yet we still see plenty of opportunity in both individual countries and whole regions. Companies can seize the opportunity, as can policy makers.

For the sake of the global economy—and the hundreds of millions of people who continue to live in poverty and aspire to a more prosperous life, it is important that they do so.

#### Insufficient growth unravels interdependence and the liberal international order---causes populism and great power war.

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The rise of nationalism/populism is both cause and effect of this economic outlook. Lower growth will make every aspect of the liberal order more difficult to resuscitate post-Trump. Domestic politics will become more polarized and dysfunctional, as competition for diminishing resources intensifies. International collaboration, ad hoc or through institutions, will become politically toxic. Protectionism, in its multiple forms, will make economic recovery from “secular stagnation” a heavy lift, and the liberal hegemonic leadership and strong institutions that limited the damage of previous downturns, will be unavailable. A clear demonstration of this negative feedback loop is the economic damage being inflicted on the world by Trump’s trade war with China, which— despite the so-called phase one agreement—has predictably escalated from negotiating tactic to imbedded reality, with no end in sight. In a world already suffering from inadequate investment, the uncertainties generated by this confrontation will further curb the investments essential for future growth. Another demonstration of the intersection of structural forces is how populist-motivated controls on immigration (always a weakness in the hyper-globalization narrative) deprives developed countries of Summers’ recommended policy response to secular stagnation, which in a more open world would be a win-win for rich and poor countries alike, increasing wage rates and remittance revenues for the developing countries, replenishing the labor supply for rich countries experiencing low birth rates.

Illiberal Globalization

Economic weakness and rising nationalism (along with multipolarity) will not end globalization, but will profoundly alter its character and greatly reduce its economic and political benefits. Liberal global institutions, under American hegemony, have served multiple purposes, enabling states to improve the quality of international relations and more fully satisfy the needs of their citizens, and provide companies with the legal and institutional stability necessary to manage the inherent risks of global investment. But under present and future conditions these institutions will become the battlegrounds—and the victims—of geopolitical competition. The Trump Administration’s frontal attack on multilateralism is but the final nail in the coffin of the Bretton Woods system in trade and finance, which has been in slow but accelerating decline since the end of the Cold War. Future American leadership may embrace renewed collaboration in global trade and finance, macroeconomic management, environmental sustainability and the like, but repairing the damage requires the heroic assumption that America’s own identity has not been fundamentally altered by the Trump era (four years or eight matters here), and by the internal and global forces that enabled his rise. The fact will remain that a sizeable portion of the American electorate, and a monolithically pro-Trump Republican Party, is committed to an illiberal future. And even if the effects are transitory, the causes of weakening global collaboration are structural, not subject to the efforts of some hypothetical future US liberal leadership. It is clear that the US has lost respect among its rivals, and trust among its allies. While its economic and military capacity is still greatly superior to all others, its political dysfunction has diminished its ability to convert this wealth into effective power.13 It will furthermore operate in a future system of diffusing material power, diverging economic and political governance approaches, and rising nationalism. Trump has promoted these forces, but did not invent them, and future US Administrations will struggle to cope with them.

What will illiberal globalization look like? Consider recent events. The instruments of globalization have been weaponized by strong states in pursuit of their geopolitical objectives. This has turned the liberal argument on behalf of globalization on its head. Instead of interdependence as an unstoppable force pushing states toward collaboration and convergence around market-friendly domestic policies, states are exploiting interdependence to inflict harm on their adversaries, and even on their allies. The increasing interaction across national boundaries that globalization entails, now produces not harmonization and cooperation, but friction and escalating trade and investment disputes.14 The Trump Administration is in the lead here, but it is not alone. Trade and investment friction with China is the most obvious and damaging example, precipitated by China’s long failure to conform to the World Trade Organization (WTO) principles, now escalated by President Trump into a trade and currency war disturbingly reminiscent of the 1930s that Bretton Woods was designed to prevent. Financial sanctions against Iran, in violation of US obligations in the Joint Comprehensive Plan Of Action (JCPOA), is another example of the rule of law succumbing to geopolitical competition. Though more mercantilist in intent than geopolitical, US tariffs on steel and aluminum, and their threatened use in automotives, aimed at the EU, Canada, and Japan,15 are equally destructive of the liberal system and of future economic growth, imposed as they are by the author of that system, and will spread to others. And indeed, Japan has used export controls in its escalating conflict with South Korea16 (as did China in imposing controls on rare earth,17 and as the US has done as part of its trade war with China). Inward foreign direct investment restrictions are spreading. The vitality of the WTO is being sapped by its inability to complete the Doha Round, by the proliferation of bilateral and regional agreements, and now by the Trump Administration’s hold on appointments to WTO judicial panels. It should not surprise anyone if, during a second term, Trump formally withdrew the US from the WTO. At a minimum it will become a “dead letter regime.”18

As such measures gain traction, it will become clear to states—and to companies—that a global trading system more responsive to raw power than to law entails escalating risk and diminishing benefits. This will be the end of economic globalization, and its many benefits, as we know it. It represents nothing less than the subordination of economic globalization, a system which many thought obeyed its own logic, to an international politics of zero-sum power competition among multiple actors with divergent interests and values. The costs will be significant: Bloomberg Economics estimates that the cost in lost US GDP in 2019- dollar terms from the trade war with China has reached $134 billion to date and will rise to a total of $316 billion by the end of 2020.19

Economically, the just-in-time, maximally efficient world of global supply chains, driving down costs, incentivizing innovation, spreading investment, integrating new countries and populations into the global system, is being Balkanized. Bilateral and regional deals are proliferating, while global, nondiscriminatory trade agreements are at an end. Economies of scale will shrink, incentivizing less investment, increasing costs and prices, compromising growth, marginalizing countries whose growth and poverty reduction depended on participation in global supply chains. A world already suffering from excess savings (in the corporate sector, among mostly Asian countries) will respond to heightened risk and uncertainty with further retrenchment. The problem is perfectly captured by Tim Boyle, CEO of Columbia Sportswear, whose supply chain runs through China, reacting to yet another ratcheting up of US tariffs on Chinese imports, most recently on consumer goods:

We move stuff around to take advantage of inexpensive labor. That’s why we’re in Bangladesh. That’s why we’re looking at Africa. We’re putting investment capital to work, to get a return for our shareholders. So, when we make a wager on investment, this is not Vegas. We have to have a reasonable expectation we can get a return. That’s predicated on the rule of law: where can we expect the laws to be enforced, and for the foreseeable future, the rules will be in place? That’s what America used to be.20

The international political effects will be equally damaging. The four structural forces act on each other to produce the more dangerous, less prosperous world projected here. Illiberal globalization represents geopolitical conflict by (at first) physically non-kinetic means. It arises from intensifying competition among powerful states with divergent interests and identities, but in its effects drives down growth and fuels increased nationalism/populism, which further contributes to conflict. Twenty-first-century protectionism represents bottom-up forces arising from economic disruption. But it is also a top-down phenomenon, representing a strategic effort by political leadership to reduce the constraints of interdependence on freedom of geopolitical action, in effect a precursor and enabler of war. This is the disturbing hypothesis of Daniel Drezner, argued in an important May 2019 piece in Reason, titled “Will Today’s Global Trade Wars Lead to World War Three,”21 which examines the pre-World War I period of heightened trade conflict, its contribution to the disaster that followed, and its parallels to the present:

Before the First World War started, powers great and small took a variety of steps to thwart the globalization of the 19th century. Each of these steps made it easier for the key combatants to conceive of a general war.

We are beginning to see a similar approach to the globalization of the 21st century. One by one, the economic constraints on military aggression are eroding. And too many have forgotten—or never knew—how this played out a century ago.

…In many ways, 19th century globalization was a victim of its own success. Reduced tariffs and transport costs flooded Europe with inexpensive grains from Russia and the United States. The incomes of landowners in these countries suffered a serious hit, and the Long Depression that ran from 1873 until 1896 generated pressure on European governments to protect against cheap imports.

…The primary lesson to draw from the years before 1914 is not that economic interdependence was a weak constraint on military conflict. It is that, even in a globalized economy, governments can take protectionist actions to reduce their interdependence in anticipation of future wars.

In retrospect, the 30 years of tariff hikes, trade wars, and currency conflicts that preceded 1914 were harbingers of the devastation to come. European governments did not necessarily want to ignite a war among the great powers. By reducing their interdependence, however, they made that option conceivable.

…the backlash to globalization that preceded the Great War seems to be reprised in the current moment. Indeed, there are ways in which the current moment is scarier than the pre-1914 era. Back then, the world’s hegemon, the United Kingdom, acted as a brake on economic closure. In 2019, the United States is the protectionist with its foot on the accelerator. The constraints of Sino-American interdependence—what economist Larry Summers once called “the financial balance of terror”—no longer look so binding. And there are far too many hot spots—the Korean peninsula, the South China Sea, Taiwan—where the kindling seems awfully dry.

#### Populism causes nuclear war---extinction.

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Introduction

The rise of nationalist populists[1](https://www.tandfonline.com/doi/full/10.1080/10736700.2020.1864932) to power in nuclear-armed states and their allies is undermining the nuclear order and raising the risks of nuclear war. That populists such as Boris Johnson, Narendra Modi, Vladimir Putin, and Donald Trump were able to take charge of nuclear arsenals, including in some of the nuclear powers recognized under the 1968 Treaty on the Non-Proliferation of Nuclear Weapons (NPT), challenges the assumption that established nuclear-weapon states behave responsibly. Nationalist populism,[2](https://www.tandfonline.com/doi/full/10.1080/10736700.2020.1864932) understood as a nationalist, anti-elitist, illiberal, and anti-pluralist set of ideas and politics conducted in the supposed interests of “the people”—that is, the domestic constituencies of the nationalist-populist leaders—has been on the rise globally since the mid-2000s. It has come to include the leadership of a growing number of countries[3](https://www.tandfonline.com/doi/full/10.1080/10736700.2020.1864932) and has begun to influence the effectiveness of time-honored institutions of the nuclear order.

We argue that this rise of nationalist populists and their foreign and defense policies weakens the nuclear order in novel, significant, and persistent ways. Three characteristics are typical of nationalist populists’ nuclear policies: they talk differently about nuclear weapons; they have a specific way of getting involved in national decision making on nuclear-weapon issues; and their approach to international alliances and institutions is unique. The fact that nationalist-populist leaders have assumed control over nuclear weapons in countries at the core of the nuclear order shatters the presumed distinction between “responsible” and “irresponsible” nuclear powers. These leaders threaten the nuclear order built on the principled acceptance of a logic of restraint by the nuclear-weapon states.

Although it highlights the risks associated with populists’ control over nuclear weapons, this article does not aspire to a radical critique of the nuclear order.[4](https://www.tandfonline.com/doi/full/10.1080/10736700.2020.1864932) Our aim is to show that the rise of populists to the centers of power in nuclear-armed states challenges prevailing presumptions about nuclear risks and how they are to be managed. The view that a few responsible nuclear-armed states guard against irresponsible behavior by states mostly peripheral to the nuclear order is no longer defensible, if it ever was. Nationalist populists thus starkly expose the dangers intrinsically linked to nuclear weapons, regardless of regime type and the position of nuclear-weapon possessors in the international system.

We understand nationalist populists to be leaders who claim to implement policies to defend the interests of their constituencies, which they brand as “the people,” against supposed foreign and internal elites in order to bolster national sovereignty. Nationalist-populist leaders who had or have nuclear weapons under their control include former US President Donald Trump, British Prime Minister Boris Johnson, Indian Prime Minister Narendra Modi, and Russian President Vladimir Putin.[5](https://www.tandfonline.com/doi/full/10.1080/10736700.2020.1864932) We concentrate our analysis on these four nationalist-populist leaders, who have shaped foreign and defense policies—and particularly nuclear-weapon policies—in key nuclear-possessor states.[6](https://www.tandfonline.com/doi/full/10.1080/10736700.2020.1864932) The 2016 election of Donald Trump, a populist by any measure, is of particular significance, since the United States has consistently been the state with the largest ability to uphold and strengthen the institutions and practices that underpin the nuclear order.

Former Prime Minister Benjamin Netanyahu of Israel and Prime Minister Imran Khan of Pakistan are also nationalist populists. Israel, however, has a policy of nuclear opacity, under which it does not acknowledge possession of nuclear weapons.[7](https://www.tandfonline.com/doi/full/10.1080/10736700.2020.1864932) This made it impossible for Netanyahu to openly use nuclear weapons as a policy instrument in the same manner as other populists do. In Pakistan, the civilian leadership has only limited influence over nuclear-weapon policies because nuclear command and control rests with the armed forces.[8](https://www.tandfonline.com/doi/full/10.1080/10736700.2020.1864932)

Chinese President Xi Jinping and North Korean leader Kim Jong Un are also often described as populists.[9](https://www.tandfonline.com/doi/full/10.1080/10736700.2020.1864932) Both leaders frequently use nationalist rhetoric, which resembles the populists’ style. However, we do not classify either as a nationalist populist because they do not rely on an internal in-group versus out-group dichotomy to justify their leadership. In autocratic regimes, such as those in China and North Korea, the leader holds absolute power and does not need to appeal to popular sovereignty or to employ other populist strategies.

In France, the Front National, now Rassemblement National, is an influential nationalist-populist movement. Opposition leader Marine Le Pen has promised to “restore the full meaning of the ‘force de frappe’” and reinvigorate national sovereignty through nuclear deterrence.[10](https://www.tandfonline.com/doi/full/10.1080/10736700.2020.1864932) A populist turn in French nuclear policies therefore remains a distinct possibility.

In two of the five nations that host US nuclear weapons under NATO nuclear-sharing arrangements, populists are in power (Turkey) or part of a government (Italy). In a third host nation, Belgium, a right-wing populist party has very recently been part of the government. In Germany, until the September 2021 parliamentary elections, a right-wing populist party was the strongest parliamentary opposition party.[11](https://www.tandfonline.com/doi/full/10.1080/10736700.2020.1864932)

While populism, and particularly nationalist populism, has been on the rise in nuclear-armed states, three major developments in the background have reshaped the nuclear order. We understand this order to be characterized by the continuous search for accommodation between the goals of nuclear disarmament, on the one hand, and stability based on nuclear-deterrence relationships, on the other hand, through a policy of restraint and responsible behavior, particularly by the five nuclear-weapon states recognized under the NPT.[12](https://www.tandfonline.com/doi/full/10.1080/10736700.2020.1864932) First, a more multipolar logic has begun to replace the primarily bipolar Cold War nuclear structure. In particular, the rise of new challengers to US hegemony has produced new power constellations.[13](https://www.tandfonline.com/doi/full/10.1080/10736700.2020.1864932) Second, new actors, including transnational non-state groups, are challenging the predominance of governments and pose new threats, particularly if those actors strive to acquire weapons of mass destruction. Third, the emergence of new military technologies has weakened strategic stability. For example, the entanglement of novel conventional and nuclear warfighting capabilities threatens to destabilize long-standing mutual-deterrence relationships, particularly between Russia and the United States, on the one hand, and between China and the United States, on the other hand.[14](https://www.tandfonline.com/doi/full/10.1080/10736700.2020.1864932)

All three developments, and the interrelations among them, already are increasing nuclear dangers and unsettling the existing nuclear-deterrence relationships. The rise of nationalist populism and populists to power is a recent fourth development that adds to and amplifies these risks.

#### U.S.-China war goes nuclear.

Talmadge 18, Associate Professor of Security Studies at the Edmund A. Walsh School of Foreign Service at Georgetown University. (Caitlin, 10/15/18, "Beijing’s Nuclear Option: Why a U.S.-Chinese War Could Spiral Out of Control", *Foreign Affairs*, https://www.foreignaffairs.com/articles/china/2018-10-15/beijings-nuclear-option)

As China’s power has grown in recent years, so, too, has the risk of war with the United States. Under President Xi Jinping, China has increased its political and economic pressure on Taiwan and built military installations on coral reefs in the South China Sea, fueling Washington’s fears that Chinese expansionism will threaten U.S. allies and influence in the region. U.S. destroyers have transited the Taiwan Strait, to loud protests from Beijing. American policymakers have wondered aloud whether they should send an aircraft carrier through the strait as well. Chinese fighter jets have intercepted U.S. aircraft in the skies above the South China Sea. Meanwhile, U.S. President Donald Trump has brought long-simmering economic disputes to a rolling boil.

A war between the two countries remains unlikely, but the prospect of a military confrontation—resulting, for example, from a Chinese campaign against Taiwan—no longer seems as implausible as it once did. And the odds of such a confrontation going nuclear are higher than most policymakers and analysts think.

Members of China’s strategic com­munity tend to dismiss such concerns. Likewise, U.S. studies of a potential war with China often exclude nuclear weapons from the analysis entirely, treating them as basically irrelevant to the course of a conflict. Asked about the issue in 2015, Dennis Blair, the former commander of U.S. forces in the Indo-Pacific, estimated the likelihood of a U.S.-Chinese nuclear crisis as “somewhere between nil and zero.”

This assurance is misguided. If deployed against China, the Pentagon’s preferred style of conventional warfare would be a potential recipe for nuclear escalation. Since the end of the Cold War, the United States’ signature approach to war has been simple: punch deep into enemy territory in order to rapidly knock out the opponent’s key military assets at minimal cost. But the Pentagon developed this formula in wars against Afghanistan, Iraq, Libya, and Serbia, none of which was a nuclear power.

China, by contrast, not only has nuclear weapons; it has also intermingled them with its conventional military forces, making it difficult to attack one without attacking the other. This means that a major U.S. military campaign targeting China’s conventional forces would likely also threaten its nuclear arsenal. Faced with such a threat, Chinese leaders could decide to use their nuclear weapons while they were still able to.

As U.S. and Chinese leaders navigate a relationship fraught with mutual suspicion, they must come to grips with the fact that a conventional war could skid into a nuclear confrontation. Although this risk is not high in absolute terms, its consequences for the region and the world would be devastating. As long as the United States and China continue to pursue their current grand strategies, the risk is likely to endure. This means that leaders on both sides should dispense with the illusion that they can easily fight a limited war. They should focus instead on managing or resolving the political, economic, and military tensions that might lead to a conflict in the first place.

A NEW KIND OF THREAT

There are some reasons for optimism. For one, China has long stood out for its nonaggressive nuclear doctrine. After its first nuclear test, in 1964, China largely avoided the Cold War arms race, building a much smaller and simpler nuclear arsenal than its resources would have allowed. Chinese leaders have consistently characterized nuclear weapons as useful only for deterring nuclear aggression and coercion. Historically, this narrow purpose required only a handful of nuclear weapons that could ensure Chinese retaliation in the event of an attack. To this day, China maintains a “no first use” pledge, promising that it will never be the first to use nuclear weapons.

The prospect of a nuclear conflict can also seem like a relic of the Cold War. Back then, the United States and its allies lived in fear of a Warsaw Pact offensive rapidly overrunning Europe. NATO stood ready to use nuclear weapons first to stalemate such an attack. Both Washington and Moscow also consistently worried that their nuclear forces could be taken out in a bolt-from-the-blue nuclear strike by the other side. This mutual fear increased the risk that one superpower might rush to launch in the erroneous belief that it was already under attack. Initially, the danger of unauthorized strikes also loomed large. In the 1950s, lax safety procedures for U.S. nuclear weapons stationed on NATO soil, as well as minimal civilian oversight of U.S. military commanders, raised a serious risk that nuclear escalation could have occurred without explicit orders from the U.S. president.

The good news is that these Cold War worries have little bearing on U.S.-Chinese relations today. Neither country could rapidly overrun the other’s territory in a conventional war. Neither seems worried about a nuclear bolt from the blue. And civilian political control of nuclear weapons is relatively strong in both countries. What remains, in theory, is the comforting logic of mutual deterrence: in a war between two nuclear powers, neither side will launch a nuclear strike for fear that its enemy will respond in kind.

The bad news is that one other trigger remains: a conventional war that threatens China’s nuclear arsenal. Conventional forces can threaten nuclear forces in ways that generate pressures to escalate—especially when ever more capable U.S. conventional forces face adversaries with relatively small and fragile nuclear arsenals, such as China. If U.S. operations endangered or damaged China’s nuclear forces, Chinese leaders might come to think that Washington had aims beyond winning the conventional war—that it might be seeking to ~~disable~~ or destroy China’s nuclear arsenal outright, perhaps as a prelude to regime change. In the fog of war, Beijing might reluctantly conclude that limited nuclear escalation—an initial strike small enough that it could avoid full-scale U.S. retaliation—was a viable option to defend itself.

STRAIT SHOOTERS

The most worrisome flash point for a U.S.-Chinese war is Taiwan. Beijing’s long-term objective of reunifying the island with mainland China is clearly in conflict with Washington’s longstanding desire to maintain the status quo in the strait. It is not difficult to imagine how this might lead to war. For example, China could decide that the political or military window for regaining control over the island was closing and launch an attack, using air and naval forces to blockade Taiwanese harbors or bombard the island. Although U.S. law does not require Washington to intervene in such a scenario, the Taiwan Relations Act states that the United States will “consider any effort to determine the future of Taiwan by other than peaceful means, including by boycotts or embargoes, a threat to the peace and security of the Western Pacific area and of grave concern to the United States.” Were Washington to intervene on Taipei’s behalf, the world’s sole superpower and its rising competitor would find themselves in the first great-power war of the twenty-first century.

In the course of such a war, U.S. conventional military operations would likely threaten, ~~disable~~, or outright eliminate some Chinese nuclear capabilities—whether doing so was Washington’s stated objective or not. In fact, if the United States engaged in the style of warfare it has practiced over the last 30 years, this outcome would be all but guaranteed.

Consider submarine warfare. China could use its conventionally armed attack submarines to blockade Taiwanese harbors or bomb the island, or to attack U.S. and allied forces in the region. If that happened, the U.S. Navy would almost certainly undertake an antisubmarine campaign, which would likely threaten China’s “boomers,” the four nuclear-armed ballistic missile submarines that form its naval nuclear deterrent. China’s conventionally armed and nuclear-armed submarines share the same shore-based communications system; a U.S. attack on these transmitters would thus not only disrupt the activities of China’s attack submarine force but also cut off its boomers from contact with Beijing, leaving Chinese leaders unsure of the fate of their naval nuclear force. In addition, nuclear ballistic missile submarines depend on attack submarines for protection, just as lumbering bomber aircraft rely on nimble fighter jets. If the United States started sinking Chinese attack submarines, it would be sinking the very force that protects China’s ballistic missile submarines, leaving the latter dramatically more vulnerable.

Even more dangerous, U.S. forces hunting Chinese attack submarines could inadvertently sink a Chinese boomer instead. After all, at least some Chinese attack submarines might be escorting ballistic missile submarines, especially in wartime, when China might flush its boomers from their ports and try to send them within range of the continental United States. Since correctly identifying targets remains one of the trickiest challenges of undersea warfare, a U.S. submarine crew might come within shooting range of a Chinese submarine without being sure of its type, especially in a crowded, noisy environment like the Taiwan Strait. Platitudes about caution are easy in peacetime. In wartime, when Chinese attack submarines might already have launched deadly strikes, the U.S. crew might decide to shoot first and ask questions later.

Adding to China’s sense of vulnerability, the small size of its nuclear-armed submarine force means that just two such incidents would eliminate half of its sea-based deterrent. Meanwhile, any Chinese boomers that escaped this fate would likely be cut off from communication with onshore commanders, left without an escort force, and unable to return to destroyed ports. If that happened, China would essentially have no naval nuclear deterrent.

The situation is similar onshore, where any U.S. military campaign would have to contend with China’s growing land-based conventional ballistic missile force. Much of this force is within range of Taiwan, ready to launch ballistic missiles against the island or at any allies coming to its aid. Once again, U.S. victory would hinge on the ability to degrade this conventional ballistic missile force. And once again, it would be virtually impossible to do so while leaving China’s nuclear ballistic missile force unscathed. Chinese conventional and nuclear ballistic missiles are often attached to the same base headquarters, meaning that they likely share transportation and supply networks, patrol routes, and other supporting infrastructure. It is also possible that they share some command-and-control networks, or that the United States would be unable to distinguish between the conventional and nuclear networks even if they were physically separate.

To add to the challenge, some of China’s ballistic missiles can carry either a conventional or a nuclear warhead, and the two versions are virtually indistinguishable to U.S. aerial surveillance. In a war, targeting the conventional variants would likely mean destroying some nuclear ones in the process. Furthermore, sending manned aircraft to attack Chinese missile launch sites and bases would require at least partial control of the airspace over China, which in turn would require weakening Chinese air defenses. But degrading China’s coastal air defense network in order to fight a conventional war would also leave much of its nuclear force without protection.

Once China was under attack, its leaders might come to fear that even intercontinental ballistic missiles located deep in the country’s interior were vulnerable. For years, observers have pointed to the U.S. military’s failed attempts to locate and destroy Iraqi Scud missiles during the 1990–91 Gulf War as evidence that mobile missiles are virtually impervious to attack. Therefore, the thinking goes, China could retain a nuclear deterrent no matter what harm U.S. forces inflicted on its coastal areas. Yet recent research suggests otherwise. Chinese intercontinental ballistic missiles are larger and less mobile than the Iraqi Scuds were, and they are harder to move without detection. The United States is also likely to have been tracking them much more closely in peacetime. As a result, China is unlikely to view a failed Scud hunt in Iraq nearly 30 years ago as reassurance that its residual nuclear force is safe today, especially during an ongoing, high-intensity conventional war.

China’s vehement criticism of a U.S. regional missile defense system designed to guard against a potential North Korean attack already reflects these latent fears. Beijing’s worry is that this system could help Washington block the handful of missiles China might launch in the aftermath of a U.S. attack on its arsenal. That sort of campaign might seem much more plausible in Beijing’s eyes if a conventional war had already begun to seriously undermine other parts of China’s nuclear deterrent. It does not help that China’s real-time awareness of the state of its forces would probably be limited, since blinding the adversary is a standard part of the U.S. military playbook.

Put simply, the favored U.S. strategy to ensure a conventional victory would likely endanger much of China’s nuclear arsenal in the process, at sea and on land. Whether the United States actually intended to target all of China’s nuclear weapons would be incidental. All that would matter is that Chinese leaders would consider them threatened.

LESSONS FROM THE PAST

At that point, the question becomes, How will China react? Will it practice restraint and uphold the “no first use” pledge once its nuclear forces appear to be under attack? Or will it use those weapons while it still can, gambling that limited escalation will either halt the U.S. campaign or intimidate Washington into backing down?

Chinese writings and statements remain deliberately ambiguous on this point. It is unclear which exact set of capabilities China considers part of its core nuclear deterrent and which it considers less crucial. For example, if China already recognizes that its sea-based nuclear deterrent is relatively small and weak, then losing some of its ballistic missile submarines in a war might not prompt any radical discontinuity in its calculus.

The danger lies in wartime developments that could shift China’s assumptions about U.S. intentions. If Beijing interprets the erosion of its sea- and land-based nuclear forces as a deliberate effort to destroy its nuclear deterrent, or perhaps even as a prelude to a nuclear attack, it might see limited nuclear escalation as a way to force an end to the conflict. For example, China could use nuclear weapons to instantaneously destroy the U.S. air bases that posed the biggest threat to its arsenal. It could also launch a nuclear strike with no direct military purpose—on an unpopulated area or at sea—as a way to signal that the United States had crossed a redline.

#### Slow growth collapses the EU.

Kempe 19, \*Fred Kempe is the President and Chief Executive Officer of the Atlantic Council; (May 24th, 2019, “Europeans go to polls, but real dangers are slow growth, declining clout and uninspired leadership”, https://www.cnbc.com/2019/05/24/european-union-real-dangers-are-slow-growth-declining-clout-uninspired-leadership.html)

The best Europe in history is facing some of its greatest challenges ever. They will test the sustainability, effectiveness and relevance of the European Union and its related institutions that helped end centuries of conflict.

Despite all the focus on this week’s European parliamentary elections – the most closely watched and most widely reported in their four-decade run – this vote shouldn’t distract anyone from the more existential questions facing Europe.

The dangers are deep and fall under three, broad categories: consistently slow economic growth, declining global relevance and unimaginative political leadership.

The good news is that European leaders and citizens can address all three, and European parliamentary elections might even help more than they hurt by creating a more democratically dynamic and truly European body that is closer to its constituents.

The bad news is that most European leaders and citizens continue to live in denial, insufficiently aware of the fragility of their historic accomplishments and inadequately motivated to make the decisions that could build on the past 74 years of European peace and progress.

Even worse, few in the Trump administration – least of all President Donald Trump himself – are willing to say loudly and publicly that today’s Europe is one of the greatest foreign policy accomplishments in American history, achieved at a considerable cost of blood and treasure through two world wars and a Cold War that followed.

Fast-forward to today. The stakes have rarely been greater for U.S.-European relations as we enter a new and intensifying period of major power competition, pitting democracies and open societies against autocratic rivals.

We confront a historic inflection point as significant as 1919, 1945 and 1989, and just as then Europe is at the center of a global contest and the United States remains a crucial actor in how that unfolds. Whatever challenges the West faces in the 21st century – ideological, economic, technological and geopolitical – all are playing out again in full force on the European continent.

As the financier George Soros has [argued](https://www.project-syndicate.org/commentary/political-party-systems-undermining-european-union-by-george-soros-2019-02), “Europe is sleepwalking into oblivion, and the people of Europe need to wake up before it is too late. If they don’t, the European Union will go the way of the Soviet Union in 1991. Neither our leaders nor ordinary citizens seem to understand we are experiencing a revolutionary moment, that the range of possibilities is very broad, and that the eventual outcome is thus highly uncertain.”

Share that warning with most Eurocrats in Brussels or officials in European capitals, and they’ll roll their eyes. They’ll remind you that critics – and particularly Americans – have been underestimating the European Union since its beginning and should drop outdated, apocalyptic thinking about their future.

I share the view that this European project, at age 74, is more robust and resilient than doomsayers recognize. Indeed, even as many worry that Eurosceptic and nationalist parties will surge in this weekend’s elections, far-right populist parties, except in the UK, have shifted away from seeking a way out of the European Union to wanting to change it from within.

This vote is perhaps the most truly European in the European Union’s history, with ideological battle lines being drawn across national borders. The result is likely to be a more factionalized European parliament with more pronounced disputes. However, it at the same time will be a more democratically dynamic, political and pan-European parliament, one that more closely reflects the preferences of national electorates and thus might increase confidence in the EU.

That, however, will only happen if they and national political leaders address the three broad issues listed above.

Slow economic growth

It’s no wonder that populists are gaining ground against established parties that haven’t delivered results. If the eurozone’s GDP over the past decade were a stock, you wouldn’t want to own it. Eurozone economic output in 2017 was lower than it was in 2009, according to World Bank figures. Looking at the considerable political risks ahead, the Atlantic Council’s Ben Haddad judges that stock as “high risk, low returnn risks ahead

By comparison, Chinese GDP over that same period grew by 139%, India’s GDP by 96% and the United States’ by 34%. The European Commission has [cut](http://europa.eu/rapid/press-release_IP-19-2388_en.htm) the 2019 eurozone growth forecast to 1.2% from an already unimpressive [1.9%](https://ec.europa.eu/commission/news/commission-publishes-autumn-2018-economic-forecast-2018-nov-08_en) -- with [concerns](https://www.wsj.com/articles/germanys-economy-rebounds-despite-darkening-trade-outlook-11557912905) over Germany’s economic strength abound.

“And there are strong signals that worse is to come,” [says](https://www.project-syndicate.org/commentary/european-parliament-elections-eu-reform-by-ana-palacio-2019-05?a_la=english&amp;a_d=5ce56f174f47733ae094e2b6&amp;a_m=&amp;a_a=click&amp;a_s=&amp;a_p=homepage&amp;a_li=european-parliament-elections-eu-reform-by-ana-palacio-2019-05&amp;a_pa=curated&amp;a_ps=) Ana Palacio, former Spanish foreign minister. “Debt levels are rising fast and the European Central Bank has re-launched stimulus measures to stave off recession.”

Unlike the financial crisis of a decade ago, where the pain was concentrated in southern Europe, this one will hit the eurozone generally and, most dangerously, Germany. “The European Union barely survived the first crisis,” says Palacio. “A recession that hits the EU core would amount to a serious, even existential threat.”

#### EU collapse causes World War III.

Gommes 11, former Columbia Law Review senior editor, publisher of Periscope Post, former corporate lawyer (Thomas, “Eurozone in crisis: The death of the euro could trigger World War III,” [www.periscopepost.com/2011/12/eurozone-in-crisis-the-death-of-the-euro-could-trigger-world-war-iii/](http://www.periscopepost.com/2011/12/eurozone-in-crisis-the-death-of-the-euro-could-trigger-world-war-iii/))

Eurozone in crisis: The death of the euro could trigger World War III

The slow-motion demise of the euro isn’t just financial Armageddon – it could just be one step down the slippery path to World War III. At the risk of being accused of scaremongering, I’ll state my point simply and up front: Things in Europe are not as bad as they seem – they’re worse. And though the commentariat is queuing up to predict the imminent demise of the euro currency and to lament the ongoing recession, that’s not even the half of it: We’re looking at World War III. As major corporations start drawing up contingency plans for a world without the euro and as weaknesses in government finances become ever more glaring, the end of the euro currency becomes an increasingly realistic prospect. Related, the total absence of business growth, or trading among European nations raises the question of what benefits a unified trading block offers. The driving motive behind the original Coal and Steel alliance that ultimately became today’s European Union was a desire among nations, traumatised by the worst war in their collective history, to provide a deterrent against another war. My concern is that that trauma has faded, and that the fear of war has been replaced by the fear of recession. As anyone with even a fleeting familiarity with European history can confirm, ours is not exactly a history of love and peace. In fact, the period since the end of World War II has been probably the longest period of relative peace the region has ever known. Arguably, it’s no coincidence that that period of peace has coincided exactly with the ever strengthening ties that have been forged between European nations over these past 60 years. If the bonds that tie European nations together are weakened, the incentives to avoid total war dwindle. And its not as dramatic or far fetched a theory as it may at first sound. The end of the euro currency and a reversion to national currencies could quite possibly provide the impetus for a further dissolution of the union. The unraveling of painstakingly negotiated ties becomes easier and easier as each strand frays and breaks. Combine this unraveling with an ongoing or even deepening recession, and it all makes for a combustible atmosphere. Unfortunately, it is human nature to blame others for our woes. In an environment of unemployment, austerity, and general resentment, it is not difficult to imagine nations starting to point the finger at their neighbours. And without the unifying effect of a common currency, thriving trading relations, free movement of peoples, and common interests, Europe would find itself increasingly susceptible to war. Moreover, as so few Europeans in my generation, let alone subsequent generations, have even the slightest inkling about how horrific war is, it may be tempting to consider it as a solution to problems, or at minimum an acceptable response to perceived slights.

#### The liberal international order is key to rogue tech regulation---extinction.

Harari 18, \*Yuval Noah Harari, Professor of History at Hebrew University of Jerusalem; (September 26th, 2018, “We need a post-liberal order now,” The Economist, <https://www.economist.com/open-future/2018/09/26/we-need-a-post-liberal-order-now>)

Even more importantly, whether people like it or not, humankind today faces three common problems that make a mockery of all national borders, and that can only be solved through global cooperation. These are nuclear war, climate change and technological disruption. You cannot build a wall against nuclear winter or against global warming, and no nation can regulate artificial intelligence (AI) or bioengineering single-handedly. It won’t be enough if only the European Union forbids producing killer robots or only America bans genetically-engineering human babies. Due to the immense potential of such disruptive technologies, if even one country decides to pursue these high-risk high-gain paths, other countries will be forced to follow its dangerous lead for fear of being left behind.

An AI arms race or a biotechnological arms race almost guarantees the worst outcome. Whoever wins the arms race, the loser will likely be humanity itself. For in an arms race, all regulations will collapse. Consider, for example, conducting genetic-engineering experiments on human babies. Every country will say: “We don’t want to conduct such experiments—we are the good guys. But how do we know our rivals are not doing it? We cannot afford to remain behind. So we must do it before them.”

Similarly, consider developing autonomous-weapon systems, that can decide for themselves whether to shoot and kill people. Again, every country will say: “This is a very dangerous technology, and it should be regulated carefully. But we don’t trust our rivals to regulate it, so we must develop it first”.

The only thing that can prevent such destructive arms races is greater trust between countries. This is not an impossible mission. If today the Germans promise the French: “Trust us, we aren’t developing killer robots in a secret laboratory under the Bavarian Alps,” the French are likely to believe the Germans, despite the terrible history of these two countries. We need to build such trust globally. We need to reach a point when Americans and Chinese can trust one another like the French and Germans.

Similarly, we need to create a global safety-net to protect humans against the economic shocks that AI is likely to cause. Automation will create immense new wealth in high-tech hubs such as Silicon Valley, while the worst effects will be felt in developing countries whose economies depend on cheap manual labor. There will be more jobs to software engineers in California, but fewer jobs to Mexican factory workers and truck drivers. We now have a global economy, but politics is still very national. Unless we find solutions on a global level to the disruptions caused by AI, entire countries might collapse, and the resulting chaos, violence and waves of immigration will destabilise the entire world.

This is the proper perspective to look at recent developments such as Brexit. In itself, Brexit isn’t necessarily a bad idea. But is this what Britain and the EU should be dealing with right now? How does Brexit help prevent nuclear war? How does Brexit help prevent climate change? How does Brexit help regulate artificial intelligence and bioengineering? Instead of helping, Brexit makes it harder to solve all of these problems. Every minute that Britain and the EU spend on Brexit is one less minute they spend on preventing climate change and on regulating AI.

In order to survive and flourish in the 21st century, humankind needs effective global cooperation, and so far the only viable blueprint for such cooperation is offered by liberalism. Nevertheless, governments all over the world are undermining the foundations of the liberal order, and the world is turning into a network of fortresses. The first to feel the impact are the weakest members of humanity, who find themselves without any fortress willing to protect them: refugees, illegal migrants, persecuted minorities. But if the walls keep rising, eventually the whole of humankind will feel the squeeze.

### 1AC---Solvency

#### Finally, solvency:

#### Plan: The United States federal government should substantially increase prohibitions on anticompetitive private naked price-fixing practices in cases where foreign plaintiffs cannot secure adequate relief in alternative fora.

#### The plan permits jurisdiction over *Empagran*-type cases only in instances where foreign plaintiffs don’t have an alternative forum for recovering damages---that maximizes cartel deterrence through harmonization of antitrust laws and preserves judicial economy.

Schmidt 6, \*Jonathan T. Schmidt. Antitrust lawyer. Master’s in Public Affairs from the Princeton School of Public and International Affairs. JD from Yale Law School. Former Fulbright Fellow in Peru, where he studied micro-enterprise lending; (2006, “Keeping U.S. Courts Open to Foreign Antitrust Plaintiffs: A Hybrid Approach to the Effective Deterrence of International Cartels.” <https://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1266&context=yjil>)

5. A New Approach to the Empagran Problem: Legislative Authorization to the Executive Branch To Limit Jurisdiction Based on the Principles of Foreign Non Conveniens

A better approach would systematize the executive branch's review of other countries' antitrust regimes, apply that executive determination categorically over a class of cases, and remove judicial discretion with respect to complying with that executive determination. Accordingly, I recommend that the DOJ 2 7 6 should annually review other countries' antitrust regimes to determine whether they provide private parties an adequate forum to recover damages from cartel activities. Congress should amend 277 section 12 of the Clayton Act to bar jurisdiction in cases involving international cartels in which (1) neither the plaintiff nor the defendant is a national of the United States, and (2) the plaintiff or defendant is a national of a country that the DOJ currently lists as one that provides plaintiffs with an adequate private remedy in the antitrust claim, except (3) when that country permits United States jurisdiction for reasons of judicial economy. Such a law would promote international judicial economy in a transparent and predictable manner that prevents forum shopping without greatly reducing the deterrent effect of United States law.

The principles underlying this proposed law are those of the doctrine of forum non conveniens as articulated in Piper. Thus, if plaintiffs can secure relief in their domestic courts for antitrust violations that involve foreign harms, they should not be able to sue a foreign defendant in U.S. courts simply because the damages available there may be more favorable. However, when a foreign plaintiff cannot secure relief in her domestic courts--either because the courts do not permit jurisdiction over the claims or because the statutory relief is not actually available-she should first turn to the court system in which the foreign defendant is located. Again, this result would accord with a concern for convenience and judicial economy. Only if the plaintiff cannot receive adequate relief in her home forum or the defendant's home forum should U.S. courts exercise jurisdiction, assuming the requisite showing of a link to domestic effect is made. Such an exercise of jurisdiction would not be an act of charity toward the plaintiff; it would recognize that affording such plaintiffs an opportunity for relief somewhere is necessary to deter the international cartels that harm American consumers and businesses.

Such a restriction of jurisdiction would not affect the ability of American plaintiffs to bring antitrust claims against anyone in the world, nor would it prevent U.S. courts from exercising jurisdiction over cases involving American defendants. Instead, this restriction on jurisdiction would apply only when neither the plaintiff nor the defendant was an American. In such situations, the United States retains an interest in ensuring that plaintiffs can receive adequate compensation because of its deterrent effect on international cartels that affect the United States. However, if such claims could be better heard before a foreign court, the United States should decline jurisdiction because of convenience and judicial economy.279

The DOJ's annual review of other countries' private antitrust remedies should be more than a broad "thumbs-up, thumbs-down" review; it should distinguish the types of claims for which a country's relief is adequate from those for which it is inadequate. For example, although Canada has a strong anti-cartel regime, it also protects its domestic export cartels.280 Such protectionist policies-of which the FTAIA is one-do not enhance worldwide deterrence,28' and when implemented by foreign governments, they specifically do not deter conduct harming American consumers. Therefore, the DOJ would list Canada as a country that provides an adequate forum except in cases involving Canadian export cartels. Similarly, other countries may not permit foreign plaintiffs to sue their domestic firms for participating in an international cartel, though domestic plaintiffs can bring such actions. In these situations, the DOJ would list those countries as providing an adequate forum for domestic plaintiffs, but U.S. jurisdiction would be permitted if the plaintiffs were foreigners who also lacked an adequate forum in their home country.

The definition of "adequate" relief is an important component of this proposal. Consistent with the principles of forum non conveniens articulated in Piper, the United States should not require that countries provide treble damages. The United States should decline jurisdiction in anti-cartel actions so long as plaintiffs can recover at least compensatory damages. America's mandatory treble damages regime is based on a policy choice in the United States regarding the proper mix of public and private enforcement. The fact that other governments do not provide treble damages may reflect other aspects of their systems, such as greater public fines, the availability of punitive damages, or the cost to plaintiffs of bringing actions for damages. The United States should not require treble damages as the sole mechanism of deterrence.

Refusing jurisdiction in international antitrust suits may sacrifice some global judicial economy. The nature of international cartel activities increases the possibility that the same defendants will simultaneously face multiple lawsuits in many countries. By splitting the plaintiffs' actions, these multiple lawsuits could complicate the suits, delay them, and make them more 282 expensive. For this reason, the U.S. courts could exercise jurisdiction if the nations implicated in the case ask it to do so. Admittedly, this is only a partial solution to the issue of global judicial economy. A more comprehensive solution will require additional political solutions, such as an international agreement permitting some form of transnational transfer or consolidation of cases. Such agreement is foreseeable, as informal collaboration already occurs with respect to public lawsuits against international cartel members.

This proposal would help achieve America's three goals with respect to international antitrust. First, the U.S. government would have a national policy with respect to jurisdiction in international cartel cases that distinguishes between those foreign antitrust regimes that are effective and those that are not. Second, such a policy would be consistent and predictable, facilitating international trade. Plaintiffs and defendants would know whether jurisdiction could be exercised before bringing a case. Plaintiffs from countries that the United States deems to have an effective antitrust regime would have no reason to bring a case in U.S. courts, and they would therefore need to turn to their home jurisdiction. In this manner, the policy would encourage other jurisdictions to enact policies that would be in harmony with those of the United States. For example, with respect to Canada, the exercise of U.S. jurisdiction with respect to a Canadian export cartel may cause Canadian lawmakers to tear down their measures protecting such cartels, especially if they wish to protect Canadian defendants from America's treble damages regime.283

[FOOTNOTE 283]

283. Indeed, America's treble damages regime would provide an incentive for foreign companies to lobby their countries to enact antitrust policies sufficiently strong to remove them from U.S. jurisdiction in Empagran-type suits.

[END FOOTNOTE 283]

Upon such action, the DOJ would determine that U.S. jurisdiction should no longer be granted in such cases. Thus, this proposal, like my suggested reforms of national amnesty programs, seeks to harmonize international antitrust policies and to do so in a manner that most effectively deters international cartels.

#### States have a common interest in coordinating antitrust---they prefer to cooperate, rather than resist, extraterritorial enforcement.

Lim 17, \*Daniel Lim, Corporate Associate at Ropes & Gray LLP. Ropes & Gray LLP; (2017, “State Interest as the Main Impetus for U.S. Antitrust Extraterritorial Jurisdiction: Restraint Through Prescriptive Comity”, https://scholarlycommons.law.emory.edu/cgi/viewcontent.cgi?article=1180&context=eilr)

II. FROM RESENTMENT TO COOPERATION

Following the Alcoa decision, none of the nearly 250 foreign antitrust actions brought by the DOJ had been dismissed under the intended effects test.108 As a result, foreign states began adopting “blocking” statutes. Some of these frustrated U.S. application of antitrust laws by preventing discovery, requiring foreign courts to refuse recognition of treble-damages awards, and permitting defendants to receive “clawback” judgments, 109 which allow defendants to retrieve the damages award they paid in their home courts. 110 However, members of the international community began changing their approach; instead of resisting, they began to formulate their own antitrust laws. Bilateral and multilateral agreements gave rise to cooperative regimes to harmonize and enforce antitrust laws. However, the effects of these regimes were limited to common interests between states.

A. Foreign Counteractions against U.S. Antitrust Laws

After the Seventh Circuit Court asserted jurisdiction over Australia, Canada, Great Britain, and South Africa in a uranium price-fixing case, the Westinghouse litigation, the foreign states passed blocking statutes. 111 The British Parliament passed the Shipping Contracts and Commercial Documents Act, which “authorized a Minister of the British Government to order British citizens not to comply with certain discovery requests from foreign States.” 112 The Canadian government also adopted a similar blocking statute by adopting a Uranium Information Security Regulation, which “prohibit[ed] a person from releasing any written matter or documentation relating to any phase of uranium mining, refining or marketing . . . unless required to do so by Canadian law, or by the Minister of Energy, Mines and Resources.” 113 The Australian government passed the Australian Foreign Antitrust Judgments Act providing that a judgment of a foreign court under antitrust law should not be satisfied if the Attorney General determined that it was inconsistent with international law or comity, or was not in the national interest.114

B. Development of Stricter Antitrust Laws in Foreign States

While the United States was initially the most aggressive in expanding the reach of its antitrust laws, other nations began to reciprocate U.S. antitrust extraterritorial jurisdiction. 115 This change in attitude came with the increasingly global nature of business activity and the realization that international comity principles posed no significant obstacle to extraterritorial application of antitrust laws. 116 The continuing liberalization of trade also encouraged the increasing number of competition statutes among various states.117

In particular, the EU began not only tolerating but also increasingly applying extraterritorial jurisdiction.118 Among other factors, the EU’s growing role as an economic actor contributed to its boldness in applying its antitrust extraterritorial jurisdiction.119 Today, the EU is considered to be engaging in “unilateral regulatory globalization” known as “The Brussels Effect.”120

Although the European Court of Justice (ECJ) never explicitly affirmed the effects doctrine, it developed doctrines that emulated the tests formulated by U.S. courts. 121 The Economic Entity Doctrine was used to assert jurisdiction over non-EU parent undertakings by attributing liability to them for the illegal price-fixing by their subsidiaries in the EU.122 The ECJ looked at the extent to which a non-EU parent undertaking controls its subsidiaries located in the EU to determine if a single economic entity was formed. 123 Because the court regarded the non-EU parent and its EU subsidiaries as a single economic entity, the non-EU undertaking fell within the scope of the EU competition law.124 The EU also developed the Implementation Doctrine, which is based on the territoriality principle.125 Under this doctrine, agreements and practices fall within the purview of Articles 101 and 102 of the Treaty on the Functioning of the European Union (TFEU)126 if they are implemented within the EU and they affect trade between member states, regardless of their geographic origin.127

Other states, such as Australia and South Korea, adopted similar approaches to extraterritorial application of antitrust laws. In Australia, although the government enacted the Trade Practices Act, which rejected the U.S. and Canadian models, it eventually adopted antitrust legislation modeled after U.S. antitrust legislation. 128 South Korea enacted the Monopoly Regulation and Fair Trade Act (MRFTA), which was also modeled after U.S. antitrust laws.129 Today, the five most aggressive antitrust enforcement regimes are found in the EU, Brazil, Japan, South Korea, and the United States. 130 The EU is the leading entity in aggressive investigation of cartel activity. In 2014, it led the way in cartel fines, collecting over $2 billion. 131 In 2002, the Korean Fair Trade Commission (KFTC) made its first decision to apply extraterritorial jurisdiction in a case concerning international cartels. 132 In January 2015, the KFTC made a record fine of $123 million for bid-rigging.133 For the first time, it also imposed prison terms on individuals for cartel offenses in 2014. 134 In other states, such as Brazil, the jail sentence for anticompetitive behavior has been increasing, with sentences sometimes exceeding ten years.135

C. International Cooperative Regimes for Antitrust Enforcement

Along with an increasing application of extraterritorial jurisdiction of anti- competition laws, various states began cooperating and building global antitrust regimes. This movement began after World War II, when states attempted to achieve harmonization through multilateral agreements and international organizations.

In 1947, the Havana Charter and the International Trade Organization began contemplating adding provisions for the regulation of business practices. 136 In the early 1950s, the United Nations (U.N.) Economic and Social Council continued discussions on formulating an international agreement on business practices as well. However, these international endeavors were rejected by the United States. 137 Although the “Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices” was adopt ed in 1980 with the efforts of developing countries, it did not have much meaningful effect due to the voluntary nature of the code.138

The formation of the World Trade Organization (WTO) in the 1990s reignited efforts to harmonize antitrust laws and enforcement. 139 This time, leaders of the European Commission tried to incorporate competition law into the WTO regime, but failed due to opposition from both developing countries and the United States. 140 Following years of failed negotiations, the WTO decided not to hold discussions on competition law.141

However, the stalemate for international cooperation was broken with the strong support of U.S. interest s through a different strategy. 142 In 1997, U.S. Attorney General Janet Reno and Assistant Attorney General for Antitrust Joel Klein formed the International Competition Policy Advisory Committee (ICPAC).143 This committee was commissioned to address worldwide antitrust problems and issued a report advising the creation of a “Global Competition Initiative” to realize a greater convergence of competition law, analysis, and common culture. 144 At the anniversary of the European Council Merge Control Regulation in 2000, Mario Monti, then-European Commissioner for Competition, and Joel Klein expressed their support for the initiative. 145 Finally, in 2001, top officials from Australia, Canada, the EU, France, Germany, Israel, Japan, Korea, Mexico, South Africa, the United Kingdom, the United States, and Zambia launched the International Competition Network (ICN).146

One of the main features of the ICN is that participation is voluntary. 147 Although almost all of the competition authorities in the world are represented in the ICN, 148 ICN initiatives and cooperation will only be effective when the case involves jurisdictions without contradictory interests. The voluntary nature of the ICN and the bilateral agreements discussed below are all efforts initiated by states with power to coordinate a more effective competition law enforcement regime according to the standards of each respective state.

The United States continued to build an international community that would help support its competition law initiatives by entering into bilateral and regional agreements with other nations, rather than using international organizations as a forum for discussion. Initially, the United States was not receptive to cooperation with other states, 149 as evidenced by its rejection of the recommendation of the Organisation for Economic Co-operation and Development (OECD) in 1967 to limit state enforcement actions in light of legitimate foreign interests. 150 Today, the United States has entered into anticompetitive bilateral agreements with Australia, Brazil, Canada, the European Union, Germany, Israel, Japan, Mexico, and Russia. 151 Mutual legal assistance treaties (MLATs) are other important tools of cooperation. 152 MLATs are bilateral agreements, which provide that each party will use its own criminal investigative resources to obtain information for an investigation being conducted by the other party. 153 To date, the United States has entered into an MLAT agreement with twenty-six different states, including Australia, Canada, Japan, South Korea, and the UK. 154 There have also been cooperative efforts on a regional level. Some of the most notable multilateral agreements are the Asia-Pacific Economic Cooperation (APEC), where the United States is a key participant, and the North American Free Trade Agreement (NAFTA).155 These agreements have gone beyond written form into action. Some of these coordinated efforts include cooperative dawn raids and the execution of search warrants in multiple jurisdictions.156

Nonetheless, these agreements did not play a major role in harmonizing antitrust policies, but instead acted mostly as non-binding agreements. 157 And even those agreements that were binding only had some rudimentary coverage of competition policy matters. 158 Most importantly, these international agreements were not effective in restraining extraterritorial jurisdiction, but they did support cooperative efforts that were aimed towards reinforcing each state’s interest by sharing information, coordinating dawn raids, and executing multi-jurisdictional search warrants. 159 The nature of these agreements shows that international cooperation in antitrust laws is not motivated by a desire of restraint, but by a desire to effectively enforce each state’s own antitrust laws. In other words, international anti-competitive cooperation is realized by the gathering of various states that have common interests in preventing similar “anti-competitive” actions.

#### Only international, private antitrust enforcement maximizes deterrence---it enhances the cartel’s likelihood of being detected and makes operation in multiple countries cost-prohibitive.

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II. BACKGROUND

A core aspect of America's antitrust regime is its encouragement of private litigation as an enforcement device. Private litigation is thought to be particularly effective against cartels, as the consumers in a cartel market may often be among the first entities to detect the cartel's damaging collusive behavior, and awarding damages-particularly a multiple of the cartel's profits-may make the illegal conduct cost-prohibitive. Thus, private litigation is viewed as an important mechanism for achieving one of the fundamental goals of the antitrust acts: the maximum deterrence of cartels.26

Initially, the application of America's antitrust regime was contained within its borders. But as commerce became increasingly international after World War II, U.S. courts applied the antitrust laws extraterritorially. America's extraterritorial application of its antitrust laws created tension with its trading partners, who disagreed with the American approach of relying on private litigation and treble damages as an enforcement device. They viewed the extraterritorial application of U.S. law as an anticompetitive maneuver aimed at furthering U.S. trade objectives. In the late 1970s and early 1980s, many of these countries passed legislation to frustrate the extraterritorial application of America's antitrust laws. The U.S. Congress responded by passing the FTAIA. This law barred foreigners from using America's laws against American companies when American consumers were not harmed. The Empagran decision-and the governments' amici briefs-must be understood within this context of antitrust policy as trade policy.

A. The Sherman and Clayton Acts

The Sherman and Clayton Acts are the statutory foundation for private antitrust litigation in the United States. The Sherman Antitrust Act outlaws "[e]very contract, combination . . . or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations., 27 Violations are felonies, with corporations and individuals facing civil and criminal penalties, including imprisonment.29

To expand the enforcement of the antitrust laws and to facilitate the compensation of the victims of antitrust harms, Congress adopted the Clayton Act. Section 4 of the Clayton Act creates a private cause of action for individuals and companies harmed by antitrust violations, 30 and section 12 grants jurisdiction over these lawsuits to any district in which the defendant does business.3' Plaintiffs in such lawsuits act as "private attorneys general, 32 who help alert authorities to violations of the antitrust laws while also punishing those violations. The Clayton Act allows private litigants to sue for treble damages. Treble damages enhance deterrence in two ways-they encourage private suits, which raise the probability the cartel will be detected,33 and they increase the penalty imposed on defendants found guilty of violating the acts.34 The Clayton Act has succeeded in encouraging such suits. 35

B. Cartels-An Introduction

Cartels are "unambiguously bad' 36 and "the most egregious violations of competition law."3 7 The collusion they engage in the "supreme evil of antitrust. ' '3s A cartel is a group of firms in an industry that should be competitors but have instead agreed to coordinate their activities so that they can raise prices and earn profits above competitive market levels. Cartels utilize a number of mechanisms to coordinate their activities, including horizontal price fixing,39 bid rigging, territorial division,40 non-territorial customer division, and market-share agreements. In addition to harming the consumers of their products by charging supra-competitive prices, cartels also reduce economic efficiency by causing consumers to purchase less of a product than they otherwise would buy and by reducing the competitive pressures that member firms face to control costs and to innovate.41

A cartel must overcome four challenges to operate successfully. First, the cartel's members must reach agreement to restrict the supply of a product and increase its price. A cartel restricts supply so that the loss from the lower quantity of sales is more than offset by the increase in the price of each remaining sale. The optimal cartel quantity and price is that of a monopoly producer, but cartels rarely achieve that optimal level because cheating by members and market entry by new producers increases market supply. Thus, a second challenge for a cartel is to ensure that its members follow the agreed course of action. Each cartel member has an incentive-to sell more than the agreed quantity of the product-at the cartel price or one slightly below it-to gain even more profit.42 Because cheating threatens the cartel's viability, cartels must monitor their members and punish cheating.4 3 But monitoring is difficult because of the third challenge inherent to cartels: their illegal actions force them to operate in secrecy to avoid detection.44 Yet even if, while operating in secret, cartels are able to monitor and punish cheaters, they still must prevent entry by other firms into the market. Entrants will be enticed by the opportunity to earn profits due to the extra-competitive cartel prices, and their entry will drive down the cartel's profits. To maintain its hold on the market, the cartel must prevent new entry, again without making the cartel visible. The complexity of addressing these four challenges leads many economists to conclude that cartels are "inherently unstable."43

Certain market characteristics are conducive to collusive activity. Cartels often operate in concentrated markets with few firms, permitting easier coordination and more reliable confidentiality.46 Markets with high initial investment costs are also conducive to cartel activity. These costs deter other firms from quickly entering the market to take advantage of the cartel's artificially high prices.47 Products that are homogenous and fungible also facilitate cartel activity. a Such products are usually uniformly priced, making it easier for cartels to monitor member prices. Finally, market structures, such as public disclosure laws regarding prices and quantities, can help cartels monitor their members' activities.

Market characteristics alone cannot sustain a cartel; cartel members must adopt a variety of practices to avoid detection and to enforce compliance. Cartels avoid detection by holding secret meetings, using code names, and creating legitimate-appearing trade associations to share information.49 Generally, cartel members meet periodically to review public and private sales and price figures from prior periods. They also force members who exceed their quotas to compensate the other members.50 Thus, cartels overcome their inherent instability by successfully providing supra-competitive profits to their members while maintaining the secrecy of their collusion and punishing any deviations. Indeed, based on the fact that twenty-four of the forty international cartels prosecuted in the 1990s had operated for at least four years, one study concluded, "market forces alone may be unable to quickly undermine attempts to fix prices, rig bids, allocate quotas, and market shares; perhaps implying a potential role for national anti-cartel enforcement." 51

C. International Cartels

Certain characteristics of the global marketplace increase the ability of international cartels to monitor their members and maintain secrecy. The publication of official import and export data facilitates the cartel's monitoring of its members. National differences in accounting, reporting requirements, and other legal mandates help cartels to hide their activities and profits. 53 National borders mask agreements to divide a product market among competitors,54 and they can facilitate the punishment of cheaters.55 Cartel members also frustrate the efforts of effective policing authorities by meeting and retaining records outside their jurisdictions.56

Almost invariably, any international cartel harms consumers in all of the countries in which its product is sold. If an international cartel does not raise prices everywhere, a product sold at a cheaper price in one country can be resold in another country where the price is higher. This arbitrage threat exists as long as transaction costs, including transportation costs, are low and the product is undifferentiated across the various countries. If the cartel's product is sold in the United States, the cartel must raise its price in the United States sufficiently so that it is not profitable to buy the product in the United States, ship it to another market, and sell it at or below the cartel price. Thus, because cartels must address the arbitrage threat by raising prices in all of the markets in which they operate, the harms caused by the cartels in those markets are interconnected.

To effectively deter cartels, the total expected penalty must at least equal the supra-competitive profits from participating in the cartel.57 Because an international cartel enjoys supra-competitive profits from its sales in other countries, "[tihe relevant expected penalty depends on the sum of the expected penalties in each nation., 58 According to the OECD, sanctions against cartels "are, on the whole, still inadequate" 59 in most countries. Therefore, cartels will raise their prices in the United States even though doing so increases the likelihood of the cartel's detection due to the United States's more rigorous antitrust regime. The international cartel will still harm American consumers because it can offset its expected American losses with its supra-competitive profits from countries where it has little fear of penalty. As a result, "the deterrent required to prevent a global cartel from including the United States is generally larger than the deterrent required to prevent a purely domestic cartel from forming." 60