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### 1AC---China ADV

#### Advantage 1 is China:

#### Standards-Setting Organizations (SSO’s) are industry members who jointly establish standards for information tech defined by the adoption of standard-essential patents (SEP’s), which are licensed to companies who wish to implement the tech in their product, called implementers, on Fair, Reasonable, and Non-Discriminatory (FRAND) terms. Current standards promote price gouging, FRAND enforcement is critical.

Melamed & Shapiro 18, \*A. Douglas Melamed is Professor of the Practice of Law at Stanford Law School; \*Carl Shapiro is the Transamerica Professor of Business Strategy at the Haas School of Business at the University of California at Berkeley; (May 2018, “How Antitrust Law Can Make FRAND Commitments More Effective”, https://www-cdn.law.stanford.edu/wp-content/uploads/2018/05/How-Antitrust-Law-Can-Make-FRAND-Commitments-More-Effective.pdf)

I. Standard Setting and the Competitive Process

The fundamental economics in the information technology sector, driven by network effects, implies that there is enormous value associated with establishing compatibility standards. Popular standards include the mobile broadband standards used in cell phones, which are established by the 3rd Generation Partnership Project (3GPP), and the Wi-Fi technology for wireless local area networks, which is enabled by the 802.11 standard established by the Institute of Electrical and Electronics Engineers (IEEE).4

There are many SSOs, and their rules and procedures differ considerably. In addition to IEEE, leading SSOs include the International Organization for Standardization (ISO), the International Telecommunication Union (ITU), the European Telecommunications Standards Institute (ETSI), the Internet Engineering Task Force (IETF), and the World Wide Web Consortium (W3C).5 SSOs generally establish standards by holding a series of committee meetings among industry participants. These meetings culminate in a vote on a technical specification that describes what features or attributes a product must have in order to comply with the standard. Most SSOs are open to all industry participants and seek to operate on a consensus basis, applying certain voting rules. SSOs do not normally engage in patent licensing, nor do they specify how patent royalties will be divided up among patent holders. They leave that to their members, which in some cases form patent pools to address these issues.6

SSOs adopt specific policies relating to intellectual property rights (IPRs).7 These IPR policies are generally intended to enable the SEP holders to obtain reasonable royalties for licensing their patents, while prohibiting them from charging excessive royalties after other industry participants have committed to the standard. At that point, firms committed to implementing the standard— which we call “implementers”—would find it very costly to avoid using the patented technology. For this purpose, most SSOs require SEP owners to license their SEPs on FRAND terms.8

FRAND policies are especially necessary because negotiations between SEP holders and implementers generally take place only after the implementers have used and infringed the technologies claimed by the SEPs. Standards involving information and communications technology can involve hundreds or even thousands of SEPs, many with uncertain boundaries for infringement. In addition, a time lag exists between patent application and patent issuance. For these and other reasons, it is impractical for implementers to enter into negotiations for patent licenses with all SEP owners prior to the establishment of a standard and to their implementation of it.9

The fact that patent negotiations generally do not take place until after implementers have used and infringed the technologies has several critical implications. First, at the time of negotiation, implementers are locked into the standard and the technologies claimed by the SEPs—that is, the cost to switch to an alternative technology or standard at that point—ex post—is much greater than it was ex ante, before the patented technology was first included in the standard. Ex post, the patent holder is no longer competing to have its technology included in the standard, nor is it competing to have implementers of the standard use its technology. Instead, because the patent holder owns an asset that is essential to the standard, implementers have no choice but to use the patented technology.

If the standard is commercially successful, implementers are willing to pay a much larger royalty for use of the patented technology than they would have paid ex ante, when the SEP holder faced competition from other technologies. In these circumstances, the SEP holder can be said to have obtained monopoly power in the market in which the patented technology is licensed for use in implementing the standard.10

Second, because of lock-in and the implementer’s ongoing infringement, the potential for litigation looms large in licensing negotiations. In effect, the parties are negotiating about how to settle an infringement suit, and that negotiation is heavily influenced by their predictions as to what the court will do if they cannot agree. This situation is not unique to SEPs; it arises frequently when firms are faced with patent infringement claims for products they have independently developed or technologies they have inadvertently infringed. Patent law addresses such instances by specifying that patent holders are entitled to “reasonable royalties,” defined as the royalties that the parties would have negotiated prior to the infringement and thus prior to lock-in.11 Those hypothetical ex ante royalties reflect the market value of the patent license. Notwithstanding the law’s embrace of this principle, however, as a practical matter, patent holders are generally able to recover more than the ex ante value of the patent when litigation occurs after the implementers are locked in. Further, negotiations in the shadow of litigation after lock-in tend to result in royalties in excess of the ex ante or market value of the patented technology.12

Third, the shadow of litigation is particularly problematic in the communications and technology sector, in which products typically include hundreds or thousands of patented technologies. A court-ordered injunction involving such products would deprive the implementer of not only the value of the technology covered by the patent-in-suit, but also the value of the entire product.13 Implementers that are forced to bear the risk of an injunction are thus induced to agree to royalties greater than those that would be appropriate if only the value of the patented technology were at stake. Those royalties systematically provide SEP holders with excessive compensation in comparison with the benchmark of ex ante royalties.

These implications of lock-in and ex post dealings are well-understood: they represent an example of the general concept of lock-in and opportunism developed by Oliver Williamson.14 The Federal Circuit has also recognized the market distortions caused by the inclusion of patented technologies in public standards and the resulting danger of patent holdup involving SEPs.15

For these and other reasons, the SEP holder has ex post monopoly power that, if left unchecked, would enable it to obtain royalties far in excess of the royalties that it could earn in a competitive market.16 To address this common problem and limit ex post opportunism by SEP holders, SSOs typically require participants that own SEPs to make certain FRAND commitments. In particular, by requiring a commitment to license on “fair and reasonable” terms, the FRAND requirement aims to prevent, or at least reduce, the extent of monopoly pricing by SEP holders. And by requiring a commitment to license on “nondiscriminatory” terms, the FRAND requirement can prevent SEP holders from extracting monopoly premiums by selective licensing or, more important, migrating their monopoly power from the FRAND-regulated market to unregulated standard-implementing product markets by licensing to only one or a few implementers or licensing to selected implementers on discriminatorily favorable terms.

#### Patent holdup is accentuated by the Ninth Circuit’s recent decision in *FTC v. Qualcomm* that permits ICT firms to engage in innovation-stifling conduct with antitrust impunity.

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Standards can enhance competition and consumer choice, but they also massively inflate the value of patents deemed essential to the standard, and give their owners the power to sue companies that implement the standard for money damages or injunctions to block them from using their SEPs. When standards cover critical features like wireless connectivity, SEP owners wield a huge amount of “hold-up” power because their patents allow them to effectively block access to the standard altogether. That lets them charge unduly large tolls to anyone who wants to implement the standard.

To minimize that risk, standard-setting organizations typically require companies that want their patented technology incorporated into a standard to promise in advance to license their SEPs to others on fair, reasonable, and non-discriminatory (FRAND) terms. But that promise strikes at a key tension between antitrust and patent law: patent owners have no obligation to let anyone use technology their patent covers, but to get those technologies incorporated into standards, patent owners usually have to promise that they will give permission to anyone who wants to implement the standard as long as they pay a reasonable license fee.

Qualcomm is one of the most important and dominant companies in the history of wireless communication standards. It is a multinational conglomerate that has owned patents on every major wireless communication standard since its first CDMA patent in 1985, and it participates in the standard-setting organizations that define those standards. Qualcomm is somewhat unique in that it not only licenses SEPs, but also supplies the modem chips used by a wide range of devices. These include chips that implement wireless communication standards, which lie at the heart of every mobile computing device.

Although Qualcomm promised to license its SEPs (including patents essential to CDMA, 3G, 4G, and 5G) on FRAND terms, its conduct has to many looked unfair, unreasonable, and highly discriminatory. In particular, Qualcomm has drawn scrutiny for bundling tens of thousands of patents together—including many that are not standard-essential—and offering portfolio-only licenses no matter what licensees actually want or need; refusing to sell modem chips to anyone without a SEP license and threatening to withhold chips from companies trying to negotiate different license terms; refusing to license anyone other than original-equipment manufacturers (OEMs); and insisting on royalties calculated as a percentage of the sale price of a handset sold to end users for hundreds of dollars, despite the minimal contribution of any particular patent to the retail value.

In 2017, the U.S. Federal Trade Commission [sued](https://www.ftc.gov/news-events/press-releases/2017/01/ftc-charges-qualcomm-monopolizing-key-semiconductor-device-used) Qualcomm for violating both sections of the Sherman Antitrust Act by engaging in a number of anticompetitive SEP licensing practices. In May 2019, the U.S. District Court for the Northern District of California agreed with the FTC, identifying numerous instances of Qualcomm’s unlawful, anticompetitive conduct in a comprehensive [233-page opinion](https://www.eff.org/document/ftc-v-qualcomm-district-court-opinion). We were pleased to see the FTC take action and the district court credit the overwhelming evidence that Qualcomm’s conduct is corrosive to market-based competition and threatens to cement Qualcomm’s dominance for years to come.

But this month, a panel of judges from the Court of Appeals for the Ninth Circuit unanimously [overturned](https://www.eff.org/document/ninth-circuit-opinion-ftc-v-qualcomm) the district court’s decision, reasoning that Qualcomm’s conduct was “hypercompetitive” but not “anticompetitive,” and therefore not a violation of antitrust law. To reach that result, the Ninth Circuit made the patent grant more powerful and antitrust law weaker than ever.

According to the Ninth Circuit, patent owners don’t have a duty to let anyone use what their patent covers, and therefore Qualcomm had no duty to license its SEPs to anyone. But that framing requires ignoring the promises Qualcomm made to license its SEPs on reasonable and non-discriminatory terms—promises that courts in this country and around the world have consistently enforced. It also means ignoring antitrust principles like the essential facilities doctrine, which limits the ability of a monopolist with hold-up power over an essential facility (like a port) to shut out rivals. Instead, the Ninth Circuit held rather simplistically that a duty to deal could arise only if the monopolist had provided access, and then reversed its policy.

But even when Qualcomm restricted its licensing policies in critical ways, the Ninth Circuit found reasons to approve those restrictions. For example, Qualcomm stopped licensing its patents to chip manufacturers and started licensing them only to OEMs. This had a major benefit: it let Qualcomm charge a much higher royalty rate based on the high retail price of the end user devices, like smartphones and tablets, that OEMs make and sell. If Qualcomm had continued to license to chip suppliers, its patents would be “exhausted” once the chips were sold to OEMs, extinguishing Qualcomm’s right to assert its patents and control how the chips were used.

Patent exhaustion is a century-old doctrine that protects the rights of consumers to use things they buy without getting the patent owner’s permission again and again. Patent exhaustion is important because it prevents price-gouging, but also because it protects space for innovation by letting people use things they buy freely, including to build innovations of their own. The doctrine thus helps patent law serve its underlying goal—promoting economic growth and innovation. In other words, the doctrine of exhaustion is baked into the patent grant; it is not optional. Nevertheless, the Ninth Circuit wholeheartedly approved of Qualcomm’s efforts to avoid exhaustion—even when that meant cutting off access to previous licensees (chip-makers) in ways that let Qualcomm charge far more in licensing fees than its SEPs could possibly have contributed to the retail value of the final product.

It makes no sense that Qualcomm could contract around a fundamental principle like patent exhaustion, but at the same time did not assume any antitrust duty to deal under these circumstances. Worse, it’s harmful for the economy, innovation, and consumers. Unfortunately, the kind of harm that antitrust law recognizes is limited to harm affecting “competition” or the “competitive process.” Antitrust law, at least as the Ninth Circuit interprets it, doesn’t do nearly enough to address the harm downstream consumers experience when they pay inflated prices for high-tech devices, and miss out on innovation that might have developed from fair, reasonable, and non-discriminatory licensing practices.

We hope the FTC sticks to its guns and asks the Ninth Circuit to go en banc and reconsider this decision. Otherwise, antitrust law will become an even weaker weapon against innovation-stifling conduct in technology markets.

#### Weakened antitrust enforcement emboldens firms to follow Qualcomm’s lead, which collapses FRAND integrity.

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While the FRAND process has been highly productive, it is also fragile. Firms are tempted to make commitments at the beginning when the incentive to join is large, but renege on them later when they can profit by doing so. At least in this particular case, private FRAND enforcement had not worked very well. Qualcomm had been able to violate FRAND commitments in order to exclude rivals and obtain higher royalties than FRAND would permit, largely with impunity. Other firms will very likely follow Qualcomm’s lead. If that happens the FRAND system will fall apart, doing irreparable injury to the modern wireless telecommunications network or, at the very least, diminishing the leadership role of the United States in preserving effective network competition.

While governments can be heavily involved in standard set-ting,9 the implementation of technical standards in information technologies is largely the work of private actors. Government involvement is limited mainly to enforcement of contract, intellectual property, or antitrust law. As private actors, those involved in standard setting or compliance are fully subject to the federal antitrust laws.

This Article addresses one question: when is an SSO participant’s violation of a FRAND commitment an antitrust violation, and if it is, of what kind and what are the implications for remedies? It warns against two extremes. One is thinking that any violation of a FRAND commitment is an antitrust violation as well. In the first instance FRAND obligations are contractual, and most breaches of contract do not violate any antitrust law. The other extreme is thinking that, because a FRAND violation is a breach of contract, it cannot also be an antitrust violation. The question of an antitrust violation does not de-pend on whether the conduct breached a particular agreement but rather on whether it caused competitive harm. This can happen because the conduct restrained trade under section 1 of the Sherman Act, was unreasonably exclusionary under section 2 of the Sherman Act, or amounted to an anticompetitive condition or understanding as defined by section 3 of the Clay-ton Act.10 The end goal is to identify practices that harm com-petition, thereby injuring consumers.

The Ninth Circuit’s Qualcomm decision will make antitrust violations in the context of FRAND licensing much more difficult to prove, even in cases where anticompetitive behavior and consumer harm seem clear.11 Indeed, in this case the court itself acknowledged the harm to consumers but appeared to think that they were not entitled to protection.12 If this decision stands, FRAND obligations will to a larger extent have to be settled through private litigation and the federal antitrust enforcement agencies will have a diminished role. Anticompetitive behavior by one firm that is not effectively disciplined will lead others to do the same thing.

#### Monopoly pricing and selective licensing undermines 5G innovation---FRAND enforcement is key.

Actonline 20, the App Association represents more than 5,000 app companies and information technology firms across the mobile economy; (August 26th, 2020, “Save Our Standards: The Ninth Circuit Court of Appeals Reverses Decision in FTC v. Qualcomm”, <https://actonline.org/2020/08/26/save-our-standards-the-ninth-circuit-court-of-appeals-reverses-decision-in-ftc-v-qualcomm/>)

* Ability edited

Moreover, the FRAND agreement is a critical tool used by standard setting organizations to ensure the process enhances competition and does not run afoul of antitrust laws. Generally, a collaboration between competitors to choose market winners or set prices raises significant questions for competition regulators. Royalty free and FRAND licensing requirements were created by standards bodies to avoid potential antitrust scrutiny by limiting the market power and the potential for abuse by those involved in developing a standard. This is why the American National Standards Institute (ANSI) will not accredit any standards developing organization (SDO) that does not require standard-essential patent holders to provide licensing terms at least as favorable as FRAND.

The most important beneficiary of open interoperability standards and FRAND licensing requirements are the entrepreneurs and small businesses that have long fueled America’s innovation engine. They don’t have giant patent portfolios, market power, or the resources to hire legions of lawyers and spend years battling SEP abusers in civil court. Without some level of certainty about their ability to obtain licenses—let alone what they may cost—entrepreneurs will have trouble justifying the pursuit of any innovation that uses a standard and will certainly struggle to raise money from investors for such innovation. And Qualcomm’s vague and toothless promise simply “not to sue” smaller companies and component makers is no substitute for a license.

The adoption of 5G technology is expected to open unprecedented opportunities for innovation and economic growth as we move toward a world where everything from cars to tractors to buildings will connect to wireless networks. At every stage of the information technology revolution, America has been the undisputed leader because of the unparalleled entrepreneurial innovation ecosystem that we have built. If 5G SEP holders are able to arbitrarily refuse licenses to smaller firms, it would ~~cripple~~ undermine America’s innovation ecosystem at the start of the next big wave of innovation. As economic tensions continue to rise with China, Chinese-based companies could use their 5G SEPs as international economic weapons to thwart U.S. competitors.

The 5G standard is supposed to be a platform for competition, innovation, and entrepreneurship, but if the Ninth Circuit decision is allowed to stand, it will become a chokepoint for snuffing out competitors and demanding monopoly rents. Open standards and FRAND licensing commitments are fundamental to competition in the modern economy, and the idea that they aren’t a subject for antitrust enforcement is patently absurd.

#### The absence of domestic 5G competition cedes leadership in technical standards to China.

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There is little doubt today that American superiority in the next generation of mobile communications, commonly called 5G, is a matter of extraordinary national concern. There is also little doubt that China is a strong competitor, already having outspent the United States by [$24 billion](https://www2.deloitte.com/content/dam/Deloitte/us/Documents/technology-media-telecommunications/us-tmt-5g-deployment-imperative.pdf#page=3) and planning [$411 billion](https://www.scmp.com/tech/china-tech/article/2098948/china-plans-28-trillion-yuan-capital-expenditure-create-worlds) in 5G investment over the next decade. The Chinese government has also laid out multiple national plans for establishing the country as a leader in mobile technology, and the Chinese firm Huawei is poised to be the [top smartphone manufacturer](https://www.cnbc.com/2018/11/16/huawei-aims-to-overtake-samsung-as-no-1-smartphone-player-by-2020.html) by 2020.

And what are United States companies doing about this? Bickering over patents.

For years, the leading American supplier of advanced mobile communications chips has been the San Diego-based Qualcomm. The company has been an innovator of mobile technology, but it has also been a remarkable innovator of convoluted legal strategies. As an ongoing Federal Trade Commission [lawsuit alleges](https://www.ftc.gov/news-events/press-releases/2017/01/ftc-charges-qualcomm-monopolizing-key-semiconductor-device-used), Qualcomm has used its dominant position as a chip supplier and its extensive patent holdings to weave an intricate web of patent licensing across the mobile industry. The effect of that complex licensing scheme, the FTC claims, has been to force competitor chipmakers out of the market and to extract concessions and high patent royalties from smartphone and mobile-device makers.

Qualcomm today faces only one major U.S. competitor—Intel, whose chips Apple recently [started using](https://www.cultofmac.com/484250/intel-reaping-rewards-apples-scrap-qualcomm/) instead of Qualcomm’s. Not surprisingly, Qualcomm has leveraged its patents to force a retaliatory investigation against Apple, the effect of which could be, as an administrative judge [recently determined](http://www.fosspatents.com/2018/10/itc-judge-didnt-buy-testimony-for-which.html), to boot Intel out of the mobile-chip market and leave Qualcomm as a monopoly.

It is hard to imagine that this infighting among Apple, Intel and Qualcomm is getting the United States very far in 5G, and it is harder to imagine that Qualcomm’s desired outcome would do so, either. The best path, instead, is the obvious one: allowing competition and expanding the number of firms working on 5G.

Competition encourages companies to out-innovate each other in order to grab market share. Of particular importance to 5G, competition leads to [better cybersecurity](https://morningconsult.com/opinions/in-the-race-to-5g-monopoly-considered-harmful/) in products, making them less vulnerable to hacking or misuse.

Competition is especially crucial when it comes to the technical standards that define how 5G works. These standards are the work of 3GPP, an international consortium of technology companies in the field. Chinese players such as Huawei and ZTE are major participants in 3GPP. Ensuring that 3GPP’s standards reflect American values requires having as many American companies at the negotiating table as possible—which is harder to achieve when those companies are trying to sue each other out of business.

Certainly patents themselves, as rewards for new inventions, are a driver of innovation in areas such as 5G. The problem, though, is not the existence of a patent system but the ever-expanding power of the patent laws, which encourage companies to pour dollars into complex patent licensing and assertion schemes—as companies like Qualcomm have done—rather than to perform the hard work of building new technologies. When innovation in patent strategy is more profitable than actual innovation, we lose the race to 5G and other technologies.

But don’t take my word for it. [Multiple members of Congress](https://www.patentprogress.org/2019/01/11/congress-weighs-in-on-qualcomm-and-apple-at-the-itc/), from both sides of the aisle, have denounced the use of patents to kick companies like Intel out of 5G development, predicting that such actions would “dampen the quality, innovation, competitive pricing, and in this case the preservation of a strong U.S. presence in the development of 5G and thus the national security of the United States.”

Or look to what China itself is doing. The Chinese government is handing out rewards left and right to encourage technology research and development. Indeed, it grants subsidies and financial benefits (ranging from the [ordinary](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2818503) to the [imperfect](https://funginstitute.berkeley.edu/wp-content/uploads/2013/12/patent_subsidy_Zhen.pdf) to the [bizarre](https://www.scmp.com/news/china/article/1681850/how-get-out-jail-early-china-buy-inventors-idea-and-patent-it)) to encourage its citizens to file for patents. But while China specifically encourages filing for patents, it does little to encourage using them: Patent infringement awards in court are peanuts—often only [five figures](https://scholarship.law.berkeley.edu/btlj/vol33/iss2/2/)—and most Chinese patent owners drop their patents [within five years](https://www.bloomberg.com/news/articles/2018-09-26/china-claims-more-patents-than-any-country-most-are-worthless) of getting them. The message in China is clear: You will be rewarded for innovating, but not for quibbling over patents.

The United States should take the same tack if it wants to match China in 5G. Ever-stronger patent rights encourage counterproductive disputes that are a drag on industry, a drag on research and development, and ultimately a drag on domestic competitiveness on the global stage. If America wants to lead in 5G, then it must clear the path for strong competition among leading American technology companies.

#### Standards leadership allows China to export digital authoritarianism.

Drew et al. 21, \*Dr Alexi Drew, Research Associate, The Policy Institute, King’s College London; (May 7th, 2021, “The Critical Geopolitics of Standards Setting”, https://www.transatlantic-dialogue-on-china.rusi.org/article/the-critical-geopolitics-of-standards-setting)

However, this previously ‘western’ domain is challenged by a Chinese bloc of private industry actors with centrally directed, strategic motivations for their efforts who have managed to leverage the flaws of this system for political and economic advantage.  The market-driven self-regulation model of technical standards has proven itself unsustainable given the geopolitical power achievable through the control of these standards. The marketised approach is easily abusable by a technologically developed nation-state with geopolitical intentions firmly in mind.

Obscurity Through Complexity

Technical standards have the immediate appearance of being both apolitical and ethically neutral. This seems to set them apart from the debate over standards of state behaviour in [cyber space concerning espionage and actions below the threshold of armed conflict](https://www.cfr.org/blog/unexpectedly-all-un-countries-agreed-cybersecurity-report-so-what). Yet, technological standards are unequivocally connected to normative practices of international behaviour and ethics. The extremely complex nature of the standards under consideration in bodies such as the International Organization for Standardization, the International Electrotechnical Commission (IEC), the International Telecommunications Union (ITU), and the Third Generation Partnership Project (3GPP) obscures the very tangible real-world impact that the standards they set have. The 3GPP is responsible for standards setting for mobile telecommunications. It covers everything from 5G through to autonomous vehicles and the Internet of Things. These are the bodies defining how the modern world is constructed.

On the one hand they appear quite benign, responsible for such banalities as the use of Universal Serial Bus (USB) connectors versus proprietary standards. This hardly seems a matter of national security importance. But the same process is responsible for what ultimately shape the basic operating parameters of facial recognition technology in closed circuit television systems, the level of centralised state control at the technical foundations of the internet, and the protections of personally identifiable data. These generate profound implications for international policy and ethics.

Internal Competition vs Strategic Direction

Technical standards setting processes have, historically, been dominated by private sector actors who have had both the capacity to develop a particular technology to the point of holding a significant market share, and the ability to use that market share to advocate for the standardisation of the technology in line with their own production. The market led approach has continued to be the prevailing model by which American companies have globalised the technical standards behind US dominated technological innovation. This privatised form of self-regulation for technology companies is only partially influenced by the approach taken within the EU where [some licensing of standards are controlled by state or EU led institutions.](https://www.ui.se/globalassets/ui.se-eng/publications/ui-publications/2019/ui-brief-no.-2-2019.pdf)

In contrast to this approach the Chinese model has involved a high level of state-oriented direction, oversight, and direct engagement on the creation and signing off technical standards. Efforts to harmonise and centralise technical standards domestically have become increasingly internationalised as the CCP takes this centralised, strategic approach to technical standards setting bodies such as the ITU, 3GPP, and IEC. Technical standards have also become an increasingly central component of the Digital Silk Road with the openly expressed goal of increasing uptake of Chinese technical standards in partner countries.

The implications of this clash between a system of technical standardisation that is driven by the market versus one driven by an authoritarian government subsidised model are a direct challenge to the development of free, open, and ethical technology. Standardisation mechanisms have become political, or rather there has been a gradual realisation of the political power to be gained from the control of technical standards. While the PRC might have come to this awareness first, the US and Europe have since had a rude awakening about the missed opportunity. The privatised model of technical standards setting favoured by European and US markets relies upon the dynamics of financial competition to regulate behaviour. This is in stark contrast to the statist Chinese model.

#### Causes global backsliding.

Kendall-Taylor et. al 20 \*Andrea Kendall-Taylor, senior fellow and director of the Transatlantic Security Program at the Center for a New American Security, co-author of Democracies and Authoritarian Regimes; Erica Frantz is Assistant Professor of Political Science at Michigan State University; Joseph Wright is Professor of Political Science at Pennsylvania State University; (March/April 2020, “The Digital Dictators,” Foreign Affairs, <https://www.foreignaffairs.com/articles/china/2020-02-06/digital-dictators>)

The risk that technology will usher in a wave of authoritarianism is all the more concerning because our own empirical research has indicated that beyond buttressing autocracies, digital tools are associated with an increased risk of democratic backsliding in fragile democracies. New technologies are particularly dangerous for weak democracies because many of these digital tools are dual use: technology can enhance government efficiency and provide the capacity to address challenges such as crime and terrorism, but no matter the intentions with which governments initially acquire such technology, they can also use these tools to muzzle and restrict the activities of their opponents.

#### Democracy solves a litany of existential threats.

Diamond 19, Professor of Political Science and Sociology at Stanford University, Senior Fellow at the Hoover Institution, Senior Fellow at the Freeman Spogli Institute for International Studies, PhD in Sociology from Stanford University, (Dr. Larry, Ill Winds: Saving Democracy from Russian Rage, Chinese Ambition, and American Complacency, p. 199-202)

The most obvious response to the ill winds blowing from the world’s autocracies is to help the winds of freedom blowing in the other direction. The democracies of the West cannot save themselves if they do not stand with democrats around the world. This is truer now than ever, for several reasons. We live in a globalized world, one in which models, trends, and ideas cascade across borders. Any wind of change may gather quickly and blow with gale force. People everywhere form ideas about how to govern—or simply about which forms of government and sources of power may be irresistible—based on what they see happening elsewhere. We are now immersed in a fierce global contest of ideas, information, and norms. In the digital age, that contest is moving at lightning speed, shaping how people think about their political systems and the way the world runs. As doubts about and threats to democracy are mounting in the West, this is not a contest that the democracies can afford to lose. Globalization, with its flows of trade and information, raises the stakes for us in another way. Authoritarian and badly governed regimes increasingly pose a direct threat to popular sovereignty and the rule of law in our own democracies. Covert flows of money and influence are subverting and corrupting our democratic processes and institutions. They will not stop just because Americans and others pretend that we have no stake in the future of freedom in the world. If we want to defend the core principles of self-government, transparency, and accountability in our own democracies, we have no choice but to promote them globally. It is not enough to say that dictatorship is bad and that democracy, however flawed, is still better. Popular enthusiasm for a lesser evil cannot be sustained indefinitely. People need the inspiration of a positive vision. Democracy must demonstrate that it is a just and fair political system that advances humane values and the common good. To make our republics more perfect, established democracies must not only adopt reforms to more fully include and empower their own citizens. They must also support people, groups, and institutions struggling to achieve democratic values elsewhere. The best way to counter Russian rage and Chinese ambition is to show that Moscow and Beijing are on the wrong side of history; that people everywhere yearn to be free; and that they can make freedom work to achieve a more just, sustainable, and prosperous society. In our networked age, both idealism and the harder imperatives of global power and security argue for more democracy, not less. For one thing, if we do not worry about the quality of governance in lower-income countries, we will face more and more troubled and failing states. Famine and genocide are the curse of authoritarian states, not democratic ones. Outright state collapse is the ultimate, bitter fruit of tyranny. When countries like Syria, Libya, and Afghanistan descend into civil war; when poor states in Africa cannot generate jobs and improve their citizens’ lives due to rule by corrupt and callous strongmen; when Central American societies are held hostage by brutal gangs and kleptocratic rulers, people flee—and wash up on the shores of the democracies. Europe and the United States cannot withstand the rising pressures of immigration unless they work to support better, more stable and accountable government in troubled countries. The world has simply grown too small, too flat, and too fast to wall off rotten states and pretend they are on some other planet. Hard security interests are at stake. As even the Trump administration’s 2017 National Security Strategy makes clear, the main threats to U.S. national security all stem from authoritarianism, whether in the form of tyrannies from Russia and China to Iran and North Korea or in the guise of antidemocratic terrorist movements such as ISIS.1 By supporting the development of democracy around the world, we can deny these authoritarian adversaries the geopolitical running room they seek. Just as Russia, China, and Iran are trying to undermine democracies to bend other countries to their will, so too can we contain these autocrats’ ambitions by helping other countries build effective, resilient democracies that can withstand the dictators’ malevolence. Of course, democratically elected governments with open societies will not support the American line on every issue. But no free society wants to mortgage its future to another country. The American national interest would best be secured by a pluralistic world of free countries—one in which autocrats can no longer use corruption and coercion to gobble up resources, alliances, and territory. If you look back over our history to see who has posed a threat to the United States and our allies, it has always been authoritarian regimes and empires. As political scientists have long noted, no two democracies have ever gone to war with each other—ever. It is not the democracies of the world that are supporting international terrorism, proliferating weapons of mass destruction, or threatening the territory of their neighbors.

#### China 5G leadership compromise US military superiority

Borghard et al. 19, \*Erica D. Borghard is an Assistant Professor at the Army Cyber Institute at West Point. Shawn W. \*Lonergan is a U.S. Army Reserve officer assigned to 75th Innovation Command and a Research Scholar at the Army Cyber Institute. (April 25th, 2019, “The Overlooked Military Implications of the 5G Debate”, https://www.cfr.org/blog/overlooked-military-implications-5g-debate)

There are economic implications for which entities can secure the [greatest global market share](https://www.reuters.com/brandfeatures/venture-capital/article?id=61837) of 5G technology. Technological innovation drives economic growth, job creation, and global economic influence. Huawei may have a long-term market advantage over U.S and Western telecoms because the former has been able to offer 5G products at [far cheaper](https://www.nytimes.com/2019/01/26/us/politics/huawei-china-us-5g-technology.html) rates than the latter. Furthermore, there are also concerns that Chinese-built 5G technology is likely to [contain backdoors](https://www.wired.com/story/huawei-case-signals-new-us-china-cold-war-tech/) that could be used to enable [Chinese economic or national security espionage](https://www.cnbc.com/2019/03/05/huawei-would-have-to-give-data-to-china-government-if-asked-experts.html). It is unlikely that Beijing would actively monitor all of the content of the data that comes across Huawei owned or operated infrastructure (although it may collect and analyze metadata). However, it is conceivable that Huawei would get a proverbial “tap on the shoulder” from Beijing to share pertinent information in specific instances. This may include individually targeting senior corporate executives, which is enabled by the millimeter wave frequency that 5G networks employ.

The military applications of 5G technology have vital strategic and battlefield implications for the U.S. Historically, the U.S. military has reaped enormous advantages from employing cutting edge technology on the battlefield. 5G technology holds similar innovative potential. Perhaps most obviously, the next generation of telecommunications infrastructure will have a direct impact on improving military communications. However, it will also produce cascading effects on the development of other kinds of military technologies, such as robotics and artificial intelligence. For instance, artificial intelligence and machine learning capabilities, such as those used in the Department of Defense’s [Project Maven](https://dod.defense.gov/News/Article/Article/1254719/project-maven-to-deploy-computer-algorithms-to-war-zone-by-years-end/), could be greatly enhanced when leveraging the data processing speeds made possible through 5G infrastructure. As an [era of great power competition](https://dod.defense.gov/Portals/1/Documents/pubs/2018-National-Defense-Strategy-Summary.pdf) emerges between the United States and China, the United States has a compelling strategic interest in being at the forefront of these new technologies.

The United States and its allies must also consider the tactical and operational implications on the battlefield of conducting conventional or counterinsurgency operations in an area with Chinese owned or operated 5G infrastructure. This concern stems from the nature of the relationship between Huawei, an [ostensibly private company](https://www.itnews.com.au/news/analysis-who-really-owns-huawei-175946), and the Chinese Communist Party (CCP). While Huawei’s founder and CEO, Ren Zhengfei proclaimed in a February 2019 interview on [CBS This Morning](https://www.cbsnews.com/news/ren-zhengfei-huawei-ceo-says-we-will-never-provide-chinese-government-with-any-information/)that the company never has and never would provide information to the Chinese government, many experts are [skeptical](https://www.cnbc.com/2019/03/05/huawei-would-have-to-give-data-to-china-government-if-asked-experts.html). Under China’s [2017 National Intelligence Law](https://www.reuters.com/article/us-china-security-lawmaking-idUSKBN19I1FW), the CCP has the authority to monitor and investigate domestic and international companies as well as direct organizations to assist with government espionage efforts. As such, it is conceivable that Huawei will be required to hand over its data to the Chinese government for collection and analysis.

Due to this reality, the United States must consider and be prepared to conduct overseas contingency or counterterrorism operations in areas where Chinese telecommunications infrastructure is widely proliferated, thus restricting the United States’ ability to rely on indigenous telecoms. As [noted](https://www.africom.mil/media-room/transcript/31604/gen-joseph-votel-gen-thomas-waldhauser-and-acting-asd-for-international-security-affairs-kathryn) by US AFRICOM Commander General Thomas Waldhauser, this has already become an issue in Africa where Chinese telecommunications companies are poised to dominate. The integrity of U.S. military communications systems that rely on 5G networks could be undermined at key phases of an operation. For example, if the United States is conducting a military operation in an area of interest to China, it is plausible that the Chinese government could leverage Huawei to intercept or even deny military communications. Furthermore, Chinese telecom infrastructure dominance in a theater of operations may limit the U.S. military’s ability to conduct precision targeting that leverages signals intelligence collection on 5G telecommunications networks.

The strategic and battlefield implications of who owns and operates 5G infrastructure around the world underscores the national security importance of 5G. The U.S. government and its allies should more systematically assess both the opportunities and risks associated with conducting future military operations in environments that rely on Chinese technology.

To date, the U.S. government has devoted significant energy to persuading its allies and partners to follow the United States in prohibiting Chinese telecoms, particularly Huawei, from building and/or operating 5G infrastructure. However, its diplomatic approach has been met with varying degrees of success. While some countries such as [Australia](https://www.ft.com/content/e90c3800-aad3-11e8-94bd-cba20d67390c) and [Japan](https://www.reuters.com/article/us-usa-china-huawei-japan/japans-top-three-telcos-to-exclude-huawei-zte-network-equipment-kyodo-idUSKBN1O90JW) have fallen in line with the U.S. stance on Huawei, many others have not. The European Commission’s recent 5G [recommendations](https://www.cyberscoop.com/5g-eu-huawei-cybersecurity-recommendations/) for member states dismissed a ban on Chinese telecoms. British intelligence has reportedly maintained that the security risks associated with Huawei can be [sufficiently managed](https://www.ft.com/content/619f9df4-32c2-11e9-bd3a-8b2a211d90d5), and New Zealand, after [initially bandwagoning](https://www.nytimes.com/2018/11/28/business/huawei-new-zealand-papua-new-guinea.html) with the United States in December 2018, abruptly [reversed course](https://www.bloomberg.com/news/articles/2019-02-18/new-zealand-says-china-s-huawei-hasn-t-been-ruled-out-of-5g-role) in February 2019. This is concerning for the United States because New Zealand and the UK are members of the Five Eyes intelligence-sharing alliance. Many allies have refused an outright ban of Huawei because of the company’s ability to offer 5G products at far cheaper rates than Western telecoms.

It is clear that U.S. diplomatic efforts are not working. The reality is that the bottom line is largely driving decision-making. Therefore, rather than take a purely negative approach, the United States should consider using positive inducements to make its 5G products more appealing. While the United States should not strive to mirror China’s top-down approach to innovation, it should work with allies to use market incentives to make U.S.- and Western-developed 5G infrastructure and products more competitive. Furthermore, the U.S. military needs to anticipate that its use of native telecommunications infrastructure in a future operating environment may be compromised, limited, or denied. The U.S. military will inevitably need greater bandwidth on the tactical edge and this should be an imperative that drives investment in research and development to address this challenge.

Technological innovation was at the crux of the United States’ comparative military and economic advantage in the twentieth century. In this contemporary great power competition, U.S. failure to innovate at the scientific and technological frontier will have direct (and deleterious) effects for the United States on the distribution of power in the international system over the long term.

#### Chinese tech superiority upends deterrence and emboldens them to risk conflict over Taiwan---extinction.

Kroenig 18, Deputy Director for Strategy, Scowcroft Center for Strategy and Security Associate Professor of Government and Foreign Service, Georgetown University (Matthew, Nov 12, 2018, “Will disruptive technology cause nuclear war?” *BAS*, <https://thebulletin.org/2018/11/will-disruptive-technology-cause-nuclear-war>)

Rather, we should think more broadly about how new technology might affect global politics, and, for this, it is helpful to turn to scholarly international relations theory. The dominant theory of the causes of war in the academy is the “bargaining model of war.” This theory identifies rapid shifts in the balance of power as a primary cause of conflict.

International politics often presents states with conflicts that they can settle through peaceful bargaining, but when bargaining breaks down, war results. Shifts in the balance of power are problematic because they undermine effective bargaining. After all, why agree to a deal today if your bargaining position will be stronger tomorrow? And, a clear understanding of the military balance of power can contribute to peace. (Why start a war you are likely to lose?) But shifts in the balance of power muddy understandings of which states have the advantage.

You may see where this is going. New technologies threaten to create potentially destabilizing shifts in the balance of power.

For decades, stability in Europe and Asia has been supported by US military power. In recent years, however, the balance of power in Asia has begun to shift, as China has increased its military capabilities. Already, Beijing has become more assertive in the region, claiming contested territory in the South China Sea. And the results of Russia’s military modernization have been on full display in its ongoing intervention in Ukraine.

Moreover, China may have the lead over the United States in emerging technologies that could be decisive for the future of military acquisitions and warfare, including 3D printing, hypersonic missiles, quantum computing, 5G wireless connectivity, and artificial intelligence (AI). And Russian President Vladimir Putin is building new unmanned vehicles while ominously declaring, “Whoever leads in AI will rule the world.”

If China or Russia are able to incorporate new technologies into their militaries before the United States, then this could lead to the kind of rapid shift in the balance of power that often causes war. If Beijing believes emerging technologies provide it with a newfound, local military advantage over the United States, for example, it may be more willing than previously to initiate conflict over Taiwan. And if Putin thinks new tech has strengthened his hand, he may be more tempted to launch a Ukraine-style invasion of a NATO member.

Either scenario could bring these nuclear powers into direct conflict with the United States, and once nuclear armed states are at war, there is an inherent risk of nuclear conflict through limited nuclear war strategies, nuclear brinkmanship, or simple accident or inadvertent escalation.

This framing of the problem leads to a different set of policy implications. The concern is not simply technologies that threaten to undermine nuclear second-strike capabilities directly, but, rather, any technologies that can result in a meaningful shift in the broader balance of power. And the solution is not to preserve second-strike capabilities, but to preserve prevailing power balances more broadly.

When it comes to new technology, this means that the United States should seek to maintain an innovation edge. Washington should also work with other states, including its nuclear-armed rivals, to develop a new set of arms control and nonproliferation agreements and export controls to deny these newer and potentially destabilizing technologies to potentially hostile states.

These are no easy tasks, but the consequences of Washington losing the race for technological superiority to its autocratic challengers just might mean nuclear Armageddon.

### 1AC---Cybersecurity ADV

#### Advantage 2 is Cybersecurity:

#### Aggressive patent strategies create structural flaws in 5G standardization that imperils domestic cybersecurity---market competition reduces the incidence of vulnerability and severity of attacks.

Duan 20, \*Charles Duan is a senior fellow and associate director of tech & innovation policy at the R Street Institute, where he focuses his research on intellectual property issues; (2020, “OF MONOPOLIES AND MONOCULTURES: THE INTERSECTION OF PATENTS AND NATIONAL SECURITY”, Santa Clara High Technology Law Journal, 36(4), 369-405. Retrieved from <https://www2.lib.ku.edu/login?url=https://www.proquest.com/scholarly-journals/monopolies-monocultures-intersection-patents/docview/2442966690/se-2?accountid=14556>)

III. COMPETITION AND CYBERSECURITY

In addition to the historical review done so far, another approach to understanding the relationship among patents, competition, and national security is to consider the role of cybersecurity. There is little doubt that computer system vulnerabilities that enable hacking and spread of computer exploits are a threat to the nation’s defenses, so better cybersecurity is a key part of national security strategy.155

Strong competition can thus complement national security by enhancing domestic cybersecurity, and patent assertion that unduly weakens competition detracts from cybersecurity.156 Competition promotes better cybersecurity in at least two ways. First, multiple studies show that competition encourages firms to improve their products on multiple vectors including cybersecurity. Second, competition avoids a situation that security experts call a “monoculture,” which increases vulnerability to severe cyberattacks. As former Secretary of Homeland Security Michael Chertoff wrote recently, “We need competition and multiple providers, not a potentially vulnerable technological monoculture,” to guarantee national security.157 Thus, cybersecurity provides a useful lens for understanding how unfettered patent assertion and licensing can detract from national security.

A. Cybersecurity as Competitive Value-Add

Competition enhances national security by reducing the incidence of technical vulnerabilities. That effect is especially important for security sensitive systems such as mobile telecommunications.

Intuitively, a causal chain from competition to cybersecurity makes logical sense. Computer security is a value-added benefit to consumers, so firms in competitive markets are likely to use security to gain an edge over their competitors.158 In monopolized markets, though, there may be less external impetus to test products for flaws, and the monopolist may choose to focus less on security and more on new product features or increased product quality.

Economic research confirms these hypotheses about competition leading to better cybersecurity. A 2009 empirical study of web browsers considered the impact of market concentration on the amount of time that vendors took to fix security vulnerabilities as they were discovered.159 The study found that the presence of more competitors correlated with faster cybersecurity response—a reduction of 8–10 days in response time per additional market rival.160 Similarly, business researchers in 2005 modeled incentives for firms to engage in sharing of cybersecurity information, and concluded that the “inclination to share information and invest in security technologies increases as the degree of competitiveness in an industry increases.”161 Another study found that, where two software firms are in competition, at least one will be willing to take on some degree of risk and responsibility for cybersecurity, whereas a monopoly software firm will consistently fail to accept such responsibility.162 To be sure, an unpublished study from 2017 found that some market concentration can make firms more responsive to cybersecurity issues, but only to a point: “being in a dominant position reduces the positive effect of having less competitors on the responsiveness of the vendor,” and indeed the “more dominant the firm is, the less rapid it is in releasing security patches.”163 This research confirms that competition is more conducive to cybersecurity.

It is not hard to see how this applies to emerging communication technologies markets. In the absence of competition, the above research suggests that device manufacturers, chip makers, and software developers will lack incentives to respond to vulnerabilities, to share information about cybersecurity practices and issues, and to take responsibility for security matters. Mobile phone chips have had their share of cybersecurity failures already.164 The best way to flush out ongoing and future cybersecurity issues is to maintain competitive pressure at all levels of the supply chain.

B. Vulnerabilities of “Monocultures”

A second reason why monopoly undermines cybersecurity is that monopoly leads to a “monoculture” of single-vendor products, opening the door to massive systemic failure in the case of a cyberattack. Computer researchers developed the theory of software monocultures in the early 2000s, in response to the regular phenomenon of computer viruses and other attacks spreading rapidly by exploiting flaws in the dominant operating system at the time, Microsoft Windows.165 Where a computer system such as Windows has a commanding share of users, a virus that exploits a flaw in that system can quickly spread to infect a whole interconnected ecosystem. An operating system monopoly thus enables fast and easy spread of cyberattacks, and better cybersecurity would be achieved through greater diversity in online systems.166 As one research group posited, “a network architecture that supports a collection of heterogeneous network elements for the same functional capability offers a greater possibility of surviving security attacks as compared to homogeneous networks.”167

There has been considerable study of the theory that computer monocultures are naturally more vulnerable to attacks.168 In one study, computer science researchers reviewed a catalog of 6,340 software vulnerabilities recorded in 2007, to compare whether comparable software would share the same flaws.169 Of the 2,627 vulnerabilities applicable to application software (as opposed to operating systems, web scripts, and other software components), only 29 (1.1%) applied to substitute products from different vendors but providing the same functionality.170 By contrast, different versions of a single software product were found to share vulnerabilities 84.7% of the time.171 Thus, software monocultures share exploitable flaws even when there is some variation in versions across the monoculture; by contrast, diversity in software is almost guaranteed to prevent a single flaw from affecting all users.

In the case of 5G and wireless mobile communications, a monoculture is an especially concerning possibility. To the extent that systems such as smart city sensors or communication networks are widely deployed in a monoculture fashion, a widespread attack could have devastating consequences, potentially blacking out a region and affecting essential services such as 911.172 A monoculture that is vulnerable to so-called “rootkits” or “backdoors”—maliciously installed software that enable bad actors to commandeer systems—could also enable mass surveillance or spying by private hackers or foreign governments.173 The presence of systems from multiple vendors would mitigate these possibilities.

#### Actors have the means and motivations to strike critical infrastructure.

Wintch 21, \*Timothy M. Wintch, an active-duty Major in the United States Air Force. He is currently a graduate student at the Oettinger School of Science & Technology Intelligence, National Intelligence University, in Bethesda, Maryland. Mr. Wintch has over 11 years of experience in command-and-control operations as an Air Battle Manager. He holds a Bachelor of Arts in Politics from the University of California, Santa Cruz, and a Master of Arts in Military Studies from American Military University. (April 20th, 2021, “PERSPECTIVE: Cyber and Physical Threats to the U.S. Power Grid and Keeping the Lights on”, https://www.hstoday.us/subject-matter-areas/infrastructure-security/perspective-cyber-and-physical-threats-to-the-u-s-power-grid-and-keeping-the-lights-on/)

Among critical infrastructure sectors in the U.S., energy is perhaps the most crucial of the 16 sectors defined by the Department of Homeland Security. This sector is so vital because it provides the energy necessary to run every other critical infrastructure sector. However, the U.S. power grid, the backbone of the energy sector, is built upon an aging skeleton that is becoming increasingly vulnerable every day. Whether from terrorists or nation-states like Russia and China, the power grid is susceptible to not just physical attacks, but also to cyber intrusion as well. However, much of this threat can be mitigated if the U.S. takes the appropriate steps to safeguard the power grid and avoid a potential catastrophe in the future.

Since Sept. 11, 2001, terrorism on U.S. soil has been at the forefront of American consciousness. Critical infrastructure provides an appealing target because of the disproportionally large impact even a small attack can have on the sectors. In particular, the power grid represents a particularly lucrative target, both in terms of the ease of access and the large impact it can make. The National Research Council stated that the U.S. power grid is “vulnerable to intelligent multi-site attacks by knowledgeable attackers intent on causing maximum physical damage to key components on a wide geographical scale.”[[1]](https://www.hstoday.us/subject-matter-areas/infrastructure-security/perspective-cyber-and-physical-threats-to-the-u-s-power-grid-and-keeping-the-lights-on/" \l "_ftn1) Additionally, the physical security of transmission and distribution systems is difficult due to the dispersed nature of these key components, which in turn is advantageous to attackers as it reduces the likelihood of their capture.[[2]](https://www.hstoday.us/subject-matter-areas/infrastructure-security/perspective-cyber-and-physical-threats-to-the-u-s-power-grid-and-keeping-the-lights-on/" \l "_ftn2) From 2002-2012, approximately 2,500 physical attacks occurred against transmission lines and towers worldwide and approximately 500 attacks against transformer substations.[[3]](https://www.hstoday.us/subject-matter-areas/infrastructure-security/perspective-cyber-and-physical-threats-to-the-u-s-power-grid-and-keeping-the-lights-on/" \l "_ftn3) Terrorists have the motivation to attack the U.S. power grid but the very nature of the grid makes it highly vulnerable. The power grid is not only at risk from physical attacks, but also nation-state cyberattacks.

One nation that has shown both the capability and intent to use attacks against critical energy infrastructure is Russia, as demonstrated in their 2015 annexation of Crimea from Ukraine. A Russian cyber threat group known as Sandworm, which used its BlackEnergy malware, attacked Ukrainian computer systems that provide remote control of the Ukraine power grid.[[4]](https://www.hstoday.us/subject-matter-areas/infrastructure-security/perspective-cyber-and-physical-threats-to-the-u-s-power-grid-and-keeping-the-lights-on/" \l "_ftn4) This attack, and another in 2016, each left the capital Kiev without power, prompting cyber experts to raise concern about the same malware already existing in NATO and the U.S. power grids.[[5]](https://www.hstoday.us/subject-matter-areas/infrastructure-security/perspective-cyber-and-physical-threats-to-the-u-s-power-grid-and-keeping-the-lights-on/" \l "_ftn5) In any conflict between Russia and NATO, not only would similar cyberattacks pose a threat, but so would potential physical attacks severing fuel oil and natural gas lines to Western Europe. Russia has both the capability and intent to attack critical infrastructure, particularly power grids, during future conflicts in their “hybrid warfare” approach.

Another nation that has the capability to attack critical energy infrastructure is China, representing a threat to not just the U.S. energy infrastructure but also that of our allies whose support would be vital in a major conflict. A recent NATO report highlighted this threat from China’s Belt and Road Initiative, stating that “[China’s] foreign direct investment in strategic sectors [such as energy generation and distribution] …raises questions about whether access and control over such infrastructure can be maintained, particularly in crisis when it would be required to support the military.”[[6]](https://www.hstoday.us/subject-matter-areas/infrastructure-security/perspective-cyber-and-physical-threats-to-the-u-s-power-grid-and-keeping-the-lights-on/" \l "_ftn6) Like Russia, China has been active with cyber intrusions in U.S. energy infrastructure. The Mission Support Center at Idaho National Laboratory characterized these as attacks as “multiple intrusions into US ICS/SCADA [Industrial Control Systems/Supervisory Control and Data Acquisition] and smart grid tools [that] may be aimed more at intellectual property theft and gathering intelligence to bolster their own infrastructure, but it is likely that they are also using these intrusions to develop capabilities to attack the [bulk electric system], as well.”[[7]](https://www.hstoday.us/subject-matter-areas/infrastructure-security/perspective-cyber-and-physical-threats-to-the-u-s-power-grid-and-keeping-the-lights-on/" \l "_ftn7) China, therefore, has both the capability and intent to conduct cyber intrusions and attacks for myriad reasons.

Another arm of this threat is the reliance the U.S. energy industry has on imports from China, especially transformers. In early 2020, federal officials seized a transformer in the port of Houston that had been imported by the Jiangsu Huapeng Transformer Company before sending it to Sandia National Laboratory in Albuquerque. Sandia is contracted by the U.S. Department of Energy for mitigating national security threats.[[8]](https://www.hstoday.us/subject-matter-areas/infrastructure-security/perspective-cyber-and-physical-threats-to-the-u-s-power-grid-and-keeping-the-lights-on/" \l "_ftn8) The Wall Street Journal reported that “Mike Howard, chief executive of the Electric Power Research Institute, a utility-funded technical organization, said that the diversion of a huge, expensive transformer is so unusual – in his experience, unprecedented – that it suggests officials had significant security concerns.”[[9]](https://www.hstoday.us/subject-matter-areas/infrastructure-security/perspective-cyber-and-physical-threats-to-the-u-s-power-grid-and-keeping-the-lights-on/" \l "_ftn9) Previously destined for the Washington Area Power Administration’s Ault, Colo., substation, the transformer is believed to have been seized due to “backdoor” exploitable hardware emplaced by the Chinese prior to shipment.[[10]](https://www.hstoday.us/subject-matter-areas/infrastructure-security/perspective-cyber-and-physical-threats-to-the-u-s-power-grid-and-keeping-the-lights-on/" \l "_ftn10) Shortly after these events, President Trump issued Executive Order 13920, “[Securing the United States Bulk-Power System](https://trumpwhitehouse.archives.gov/presidential-actions/executive-order-securing-united-states-bulk-power-system/),” essentially limiting the import of Chinese-built critical energy infrastructure components due to concerns about cybersecurity.[[11]](https://www.hstoday.us/subject-matter-areas/infrastructure-security/perspective-cyber-and-physical-threats-to-the-u-s-power-grid-and-keeping-the-lights-on/" \l "_ftn11) Interestingly, Jiangsu Huapeng “boasted that it supported 10 percent of New York City’s electricity load.”[[12]](https://www.hstoday.us/subject-matter-areas/infrastructure-security/perspective-cyber-and-physical-threats-to-the-u-s-power-grid-and-keeping-the-lights-on/" \l "_ftn12)

Franklin Kramer, the former Assistant Secretary of Defense for International Security Affairs, testified before a U.S. House of Representatives Energy and Commerce subcommittee during an energy and power hearing in 2011 and said that a “highly-coordinated and structured cyber, physical, or blended attack on the bulk power system, however, could result in long-term (irreparable) damage to key system components in multiple simultaneous or near-simultaneous strikes.” He added that “an outage could result with the potential to affect a wide geographic area and cause large population centers to lose power for extended periods.”[[13]](https://www.hstoday.us/subject-matter-areas/infrastructure-security/perspective-cyber-and-physical-threats-to-the-u-s-power-grid-and-keeping-the-lights-on/" \l "_ftn13) Even the inclusion of features such as smart grids to the overall grid structure poses new vulnerabilities through their connectivity. Kramer stated that “such connectivity means that the distribution system could be a key vector for a national security attack on the grid.”[[14]](https://www.hstoday.us/subject-matter-areas/infrastructure-security/perspective-cyber-and-physical-threats-to-the-u-s-power-grid-and-keeping-the-lights-on/" \l "_ftn14)

#### Those attacks cause accidental nuclear escalation.

Klare 19, \*Michael T. Klare is a professor emeritus of peace and world security studies at Hampshire College and senior visiting fellow at the Arms Control Association; (November 19th, “Cyber Battles, Nuclear Outcomes? Dangerous New Pathways to Escalation”, https://www.armscontrol.org/act/2019-11/features/cyber-battles-nuclear-outcomes-dangerous-new-pathways-escalation)

Yet another pathway to escalation could arise from a cascading series of cyberstrikes and counterstrikes against vital national infrastructure rather than on military targets. All major powers, along with Iran and North Korea, have developed and deployed cyberweapons designed to disrupt and destroy major elements of an adversary’s key economic systems, such as power grids, financial systems, and transportation networks. As noted, Russia has infiltrated the U.S. electrical grid, and it is widely believed that the United States has done the same in Russia.[12](https://www.armscontrol.org/act/2019-11/features/cyber-battles-nuclear-outcomes-dangerous-new-pathways-escalation#endnote12) The Pentagon has also devised a plan known as “Nitro Zeus,” intended to immobilize the entire Iranian economy and so force it to capitulate to U.S. demands or, if that approach failed, to pave the way for a crippling air and missile attack.[13](https://www.armscontrol.org/act/2019-11/features/cyber-battles-nuclear-outcomes-dangerous-new-pathways-escalation#endnote12)

The danger here is that economic attacks of this sort, if undertaken during a period of tension and crisis, could lead to an escalating series of tit-for-tat attacks against ever more vital elements of an adversary’s critical infrastructure, producing widespread chaos and harm and eventually leading one side to initiate kinetic attacks on critical military targets, risking the slippery slope to nuclear conflict. For example, a Russian cyberattack on the U.S. power grid could trigger U.S. attacks on Russian energy and financial systems, causing widespread disorder in both countries and generating an impulse for even more devastating attacks. At some point, such attacks “could lead to major conflict and possibly nuclear war.”[14](https://www.armscontrol.org/act/2019-11/features/cyber-battles-nuclear-outcomes-dangerous-new-pathways-escalation#endnote14)

These are by no means the only pathways to escalation resulting from the offensive use of cyberweapons. Others include efforts by third parties, such as proxy states or terrorist organizations, to provoke a global nuclear crisis by causing early-warning systems to generate false readings (“spoofing”) of missile launches. Yet, they do provide a clear indication of the severity of the threat. As states’ reliance on cyberspace grows and cyberweapons become more powerful, the dangers of unintended or accidental escalation can only grow more severe.

#### Cyber-compromised NC3 causes nuclear war.

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The Nuclear-Cyber Connection

These links exist because the NC3 systems of the United States and other nuclear-armed states are heavily dependent on computers and other digital processors for virtually every aspect of their operation and because those systems are highly vulnerable to cyberattack. Every nuclear force is composed, most basically, of weapons, early-warning radars, launch facilities, and the top officials, usually presidents or prime ministers, empowered to initiate a nuclear exchange. Connecting them all, however, is an extended network of communications and data-processing systems, all reliant on cyberspace. Warning systems, ground- and space-based, must constantly watch for and analyze possible enemy missile launches. Data on actual threats must rapidly be communicated to decision-makers, who must then weigh possible responses and communicate chosen outcomes to launch facilities, which in turn must provide attack vectors to delivery systems. All of this involves operations in cyberspace, and it is in this domain that great power rivals seek vulnerabilities to exploit in a constant struggle for advantage.

The use of cyberspace to gain an advantage over adversaries takes many forms and is not always aimed at nuclear systems. China has been accused of engaging in widespread cyberespionage to steal technical secrets from U.S. firms for economic and military advantages. Russia has been accused, most extensively in the Robert Mueller report, of exploiting cyberspace to interfere in the 2016 U.S. presidential election. Nonstate actors, including terrorist groups such as al Qaeda and the Islamic State group, have used the internet for recruiting combatants and spreading fear. Criminal groups, including some thought to be allied with state actors, such as North Korea, have used cyberspace to extort money from banks, municipalities, and individuals.[4](https://www.armscontrol.org/act/2019-11/features/cyber-battles-nuclear-outcomes-dangerous-new-pathways-escalation#endnote04) Attacks such as these occupy most of the time and attention of civilian and military cybersecurity organizations that attempt to thwart such attacks. Yet for those who worry about strategic stability and the risks of nuclear escalation, it is the threat of cyberattacks on NC3 systems that provokes the greatest concern.

This concern stems from the fact that, despite the immense effort devoted to protecting NC3 systems from cyberattack, no enterprise that relies so extensively on computers and cyberspace can be made 100 percent invulnerable to attack. This is so because such systems employ many devices and operating systems of various origins and vintages, most incorporating numerous software updates and “patches” over time, offering multiple vectors for attack. Electronic components can also be modified by hostile actors during production, transit, or insertion; and the whole system itself is dependent to a considerable degree on the electrical grid, which itself is vulnerable to cyberattack and is far less protected. Experienced “cyberwarriors” of every major power have been working for years to probe for weaknesses in these systems and in many cases have devised cyberweapons, typically, malicious software (malware) and computer viruses, to exploit those weaknesses for military advantage.[5](https://www.armscontrol.org/act/2019-11/features/cyber-battles-nuclear-outcomes-dangerous-new-pathways-escalation#endnote05)

Although activity in cyberspace is much more difficult to detect and track than conventional military operations, enough information has become public to indicate that the major nuclear powers, notably China, Russia, and the United States, along with such secondary powers as Iran and North Korea, have established extensive cyberwarfare capabilities and engage in offensive cyberoperations on a regular basis, often aimed at critical military infrastructure. “Cyberspace is a contested environment where we are in constant contact with adversaries,” General Paul M. Nakasone, commander of the U.S. Cyber Command (Cybercom), told the Senate Armed Services Committee in February 2019. “We see near-peer competitors [China and Russia] conducting sustained campaigns below the level of armed conflict to erode American strength and gain strategic advantage.”

Although eager to speak of adversary threats to U.S. interests, Nakasone was noticeably but not surprisingly reluctant to say much about U.S. offensive operations in cyberspace. He acknowledged, however, that Cybercom took such action to disrupt possible Russian interference in the 2018 midterm elections. “We created a persistent presence in cyberspace to monitor adversary actions and crafted tools and tactics to frustrate their efforts,” he testified in February. According to press accounts, this included a cyberattack aimed at paralyzing the Internet Research Agency, a “troll farm” in St. Petersburg said to have been deeply involved in generating disruptive propaganda during the 2016 presidential elections.[6](https://www.armscontrol.org/act/2019-11/features/cyber-battles-nuclear-outcomes-dangerous-new-pathways-escalation#endnote06)

Other press investigations have disclosed two other offensive operations undertaken by the United States. One called “Olympic Games” was intended to disrupt Iran’s drive to increase its uranium-enrichment capacity by sabotaging the centrifuges used in the process by infecting them with the so-called Stuxnet virus. Another left of launch effort was intended to cause malfunctions in North Korean missile tests.[7](https://www.armscontrol.org/act/2019-11/features/cyber-battles-nuclear-outcomes-dangerous-new-pathways-escalation#endnote07) Although not aimed at either of the U.S. principal nuclear adversaries, those two attacks demonstrated a willingness and capacity to conduct cyberattacks on the nuclear infrastructure of other states.

Efforts by strategic rivals of the United States to infiltrate and eventually degrade U.S. nuclear infrastructure are far less documented but thought to be no less prevalent. Russia, for example, is believed to have planted malware in the U.S. electrical utility grid, possibly with the intent of cutting off the flow of electricity to critical NC3 facilities in the event of a major crisis.[8](https://www.armscontrol.org/act/2019-11/features/cyber-battles-nuclear-outcomes-dangerous-new-pathways-escalation#endnote08) Indeed, every major power, including the United States, is believed to have crafted cyberweapons aimed at critical NC3 components and to have implanted malware in enemy systems for potential use in some future confrontation.

Pathways to Escalation

Knowing that the NC3 systems of the major powers are constantly being probed for weaknesses and probably infested with malware designed to be activated in a crisis, what does this say about the risks of escalation from a nonkinetic battle, that is, one fought without traditional weaponry, to a kinetic one, at first using conventional weapons and then, potentially, nuclear ones? None of this can be predicted in advance, but those analysts who have studied the subject worry about the emergence of dangerous new pathways for escalation. Indeed, several such scenarios have been identified.[9](https://www.armscontrol.org/act/2019-11/features/cyber-battles-nuclear-outcomes-dangerous-new-pathways-escalation#endnote09)

The first and possibly most dangerous path to escalation would arise from the early use of cyberweapons in a great power crisis to ~~paralyze~~ undermine the vital command, control, and communications capabilities of an adversary, many of which serve nuclear and conventional forces. In the “fog of war” that would naturally ensue from such an encounter, the recipient of such an attack might fear more punishing follow-up kinetic attacks, possibly including the use of nuclear weapons, and, fearing the loss of its own arsenal, launch its weapons immediately. This might occur, for example, in a confrontation between NATO and Russian forces in east and central Europe or between U.S. and Chinese forces in the Asia-Pacific region.

Speaking of a possible confrontation in Europe, for example, James N. Miller Jr. and Richard Fontaine wrote that “both sides would have overwhelming incentives to go early with offensive cyber and counter-space capabilities to negate the other side’s military capabilities or advantages.” If these early attacks succeeded, “it could result in huge military and coercive advantage for the attacker.” This might induce the recipient of such attacks to back down, affording its rival a major victory at very low cost. Alternatively, however, the recipient might view the attacks on its critical command, control, and communications infrastructure as the prelude to a full-scale attack aimed at neutralizing its nuclear capabilities and choose to strike first. “It is worth considering,” Miller and Fontaine concluded, “how even a very limited attack or incident could set both sides on a slippery slope to rapid escalation.”[10](https://www.armscontrol.org/act/2019-11/features/cyber-battles-nuclear-outcomes-dangerous-new-pathways-escalation#endnote10)

What makes the insertion of latent malware in an adversary’s NC3 systems so dangerous is that it may not even need to be activated to increase the risk of nuclear escalation. If a nuclear-armed state comes to believe that its critical systems are infested with enemy malware, its leaders might not trust the information provided by its early-warning systems in a crisis and might misconstrue the nature of an enemy attack, leading them to overreact and possibly launch their nuclear weapons out of fear they are at risk of a preemptive strike.

“The uncertainty caused by the unique character of a cyber threat could jeopardize the credibility of the nuclear deterrent and undermine strategic stability in ways that advances in nuclear and conventional weapons do not,” Page O. Stoutland and Samantha Pitts-Kiefer wrote in 2018 paper for the Nuclear Threat Initiative. “[T]he introduction of a flaw or malicious code into nuclear weapons through the supply chain that compromises the effectiveness of those weapons could lead to a lack of confidence in the nuclear deterrent,” undermining strategic stability.[11](https://www.armscontrol.org/act/2019-11/features/cyber-battles-nuclear-outcomes-dangerous-new-pathways-escalation#endnote11) Without confidence in the reliability of its nuclear weapons infrastructure, a nuclear-armed state may misinterpret confusing signals from its early-warning systems and, fearing the worst, launch its own nuclear weapons rather than lose them to an enemy’s first strike. This makes the scenario proffered in the 2018 NPR report, of a nuclear response to an enemy cyberattack, that much more alarming.

### 1AC---Solvency

#### Plan: The United States federal government should substantially increase prohibitions on private sector conduct that is more restrictive of competition than reasonably necessary to enable creation of information technology standards.

#### The plan requires SSO’s to administer reasonable action to prohibit ex post opportunism---that strengthens FRAND effectiveness while enabling SEP holders to capture appropriate royalties---which is the best competition-innovation balance.

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3. Application of the Basic Legal Principles

The antitrust principle is straightforward: industry-wide collaboration through SSOs to establish procompetitive standards is permitted only if it is no more restrictive of competition than reasonably necessary to enable creation of the standards. When standard setting predictably creates technology monopolies that, if unrestrained, will enable anticompetitive ex post opportunism that would otherwise not occur, an SSO that does not take effective measures to prevent or minimize such ex post opportunism engages in conduct that is more restrictive of competition than necessary. In that case, the SSO and, in appropriate cases, its members, may well violate Section 1 of the Sherman Act.

Under this principle, SSO procedures and FRAND rules should be evaluated based on whether they lead to reasonable SEP royalties, using the competitive ex ante licensing standard discussed above, which has been adopted by the courts in patent law. Put differently, FRAND rules should be evaluated based on their ability to prevent SEP holders from obtaining more than the ex ante value of their technology from implementers.

This limitation would not prevent a SEP holder from proﬁting, perhaps greatly, from participating in the SSO and having its patented technology included in the standard. The SEP holder continues to be rewarded for its technology because the inclusion of its technology in the standard can still greatly increase the volume of licensing opportunities available to the SEP holder.

Whether a particular set of FRAND rules are sufficiently effective in preventing ex post opportunism will depend on the particular circumstances. The procedural unfolding of the case will also depend upon the circumstances. As a general matter, the case would probably be structured as an ordinary Rule of Reason case.82

First, the plaintiff would have to demonstrate harm to competition as a result of the collaboration of the SSO’s members, many of which compete with one another. In this case, the harm to competition would stem from the ability of the SEP holder to exercise monopoly power by obtaining royalties in excess of the competitive, ex ante level. The decision to include patented technologies in the standard would be the allegedly unlawful agreement. Notably, the court need not determine what a FRAND royalty is; it would suffice to determine that market power has been created or exercised, and that existing SSO rules and policies were not adequate to prevent the competitive harm. The defendant, which could be the SSO or perhaps one or more SSO members, would win at this point if the plaintiff failed to show harm to competition. If might fail if the standard faces substantial competition and the court concludes that the SEP holder therefore does not have market power or if the SSO’s rules and policies are found to be effective in preventing ex post opportunism, even if the plaintiff or even the court thinks that other rules and policies would be preferable.

Second, if the plaintiff makes the requisite showing of harm to competition, the defendant(s) would then have to show some procompetitive justiﬁcation— in this case, the beneﬁts of the standard. These two initial steps should be straightforward.

Third, if as is likely the defendant is able to show a procompetitive justiﬁcation, the plaintiff would have to show that the SSO could have used available, reasonable alternatives to realize the efficiency beneﬁts with less or none of the competitive harms. The plaintiff might identify reasonable alternatives that would have led to a different standard, based on including unpatented technology in the standard or perhaps involving fewer SEPs or fewer owners of SEPs, which would be less subject to patent holdup. More likely, the plaintiff could suggest alternative SSO rules that would not change the standard, but would reduce the likelihood or extent of ex post opportunism. For example, the plaintiff might suggest more rigorous FRAND-type rules, such as rules that set forth more precise principles on which FRAND royalties are to be determined and the circumstances under which SEP holders might seek injunctions.

Fourth, the burden would then shift to the defendant(s) to show that the beneﬁts of the standard could not have been realized if the SSO had adopted any of the proffered alternatives or that those alternatives were unrealistic.83 The plaintiff would be entitled to judgment if the court concludes that those beneﬁts could have been realized with less competitive harm if the SSO had adopted the standard with different IPR rules or policies.

Our overall sense, based on experience and the empirical literature, is that the extant FRAND rules are generally useful, but tend to be inadequate because they are imprecise and leave unresolved such critical issues as (a) the meaning of a reasonable royalty, even conceptually; (b) the meaning of “non-discriminatory;” (c) to whom licenses must be offered; and (d) under what circumstances may a SEP holder obtain an injunction.84 These imprecise FRAND commitments are therefore not sufficient to adequately prevent ex post opportunism. The recent revisions to IEEE’s FRAND policy represent a signiﬁcant step in the right direction, but even this advance leaves important questions unanswered.85 If FRAND rules are inadequate in these ways, litigation involving extant FRAND rules would likely be resolved only at the ﬁnal, fourth step. The defendant would be able to demonstrate the beneﬁts created by the standard; the plaintiff would be able to demonstrate the creation of market power and that other reasonable and practical rules or policies would ameliorate the problem. The case would thus turn on whether the defendant is able to demonstrate that signiﬁcant beneﬁts associated with standardization could not have been realized if the SSO had adopted those other rules or policies.

The court would have available a variety of possible remedies if the plaintiff prevails. Implementers that paid supracompetitive royalties or were unlawfully excluded in whole or in part from product markets as a result of the inadequate FRAND policies would be entitled to damages and, in some cases, to treble damages.86 If the unlawful SSO conduct is regarded as the collective action of the SSO and its members, which is likely to be the case in most instances, SSO members would be jointly and severally liable for the damages. Forward-looking injunctive relief aimed at restoring competition would need to be fashioned to the requirements of the individual case. For example, a court could order the SSO to adopt a new rule or policy proposed by the plaintiff. If the court is reluctant to take on that governance role, it might give the SSO a period of time—maybe ninety days—to develop a rule, subject to the court’s ultimate approval, which would adequately ameliorate the competitive problem created by the SSO. Alternatively or in addition, the court might order the parties to attempt to negotiate a rule or policy on which they can agree. And, depending on the circumstances, the court might order SEP holders, including at least those that were defendants in the case, to comply with the new SSO rules and policies.

#### Alleviating patent holdup begins by permitting consumer challenges to SSO misconduct, which necessitates antitrust. SSO’s cannot be counted on to self execute FRAND.

Melamed & Shapiro 18, \*A. Douglas Melamed is Professor of the Practice of Law at Stanford Law School; \*Carl Shapiro is the Transamerica Professor of Business Strategy at the Haas School of Business at the University of California at Berkeley; (May 2018, “How Antitrust Law Can Make FRAND Commitments More Effective”, <https://www-cdn.law.stanford.edu/wp-content/uploads/2018/05/How-Antitrust-Law-Can-Make-FRAND-Commitments-More-Effective.pdf>)

2. Why Antitrust Enforcement Is Necessary

Some SSO members have an interest in ensuring that the SSO takes steps to minimize the potential harms from the SEP holders’ monopoly power, and this undoubtedly explains in part why most SSOs have adopted FRAND policies or similar requirements. But, as shown in the economic model in the Appendix,73 SSOs cannot in general be counted on to adopt effective FRAND policies. The bases for this conclusion, which is central to our argument for the applicability of Section 1 to SSO FRAND rules, can be summarized as follows.74

First, the SSO members collectively have an interest in permitting SEP holders to charge supracompetitive royalties that elevate the downstream price of compliant devices to the monopoly level. Doing so will enable the members in aggregate to collect increased revenues from consumers, and thus to generate increased profits that in theory could be shared by all the members. In other words, supracompetitive royalties can enrich industry participants as a group at the expense of final consumers. This fact alone should serve as a clear and strong signal regarding the dangers of counting on SSOs to implement effective FRAND policies: if the SSO members negotiate efficiently, the outcome will be just as bad for consumers as if the members agreed to fix downstream prices.75 The fundamental problem is that final consumers are not at the table when the SSO rules are negotiated.

Second, SSO members that own SEPs but earn little or no profits as implementers have a powerful self-interest in being able to exercise the ex post monopoly power associated with their SEPs. Because SSO policies are usually determined by a consensus process, these members will likely be able to block the adoption of fully effective FRAND policies. Moreover, these SSO members often have the greatest interest in SSO patent policies. Since much of their income may be attributable to patent licensing, they can be expected to devote substantial resources to block the adoption of FRAND policies that effectively prevent patent holdup.

Third, even SSO members that earn significant profits as implementers may have mixed incentives if they also own SEPs, which can also lead to weak or in-effective FRAND rules. In the Appendix, we show that, if the requisite share of votes in the SSO are cast by firms whose share of SEP royalties is at least as large as their share of downstream profits, and if these firms can coordinate their voting over the FRAND rules, then an SSO unconstrained by antitrust laws will establish FRAND rules leading to an outcome no better for consumers than would result from an integrated monopolist controlling all SEPs and all downstream sales.76

Fourth, even SSO members that are downstream implementers and own few, if any, SEPs may have only a modest interest in promoting effective policies to restrict ex post opportunism. Because all implementers will be subject to the opportunism, all of them will face increased licensing costs, and therefore will likely be able to pass on most or all of the increased costs to their customers.77 Furthermore, these implementers might not be especially active or effective in the standard-setting process for free-riding or public-good reasons, especially if SEP royalties constitute only a relatively small portion of the costs of their standard-implementing products. Public choice theory predicts that the highly motivated SEP holders are likely to have the greatest influence over patent policies.

Empirical evidence bears out these concerns. As a starting point, we find it striking that SSO FRAND rules are almost always quite vague.78 Notably, SSOs in which SEP holders are more prevalent tend to have weaker FRAND rules.79 Further, to our knowledge, SSOs have made almost no effort to enforce their FRAND rules and have, instead, left enforcement efforts to others.80 This evidence raises serious doubts about the effectiveness of the existing FRAND rules in preventing ex post opportunism.

The problem is exacerbated by the fact that most SSOs put IPR rules in place long ago, when SEP-holder opportunism was much less of a problem. Proponents of new, stricter IPR rules to prevent SEP-holder opportunism thus face the daunting task of persuading an SSO that makes decisions by consensus to change an existing policy over the often-intense opposition of SEP holders. The dispute over the recent changes to the IPR rules at the Institute of Electrical and Electronics Engineers (IEEE) illustrates how difficult and contentious that process can be.81

Thus, effective prevention of ex post opportunism by SEP holders requires antitrust enforcement to overcome the SSO problems associated with (a) attenuated incentives (implementers that also own SEPs); (b) the public good aspect of stronger FRAND rules (the danger that implementers will free ride on others rather than expend resources to implement strong FRAND rules); and (c) externalities (the harm to consumers that results when implementers pass through higher royalties in the form of higher prices).

#### Indicting systemic holdup is a fruitless academic exercise. Be cautious of neg studies---they rely on deeply flawed methodologies, don’t address relevant hypotheses, and in all likelihood are funded by Qualcomm.

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C. Actual Patent Holdups Are Very Difficult to Measure

As with holdup in general, quantifying the frequency and magnitude of actual patent holdups is very difficult as a practical matter and not a useful way of assessing the importance of the patent holdup problem. Rarely can researchers observe the ex post price, because patent licensing terms are normally confidential. Even when researchers can observe the license fees, they are often embedded in a complex agreement. And even in those rare cases where researchers can accurately observe the ex post price, they are unlikely to observe the ex ante price, making it difficult if not impossible to measure the magnitude of the holdup.

Litigated cases also are problematic as a source of data to quantify the magnitude of actual patent holdups. A litigated case resulting in an award of reasonable royalties may well involve attempted holdup, but by definition it cannot provide smoking-gun evidence of actual holdup, at least if one accepts that the royalties awarded by the court are reasonable.64 Rather, at least since the Supreme Court eliminated the automatic entitlement to an injunction, litigation to judgment (which is rare) often reflects a refusal to give in to holdup by a defendant willing to take its chances in court. And the vast majority of patent cases settle. The terms of a settlement are rarely observable, so it is impossible to know whether those settlements reflected the value of holdup.

Notwithstanding these points, a number of authors have pointed to a lack of empirical evidence to argue that patent holdup either does not exist or is not a significant problem.65 Even taken on their own terms, many of these papers are deeply flawed. One such paper, which has often been cited by those who downplay the importance of patent holdup, purports to offer empirical evidence inconsistent with the hypothesis that SEP holdup has slowed innovation or harmed consumers.66 The conclusion to this Qualcomm-funded paper states, “[w]e cannot reject the hypothesis of no SEP holdup.”67 How do these authors reach this conclusion? They compare rates of change of quality-adjusted prices in “SEP- reliant” industries with “similar” non-SEP-reliant industries, primarily over the 1997-2013 period.68 For example, they show that quality-adjusted prices of cellular phones have fallen faster than the quality-adjusted prices of automobiles.69 This exercise does not address the relevant hypothesis: whether SEP holdup increased the price of cellular phones from what it otherwise would have been.70 The quality- adjusted prices of pharmaceuticals have risen much faster than automobiles over the same period of time, but that similarly is not proof that pharmaceuticals are subject to a patent holdup problem.

Beyond the obvious and fatal flaws in this empirical work,71 the whole line of inquiry is of limited relevance for the purpose of measuring the social costs of holdup or designing institutions to limit patent holdup, because it only looks for instances of actual patent holdup. As explained above, these instances are very difficult to detect and are only the tip of the iceberg in terms of the social costs of patent holdup.72 So far as we can tell, the vast majority of these papers have been funded by Qualcomm and other patent holders seeking to weaken the institutions designed to control patent holdup, increase their leverage in licensing negotiations, and thus increase their ability to monetize their patents.73

Despite the difficulties of observing the incidence and magnitude of actual patent holdups, we are able to observe the telltale signs of actual patent holdup. Transaction cost economics, and simple bargaining theory for that matter, tell us that actual patent holdup can be expected to occur when three conditions are present: (1) a firm has developed a new product independently; (2) that firm has made significant investments that are specific to one or more patents asserted against that product; and (3) the firm is not protected from patent holdup.74 As discussed above, conditions (1) and (2) are common in the high-tech sector, placing considerable weight on the institutions that protect firms from patent holdup.

The presence of those institutions is itself evidence that the patent holdup problem is real and significant. As we noted in Part I, companies try to structure their transactions to avoid holdup, developing institutions for that purpose. As we have seen, the traditional market solutions do not work well for patents. In most industries, the central mechanisms limiting patent holdup come from patent law, namely the rules governing injunctions and patent damages. In the high-tech sector, companies have overwhelmingly turned to SSOs in an effort to obtain global commitments to an ex ante royalty, which appear in the form of FRAND commitments. The near-universal recognition in the industry of the need for such a mechanism is strong evidence that companies view holdup as a problem they must build institutions to avoid.

#### Patent holdup is real and necessitates intervention, even if it can’t be systemically proven.

Contreras 19, \*Jorge Contreras, Professor, University of Utah S.J. Quinney College of Law; (2019, “MUCH ADO ABOUT HOLD-UP”, <https://www.illinoislawreview.org/wp-content/uploads/2019/08/Contreras.pdf>)

B. Protective Measures May Already Be Working to Reduce Hold-Up

Another important factor that should be considered regarding the purported lack of empirical evidence of systemic hold-up is the effect that existing policy measures have already had in reducing hold-up. As noted above, the threat of patent hold-up was a primary motivating factor for many SDOs to adopt policies requiring the disclosure and licensing of SEPs. These policies have been in place for decades. In the United States, the first such policy was adopted in 1959 by the American Standards Association (the predecessor to today’s American National Standards Institute (ANSI).102 Today, every one of the more than 200 ANSI-accredited developers of American National Standards must adhere to ANSI’s essential requirements, including the adoption of such a licensing policy for SEPs. Similar policies have existed in European and international standards organizations since at least the 1980s.103 These policies, which were developed by SDOs in large part to reduce the likelihood of hold-up within standard-setting systems, have had several decades to work, and it is likely that the lack of observed hold-up in some studies can be attributed to the successful operation of these policies.

Similarly, antitrust and competition enforcement agencies in the U.S. and Europe have been aware of the potential for hold-up connected with standardization for many years. Accordingly, they have brought enforcement actions when it has been alleged that hold-up behavior has resulted in a violation of the antitrust laws. High-profile enforcement actions against patent holders such as Rambus, 104 Google 105 and Qualcomm106 send powerful deterrent signals to the market and warn others not to engage in similar behavior lest they, too, become the subject of agency enforcement. Like SDO policies, it is likely that the general market awareness of agency interest in standard-setting and hold-up has, to a degree, limited the amount of hold-up that is actually attempted in the marketplace, thereby limiting the direct evidence of hold-up as a systemic problem.

But do the deterrent effects of SDO and agency efforts to reduce hold-up signify that hold-up is not a problem? Certainly not. To reach such a conclusion would be perverse: akin to claiming that burglary is not a problem in a neighborhood that experiences reduced burglary rates after it has implemented an active neighborhood watch program and enhanced policing.

C. Indicia of Healthy Markets do not Prove the Absence of Anticompetitive Conduct

As noted above, one of the principal arguments advanced by commentators seeking to refute the “hold-up theory” is that markets for telecommunications products, namely smart phones, are robust – evidenced by increasing product functionality, decreasing consumer prices and rapid innovation -- and that this degree of robustness indicates that hold-up cannot be a problem in these markets.107 If hold-up were a problem in these markets, they reason, we would see product stagnation, stable (but high) prices, and a lack of competition – features associated with classic examples of hold-up in markets for products such as natural resources and agricultural goods.108

But this argument relies on a false syllogism: hold-up results in market dysfunction; if a market functions well, then it cannot be subject to hold-up. The weaknesses in this argument are multifold. First, hold-up may exist in individual instances without sufficient weight to affect overall market characteristics, particularly in a large global market such as mobile telecommunications. Thus hold-up may exist, even in a market that outwardly appears to be functioning well. Second, there is no valid counterfactual to use to compare the health and robustness of the market for mobile telecommunications products.109 Other consumer electronics devices, such as televisions and DVD players, do not compare well with mobile telecommunications devices, which have taken on a unique character in the modern networked economy. Thus, observing the strength of the market fails to answer the critical questions “compared to what?” and how much stronger the market might be (through more product diversity, functionality, price reduction) without hold-up?

A simple historical illustration is useful in this context. During the decade leading up to the enactment of the Sherman Antitrust Act of 1890, several major U.S. commodity markets (e.g., steel, salt, petroleum, coal, sugar, lead, and others) came under intense scrutiny for a variety of allegedly anticompetitive industrial arrangements. One might have argued that these markets, had they been subject to the sorts of anticompetitive collusion that the Sherman Act sought to address, should have seen reductions of output and increases in price. Yet, between 1880 and 1890, U.S. output of salt, petroleum, steel, and coal all increased significantly, and prices of steel, sugar and lead all dropped significantly.110 Do these positive market indicia demonstrate that the subject markets were not subject to anticompetitive collusion, and that the Sherman Act was not necessary? Certainly, investigations of these industries revealed significant cartel behavior. I would suggest that few commentators today would argue that the coal, steel, sugar and other major industrial producers of the late nineteenth century were innocent of collusive and anticompetitive conduct, or that the Sherman Act was not a necessary and beneficial measure for the U.S. economy.111 Yet, had we relied solely on the positive characteristics exhibited by these markets as proof that anticompetitive conduct did not exist, then perhaps the Sherman Act never would have been enacted.

By the same token, the fact that global markets for standardized products such as computers and smart phones appear to be thriving does not itself refute the possibility of hold-up nor the existence of anticompetitive conduct in these markets. Nor does it allow regulators and policy makers to drop their guard or cease to monitor these important industries.

## 2AC

### Advantage 1

#### Heg is sustainable.

Kroenig 20, Professor in the Department of Government and the Edmund A. Walsh School of Foreign Service at Georgetown University. (Matthew, *The Return of Great Power Rivalry: Democracy versus Autocracy from the Ancient World to the U.S. and China*, pg. 205-207, Oxford University Press)

America’s Military Strength

America’s final advantage is its military strength. The United States remains the world’s only military superpower. It has global power-projection capabilities. As it demonstrated as far back as World War II, it can bring military forces to any spot on the globe and wage a sustained, major-theater war. It currently deploys forces on every major continent except Antarctica. Russia and China lack these capabilities.

When analysts worry about World War III, they are talking about a possible fight in Russia or China’s backyard. Some international relations theorists argue that we are moving to a more multipolar world. But in the classic European balance of power system, Prussia’s ability to threaten France was roughly equivalent to France’s capacity to do harm to Prussia. Until Russia and China have the ability to fight a full-scale war in North America, talk of genuine multipolarity is premature.

In addition, as the United States demonstrated in Iraq, Afghanistan, Serbia, and Libya, hostile dictators in small and medium-sized countries remain in power only at the mercy of the U.S. Department of Defense. While rebuilding governments has proved to be an insurmountable challenge, the Pentagon has shown that it can topple them with relative ease.

The United States uses its large economy to continue to invest in military strength. Its annual defense spending towers over that of its competitors at $718 billion per year, compared to $146 billion in China and $68 billion in Russia. Indeed, the United States spends more on defense than the next nine countries combined, and most of these countries are U.S. allies and partners.

China is certainly expanding its military capabilities, but it takes time (often a decade or more) to build major military platforms. Even if Xi Jinping makes the decision to do so today, it would take China until 2050 at the earliest to become a global military superpower.

Washington also has trust in its officer corps and strong civil-military relations. The United States is comfortable delegating tactical decisions to commanders on the ground. This provides a significant advantage over more sclerotic autocratic competitors, especially in a messy, high-intensity fight.

The United States also retains a healthy lead in military applications of high technology and strategic forces. Washington first deployed stealth technology in the late 1980s, for example. China has been working on stealth technology since that time, and it is still not clear whether it has mastered it. Washington is still the only great power that conducts regular nuclear deterrence patrols with its submarine force; this is a strategic advantage that is sixty years old and counting.

Washington is also exploring new military technologies: hypersonic glide vehicles, directed-energy lasers for missile defense, and other sci-fi-like capabilities. The United States is already incorporating 3D printing into its defense acquisition process, with the potential to produce better products while drastically lowering the defense budget.13 China and Russia are also working in these areas, but history and theory, from the Greek phalanx to thermonuclear weapons, suggest that an open society will likely be the first to develop novel military technologies and the operational concepts to put them to good use.

Perhaps America’s greatest military strength, however, is the simple fact that it can focus its defense strategy against foreign threats. Unlike its autocratic foes, U.S. leaders do not worry that the American system of government might fall tomorrow. As a result, they do not need to spend exorbitant amounts on domestic security. To be sure, the United States has effective law enforcement and provides adequate resources to the FBI and state and local police. But among the new great power competitors, the United States is unique in spending less on domestic security than on international security. If you follow the money, Russia and China believe that the greatest threat to their security comes from their own people. In the United States, domestic tranquility provides for our common defense.

U.S. domestic political stability will allow Washington to continue to execute its consistent grand strategy from the past seventy-five years and counting: expanding and defending the U.S.-led, rules-based international order. Pessimists have argued that this order is dead, but they are incorrect. It can and should be revitalized, adapted, and defended for a new era.14

The United States has certainly made some costly errors in foreign and defense policy. Most believe the Iraq war was a mistake and the execution of the conflicts in both Iraq and Afghanistan left something to be desired. Yet, consistent with democracies in the past, America’s mistakes have been fewer and easier to rectify. Occupying Iraq and Afghanistan is not invading Russia in the winter. Despite fighting for nearly two decades in what may be considered losing wars, the United States remains the world’s preeminent military power.

#### COVID won’t cause defense spending cuts or retrenchment.

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\*\*charts omitted

How will the economic and political impact of COVID-19 affect future U.S. defense spending? Are the assumptions that underpinned budget forecasts before the crisis still relevant? And what does the history of American military spending tell us about the future trajectory of the defense budget? Heading into 2020, the prospects for U.S. defense spending seemed to be fairly clear. It was assumed that defense toplines would be constrained by higher deficits and debt servicing for the foreseeable future. While many of those assumptions remain true, debates over modest increases in the defense topline have been rendered a sideshow relative to the massive disruptions and potentially epoch-changing events of this year. COVID-19 could have major implications for defense spending. Given the scale of the recession caused by the pandemic, and the debt accrued by the government in order to stimulate the economy, future cuts to the defense budget may be inevitable. However, the historical evidence suggests that recessions do not necessarily lead to decreased funding for the Pentagon. Indeed, given rising international tensions, military spending over the next few years might actually level off or even increase. Analysts will need to carefully watch the political and geopolitical events of the next few months as they make spending forecasts, and should avoid assuming that the economic crisis and inflated deficits will lead to cuts in the defense budget. The Scale of Disruption The first half of 2020 has brought with it unprecedented disruption. First, the COVID-19 pandemic has swept across the globe, killing hundreds of thousands of people and imposing economic costs unseen since the Great Depression. In response, the U.S. government spent trillions of dollars stabilizing the economy, resulting in record budget deficits. At the same time, China’s increasingly assertive diplomatic posture has contributed to disputes with the United States, the United Kingdom, Italy, India, Bhutan, and Australia. Its decision to subject Hong Kong to the draconian legal structure of the mainland has only further served to drive a wedge between the Chinese Communist Party and the international community. Internally, the United States has been racked by protests and unrest following the killing of George Floyd by Minneapolis police officers. Whatever confidence may have existed in the future direction of the U.S. defense budget has been deeply eroded. In order to make sense of the path for defense spending, it is useful to put recent trends in a broader historical context. The Effect of Economic Growth on U.S. Defense Spending The conventional wisdom in defense budget forecasting is that economic downturns trigger a decline in defense spending. However, the historical evidence doesn’t seem to support this assumption. The line graph in the chart below represents constant “total obligation authority,” which is the amount of money actually spent by the Department of Defense (Table 6-1 in the Fiscal Year 2021 Green Book) while the vertical bars represent years where there were recessions (drawn from the National Bureau of Economic Research). A quick review of the graph demonstrates that some recessions have presaged declines in U.S. defense spending while others have preceded increases. Figure 1: U.S. Defense Spending and Economic Recessions Source: Chart generated by the author. Data from the National Bureau of Economic Research and Office of the Under Secretary of Defense (Controller). Similarly, a regression of real GDP growth and defense spending growth from 1948 to 2019 shows that there is almost no relationship between the two figures. In measuring how closely two variables are related, a regression calculation results in something called an “r-squared” value, which is what percent of the change in an output variable depends on an input. If you compare real GDP growth and defense spending growth for this period, the r-squared is .1949, which is fairly low. The scatter plot below suggests that there is a relationship between the two but that the connection is not particularly strong. Simply put, a reduction in defense spending following this downturn is certainly possible, but it is not foreordained. Figure 2: U.S. GDP Growth and Defense Spending Source: Chart generated by the author. Data from Office of Management and Budget. Without the ability to draw a clear conclusion on the relationship between economic growth and defense spending, analysts will need to resort to more qualitative analysis to think through how defense spending may shift. Precedent for a Downturn in Defense Spending Defense spending could fall as deficits rise and political gridlock leads to across-the-board budget reductions. The 2008 economic crisis and subsequent implementation of the Budget Control Act provide a recent example of how such a reduction could take place. Following the 2008 recession, consecutive elections (2008 and 2010) produced a divided and highly partisan government. Internationally, threat levels to the United States remained relatively low. The Obama administration was able to reduce troop levels in Iraq, ties with Russia were fraught but hadn’t ruptured like they did after the 2014 invasion of Ukraine, and U.S.-Chinese relations were tense but relatively stable. The political focus in Washington shifted to austerity. Defense cuts between 2010 and 2015 represent a rough proxy for what might be expected as the United States’ debt burden rises — defense budget toplines in this period dropped from $839 billion in 2010 to $636 billion in 2015 in constant dollars. While defense spending generally has bipartisan support, both for national security and more parochial reasons, that consensus has begun to fray. In the next few years, it is fairly easy to imagine a scenario in which military spending takes a hit. For example, a future Biden administration facing a Republican House of Representatives or Senate would almost certainly face rising calls for austerity measures in response to growing deficits, and defense spending might be cut in the process. While there has been broad support for increasing deficits under the Trump administration, it is likely that Republicans would oppose increased non-defense spending under a Biden presidency. If Democrats controlled both houses of Congress, they would almost certainly pass defense budget cuts (although much would depend on Republicans in the Senate and the fate of the filibuster). A Trump re-election would make major reductions unlikely. However, the future years defense program in the president’s proposed FY2021 budget only envisions military spending increasing in line with inflation, and budget hawks like the recently confirmed Office of Management and Budget head Russell Vought will likely push for further reductions. Figure 3: U.S. Defense Spending Since the Great Recession Source: Chart generated by the author. Data from the National Bureau of Economic Research and Office of the Under Secretary of Defense (Controller). Could Defense Spending Increase After the Pandemic? Defense spending could grow during and after the pandemic if policymakers and Congress grow more concerned about threats from China, Russia, Iran, or North Korea. In the early 1980s, the U.S. economy endured three years of recessions (one in 1980 and one that stretched from 1981 to 1982). In spite of this, the Carter administration increased defense spending in his last year in office in response to an assertive Soviet Union foreign policy. This increase was turbocharged by the Reagan administration through the mid-1980s during one of the most tense and dangerous periods of the Cold War. Simply put, policymakers seem willing to increase military spending, even during a recession, if perceived threats to U.S. national security are sufficiently severe. The shape of the defense budget will be driven, for better or for worse, by America’s geopolitical environment, particularly its ties with other great powers. Given a growing consensus in Washington about taking a tougher line against Beijing, the possibility of increased defense investment is a distinct possibility. Figure 4: U.S. Defense Spending in 1980s Source: Chart generated by the author. Data from the National Bureau of Economic Research and Office of the Under Secretary of Defense (Controller). Signposts to Watch For It is too early to know whether political and economic factors will constrain defense spending, or if concern about America’s adversaries will lead to higher toplines. However, it is worth thinking through what events or developments might serve as signposts indicating how things may proceed. A first key event will be the 2020 elections. Biden, the presumptive Democratic nominee, appears to be slightly favored over Trump, holding a lead nationally and in swing states as of mid-July. While defense spending can be influenced by other factors, the political configuration of Congress and the White House and the views of those institutions’ leadership is ultimately what dictates spending levels. Understanding the near- to mid-term political dynamics will go a long way towards understanding spending trends in the next several years. A Biden administration would likely see Democrats keep control of the House and possibly win the Senate. Should Democrats control both chambers and the White House, they would likely seek to reduce topline defense growth, if not impose cuts on defense spending. There are clear divisions in the Democratic caucus between progressives and moderates that might mitigate against such cuts (defense spending remained high during the period of unified Democratic control in 2009 to 2010), but the party has shifted somewhat to the left in the interim. It is difficult imagine the broader caucus not pushing for reductions when, for instance, the chairman of House Armed Services Committee, Rep. Adam Smith, has talked about level or reduced spending. Republicans in this scenario would likely try to block Democratic moves in the Senate through the use of the filibuster. However, the party in the White House tends to struggle in midterms, so Democratic control of government might not extend past 2022. Should Democrats fail to take the Senate, it becomes much harder to see defense spending falling significantly, as Senate Republicans will almost certainly demand defense spending levels be treated similarly to non-defense spending.

#### Alliances are robust now---deep support ensures existing disagreements are smoothed out

Kroenig 20, Professor in the Department of Government and the Edmund A. Walsh School of Foreign Service at Georgetown University. (Matthew, *The Return of Great Power Rivalry: Democracy versus Autocracy from the Ancient World to the U.S. and China*, pg. 204-205, Oxford University Press)

Some argue that U.S. alliances are fraying. They cite harsh criticism of old friends coming out of the current U.S. administration; policy differences over the Iran nuclear deal and climate change; increasing independence of formal treaty allies, like Turkey; and inroads made by Russia and China into America’s traditional spheres of influence. These are real concerns, but they must also be put in perspective.

The current U.S. administration is not unique in asking America’s allies to contribute more to their mutual defense. This has been a source of frustration since the dawn of history. Burden sharing caused tensions for democratic alliance leaders from the Delian League’s tribute to Athens to Roman provinces contributing soldiers to the Roman legions. America encountered the same problems as soon as it emerged as the democratic leader in 1945. Every U.S. presidential administration since Eisenhower has asked the Europeans to do more for the common defense. President Obama’s secretary of defense, Robert Gates, even used his final speech in office to travel to Brussels and lambast Europe over its meager defense spending. These tensions will continue, but they will also be manageable.

Moreover, lest we forget, Washington and its allies have made it through tough times in the past. They had serious disagreements about the Suez Crisis in 1956, the Vietnam War in the 1960s and 1970s, and the U.S. invasion of Iraq in 2003. Yet, the American-led league of democracies weathered the storm.

Further, things are better behind the scenes than one may suspect from reading the headlines. Even though White House messaging is inconsistent, the rest of the U.S. government has taken concrete steps to strengthen U.S. alliances on the ground. In stark contrast to the diplomatic problems face by Russia and China, when U.S. allies do complain it is generally because they demand more, not less, American involvement in their countries and regions. Moreover, societal support for America’s traditional global leadership role remains strong. When NATO Secretary General Jens Stoltenberg addressed a joint session of the U.S. Congress in April 2019, he received an enthusiastic standing ovation. And in recent public opinion polling, record numbers of Americans expressed support for U.S. security alliances.

In addition to its formal network of allies, the United States also possesses significant reservoirs of “soft power.”11 American people, values, and culture are widely admired. Until recently, the United States ranked number one in a worldwide ranking of national soft power.12 Under President Trump, the United States dropped to fourth place, but its position will likely rebound with a more conventional president in the future. Moreover, the top twenty countries are all democracies and all but a few are formal U.S. allies. China and Russia come in at numbers 27 and 28, respectively. While the U.S. brand may have been tarnished in recent years, it is still much more popular than that offered by Russia or China.

Russian and Chinese growing assertiveness is stressing U.S. alliances in some instances, but, on balance, it is helping to reinvigorate them. For twenty-five years after the end of the Cold War, NATO searched for a new mission. Now that mission is clear: collective defense of Europe against possible Russian aggression. And as we saw in the last chapter, China is provoking a significant counterbalancing coalition that is pushing other countries in Asia and around the world into Uncle Sam’s embrace.

State-led capitalism appeals to some would-be autocrats, but the U.S. model of free politics and economics remains more attractive to our democratic friends in Europe and Asia. At the end of the day, it is likely that the free nations of the world will continue to prefer the United States, despite its flaws, over its corrupt, autocratic competitors.

#### Primacy deters nuclear war with revisionist powers---multipolarity fragments the global order.

Brands & Edel 19, \*PhD, Henry A. Kissinger Distinguished Professor of Global Affairs at the Johns Hopkins School of Advanced International Studies. \*\*PhD, Senior Fellow and Visiting Scholar at the United States Studies Centre at the University of Sydney. (Hal and Charles, *The Lessons of Tragedy: Statecraft and World Order*, Ch. 6: Darkening Horizon, Yale University Press)

The revival of great-power competition entails higher international tensions than the world has known for decades, and the revival of arms races, security dilemmas, and other artifacts of a more dangerous past. It entails sharper conflicts over the international rules of the road on issues ranging from freedom of navigation to the illegitimacy of altering borders by force, and intensifying competitions over states that reside at the intersection of rival powers’ areas of interest. It requires confronting the prospect that rival powers could overturn the favorable regional balances that have underpinned the U.S.-led order for decades, and that they might construct rival spheres of influence from which America and the liberal ideas it has long promoted would be excluded. Finally, it necessitates recognizing that great-power rivalry could lead to great-power war, a prospect that seemed to have followed the Soviet empire onto the ash heap of history.

Both Beijing and Moscow are, after all, optimizing their forces and exercising aggressively in preparation for potential conflicts with the United States and its allies; Russian doctrine explicitly emphasizes the limited use of nuclear weapons to achieve escalation dominance in a war with Washington. In Syria, U.S. and Russian forces even came into deadly contact in early 2018. American airpower decimated a contingent of government-sponsored Russian mercenaries that was attacking a base at which U.S. troops were present, an incident demonstrating the increasing boldness of Russian operations and the corresponding potential for escalation. The world has not yet returned to the epic clashes for global dominance that characterized the twentieth century, but it has returned to the historical norm of great-power struggle, with all the associated dangers.

Those dangers may be even greater than most observers appreciate, because if today’s great-power competitions are still most intense at the regional level, who is to say where these competitions will end? By all appearances, Russia does not simply want to be a “regional power” (as Obama cuttingly described it) that dominates South Ossetia and Crimea.37 It aspires to the deep European and extra-regional impact that previous incarnations of the Russian state enjoyed. Why else would Putin boast about how far his troops can drive into Eastern Europe? Why else would Moscow be deploying military power into the Middle East? Why else would it be continuing to cultivate intelligence and military relationships in regions as remote as Latin America?

Likewise, China is today focused primarily on securing its own geopolitical neighborhood, but its ambitions for tomorrow are clearly much bolder. Beijing probably does not envision itself fully overthrowing the international order, simply because it has profited far too much from the U.S.-anchored global economy. Yet China has nonetheless positioned itself for a global challenge to U.S. influence. Chinese military forces are deploying ever farther from China’s immediate periphery; Beijing has projected power into the Arctic and established bases and logistical points in the Indian Ocean and Horn of Africa. Popular Chinese movies depict Beijing replacing Washington as the dominant actor in sub-Saharan Africa—a fictional representation of a real-life effort long under way. The Belt and Road Initiative bespeaks an aspiration to link China to countries throughout Central Asia, the Middle East, and Europe; BRI, AIIB, and RCEP look like the beginning of an alternative institutional architecture to rival Washington’s. In 2017, Xi Jinping told the Nineteenth National Congress of the Chinese Communist Party that Beijing could now “take center stage in the world” and act as an alternative to U.S. leadership.38

These ambitions may or may not be realistic. But they demonstrate just how significantly the world’s leading authoritarian powers desire to shift the global environment over time. The revisionism we are seeing today may therefore be only the beginning. As China’s power continues to grow, or if it is successful in dominating the Western Pacific, it will surely move on to grander endeavors. If Russia reconsolidates control over the former Soviet space, it may seek to bring parts of the former Warsaw Pact to heel. Historically, this has been a recurring pattern of great-power behavior—interests expand with power, the appetite grows with the eating, risk-taking increases as early gambles are seen to pay off.39 This pattern is precisely why the revival of great-power competition is so concerning—because geopolitical revisionism by unsatisfied major powers has so often presaged intensifying international conflict, confrontation, and even war. The great-power behavior occurring today represents the warning light flashing on the dashboard. It tells us there may be still-greater traumas to come.

The threats today are compelling and urgent, and there may someday come a time when the balance of power has shifted so markedly that the postwar international system cannot be sustained. Yet that moment of failure has not yet arrived, and so the goal of U.S. strategy should be not to hasten it by giving up prematurely, but to push it off as far into the future as possible. Rather than simply acquiescing in the decline of a world it spent generations building, America should aggressively bolster its defenses, with an eye to preserving and perhaps even selectively advancing its remarkable achievements.

### Advantage 2

#### Impact’s wrong AND detachment’s inevitable, but they link harder under guise of “neg flex”

Williams 11, International Affairs Professor at University of Ottawa (Michael Williams, 2011, “Securitization Theory: How Security Problems Emerge and Dissolve,” pp. 219-220)

Fear has generally had a bad name in modernity. It has been seen as something to be banished -freedom from it was the target of one of Franklin Roosevelt's 'four freedoms', and it is today one of the unifying elements of the Human Security agenda and, in certain forms at least, of Critical Security Studies. From a different but equally hostile perspective, some philosophic accounts see modernity as based in fear, and its (generally destructive) preoccupation with security as a consequence of this more basic foundation. To still others, fear is an instrument which, far from being part of the existential condition of modernity, has been made more powerful and effective by the structures of modem politics. 5 Each of these three views, despite their apparent (and by no means insubstantial) differences, are united in their basic vision off fear as negative. And there is no doubt that their assault on the politics of fear and its negative effects is an indispensable element of any serious analysis of security. Yet it is also the case that to reject fear completely, or to see it as wholly antithetical to security is both analytically and politically ~~blinding~~[ineffective]. In contrast to these modem views of fear, many older traditions of thought exhibit a rather different sensibility, and provided a more nuanced and potentially more productive view of the politics offer. To take one example, in the eyes of perhaps the greatest political philosopher of fear, Thomas Hobbes, the human condition was dominated by multiple and often contradictory and competing forms of fear: the fear of death itself; the fear of violent death at the hands of others, which marked a fear of dishonor ( of Pride and the sense of self) more than it did of mere mortality;6 fear of the unknown and unknowable future and its potential hazards (Blits 1989).7 Fear, in short, was everywhere, and while Hobbes freely admitted that he might have felt its effects more acutely than many people, he was convinced nonetheless that it dominated the human condition, and that a complete escape from fear was possible only temporarily in sleep, and ultimately, in death. Yet Hobbes did not view fear wholly negatively. Indeed, he believed that the absence of fear could be as dangerous as its over-abundance. Disregard of the fear of death as a result of vanity and the search for glory or honour, he believed, could lead to the worst forms of conflict, while misplaced certainly (belief in the security of knowledge) could result in dogmatism, intolerance and violence in the name of universal truths. Recognizing these dangerous beliefs and fearing their consequences, however, could act as a positive constraint on human excesses, and foster peace. Fear arising from the absence of specific forms of fear (of, for instance, conflicts arising from Vain-glory or religious zealotry that overwhelmed the fear of death, or that arose from a failure to acknowledge the limits human knowledge and an unwillingness to live with the fear presented by the inability to control an essentially uncertain future) could lead to a politics that restrained these beliefs and behaviours. In other words, the fear off fear (and of the practices likely to lead to extreme fear) could act as a check upon the politics of fear. However difficult it might be to achieve, fear was in principle capable of supporting forms of positive, pacific action.

### Psychoanalysis Heg Bad K

#### Liberal peace efforts empirically solve war and structural violence

Paris 10 – PhD, Associate Professor Graduate School of Public and International Affairs University of Ottawa (Roland, “Saving Liberal Peacebuilding,” *Review of International Studies*, 36)

Mistake 4: mischaracterising the peacebuilding record

If the purpose of peacebuilding is to create the conditions for self-sustaining peace, most missions cannot be judged to have fully succeeded, and for this reason important questions have been raised about the sustainability of peacebuilding outcomes.64 But recognising the many shortcomings of these missions and their sometimes troubling effects does not, in itself, demonstrate that peacebuilding has on balance been harmful to the societies into which these operations have been deployed. Most of these countries are probably better off than they would have been without such missions.65 Consider the specific case of Bosnia. Many commentators have critiqued the international role in that country – and with good cause. Rather than taking the time to design an electoral system that would encourage inter-factional compromise, international peacebuilders rushed ahead with elections that served to reinforce ethnic divisions and the power of the most recalcitrant nationalist leaders. In effect, international agencies wound up supporting ‘the dysfunctional political structures that emerged from the war, while failing to buttress the development of alternative political and social projects in civil society’.66 This is just one of several criticisms, including the one raised by David Chandler and others: that peacebuilders have been too dirigiste and have done too little to ensure democratic accountability or to foster genuine political participation within the population.67 Acknowledging the validity of these criticisms, however, tells us little about the overall impact of the Bosnia mission. Although the Wilsonian assumptions informing this mission did not produce the hoped-for results, the fact that Bosnians are no longer killing each other, and have not been doing so for well over a decade, should figure prominently in any calculus of the ‘net’ effects of the operation. Even the specific criticism that international administrators have exercised excessive power in Bosnia needs to be interpreted with caution. Not all of Bosnia’s problems – from unemployment and corruption to the passivity of the country’s political class – can be attributed to the international administrator’s robust authority. On the contrary, some of the most important postwar achievements can be traced to the very exercise of these powers, including internationally-driven measures to allow the return of refugees and displaced persons, to create a Bosnian central bank and currency, and to remove ethnic identifiers from official documents including passports. As Sumantra Bose puts it, ‘Virtually all developments in [Bosnia] since the end of the war that contribute to a slightly better present for its citizens and open up better prospects – however tenuous – for their future have been due to international effort, often very intensive and protracted.’68 Bose’s attribution of ‘virtually all’ major developments to international efforts may be debatable, but the broader point is that a balanced analysis of peacebuilding behaviour would consider both the costs and benefits of an assertive international presence, and that we stand to learn more from such an analysis than from caricatures of peacebuilders as a new ‘Raj’.69 This point also applies to the larger peacebuilding record. Most of the countries that have hosted missions are no longer at war. This is not, in itself, an adequate measure of success, because the absence of fighting is not equivalent to stable peace. (Indeed, peacebuilders have devoted too little attention to the longer-term requirements for sustainable peace). But the record does not support claims that liberal peacebuilding, on the whole, has been ‘counterproductive’70 or ‘nonsensical’.71 It is impossible to say how many lives would have been lost if not for these interventions, but there is compelling evidence that peace agreements endure longer, and societies are less likely to slip back into internecine violence, when major peacebuilding missions are deployed.72 The economic benefits of peace are also difficult to calculate, but one recent Oxfam study estimated the cost of Africa’s armed conflicts from 1990 to 2005 as $284 billion, or approximately 15 per cent of GDP for the countries that experienced wars.73 Compared to peaceful countries, moreover, African states in conflict have 50 per cent more infant deaths, 15 per cent more undernourished people, five less years of life expectancy, 20 per cent more adult illiteracy, 2.5 fewer doctors per patient, and 12.4 per cent less food per person on average.74 If and when international actors help to prevent such conflicts from reigniting, these human and developmental costs may be avoided. In other words, the specific problems of peacebuilding need to be considered in the light of the overall effects of these operations.

#### No endless intervention.

Mazarr 20, PhD @ Maryland, MA @ Georgetown, senior political scientist @ RAND. (Michael J., “Rethinking Restraint: Why It Fails in Practice”, *The Washington Quarterly*, 43:2, pg. 12-14, Accessible at: <https://doi.org/10.1080/0163660X.2020.1771042>)

An Inconsistent Urge to Transform the World

In his most recent book, eminent realist John Mearsheimer defines US hegemonic aspirations in especially absolute terms, specifically regarding the promotion of liberal values. The focus of Mearsheimer’s ire is liberal hegemony, which he defines as “an ambitious strategy in which a state aims to turn as many countries as possible into liberal democracies like itself while also promoting an open international economy and building international institutions” through “an active policy of regime change.” Liberal hegemony thus inevitably becomes a “highly interventionist foreign policy that involves fighting wars,” “doing significant social engineering in countries throughout the world,” and “toppling autocracies” which, according to Mearsheimer, results in an “abysmal record of failure.” 29 Stephen Walt joins Mearsheimer in condemning the pursuit of such liberal hegemony as a “costly failure.” 30

It is not clear at what country this critique is aimed, but it certainly is not the United States. During the Cold War, of course, many criticized US foreign policy specifically for embracing many dictatorships—from Pinochet’s Chile to the Shah’s Iran to authoritarian governments in Guatemala. Since the Cold War’s end, the United States has had active regime change policies aimed at only a handful of states. Even with regard to some of these, the record is full of swerves: the United States infamously toyed with engaging Saddam Hussein’s Iraq in the 1980s before gradually sliding toward an unofficial regime change policy by the late 1990s. (Even after fighting Saddam Hussein’s Iraq in the Gulf War, the Bush administration famously decided not to overthrow him, a decision that reflected a remarkable degree of restraint.31) US regime change ambitions with both Iran and Cuba were effectively shelved by the Obama administration (even if revived, at least with Iran, by the Trump administration).

The United States has persistently encouraged the gradual advance of liberal values through more patient means such as broad-based engagement, support for human rights activists, and investments in civil society organizations. But these indirect, long-term approaches are a far cry from the vision of a militarized liberal hegemony.

As an example of the gap between this caricature and actual US policy, consider the US approach to the roster of autocratic states in 1990. Many of these were clustered in Africa; the United States called for improved human rights policies on the continent but had no real, active regime change policies toward any of these governments. Globally, Washington counted many regimes then defined as illiberal—including Saudi Arabia, Oman, Indonesia, Egypt, and Morocco—as friends. It was busily embracing a policy of engaging China, the world’s biggest autocratic regime, and would soon be on the road to mending ties and eventually initiating a strategic partnership with Vietnam. The direct clashes that did exist with autocratic states (largely Cuba, Iran, Iraq, and North Korea) were the product of specific histories or aggressive behavior on the part of these regimes, not any generalized crusade against illiberalism.

To be sure, dreams of liberal value promotion have always inspired US goals and have ornamented some US policies since 1945. The rise of the Responsibility to Protect (R2P) and related interventionist doctrines in the 2000s did help produce what may be the single example of an intervention prompted largely by such considerations—the European and US action in Libya in 2011. Even here, that outcome followed a US effort to embrace the regime: when Washington secured Libyan promises of nonproliferation in 2003, it was happy to remove sanctions on Muammar Qaddafi’s government and move toward rapprochement without much attention to human rights. Washington presumably hoped that such engagement would produce reform and change, but this slow, steady, peaceful approach to value promotion is presumably just the sort of alternative to militarized hegemony that restraint advocates would want. Beyond Libya, the allegedly belligerent approach to liberal hegemony has been evident in remarkably few cases.

To some degree, Mearsheimer is actually making an argument about a momentary period of surplus power, not more perennial motives behind US strategy. He claims that it is not merely a liberal hegemonic impulse that has produced US interventionism, but the fact that “the United States was so powerful in the aftermath of the Cold War that it could adopt a profoundly liberal foreign policy.” 32 If America’s relative power ebbs, he predicts, so will its liberal ambitions.

It is certainly true that, after 1989, America’s preeminent position allowed it to expand its ambitions to an unhealthy degree. But this temptation has been fading for years; the existence of surplus power, for example, cannot solely explain US interventions in Afghanistan or Iraq, neither of which would have occurred absent 9/11.33 Any great power enjoying unrivaled predominance will be tempted to widen its ambitions. That US foreign policy did not run even more amok during these years, given its massive surplus power and the lack of any real countervailing force, is perhaps the greater wonder.

In sum, the record of US foreign policy, both during and after the Cold War, does not look like anything close to an unalloyed embrace of primacy and liberal hegemony. It is the story of potent but also constrained ambitions, repeated efforts to meddle in other societies, and many refusals to do so. It is a complex history of partial global engagement marred by a handful of truly excessive tragedies (dominated by a single case—Iraq—which as of 2012 accounted for 67 percent of casualties and 64 percent of costs of all post-1990 US interventions34)—shaped at every turn by kaleidoscopic mixtures of political impulses and constraints, military realities, personality conflicts, ambitions tempered by risk, and many other influences. It is not a record that looks anything like the portrait of hegemony found in much of the restraint literature.

#### Their universalist criticism of US leadership ignores independent violent agents that are checked by US power---the alternative leads to a world run by Assad, Boko Haram and Putin---that’s far more violent

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For many American leftists, comrades abroad who ask for help are a nuisance; they interfere with our self-absorption. There is a leftist argument, sometimes articulated, more often assumed, which holds that America, the global hegemon, is responsible for most of the bad things that happen in the world. The task of the American left, therefore, is to oppose the activist policies of the hegemon and press for U.S. disengagement from international politics. America is the agent that counts in the world, and we (leftists) are the necessary opposition. Everything else is just peripheral noise. It is very difficult to acknowledge that there are other agents in the world who are responsible, entirely on their own, for bad things. But there **really are other agents**—states like Assad’s Syria or Putin’s Russia, for example, and non-state organizations like the Islamic State, Hamas, and Boko Haram. And there are men and women threatened by those other agents who **look for help** from the hegemon. Idrees Ahmad wants us to listen to them. It is especially hard to listen when any serious response would require the use of force. Officially, as it were, the left is against American forcefulness—except when we, or at least some of us, find ourselves calling for it. Consider the Yazidis of northern Iraq, designated by the Islamic State for murder and enslavement and rescued—not all of them, but most of them—by the U.S. air force and Kurdish ground troops armed (not well enough) by the United States. Most leftists supported the rescue, or so I think, though without acknowledging that we were glad that the United States had an air force capable of doing what needed to be done. In Congress, if we were there, we would probably have voted against the military budget. Would we have been more comfortable listening to the cry of the Yazidis and thinking, “Well, we would like to help, but we don’t have the planes”? Our record isn’t so good even when our comrades abroad aren’t asking for military support. Danny Postel’s book, Reading Legitimation Crisis in Tehran (2006), is a tough polemic against a left that wouldn’t listen to Iranian dissidents who wanted something very different. Consider the case of Shirin Ebadi, author of Iran Awakening and a prominent defender of the regime’s victims (and someone who has herself spent time in Iranian prisons). At a meeting in London, Postel reports, “an antiwar activist [speaking for many other antiwar activists] instructed her that she should not denounce Iran’s human rights record—indeed not discuss it at all—explaining that doing so only plays into the hands of the warmongers.” In fact, Ebadi wasn’t asking for an attack on Iran; she opposes any military intervention; all she wanted was what this “activist” was denying her: solidarity from friends in the United Kingdom. I was reminded of Leszek Kołakowski’s description of refugees from Czechoslovakia in 1968 being greeted in (West) Germany by “very progressive and absolutely revolutionary leftists with placards saying ‘fascism will not pass.’” The refugees, fascists only in the mind of the revolutionary left, weren’t calling for a “rollback” of the Soviet empire, but they did want German leftists, and others, too, to recognize the brutality of the empire and stand in opposition to it. And they wanted to be welcomed, they should have been welcomed, as heroes of the Prague Spring. What is actually at issue here is the foreign policy of the left—not of Great Britain or Germany or the United States. What should we be saying and what should our organizations be doing? It is important, of course, to argue about what policies we should be urging on our country’s leaders. But first of all we have to decide what our own policies should be. How should we organize the work of our parties, unions, movements, and even our magazines? Listen now to another Iranian dissident, Akbar Ganji: We don’t want anything from governments. We are looking to the NGOs. And we want people to know what the Iranian reality is . . . to know what’s going on in Iran. The intellectuals, the media and NGOs in the world have to draw attention to the human rights abuses in Iran. . . . I emphasize: we don’t want intervention, we only want the moral support of the global community for our fight. That sounds easy, doesn’t it? But Postel’s book is a persuasive and sad account of how scarce moral support has been. The story Postel told in 2006 was repeated a few years later during Iran’s Green Movement (2009), this time even more sadly. President Obama was slow to respond to the massive protests and was brutally attacked by American neoconservatives. But his response was probably right; it was driven by diplomatic considerations of the first importance. His task was to persuade or coerce the Iranian government to give up the effort to produce nuclear weapons, and the men and women in the streets were not going to help him do that. But the left was not constrained in the same way. We should have been actively supporting the protests, publishing the stories of Iranian dissidents, raising money for their organizations, condemning the arrests that came all too soon, holding meetings and marches, signing petitions, picketing Iranian embassies wherever there were embassies and wherever we could mobilize the picketers. In fact, we did almost nothing. Left magazines like the Nation carried strong and sympathetic reports on the uprising and emphatically supported Obama’s caution. But they had little to say about a specifically left response, which wouldn’t have had to be cautious. Some 200 human rights activists (including Noam Chomsky) signed a letter to the secretary general of the UN calling for a Security Council condemnation of the Iranian regime, which was a minimalist response but helpful and right (and a stark contrast to the defense of the regime by “postcolonial” writers and academics who described it as a bulwark against the West). But the large-scale mobilization that the international left, and the American left, should have produced didn’t happen. “All defenders of human rights,” Shirin Ebadi has written, “are members of a single family.” Is the American left part of the family? We certainly are active and engaged members whenever the violations of human rights can be attributed to our own government. **Not so much when other agents are at work**. American liberals have a better record, best represented by organizations like Human Rights Watch. Theirs is an internationalism of staff-run NGOs and UN agencies; it is focused on what governments around the world should or shouldn’t do. Ours is an internationalism of parties, unions, and social movements; it is focused on what we should or shouldn’t do. The contrast is important. Human Rights Watch is an excellent organization, doing necessary work, but it doesn’t organize marches and demonstrations or raise money for dissident groups abroad. Instead, it does research and issues reports critical of government behavior. Marches and demonstrations should be the work of the left responding to the call of other leftists. There are many more examples of our failure to respond, but I want to dwell on one that seems to me especially telling. The American invasion of Iraq in 2003 was opposed, rightly, I think, by most leftists. And most leftists then went on to oppose the occupation, even if that involved supporting what the editor of New Left Review called “the Iraqi maquis”—the “resistance”—which consisted of religious sectarians and zealots whose politics had nothing to do with the left and who didn’t deserve the comparison with the French maquis of the 1940s. There were, of course, leftist precedents for this sort of thing, one of which I once regarded with amusement, but now recognize as a warning: At the Baku Congress of the Peoples of the East in 1920, the triumphant Bolshevik Grigory Zinoviev called for a “holy war” against Western capitalism. His largely Muslim audience responded with shouts of “Death to the Infidels!” Zinoviev obviously hadn’t found the right comrades abroad. Sometimes “listening” has to be followed by a very firm No. What was necessary in Iraq was a No to the occupation and also to the “resistance.” It is a sign of the self-absorption of the American (and the Western) left that the first No was readily forthcoming and the second was very hard for many leftists to manage. As a result, it was almost impossible for us to listen to those Iraqis whom we should have recognized immediately as our comrades. For they, even when they were critical of the occupation, were nowhere near as hostile to it as we were. The American overthrow of Saddam Hussein opened space (which is now closing down) for Iraqi democrats, trade unionists, and feminists. Nadje Al-Ali, a German-Iraqi scholar who stands considerably to my left—she describes herself as a “transnational feminist anti-militarist”—has written a beautiful account (in the journal Works and Days and also in several books) of the sudden upsurge in feminist work and agitation immediately after the invasion in 2003. Al-Ali was an opponent of the sanctions regime of the 1990s, of the American invasion, and of the occupation. But she was at the same time fiercely critical of those leftists who supported Saddam (because he was “anti-imperialist”) and who went on to support the “resistance.” She believes, as I do, that leftists frequently have to fight multi-front wars. She has been inspired, she says, by “Iraqi women’s rights activists who are fighting on many fronts simultaneously: a foreign military invasion, capitalist expansion, Islamist extremists, and local patriarchal conservative forces. Their struggles and campaigns deserve . . . more widespread acknowledgment and support.” They certainly do. Why haven’t they gotten that support from American leftists? The likely answer is suggested by one moment in those “struggles and campaigns.” In 2011, Al-Ali reports, “a considerable number of women activists preferred U.S. and U.K. troops to remain [in Iraq] until the threat of Islamist militancy, random violent attacks, and sectarian violence has been controlled . . .” That’s sensible enough; their lives were at stake. But who on the left was listening? There must have been feminists in the United States who were in touch with their Iraqi sisters, but I can’t recall any discussion on the left of what those sisters wanted from us. I am not prepared to say that we should have called for a postponement of the American withdrawal. But that should certainly have been one policy option that we talked about. Perhaps we didn’t listen to the Iraqi women precisely because we didn’t want to talk about it. What we knew, and all that we knew, was that the war and the occupation together were a great evil, an American crime, which had to end. How could it be a good thing for American soldiers to “control” the country? The view that it couldn’t be a good thing reflects our inverted nationalism or, better, our self-indulgent preoccupation with what our own country does and with how we feel about what it does. It doesn’t reflect an internationalist commitment or a genuine engagement with other people. In the case of left internationalism, this would have to be an engagement with particular other people, those that I have been calling “our comrades abroad.” Who are they? In 1955, the Italian novelist, Ignazio Silone, wrote an article for Dissent called “The Choice of Comrades”—this is the choice, he thought, that defines the left. Our comrades, for him, were the oppressed, the poor, people in trouble. I am not sure that’s quite right. Those are the people the left works for, or tries to; we want to give them a voice and a chance to shape their own lives. But the people we work with, our actual comrades, are the men and women among the oppressed, and activists from all social classes, who fight against oppression because they are committed, as we are, to freedom, equality, and democracy. There are other people claiming to act in the name of the oppressed who are not our comrades: vanguard militants, terrorists, and would-be Maximal Leaders—and all their friends and apologists. Those are not the people we have to listen to. But the Syrian democrats, the Iranian dissidents, and the Iraqi feminists—they are our comrades, and we should have been listening; we should be listening right now. Shouldn’t we also be listening to people on the other side, our opponents, all the men and women we have to argue with—and all the people in the middle, too? Yes, of course, but that’s a different kind of listening, more like studying, trying to figure out what they think, and why, what their grievances are, and their prejudices, and their hopes. We listen to comrades; we do our best to understand the people we want to persuade—and may need to defeat. A case where leftists pretended to listen may be helpful here. The Boycott, Divestment, Sanctions (BDS) movement to boycott Israeli universities, and Israel generally, claims to be a response to a “call” from Palestinian civil society. Western activists listened, we are told, and went into action. In fact, the original call came from two British leftists, Steven and Hilary Rose, in 2002; they were acting on their own, for their own reasons. It wasn’t until 2005 that tactically smarter British leftists asked Palestinian organizations to call for the boycott that was already in place (though not very successful). And who responded? Who is supporting the boycott now? In a Mondoweiss interview (reposted on the Tikkun website, April 29, 2016), Norman Finkelstein, no friend of Israel, answered that question, describing the myths propagated by the BDS leadership. It claims to represent nearly 200 Palestinian civil society organizations. If there were 20—forget about 200, just 20—such organizations with a real constituency in Palestine, would the third intifada eight months later still have no organizational form? . . . The truth is, “Palestinian civil society” is an illusion. It’s just foreign-financed NGOs—one or two person-outfits—dotting Ramallah’s privileged landscape. The BDS leaders figured out that “listening” was the right thing to do, so they have (pretty successfully) pretended that that’s what they are doing. Of course, they should really be listening, and so should we—to comrades in both Palestine and Israel who are committed to freedom, equality, and democracy. That means, to men and women who believe in self-determination for both Israeli Jews and Palestinians, who defend civil rights and civil liberty for all peoples, who oppose the occupation, who support mass action against the occupation, and who reject terrorism. There are a lot of men and women with these views, and some of them might well support a boycott, qualified in this or that way. Actually, only about 50 percent of Palestinians overall support a boycott of Israeli goods, and the number participating in such a boycott is around one-third (according to an August 2015 poll by the Jerusalem Media and Communications Centre, which is run by a group of Palestinian journalists and researchers; these numbers represent a drop from the previous poll). Among our Palestinian comrades, the number supporting a boycott is probably less than 50 percent, and there will be opponents, too, who are also opposed to the BDS goal of a single state. We should be attentive to the full range of their views. Let me finish by looking at a current and future political debate among leftists in Europe and the United States. Years ago, when he was a dissident Labourite, Jeremy Corbyn called for the United Kingdom to leave NATO. Now, as leader of the Labour Party, Corbyn doesn’t say such things, but he presumably still believes that NATO should be abandoned—he is, after all, an unusually consistent politician. Much more recently, the Green Party USA adopted a platform calling for the “disbanding” of NATO and “all aggressive military alliances.” And the editors of n+1, our comrades here at home, published a long and very smart review by Richard Beck of a new book by Andrew Bacevich in which Beck argues that the United States should leave NATO. This is certainly an interesting idea, one that would probably find a lot of support among Western leftists. I wouldn’t support it, however, without asking what our comrades on the Polish left think about it—the people who run the magazine Krytyka Polityczna, for example, who are close to Dissent. Listening to them seems an obvious moral and political requirement: they have a lot more at stake than we do. I would guess that they prefer a strong to a weakened or disbanded NATO. But so far as I know, Corbyn never suggested consulting them; nor did Jill Stein, last year’s Green candidate for president; nor does Beck argue for any such consultation. If left internationalism means anything, it means that we should listen to east European leftists, our comrades abroad, before staking out positions on what the U.S. government should do in Europe. After listening, we might disagree, but then we would have to explain our disagreement to our comrades. Listening begins a conversation. **American leftists**, like Americans generally, **have to learn that it’s not all about us**.

#### 1---government officials are adept at accurately capturing China’s behavior. Empirics work, and purely academic accounts are inaccurate.

Chan 04, \*Steve Chan, College Professor of Distinction at the University of Colorado; (“Extended Deterrence in the Taiwan Strait: Learning from Rationalist Explanations in International Relations”, Asian Affairs: An American Review , Fall, 2004, Vol. 31, No. 3 (Fall, 2004), pp. 166-191)

Rationalist interpretations do not imply that people are omnipotent in their ability to procure and process information. We know all too well that people are subject to a variety of cognitive and perceptual errors (for example, Jervis 1976; Levy 1997; Kahneman and Tversky 2000; Tversky and Kahneman 1977). This recognition of limits to rationality, however, hardly warrants general attributions of naivete, even stupidity, to government leaders. On the contrary, it seems sensible to start from the premise that officials know their counterparts far better than scholars may wish to acknowledge. Washington, Beijing, and Taipei, for instance, invest enormous time, effort, and resources in trying to gain an accurate understanding of each other. Academics have a hard time claiming any special insight or unique source of wisdom, whether it is based on mastery of the other side's language, intimate familiarity with its culture, or access to timely and sensitive information with restricted distribution. If anything, they are usually at a considerable disadvantage on these scores when compared to diplomats, intelligence analysts, and even journalists and business people. Indeed, academics in fields such as history and political science typically operate in the realm of common knowledge, outdated information, and mundane data. This confession in turn implies that at least for some of us, our individual and collective forte lies with the analysis of persistent empirical patterns and the formulation of general models of foreign policy conduct.

#### 2---unfounded analysis is filtered out.

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Roles (all theorists state) give rise to “expectations” of performance. My point is that virtually every governmental role, and especially national-security roles, and particularly the roles of the uniformed military, embody expectations of devotion to the “national interest”; rationality in the derivation of policy at every functional level; and objectivity in the treatment of parameters, especially external parameters such as “threats” and the power and capabilities of other nations. Sub-rational models (such as “public choice”) fail to take into account even a partial dedication to the “national” interest (or even the possibility that the national interest may be honestly misconceived in more parochial terms). In contrast, an official’s role connects the individual to the (state-level) process, and moderates the (perhaps otherwise) self-seeking impulses of the individual. Role-derived behavior tends to be formalized and codified; relatively transparent and at least peer-reviewed, so as to be consistent with expectations; surviving the particular individual and transmitted to successors and ancillaries; measured against a standard and thus corrigible; defined in terms of the performed function and therefore derived from the state function; and uncorrrupt, because personal cheating and even egregious aggrandizement are conspicuously discouraged. My own direct observation suggests that defense decision-makers attempt to “frame” the structure of the problems that they try to solve on the basis of the most accurate intelligence. They make it their business to know where the threats come from. Thus, threats are not “socially constructed” (even though, of course, some values are). A major reason for the rationality, and the objectivity, of the process is that much security planning is done, not in vaguely undefined circum- stances that offer scope for idiosyncratic, subjective behavior, but rather in structured and reviewed organizational frameworks. Non-rationalities (which are bad for understanding and prediction) tend to get filtered out. People are fired for presenting skewed analysis and for making bad predictions. This is because something important is riding on the causal analysis and the contingent prediction. For these reasons, “public choice” does not have the “feel” of reality to many critics who have participated in the structure of defense decision-making. In that structure, obvious, and even not-so-obvious, “rent-seeking” would not only be shameful; it would present a severe risk of career termination. And, as mentioned, the defense bureaucracy is hardly a productive place for truly talented rent-seekers to operate, compared to opportunities for personal profit in the commercial world. A bureaucrat’s very self-placement in these reaches of government testifies either to a sincere commitment to the national interest or to a lack of sufficient imagination to exploit opportunities for personal profit.