**1nc – round 1 wake**

**offcase**

**1**

**Biden’s continued PC is key to pass Build Back Better next week – despite inflation concerns**

**Barrón-López 11-11** (Laura Barrón-López, White House Correspondent for Politico, formerly covered Congress for the Washington Examiner, HuffPost and The Hill, BA political science, California State University, Fullerton, “Dems to White House: **The only prescription is more Biden**,” Politico, 11-11-2021, <https://www.politico.com/news/2021/11/11/dems-white-house-biden-520946>)

After months of deference to Congress, President Joe **Biden moved more assertively last week** to shepherd half his domestic agenda into law. With the other half still in limbo, Democrats want some of that Biden punch again.

Outside groups fear that congressional Democrats could come up short on Biden’s social spending package. They are concerned that moderates in the House may end up buckling if the budget scores on the bill come back worse than anticipated. And there is residual anxiety that one of the two wavering Senate Democrats — Joe **Manchin** of West Virginia and Kyrsten **Sinema** of Arizona — could vote “no” over concerns about **inflation** and long-term debt.

The clearest **solution** to avoiding this, they argue, is **more Biden**.

“All eyes are on the president, all expectations are on the president,” said Lorella Praeli, co-president of the progressive Community Change Action. “We are playing our role. We are mobilizing. We're reminding people everyday what this is about.”

Praeli added that Biden must **ensure there aren’t future cuts** to the package, which dropped from $3.5 trillion to $1.75 trillion to accommodate centrist Democrats in the House and Senate. “This is what he campaigned on. **Only the president can deliver it** in the end.”

Until last week, Biden’s involvement in negotiations had been more deferential than managerial. That befuddled lawmakers, who were waiting for him to draw red lines about which priorities he wants in and out of the deal or to even demand votes. To date, Biden has publicly refrained from drawing a red line around including paid leave in the final version of the legislation, leaving the leadership in the House at odds with centrists in the Senate.

But **Biden did ramp up his involvement** in the negotiations last week. And Democrats viewed that as **key to getting an agreement** in the House on their infrastructure bill, as well as on a rule to move forward with their social spending package, which funds universal pre-K, expands Medicare access, cuts taxes for families with children 18 years old and under, and combats climate change.

Now they want more. Expectations are high for Biden to keep the House to its promise of a vote on that social spending plan the week of Nov. 15.

“They basically made a promise,” said Rahna Epting, executive director of the progressive advocacy group MoveOn. “And Biden was able to get enough progressives to vote for the bipartisan infrastructure bill, on that promise. We are **expecting Biden** and the Democratic Caucus will make good on their word and **pass** the **B**uild **B**ack **B**etter Act **no later than Nov 15th** as stated.”

White House officials contend that **Biden** and his team remain in close touch with the Hill, and their legislative affairs staff **continues to push** the social spending bill toward a vote. The White House said it is communicating regularly with a range of lawmakers including **Manchin**, but did not answer when asked whether Biden has spoken to the West Virginia senator or other moderates in recent days.

“There has been no kind of slowdown when it comes to our Hill outreach,” a White House official said.

The growing demands for Biden to stay heavily involved reflect a fear in the party that the **window to act on the agenda is quickly closing**, especially as concerns mount about lingering **inflation** and the **midterms** near. If the House meets its deadline next week and passes the social spending bill, some Democrats want Biden to issue a deadline for the Senate to act. Others noted that the **end-of-year legislative calendar** is **short and brutal**.

The “**dynamic has totally changed**,” said a Democratic strategist. “**The president secured this agreement** with the five holdouts for House **passage of BBB next week** and **it’s on him to enforce it**.”

A top climate operative echoed that assessment telling POLITICO that Biden “will have failed” on tackling climate change if the second piece of the agenda doesn’t pass.

But the operative also expressed a newfound fear that Biden’s current effort to sell the benefits of the infrastructure bill could distract or complicate Democrats’ attempt to keep public interested in the social spending plan.

"They need to sell [physical infrastructure] but also act like it's not enough," said the activist.

"How are they also creating the urgency for BBB to get done, for it to **stay on the timeline** of **getting it done by Thanksgiving**? It's **a balancing act**.”

Matt Bennett, co-founder of the moderate group Third Way, agreed that the dynamics were “tricky” in trying to sell one just-passed bill as historic while simultaneously making the case that another ambitious bill is needed. Biden will travel to New Hampshire and Michigan next week to highlight the money the infrastructure bill will direct toward new roads, bridges and transit projects across the country.

“This moment that we're in is hard,” said Bennett. “It will be much, much easier when both bills are completed. There is a **very profound political imperative** for Democrats to get this finished, to **end the infighting** and sausage-making and shift to **creating a narrative** about what Democrats have just done for Americans because they've been utterly unable to do that.”

A number of groups **plan to amp up pressure next week as Congress returns**. House Speaker Nancy Pelosi and the White House have repeated their desire to have a vote on the social spending plan by the end of next week. The Service Employees International Union will descend on Capitol Hill with some 500 union members, said Mary Kay Henry, the union’s president.

“We are escalating phone calls, text messages,” said Henry. “We're bringing members into Washington next Tuesday, we have the president's back, to **get Congress to act quickly** and get the full back package.”

Democratic outside groups have spent more than $150 million on TV and digital ads promoting the president’s social spending plan, known as “Build Back Better.” The League of Conservation Voters and Climate Power launched new digital ads calling on the five moderates who reached an agreement with the White House and House leadership last week to follow through on their commitment to pass the second piece of Biden’s economic agenda “next week.”

The **longer it takes** to pass the social spending plan, the **harder it becomes** to **keep the party unified**, Democrats warn, especially amid up-and-down economic news. A new report Wednesday revealed inflation hit 6.2 percent in October, its highest point in 31 years, contributing to high gas, car and food prices. It forced **Biden** to quickly issue a statement addressing the issue and ever-so-slightly **shift his messaging, arguing that passage** of the social spending plan **would combat inflation**.

“Inflation hurts Americans’ pocketbooks, and reversing this trend is a top priority for me,” Biden said in a statement. “It is important that Congress pass my Build Back Better plan, which is fully paid for and does not add to the debt, and will get more Americans working by reducing the cost of child care and elder care, and help directly lower costs for American families.”

**Plan necessarily drains PC – trading off with unrelated agenda items.**

**Carstensen ‘21**

Peter C. Carstensen - Fred W. & Vi Miller Chair in Law Emeritus, University of Wisconsin Law School, M.A., Yale University; LL.B., Yale Law School; former attorney at the Antitrust Division of the United States Department of Justice, where one of his primary areas of work was on questions of relating competition policy and law to regulated industries. He is a Senior Fellow of the American Antitrust Institute – “THE “OUGHT” AND “IS LIKELY” OF BIDEN ANTITRUST” – Concurrences – #1 - Feb 15, 2021 - #E&F - https://www.concurrences.com/en/review/issues/no-1-2021/on-topic/the-new-us-antitrust-administration-en#carstensen

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

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

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

**PC’s key to global follow-through on climate post-Glasgow summit – impact’s extinction**

**Chon 11-8** (Gina Chon, Columnist at Reuters Breakingviews, former US Regulatory and Enforcement Correspondent, Financial Times, BS Journalism, Northwestern University, “America’s **swing senator** can **save or scorch planet**,” Reuters, 11-8-2021, <https://www.reuters.com/breakingviews/americas-swing-senator-can-save-or-scorch-planet-2021-11-08/>)

The **health of the planet** hangs somewhere over West Virginia. Joe **Manchin**, one of the coal state’s senators, is in line to **cast the deciding vote** on President Joe Biden’s $1.8 trillion “**B**uild **B**ack **B**etter” spending plan. He’ll **indirectly be voting on Biden’s ability to influence other countries to fight climate change after the COP26 summit** read more.

Biden has faced two main challenges to his spending plan, a companion to the $1 trillion infrastructure legislation Congress approved on Friday. One objection comes from lawmakers worried about the amount of money at stake. After an earlier compromise, climate change initiatives are the biggest chunk of the overall blueprint at $555 billion, more than half of which comes from tax credits for cleaner vehicles and manufacturing. Manchin is already a self-confessed budget worrier.

The other obstacle is unease around specific climate initiatives. Manchin hails from a state with less than 2 million residents, but a heavy reliance on coal. His disapproval helped squash Biden’s proposal for a Clean Electricity Performance Program that would have incentivized utilities to stop using oil, coal and gas. The goal was for 80% of electricity produced in the country to come from clean sources by 2030, compared to the current 40%.

**Green-energy tax credits are still on the table** and offer a bigger bang for the taxpayer’s buck than the clean electricity program, think tank Resources for the Future estimates. By 2030 they would get the United States to 69% of its electricity coming from clean sources.

**Manchin has good reason to keep those tax credits alive**. While West Virginia is the second-largest coal producer in the United States and top five in natural gas, according to the U.S. Energy Information Administration, it’s also one of the states most exposed to damage from climate change. More than 60% of its power stations are at risk from a so-called 100-year flood, according to the First Street Foundation.

The senator’s decision **will have global repercussions**. **China**, **India** read more and **other countries** are **only likely to listen to Biden’s pleas** to help fight climate change **if he looks able to meet such pledges himself**. For example, the president **wants other countries to help cut methane emissions** by 30% this decade, but would still **need Manchin’s support** to levy fines on U.S. **methane-leakers**, which is far from guaranteed. For such a small population, West Virginia has a huge responsibility.

**2**

**Prohibitions must certianly forbid --- Governing standards are distinct**

**Laplante 12** --- Joseph N. Laplante, US District Court, New Hampshire, “SignalQuest, Inc. v. Tien-Ming Chou & Oncque Corp,” 284 F.R.D. 45, https://www.nhd.uscourts.gov/sites/default/files/Opinions/12/12NH090.pdf

Here, the parties agree that SignalQuest did not make service on defendants pursuant to Rules 4(f)(1), (2)(A)-(B), or (3). Taiwan is not a signatory to the Hague Convention or any other agreement specifying an appropriate means of service, so service pursuant to Rule 4(f)(1) is not a possibility, [\*\*8] and it is undisputed that SignalQuest did not follow Taiwan's law governing service, the directions given in response to a letter rogatory, or any order of this court. As just mentioned, SignalQuest relies solely on Rule 4(f)(2)(C)(ii), contending that it properly effectuated service of process under that section by having the clerk of this court deliver the summons and complaint to defendants by Federal Express. Defendants' disagreement with that contention is limited to a single issue: they argue that the method of service SignalQuest chose in this case is "prohibited by the foreign country's law," and therefore ineffective under Rule 4(f)(2)(C). 2

The principal point of disagreement between the parties is the proper interpretation of the term "prohibited by the foreign country's law." That matter has occupied a number of courts, and two clear lines of authority, [\*\*10] corresponding to the positions the parties stake out here, have developed. "The vast majority of cases to consider the issue have held that HN4 a method of service is not prohibited under Rule 4(f)(2)(C)(ii) unless it is expressly prohibited by a foreign country's laws." Fujitsu Ltd. v. Belkin Int'l, Inc., No. 10-cv-3972, 2011 U.S. Dist. LEXIS 99922, 2011 WL 3903232, \*3 (N.D. Cal. Sept. 6, 2011); see also SEC v. Alexander, 248 F.R.D. 108, 111-12 (E.D.N.Y. 2007) (collecting cases). The only judge of this court to consider the issue has also taken that view, see Emery v. Wood Indus., Inc., 2001 DNH 155, 4-5 (McAuliffe, J.), which is the interpretation SignalQuest urges. The remaining cases, which have interpreted the rule in the manner defendants urge, hold that "unless expressly permitted by foreign law, service by registered mail should be deemed prohibited under Rule 4(f)(2)(C)(ii)." TruePosition, 2006 U.S. Dist. LEXIS 39681, 2006 WL 1686635 at \*4.

As between the two interpretations, the court finds the majority view more persuasive. To begin, that interpretation fits more comfortably with HN5 the plain language of Rule 4(f)(2)(C) itself, which, of course, is the "starting point" for "interpreting a formal rule of procedure." Delgado v. Pawtucket Police Dep't, 668 F.3d 42, 49 (1st Cir. 2012). [\*\*11] HN6 To "prohibit" means "to forbid by authority or command: **ENJOIN**; **INTERDICT**." Webster's Third International Dictionary 1813 (1993); see also Black's Law Dictionary 1212 (6th ed. 1990) (defining "prohibit" as "[t]o **forbid by law; to prevent**"). 3 "A form [\*49] of service is **not 'forbidden by authority'** **merely** because it is not a form **explicitly 'prescribed'** by the laws of a foreign country." Dee-K Enters. Inc. v. Heveafil Sdn. Bhd., 174 F.R.D. 376, 380 (E.D. Va. 1997); see also Wright, supra § 1134 (noting that while the rule "can be **interpreted** to bar parties from using any method of service not explicitly prescribed by the laws of the foreign country . . . this reading of the rule seems **inconsistent with the text** on its face."). To be "**prohibited**" requires **something more**, akin to a **clear command that a course of action cannot be taken**.

**Only per se rules bans a PRACTICE --- rule of reason regulate anticompetitive effects for individual acts**

**Stucke 09** --- Maurice E. Stucke, Associate Professor, University of Tennessee College of Law, “Does the Rule of Reason Violate the Rule of Law?”, University of California, Davis [Vol. 42:1375 2009], https://lawreview.law.ucdavis.edu/issues/42/5/articles/42-5\_Stucke.pdf

But who has created this predicament? The Supreme Court. Over the past ninety years, the Court has supplied the Sherman Antitrust Act’s legal standards. In determining the legality of restraints of trade, the Supreme Court generally employs either a per se or rule-of-reason standard.10 Under the Court’s per se illegal rule, certain restraints of trade are deemed illegal without consideration of any defenses. These restraints are so likely to harm competition and to lack significant procompetitive benefits that, in the Court’s estimation, “they do not warrant the time and expense required for particularized inquiry into their effects.”11 Under the per se rule, once a plaintiff proves an agreement among competitors to engage in the **prohibited** conduct, the plaintiff wins.12 But the Court evaluates all other restraints under the rule of reason. This standard involves a **flexible** factual **inquiry** into a restraint’s overall competitive effect and “the facts **peculiar to the business**, the history of the restraint, and the reasons why it was imposed.”13 The rule of reason also “**varies in focus and detail** depending on the nature of the agreement and market circumstances.”14 “Under this rule the fact finder weighs all of the circumstances of a case in deciding whether a restrictive practice should be prohibited as imposing an unreasonable restraint on competition.”15 Despite its label, the rule of reason is not a **directive defined ex ante (such as a speeding limit).**16 Instead, the term embraces antitrust’s most **vague and open-ended principles**, making prospective compliance with its requirements exceedingly difficult.

**Vote neg for GROUND and LIMITS --- Other standards dodge topic uniqueness and links and they can pick something that’s broader but more permissive --- creating a bidirectional topic. Standard prolif makes the topic unmanageable**

**3**

**The FTC should issue clear enforcement guidance that the presently-existent phrase “unfair methods of competition in or affecting commerce” in Section 5 of the FTCA includes private sector export cartel practices that produce anticompetitive effects in the markets of countries that agree to a reciprocal framework regarding competition law.The FTC should release a policy statement and data sets that reflects this and enforce accordingly.**

**The counterplan solves and competes---the FTC interprets current authority without creating new prohibitions.**

**Kahn 21** et al; This is a recent joint statement released by the five Federal Trade Commissioners. The Chair of the Federal Trade Commission is Lina Khan - an Associate Professor of Law at Columbia Law School. Also on the Commission is Rohit Chopra – who was previously The Assistant Director of the Consumer Financial Protection Bureau, as well as Rebecca Slaughter - an American attorney who was previously the acting chair of the Federal Trade Commission. Two others also sit on the Commission. “STATEMENT OF THE COMMISSION On the Withdrawal of the Statement of Enforcement Principles Regarding “Unfair Methods of Competition” Under Section 5 of the FTC Act” - July 9, 2021 - #E&F – modified for language that may offend - https://www.ftc.gov/system/files/documents/public\_statements/1591706/p210100commnstmtwithdrawalsec5enforcement.pdf

**Section 5** of the **F**ederal **T**rade **C**ommission **A**ct **prohibits** “unfair methods of competition in or affecting commerce.”1 In 2015, the Federal Trade Commission under Chairwoman Edith Ramirez published the Statement of Enforcement Principles Regarding “Unfair Methods of Competition” Under Section 5 of the FTC Act (hereinafter “2015 Statement”), which established principles to guide the agency’s exercise of its “standalone” Section 5 authority.2 Although presented as a way to reaffirm the Commission’s preexisting approach to Section 5 and preserve doctrinal flexibility,3 the 2015 Statement contravenes the text, structure, and history of Section 5 and largely writes the FTC’s standalone authority out of existence. In our ~~view~~ (perspective), the 2015 Statement abrogates the Commission’s **congressionally mandated duty** to use its expertise to identify and combat unfair methods of competition even if they do not violate a separate antitrust statute. Accordingly, because the Commission intends to restore the agency to this critical mission, the agency withdraws the 2015 Statement.

I. Background

On August 13, 2015, the Federal Trade Commission issued the 2015 Statement, which announced that the Commission would apply Section 5 using “a framework similar to the rule of reason,” by only challenging actions that “cause, or [are] likely to cause, harm to competition or the competitive process, taking into account any associated cognizable efficiencies and business justifications[.]”4 The 2015 Statement advised that the Commission is “less likely” to raise a standalone Section 5 claim “if enforcement of the Sherman or Clayton Act is sufficient to address the competitive harm.”5

In a statement accompanying the issuance of these principles, the Commission explained that its enforcement of Section 5 would be “aligned with” the Sherman and Clayton Acts and thus subject to “the ‘rule of reason’ framework developed under the antitrust laws[.]”6 In a speech announcing the statement, Chairwoman Ramirez noted that she favored a “common-law approach” to Section 5 rather than “a prescriptive codification of precisely what conduct is prohibited.”7 She also acknowledged that the Commission’s policy statement was codifying an interpretation of Section 5 that is more restrictive than the Commission’s historic approach and more constraining than the prevailing case law.8 She added, “[W]e now exercise our standalone Section 5 authority in a far narrower class of cases than we did throughout most of the twentieth century.”9

With the exception of certain administrative complaints involving invitations to collude, the agency has pled a standalone Section 5 violation just once in the more than five years since it published the statement. 10

II. The Text, Structure, and History of Section 5 Reflect a Clear Legislative Mandate Broader than the Sherman and Clayton Acts

By tethering Section 5 to the Sherman and Clayton Acts, the 2015 Statement negates the Commission’s core legislative mandate, as reflected in the statutory text, the structure of the law, and the legislative history, and undermines the Commission’s institutional strengths.

In 1914, Congress enacted the **F**ederal **T**rade **C**ommission **A**ct to reach beyond the Sherman Act and to provide an alternative institutional framework for **enforcing** the **antitrust** laws. 11 After the Supreme Court announced in Standard Oil that it would subject restraints of trade to an open-ended “standard of reason” under the Sherman Act, lawmakers were concerned that this approach to antitrust delayed resolution of cases, delivered inconsistent and unpredictable results, and yielded outsized and unchecked interpretive authority to the courts.12 For instance, Senator Newlands complained that Standard Oil left antitrust regulation “to the varying judgments of different courts upon the facts and the law”; he thus sought to create an “administrative tribunal … with powers of recommendation, with powers of condemnation, [and] with powers of correction.”13 Likewise, a 1913 Senate committee report lamented that the rule of reason had made it “impossible to predict” whether courts would condemn many “practices that seriously interfere with competition, and are plainly opposed to the public welfare,” and thus called for legislation “establishing a commission for the better administration of the law and to aid in its enforcement.”14 **These concerns spurred the passage of the FTC A**ct, which created an administrative body that could police unlawful business practices with **greater expertise** and **democratic accountability** than courts provided.15

**At the heart of the statute was Section 5,** which declares “unfair methods of competition” **unlawful**.16 By proscribing conduct using this new term, rather than codifying either the text or judicial interpretations of the Sherman Act, the plain language of the statute makes clear that Congress intended for Section 5 to reach beyond existing antitrust law. The structure of Section 5 also supports a reading that is not limited to an extension of the Sherman Act. Notably, the FTC Act’s remedial scheme differs significantly from the remedial structure of the other antitrust statutes. The Commission cannot pursue criminal penalties for violations of “unfair methods of competition,” and Section 5 provides **no private right of action**, shielding violators from **private lawsuits** and treble damages. In this way, the institutional design laid out in the FTC Act reflects a basic tradeoff: Section 5 grants the Commission extensive authority to shape doctrine and reach conduct not otherwise prohibited by the Sherman Act, but provides a more limited set of remedies.17

The legislative debate around the FTC Act makes clear that the text and structure of the statute were intentional. Lawmakers chose to **leave it to the Commission** to determine which practices fell into the category of “unfair methods of competition” rather than attempt to define through statute the **various unlawful practices**, given that “there were too many unfair practices to define, and after writing 20 of them into the law it would be quite possible to invent others.”18 Lawmakers were clear that Section 5 was designed to extend beyond the reach of the antitrust laws. 19 For example, Senator Cummins, one of the main sponsors of the FTC Act, stated that the purpose of Section 5 was “to make some things punishable, to prevent some things, that cannot be punished or prevented under the antitrust law.”20

The Supreme Court has repeatedly affirmed this view of the **agency’s Section 5 authority**, holding that **the statute**, **by its plain text**, does not limit unfair methods of competition to practices that violate other antitrust laws. 21 The Court, recognizing the Commission’s expertise in competition matters, has given “deference”22 and “great weight”23 to the Commission’s determination that a practice is unfair and should be condemned.

**Our planks about *clear statements* and *data sets* mean CP avoids politics and rollback.**

* Assumes rollback efforts from either Political and Judicial actors.
* Empirical examples of FTC rollback go *Neg* – those episodes DID NOT include policy statements or data sets.

**Kovacic 15** et al; William E. Kovacic - Global Competition Professor of Law and Policy, George Washington University Law School; Non-Executive Director, United Kingdom Competition and Markets Authority. From January 2006 to October 2011, he was a member of the Federal Trade Commission and chaired the agency from March 2008 to March 2009. - “The Federal Trade Commission as an Independent Agency: Autonomy, Legitimacy, and Effectiveness” - 100 Iowa L. Rev. 2085 (2015) - #E&F - https://ilr.law.uiowa.edu/print/volume-100-issue-5/the-federal-trade-commission-as-an-independent-agency-autonomy-legitimacy-and-effectiveness/

Longevity for its own sake is hardly a worthy aim. There is little evident value in preserving a competition agency that ensures its survival by committing itself to unobtrusive law enforcement and declining to confront important and potentially controversial market failures. If a competition agency is to retain an economically significant enforcement role, one must ask how the agency is to perform that role without: (a) succumbing to pressure that undermines its capacity to make merits-based decisions about how to exercise its power to bring and resolve cases or use other instruments in its policy-making portfolio; and (b) losing the accountability and effectiveness that requires some connection to and engagement with the political process. What measures might enable a competition agency to resist suggestions that it undertake fundamentally flawed initiatives? How can one protect meritorious enforcement programs from political attack and intervention by political branches of government as such programs come to fruition? Presented below are some possible solutions. A. Greater Specification of Authority One approach is to avoid extremely open-ended grants of authority which application invites objections that the agency has overreached its mandate or inspires political demands that it use seemingly elastic powers to address all perceived economic problems. A fuller specification of powers and elaboration of factors to be considered in applying the agency’s mandate can supply a more confident basis for the authority’s exercise of power and a stronger means to resist arguments that it enjoys unbounded power. B. More Transparency, Including Reliance on Policy Statements and Guidelines Greater transparency in operations can increase the agency’s perceived legitimacy and supply a useful **barrier** to destructive political intervention. The foundations of a strong transparency regime include the compilation and presentation of **complete data sets** that document agency activity and matter-specific transparency devices, such as the preparation of statements that explain why the agency closed a specific investigation. Competition agencies can usefully rely extensively upon policy statements and guidelines to communicate their enforcement intentions and delimit the intended application of their powers. One purpose of such statements is to suggest how the agency defines the bounds of the more open-ended and inevitably ambiguous grants of authority its enabling statutes. For example, the FTC’s policy statements in the early 1980s concerning consumer unfairness and deception were important steps towards defining how the agency intended to apply its generic consumer protection powers. By articulating the bases upon which it would challenge unfair or deceptive conduct, **the Commission strengthened external perceptions** (within the business community and **within Congress**) that it would exercise its powers within structured, principled boundaries, and it increased, as well, its credibility before courts. The FTC has never issued a policy statement concerning its authority to ban **u**nfair **m**ethods of **c**ompetition, and the failure to do so has impeded the effective application of this power. A second important use of policy statements is to introduce plans for innovative enforcement programs. Before embarking upon a new series of initiatives, the competition agency would issue a policy statement that identifies conduct it intends to examine and, in stated circumstances, proscribe. Here, again, **the FTC**’s experience provides a useful illustration. Policy statements would be useful when the agency seeks to use **section 5** of the FTC Act to reach beyond existing interpretations of the Sherman and Clayton Acts, or to apply conventional antitrust principles to classes of activity previously undisturbed by antitrust intervention. **By issuing a policy statement before** commencing lawsuits, the FTC would give affected parties an opportunity to comment upon the wisdom of the agency’s proposed course of action and to adjust their conduct. Such an approach would likely **increase confidence** within industry and **within Congress** that the Commission is acting fairly and responsibly, and it could well make courts more receptive to the FTC’s application of section 5 as well.

**4**

**Vagueness –**

**The plan’s generic wording is manipulated in implementation – wrecks solvency**

**Baer 20** [Bill Baer former visiting fellow in governance studies at The Brookings Institution and assistant attorney general of the Antitrust Division and as the acting associate attorney general of the U.S. Department of Justice, 11-19-2020 <https://equitablegrowth.org/research-paper/restoring-competition-in-the-united-states/?longform=true>]

Meaningful antitrust reform should be a priority of the next administration and the 117th U.S. Congress. The challenge of drafting legislation is substantial. On the one hand, the legislation must be written for a judiciary that is both increasingly hostile to antitrust claims in general and increasingly textualist in its statutory interpretation. On the other hand, in the context of the antitrust laws, courts have often “abandoned statutory textualism” to interpret the laws “in favor of big business,”15 explains Daniel Crane, the Fredrick Paul Furth Sr. professor of law at the University of Michigan Law School. If given discretion to interpret new legislation, the current judiciary is likely to fall back on the same **skepticism** of antitrust enforcement that it has advanced over the past 40 years. Despite those concerns, legislation remains the best option to revitalizing antitrust enforcement. In drafting legislation, Congress can learn from the past. One case in point: The legislative history of the Celler-Kefauver bill, not its text, reveals the bill’s intent, which courts increasingly ignore.16 Congress can reduce that risk by **being explicit** in the text when vacating or rejecting existing precedent and when identifying relevant factors, such as the importance of protecting both actual and potential competition. Congress should identify in statute the elements sufficient to establish an antitrust violation **as precisely as possible**.

**Voting issue---**

**Aff conditionality destroys ground. 2AC clarifications dodge DA links and counterplan competition.**

**5**

**FTC independence in the US key to *global norms* that support agency independence. Vital for *free trade* and *GLO*.**

* United States’ FTC practices are modeled *by several nations* – including South Korea – and *will continue to be modeled* by nations that are still amid transitions towards industrialization;
* Global attentiveness to the United States’ FTC practices *remains ongoing* and - “*to this day*” - are a *central obstacle* to aspired free trade norms;
* The root of the loss of the global public’s confidence in free trade stems from the success of zero-sum strategies. *The root of that* is an interpretation of the FTCA that permits politicized intervention;
* Ambiguity in the United States’ FTCA permit the Act to be exercised *EITHER with a great deal of agency discretion* – *OR* alternatively, *with the perceived influence of external political branches*;
* Current US FTC practices lean away agency independence – and that’s *a central obstacle* to international agencies countering the growth of protectionist mercantilist norms
* More broadly, this hampers *general support for internationalism/GLO*

**Nam ‘18**

Steven S. Nam - Distinguished Practitioner, Center for East Asian Studies, Stanford University. Steven is also a Commission member of the Model International Mobility Treaty Commission under Columbia University's Global Policy Initiative. He is a member of the Antitrust Section of the American Bar Association and earned his B.A. at Yale and his J.D. and M.A. degrees at Columbia – “OUR COUNTRY, RIGHT OR WRONG: THE FTC ACT’S INFLUENCE ON NATIONAL SILOS IN ANTITRUST ENFORCEMENT” – University of Pennsylvania Journal of Business Law, Vol. 20, No. 1, 2018 - #E&F – No text omitted – but the Table of Contents – which comes after the Abstract - was not included – modified for language that may offend - https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=1555&context=jbl

ABSTRACT:

The Federal Trade Commission Act of 1914 (“**FTC A**ct”), **a model** for **many other countries** that set up their **own** competition agencies, combines the **control** afforded by presidential appointment and removal powers over FTC commissioners with an **exceedingly discretionary** mandate. This Article contends that the FTC Act’s outmoded openness to **strong presidential direction**, **where adapted abroad**, has helped detract from **antitrust regulator independence.** Even advanced players in the liberal international economic order **such as South Korea** have made use of the United States’ original blueprint for unitary **executive-stamped** **antitrust** enforcement without sharing a long historical evolution of counterbalancing regulatory norms, e.g. the judicial check that was Humphrey’s Executor v. United States, 295 U.S. 602 (1935).

Strong executive direction **in antitrust enforcement** is particularly suited to capitalist economies helmed by administrations with mercantilist policies, **given their belief that the state and big business must coop**erate in the face of zero-sum international competition. South Korean President Lee MyungBak’s term (2008-2013) serves as an apt recent case study, featuring dirigiste calibration of antitrust enforcement against a backdrop of global recession. This Article examines the parallels between the FTC Act and the South Korean Monopoly Regulation and Fair Trade Act (“MRFTA”) before scrutinizing the enabled silo-like enforcement patterns of the Korean Fair Trade Commission under the Lee administration. Increasingly widespread erosion of public confidence in free and competitive trade demands a better understanding of the forces **preventing global convergence** in antitrust enforcement, and of their **roots.**

We have created, in the Federal Trade Commission, a means of inquiry and of accommodation in the field of commerce which ought both to coordinate the enterprises of our traders and manufacturers and to remove the barriers of misunderstanding and of a too technical interpretation of the law. —President Woodrow Wilson, September 1916

[Our companies] are fighting with unfavorable conditions amid competition in the global economy. To do so, they must be allowed to escape various regulations. Let’s take just a half step forward to move beyond the pace of change in the global economy. —South Korean President Lee Myung-bak, March 2008

It is clear that, at the beginning of the 21st century, we cannot afford to operate, to enforce our competition laws, in national or regional silos. We must not remain isolated from what happens in other jurisdictions. Even if markets often remain regional or national in terms of competitive assessment, fostering global convergence in our legal and economic analysis is essential to ensuring effectiveness of our enforcement and creating a level playing field for businesses across our jurisdictions. —Joaquín Almunia, Vice-President of the European Commission for Competition Policy, April 2010

The [U.S.] Agencies do not discriminate in the enforcement of the antitrust laws on the basis of the nationality of the parties. Nor do the Agencies employ their statutory authority to further nonantitrust goals. —The U.S. Department of Justice and the Federal Trade Commission, April 1995

INTRODUCTION

The International Competition Network’s founding in October 2001, with the aim of “formulat[ing] proposals for procedural and substantive convergence” among its stated goals,5 sought to usher in a future with more cosmopolitan and coherent global antitrust enforcement. Although U.S. regulatory leadership maintained that “consistently sound antitrust enforcement policy cannot be defined and decreed for others by the U.S., the EU, or anyone else,” many countries (turned) ~~looked~~ to the U.S. **as a role model** while developing their **competition** regimes.6 It is ironic, **then,** that **to this day** a **central obstacle** to the aspired international “culture of competition” **can be found in none other than the influence of the U.S.’s own FTC A**ct.7

American **antitrust** priorities around the time of the legislation’s passage oscillated between tempering trusts and shepherding business to further national economic strength, all towards the domestic interest. They shaped a regulatory environment that **would reemerge abroad** in **many** later-developing countries.

The deepening global retreat from **internationalism** ***and*** free market principles in the present day, with the specter of **trade wars looming**, is exacerbated by nationalist competition regimes that **are derivative of a U.S. model** predating the modern world economy. Domestic critics of open markets often overlook the U.S.’s own past vis-à-vis protectionist governments today. Illiberal or nominally liberal, they walk the kind of dirigiste path once treaded by the American School through the early twentieth century.8

**Globally, independence of antitrust agencies will prove key – checks spiraling economic nationalisms that’ll crush liberal peace.**

**Nam ‘18**

Steven S. Nam - Distinguished Practitioner, Center for East Asian Studies, Stanford University. Steven is also a Commission member of the Model International Mobility Treaty Commission under Columbia University's Global Policy Initiative. He is a member of the Antitrust Section of the American Bar Association and earned his B.A. at Yale and his J.D. and M.A. degrees at Columbia – “OUR COUNTRY, RIGHT OR WRONG: THE FTC ACT’S INFLUENCE ON NATIONAL SILOS IN ANTITRUST ENFORCEMENT” – University of Pennsylvania Journal of Business Law, Vol. 20, No. 1, 2018 - #E&F – https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=1555&context=jbl

National antitrust silos are not a novel phenomenon. Former European Commissioner for Competition Joaquín Almunia warned of them years ago,152 and scholarship touching upon the furtherance of nationalist goals by various antitrust agencies dates back decades.153 However, a **creeping** loss of public confidence in open markets—**coupled with** the obstacles to coherent global antitrust enforcement that bear the FTC Act’s influence, **as illustrated in this Article**—risks amplifying the problem. As anti-free trade agendas continue to garner more mainstream popularity for formerly counter-establishment parties, a proliferation of **protectionist** silos could tempt even governments that, for the most part, had moved past them. Why, American officials may ask, should the U.S. continue championing the liberal international economic order when an illiberal China or an ostensibly liberal South Korea bends regulatory rules to disadvantage American companies, workers, and consumers? Skepticism towards a liberal democratic “end of history”154 in general, and failures of economic liberalism in particular, are threatening to motivate political circles accordingly. Even **perennial norms** and conventions of **the U.S. competition regime** which evolved to safeguard regulator independence at home are no longer above disruption; the ambiguous statutory articulations that **carried over abroad** to empower strong executives are likewise playing a paper tiger role domestically of late.155

Protectionist policies designed to compromise market competition—for all its documented excesses and inadequacies—would sap its creative vitality and the concurrent **liberal peace**156 **often taken for granted**. Economic liberalism ails not so much from the intrinsic failings of core tenets, but from their more egregious nation-state and corporate violators. Proposals for greater accountability and harmonization have ranged from presumption of an underlying coordination scheme in antitrust investigations of a culpable country’s companies,157 to an international competition regime binding on member states in at least some areas of antitrust.158 Each has associated costs, but their very debate harnesses polycentric dialogue lacking in nationalist regulatory agendas and calls for “our country, right or wrong” protectionist silos. It should be emphasized to policymakers and politicians collectively that lasting convergence in antitrust enforcement is unachievable without global coherence in regulator autonomy, and the FTC Act’s **formative influence** is not above scrutiny or reproach. **Still-elusive** realization of the liberal economic international order’s intended form will **require** an expanded constellation of **independent competition regulators** empowered to enforce antitrust laws consistently.

**Global free trade reversals will cause *multiple existential impacts*.**

* Arctic conflict
* Space conflict;
* Global nuclear prolif;
* Structural wars;
* Climate;
* Geo-engineering;

**Langan-Riekhof ‘21**

et al; Maria Langan-Riekhof is the Lead Author and is the new Director of the Strategic Futures Group at the National Intelligence Council, leading the Intelligence Community’s assessment of global dynamics and charged with producing the quadrennial Global Trends product for the incoming or returning administration. She has spent more than 27 years in the intelligence community as both a senior analyst and manager, serving at the CIA and on the NIC. She brings a background in Middle East studies and has spent more than half her career analyzing regional dynamics. Her leadership roles include: Chief of the CIA’s Red Cell, founder and director of the CIA’s Strategic Insight Department, and research director for the Middle East. She was one of the DNI’s Exceptional Analysts in 2008-09 and the Agency’s fellow at the Brookings Institution in 2016-17. She is a member of the Senior Analytic Service and the Senior Intelligence Service and hold degrees from the University of Chicago and the University of Denver - National Intelligence Council - Global Trends 2040 – Form the section: “Scenario Four – Separate Silos” - MARCH 2021 - #E&F - https://www.dni.gov/files/ODNI/documents/assessments/GlobalTrends\_2040.pdf

With the trade **and financial** connections that defined the prior era of globalization disrupted, economic and security blocs formed around the United States, China, the EU, Russia, and India. Smaller powers and other states joined these blocs for protection, to pool resources, and to maintain at least some economic efficiencies. Advances in AI, energy technologies, and additive manufacturing helped some states adapt and make the blocs economically viable, but prices for consumer goods rose dramatically. States unable to join a bloc were left behind and cut off.

Security links did not disappear completely. States threatened by powerful neighbors sought out security links with other powers for their own protection or accelerated their own programs to **develop nuclear weapons**, as the ultimate guarantor of their security. Small conflicts occurred at the edges of these new blocs, particularly over scarce resources or emerging opportunities, like **the Arctic** and **space**. Poorer countries became increasingly unstable, and with no interest by major powers or the United Nations in intervening to help restore order, **conflicts became endemic**, exacerbating other problems. Lacking coordinated, multilateral efforts to mitigate emissions and address **climate changes**, little was done to slow greenhouse gas emissions, and some states experimented with **geoengineering with disastrous consequences**.

**6**

**Substantial is certain**

**Words and Phrases 72** --- Words and Phrases Volume 30, Part 1, 1972, https://www.google.com/books/edition/Words\_and\_Phrases/Xs42AQAAIAAJ?hl=en&gbpv=0&kptab=getbook

The words" outward, open, actual, visible, substantial, and exclusive," in connection with a change of possession, mean substantially the same thing. They mean not concealed; not hidden; exposed to view; free from concealment, dissimulation, reserve, or disguise; in **full existence**; denoting that which not merely can be, but is opposed to **potential**, apparent, constructive, and imaginary; veritable; genuine; **certain**: absolute: real at **present time**, as a matter of fact, not merely nominal; opposed to form; actually existing; true; not including, admitting, or pertaining to any others; undivided; sole; opposed to inclusive.

**Prohibit requires the activity be clearly and certainly banned – cross apply**

**Violation --- the plan doesn’t mandate any activity be prohibited --- its contingent on the results of international bargaining**

**Voter for limits and ground --- international bargaining is extra topical --- they claim advantages off it --- and allows aff that result in ZERO change to antitrust enforcement**

**The aff is extra-topical – requires the US to foster cooperation on international antitrust law**

**Vote neg**

**1) Limits – moots the core of the resolution which is antitrust expansion**

**2) Ground – there are an infinite number of possible additional contingencies the aff can use to supplement the plan – makes being neg impossible**

**7**

**The United Nations Security Council should request an advisory opinion with binding force to create an internationally agreed framework of cooperation regarding competition law accelerated by the International Court of Justice and pass a concurrent resolution that non-compliance with the International Court of Justice’s opinion constitutes an enforceable violation of Charter obligations. The United Nations International Court of Justice should convene and, if a dispute is present, issue a binding advisory opinion that failure to enforce the agreed upon competition law is a violation of United Nations Charter obligations.**

**ICJ review better restricts stirkes and spurs U.S. follow-on**

**Shany 12** – Yuval Shany, Hersch Lauterpacht Chair in Public International Law at Hebrew University, Mount Scopus, Rethinking the Law of Armed Conflict in an Age of Terrorism, p. 108-110

In the previous sections of this chapter. I have claimed that the war on terror tends to take place in institutional settings that are unlikely to ensure a proper balance between individual rights and security interests, and that the human rights of the terror suspects might therefore be chronically underprotected by the responding state's legal system. To summarize, certain counterterrorism **measures taken by the executive occur wholly outside the scope of any form of review**; other measures are only reviewed by (deliberately) weak review mechanisms; and **domestic review mechanisms tend to defer to the executive** and operate in ways that under protect the rights of foreign terrorists. How might one prevent such suboptimal decision-making and monitoring processes? One way to break the vicious cycle of weak interbranch supervision which, as we’ve have seen, may lead to new unchecked excesses on the part of the executive—**is to delegate greater monitoring authority to international actors, such as international courts**, committees, international public opinion, international nongovernmental organizations (NOC)s). and the like. Unlike domestic branches of government, external actors do not always share the perception of the terrorists as the ultimate other and as existential threats to society."' Instead, they may sometimes view terrorists with some degree of sympathy, as fighting for a just cause, albeit through unlawful means. International actors also lend, at times, to be skeptical or suspicious of the real motives behind the domestic executive's draconian counterterrorism measures."' In short, external monitoring bodies may be **more inclined** than their domestic counterparts to assert jurisdiction over counterterrorism measures in some cases, and to second-guess executive discretion in the field of counterterrorism. The invocation of international review mechanisms, in parallel lo domestic review, is important because it may partly compensate for the accountability deficit associated with the operation of purely domestic oversight procedures. Moreover, the involvement of international actors may also **embolden national review mechanisms**—such as domestic courts—to assert more robust powers of review, on the grounds that their local review would be more palatable to local constituencies than international review, and may operate to limit the scope of the latter." Indeed, one possible explanation for the fact that the record of l\*K courts in monitoring counterterrorism measures appears more impressive than that of their L".S. counterparts, is the "shadow" cast by the European Court of Human Rights (EQIIR) in its exercise of broad supervision over the UK legal system. The potential for l-CUIR intervention, in other words, legitimizes intrusive exercise of "preemptive" jurisdiction by the local courts—which might not otherwise have occurred.7" {The same dynamics may also explain the degree of IK parliamentary opposition lo some of the government's more expansive counterterrorism initiatives)." In Israel too, one may explain the Supreme Court's increasingly robust exercise of supervisory powers over IDV and secret service counterterrorism measures— especially when comparing judicial responses to allegations of human rights violations during the Second Intifada (2000-05) to those during the First Intifada (1987-91) —at least in part as a result of the growing prominence since the late 1990s of foreign and international courts (especially in the criminal sphere) claiming jurisdiction over Israel and Israelis."

**The CP's key to ICJ cred that solves territorial conflicts -- perm fails**

**Angehr 8 –** Mark, Expert @ the Federalist Society for Law & public policy studies, JD candidate @ Northwestern Law, Engage, Vol 9 Issue 2, June, http://www.fed-soc.org/publications/detail/saying-what-the-law-is-arguments-for-an-icj-that-is-less-deferential-to-security-council-and-general-assembly-resolutions.

Organizational Dynamic of the ICJ’s Advisory Jurisdiction Th e ICJ is largely modeled on its predecessor court, the Permanent Court of International Justice (PCIJ), established by the League of Nations.7 However, unlike the PCIJ, which was not formally part of the League of Nations, the ICJ is a principal organ of the UN as well as the UN’s principal judicial organ.8 Only States may be parties in cases before the fi fteen-member Court, though the State need not be a member of the UN in order to appear.9 Member States may request that the Court exercise jurisdiction over any dispute involving interpretation of a treaty or international law, or the “existence of any fact which, if established, would constitute a breach of an international obligation.”10 Once jurisdiction has been established, the Court must decide disputes in accordance with international law, which is limited to international conventions, custom, and general principles of law.11 Th e Assembly and the Council are authorized to submit advisory opinion requests to the ICJ on “any legal question,” which the Court has broadly construed to include complex factual disputes or political issues.12 Th e advisory opinion request must be “accompanied by all documents likely to throw light upon the question.”13 Th e advisory opinion, while truly a peculiar notion to federal courts in the United States, is permitted in many U.S. courts.14 However, the advisory jurisdiction as exercised in the World Court diff ers from the practice in the United States of a state legislator requesting a court’s opinion on the constitutionality of a proposed law.15 Th e ICJ’s advisory opinions have often involved hotly debated political disputes16 and legal questions embedded in broader bilateral disputes.17 State consent, while required for the exercise of contentious jurisdiction, is not required for the ICJ to exercise advisory jurisdiction over a dispute.18 Th e ICJ’s status as “principal judicial organ” of the UN has been characterized as an “organic link” to the shared goals of the UN system.19 Th e ICJ, like all other principal organs in the UN system, has a **duty** to further the purposes and principles of the UN These purposes are to “**maintain peace** and security,” and “take collective measures for the **prevent**ion and removal of threats to the peace.”20 The advisory function of the ICJ, even more than its contentious jurisdiction, serves as a **vehicle for the Court’s participation** in the “Purposes and Principles” of the UN Charter.21 Proponents of the advisory jurisdiction argue that by rendering advisory opinions, the Court is able to place another organ’s operation upon a firm and secure foundation. Judge Bedjaoui has written that the Court’s advisory function assists the political organs by taking into account “its preoccupations or diffi culties and by selecting, from all possible interpretations of the Charter, the one which best serves the actions and objectives of the political organ concerned.”22 In the Wall Opinion, the Court explained that its obligation to clarify a legal issue for the Assembly outweighed any concerns about the judicial propriety of adjudicating an ongoing political dispute and armed conflict between Israel and Palestine.23 Accordingly, the Court stressed the organizational purpose of the advisory opinion: “Th e Court’s Opinion is given not to the States, but to the organ which is entitled to request it.”24 Th e ICJ characterized the opinion as that which “the General Assembly deems of assistance to it in the proper exercise of its function.”25 Accordingly, the Court placed the matter “in a **much broader frame** of reference than a bilateral dispute,” as it was “of particularly acute concern to the United Nations.”26 Th e Court is strongly inclined to not only answer a request for an advisory opinion, but to facilitate the larger aims of the UN by arriving at a conclusion in line with the preference of the political organ.27 Judge Azevedo has stated that the Court “must do its utmost to co-operate with the other organs with a view to attaining the aims and principles that have been set forth.”28 Th e closer the institutional connection of the ICJ to the requesting organ, he argues, the greater the usefulness of that opinion to the operation of the requesting organ. However, the advisory function threatens the institutional legitimacy of the Court because it often resolves disputes without the consent of the relevant States,29 and the political organ making the request has often already ruled on the issue.30 Organizational theory helps to explain why the ICJ is not **functioning as a check on the actions of the political organs** in its advisory jurisdiction. By examining the benefi ts and drawbacks of coordination among organizations and within organizations, organizational theory predicts the most effi cient modes of cooperation.31 Studies of coordination mechanisms within organizations suggest that the ICJ is likely motivated to undertake advisory opinions out of a fear of institutional isolation and marginalization.32 An organization might “seek[] to forestall or prevent future crisis which may imperil its success or even continuation.”33 Because organizations have incentives to increase their authority and prestige, the Court is unlikely to decline the opportunity to contribute to the progress of international law by rendering an advisory opinion.34 Given the institutional incentives for rendering advisory opinions, the ICJ will continue to do so as long as the perceived benefi ts of cooperation outweigh the loss in judicial autonomy.35 Similarly, the political organ will make the request as long as the perceived advantage to its operations outweighs any loss to its political autonomy. Th e ICJ’s reliance on the political organs to enforce compliance with its decisions incentivizes the Court not only to take on advisory opinions, but to give opinions in accordance with the **political preferences** of the requesting organ. Th e main impediment to coordination between the ICJ and the political organ is the line between cooperation and competition. If the degree of interdependence is high, and the degree of antagonism is high, the result will be competition and confl ict.36 By contrast, if the degree of interdependence is high, and the degree of antagonism is low, the result will be cooperation. The ICJ has an incentive to reduce competition and increase smooth cooperation in order to avoid alienating the requesting organ and risking institutional isolation. If we map the interaction of the ICJ and the Assembly in the Wall Opinion onto this organizational dynamic, we see a high level of interdependence due to their “organic link” and a low level of antagonism due to the Court’s incentive to contribute to the shared goals of the UN as reflected in the stated policy preference of the Assembly. Th e resultant “cooperation” between the two organs reduces the need for information processing and furthers the shared mission of the UN. By systematizing coordination through a process that provides the Court with “an exact statement of the question” as well as a “voluminous dossier”37 of documents “likely to throw light on the question,”38 the Court is unlikely to conduct its own investigation outside of the given universe of documents. From an organizational theory perspective, the Court will not engage in its own extensive review of the background material and facts, because such a duplicative inquiry would bring the Court into competition with the functioning of the requesting organ. In relying on the resolutions and factual studies made by the political organs, the likelihood that the Court will render an opinion in line with the policy preferences of the political organ is thus greater. Th e results of such a model have been borne out in the Court’s case law. In 1949, the Court held in an advisory opinion that South Africa had no legal obligation to place its mandate, South West Africa (now Namibia), under a trusteeship with the UN39 Th e Assembly had advocated for South Africa’s withdrawal from South West Africa, but the Court found in favor of South Africa’s continued occupation. Th e opinion weakened the Court’s credibility, especially among African nations.40 Th e loss of political capital to the Assembly outweighed any potential benefi t of further coordination with the Court on the issue, and, as a result, the Assembly never revisited the issue with the Court. Th en, in 1971, the Council requested an advisory opinion on the “legal consequences” of South Africa’s continued presence in Namibia.41 The request was seen as an opportunity for the Court to “**redeem its impaired image**,” since its advisory jurisdiction had been unused since 1962.42 Th e Council had in fact already passed Resolution 276, which strongly condemned the “illegal” presence of South Africa in Namibia.43 The Court in this iteration of coordination produced an opinion in line with the clear political preference of the Council by **holding that South Africa’s presence** in Namibia **was illegal**.44 Th e Court’s interaction with the Council was thus cooperative, and in rendering an opinion that mirrored the eff ect of the Council’s resolution on the issue, the Court avoided confl ict with the political organ. Th e Court consequently repaired its image and staved off institutional marginalization by indicating its willingness to cooperate with the political organs. Although this coordination effect has positive value as an explanation of the ICJ’s behavior, it should not be seen as normative. Th e ICJ **overestimates the institutional benefits** it receives from such coordination. The fear of institutional isolation motivates the ICJ to defer to the political organ, but there is little evidence that behaving in such a way increases in the long-term the number of advisory requests that the Court receives. If the Court were correct in the assumption that advisory opinions deferent to the preferences of the political organs lessen the court’s marginalization and increase the volume of its advisory jurisdiction caseload, there would be an increase in advisory opinions after the ICJ rendered a deferent advisory opinion. Although advisory requests two and four years later followed the deferent South West Africa opinion, a statistical breakdown of the Court’s advisory docket shows no long-term changes in the number of opinions rendered from its fi rst opinion in 1947 to its last in 2004. Th e Court averages about four advisory opinions a decade. As of 2008, the Court has not received another advisory request since the Wall Opinion, and it would appear that the Court will have a below-average number of advisory opinions this decade, despite the accommodation it provided the Assembly in the cooperative Wall Opinion. While the ICJ is concerned about institutional marginalization and orders its behavior in rendering advisory opinions accordingly, the motivation of the political organs in requesting advisory opinions proves to be more complex. First, the Council or Assembly may refer a dispute to the ICJ’s advisory jurisdiction when the intractability of the dispute does not lend itself to political resolution. Second, a referral to the ICJ’s advisory jurisdiction can take place if the particular dispute is susceptible to judicial resolution, that is, if the ICJ can help the organ overcome a political impasse by settling a question of international law. Th ird, if the political organ doubts the utility of the advisory opinion it will receive, or if it fears an opinion not in line with its political preferences, it can take steps to make known its preferences before the Court composes its opinion. Th erefore, the political organ’s perception of the ICJ’s propensity to render an opinion not in line with the organ’s political preference is just one of three factors that determine when the ICJ will be asked to exercise its advisory jurisdiction. Th e Court’s fear of marginalization is thus overblown; the factors determining when the organs refer a dispute to its advisory jurisdiction depend more on the peculiar nature of the dispute itself than on the Court’s perceived deference to the political will of the Council or Assembly. In other words, the Assembly’s decision to refer to the ICJ the question of the legality of the wall in Palestine depended more on the exigencies of that particular situation—namely, the need for a legal and not political resolution—than on the ICJ’s recent record of deference to the Assembly in its advisory jurisdiction. In light of the cost in **loss of judicial autonomy and reduced institutional benefits**, a new calculation shows that the Court should **defer less** to the requesting organ. Th e Court should thus be **more competitive** by undertaking its own fact- fi nding and by **rendering decisions that may not line up with** the **political preferences** of the requesting organ. The result of such an undertaking is **more independent and legitimate** advisory opinions. As more authoritative statements of the law, the opinions would provide a **better enforcement mechanism** against the political organs to police the behavior of States that have violated their legal obligations. By asserting its jurisdiction over fact-finding and legal interpretation, the ICJ would **signal** to the requesting organ **that the function each organ was to perform had changed**. In the long-term, the functional differentiation of each organ would **shift to accommodate the Court’s new role**, and the organs could ultimately **resume a cooperative interaction**. Th e political organ would continue to request opinions, because the benefit of receiving **truly independent** advisory opinions would outweigh the risk of an opinion not in line with its political preference. A **revitalized** advisory jurisdiction could **aid the political organs in providing another strong enforcement mechanism against States that violate international norms**. This model has the **additional advantage of better serving the shared goals of the UN system**. In reclaiming its judicial autonomy within its advisory jurisdiction, the Court is **aiding the UN’s settlement of international disputes** “in conformity with the principles of justice and international law.”45 **In contrast, an opinion that reproduces the politically-determined legal conclusion** of the requesting organ **does not further this goal, because it abdicates judicial responsibility to a political organ**.

**Goes nuclear**

**Chakraborty 10** – Tuhin Subhro, Research Associate at Rajiv Gandhi Institute for Contemporary Studies (RGICS), his primary area of work is centered on East Asia and International Relations. His recent work includes finding an alternative to the existing security dilemma in East Asia and the Pacific and Geo Political implications of the ‘Rise of China’. Prior to joining RGICS, he was associated with the Centre for Strategic Studies and Simulation, United Service Institution of India (USI) where he examined the role of India in securing Asia Pacific. He has coordinated conferences and workshops on United Nation Peacekeeping Visions and on China’s Quest for Global Dominance. He has written commentaries on issues relating to ASEAN, Asia Pacific Security Dilemma and US China relations. He also contributed in carrying out simulation exercise on the ‘Afghanistan Scenario’ for the Foreign Service Institute (FSI). Tuhin interned at the Indian Council of World Affairs (ICWA), Sapru House, wherein he worked on the Rise of People’s Liberation Army (PLA) military budget and its impact on India. He graduated from St. Stephen’s College, Delhi and thereafter he undertook his masters in East Asian Studies from University of Delhi. His areas of interest include China, India-Japan bilateral relations, ASEAN, Asia Pacific security dynamics and Nuclear Issues, The United States Service Institution of India, 2010, “The Initiation and Outlook of ASEAN Defence Ministers Meeting (ADMM) Plus Eight”, http://www.usiofindia.org/Article/?pub=Strategic%20Perspectiveandpubno=20andano=739

The first ASEAN Defence Ministers Meeting Plus Eight (China, India, Japan, South Korea, Australia, New Zealand, Russia and the USA) was held on the 12th of October. When this frame work of ADMM Plus Eight came into news for the first time it was seen as a development which could be the initiating step to a much needed security architecture in the Asia Pacific. Asia Pacific is fast emerging as the economic center of the world, consequently securing of vulnerable economic assets has becomes mandatory. The source of threat to economic assets is basically unconventional in nature like natural disasters, terrorism and maritime piracy. This coupled with the **conventional security threats** and **flashpoints** based on **territorial disputes** and **political differences** are very much a part of the region posing a **major security challenge**. As mentioned ADMM Plus Eight can be seen as the first initiative on such a large scale where the security concerns of the region can be discussed and areas of cooperation can be explored to keep the threats at bay. The defence ministers of the ten ASEAN nations and the eight extra regional countries (Plus Eight) during the meeting have committed to cooperation and dialogue to counter insecurity in the region. One of the major reasons for initiation of such a framework has been the new face of threat which is non-conventional and transnational which makes it very difficult for an actor to deal with it in isolation. Threats related to violent extremism, maritime security, vulnerability of SLOCs, transnational crimes have a direct and indirect bearing on the path of economic growth. Apart from this the existence of territorial disputes especially on the maritime front plus the issues related to political differences, rise of China and dispute on the Korean Peninsula has aggravated the security dilemma in the region giving rise to areas of potential conflict. This can be seen as a more of a conventional threat to the region. The question here is that how far this ADMM Plus Eight can go to address the conventional security threats or is it an initiative which would be confined to meetings and passing resolution and playing second fiddle to the ASEAN summit. It is very important to realize that when one is talking about effective security architecture for the Asia Pacific one has to talk in terms of addressing the conventional issues like the territorial and political disputes. These issues serve as bigger **flashpoint** which can **snowball** into a **major conflict** which has the possibility of turning into a **nuclear conflict**.

**case**

**trade**

**(1) Aff has zero solvency – the plan has the US agree to an intentional cooperative agreement that doesn’t exist – vote neg – the aff is the squo and any attempt to facilitate the cooperation is extra-topical**

**(2) Tons of alt causes**

**Martin 21** [Thomas Martin LLB, Queens University Belfast, 2019 A DISSERTATION SUBMITTED IN PARTIAL FULFILLMENT OF THE REQUIREMENTS FOR THE DEGREE OF MASTER OF LAWS in THE FACULTY OF GRADUATE AND POSTDOCTORAL STUDIES, THE UNIVERSITY OF BRITISH COLUMBIA. "Is global convergence of competition law the answer? How East Asian challenges demonstrate the limitations of the convergence strategy." https://open.library.ubc.ca/soa/cIRcle/collections/ubctheses/24/items/1.0396863]

Before this thesis further develops the case for maintaining **regulatory divergence** in competition law, it is important to recognise some of the main points in favour of developing a global approach to competition enforcement. The **adoption** of **competition law** by large swathes of jurisdictions has given rise to challenges for global corporations. Damien Geradin notes that the decentralised globalisation of antitrust has had three major implications for global corporations.326 First, it has increased the cost of doing business and the complexity of large-scale competition investigations, which now have a multi-jurisdictional component.327 Second, it has increased the risk of contradictory decisions where a firm’s behaviour is reviewed by different antitrust authorities under different sets of rules.328 And thirdly, it has increased the likelihood that some decisions will be guided by protectionist motives.329 However, competition law is **far** from the **only area of business** regulation that faces the problem of cross-jurisdictional **regulatory inconsistencies**. In fact, these inconsistencies are a **fact of life** for multinational corporations and are present in most areas of law, including **corporation** law, **tax** law, **labour** law, products **liability** law, **securities** regulation, and **environmental law**.330 Yet, as noted by Braithwaite and Drahos, there has been much less clamour for harmonization in these **other areas of law**, with corporation law, for example, relatively free from efforts at harmonization.331 Furthermore, this thesis would argue that for international convergence of competition law to be totally feasible and beneficial, there would have to be an international **consensus** on the objectives of competition law. As this research has demonstrated from the analysis of Japan, South Korea, and China, such a **consensus is lacking**. Indeed, Oliver Budzinski has argued that “there neither is, nor can ever be, an ultimately ‘right’ competition theory.”332

**(3) Courts mean the US won’t comply**

**Crane 21** – Frederick Paul Furth Sr. Professor of Law at UMich (Daniel, Antitrust Antitextualism, 96 Notre Dame L. Rev. 1205 (2021). Available at: <https://scholarship.law.nd.edu/ndlr/vol96/iss3/7>

But it gets worse. The courts have not merely abandoned statutory textualism or other modes of faithful interpretation out of a commitment to a dynamic common-law process. Rather, they have departed from text and original meaning in one consistent direction—toward reading down the antitrust statutes in favor of big business. As detailed in this Article, this unilateral process began almost immediately upon the promulgation of the Sherman Act and continues to this day. In brief: within their first decade of antitrust jurisprudence, the courts read an atextual rule of reason into section 1 of the Sherman Act to transform an absolute prohibition on agreements restraining trade into a flexible standard often invoked to bless large business combinations; after Congress passed two reform statutes in 1914, the courts incrementally read much of the textual distinctiveness out of the statutes to lessen their anticorporate bite; the courts have read the 1936 Robinson-Patman Act almost out of existence; and the Celler-Kefauver Amendments of 1950, faithfully followed in the years immediately after their promulgation, have been watered down to textually unrecognizable levels by judicial interpretation and agency practice. It is no exaggeration to say that not one of the principal substantive antitrust statutes has been consistently interpreted by the courts in a way faithful to its text or legislative intent, and that the arc of antitrust antitexualism has bent always in favor of capital. Unlike in many debates over statutory interpretation, the issue in antitrust is not a contest between strict textualism and purposivism, including resort to legislative history.6 This Article uses “antitextualism” as a shorthand for the phenomenon of ignoring any bona fide construction of what a statute means, whether in the plain meaning of its words, linguistic or substantive interpretive canons, legislative history, or other ordinary markers of legislative meaning. Uninterested in these methods, the courts have treated the antitrust laws as a virtually unbounded delegation of common-law powers when, in important ways, the statutes quite clearly say something other than that. Inquiring into the nature and implications of antitrust antitextualism is particularly salient at the present when, for the first time in a generation, there is widespread dissatisfaction with antitrust enforcement and impetus for potential reform legislation.7 As was true at each of the prior moments of reformist sentiment, the call is for statutory reforms to curb the power of big business.8 We have seen this play before, and also its sequel. In the play, Congress announces that the antitrust laws are too weak and that reforms are necessary to protect the nation from the power of big capital. In the sequel, the courts (often abetted by the antitrust agencies and other antitrust elites) read down the statutes to accomplish less than their texts suggest or Congress meant. Will anything be different this time around, or are the legislative reforms currently on the table predestined to a similar fate?

**(4) Unilateral enforcement still guarantees conflicts over type 3 and 4 cases.**

Michal S. **Gal 09**, Associate Professor and Vice Dean, Haifa University School of Law; Global Hauser Visiting Professor of Law, New York University School of Law. "Antitrust in a Globalized Economy: The Unique Enforcement Challenges Faced by Small and Developing Jurisdictions" Fordham International Law Journal, Volume 33, Issue 1, Article 1. <https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=2175&context=ilj&httpsredir=1&referer=>

B. The Current International Antitrust Regime: Legal Tools The current international antitrust system is largely based on unilateral enforcement whereby each jurisdiction deals, on its own, with antitrust issues surfacing at its borders.2 7 As elaborated in the next section, **the unilateral enforcement regime is** also **the main source of the enforcement problems of small and of developing jurisdictions**.

Efforts to increase **cooperation** and **coordination** of antitrust enforcement also take place at the international level. Current attempts focus mainly on the ICN. The ICN is a **voluntary** body, comprised of almost all the competition authorities in the world, and also non-governmental advisors, for the enhancement of international cooperation and the reduction of trade barriers. 28 **It operates as a mechanism for soft harmonization by creating guiding principles and best practices agreed upon by all members rather than binding agreements**. **Thus, it holds little promise for solving** most type 3 and 4 issues. **Most importantly** for this Article, as will be elaborated below, **it does not solve many of the enforcement challenges faced by small or developing jurisdictions**.

Additional international bodies also take actions which are designed to motivate solutions to international antitrust problems and to enhance unilateral enforcement. The Organization for Economic Co-operation and Development ("OECD"), for example, publishes recommendations for effective action against hard-core cartels and often reviews the suitability of sanctions imposed by jurisdictions in order to deter international cartels. 29 It also regularly publishes country-specific reports on antitrust enforcement and organizes round-table discussions on antitrust issues, designed to create better antitrust enforcement.3 0

Likewise, the United Nations Conference on Trade and Development ("UNCTAD") undertakes projects designed to increase enforcement and cooperation.3 For example, it promotes the creation of regional agreements on antitrust enforcement among developing jurisdictions.32 Additional international organizations, including the World Bank, also sometimes engage in technical assistance programs on competition issues. 33 **Yet these actions, while commendable, are relatively limited in their effect on solving international antitrust problems. This is because** in most cases **unilateral action still remains the main tool for enforcement and the resulting cooperation is limited in the ways suggested in this section**. The World Trade Organization ("WTO") has considered the inclusion of some antitrust prohibitions in its provisions.3 4 However, this option is currently off the table.-5

III. THE ENFORCEMENT CHALLENGES OF SMALL AND OF DEVELOPING JURISDICTIONS How do small and developing jurisdictions deal with antitrust cases with an international dimension that negatively affect their jurisdictions and what drives their enforcement patterns? This is the focus of this Part.

Before practical obstacles are analyzed, let us first say a few words with regard to the legal tools at the disposal of such jurisdictions. The current international antitrust system is largely based on unilateral enforcement and national vision whereby each jurisdiction deals, on its own, with antitrust issues surfacing at its borders through the lens of the effect the conduct will have on its own welfare. 36 The unilateral approach is based on the assumption that extraterritorial conduct that significantly affects one's domestic market can generally be addressed at the national level through national antitrust laws. As this section shows, this proposition does not hold true for small or developing economies, as they face severe challenges to effective prosecution.

These regimes are sometimes combined with bilateral and multilateral cooperation agreements. Such agreements attempt to solve, at least to some degree, issues of mutual concern that generally fall within the first two types of cases described in the typology above. 37 Agreements usually include a wide range of cooperation standards. 38 They often include provisions with regard to the sharing of information. This enables cooperative unilateralism: with cooperative input from other interested jurisdictions, the antitrust authority reviews and, as appropriate, remedies situations that come within its laws. 39

Many agreements also adopt the **positive comity** principle, which is designed to ensure nondiscrimination. 4° Pursuant to this principle, foreign nations and persons adversely affected by anticompetitive activities occurring in the territory of another party, and contrary to the latter's antitrust laws, may request that territory to investigate and, if warranted, to remedy these activities in accordance with its laws. 41 Positive comity is thus met when each nation implements its own national antitrust law in a credible, nondiscriminatory, clear, and understandable way. 42

Such principles create vehicles to root out a common evil where there is a preexisting disposition to cooperate and to overcome the problem of non-enforcement or discriminatory enforcement by foreign jurisdictions. Accordingly, they solve some of the problems in type one and type two cases. **Yet they have limited effect where the antitrust principles adopted by the cooperating jurisdictions differ significantly or where the application of antitrust principles leads to different factual conclusions, resulting from the fact that the effects of the proposed conduct on foreign jurisdictions is not taken into account.**43 Accordingly, **comity principles offer no solution to enforcement problems** **in type 3 and type 4 cases.**

**(5) Absolutely zero chance of a global trade collapse---the multilateral system’s incredibly resilient**

Shiro **Armstrong 14**, economist and Fellow at the Crawford School of Public Policy, Australian National University, Co-Director, Australia-Japan Research Centre, Editor of the East Asia Forum, Director of the East Asian Bureau of Economic Research and Research Associate at the Center on Japanese Economy and Business at the Columbia Business School, September 2014, “Economic Cooperation in the Asia-Pacific and the Global Trading System,” Asia & the Pacific Policy Studies, Vol. 1, No. 3, p. 513-521

The WTO and the global trading system faced a major test during the GFC[global financial crisis]. Although advanced economies went into recession on a scale that matched the Great Depression in terms of output and financial losses, and trade flows collapsed globally (by 12 per cent in 2009), there was no significant rise in tariffs and other trade barriers. 4

In the wake of the GFC, ‘murky’, non-tariff-based protectionist measures were introduced by some governments. Some estimates of these measures suggest that they accounted for more than half of all protectionist measures in the post-crisis period (Aggarwal & Evernett 2013). Policies like local content provisions and industrial policies that restrict global trade were introduced. But after the GFC, most countries actually continued to liberalise tariffs, and changes in trade policy (via raising tariffs or taking anti-dumping action) contributed only about 2 percent of the observed drop in world trade in 2008–2009 (Kee et al. 2013). That is in major contrast to the effects of the Smoot-Hawley tariff wars during the Great Depression.

Of the 4,144 trade measures recorded by Global Trade Alert from the start of the crisis to early 2014, 22.2 per cent have been coded ‘green’ (that is, they represent, in the opinion of GTA, liberalising policy), with 57.4 per cent coded ‘red’ (policy considered protectionist). 5 One reason why some developing countries in fact dropped tariffs and other trade barriers in the aftermath of the GFC may be the rise in global supply chain trade: when it is necessary to import in order to export, the risks of retaliation are larger and there are domestic producers that demand low import barriers (Gawande et al. 2014). But the role of the WTO in this should not be understated. Indeed, the rise of global supply chains is a consequence of the rules-based trading system that GATT/WTO underwrites.

This was a significant achievement given the acute protectionist pressures. Leadership at the G20 had much to do with the ‘standstill’ on protection, but the shock of the GFC did not weaken the WTO or undermine the confidence that countries placed in it. The slow recovery of the advanced economies meant that protectionist forces put significant pressure on governments to close markets, but the global trading system has proved robust to these pressures.

The robustness of the global trading system throughout the GFC and its aftermath has meant that recession and collapsed trade in some countries have not generated conflict between countries.

**(6) No geoengineering impact - Rogue SRM is impossible – too expensive or it’s not geographically feasible**

Florian **Rabitz 16**, Institute for International Relations, University of São Paulo, “Going rogue? Scenarios for unilateral geoengineering,” *Futures*, Volume 84, 2016, pp. 98-107

Cost estimates for SAI vary widely across different studies and delivery vehicles. One study considers the cost for aircraft delivery to amount to US$ 0.2–20 billion annually, with installation costs between US$ 1 and 30 billion; delivery via tethered stratospheric balloons would cost US$ 1–10 billion annually, with US$ 1–60 billion for installation; delivery via artillery shells or rockets will likely result in costs which are significantly higher (EUTRACE, 2015: 42). While aircraft delivery is thus the cheapest option, **the technical requirements are high**, as planes need to be able to carry full payloads into the stratosphere where aerosols will persist for up to two years due to horizontal winds (Hamilton, 2013: 59). Reaching the equatorial stratosphere, which commences at 18 km, is “at or **above the upper end of the operational range of most existing airplanes**” (Aurora, 2011: 22–23). While supersonic aircraft such as the decommissioned Concorde have service ceilings of 18 km and above, **no civilian models** are presently in use.

Several military aircraft possess both sufficient payloads and ceilings to reach the lower stratosphere in the polar region or at middle-latitudes. One study assesses cost projections for two different tanker jets, the KC-10 Extender and the KC-135 Stratotanker. A fleet of 9 and 15 units, respectively, would be sufficient for delivering 1 Mt of sulphur particles annually with operating costs of US$ 225 and 375 million, respectively (Robock et al., 2009). Those costs accordingly scale with the required injection volume, sometimes estimated at up to 10 Mt per year (NAS, 2015a: 79–84) more than twice the global lift capacity of FedEx (Aurora, 2011: 19). While the financial constraints may be overcome even by small states and non-state actors, procurement of military jets is **hampered by arms export legislation**. Cost constraints for modified civilian models are more substantial. With modifications, business jets could reach altitudes of above 18 km, with annual operating costs for the delivery of 1 Mt estimated to be between US$ 2.89 and 5.96 billion, depending on whether aerosols are dispersed only regionally or in transit flights along the Equator (Aurora, 2011: 38). While equatorial injections would achieve global coverage as the aerosols mix horizontally through the entire stratosphere until they reach the polar caps, the financial constraints on rogue actors intending to deploy sufficient amounts over a sustained period of time are thus significant, constituting a sizeable share of, or even **exceeding, the GDP of Small Island Developing States**.

Cost constraints may be overcome by injecting aerosols in the Arctic region where the lower stratosphere commences at about 8 km. Here, temperature changes are above the global average so that aerosols would protect against the loss of ice cover and methane releases. While in the reach of most commercially-available aircraft, this raises the problem of **geographical access**: aircraft would need to operate continuously within, or transit through, the airspace of states with relatively low vulnerabilities to climate change, or even economic stakes in the melting of Arctic ice to free up shipping routes or facilitate resource extraction (Borgerson, 2008). Arctic states thus have strong incentives to interfere with high-risk geoengineering activities in their vicinity. While the same arguably applies to other governments, any type of international response to unilateral action does not have a firm basis in international law as the legal status of SAI is ambiguous and, unlike for OIF, no enforcement measures are explicitly provided for. A robust mandate for interference would likely need to be based on a UN Security Council resolution.

**(7) Cartels solve themselves quickly**

**DePaola 14** (Joe DePaola, Managing Partner & President at BizShifts, former VP Worldwide Sales & Business Development, CIC Inc., former PhD student Business/Engineering, Stanford University, MS Engineering, New York University, “Sinister-Side of Cartels, Collusions… For Dominating Markets: Sleeping with the Competition is a Dubious Business Strategy,” BizShifts-Trends, 4-10-2014, https://bizshifts-trends.com/sinister-side-cartels-collusions-dominating-markets-sleeping-competition-dubious-business-strategy/)

Generally **cartels contain seeds of their own destruction**... cartel members are reducing their output below their existing potential production capacity, and once the market price increases, each member of the cartel has the capacity to raise output relatively easily. The **tendency is for cartel members to ‘cheat’** on their quota, increasing supply to meet market demand and lowering their price.

Most cartels agreements are **unstable** **at the slightest incentive** they will **quickly disband**, and **returning the market to competitive conditions**… Cartels appeared most strongly in those industries defined by scale and scope economies and with high fixed costs… Therefore, they are more common in wealthy countries with big businesses. Cartels also tended to appear among domestic firms first, before going international (except, for example; early– zinc, rail, shipping… cartels)…

**(8) Many thumpers to supply chain prices and disruption – BUT COVID solves – deglobalization and resilience** (to both price volatility and thumpers)

**Tsang et al 21** (Raymond Tsang, and Gerry Mattios, both partners and leaders of Bain & Company's Performance Improvement practice based in Shanghai and Singapore respectively; and Sri Rajan, partner based in San Francisco; “Confronting a new era of supply chain volatility,” Bangkok Post, 4-8-2021, https://www.bangkokpost.com/opinion/opinion/2096827/confronting-a-new-era-of-supply-chain-volatility)

As Covid-19 threw fragile global supply chains into disarray, many companies were stunned by their own vulnerability. The risk of depending on a supply base that is concentrated in one geographic region has been increasing over the past 30 years, but the pandemic quickly demonstrated how much chaos and pain one unexpected event could inflict.

It was a **powerful wake-up call**. The disruption triggered by **Covid**-19 has prompted leadership teams to confront a new era of **supply chain volatility**.

**Bracing for an era of increased turbulence**, leading **multinationals** are **rethinking their supply chain strategies** to **lower** the **risk of disruption**. In a recent **survey of 200 global manufacturers** by Bain & Company and the Digital Supply Chain Institute, executives ranked **flexibility** and **resilience** as their **top** supply chain **goals**. Only 36% of senior executives ranked cost reduction as a top three goal, down from 63% who saw it as a priority over the past three years.

To improve supply chain resilience, 45% of respondents **plan to shift production** closer **to home markets** in the coming years. The good news is that **automation** has reduced the cost of manufacturing, eroding the labour arbitrage advantage that fuelled decades of investment in **offshore** production.

The cost of humanoid robots is comparatively lower now which means companies with processes capable of being automated such as consumer electronics can opt to move supply chains closer to home **without raising costs** significantly.

For the last 30 years, manufacturing companies have wrung out supply chain costs by disaggregating the various steps of the value chain, concentrating each step with a limited number of companies and geographies to improve economies of scale.

As a result, most leadership teams lack sufficient supply chain visibility to assess their geopolitical and geographical risks.

Before investing in a new supply chain strategy, successful leadership teams evaluate their supplier and contract manufacturer risk according to two factors: the country where goods are produced and the supplier's headquarters location.

Two key factors that determine geopolitical supply chain risk are the supplier's headquarters and its manufacturing location.

Once leaders understand their risk exposure, they start building resilience into their value chains in a two-step process. First, they quickly add flexibility to the supply of finished goods and high-risk subcomponents where possible, to limit immediate risks and satisfy customers. Second, they take a strategic approach to rethinking the value chain from end to end. That includes deciding the pace of change and periodically reviewing decisions based on external conditions and internal capabilities. Below are three steps to help companies pioneer the shift to supply chain resilience:

1. Boost flexibility

Supply chain flexibility is becoming a more and more important concept for gaining competitive advantages. The first priority in **making supply chains shock-proof** is **increasing flexibility** for supplying finished goods and high-risk subcomponents. This would open the possibility for companies to respond to short-term changes in demand and supply situations as well as structural shifts in the environment of the supply chain on an immediate basis.

Not many countries have the capacity and infrastructure to handle all the volume, so manufacturers often have to piece together a solution across multiple neighbouring countries. For many companies, aligning a new production location with demand can deliver significant benefits, particularly in industries where demand is rising even through the downturn, including MedTech and certain consumer products.

2. End-to-end network rethink

For each value chain, leadership teams need to properly balance risk and resilience at the lowest total landed cost. This includes decisions on single vs. multiple sourcing, where to manufacture at each stage of assembly, and proximity to customers. They also need to determine whether to produce in-house or outsource, taking into account variables such as national incentives and declining manufacturing costs. Successful companies revisit their value chain choices regularly, especially in turbulent times.

3. Balancing cost and risk

Resilience does not eclipse every consideration. As leadership teams start to understand where they need flexibility, they face important trade-offs on cost. Investing in too much flexibility can render a company uncompetitive. As they look to reshape supply chains for the future, successful companies determine how much resilience they need, where it matters most, and what they can afford.

Resilient and flexible supply chains can be a powerful defensive hedge, but also a source of competitive advantage. Leaders make the most of options such as **capacity buffers**, **digital infrastructure** and nimble teams to react faster and more efficiently than their peers.

The investment to build and maintain these capabilities varies, depending on a company's need for responsiveness and efficiency, as well as the level of industry competition. This is why the roadmap for resilient supply chains must be linked to a company's long-term business strategy. For example, a high-growth business that has high margins and short product life cycles, and is dependent on components coming from widely distributed sources such as high-end cell phones, will require a different type of supply chain resilience than a hypercompetitive low-margin business, such as clothing or toys, which relies on imported finished goods.

**Geopolitical volatility** and **market turbulence** will **transform supply chain management** in the coming decade. Leadership teams that invest in strategies to increase supply resilience will simultaneously create a new source of competitive advantage.

**harmonization**

1. **The aff is a paper tiger – no enforcement capability**

**Ristaniemi 20** Michael Ristaniemi PhD Candidate in Commercial Law at the University of Turku, Vice President for Sustainability at the Metsä Group, Participant in the Visiting Scholar Programme at the University of California, Berkeley, “International Antitrust: Toward Upgrading Coordination and Enforcement”, Doctoral Dissertation, October 2020, <https://core.ac.uk/download/pdf/347180879.pdf> {DK}

International antitrust cooperation needs a firmer structure. Soft law may be helpful to an extent, inter alia in streamlining investigations regarding potential infringements, or in mergers requiring review by several nations running in parallel. However, non-binding international cooperation has not been ableto induce nations to institute more transformative improvements, such as **restricting the conduct of export cartels**. What is needed in addition to mere soft law, are frameworks that bind nations to action. To the extent that chapters on competition policy are included in TAs, it should be considered whether it would be beneficial for them to be made binding on the contracting parties, with appropriate dispute resolution mechanisms included. Enforcement appears to be a more problematic area than the consistency of substantive competition law, and ways to improve this are worthy of consideration. First, in practice only a handful of national competition authorities have sufficient experience and capacity to effectively enforce compliance with their respective competition laws. Disparities in enforcement practices are, however, likely to become less radical as competition authorities mature. Second, the structure of how national competition authorities operate as a collective is ill-suited to the demands of the ever-increasing cross-border nature of business. This is exacerbated by the challenges presented by the dynamic nature of the digital economy.290 New ways should be considered concerning how to multilaterally support enforcement in order to bridge the current disparity between agencies.

**(2) Aff fails – cost, political difficulties, and selfish agendas**

**Kretzmer 19** [Tevia Kretzmer, LLM from the University of Kent, BA (LLB) from the University of Johannesburg, Legal and Compliance Consultant at Rutherford, “To What Extent, If At All, Is It Desirable Or Realistic To Aim For A Global Agreement On Competition Policy?”, 5/6/2019, <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3404131>]

The **substantial costs** associated with developing and implementing a global competition policy have not gone unnoticed. For many countries, a cost-benefits analysis needs to take place, especially when a number of factors can increase the **costs**, **time** and **political difficulties** associated with establishing a harmonised agreement.63 The associated costs can also be categorised, with direct costs, out-of-pocket costs, opportunity costs as well as **political costs** all forming part of the general outlay that would be required to implement such a competition policy.64 This begs the question why any developing country would undertake such a commitment, especially with such limited resources and expertise. Ultimately, states will only cooperate when it is both in their respective interests and a benefit can be gained from such cooperation.65 This **inherent selfishness** means a global competition policy is **merely a farfetched misconception**, which is frustrating when one considers the benefits such an agreement could yield. As Noonan succinctly explains, ‘An agreement on core competition law principles could facilitate the acceptance that foreign competition laws are bona fide and not contrary to public policy in the recognising state.’66

**(3) Universal harmonization is impossible but the squo solves through informal cooperation and treaties**

**Murray 19** [Allison Murray, JD from the Loyola Law School, Los Angeles Law School, BS in Business Administration from the University of Redlands, Judicial Law Clerk at the U.S. Bankruptcy Courts, Former Corporate Paralegal at Boeing, Degree in Economics and Management from the University of Oxford, “Given Today's New Wave of Protectionism, Is Antitrust Law the Last Hope for Preserving a Free Global Economy or Another Nail in Free Trade's Coffin?”, Loyola of Los Angeles International and Comparative Law Review, Volume 42, Number 1, 42 Loy. L.A. Int'l & Comp. L. Rev. 117, Winter 2019, p. 117-119]

B. Informal Harmonization and Cooperation

Efforts to informally harmonize international competition laws **have continued** despite the failure of formal international laws. The Organization for Economic Cooperation and Development (“OECD”) and the United Nations Conference on Trade and Development (“UNCTAD”) each adopted codes that outlined negotiations and agreed to competition law principles.135 The codes were completely informal and non-binding.136 Although the OECD’s latest recommendations for antitrust cooperation were revised relatively recently in 1995, the agreement is still a “law . . . of the softest variety.”137 This is in part because Western industrialized nations seek to address anticompetitive behavior, while the burgeoning countries are more concerned with promoting economic development and regulating multinational corporations.138

The International Competition Network (“ICN”) is another institution that encourages cooperative action on antitrust principles.139 However, the ICN, much like other informal networks, does nothing to limit or minimize the protectionist behaviors of countries, which is common in the face of uncertainty and lack of consensus on topics such as antitrust.140

Lack of enforceability aside, these negotiations and cooperative efforts “established a framework that has been **reasonably successful** and has **set the stage for more** binding **commitments** on a bilateral basis.”141 The fact of the matter is that there is no economic model that is globally or unanimously accepted by all nation-states, so there can be no **truly successful** global harmonization.142 To internationalize the law, even in an informal capacity, would require the policy behind the laws to be agreed upon.143 How can one agree to perfect and protect an economic policy that is not itself uniform amongst all nations?144

C. Regional and Bi-lateral Treaties

In addition to informal harmonization efforts, certain regional and bilateral **treaties** have been put in place to encourage cooperation on antitrust enforcement.145 In 1991, the U.S. and E.U. entered into a cooperative antitrust agreement.146 Other nations have also entered into antitrust cooperation agreements.147 These agreements are not harmonized, vary widely, and contain different levels of required cooperation.148 Yet, they are a country’s best bet for **solidify**ing any kind of **binding cooperation** with another country on antitrust laws.

**(4) Multilat fails---it’ll gridlock inevitably**

**Kretzmer 19** [Tevia Kretzmer, LLM from the University of Kent, BA (LLB) from the University of Johannesburg, Legal and Compliance Consultant at Rutherford, “To What Extent, If At All, Is It Desirable Or Realistic To Aim For A Global Agreement On Competition Policy?”, 5/6/2019, <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3404131>]

The prospects of successfully harmonising a cohesive competition policy does **not appear possible** in the current global competition policy climate. A **lack of organisation, direction and leadership** among the supposed main role players in international competition law has led to an environment whereby each country adheres to its own set of competition laws or policies, and an extraterritorial application of same upon foreign companies or governments where they are deemed to be noncompliant with the home country’s competition laws. This conduct between countries can cause major conflict with regard to sovereign interests.50 The **difficulty** in formulating a **global consensus** on competition policy is by **no means** an **enviable task**, with such **difficulty well demonstrated** in how states endured nearly a **century of negotiations** in order to reach an agreement on how to control the spread of disease,51 a **seemingly necessary** agreement one might think. This **inflexibility** can be **transferred** to a key question in the field of **competition law** which is well postulated by Dabbah who questions how much certain countries would forgo national interests and priorities in favour of a global agreement based on common rules and shared objectives.52 As far back as 19**97**, attitudes towards the efficacy of creating a global competition policy had been questioned. Joel Klein, head of the antitrust division in the US Department of Justice in the late 1990s, set out his thoughts on whether the WTO would succeed in establishing a harmonised regime by stating:

this working group can play an important educational role in demonstrating the important contributions of antitrust to efficient national…we are less persuaded that the time is ripe for the negotiation of global antitrust rules.53

A delusionary perception of the current competition law system is that the current laws are suitable for all relevant parties to some extent. Interestingly however, it has been pointed out that in the majority of cases, the respective competition laws of developing countries has been ‘modelled on the basis of the competition laws found in the developed world.’54 The competition laws that have been created by developed states are arguably not suited to the starkly different needs of their developing counterparts. This is well supported by the fact that many developing countries’ competition laws and policies can be traced to the significant amount of preferential trade agreements that were signed between developed and developing countries in the 1990s.55 This situation, whereby developing states have essentially employed competition policies that are naturally suited to developed countries and their specific interests seems farcical. As has been noted, due to the fact that competition policy is always evolving, specifying overarching and binding rules on every country may be misguided.56

Competition authorities in developing countries are less equipped to effectively tackle anticompetitive conduct on the part of international monopolies, which conduct directly impacts on the lives of that developing state’s citizens. The problems encountered by domestic competition authorities concern a plethora of institutionally engineered barricades. These include areas such as lack of independence and the inability to make binding decisions, a shortage of well qualified personnel which leads to these personnel focusing on areas outside competition law and a general lack of steadiness and persistence on the part of the competition authority which has a potentially adverse effect on the enforcement of a cohesive competition policy.57

**(5) BRICS defections and free-riding make global governance failures inevitable**

Robert J **Lieber 14**, Professor, Department of Government, Georgetown University, 2014, “The Rise of the BRICS and American primacy,” International Politics, Vol. 51, p. 137-154

Other than where clear and unambiguous self-interest is present, the actual record of BRICS cooperation on a wide range of international collective action problems thus provides limited evidence of positive engagement let alone embracing of a ‘stakeholder’ role.7 Whether examined by issue or country, the pattern is clearly identifiable. For example, on global climate change, the BRICS played a major part in the debacle at the November–December 2009 Copenhagen conference that had been convened to develop a follow-on to the Kyoto Protocol in the form of a new and binding agreement, and to which the EU countries and the Obama administration were committed (Rapp et al, 2010). Instead, China, India and others saw the prospect of limits on carbon emissions as harmful to their economic development. By some accounts, they also sought the annual transfer of as much as $100 billion per year from the rich countries to the developing economies. In Copenhagen, the BRICS met separately, shutting out the European backers of a stronger agreement, and the conference ultimately concluded with only a vague statement of objectives.

China, which has gained attention for the massive scale of its production of solar panels and wind turbines, has mainly done so as an export strategy, where it has created a massive surplus of these products and undercut foreign competitors in overseas markets. Meanwhile, wind power represents a mere 0.2 per cent of China’s total energy use, while solar contributes only 0.01 per cent (Lomborg, 2013). The effort of the EU to bring a case to the World Trade Organization based on dumping and export subsidies resulted in China taking retaliatory measures and launching a series of virulent verbal assaults. In response and to mollify Beijing, the EU adopted a much watered down measure. At the same time, China’s primary reliance on coal-fired electricity plants, along with a massive expansion in its domestic auto fleet has made that country the world’s leading source of greenhouse gases. Europe and the United States have been reducing their emissions by a total of 60 million tons per year, whereas China’s are increasing by 500 million tons (The Economist, 2013a). Only in the past year, as the environmental consequences within China’s major cities have become so dire, has the Communist Party leadership embarked on a sweeping new program aimed at reducing domestic air pollution. Not only will this require a long, difficult and gradual period of change and adaptation, but the entire episode reflects the primacy of domestic priorities in shaping state behavior on collective action problems.

Human rights is another important – and troubled – arena. Here too, the BRICS’ record is negative. For the most part, they not only have been wary of providing international support on the issue, but not infrequently they have cooperated with leaders and regimes involved in major human rights abuses. For example, thanks to a vestigial anti-colonial solidarity, South Africa has been reluctant to apply pressure against the brutal and destructive rule of Zimbabwean President Robert Mugabe. As recently as August 2013, President Jacob Zuma of South Africa gave little comfort to the beleaguered democratic opposition movement and congratulated Mugabe on his victory in a rushed and badly conducted election which the opposition had protested was rigged. Brazil, a stable democracy, has nonetheless been unwilling to criticize the Castro dictatorship in Cuba. This was clearly evident in a 2012 visit by President Dilma Rousseff to Havana, in which trade was emphasized to the exclusion of other topics. Additional examples abound: Russian support for the Assad regime in Syria, India’s timber and energy deals with the then dictatorial and corrupt rulers of Burma, and China’s repeated willingness to strike trade and investment deals with oppressive regimes even when their rulers were already the object of international sanctions. Beijing has maintained profitable energy ventures in Sudan, and until recently had a long-standing relationship with the regime in Burma. At the UN, China and Russia have routinely opposed Security Council resolutions aimed at human rights violators, especially countries such as Sudan, Iran and Syria. For example, in October 2011, China and Russia both vetoed an already weakened UN resolution condemning the Syrian regime’s human rights abuses, and the three other BRIC countries (Brazil, India and South Africa) abstained.

On nuclear proliferation, both China and Russia have resisted stronger measures against Iran and North Korea. Brazil and Turkey opposed sanctions on Iran, despite condemnation of Teheran by the International Atomic Energy Agency and several (modest) sanction resolutions adopted by the Security Council. India, for its part and despite international sanctions, took steps to increase its oil exports from Iran and to pay for these by bypassing the financial restrictions meant to hinder payments to the Islamic Republic.8

The list goes on. The BRICS have not been supportive of the ‘Responsibility to Protect’ even though this principle gained international legal standing as the result of the unanimously adopted UN Security Council Resolution 1674 of April 2006. China and Russia routinely ignore a long-standing 1951 UN Convention by returning refugees to countries in which they are likely to be persecuted. Moreover, in the area of intellectual property, China is a notorious violator. To round off the list, most of the BRICS themselves suffer from high levels of corruption. According to an index developed by Transparency International (with number one being least corrupt), Brazil ranks 71st, followed by China in 82nd place, India 100th and Russia 140th (Transparency International, 21 January 2012).

On trade, China has continually acted in a predatory manner, even while benefiting enormously from an open international economic order, especially in its admission to the World Trade Organization in 2001. Brazil, despite possessing the world’s sixth largest economy, has responded to a recent slowing of economic growth and exports by adopting protectionist measures including special tariffs, local preferences, content requirements and the use of special tax rules (Transparency International, 2012).

Even when the international community has been capable of achieving collective action, the BRICS have dragged their feet. Consider the passage of UN Security Council Resolution 1973 in March 2011, for the purpose of protecting civilians and creating a no fly zone in Libya, and which in effect authorized the use of force (all necessary measures) to enforce the resolution against the forces of Colonel Kaddafi. The resolution was 82nd widely praised at the time as an example of humanitarian intervention. In fact, however, it was a very rare instance of Security Council agreement on the use of significant force, and though it passed with the required 10 votes, the list of countries abstaining is revealing: Brazil, Russia, India, China and Germany. All four of the BRIC countries thus chose to abstain, as did Germany, the largest and most important member of the EU and the one most commonly described as a civilian rather than military power.

Not only are the BRICS reluctant to cooperate on global governance issues, but their record of cooperation with each other is also limited. Although they have been meeting as a group annually since 2009, and even agreed in principle to establish a BRIC bank, the differences among them remain considerably greater than their commonalities and little in the way of tangible achievements has resulted. For example, China had sought to have the funding burden for the new bank split equally among the five BRICS, while the others preferred that China take on the greater burden. Despite their shared status as emerging powers, the differences among the BRICS are at least as important as what unites them. Three are democratic (Brazil, India, South Africa), while two are authoritarian or semi-authoritarian (China, Russia). Two are geopolitical rivals with unresolved border and territorial disputes (China, India). One is primarily an energy, raw materials and weapons exporter (Russia). And two (Brazil, South Africa) are showing signs of pushing back against predatory export behavior and foreign influence on the part of China. Moreover, all find themselves distracted by significant regional challenges or disputes. Observing this pattern, Harsh V. Pant of King’s College London rejects the characterization of the BRICS by South Africa’s Jacob Zuma who has claimed the BRICS as ‘a credible and constructive grouping in our quest to forge a new paradigm of global relations and cooperation’. Instead, Pant (2013, pp. 91, 103) concludes that, ‘The narrative surrounding the rise of the BRICS is as exaggerated as that of the decline of the United States’.

**(6) No risk of US – China war –** diplomatic ties, economic interdependence, geography, nuclear postures, balancing powers, no ideological conflict **–** any crisis won’t escalate

**Shifrinson, 19** – Joshua Shifrinson (Assistant professor of international relations at Boston University, “The ‘new Cold War’ with China is way overblown. Here’s why,” <https://www.washingtonpost.com/news/monkey-cage/wp/2019/02/08/there-isnt-a-new-cold-war-with-china-for-these-4-reasons/?noredirect=on&utm_term=.2f92e43bb9f3>)

Is a new Cold War looming — or already present — between the United States and China? Many analysts argue that a combination of geopolitics, ideology and competing visions of “global order” are driving the two countries toward emulating the Soviet-U.S. rivalry that dominated world politics from 1947 through 1990. But such concerns are **overblown**. Here are four big reasons why. 1. The historical backdrops of the two relationships are very different When the Cold War began, the U.S.-Soviet relationship was fragile and tenuous. Bilateral diplomatic relations were barely a decade old, U.S. intervention in the Russian Revolution was a recent memory, and the Soviet Union had called for the overthrow of capitalist governments into the 1940s. Despite their Grand Alliance against Nazi Germany, the two countries shared few meaningful diplomatic, economic or institutional links. In 2019, the situation between the **U**nited **S**tates and China is very different. Since the 1970s, **diplomatic interactions**, **institutional ties** and **economic flows** have all **exploded**. Although each side has criticized the other for domestic interference (such as U.S. demands for journalist access to Tibet and China’s espionage against U.S. corporations), these issues did not prevent cooperation on a host of other issues. Yes, there were tensions over the past decade, but these occurred against **a generally cooperative backdrop**. 2. **Geography** and powers’ **nuclear postures** suggest East Asia is **more stable** than Cold War-era Europe The Cold War was shaped by an intense arms race, nuclear posturing and crises, especially in continental Europe. Given Europe’s political geography, the United States feared a “bolt from the blue” attack would allow the Soviet Union to conquer the continent. Accordingly, the United States prepared to defend Europe with conventional forces, and to deter Soviet aggrandizement using nuclear weapons. Unsurprisingly, the Soviet Union also feared that the United States might attack and wanted to deter U.S. adventurism. Concerns that the other superpower might use force and that crises could quickly escalate colored Cold War politics. Today, the **U**nited **S**tates and China spend proportionally far less on their militaries than the United States and the Soviet Union did. Though an arms race may be emerging, U.S. and Chinese nuclear postures are **not nearly as large or threatening**: Arsenals remain far **below the size and scope** witnessed in the Cold War, and are kept at **a lower state of alert**. As for geography, East Asia is not primed for tensions akin to those in Cold War Europe. China can threaten to coerce its neighbors, but the water barriers separating China from most of Asia’s strategically important states make outright conquest significantly harder. Of course, as scholars such as Caitlin Talmadge and Avery Goldstein note, crises may still erupt, and each side may face pressures to escalate. Unlike the Cold War, however, U.S.-Chinese confrontations occur at sea with relatively **limited forces** and **without clear territorial boundaries**. This suggests there are **countervailing factors** that may give the two sides **room to negotiate** — and **limit the speed** with which a crisis unfolds. 3. The Cold War had just two major powers The Cold War took place in a bipolar system, with the United States and Soviet Union uniquely powerful, compared with other nations. This dynamic often pushed the United States and the U.S.S.R. toward confrontation and contributed to more or less fixed alliances; moreover, it encouraged efforts to suppress prospective great powers, such as Germany. In 2019, it’s not at all clear we are back to bipolarity. Analysts remain divided over whether the U.S. unipolar era is waning (or is already over) — and, if so, whether we are heading for a new period of bipolarity, modern-day multipolarity or something else. Regardless, most analysts accept that other countries will play a central role in East Asian security affairs. **Russia**, for example, still benefits from legacy military investments, **India** is developing economically and militarily, and **Japan** is beginning to build highly capable military forces to complement its still-significant economic might. Even if these nations aren’t as powerful as the United States or China, their presence makes for **more fluid diplomatic arrangements** and more diffuse security concerns than during the U.S.-Soviet competition. The resulting security dynamics are therefore likely to look very different. 4. Ideology plays less of a role in U.S.-Chinese relations Many people see the Cold War as an ideological contest between U.S.-backed liberalism and Soviet-backed communism. But that’s not the whole story. The early 20th century saw liberalism, communism and fascism vie for ideological preeminence. With fascism defeated alongside Nazi Germany, the postwar stage was set for a struggle between communism and liberalism to reinforce the U.S.-Soviet contest. That each ideology claimed universal scope ensured that the ideologies served as rallying cries for Third World conflicts, which were subsequently associated with the U.S.-Soviet struggle. The respective “ideologies” of the United States and China do not favor this type of contest today. Indeed, analysts calling for a hard-line stance against China have faced difficulties even identifying a coherent Chinese ideological alternative. And while some researchers claim that a nascent ideological contest pitting an “autocratic” China against the “liberal” **U**nited **S**tates is emerging, this narrative ignores the political contests that shape Chinese politics (and have parallels in U.S. politics). Autocracies and democracies often cooperate. And on one important ideological issue — how they organize their economic lives — China and the **U**nited **S**tates have both embraced economic growth via trade, the private sector and semi-free markets. Likewise, while a clearer Chinese ideological “brand” may eventually emerge, it is unclear whether the ideology would claim universal applicability. This is not to deny that there are tensions between the United States and China. What we are seeing, however, is **not a new cold war** but a reversion to a pre-1945 form of great power politics. What changed? Put simply, the United States no longer enjoys preeminence as the only superpower, as it did in the immediate post-Cold War era. The ideological, historical and geopolitical differences between today and the Cold War years far outweigh the similarities. As David Edelstein notes, at times it’s hard to understand what the United States and China are competing over. If that’s true, then there’s reason to believe there are more nuanced ways of understanding the tensions — and options for **managing great power politics** — than a Cold War reboot.

**ICJ CP**

**Solvency---2NC**

**Ruling with concurrent UN enforcement resolution causes durable compliance because of mutually reinforcing international pressure and follow-on by the Courts and Congress to enforce the decision**

**View solvency through sufficiency – case answers prove a high bar – if CP is in the right direction, we solve – they need a quantifiable deficit**

**5 nuances**

**First – combo – deficits don’t assume mutually reinforcing concurrent action by the Security Council AND ICJ – deficits to one are overcome by the other.**

**Second – initiation – only our ev assumes the Security Council asking for the CP – opinions are always complied when requested**

**Mahasen 6** Professor Mahasen M. Aljaghoub University of Jordan “The Advisory Function of the International Court of Justice 1946−2005” 2006 p. 257

This Chapter has emphasised that **the requesting organs have always** coordinated with the Court upon the receipt of an advisory opinion by **accepting**, adopting or taking note of the opinion and **acting in accordance with it**. Indeed, in **no** case have the requesting organs acted contrary to any given opinion, although the real implementations of the opinions, in some cases, have been hampered by States who have failed to act in accordance with the requesting organ’s recommendations which had been made after the receipt of the Court’s certain opinions. Kaikobad notes that the positive attitude of the UN and its specialised agencies towards the Court’s opinions is due to two factors: first, it is not in the interest of the organ, nor it is consistent with its authority and standing, to seek an advisory opinion and then disregard the terms thereof if the reply it receives is regarded as somehow unsatisfactory, second, the Court’s deliberations are definitive, even if not dispositive, statements on the law by the principal judicial organ of the UN. Consequently they cannot be dismissed as non-authoritative. Moreover, a rejection of an advisory opinion would undermine the authority and prestige of the Court, which would not be in the interest of any UN organ.80 Given the lack of enforceability of the advisory opinion due to its non-binding nature, coordination of UN member States in receiving and acting upon the Court’s decision seems vital.

**Third – circumvention – ICJ increases non-compliance reputational costs that the aff can’t access – outweigh**

**Unilateral actions guarantees**

**Belz 4 –** Dan Belz dual degree from the University of Tel-Aviv, LL.B. (magna cum laude) and B.A. in Economics (summa cum laude), During his undergraduate studies, Dan served as Assistant Editor at the Journal of International Inquiries in Law, one of the world’s most cited legal journals “Is International Humanitarian Law Lapsing into Irrelevance in the War on International Terror?” 2004

Beyond theoretical implications for the economic analysis of humanitarian law, the discussion above leads to the normative conclusion that the resolution of **collective action problems**, which lead to a suboptimal aggregate level of security in reply to the threat of international terror, necessitates the formulation of a new set of rules that will regulate the investment in security of states which enjoy this public good. Contrary to what the existing models suggest, these rules cannot belong to the category of jus in bello, which regulates the conduct of belligerents. They must be capable of providing the appropriate frameworks for the regulation of allies’ conduct among themselves. The US’s inability to impose on its allies a part of the costs of security, proportional to their benefit from this product,56 **compels the establishment of** such **international frameworks**, which will regulate the level of optimal aggregate security. This can be accomplished through instruments such as the “command mechanism”, the voting system, or the Groves-Clarke tax,57 which must include the ability to impose the costs that stem from the provision global security on the relevant states. Such frameworks can be based on existing international security-oriented organizations such as NATO, regional organizations such as the European Union, defense alliances, or compelling resolutions of the Security Council under chapter VII of the UN Charter. Hugo Grotius recognized in his treatise De jure belli ac pacis (1646) the obstacles that states’ utilitarianism can pose to the achievement of common goals by coalitions - “… that association which binds together the human race or binds many nations together, has need of law ... shameful deeds ought not to be committed even for the sake of one’s country.”58 Thus, **only** such **international frameworks** that have the power to establish and enforce a virtual tax collecting system, will **provide a remedy to the suboptimal supply of aggregate security that stems from collective action problems**.

**Fourth – even without enshrining it in law, Biden follows the ruling**

**Brewster 13** – Rachel Brewster, Law Prof @ Duke, Adam Chilton, Law Prof @ Chicago, <http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=5837&context=faculty_scholarship>

The question of why and when states comply with international law is one of the **foundational** inquiries in international legal studies. This work attempts to examine compliance actions empirically by studying the compliance behavior of the U.S. in responses to adverse WTO dispute resolution decisions. While focusing on the U.S. government alone has some limitations in terms of how well the findings here can generalize to other states, this study has important implications for understanding states’ compliance with international law. First, opening the “black box” of the state is critical to explaining patterns of compliance. Different domestic actors can be the source of policy compliance on various issues. This study demonstrates that **when the executive branch has the power to comply** with adverse WTO decisions, then **the likelihood of compliance is significantly high and** the compliance comes significantly **fast**er than if congressional action is needed. This result is important because it demonstrates that states are not unitary actors when it comes to compliance decisions. The structure of the domestic political system influences the rate of compliance across policy issues. Our empirical analysis finds that the question of who supplies compliance **overwhelms the influence of all international** factors in predicting compliance, including the economic size of the complaining state, **and all other domestic factors, including political** contributions. What actor within the state has the capacity to cure the violation is not only significant in determining the “state’s” compliance, it is also the **most important characteristic in explaining compliance**. This suggests that it is not useful to talk about a “state’s” level of compliance when analyzing patterns of compliance. Rather, compliance behavior must be disaggregated based on the source of compliance to be coherently understood. If members of Congress are **fundamentally less receptive** to appeals that abide by international obligations than members of the executive branch (either because of their constituencies, their lack of participation in the day-to-day practice of foreign affairs, or super-majority voting rules) then our focus should shift to more domestic level variables to understand the effects of international law. This study also suggests that international relations theories that have expectations for “state” action may be overly broad. Different actors within a state may operate based on different logics and the efforts to treat the state as unitary obscures important causal factors. Our study is generally supportive of the idea that executive branch actors may experience **more of a “compliance pull”** with international law than members of Congress. This could be based on the executive branch’s day-to-day operation of foreign affairs, concerns about reciprocity with foreign counterparts, or perception of the legitimacy of the dispute resolution process. Members of Congress may have lower concerns about reciprocity (particularly on a daily basis), have less exposure to the dispute settlement processes, and thus, have lower levels of confidence in the legitimacy of the process. Thus the supply-side approach opens up a **new area of compliance research** that has **broad implications** for theories of compliance, in addition to more narrow proposals for designing dispute settlement regimes. In broad brushstrokes, this study indicates that institutionalist logic may have **more force** when dealing with executive branch officials. Concerns about reputation or a desire to be perceived as a “law-abiding” state may have **greater influence** on government officials who deal with the international system directly.155 In addition, the managerialist approaches that emphasizes the importance of “jaw-boning” or “shaming” may also find a more fertile ground when dealing with executive branch officials.156 By contrast, members of Congress may not be influenced by concerns about the perceptions of foreign policymakers or international officials because they interact with these audiences less often. Jaw-boning may be less effective with members of Congress because they are not at the bargaining table. Furthermore, the same activities that might be embarrassing to an executive branch official, such as openly refusing to abide by an international court decision, may be the source of pride or greater domestic support to a member of Congress. When dealing with members of Congress, other logics may better describe compliance behavior. Members of Congress appear less responsive to the current levels of prospective remedies available at the WTO than the executive branch, but legislators may nonetheless be responsive to the material consequences of non-compliance that would affect their constituencies. Thus, the levels of cooperation that can be sustained when legislative action is necessary may depend on the level of retaliation that can be authorized for non-compliance.157 In dispute settlement design terms, this means that permitting higher retaliatory remedies, including retrospective damages or progressively higher damages, may be helpful to create the necessary domestic conditions for compliance to occur. Finally, greater **delegation to executive branch officials will make compliance more likely and quicker. Thus, much of the work of compliance may lie in domestic structures**—the statutory system **and the level of policy discretion allocated to the executive**—as much as in the design of international treaty regimes. By contrast, when compliance involves congressional action, the U.S. pattern of lower and slower compliance may be a bargaining asset. As two-level game theory suggests, the existence of a well-known congressional intransigence may allow the U.S. to settle disputes on more favorable terms (i.e., what the executive branch can accomplish unilaterally).158 Complaining states may even be deterred from bringing claims if they expect that compliance will not be forthcoming or will be particularly slow. In sum, understanding compliance with international law requires attention to the demand-side and the supply-side of policymaking. Thus far, scholars have focused overwhelmingly on the demands for compliance without sufficiently appreciating the role of national actors in supplying compliance. This Article demonstrates that the supply of compliance is of critical importance to international law and international relations theory. Domestic factors are not only relevant, but can be the most important element in explaining a state’s actions on the international stage.

**Fifth – *even if* there’s non-compliance, the CP solves – increases public awareness, others comply and solves signal**

**Levit 8** Janet Koven Levit, Dean and Professor of Law, University of Tulsa College of Law; Yale Law School (J.D., 1994); Yale University (M.A., 1994); Princeton University (A.B., 1990), 2008 77 Fordham L. Rev. 617

Local law enforcement practices stand at the confluence of these foreign, federal, state, local, and private initiatives, and the ensuing **empirical evidence belies the pessimism that Medellin spawned**. Local law enforcement operating procedures now routinely incorporate Vienna Convention obligations, often creating roadmaps and consular notification forms that functionally translate treaty requirements, stated in diplomatic legalese, into on-the-ground practice. n76 In Tulsa County, early "touchpoints" in a foreign national's detention - sheriffs, detectives, and magistrates - follow protocols and checklists that include Vienna Convention-related questions. n77 Why the disjuncture between the Court's palpable hostility toward the Vienna Convention in Medellin and the accommodating attitudes on the ground by those who grapple with consular notification day in and day out? In my view, the Court's pronouncement happened too far into the consular notification tale to have significant consequence. The top-down story of Supreme Court and ICJ decisions, a story that international legal scholars are often quick to tell, is unidimensional and woefully inadequate to capture the complex dynamics that Vienna Convention litigation sparked. The decade-plus volley within the judicial echelon - the volley that is at the heart of top-down accounts - unleashed irrepressible forces, triggering **transnational dialogue** and **energizing** multiple state, local, and private **actors**. A bottom-up account thus reveals that, by the time the Court issued Medellin, a core goal of Vienna Convention litigation, **compliance, had been met**. The complex, intertwined, and **self-reinforcing nature** of the web that undergirds such compliance suggests that the decision will not spark a reversal. Conclusion While Medellin may have limited consequence, its backdrop nonetheless reveals much about international law and lawmaking. International law is not a snapshot; it is an interactive process. This simple, almost self-evident conclusion has been at the fulcrum of international scholarship for [\*631] decades. n78 Yet, scholars and practitioners tend to celebrate the role of traditional elites - diplomats, judges, presidents. What this essay emphasizes is the role of a myriad of actors who do not adorn headlines - instead, they are those who roll up their sleeves and grapple with the nitty-gritty mechanics of detaining, booking, and notifying foreign nationals of their Vienna Convention rights. Thus, international law emerges as a multidimensional, multidirectional process, emanating not only from the top down but also from the bottom up. To focus on "top-down" Vienna Convention litigation, on the Court's ultimate decision in Medellin, without also contemplating all that is transpiring on the ground level, is to paint a **woefully incomplete picture** and to skew scholarly and advocacy endeavors. Medellin indisputably closed the courthouse doors to many Vienna Convention claims. Yet, while Vienna Convention litigation made its way through various international, national, and state courts, **public awareness** of reciprocal Vienna Convention obligations **grew**, and **nonjudicial actors began institutionalizing processes that effectively cured** Vienna Convention **transgressions**. Medellin will not reverse all that has solidified in the underbrush - from police department checklists to consular notification functionality in law enforcement databases. For the most part, officials now notify foreign nationals of consular rights. Thus, consular notification happens whether the Supreme Court demands it or not. And, while scholars will undoubtedly parse and debate Medellin, from the perspective of Vienna Convention compliance, it is a decision that may simply not matter.

**Perm: Do Both---2NC**

**“Do Both” means simultaneously---that doesn’t solve ICJ cred---it’s perceived as coordination and bypasses the perception of the ICJ dictating policy to the U.S.---that’s Aneghr.**

**Procedurally, the plan eliminates the dispute and makes a ruling impossible**

**Davey 6** William J. Davey is the Guy Raymond Jones Chair Emeritus at the College of Law, Illinois, Enforcing World Trade Rules: Essays on WTO Dispute Settlement and GATT Obligations, 2006 p. 35-36

Concerns about ripeness also exist at the ICJ. While the ICJ is permitted to and has often issued advisory opinions, those advisory opinions may only be requested by an international organization. Individual states may not request advisory opinions. In contentious proceedings between states, the ICJ's function is said to be "to decide in accordance with international law such disputes as are submitted to it". What is a "dispute"? The ICJ has indicated: The Court, as a judicial organ, is however only concerned to establish, first that the dispute before it is a legal dispute, in the tense of a dispute capable of being settled by the application of principles and rules of international law, and second, that the Court has jurisdiction to deal with it…” The Court has generally not interpreted this requirement that strictly, having stated, inter alia, that “a dispute is a disagreement on a point of law or fact, a conflict of legal views or interests between parties”/ However, in more general terms, it is noted in Northern Cameroons that: The function of the Court is to state the law, but **it may pronounce judgment only in** connection with concrete **cases where there exists at the time of the adjudication an actual controversy** involving a conflict of legal interests between the parties. The Court's judgment must have some practical consequence in the sense that it can affect existing legal rights or obligations of the parties, thus removing uncertainty from their legal relations. No judgment on the merits in this case could satisfy these essentials of the judicial function.

**Perm wrecks cred and independence:**

**Maintains deference, not adversarial, and decks sequencing**

**Angehr, 8 –** Mark, Expert @ the Federalist Society for Law & public policy studies, JD candidate @ Northwestern Law, Engage, Vol 9 Issue 2, June, http://www.fed-soc.org/publications/detail/saying-what-the-law-is-arguments-for-an-icj-that-is-less-deferential-to-security-council-and-general-assembly-resolutions

The ICJ is the “principal judicial organ” of the UN.1 In addition to deciding contentious disputes between States, the ICJ possesses an advisory jurisdiction, under which it considers legal questions received from the Council and Assembly.2 The UN Charter mandates that the ICJ decide these legal questions in accordance with international law.3 The ICJ’s advisory jurisdiction has become a dustbin for intractable political and humanitarian conflicts that the political organs have failed to solve with their own resolutions. Therefore, to answer an advisory opinion request, the ICJ often deals with resolutions closely related to the underlying legal question. The Court should **retain its legitimacy** as a judicial organ, but nonetheless further the political goals of the larger UN system. It should scrutinize the legal determinations of the UN’s political organs or risk lending its **judicial imprimatur to decisions based on political, non-judicial processes**. The **judicial autonomy and legitimacy of the ICJ are centrally important to the healthy functioning of the UN system**. The structural principles embedded in the UN Charter mandate that the ICJ **not cede** control over judicial determinations to **political organs guided by the national interests of its Member States**. Consequently, the ICJ must **reclaim its judicial independence** in the exercise of its advisory jurisdiction by rehabilitating its fact-finding capabilities and ensuring the correct application of international law to the specific factual situation before it. Regardless of previous legal action taken by the political organs, the ICJ must bring to bear on international disputes the inherent advantage of the judicial process—namely, an **adversarial process** to fi nd true facts and the ability to ensure the correct application of international law. Th e ICJ’s recent advisory opinion on Israel’s construction of a security wall in the disputed West Bank illustrates the danger to the Court’s institutional legitimacy posed by cases that the Council and Assembly have **already dealt with in their political processes**.4 In this opinion, the ICJ held that the wall violated international humanitarian law and international human rights law, and ordered Israel to remove the portions of the wall located in the West Bank.5 However, Council and Assembly resolutions had already reached the same legal conclusion before the request for the advisory opinion. Just nineteen days before the submission of the advisory request, the Assembly passed Resolution 10/13, declaring the wall in violation of international law and ordering its removal.6 A lengthy dossier submitted with the advisory request formed the factual basis of the ICJ’s decision. Th is dossier included relevant Council and Assembly resolutions, as well as UN-commissioned fact-fi nding reports. Aside from written statements mainly opposing the Court’s exercise of jurisdiction, the ICJ did not gather evidence outside of this dossier. Th e Wall Opinion illustrates the risks to the Court’s **institutional legitimacy**, as well as to international law as a whole, when the ICJ **defers** to the factual and legal determinations of the political organs. If the ICJ is to expand its role in fact-intensive disputes such as those involving international human rights, it should increase its fact-fi nding capacity so that it may act less like an appellate body and more like a trial court of **first instance**.

**Perm: Do the CP---2NC**

**Perm severs---the CP alone doesn’t fiat the USFG limits alliance commitments---the plan does. They’re clearly distinct.**

**Competition is determined by mandates not outcomes – solvency is about FOLLOW-ON, which is indistinct from fed spill-up with states**

**It’s legally and functionally distinct, and it does not express the desirability of US compliance – but still solves**

* US = Distinct sovereign entity - UNSC = not US –
* We don’t fiat President – President = sole/exclusive organ of the “united states” in its foreign relations
* UNSC

**Casey, ‘6 ---** Lee A. Casey and David B. Rivkin, Rivkin is a former U.S. government official, having served under Presidents Ronald Reagan and George H. W. Bush., American attorney, political writer, and media commentator on matters of constitutional and international law, as well as foreign and defense policy, frequently testifying before Congressional committees, Visiting Fellow at the Center for the National Interest, and a recipient of the U.S. Naval Proceedings Annual Alfred Thayer Mahan Award for the best maritime affairs article, Co-Chairman of the Center for Law and Counterterrorism at the Foundation for Defense of Democracies, and is a former member of the Sub-Commission on the Promotion and Protection of Human Rights of the United Nations Commission on Human Rights, Lee Casey served in the Department of Justice during the Ronald Reagan and George H.W. Bush administrations, Partner @ Baker Hostetler, performs appellate work for clients, while also maintaining a practice in the areas of administrative law, compliance counseling, and foreign-related litigation, International Law and the Nation-State at the U.N.: A Guide for U.S. Policymakers”, Heritage foundation, 8/18, http://www.heritage.org/research/reports/2006/08/international-law-and-the-nation-state-at-the-un-a-guide-for-us-policymakers

At the same time, it is also fair to say that, beyond a few academics and activists, most Ameri­cans do not look to international institutions or the "international community" for validation of their government's actions or their own. One might well ask, in response to the German Foreign Ministry, what is the "international community"? Does it, for example, include China's Communist rulers or the Persian Gulf's divine right monarchs? And what obligations, exactly, might Americans have to them? Law, in the United States, is made by our elected representatives, and the measure of its legit­imacy is the United States Constitution. As a result, of course, international law has never been treated as a rigid and imperative code of con­duct by U.S. policymakers. This attitude toward international law transcends political ideology and party label. Nowhere was it better displayed than in an exchange between then Secretary of State Madeleine Albright and her British counterpart, Foreign Secretary Robin Cook, during the run-up to NATO's 1999 intervention in Kosovo. As reported by Mrs. Albright's spokesman James Rubin, when Cook explained that British lawyers objected to the use of military force against Serbia without U.N. approval, she replied simply "get new lawyers."[3] Mrs. Albright's suggestion was perhaps undiplo­matic, but it revealed a firm grasp of the essential genius of international law: It is a body of norms made by states for states, and its content and appli­cation are almost always open to honest dispute. Moreover, and most important of all, there is no global power or authority with the ultimate right to establish the meaning of international law for all. Every independent state has the legal right-and the obligation-to consider and interpret interna­tional law for itself. In other words, when questions are asked about the meaning and requirements of international law, the answers will probably, and properly, depend on who the lawyers are. This does not mean that international law is illu­sory or that it can or should be ignored by states in the day-to-day exercise of power. It does mean, however, that international law is best viewed as a collection of behavioral norms-some arising from custom and some from express agreement, some more well-established and some less so-that it is in the interest of states to honor. As Chief Justice John Marshall explained in 1812 in describing one important aspect of international law:[4] The world being **composed of distinct sovereignties,** possessing equal rights and equal independence, whose mutual benefit is promoted by intercourse with each other, and by an interchange of those good offices which humanity dictates and its wants require, all sovereigns have consented [to certain legal norms]. The key, of course, is consent. Ultimately, the binding nature of international law is a matter of the **consent of sovereign states**. They can interpret that law in accordance with their understanding and interests, they can attempt to change it, and they can choose to ignore it-so long as they are prepared to accept the very real political, eco­nomic, and even military consequences that may result. This is the **essence of sovereignty**, which itself is the **basis and guarantor of self-government**. This paper is designed as a short guide to inter­national law for American policymakers. The topic area is, of course, vast-even when the inquiry is limited to what is commonly known as "public international law" (the rules governing the conduct of states) rather than international trade relations. As a result, the scope of the material treated here is necessarily limited and selective. An effort has, however, been made to discuss the most important tenets of international law as it is today applicable to the United States and to identify the current con­troversies over this law's interpretation and applica­tion that most profoundly divide the United States from its European Allies. In fact, the understanding of how the world's nations are, or should be, orga­nized in their inter-relations and what role interna­tional law and judicial institutions should play in that great endeavor is one area where differences between the United States and Europe are growing rapidly and are likely to produce increasing future tension and diplomatic conflicts. Definition of Terms I. What Is International Law? Perhaps the most important and vexing question about international law is whether or not it is "law" at all.[5] Traditionally, international law existed as a col­lection of principles and practices-some based on custom and some based on treaties-that govern the interactions of sovereign states. As a theoretical matter, most commentators found the basis of this "law of nations" in some form of Natural Law. As noted by Emmerich de Vattel in the 18th century, "We must then apply to nations the rules of the law of nature, in order to discover what are their obli­gations, and what are their laws; consequently, the law of nations is originally no more than the law of nature applied to nations."[6] Whether the actual practitioners of statecraft ever took the "divine" or "natural" foundation of international law very seriously, at least after the emergence of the "Westphalian" state system in 1648, is debatable.[7] Over time, most states have complied with these rules in accordance with their needs and interests, always keeping in mind that violations of accepted norms can carry significant consequences-up to and including war. However, from the perspective of current debates about the nature and role of international law as an organiz­ing principle, the most important characteristic of the traditional international legal system is that there was no regular means of judicial enforce­ment. All sovereign states are equal in law, and none can claim the right to adjudicate-in a defin­itive legal, as opposed to political, sense-the actions of another.[8] Changing this state of affairs has been one of the most important goals of "progressives" and "inter­nationalists" since before the First World War. In particular, throughout the 20th century-and especially after World War II-determined and sustained efforts were made to establish some form of international judicial system under which states would no longer be the ultimate arbiters of their own international legal obligations. These efforts, which can fairly be said to include the League of Nations (and its Permanent Court of International Justice), the United Nations' International Court of Justice (ICJ), and the International Criminal Court (ICC), have always found favor with the United States at their inception but have always been rejected in the end. (The United States, of course, never joined the League, withdrew from the ICJ's compulsory jurisdiction in 1986, and "de-signed" the ICC treaty in 2003.) The reason is simple enough. A genuine system of international law, comparable to domestic legal systems in its reach and authority, would require a universally accepted institution entitled both to adjudicate the conduct of states and, by exten­sion, their individual officials and citizens and to implement its judgments through compulsory process with or without consent of the states concerned. Such a universal authority, however, would be fundamentally at odds with the found­ing principles of the American Republic. It would require the American people to accept that there is, in fact, a legal power that has legitimate author­ity over them but is not accountable to them for its actions. Pending this revolution in American beliefs and principles, U.S. officials and diplomats should recall two basic points in their approach to interna­tional law: As an **independent sovereign**, the United States is fully entitled to interpret international law for itself. The views of international organizations, including the United Nations, other states, and non-governmental organizations (NGOs) may be informative, but they are not legally binding unless, and only to the extent that, the United States agrees to be bound. Any institution or individual invoking interna­tional law as the measure of U.S. policy choices is only expounding an opinion of what interna­tional law is or should be. That opinion may be well or poorly informed, but it is not and can­not be authoritative. There is no supreme inter­national judicial body with the inherent right to interpret international law for states. In short, the United States, like all other states, is bound by international law; but, like all other states, it is also entitled to interpret international law for itself. Whether the U.S. or any other state has been reasonable in its interpretation is ulti­mately a political determination. II. Does the U.S. Constitution Acknowledge International Law? Advocates of various international norms, real or imagined, are quick to assert that international law is part of American law and therefore binding on the United States government. This is true as far as it goes. There are, however, numerous caveats that must be taken into account in determining the extent to which international law considerations may, or must, inform American policymaking. At the outset, it is worth noting that this rule is a judge-made doctrine that does not actually appear in the Constitution's text.[9] The Constitution does, of course, make treaties "the supreme Law of the Land," although not as a means of empowering the courts to oversee the formulation and execution of United States foreign policy. The entire text of the Suprem­acy Clause makes its purpose clear-the targets were the states and not the federal government:[10] This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the contrary notwithstanding. As Justice Joseph Story noted in his 1833 expo­sition of the Constitution: It is notorious, that treaty stipulations (especially those of the treaty of peace of 1783) were grossly disregarded by the states under the confederation. They were deemed by the states, not as laws, but like requisitions, of mere moral obligation, and dependent upon the good will of the states for their execution.[11] The Supremacy Clause was designed to ensure that the United States spoke with one voice on the international level and that the states could not choose for themselves which federal treaties to honor and which to ignore. Supreme law notwithstanding, however, treaties remain subject to the Constitution and to later fed­eral action. Where there is a conflict between the Constitution and a treaty, the Constitution pre­vails.[12] Moreover, treaties can be applied directly by the courts only to the extent that they are "self-executing" (most are not) or have been the subject of implementing legislation.[13] Finally, Congress can modify or eliminate a treaty's effect, at least as a matter of domestic law, by a later statute.[14] Ameri­can courts are bound to respect the plain meaning of such a law even if treaty partners claim that this would violate U.S. international obligations and the claim is accurate. In this regard, however, it should again be emphasized that such a claim may or may not be correct in any given case, since no other state, group of states, or international institu­tion is entitled-absent specific U.S. consent-to interpret or adjudicate American international law obligations. A difference of opinion over the mean­ing of either a treaty or the requirements of custom does not automatically amount to a violation of international law by any of the parties involved. In addition, treaties are subject to a number of presidential actions. The President is the "**sole organ" of the United States in its external rela­tions**.[15] Although a President can "make" a treaty only after obtaining the Senate's consent (by a two-thirds vote), he can terminate a treaty (in accor­dance with its terms), or abrogate the agreement entirely, on his own authority. Similarly, the Presi­dent can-as a lesser power-suspend American performance under a particular agreement as one means of achieving U.S. policy goals. Of course, all of these actions may be more or less controversial, depending on the circumstances. In fact, arguments have occasionally been advanced that the President must obtain the con­sent of Congress-or at least the Senate-before fundamentally changing U.S. treaty obligations. However, these claims have not been successful, either with the executive branch or before the courts. The leading case is Goldwater v. Carter,[16] where a group of Senators and members of the House of Representatives sued to prevent President Jimmy Carter's termination of the Mutual Defense Treaty of 1954 between the United States and the Republic of China (Taiwan). The United States Court of Appeals for the District of Columbia Cir­cuit ruled that the President, as "the constitutional representative of the United States with respect to external affairs," was within his constitutional authority to terminate this treaty.[17] For its part, the Supreme Court never reached the merits of this question. It vacated the D.C. Circuit's opinion and ordered the original complaint dismissed-an act strongly suggesting that this and similar questions are not subject to judicial determination at all.[18] Finally, although international law is generally considered to be part of American law, the United States, like other sovereign nations, can derogate from the accepted rules. And, like other aspects of the nation's foreign relations, the exercise of this authority falls-at least in the first instance-to the President. The Supreme Court's ruling in The Paquete Habana is not to the contrary, although claims are sometimes made that it is. That case involved the U.S. Navy's capture, during the Span­ish-American War, of fishing boats in Cuba's coastal waters. The Supreme Court was called upon to determine whether these vessels were lawful captures and concluded that they were not. Citing generally accepted rules of international law sug­gesting that coastal fishermen were not to be molested by belligerent forces, the Court ruled that the boats were not lawful "prizes" of war. However, in doing so, it specifically noted that "where there is no treaty and no controlling executive or legislative act or judicial decision, resort must be had to the cus­toms and usages of civilized nations."[19] The sug­gestion is clear that, had there been a formal decision by the President (or by Congress through appropriate legislation) to ignore the otherwise applicable international rule, the United States courts would have been bound by that decision. III. How Is International Law "Made?" International law is made by and through the actions of states. This is true both with respect to customary international law and, since a treaty's meaning and continued efficacy greatly depend upon how the parties interpret and apply its provi­sions in actual practice, with respect to conventual or treaty law. However, for the sake of clarity, these fundamental aspects of international law will be addressed separately. Customary International Law. Customary inter­national law grows out of more or less consistent state practice over time. There is no hard and fast rule on how general a practice must be to be con­sidered customary or on how long it must be fol­lowed. However, the "failure of a significant number of important states to adopt a practice can prevent a principle from becoming general customary law though it might became 'particular customary law' for the participating states."[20] Moreover, a rule can­not be imposed on a state that has objected.[21] In this connection, it also is important to note that what are sometimes called the "sources" of interna­tional law are, in fact, merely evidence of what the law may be. This includes such authorities as (1) the decisions of international courts and arbitral bodies, (2) the decisions of national courts ruling on inter­national law questions, (3) the writings of interna­tional law commentators, and (4) the statements of governments.[22] As the Supreme Court cautioned long ago with respect to the writings of jurists and commentators, "Such works are resorted to by judi­cial tribunals, not for the speculations of their authors concerning what the law ought to be, but for trustworthy evidence of what the law really is."[23] Opinio Juris. Opinio juris is a critical element in transforming an international usage or practice into a binding norm of customary international law. Unfortunately, opinio juris can be as elusive as the Philosopher's Stone. The full term is opinio juris et necessitatis, and it refers to a belief by states that the practice at issue is legally required. In other words, however longstanding and widespread a practice may be, it is binding only if states comply out of a sense of legal obligation. As explained by Ian Brownlie, "The sense of legal obligation, as opposed to motives of courtesy, fairness, or morality," is "a necessary ingredient" in turning general usage into a legal requirement.[24] Derogation from International Law Rules. States can derogate from customary international law rules and from treaty obligations.[25] Such deroga­tions are considered to be different from a repu­diation of the rule or treaty and must also be distinguished from differences of opinion over the actual requirements of international law or the proper interpretation of a treaty. A genuine derogation involves one or more states acknowl­edging the force and effect of a particular rule or provision but nevertheless departing from it in limited circumstances. As such, openly admitted derogation is relatively rare. Most often, deroga­tions involve states agreeing (expressly or by implication) to depart from a general rule in their own dealings with one another. These states gen­erally are not considered to have violated inter­national law. A state can also choose to derogate from an other­wise applicable requirement on its own account. Depending on the rule in issue, however, it will risk prompting a negative response from its treaty part­ners or from the community of nations at large. Whether such a state can be said to have violated international law by its derogation, however, is almost always debatable. This is a function of the manner in which international law is made-based on the actual practice of states. Determining whether a particular state has violated its interna­tional obligations or has merely set out to promote and establish a new and different rule (or treaty interpretation) that, in its view, may be superior requires augurs of exceptional ability. As a result, and as a practical matter, the question is very much a political one-ultimately resolved by whether or not other states follow the new rule. Jus Cogens. There are, of course, certain rules of international law from which, it is said, no deroga­tion is permissible. These are generally referred to as "jus cogens" or "peremptory norms of interna­tional law." The application of either term to a par­ticular rule or practice should sound alarm bells for any American diplomat, since the benefits of achieving jus cogens status for a preferred rule are substantial. In fact, the number of international norms that can honestly be characterized as jus cogens-based on long and consistent state prac­tice-is small. Thus, the impermissibility of the oceanic slave trade is jus cogens not merely because it has been universally condemned, but also because the responsible maritime nations have, at least since the mid-19th century, acted seriously and effectively to suppress the activity under a gen­erally acknowledged claim of right. Moreover, like other aspects of international law, jus cogens is subject to the development of new norms. As one important commentator has explained, "They are rules of customary law which cannot be set aside by treaty or acquiescence but only by the formulation of a subsequent customary rule of contrary effect."[26] In short, the doctrine of jus cogens is subject to being formed and reformed by the actual practice of states. As a result, a princi­ple that is claimed to be jus cogens but is widely ignored is probably not a peremptory norm of international law-however important the pol­icy it may support or detestable the practice it pur­ports to forbid. Treaties and Other International Agreements. On the international level, any agreement between or among states can properly be described as a treaty. These instruments can be bilateral or multi­lateral and create binding legal obligations for the states that become parties to any particular agree­ment. Under international law, states are required to comply with their treaty obligations. The princi­ple pacta sunt servanda ("keep your agreements") is often identified as jus cogens, and with some justice. All things being equal, over time, states have recog­nized the importance of compliance with their treaty obligations, and-in the absence of special circumstances-most at least attempt to do so. The unilateral abrogation of a treaty without sufficient legal cause is considered to be a violation of inter­national law. Most recent treaties, however, contain a termination or withdrawal clause permitting a party to end its obligations by meeting a notice requirement. Bilateral treaties are, of course, agreements between two states generally governing aspects of their relationship to one another. The inter­pretation and application of such treaties is a mat­ter for the parties alone, although the agreement may well provide for a type of arbitration or adju­dication in an international body-such as the ICJ-in case of dispute. Multilateral treaties involve an agreement between more than two states, and these types of agree­ments have significantly increased in number and importance over the past century. They include such basic instruments as the United Nations Char­ter, the North Atlantic Treaty, and the Geneva Con­ventions, as well as a whole array of critical agreements governing all aspects of transnational commerce and relations. Examples of such agree­ments include the Vienna Convention on Consular Relations, the Convention for the Unification of Certain Rules Relating to International Transporta­tion by Air (the "Warsaw Convention"), the agree­ments establishing the World Trade Organization, and the Berne Conventions for the Protection of Literary and Artistic Works. Multilateral treaties usually establish a specific number of ratifications necessary before the agree­ment will go into effect among the parties (the Rome Statute of the International Criminal Court, for example, required 60 countries to ratify before it went into effect) and are often-although not always-open to accession by states that may wish to become parties at a later time. Like more recent bilateral treaties, multilateral treaties often provide for a formal mechanism-submission to the ICJ-for resolution of disagreements over the treaty's interpretation. States may or may not accept these provisions upon ratification. It is important to note, however, that there is no general principle of international law suggesting that an interpreta­tion favored by a significant number of state parties to an agreement, even if this involves a substantial majority or near unanimity, must be accepted by all parties. Treaties Purporting to Codify International Law. An increasingly important "source" of interna­tional law is treaties that purport to "codify" cus­tomary international law. These instruments must be treated with extreme caution, since they are very often much less than they appear. The codification of international custom is, in any case, a speculative business. States are far more likely to agree on gen­eral principles than on detailed provisions. More­over, and more to the point, states are often much more willing to state a rule as internationally bind­ing than they are to apply it in practice. Nevertheless, in certain areas, serious attempts have been made to reach agreement not merely on principles, but on the details. Prime examples here are the Vienna Convention on the Law of Treaties, the Law of the Sea Treaty, and the 1977 Protocol I Additional to the Geneva Conventions of August 12, 1949. All of these agreements indisputably include some provisions that are, or can legiti­mately be argued to be, customary international law. Significantly, however, the United States has not ratified any of these agreements, and it is not bound by them-except to the extent that their provisions restate binding customary norms. In assessing the effect of these and similar docu­ments on the United States, it is critical to keep in mind that the mere fact that some provisions of a treaty restate binding norms of customary interna­tional law does not mean that the entire document enjoys that status. Each provision must be judged independently to determine whether there is suffi­cient state practice (that is, actual observance based on a sense of legal obligation and in relevant cir­cumstances) to justify its identification as binding custom. Thus, although Geneva Protocol I Addi­tional clearly restates certain customary rules, such as the rule against deliberately targeting civilians, it also includes many provisions that represent efforts to "move" the international law of armed conflict in a particular direction-specifically toward "privi­leging" guerrilla or irregular combatants. The United States rejected this treaty on that very account and cannot now be held to these provi­sions merely because other portions of Protocol I are binding custom. Executive Agreements. Although all agreements between or among states can accurately be labeled "treaties" for international purposes, this is not the case with respect to American constitutional law. The President can make treaties for the United States only with the Senate's consent. However, he can also enter certain "executive agreements," which bind the United States internationally and also have the force and effect of law on the domestic level.[27] The full extent of the President's authority in this area is unclear, although executive agreements have generally been "of a routine character."[28] Pre-ratification Obligations: Article 18 of the Vienna Convention on the Law of Treaties. One of the more vexing issues arises because of the prac­tice, engaged in by both Democrat and Republican Presidents, of signing international agreements that have little or no chance of approval by the Senate and therefore will never be ratified by the United States. There are many reasons for this practice-it may appear prudent at the time to exercise "leader­ship" on a particular issue, or it may be an effort to drive international law in the direction an Admin­istration favors. Regrettably, this practice often leads to claims that the United States is bound by a treaty that it has not ratified, at least to the extent that it cannot take action to defeat the treaty's "object and purpose." This rule is drawn from Article 18 of the Vienna Convention on the Law of Treaties, which the United States has signed but has not ratified. Although it is often stated that the Vienna Conven­tion "is largely a restatement of customary rules,"[29] emphasis must be placed in the word "largely." Arti­cle 18 is, in fact, a rule characteristic of civil law legal systems.[30] Whether it can be applied to com­mon law countries without express consent is debatable. Moreover, its application by American courts would raise significant constitutional issues, at least in any instance where the President's own authority was insufficient to bind the United States to a particular obligation, since treaty obligations cannot be undertaken without the Senate's consent. In any case, in construing Article 18, it is impor­tant to note that the obligation it imposes is emphatically not to comply with the terms of a treaty before the instrument is ratified. Rather, it requires only that a signatory "refrain from acts which would defeat the object and purpose of a treaty"-suggesting that only actions deliberately calculated to undermine a state's ability eventually to comply, including and especially any uniquely irreversible action,[31] are forbidden. Nevertheless, the potential application of Article 18 must always be considered and is one very good reason why any responsible President should not sign agreements he does not expect to be able to ratify. IV. How Is International Law Interpreted and Enforced? As states are the ultimate authors of international law, they also are the arbiters of its meaning. As suggested above, each nation, as an independent sovereign, has an equal right to interpret interna­tional law in general and its own international legal obligations in particular. The interpretation of one state-or group of states-is no better or worse than the interpretation of others. This does not, of course, mean that states can interpret international norms to a point where any actual obligation is illu­sory. They must act, especially in construing their treaty obligations, in good faith.[32] Moreover, all states must understand and accept that their inter­pretation of international legal requirements may carry consequences. As a **legal matter**, however, there is no state, group of states, international orga­nization, or judicial authority with the paramount right-paraphrasing Chief Justice John Marshall's description of the federal judiciary's power in Mar­bury v. Madison-to say what the law is. There is no international Supreme Court. International Judicial Institutions. That said, there are numerous international judicial institu­tions that, depending on the circumstances, may well be entitled to issue binding judgments against states. The most important of these, of course, is the ICJ. The authority of these courts, however, is based on the consent of the states concerned-con­sent that can be withdrawn in appropriate circum­stances. Thus, for example, the United States withdrew from the ICJ's "compulsory" jurisdiction in 1986. As a result, it is subject to the ICJ's rulings only to the extent that some independent treaty provision vests that court with the power to adju­dicate a dispute between the United States and one of its treaty partners. In addition, with the exception of the ICC and other, ad hoc, international criminal tribunals (which can issue orders directed at individuals), international courts have no direct means of enforcing their judgments. As a general rule, they must depend on the voluntary compliance of the relevant states or seek the assistance of appropriate political institutions. The extent to which duly entered international judgments (where jurisdic­tion was appropriate) may bind the courts of the United States remains an open question-even though the issue was before the Supreme Court, in the case of Medellin v. Dretke, in 2005.[33] This case involved the Vienna Convention on Consular Relations, a treaty to which the United States is a party. Among other things, this treaty requires that foreign nationals be permitted certain access to their country's consular authorities in case of arrest in the territory of another state party. A number of Mexican citizens have been convicted of capital crimes in the United States without having been granted this access-largely because it was unclear to local authorities either that the individ­uals were foreign citizens or that they wished the assistance of Mexican authorities. In any case, the Vienna Consular Convention does vest the ICJ with the authority to resolve disputes between parties, and pursuant to this provision, Mexico successfully sued the United States in that court. The ICJ issued its decision in 2004, determining that the United States had violated the treaty and ordering it to pro­vide some means of reviewing and reconsidering the convictions of the effected individuals.[34] The Supreme Court accepted certiorari to deter­mine the extent to which this decision actually bound the federal and state courts and whether the ICJ's interpretation of the Vienna Consular Con­vention should, in any case, be given effect as a matter of judicial comity. In the meantime, how­ever, President George W. Bush issued a memoran­dum indicating that the United States would comply with the ICJ's order by having the state courts "'give effect to the [ICJ] decision in accor­dance with general principles of comity in cases filed by the 51 Mexican nationals addressed in that decision.'"[35] In light of this determination by the President, the Supreme Court dismissed the case without deciding whether U.S. courts must imple­ment properly entered ICJ decisions. International Political Institutions. Although states are entitled to interpret their own interna­tional obligations, all members of the United Nations have agreed to abide by certain decisions of the United Nations Security Council-at least when that body acts in accordance with its power under Chapter VII of the U.N. Charter. Chapter VII vests the Security Council with the authority to "determine the existence of any threat to the peace" and to "decide what measures shall be taken."[36] These measures can include diplomatic or eco­nomic sanctions, up to and including the use of force. U.N. member states are required to "join in affording mutual assistance in carrying out the measures decided upon by the Security Council."[37] Of course, the Security Council is a political, not a judicial, body, and it is far from clear whether- even exercising its Chapter VII authority-it can articulate or establish a member state's legal obliga­tions. As a **practical matter**, however, the Security Council's political decisions may well be **sufficient** to impose a particular result on one or more states **regardless of the legal principles at issue**-assum­ing that all of the Council's permanent, veto-wield­ing members determine to act with a sufficient level of force. Moreover, U.N. member states do have a legal obligation to comply with properly entered Security Council Chapter VII resolutions as a matter of treaty.

**Their standard mixes burdens and kills ground because any counterplan CAN result in plan**

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

**Every action or decision has some kind of effect on something** or someone, if only in an indirect way. How we approach these decisions or actions we take can have a huge impact, not just on those directly involved, but on others we could hardly fathom would be affected. You never know what little action may be the tipping point for another action and or reaction.

butterfly effect

When you hear the words “The Butterfly Effect”, most of you will probably think of the movie. That was about the chaos theory, meaning one series of events leads to another and the effect of changing the course of those events.

Actually the term “The Butterfly Effect”, was a phenomenon proposed in a doctoral thesis written in 1963 by Edward Lorenz. It states that a butterfly, by flapping its wings in one place and time is able to create a major weather event in another place and time, eventually having a far-reaching ripple effect on subsequent events.

The butterfly effect suggests that cause and effect are applicable in the universe even if the pattern is indecipherable and the precise cause of our predicaments, rooted far away in time and space, are ultimately unfathomable. More than just an esoteric science, the chaos theory works off the concept that the relation between any two things is rarely linear in nature, that any reaction is usually the result of an accumulation of causative factors small and large, intentional and accidental.

**CPs key to ground – tests non-intrinsic advantages and new affs**

**Doesn’t “result in the plan”---process is critical and ensures a different substantive outcome**

**Katyal 13** – Neal Kumar Katyal, Professor of Law at Georgetown University, “Book Review: Stochastic Constraint”, Harvard Law Review, 126 Harv. L. Rev. 990, http://www.harvardlawreview.org/media/pdf/vol126\_katyal.pdf

One hot summer day, following a week-long marathon of grading 130 Constitutional Law exams, I received a visit from a student who appeared in my office to protest her grade vociferously. She arrived clutching the marked-up exam that she had written during the allocated three hours. Her exam was four pages long. And she pointed to the last lines of the exam, and then pulled out a copy of the exam I had designated as the best in the class, and contended that she should have received the same grade. Her reasoning was simple: “I got the same answer, so I should get the same grade.” I pointed out, however, that the model exam was a twenty-page-long exegesis of the same problem, and reached the same answer that she did by a completely different (and more accurate) path. In the end, I told her, a grade is not simply a function of the bottom-line answer, but rather of the **process** used to reach the result.

With The Terror Presidency, Professor Jack Goldsmith wrote, hands down, the very best analysis of the national security issues surrounding President George W. Bush’s tenure. In Power and Constraint: The Accountable Presidency After 9/11, Goldsmith returns to the same set of problems, but adopts a different tack. He argues that the modern wartime Executive is constrained in new ways beyond the traditional system of checks and balances, and that these new constraints combine to create an effective system that checks executive power. Though the modern wartime Executive may disregard traditional limits on presidential power and attempt to act unilaterally, new checks from an aggressive press, a watchful and technologically enabled public, and the legalization of warfare combine to constrain the executive branch. Goldsmith argues that this system is the type of reciprocal restraint of which our Founders would have approved (p. 243).

Goldsmith’s claim ultimately boils down to one about how presidential constraint arises from a **stochastic mélange** produced by these newly empowered actors. But in his analysis of the constraint imposed on the modern Executive by this new system of checks and balances, Goldsmith fails to account for the **values served by good process**. Just as with a student’s four-page exam (which might reach a correct result but probably will not), **the path by which the Executive is constrained matters**, because it will significantly affect the **substantive quality** and **sustainability** of that end result. Goldsmith’s new system of accountability relies on a combination of government leaks and **self-checking** out of fear of reprisal, whereas the traditional system trusts “[a]mbition . . . to counteract ambition.” The latter system — the one envisioned by the Founders — has significantly fewer side effects attached to the process of checking the Executive.

In this Review, I argue that the **particular process** employed to constrain the Executive has **consequences beyond the mere fact of achieving** some level of **constraint,** and the “new” system of checks and balances has more costs associated with it than the traditional, constitutionally envisioned system, which primarily relies on government officials. In the end, **many different methods** might be used to achieve “constraint,” broadly conceived, but the process chosen to reach that constraint has **substantive implications**. Part I discusses the relationship between the process used to check the Executive and the substance of the constraints imposed. It contends that, just as the Coase Theorem predicts, the initial set of entitlements will strongly influence the eventual result, and that Coasean analysis provides a helpful frame through which to assess Goldsmith’s claim that the new constraints he identifies can substitute for Madisonian checks and balances. Part II analyzes Goldsmith’s speculation that the modern cycle of permission and constraint is likely to continue, and suggests that future inquiry should examine whether **particular policy solutions** could be developed, in advance of the next crisis, that might break this cycle.

**Independently - even if Aff isn’t *certain* – they must commit to *possibility* of *fiated* decrease– key to neg ground – all offense assumes it – key to aff ground – otherwise they lose on politics and rollback**

**Severs textually – doesn’t say** (reduce/reduction/remove/etc) **or** (significantly/substantially/etc) **and plan does – they lose in their standard**

Doesn’t express desirability – net benefit is an opportunity cost

**Not topical---**

**“Should” is mandatory and immediate**

**Summers 94** (Justice – Oklahoma Supreme Court, “Kelsey v. Dollarsaver Food Warehouse of Durant”, 1994 OK 123, 11-8, <http://www.oscn.net/applications/oscn/DeliverDocument.asp?CiteID=20287#marker3fn13>)

¶4 The legal question to be resolved by the court is whether the word "should"[13](http://www.oscn.net/applications/oscn/DeliverDocument.asp?CiteID=20287#marker3fn13) in the May 18 order connotes futurity or may be deemed a ruling *in praesenti*.[14](http://www.oscn.net/applications/oscn/DeliverDocument.asp?CiteID=20287#marker3fn14) The answer to this query is not to be divined from rules of grammar;[15](http://www.oscn.net/applications/oscn/DeliverDocument.asp?CiteID=20287#marker3fn15) it must be governed by the age-old practice culture of legal professionals and its immemorial language usage. To determine if the omission (from the critical May 18 entry) of the turgid phrase, "and the same hereby is", (1) makes it an in futuro ruling - i.e., an expression of what the judge will or would do at a later stage - or (2) constitutes an in in praesenti resolution of a disputed law issue, the trial judge's intent must be garnered from the four corners of the entire record.[16](http://www.oscn.net/applications/oscn/DeliverDocument.asp?CiteID=20287#marker3fn16)

[CONTINUES – TO FOOTNOTE]

[13](http://www.oscn.net/applications/oscn/DeliverDocument.asp?CiteID=20287#marker2fn13) "*Should*" not only is used as a "present indicative" synonymous with *ought* but also is the past tense of "shall" with various shades of meaning not always easy to analyze. See 57 C.J. Shall § 9, Judgments § 121 (1932). O. JESPERSEN, GROWTH AND STRUCTURE OF THE ENGLISH LANGUAGE (1984); St. Louis & S.F.R. Co. v. Brown, 45 Okl. 143, 144 P. 1075, 1080-81 (1914). For a more detailed explanation, see the Partridge quotation infra note 15. Certain contexts mandate a construction of the term "should" as **more** than merely indicating preference or desirability. Brown, supra at 1080-81 (jury instructions stating that jurors "should" reduce the amount of damages in proportion to the amount of contributory negligence of the plaintiff was held to imply an *obligation* *and to be more than advisory*); Carrigan v. California Horse Racing Board, 60 Wash. App. 79, [802 P.2d 813](http://www.oscn.net/applications/oscn/deliverdocument.asp?box1=802&box2=P.2D&box3=813) (1990) (one of the Rules of Appellate Procedure requiring that a party "should devote a section of the brief to the request for the fee or expenses" was interpreted to mean that a party is under an *obligation* to include the requested segment); State v. Rack, 318 S.W.2d 211, 215 (Mo. 1958) ("should" would mean the same as "shall" or **"must"** when used in an instruction to the jury which tells the triers they "should disregard false testimony"). [14](http://www.oscn.net/applications/oscn/DeliverDocument.asp?CiteID=20287#marker2fn14) *In praesenti* means literally "at the present time." BLACK'S LAW DICTIONARY 792 (6th Ed. 1990). In legal parlance the phrase denotes that which in law is *presently* or ***immediately effective***, as opposed to something that *will* or *would* become effective *in the* ***future*** *[in futurol*]. See Van Wyck v. Knevals, [106 U.S. 360](http://www.oscn.net/applications/oscn/deliverdocument.asp?box1=106&box2=U.S.&box3=360), 365, 1 S.Ct. 336, 337, 27 L.Ed. 201 (1882).

**‘Resolved’ is enacted policy by law**

**Words and Phrases 64** (Permanent Edition)

Definition of the word “resolve,” given by Webster is “to express an opinion or determination by resolution or vote; as ‘it was resolved by the legislature;” It is of similar force to the word “enact,” which is defined by Bouvier as meaning “to establish by law”.

**Case**

**Adv 1**

**\*Must Read – 2NC – Solvency Rant**

**Judicial nullification wrecks solvency**

**Crane 20** [Daniel A. Crane, Frederick Paul Furth, Sr. Professor of Law, University of Michigan, 3-1-2020 https://papers.ssrn.com/sol3/papers.cfm?abstract\_id=3561870]

Judges and scholars frequently describe antitrust as a common law system predicated on open-textured statutes, but that description fails to capture a **historically persistent** phenomenon; judicial **disregard** of the plain meaning of the statutory texts and manifest purposes of Congress. This pattern of **judicial nullification** is not evenly distributed: When the courts have deviated from the plain meaning or Congressional purpose, they have **uniformly** done so to **limit the reach of antitrust liability** or **curtail the labor exemption** **to the benefit of industrial interests**. This phenomenon cannot be explained solely or even primarily as a tug-of-war between a progressive Congress and conservative courts. The judges responsible for these decisions were far from uniformly conservative, Congress has not mobilized to overturn the judicial precedents, nor, despite opportunities to do so, have the courts constitutionalized their holdings to prevent Congressional overriding. Antitrust antitextualism is best understood as an implicit political arrangement in which Congress writes broad statutes expressing anti-bigness republican idealism, and then the courts **read down the statutes** pragmatically to accommodate competing demands for efficiency and industrial progress.

**Conflicting preferences prove**

Anu **Bradford 11**. Henry L. Moses Professor of Law and International Organization and director of the European Legal Studies Center at Columbia Law School, Senior Scholar at Columbia Business School’s Jerome A. Chazen Institute for Global Business, a nonresident scholar at Carnegie Endowment for International Peace, heads the Comparative Competition Law Project, was an Assistant Professor at the The University of Chicago Law School, practiced EU and antitrust law in Brussels, served as an adviser on economic policy in the Parliament of Finland, and served as an expert assistant at the European Parliament. “International Antitrust Cooperation and the Preference for Nonbinding Regimes”. COOPERATION, COMITY, AND COMPETITION POLICY, ANDREW T. GUZMAN, ED., OXFORD UNIVERSITY PRESS (2011). https://scholarship.law.columbia.edu/cgi/viewcontent.cgi?article=2966&context=faculty\_scholarship

This article has argued that the pursuit of nonbinding international antitrust cooperation represents an optimal choice for states. It is not merely an opportunity to capture limited gains from cooperation while proceeding towards a binding international agreement, as is commonly perceived. States’ **conflicting preferences** over the optimal **content** of international antitrust cooperation is the primary **impediment** for negotiating binding antitrust rules in the WTO. States have sought to accommodate their divergent preferences by removing controversial issues from the negotiation agenda. However, this has led to proposals for **watered-down rules** that would confer trivial benefits to WTO member states. Because states expect low net benefits from a prospective WTO antitrust agreement, states have abandoned the negotiations to seek case-by-case cooperation and **voluntary** international **guidelines** instead. **Nonbinding cooperation** has successfully fostered international antitrust convergence. A growing number of states enforce increasingly consistent antitrust rules today without any binding international agreement requiring them to do so. Eventually, successful voluntary convergence could pave the way for binding cooperation. However, this article has argued that nonbinding agreements are likely to persist for three primary reasons. First, as cooperation under nonbinding agreements is largely self-enforcing, the added value of a binding agreement with provisions for monitoring, enforcement, and sanctions is trivial. Second, in the absence of coordinated domestic interest group support for international antitrust cooperation, a binding agreement would not provide states with any domestic political economy rents and therefore will remain a low national priority. Finally, the emerging voluntary convergence will slowly eradicate negative externalities stemming from decentralized antitrust regimes, making the case for a binding international agreement less compelling. By arguing that nonbinding agreements are preferable to binding agreements, even in situations where binding agreements are feasible, this article disputes the view that nonbinding agreements are second-best instruments for fostering international antitrust convergence. States have not chosen nonbinding agreements because their first-best regime choice has been unavailable. Instead, states have viewed binding agreements as unnecessary and undesirable. An optimal institutional design must be consistent with state interests to be effective. By acknowledging both the difficulties involved in the pursuit of binding international antitrust cooperation and the ability of nonbinding agreements to mitigate those difficulties, this article raises two critical questions. First, given the obstacles to international antitrust cooperation, how could a binding agreement emerge? And second, assuming that a binding agreement could emerge, what would it add to the existing nonbinding international antitrust regime? Until the proponents of a binding international antitrust agreement can answer those questions, nonbinding cooperation is, and will likely remain, the preferred solution.

**Developing countries will say no**

**Kretzmer 19** [Tevia Kretzmer, LLM from the University of Kent, BA (LLB) from the University of Johannesburg, Legal and Compliance Consultant at Rutherford, “To What Extent, If At All, Is It Desirable Or Realistic To Aim For A Global Agreement On Competition Policy?”, 5/6/2019, <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3404131>]

A major negative perception that is held of the ICN is that it represents US interests in the formulation of its policy. The US was always aloof to the idea of a global competition policy being implemented under the auspices of the WTO,43 and thus felt it could better control global competition policy through the ICN. Sweeney writes that: The ICN represented the preferred US path to solving international competition problems. Indeed, the speed with which it was created suggests that it may have been a strategic response by the USA to head off proceedings at the WTO. 44 This western supported ideology can have negative implications when trying to establish a global competition policy. It is trite that developing countries may view the ICN as an institution that only serves western-backed ideologies, and ultimately views the concerns of developing countries as **less of a priority,** especially when one considers the fact that the majority of contributions to the ICN emanate from wealthier jurisdictions, which may lead to poorer developing countries to question whether the ICN truly serves their best interests.45 A further weakness of the ICN is fundamental, in that its various policy recommendations are **merely** instructional and **non-binding**. It is almost **impossible** to facilitate the creation of a global competition policy when countries are **ultimately under no obligation** to implement ICN recommendations. The consequences of this soft law approach are well illustrated by Sweeney who writes that ‘the greatest threat to the ICN may be **irrelevance**, as **soft law options** are taken as far as they will go.’46 This is exacerbated by the fact that the ICN has no mechanisms to deal with these limitations.47 A further negative perception of the ICN is its susceptibility to the notion of being captured, which weakens its legitimacy.48 This perceived capture, coupled with the assertion that the ICN is financially supported by wealthy developed countries as mentioned above, creates a truly awkward position for the ICN when trying to influence developing countries to implement its competition policy recommendations. The writer asserts that the most **glaring [weakness]** ~~defect~~ within the framework of the ICN is its lack of a general headquarters or secretariat, which means that the ICN lacks a bureaucracy, legislative powers and an executive,49 which are key elements of any institution deemed worthy of recommending significantly influential policies.

**Those are uniquely disruptive to trade---*and even if they solve coordination over Type 1 and 2 cases, unilateral enforcement still creates disparate remedies that disrupt trade***

Michal S. **Gal 09**, Associate Professor and Vice Dean, Haifa University School of Law; Global Hauser Visiting Professor of Law, New York University School of Law. "Antitrust in a Globalized Economy: The Unique Enforcement Challenges Faced by Small and Developing Jurisdictions" Fordham International Law Journal, Volume 33, Issue 1, Article 1. <https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=2175&context=ilj&httpsredir=1&referer=>

In the first type of cases, the conduct of market players enhances or has a neutral effect on the welfare of all the jurisdictions in which they trade. That will be the case, for example, should the merging firms face strong competition in all markets in which they trade. In the second type of cases, the conduct of international market players reduces the welfare of all the jurisdictions in which they trade. To illustrate, the "Vitamins" cartel negatively affected all the countries in which vitamins were sold. 14 If the relevant market is truly global, conduct will generally fall within one of these two categories.

The third type of case creates **mixed effects**: the conduct creates positive or neutral welfare effects on the domestic jurisdiction (possibly on some foreign jurisdictions also) and negative welfare effects on one or more foreign jurisdictions. 15 This may occur, for example, when parties to ajoint venture face strong competition in some markets, but face limited competition in others due to high entry barriers. This category also includes export cartels and cases in which a domestic firm abuses its power in foreign markets. 16 To concretize this type of cases, consider European and U.S. food producers merger of Unilever and Best Foods. The European Union ("EU") and the United States approved the merger, since it did not raise anticompetitive concerns in their markets. 17 Yet it substantially lessened competition in some Israeli markets, given that each of the merging entities had previously merged with a dominant player in some Israeli food market. 8

The fourth type is characterized by opposite mixed effects: it creates **negative welfare effects in the domestic jurisdiction** (possibly on some additional jurisdictions as well) **and positive effects in** one or more **foreign jurisdictions**. This may be the case when high trade barriers in the home jurisdiction prevent the entry of foreign firms that compete effectively with a domestic one in other markets.

Figure 1 represents the four cases visually, in a two-country setting, which can be extended to a multi-country one.19 The horizontal axis represents the welfare effects on Jurisdiction A, while the vertical axis represents the welfare effects on Jurisdiction B. Accordingly, the right-slanted area represents the cases that are harmful to the Jurisdiction A, while the left-slanted area represents the cases that are harmful to the Jurisdiction B.

As Figure 1 clearly indicates, the first two types are easy cases, in the sense that the interests of all countries involved are aligned. The decision of Jurisdiction A will generally coincide with the interest of Jurisdiction B. Yet even in these cases, issues of coordination and cooperation arise. For one, cooperation may be necessary for gathering the information needed to prosecute anticompetitive conduct, evaluating its effects, or enforcing remedies effectively.20 Coordination is also needed if antitrust regulation requires ex ante clearance of a transaction, as for mergers. If a merger must be approved by multiple agencies and the process is lengthy, costly, or unpredictable, the transaction costs of such a multijurisdictional review might prevent an otherwise welfare-enhancing merger from taking place, even if it would have been approved by all.2 1 Ironically, **such governmental barriers to trade are a direct result of the attempt to effectively regulate private barriers**.

Additional cooperation issues arise with regard to the effects that limited international enforcement might have on the incentives of firms to engage in anticompetitive conduct. As will be elaborated below, currently a limited number of jurisdictions bring international cartels to trial. Yet the sanctions imposed by the handful of jurisdictions on cartel members might not be sufficient to deter future international cartels, as the fines, private damages, and even jail time imposed by them are generally based on the harm to their domestic consumers and firms. 22 Cartel members may thus still find it profitable to engage in international anticompetitive activity .so long as the benefits from cartelization are larger than the fines and damages they must incur in the few jurisdictions that enforce their laws against them.

The need for coordination also arises from the fact that sanctions against international cartels are not synchronized. This fact reduces the incentives of cartelists to report their cartels through leniency programs, since once the cartel is discovered the party that reported the cartel might still be subject to sanctions in other jurisdictions in which it does not enjoy leniency. In fact, this situation **strengthens international cartels relative to domestic ones**, as cheating on them by way of reporting produces lower rewards.23 It is thus important to devise ways to solve these incentive problems. 2 4

The third and fourth types of extraterritorial cases raise even more difficult issues for cooperation as **different jurisdictions may reach conflicting decisions and have divergent interests.** 25 For example, if the firms of one jurisdiction have monopoly power in world markets, that jurisdiction might have limited incentives to stop their anticompetitive activity, thereby increasing national wealth at the expense of foreigners. A good illustration involves the reluctance of the South African government to place limitations on the diamond cartel that operated from within its borders. Moreover, as Figure 1 indicates, **such cases may create over-enforcement relative to a worldwide total welfare standard, if the negative welfare effects on all countries affected are smaller than their positive welfare effects**.2 6

**No harmonization – they’d prefer convergence but can’t agree on details**

**Bradford ’12** [Anu H. Bradford is a Finnish-American author, law professor, and expert in international trade law. In 2014, she was named the Henry L. Moses Distinguished Professor of Law and International Organization at the Columbia Law School. She is the author of The Brussels Effect: How the European Union Rules the World. "Antitrust Law in Global Markets." https://scholarship.law.columbia.edu/cgi/viewcontent.cgi?article=2977&context=faculty\_scholarship]

Section IIB explored the possibility that the risk of defection inherent in the prisoner’s dilemma would impede states from pursuing international antitrust cooperation. However, some scholars have questioned this premise. They argue that the **greatest impediment** for international cooperation does not stem from the possibility of defection but from the difficulty of **reaching** the right set of rules in the **first place**. States **prefer** convergence to nonconvergence; they **just cannot agree** on optimal rules to converge on. Bradford, for instance, has argued against the widespread existence of PD- incentives,193 asserting instead that the collective action problem underlying international **antitrust coop**eration resembles a ‘coordination game’ where the distributional consequences of various forms of coordination impede states’ ability to settle on any given set of international rules.194 This theory assumes that different antitrust rules are optimal for different states. The costs and the benefi ts of a harmonized antitrust regime would therefore be **unevenly** distributed among states, creating a distributional conflict. This distributional conflict impedes states’ **ability to agree** on the focal point of coordination.195

The most prominent distributional conflict exists between the **U**nited **S**tates and the **EU**. Despite the increasing **alignment** of the US and EU antitrust laws over the last decade, some key differences **persist**, as discussed above in section IC.196 These enduring differences explain why the **U**nited **S**tates and the **EU** have competed against each other to direct international convergence towards their respective antitrust laws.197 Even if both entities recognize that increased international coordination would lead to greater effi ciency, each would prefer to internationalize their respective domestic antitrust regimes.198

This type of strategic situation is known as a coordination game with distributional consequences (**CGDC**) or a ‘battle of the sexes’.199 In a CGDC, both states prefer a coordinated outcome to a noncoordinated outcome, even though both also favor coordinating at their respective preferred equilibrium. For instance, the United States and the EU might both prefer **coordination to noncoordination** given that their antitrust laws today are increasingly similar; neither the United States nor the EU would incur signifi cant adjustment costs if they were to coordinate to each other’s preferred equilibrium. **Still**, it is reasonable to assume that, given the choice, both players would favor their own respective **regimes** as the focal point of convergence. The challenge is to choose between the focal point the United States prefers (US antitrust law) and the focal point the EU prefers (EU antitrust law).

Similar distributional **conflict exists** between developed countries and developing countries.200 Developed countries want any international antitrust regime to reduce multinational corporations’ (MNCs’) transaction costs of operating on global markets. They also seek to ‘level the playing fi eld’ by enhancing MNCs’ access to the developingcountry markets.201 In contrast, developing countries resist the idea of a level playing field, asserting that their small domestic corporations require protection to be able to **compete** against MNCs.202 Developing countries struggling with capacity constraints also fear that an international antitrust agreement would impose unduly burdensome obligations on them. Both developed countries and developing countries would benefi t from coordination, but they disagree on whether to coordinate around the **focal point** preferred by the **former or the latter**.

Even the **proponents** of an international antitrust agreement concede that the unequal distributional consequences of any international agreement would present a **challenge** for **cooperation**.203 This has led them to propose ways to overcome the distributional confl ict. Eleanor Fox, for instance, invokes the spirit of cosmopolitanism as a solution to the existing disagreements among antitrust jurisdictions on optimal law and policy.204 Fox calls on countries to bar government actions ‘where the harm [the action] causes to world welfare perceptibly outweighs the benefi t to the nation’s citizens’.205 However, critics have pointed out that this approach raises **practical** and **moral concerns**. On the practical level, **data** measuring ‘world’ and ‘domestic’ welfare would be **hard to obtain** and, once obtained, would remain **controversial**; it would also be difficult for countries in the WTO to agree when ‘**perceptible’** net **losses** to world **welfare** have occurred. On an even more fundamental level, Fox’s approach raises concern on whether ‘world welfare’ is the appropriate standard to use in the fi rst place. As Marsden argues, the national government’s obligations should lie with its national constituency.206

1. **No cartel formation and India – China won’t comply**

**Verbeke 21** --- Alain Verbeke, holds the McCaig Research Chair in Management and is a Professor of International Business Strategy, and Caroline Buts, “The Not So Brilliant Future of International Cartels”, 17 August 2021, https://www.cambridge.org/core/journals/management-and-organization-review/article/not-so-brilliant-future-of-international-cartels/363CC718A5FD54F8BB390B9AB22150B7

Could protectionism in the realm of the internet, and digital economy more broadly, foster ‘cross-fracture’ internet cartels? **This is unlikely**. There is substantial animosity in many countries, including the European Union, **against** the dominant role of US-based digital companies, and even though (as noted above) some of these companies have engaged in cartel-like behavior domestically, **these firms’ strategic behavior** and the outcomes thereof **are presently closely monitored** by host-region regulators. As one example, the European Union would like to see the development of equivalent European digital companies to compete effectively against US-based ones. And countries such as China and India have introduced strong policies to reduce the reach and influence of US digital companies. There are few incentives for any of these non-US companies to **bridge institutional fractures via cartel formation**, with such cartels having the capability to cross the dense, osmium-like new curtains presently being set up or contemplated by a large number of governments.

Our predictions – assuming higher political risk that results from global institutional fracturing – are very different from those of B&C (Reference Buckley and Casson2021). We predict increased investments in intelligence and contracting safeguards by individual lead-multinational enterprises in GVCs; lower levels of irreversible investments in hostile environments; higher product and industry diversification to counter the possible impacts of instant and uncontrollable government restrictions when a crisis occurs, whether health-related, national-security-related or for urgent economic reasons; and finally increased sophistication of relational contracting and ex post governance in GVCs (Verbeke, Reference Verbeke and Hutzschenreuter2020).

When faced with sharply increased VUCA-conditions (referring to volatility, uncertainty, complexity, and ambiguity), the efficient governance response for most multinational enterprises will **not be to engage in cartel-formation**, considered as a dark governance form by competition authorities around the world. Rather, their response will be to become **more efficient and effective stewards** of the GVCs they lead, thereby eliminating dark-side elements in their own GVCs’ functioning.

**1nr wake round 1**

**Case**

**Adv 1**

Liberalization up, recession changes, and issues of reverse causality

**Trade doesn’t solve war**

**Musgrave 20** --- Paul Musgrave is an assistant professor of political science at the University of Massachusetts Amherst, “The Beautiful, Dumb Dream of McDonald’s Peace Theory”, Foreign Policy, NOVEMBER 26, 2020, https://foreignpolicy.com/2020/11/26/mcdonalds-peace-nagornokarabakh-friedman/

**Of course**, I would explain to my students, war could also proceed from other causes. **Economic integration may be no panacea** to interstate war after all. John Vasquez writes: “War among equals has followed the failure of power politics to settle certain highly salient issues”—none, he writes, more than “issues involving territory, especially territorial contiguity.”

In the former Soviet Union, the wars over Chechnya, Georgia, Ukraine, and now Nagorno-Karabakh have all involved territory as a crucial element, a story much closer to what Vasquez’s theory would predict than to Friedman’s.

Globalization may have increased the costs of these wars, **but they have** obviously **not prevented them**. To be sure, Armenia has no McDonald’s, an issue grave enough to have been raised in the parliament at Yerevan earlier this year. The Azerbaijan franchise’s cheerleading was also slapped down by the Home Office.

Regardless, Friedman’s logic suggests the conflict shouldn’t have begun, or shouldn’t have been so bloody once it did. Both Armenia and Azerbaijan score highly (and almost identically) on the ETH Zurich KOF Globalisation Index. The pace of deaths suggests that the conflict could qualify as a so-called real war by the traditional 1,000 battle-related-deaths criterion. (Indeed, some reports say the death toll blew past that level quickly.)

And if the conflict has knocked the final support from the Golden Arches theory, it has also finally toppled whatever confidence remained in the 1990s belief in the eternal sunshine of the American order.

The resurgent Nagorno-Karabakh conflict provides yet another reason to worry that the world is entering a new phase of more violent conflict—including major wars—and globalization will **no more prevent them** than **burgeoning** trade before Archduke Ferdinand’s assassination prevented World War I.

After all, **wars keep emerging** that challenge the optimistic assessment that war is a relic of the past. The specific ways these conflicts emerge, moreover, point to the possibility that **new wars** could break out that make **even bloody conflicts** like those in Syria and Yemen **seem relatively minor.**

Driven by processes of imperial dysfunction and internal breakdown, today’s wars have causes that are enormously difficult to heal.

The conflicts in the former Soviet Union, from Chechnya in the 1990s to Nagorno-Karabakh today, represent a set of wars in the post-Soviet succession. Russia has attempted to maintain its central role against real and perceived rivals throughout that vast region including transnational Islam, the European Union, the United States, China, and now arguably Turkey.

In the Middle East, revisionist regional powers like Saudi Arabia and Iran contend for power as the United States continues to loudly proclaim that it is unwilling to continue playing its imperial stabilizing role (even if Washington never actually seems to find the exit).

And China, which once preferred to keep its border disputes quiet, seems increasingly willing to saber-rattle from the Taiwan Straits to the Himalayas.

**Adv2**

**finish**

**Shifrinson, 19** – Joshua Shifrinson (Assistant professor of international relations at Boston University, “The ‘new Cold War’ with China is way overblown. Here’s why,” <https://www.washingtonpost.com/news/monkey-cage/wp/2019/02/08/there-isnt-a-new-cold-war-with-china-for-these-4-reasons/?noredirect=on&utm_term=.2f92e43bb9f3>)

**FINISH**

Of course, as scholars such as Caitlin Talmadge and Avery Goldstein note, crises may still erupt, and each side may face pressures to escalate. Unlike the Cold War, however, U.S.-Chinese confrontations occur at sea with relatively **limited forces** and **without clear territorial boundaries**. This suggests there are **countervailing factors** that may give the two sides **room to negotiate** — and **limit the speed** with which a crisis unfolds. 3. The Cold War had just two major powers The Cold War took place in a bipolar system, with the United States and Soviet Union uniquely powerful, compared with other nations. This dynamic often pushed the United States and the U.S.S.R. toward confrontation and contributed to more or less fixed alliances; moreover, it encouraged efforts to suppress prospective great powers, such as Germany. In 2019, it’s not at all clear we are back to bipolarity. Analysts remain divided over whether the U.S. unipolar era is waning (or is already over) — and, if so, whether we are heading for a new period of bipolarity, modern-day multipolarity or something else. Regardless, most analysts accept that other countries will play a central role in East Asian security affairs. **Russia**, for example, still benefits from legacy military investments, **India** is developing economically and militarily, and **Japan** is beginning to build highly capable military forces to complement its still-significant economic might. Even if these nations aren’t as powerful as the United States or China, their presence makes for **more fluid diplomatic arrangements** and more diffuse security concerns than during the U.S.-Soviet competition. The resulting security dynamics are therefore likely to look very different. 4. Ideology plays less of a role in U.S.-Chinese relations Many people see the Cold War as an ideological contest between U.S.-backed liberalism and Soviet-backed communism. But that’s not the whole story. The early 20th century saw liberalism, communism and fascism vie for ideological preeminence. With fascism defeated alongside Nazi Germany, the postwar stage was set for a struggle between communism and liberalism to reinforce the U.S.-Soviet contest. That each ideology claimed universal scope ensured that the ideologies served as rallying cries for Third World conflicts, which were subsequently associated with the U.S.-Soviet struggle. The respective “ideologies” of the United States and China do not favor this type of contest today. Indeed, analysts calling for a hard-line stance against China have faced difficulties even identifying a coherent Chinese ideological alternative. And while some researchers claim that a nascent ideological contest pitting an “autocratic” China against the “liberal” **U**nited **S**tates is emerging, this narrative ignores the political contests that shape Chinese politics (and have parallels in U.S. politics). Autocracies and democracies often cooperate. And on one important ideological issue — how they organize their economic lives — China and the **U**nited **S**tates have both embraced economic growth via trade, the private sector and semi-free markets. Likewise, while a clearer Chinese ideological “brand” may eventually emerge, it is unclear whether the ideology would claim universal applicability. This is not to deny that there are tensions between the United States and China. What we are seeing, however, is **not a new cold war** but a reversion to a pre-1945 form of great power politics. What changed? Put simply, the United States no longer enjoys preeminence as the only superpower, as it did in the immediate post-Cold War era. The ideological, historical and geopolitical differences between today and the Cold War years far outweigh the similarities. As David Edelstein notes, at times it’s hard to understand what the United States and China are competing over. If that’s true, then there’s reason to believe there are more nuanced ways of understanding the tensions — and options for **managing great power politics** — than a Cold War reboot.

**da**

**ov**

**Disad outweighs – prefer scope and reversibility – failure to pass BBB dooms foreign follow-through on commitments post-Glasgow conference – scorches the planet – that’s Chon**

**Prefer scientific consensus – now’s the last chance before countless catastrophic impacts become irreversible – encompasses all other impacts, making it try or die to avoid the disad**

**Åberg et al 10-5** (Anna Åberg, research analyst in the Environment and Society Programme of Chatham House, formerly served as desk officer at the Swedish Ministry for Foreign Affairs, MSc Development Studies, London School of Economics and Political Science, BSc Business and Economics, and Politics and Economics, Lund University; Antony Froggatt, deputy director and senior research fellow in the Environment and Society Programme of Chatham House; and Rebecca Peters, Queen Elizabeth II Academy Fellow in the Environment and Society Programme of Chatham House, doctoral candidate at the University of Oxford with the UK Foreign, Commonwealth and Development Office REACH Water Security programme, MSc Development Economics, MSc Water Science and Policy, Marshall Scholar; “Raising climate ambition at COP26,” Chatham House (the Royal Institute of International Affairs, London) Research Paper, October 2021, https://www.chathamhouse.org/sites/default/files/2021-10/2021-10-05-raising-climate-ambition-at-cop26-aberg-et-al-pdf.pdf)

01

Introduction

COP26 is the most important climate summit since COP21 in Paris in 2015. Over the past year, the **global politics** of **climate change** have shifted, with the election of President Joe **Biden** and the announcement of **China’s carbon neutrality target**.

Addressing climate change is the defining challenge of our time. Around the globe – and across the suite of UN organizations – there is **widespread recognition of the urgency** to reduce greenhouse gas (GHG) emissions and to prepare for a world that is, and will continue to be, severely impacted by climate change.

The foundational treaty of the international climate change regime – the United Nations Framework Convention on Climate Change (UNFCCC) – was adopted at the Rio Earth Summit in 1992.1 Its signatories agreed to ‘achieve… stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system’.2 The states that have ratified the UNFCCC meet annually at the ‘Conference of the Parties’ (COP) to assess and review the implementation of the convention.3 The COP has negotiated two separate treaties since the formation of the UNFCCC: the Kyoto Protocol in 1997, and the Paris Agreement in 2015.4

The Paris Agreement was adopted by 196 parties at COP21 in 2015 and entered into force less than a year later.5 The goals of the treaty are to keep the rise in the global average temperature to ‘well below 2°C above pre-industrial levels’, ideally 1.5°C; enhance the ability to adapt to climate change and build resilience; and make ‘finance flows consistent with a pathway towards low greenhouse gas emissions and climate-resilient development’.6 The agreement adopts a ‘bottom-up’ and non-standardized approach, where parties themselves set their national emission reduction targets and communicate these to the UNFCCC in the form of nationally determined contributions (NDCs).7

As things stand, the targets8 that were submitted in the run-up to COP21 are not sufficient, even if fully implemented, to limit global warming to 2°C, much less 1.5°C.9 The Paris Agreement was designed, however, to generate increased ambition over time via two components: a collective ‘global stocktake’ during which progress towards Paris Agreement goals is assessed based on country reporting,10 and the ‘ratchet mechanism’, which encourages countries to communicate new or updated NDCs every five years, with the expectation that ambition will increase over time.11 The results of the stocktake are scheduled to be released two years before NDC revisions are made.12 This sequencing is designed to allow national plans to account for the global context of the climate assessment. The first global stocktake is to be conducted between 2021 and 2023, and will be repeated every five years thereafter.13 The results of the first stocktake are due to be published around COP28.

We really are **out of time**. We **must act now** to prevent further **irreversible damage**. COP26 this November must mark that turning point.14 UN Secretary-General António Guterres, 16 September 2021

The 26th Session of the Conference of the Parties (COP26) to the UNFCCC is to be hosted by the UK, in partnership with Italy. After a year-long delay, the conference is now scheduled to take place in Glasgow, Scotland, between 31 October and 12 November 2021.15 Organizing an in-person event during a pandemic presents a substantial challenge. The UK government is providing vaccines to accredited delegations, but doses only started to be delivered at the beginning of September 2021 and restrictions, such as quarantine requirements,16 pose further obstacles to participation.17 An alliance of 1,500 civil society organizations are among those calling for a second postponement of the COP, citing concerns about a lack of plans to enable safe and inclusive participation of delegates from, not least, the Global South.18 The UK government is, however, adamant that it will proceed with the conference as planned.19

The pandemic has changed understandings of global risks, the interconnected nature of economies and the role of governments in preparing for and responding to existential threats. This may provide impetus for accelerated climate action. The postponement of COP26 itself has been of considerable significance. Over the past year, the global politics of climate change have shifted, with the election of President Joe Biden and the announcement of China’s climate neutrality target being particularly important. Moreover, the economic recovery packages that are being rolled out to counter the economic consequences of the pandemic present an opportunity to accelerate the green transition.20 To date, however, the members of the G20 have prioritized investments in fossil fuels above those in clean energy,21 and only 10 per cent of the global expenditure is estimated to have been allocated to projects with a net positive effect on the environment.22

**COP26** is the **most important climate summit** since COP21 in Paris, and it differs from earlier COPs in several ways: it is the first **test of the ambition-raising ratchet mechanism** and marks a **shift from negotiation to implementation**. An ambitious outcome at COP26 **requires** substantial **action to be taken before the summit** – and outside the remits of the UNFCCC process – as well as at the actual conference.

Human activity has already caused the global average temperature to rise by around 1.1°C above pre-industrial levels, and every additional increase in warming raises the risks for people, communities and ecosystems. To **avoid the most catastrophic climate change impacts**, **it is essential** world leaders make every effort to **limit warming to 1.5°C**. Working group I of the Sixth Assessment Report of the **IPCC** shows it is **still possible** to keep warming to this critical threshold, **but** that unprecedented **action must be taken now**.23 As John Kerry, special presidential envoy for climate, stated, ‘[t]his test is now as acute and as **existential** as any previous one’.24

**COP26** has a **critical role** in getting the world **on track for a 1.5°C pathway**, and in supporting those most affected by climate change impacts. It also constitutes a **key test** for the **credibility** of the **Paris Agreement** and the **UNFCCC process overall**. But what can and should the Glasgow summit achieve more specifically? The objective of this paper is to discuss what a positive outcome at COP26 would entail, with the dual aims of encouraging increased ambition and contributing to an informed public debate. The main argument put forth is that substantial progress must be made in three main areas, namely on increasing the ambition of NDCs; enhancing support to and addressing concerns of climate-vulnerable developing countries; and advancing the Paris Rulebook to help operationalize the Paris Agreement.

COP26 is undoubtedly hugely significant and national government pledges in the run-up to Glasgow will contribute to shaping the level of future GHG emissions. However, the event is not only critical in terms of reaching an ambitious outcome on climate, it is also an important opportunity to judge the level of confidence in the international process and the UNFCCC.

02

Increasing the ambition of the NDCs

A key element of COP26 will be the level of ambition of the revised NDCs put forward by governments to the UNFCCC and the extent to which these keep the 1.5°C global warming target agreed in Paris within reach.

According to the United Nations Environment Programme (UNEP), greenhouse gases (GHGs) in 2019 totalled 52.4 gigatonnes of CO₂ equivalent (GtCO₂e)25 of which the majority was CO₂ (38 Gt), then methane (9.8 Gt), nitrous oxide (2.8 Gt) and F-gases (1.7 Gt).26 The same year, GHG emissions were approximately 59 per cent higher than in 1990 and 44 per cent higher than in 2000.The six largest emitters – together accounting for 62 per cent of the global total – were China (26.7 per cent), the US (13 per cent), the EU (8 per cent), India (7 per cent), Russia (5 per cent) and Japan (3 per cent) (see Figure 1).27

**[FIGURE 1 OMITTED]**

According to UNEP, the implementation of the first round of NDCs would result in an average global temperature increase of 3°C above pre-industrial levels by the end of the century, with further warming taking place thereafter. If these NDC’s were fully implemented, emission levels are expected to be in the range of 56 GtCO2e (with unconditional NDCs) to 53 GtCO₂e (with conditional NDCs) by 2030.28 To align with a 2°C pathway, the ambition of the second round of NDCs would need to triple relative to the original targets, leading to emissions levels of around 41 GtCO₂e in 2030. Alignment with the 1.5°C target would require a fivefold increase in ambition, leading to emission levels around 25 CO₂e in 2030 (see Figure 2).29

**[FIGURE 2 OMITTED]**

The Paris Agreement states that parties shall communicate an NDC every five years,30 and that each submission shall constitute a progression in terms of ambition.31 Parties conveyed their first round of targets prior to COP21, and were due to submit new or updated plans in 2020.32 COP26, originally scheduled for November 2020, would then take stock of the collective level of ambition of these plans vis-à-vis the temperature targets of the Paris Agreement. The postponement of the COP by one year has in practice (albeit not formally) extended the deadline for submitting NDCs to ‘ahead of COP26’.

Where do we stand?

The delay of COP26 has given countries more time to put forward NDCs and longer-term decarbonization targets. This effort gained significant traction when China pledged to achieve carbon neutrality by 2060 and peak its emissions before 2030, during the general debate of the 75th Session of the UN General Assembly (UNGA) in September 2020.33 Then, in November 2020, the UK submitted its NDC, pledging a 68 per cent reduction in emissions by 2030 (based on 1990 levels)34 and later added a 2035 target of 78 per cent.35 The EU has, moreover, put forward a 55 per cent reduction target relative to 1990 levels,36 with some countries within the bloc going even further, including Germany, which agreed on a 65 per cent reduction target.37

The election of President **Biden** has **fundamentally changed the US’s position** on climate change, leading to, among other things, the country re-joining the Paris Agreement.38 At a specially convened Leaders Summit on Climate – hosted by the US – the **Biden** administration presented an **NDC** with an **emission reduction target of 50**–52 **per cent**39 (based on 2005 levels, which is equivalent to 40–43 per cent below 1990 levels40). During the summit, countries including Canada, Japan and others pledged more ambitious NDC targets.41

While there is more pressure on governments to act on climate change, due to its increasingly devastating impacts, there are also more opportunities for carbon mitigation through available alternative technologies and systems, as well as falling renewable energy costs (see Box 2).

Table 1 details the NDC targets put forward by G20 countries prior to COP21 in Paris and the extent to which these have since been revised. The updated NDCs have been assessed by the independent body, Climate Action Tracker, which has analysed to what extent the NDCs align with the 1.5°C pathway. The analysis also looks at domestic policies and actions, which are important as they provide an indication of whether governments are following through on their promises.

**[TABLE 1 OMITTED]**

As of September 2021, 85 countries and the EU27 had submitted new or updated NDCs, covering around half of global GHG emissions. Some parties, like China and Japan, have proposed new targets but not yet submitted them formally while around 70 parties – including G20 countries like India, Saudi Arabia and Turkey – have neither proposed nor communicated a revised NDC target. Several parties have, moreover, submitted new NDCs without increasing ambition. These include Australia, Brazil, Indonesia, Mexico, New Zealand, Russia, Singapore, Switzerland and Vietnam.42 In some of these cases, adjustments in baselines mean that ambition has de facto decreased (Brazil and Mexico).43 Analysis published by Climate Action Tracker in September 2021 shows that the NDC updates only narrow the gap to 1.5°C by, at best, 15 per cent (4 GtCO₂e). This leaves a large gap of 20–23 GtCO₂e.44

Similar analysis from the UN underscores the need for further NDC enhancements.45 If all current NDCs are implemented, total GHG emissions (not including emissions associated with land use) in 2030 are projected to be 16.3 per cent higher than in 2010, and 5 per cent higher than in 2019. The emissions of the parties that have submitted new or updated NDCs are, however, expected to fall by around 12 per cent by the end of the decade, compared to 2010 levels. The UN report also highlights the importance of providing support to developing countries, as many of these have submitted NDCs that are – at least in part – conditional on the receipt of additional financial resources, capacity-building support, and technology transfer, among other things. If such support is forthcoming, global emissions could peak before 2030, with emission levels at the end of this decade being 1.4 per cent lower than in 2019. However, even the full implementation of both the unconditional and conditional elements of the NDCs would lead to an overshoot of the targets of the Paris Agreement – as alignment with 1.5°C and 2°C require cuts of 45 per cent and 25 per cent, respectively, by 2030 (relative to 2010 levels).46

A large number of countries are also making more long-term net zero emissions or carbon neutrality pledges. As of September 2021, just over 130 countries had made such commitments, but not all of them have formally presented them to the UNFCCC.47 Examples include large economies like China, Japan, Brazil, the US, South Africa, South Korea, and the EU, as well as climate-vulnerable developing countries like the Marshall Islands, Barbados, Kiribati and Bangladesh.48 Climate Action Tracker estimates that if these long-term targets – and the NDCs – are fully implemented, global warming could be limited to 2°C.49 Most of the net zero pledges are, however, formulated in vague terms that are not consistent with good practice. The long-term targets are, moreover, only credible if they are backed up by ambitious and robust 2030 NDCs,50 given that substantial cuts in emissions must occur this decade. An additional concern that has been raised when it comes to net zero pledges is that they may encourage reliance on negative emissions technologies, such as bioenergy with carbon capture and storage (BECCS), which have still to be tested at scale to assess land requirement, efficiency and economic viability.51

**[BOX 1 OMITTED]**

The challenge of closing the gap

Bridging the gap between current NDCs and targets that would keep warming to 1.5°C is a defining challenge for governments ahead of COP26. As mentioned, UNEP estimates that the ambition of 2030 targets would need to be enhanced fivefold vis-à-vis pledges made in 2015 to align with a 1.5°C pathway.53 Several large emitters – including the US and the EU – have now submitted their new or updated NDCs. According to Climate Action Tracker, the UK’s target is considered to be compatible with a 1.5°C pathway, while those of the US, EU, Japan and Canada are classified as ‘almost sufficient’.54

It is critical that all countries that have not yet submitted a new or updated NDC do so, and that these pledges are aligned with 1.5°C. It is equally important that countries that have submitted unambitious NDCs revisit their targets. The Paris Agreement states that parties may revise existing NDCs at any time, if the purpose is to enhance ambition.55 The G20 countries have a particularly important role to play. In July 2021, the Italian G20 presidency hosted the first ever G20 Climate and Energy Ministerial meeting. In the final communique the countries in the G20 stated that they ‘intend to update or communicate ambitious NDCs by COP26’.56 The importance of action from all members of the G20 is clear, as they collectively account for 80 per cent of global emissions and as UN Secretary-General António Guterres said, ‘there is no pathway to this [1.5°C] goal without the leadership of the G20’.57

With only a few weeks to go it is, however, unlikely that the 20–23 GtCO₂e gap in targets will be closed by COP26. At the UK-hosted COP26 ministerial in July, a number of ministers stressed that parties would need to respond to any gap remaining by the Glasgow conference. Some suggested that such a response could include a ‘clear political commitment’ to keep 1.5°C within reach, a recognition of the gap, and a plan to bridge it. More specific proposals of actions that could be taken, as part of the response, to keep the 1.5°C pathway alive were also discussed. Suggestions included, but were not limited to, encouraging countries whose NDCs are not consistent with 1.5°C to bring their 2030 targets in line before 2025 (when the third round of NDCs are due); calling for parties to submit concrete long-term strategies for reaching net zero; and/or sending clear signals to markets through actions like phasing out unabated coal, carbon pricing, fossil fuel subsidy reform, nature-based solutions, and decarbonizing transport.58

Achieving a positive COP26 outcome

The **ultimate benchmark** for a high ambition outcome at COP26 is whether the new or **updated NDCs** are ambitious enough to **align with a 1.5°C pathway**. For many communities and ecosystems, the threat of **different climate impacts** between **1.5**°C and **2°**C – not to mention 3°C, 4°C or 5°C – is **existential**. **Each increment of warming** is anticipated to **drive increasingly devastating and costly impacts**, including **extreme heatwaves**, rising **sea levels**, **biod**iversity **loss**, reductions in **crop yields**, and **widespread ecosystems damage** including to **coral reefs** and **fisheries**.59

Keeping the goal of 1.5°C within reach will require substantial action this decade. **Long-term targets** to achieve **net zero emissions** or **carbon neutrality** have the potential to be **powerful drivers of decarbonization** but **need to be supported by ambitious NDCs** as well as **concrete policies** and **sufficient investment**.

Should we reach COP26 without sufficient ambition on NDCs, parties would need to present a plan for how ambition will be raised in the early 2020s. This could include a COP decision or a political statement underscoring the need to keep warming to 1.5°C and inviting parties to revisit their NDCs earlier than the Paris timetable dictates (for instance in 2023 instead of 2025).60 To support more ambitious action, countries should look to **expand international collaboration and accelerate decarbonization** in key sectors. At COP26, parties can help **boost the credibility of their pledges** by **showcasing policies**, measures and sector initiatives that will accelerate decarbonization, including on the phase out of unabated coal and the increased use of electric vehicles (see Box 3).

**[BOX 2 OMITTED]**

**[FIGURE 3 OMITTED]**

In the run-up to COP26, the UK government is mobilizing its counterparts and non-state actors to drive accelerated action on phasing out the use of unabated coal,65 accelerating the deployment of electric vehicles,66 protecting and restoring nature (nature-based solutions67), and aligning financial flows with the goals of the Paris Agreement.68 The role of the private sector is crucial in the transition to net zero economies and is recognized within the framework of the UNFCCC, as they can deliver funding, innovation and technology deployment at a pace and scale beyond that of most governments (see Box 1). It is hoped that some of these initiatives will lead to plurilateral agreements at or ahead of COP26, which could enhance the credibility of mitigation pledges and help keep the 1.5°C target within reach. **Being able to showcase** a package consisting of **ambitious NDCs**, plurilateral deals, and **national policies** at **COP26** could **generate positive momentum** and **create a sense of inevitability** around the **transition to net zero** societies.

**[BOX 3 OMITTED]**

03

Support to climate-vulnerable developing countries

**Increased action on climate finance**, adaptation, and loss and damage is **critical** for **supporting climate-vulnerable developing countries**, **strengthening trust** and **raising ambition on mitigation**.

The year 2020 was one of the warmest on record.80 As COVID-19 ravaged the world, extreme weather events continued to cause severe devastation. In Bangladesh, torrential rains submerged a quarter of the country,81 resulting in hundreds of deaths, mass displacement and damage to more than a million homes.82 Record-breaking floods in Sudan83 and Uganda84 also displaced hundreds of thousands, while super cyclone Amphan raged across South Asia.85 Extreme weather events were also a defining feature of the summer of 2021.

An unprecedented heatwave may have killed almost 500 people in British Columbia,86 as well as a billion marine animals along the Canadian coastline.87 In the Chinese province of Henan people drowned in the subway after a year’s worth of rain fell in just three days.88 Germany and Belgium also experienced death and destruction as a result of severe flooding,89 while villages in Greece burned.90

The impacts of climate change are striking even harder than many anticipated,91 and as temperatures continue to rise extreme weather events are increasing in both frequency and intensity. Limiting global warming to 1.5°C is key to avoiding the most catastrophic events, but substantial measures must also be undertaken to adapt to climate change impacts and build resilience. As the summer of 2021 shows, no country is spared. It is, however, those who have emitted the least that are most at risk,92 and in many countries that are disproportionately affected by climate change – such as the least developed countries (LDCs)93 – financial constraints impede their ability to invest in adaptation, build resilience and deal with loss and damage.94 COVID-19 has aggravated this challenge: while industrialized countries have implemented unprecedented stimulus measures to support their economies – and vaccinated large parts of their populations – many developing countries remain in the midst of a health and economic catastrophe.

**Scaled up action on climate finance**, adaptation and loss and damage are – in addition to increased ambition on mitigation – **key priorities for climate-vulnerable nations** ahead of COP26. Raised ambition and **concrete delivery** in these areas are critical for supporting those at the frontline of climate change, key to **building trust**, and could encourage some parties to **raise the ambition of their NDC pledges**. The **implementation of many NDCs is**, in addition, at least partly **conditional upon receiving increased levels of finance**, as well as other types of support.95

Honouring the $100 billion goal

In 2009, developed countries committed to mobilizing $100 billion per year by 2020 for climate mitigation and adaptation in developing countries.96 This pledge was subsequently formalized in the Cancun Agreements in 201097 and reaffirmed in the Paris Agreement in 2015. The resources provided were to be ‘new and additional’98 and come from a variety of public and private sources.99 The $100 billion goal is a core element of the bargain underpinning the Paris Agreement.100 While achieving the mitigation and adaptation goals of the agreement will require trillions of dollars in investment – of which most will need to come from the private sector – the delivery of the $100 billion is critical to building trust between developed and developing countries,101 and is important for raising ambition on mitigation.102

The OECD estimates that $79.6 billion was mobilized in 2019, which is the most recent year for which official figures are available.103 In 2018, the figure was $78.9 billion, and in 2017 it was $71.2 billion.104 Though the verified figures for 2020 will not be available until 2022, it is clear the target was missed.105

Developed countries have, moreover, not yet been able to show that the pledge will be honoured in 2021, nor demonstrate conclusively how it will be met in the 2022–24 period.106

The pledge by developed nations to mobilize $100 billion to developing nations by 2020 is a commitment made in the UNFCCC process more than a decade ago. It’s time to deliver. How can we expect nations to make more ambitious climate commitments for tomorrow if today’s have not yet been met?107

Patricia Espinosa, 23 July 2021

How the goal is achieved matters. Only around one-fifth of bilateral climate finance is allocated to the LDCs,108 and locally led projects receive low priority.109 There are also concerns related to overreporting and lack of additionality. Oxfam estimates, for instance, that 80 per cent of public climate finance provided over the 2017–18 period took the form of loans or other non-grant instruments, and that the actual grant equivalent only accounted for around half of the total amount of finance reported.110 Furthermore, the Center for Global Development has found that almost half of the climate finance reported between 2009 and 2019 cannot be considered ‘new and additional’.111 There is, finally, an urgent need to close the adaptation finance gap (see next section),112 and facilitate access to finance.113

It is widely recognized that honouring the $100 billion goal is a **prerequisite for success at COP26**.114 The hitherto failure of developed countries to provide clarity on the issue is creating mistrust between countries,115 with the director of the International Centre for Climate Change and Development (who is also an adviser to the climate-vulnerable countries) conveying that, ‘if the money is not delivered before November, then there is little point in climate-vulnerable nations showing up in Glasgow to do business with governments that break their promises’.116 The chair of the LDC Group has also made it clear that, ‘[t]here will be no COP26 deal without a finance deal’. 117

The G7 countries play a critical role in mobilizing the $100 billion,118 and there was a hope that G7 leaders would increase their bilateral commitments substantially – and provide clarity on the $100 billion119 – when they convened in Cornwall in June 2021. Some new pledges were made. Canada, for instance, committed to doubling its climate finance through to 2025 (to CAD $5.3 billion), and Germany pledged to increase its annual commitments from €4 billion to €6 billion by 2025 at the latest.120 The G7 members collectively also committed to ‘each increase and improve’ their public climate finance contributions, and announced they would develop a new international initiative – ‘Build Back Better for the World’121 – the details of which have yet to be fleshed out. However, many developing country officials – and many observers worldwide – expressed disappointment with the summit outcome, with the climate minister of Pakistan describing the G7 commitments as ‘peanuts’.122

Several announcements on climate finance were also made during the 76th Session of the UNGA in September 2021. Most importantly, President Joe **Biden pledged to double US climate finance** (again) from the previously committed $5.7 billion to $11.4 billion per year by 2024. **Actual delivery is, however, contingent on congressional approval**.123 The EU – which already contributes around $25 billion in climate finance per year – also stepped up, announcing an additional €4 billion until 2027,124 while Italian Prime Minister Mario Draghi conveyed that Italy would shortly be announcing a new climate finance commitment.125 Though the **US pledge in particular** has been described as a **critical step forward that ‘puts the $100 billion within reach’**,126 more will need to be done.127

$100 billion is a bare minimum. But the agreement has not been kept. A clear plan to fulfil this pledge is **not just about the economics of climate change**; it is **about establishing trust in the multilateral system**.128

António Guterres, 9 July 2021

**Turns case**

**1. Turns the trade wars advantage AND the populism scenario on the other advantage – BBB failure causes hard protectionism to fill-in AND populist backlash**

**Hubbard 21** (R. Glenn Hubbard, Russell L. Carson Professor of Finance and Economics at Columbia Business School and professor of economics at Columbia University, former chair of the Council of Economic Advisers, “How Do We ‘Build Back Better’?” National Review, Capital Matters, 3-17-2021, https://www.nationalreview.com/2021/03/how-do-we-build-back-better/)

The **pandemic** has intensified a long-standing **divergence in economic outcomes** for **higher- and lower-skilled workers**. Globalization, and especially technological improvements, have made America richer and more dynamic, and have propelled many people forward. But these forces have also inflicted a body blow on our less-educated and less-trained citizens.

A “building” agenda focused on **walls to protect** these **workers** — both literally (against immigrants) and metaphorically (**against imports**) will fail. Yet such an approach is an understandable **political response** to the **lack of action** by neoliberal economists and policy-makers over the years. Pieties about the wonders of markets haven’t meant much to struggling communities in, say, Youngstown, Ohio, and elsewhere.

Now that the American Rescue Plan Act has been signed into law, the **Biden** administration ought to make a push for more Americans to participate in our dynamic economy. We need bridges that prepare and reconnect people to work in the aftermath of those structural forces. Bridges are the counterpart to walls, and they have a long history of success in the United States. From compulsory schooling to land-grant colleges to Social Security to the G.I. Bill, and now to public-private partnerships for economic inclusion: To build a bridge is to “**b**uild **b**ack **b**etter.”

Mass Flourishing as a Moral and Economic Imperative

Policy-makers are often impatient with the extended time it takes for bridges to make a difference. If a community is hurting because of imports or technology, why not just put in temporary **tariffs** or other protections (e.g., a wall)? Very simply, because to do so would be to postpone the inevitable work that all communities must do in order to participate in a dynamic economy.

More important, walls are almost always inequitable. Tariffs on steel might temporarily help a few steelmaking towns, but they ultimately operate at the cost of many more manufacturing towns with falling revenue because of higher prices for a key input. Protections usually favor well-connected groups at the expense of underprivileged communities trying to make it the usual way.

Adam Smith, the father of modern economics, understood this dynamic as well as anyone did. In his day, mercantilist thinkers thought that the wealth of nations consisted of stocks of gold or silver. They wanted to increase those stocks, the better to fund wars and explorations. They convinced kings to intervene in markets to limit competition at home and abroad for favored activities. Trade surpluses were good, trade deficits bad, and state-sanctioned monopolies generated more revenue for the crown.

For Smith, the wealth of a nation lay in its potential for consumption by the great mass of ordinary people. He wanted to make the economic pie as large as possible. The consumer, not the crown or court, was Smith’s economic king.

To expand this wealth, Smith promoted free markets and competition guided by the invisible hand. These forces reconciled self-interest with the expanding pie for everyone. He wanted everyone, even those without connections, to be able to compete, so he encouraged education and other kinds of preparation. Mass flourishing was his goal.

Today’s economy is more complex and disruptive than that of Smith’s day, but we still need broad participation. That’s the only way to keep raising living standards for more people, and bring economic justice to formerly marginalized groups.

Participation is also good for its own sake. Think of mass flourishing as being “in the groove” of the dynamic economy, akin to psychologists’ concept of flow. Like flow, flourishing requires individuals who can raise their game to keep up with wherever the economy goes. People feel a sense of belonging in the economy when they work in open markets.

They don’t get that sense when we try to protect them with walls. Well-connected workers will get those protected jobs, while other people will remain stuck. It’s far better to let consumers’ tastes and incomes shape the opportunities for firms and the employment patterns that follow. And once you start a bit of tinkering in the economy, everyone wants favors, and pretty soon you’ve smothered the economy’s dynamism inside a series of well-intentioned walls.

What It Takes to Build Bridges

To be fair, the federal government has tried to build bridges. Congress passed the Trade Adjustment Assistance Act back in 1962, to funnel resources to communities dislocated by foreign competition. It provided two-thirds of a worker’s wages for up to a year, along with education and training subsidies. It was positive in theory, but the follow-through was almost nonexistent — few workers actually received aid. We’d see a flurry of activity only when an administration wanted to pass NAFTA or other free-trade programs.

This intended preparation is all the more important as the economy reallocates jobs across economic sectors in the aftermath of the pandemic. The best delivery mechanisms are community colleges, public training programs, and companies themselves. We need public-policy changes to advance all three, set within a flexible skills-training system to meet the diverse situations of adults.

Community colleges are the logical workhorses of skill development, and their presence in local economies makes them attractive partners for employers. Economists have found that associate degrees or even high-quality certification programs are enough to boost wages substantially — no bachelor’s degrees necessary. Community colleges also work with local employers to develop certificate programs for training — companies are the best ones to decide what skills are really needed. Too many federal and state job-training programs have failed to target the needs of local employers. Yet community colleges have seen their state-level public support wither.

Many states are now experimenting with eliminating tuition charges, which does boost the demand for higher learning. But numerous studies show that institutional funding on the supply side is essential for students to actually gain skills and complete a degree. Free tuition means little if your institution lacks the services to support your education.

Accordingly, Amy Ganz, Austan Goolsbee, Melissa Kearney, and I recently proposed a supply-side program of federal grants to strengthen community colleges — contingent on improved degree-completion rates and labor-market outcomes. In contrast to calls for demand-side support (i.e., free tuition), the proposal centers on supply-side resources for community colleges in their skill-development mission.

Inspired by the 1863 Morrill Land-Grant program, we set the ambitious goal by 2030 of raising community-college-completion rates (or transfer to four-year colleges) to 60 percent, which is the current graduation rate for students seeking bachelor’s degrees. It also aims at increasing the share of Americans aged 25–64 with post-secondary credentials from 47 percent to 65 percent, the level projected to meet the economy’s skill needs by 2030.

These grants would cost $20 billion annually. That’s substantial, but still small relative to outlays in Biden’s first go at boosting the economy during the coronavirus pandemic. And these grants are an investment in our future, so they will pay off in a more productive economy for many years to come. As with the land-grant colleges, federal funding would work through a block grant so that states could adjust as needed to the local context.

Another bridge can help dislocated workers: temporary income to encourage them to invest in skills rather than in a desperation chase for whatever work they can find. Current unemployment insurance is aimed at people suffering from cyclical layoffs, not the structural disruptions that can last for years. For the latter, a better approach would be personal reemployment accounts (cash to support training periods), and substantially expanding the earned-income tax credit, particularly for younger, childless workers. For the hardest-hit communities, we should also consider place-based aid with extra subsidies for employment.

These bridges aren’t cheap. Timothy Bartik of the Upjohn Institute calculates that a robust series of training and income programs would cost about $30 billion annually. But he estimates that support for local communities would bring employment rates in the bottom quartile by area to the median. The cost raises the stakes in evaluating the relative desirability of the massive costs of the American Rescue Plan Act.

Bridges Require Intentional Business and Government Action

Companies have essential roles to play in building back better with bridges. Especially for dislocated communities, governments alone can’t lead the way in restoring the economy to dynamism. Historically, both the Massachusetts Miracle (from textiles to electronics) and the Pittsburgh Renaissance (from steel to “meds and eds”) demonstrate that future-oriented local business leadership — supported by local and national government — make the difference in local flourishing.

Companies can help reduce frictions in the economy that discourage workers from moving to areas of greater opportunity. State and local governments across the country have erected many kinds of barriers to mobility, from occupational licensing (which disproportionately hurts minority groups) to zoning restrictions (which can legislate existing privileges) to various other regulations and subsidies that favor established businesses. Collectively, the business community must offer its strong voice in defense of competition — just as Adam Smith did in railing against the cronyism of 18th-century Britain.

Indeed, business’s role in bridge building has another, more macro objective: to bolster public support for the dynamic market economy. Corporate indifference to the damage from dynamism will only increase populist rage against capitalism and support for walls. One helpful step here would involve companies devoting a section of each annual report to what they’ve done to build bridges for less-skilled workers.

Returning to Team Biden, the policy process matters in addition to ideas, leadership, and framing. A cabinet-level U.S. task force on economic engagement could deliver all-of-government advice and coordination for the White House. An annual report along with regular congressional testimony would engage the public broadly. Building from local experiences across the United States, business and university leaders could be called upon to serve on an advisory council with the task force.

**2. Turns and solve rogue geoengineering**

**Jayaram 20** (Dhanasree Jayaram, Assistant Professor, Department of Geopolitics and International Relations and Co-coordinator, Centre for Climate Studies, Manipal Academy of Higher Education (MAHE), India; and Research Fellow, Earth System Governance, “Without Attention, Geoengineering Could Upend Foreign Policy,” Wilson Center, 9-30-2020, https://www.wilsoncenter.org/article/without-attention-geoengineering-could-upend-foreign-policy)

In the present situation the uncertainties have multiplied, with the COVID-19 pandemic, geopolitical tensions, and climate change complicating existing challenges. With the pandemic, although there are never-ending calls for a “green recovery”—"to **b**uild **b**ack **b**etter”— some speculate that many renewable energy projects are likely to be delayed. In such a scenario, countries will be more ambitious about pushing ahead with geoengineering projects to achieve their climate objectives. Richer countries may set aside ethical concerns with regard to developing countries and pursue a technocratic solution to climate change. In this context, the need for better governance mechanisms and tools, and the role of foreign policy stakeholders, especially those who engage in climate diplomacy, will be paramount, including in regions such as South Asia.

**1nr – at: thumpers**

**Biden’s focused PC will swing holdouts – insiders are confident**

**Deese et al 11-9** (Brian Deese, director of the National Economic Council, former senior advisor to President Barack Obama, JD Yale Law School; interviewed by Yamiche Alcindor, White House correspondent for the PBS NewsHour, MA broadcast news and documentary filmmaking, New York University; “White House ‘confident’ Congress will pass Build Back Better bill,” PBS NewsHour, 11-9-2021, <https://www.pbs.org/newshour/show/white-house-confident-congress-will-pass-build-back-better-bill>)

President Joe Biden is expected to sign the bipartisan infrastructure deal into law, securing a major legislative victory. But his larger **economic and social spending** package **still remains a subject of concern** as members of Congress mull its provisions. Yamiche Alcindor talks to Brian Deese, director of the National Economic Council for the Biden administration, about those negotiations.

Read the Full Transcript

**Judy Woodruff:**

President Biden will soon sign into law one major piece of his agenda, the bipartisan infrastructure deal, securing a major legislative victory.

But there is **still work to be done** to get his larger economic and social spending package over the finish line.

Yamiche Alcindor talks to one of the White House's key negotiators on where it all stands.

**Yamiche Alcindor:**

Since the infrastructure vote on Friday night, the Biden administration has directed its focus to the Build Back Better package. That's the $1.75 trillion bill with money for child care, health care, and climate change.

It needs nearly every House Democrat and all 50 Senate Democrats on board to pass.

Brian Deese is the director of the National Economic Council for the Biden administration. He's been a central figure in these negotiations. And he joins me now from the White House.

Brian, thank you so much for being here.

President Biden will soon pass the bipartisan infrastructure plan, but there were many lawmakers who wanted it tied to the Build Back Better act. What assurances can you give Americans that that Build Back Better act is going to become law? And how soon do you expect that to happen?

**Brian Deese, Director, National Economic Council:**

Well, for starters, what I can assure folks is that signing this historic infrastructure bill is going to do a lot of good for the country.

We have waited decades to actually do something about infrastructure. And, in that period, the United States has fallen behind. We're 13th in the world in infrastructure.

And with this piece of legislation that the president will sign soon, we're going to make historic investments in rebuilding both our physical infrastructure ports, and airports, roads, and bridges, transit, but also provide high-speed Internet to all Americans, clean water by replacing lead service lines across the country. So this is a big set of investments, a capital investment in America that we have waited way too long to do, and we're now finally going to make happen.

And I think that's **going to build real momentum** for getting the second half of the president's economic agenda, the **B**uild **B**ack **B**etter plan, into law. That will start **next week**, where we anticipate a **vote in the House**, and **then onto the Senate** as well.

**Yamiche Alcindor:**

Now, the Congressional Budget Office said today that it's releasing estimates for individual titles on this bill, but that it's not clear when it will have a final cost for the final bill.

There are some moderates who say they want to see a CBO score before they vote for this. House Speaker Nancy Pelosi has said that she wants to vote on this Build Back Better Act on the week, next week, the week of November 15.

How sure are you — how sure are you that this CBO score will be available by then? But also how worried is the president and yourself that there won't be the score needed to pass this bill in the House?

**Brian Deese:**

Well, we're very confident that this bill is fiscally responsible and fully paid for.

We saw last week the Joint Committee on Taxation, which is the gold standard for the revenue provisions in this bill, reinforce that there is more than enough revenue, **more than enough offsets** to offset all of the new investment in this package.

And this is the typical process. Both chambers of Congress typically vote on bills when they have enough information. So, we anticipate that there will be more information provided to lawmakers this week, and, consistent with the commitments that lawmakers and leadership made, that there will be a vote next week, based on that additional information, in the House.

This is a process. The bill **will pass the House** and then will go to the **Senate**. But, at the end of the day, the most important bottom line is, these are high-value, targeted investments in the American people and the American economy that are fully paid for.

**Yamiche Alcindor:**

How confident are you that you have the votes to get this Build Back Better Act passed?

And I also wonder what — you're in the room. What are you telling lawmakers as you try to close this deal?

**Brian Deese:**

We are **confident** that this framework **will pass the House** and **will pass the Senate**. And what we're telling lawmakers is, this is an easy vote.

The American people are looking to lower the cost of prescription drugs. They're looking to lower the cost of child care and to provide a tax cut to middle-class families, so they finally can have some breathing room. People who are anxious about their economic circumstance, are seeing higher prices, what we — this bill will do is actually lower prices, lower inflationary pressure by getting more people to work.

And it is fully paid for, and paid for in a responsible way, by asking the largest companies to pay a bit more, as well as the wealthiest Americans. So this is a straightforward plan to deliver where the American people need it most. We're making that case. And we're confident that **we can get it through both houses of Congress**.

**Yamiche Alcindor:**

I want to also ask you about paid **family leave**. It was added back into the Build Back Better Act.

But **senators, including** Senator **Manchin**, they have been opposed to this. I wonder, do you expect paid family leave to be in the final bill?

**Brian Deese:**

Well, we're going to work on this issue, and we will see. There's some **twists and turns ahead**.

Paid family leave is certainly something that the president has always and consistently been supportive of. There's been concerns raised by members of Congress. So we're **going to work that through**.

But I think, at the core, the question is not what is not going to be in this package, but what this package will actually deliver for the American people. We have been talking about something like universal preschool for years and decades. Again, economists of all stripes have identified that as the one of the highest investments we could make in terms of value for the American economy, getting all our 3- and 4-year-olds educated at an early age.

We have the potential to get that done and, again, get it done in a way that is fiscally responsible, fully paid for, doesn't raise taxes for anyone making less than $400,000 a year. That's the plan.

**Yamiche Alcindor:**

And, Brian, in the last administration that you worked for — that would be former President Obama — you were also a key expert on climate change.

I want to ask you about climate change in this bill. Are you worried that there are critics who think that you gave up too much on climate and that this bill is too **watered down** as it relates to those issues**?**

**Brian Deese:**

This bill, **as it's structured**, would be the **largest and most significant investment in climate change** in our nation's **history** **by a significant factor**.

It would, if enacted, **reduce one gigaton of emissions** from our economy. And, most importantly, it would **spark new economic engines** in our economy, from the electric vehicle industry, to the clean power industry, not only putting people to work in good-paying jobs around the country, but creating new export opportunities, so that the United States is actually exporting the next generation of, for example, American-made vehicles, electric clean vehicles all around the world.

It's an enormous economic opportunity and a very significant investment. We feel good about what we can get done on climate change, in the same way that we feel good about what we can do to get more people to work by providing child care and eldercare and preschool.

**Yamiche Alcindor:**

And, right now, Americans are facing some real economic struggles. Gas prices are at a record high, the highest, some experts say, that they have been in seven years. There are people that are paying more for the meat that they want to put on the Thanksgiving table.

What do you say that to some critics who think that the White House is too focused on long-term investments and are not focused enough on sort of short-term right now relief for Americans?

**Brian Deese:**

Look, President **Biden** understands deeply the impact that higher prices can have on a typical family, whether that's the price at the pump or the price at the grocery store.

And he is **focused like a laser** on those issues. In fact, just today, he was making calls to CEOs of some of the biggest companies, our biggest retailers, as well as freight movers, like FedEx and UPS, to talk about how we can unstick the bottlenecks, some of these bottlenecks that are keeping goods from moving as quickly as they can throughout the economy.

So he is on this case. But I would also underscore the economic momentum and progress that we are making is real. We have seen 5.6 million jobs created. The unemployment rate is down to 5.6 — to 4.6. That's two years faster than most experts created.

And a lot of these supply chain challenges are actually a reflection of the fact that we are moving more goods, more products through the American economy now than at any time in history, significantly higher than before the pandemic. That's a good thing. It reflects the fact that Americans are out there unable to buy goods again.

We're going to work through those challenges. And we are on that every day in the short term. But we think we can focus on both the short term and the medium and longer-term challenges. Part of why we're in this problem is, we haven't invested in building our infrastructure, so that we have more resilient ports, more resilient roads and bridges around America.

We can do both of these things. That certainly is what we're focused on.

**Yamiche Alcindor:**

Well, thank you so much for joining us, Brian Deese, the director of the National Economic Council.

**Brian Deese:**

Thank you.

**NO thumpers – they’re all priced in – Biden has enough PC** despite other must-pass votes like avoiding shutdown and debt default

**Romm 11-6** (Tony Romm, congressional economic policy reporter at The Washington Post, “With infrastructure victory in hand, Democrats brace for next battle over $2 trillion spending bill,” The Washington Post, 11-6-2021, https://www.washingtonpost.com/us-policy/2021/11/06/congress-biden-spending-deal/)

With a roughly $1.2 trillion bill to improve the nation’s infrastructure now behind them, Democrats must prepare to turn to their next, perhaps tougher task: Shepherding the rest of President Biden’s economic agenda through Congress.

The successful vote in the House late Friday marked only the first of two spending initiatives that Biden has called on Congress to adopt for months. Still another roughly $2 trillion in new tax and spending investments are awaiting action in the House and Senate, where party lawmakers harbor grand ambitions to overhaul the nation’s health care, education, climate, immigration and tax laws.

Beginning in the spring, many Democrats had hoped to move these two bills in tandem, a strategy meant to satisfy liberals and moderates who were warring with each other over the size and scope of their spending priorities. But the House this week essentially opted to divorce them, adopting an infrastructure bill that had been stalled since August while voting to open debate on the remainder of their plans.

That tees up for Congress an **eleventh-hour sprint** in the waning moments of the year through treacherous political terrain. The $2 trillion tax-and-spending proposal is still unsettled policy in the eyes of moderates, including Sen. Joe **Manchin** III (D-W.Va.), who long has sought to whittle down its price tag. And the debate is set to arrive just as Congress is preparing to take on **a host of additional challenges**, including a renewed need to **fund the government** in December, that could distract Democrats in the end.

For all the hurdles they face, **however**, Democrats this week sounded an **upbeat** note — **emboldened anew** after achieving a **fresh political victory**.

“Let me be clear: We **will pass** this in the **House**. And we **will pass** it in the **Senate**,” Biden said during a speech Saturday heralding the passage of the infrastructure bill.

The $2 trillion measure — called the “Build Back Better Act,” which bears the name of the president’s 2020 campaign slogan — aims to expand the footprint of government to deliver more robust services to American workers and families, especially those in greatest need.

**1nr – at: link turn**

**Plan’s unpopular – stuff**

**Reform efforts face fierce opposition that requires political capital.**

**Jones and Kovacic 20** (Alison Jones, Professor of Law, King’s College London; and William E. Kovacic, Global Competition Professor of Law and Policy, Professor of Law, and Director of the Competition Law Center, at George Washington University Law School, former General Counsel, Commissioner, and Chairman of the Federal Trade Commission; “Antitrust’s Implementation Blind Side: Challenges to Major Expansion of U.S. Competition Policy,” The Antitrust Bulletin, 65(2), 3-20-2020, DOI: 10.1177/0003603X20912884)

New legislation envisaged by reform advocates could ease the path for current government agencies seeking to reduce excessive levels of industrial concentration by arresting anticompetitive behavior of dominant enterprises (through interim and permanent relief) and by blocking mergers that pose incipient threats to competition. It seems clear, however, that such dramatic legislative proposals are **likely to be fiercely contested through the legislative process** and so **will take time**, and **be difficult, to enact**. Further, even if armed with a more powerful mandate, the DOJ and the FTC will still have to bring what are likely to be challenging cases applying the new laws (see Section F). The adoption, setting up, and bedding in of new legislation or regulatory structures and bodies is therefore unlikely to happen very quickly and is, consequently, unlikely to meet the demands of those seeking urgent and immediate action now.

These difficulties suggest that for the near future, at least, the agencies will have to achieve successful extensions of policy mainly through launching themselves into a number of lengthy, complex investigations and litigation based on the current regime. This means establishing violations under existing judicial interpretations of the antitrust laws and making a convincing case for the imposition of effective remedies, including structural relief.

**Especially since you said you’re the FTC**

---Not thumpers b/c not Congressional actions

**Nylen**, 7-1-**21** (Leah, “Unlike anything I’ve seen at the FTC’: Biden’s chair makes her public debut,” accessed 7-5-21, <https://www.politico.com/news/2021/07/01/ftc-lina-khan-antitrust-chair-497764>) JFN

The **F**ederal **T**rade **C**ommission's first meeting under new Chair Lina Khan broke **decades of precedent** Thursday by taking place in public — something unheard-of for the notably secretive antitrust and consumer protection agency. Then it pushed through a series of actions on progressive Democrats' wish list: Fines for companies that lie about products being "Made in America." Greater latitude for launching antitrust probes and lawsuits. And a wider door to writing new regulations — something else the FTC hasn't done much of in decades. All this came despite **fierce objections** from the commission's two Republicans, in a sign that **partisan rancor** is also **back** in vogue at the Biden-era FTC.

***burns Biden’s PC* and trades-off with other legislative priorities.**

* Bipart link turn wrong – general consensus loses-out to details like what will be included, excluded, etc.

**Folio ‘21**

et al; Joe Folio – Counsel at Morrison-Foerster- Before joining the firm, Joe most recently served as Chief Counsel for the U.S. Senate Committee on Homeland Security & Governmental Affairs, where he advised on all issues falling within the committee’s broad jurisdiction, including cybersecurity, border security, domestic terrorism, election security, supply chain security (including 5G policy), and reforming the National Emergencies Act. “Antitrust Update: Up and Down the Avenue” - Morrison-Foerster- 22 Mar 2021 - #E&F – ellipses in original - <https://www.mofo.com/resources/insights/210322-atr-update.html>

**Meanwhile, on Capitol Hill …**

Down the avenue, Congress is debating whether to provide the agencies with additional tools and resources. But how realistic are the prospects for legislative reform ?

In short, although the prospects for sweeping legislative reform of the antitrust laws **are dim**, targeted reforms appear increasingly likely, especially increased funding for the agencies. In October 2020, the House antitrust subcommittee concluded a year-long bipartisan investigation into these issues, and the House Democrats published a lengthy report detailing their findings and making recommendations for reform. Notably, the House Republican response identified several areas of agreement, including “providing antitrust enforcement agencies with the necessary resources.” [3] House Republicans also made it clear that they too are concerned about tech companies “using ‘killer acquisitions’ to remove up-and-coming competitors from the marketplace,” and that the burdens of proof for mergers and predatory pricing cases need to be reevaluated.[4] On March 18, 2021, however, the Republican ranking member on the committee reiterated a shared interest in reforming the evidentiary burden of proof in merger cases, which he described as having become “essentially insurmountable” and “a grant of near total immunity to big tech companies.” Although a path to agreement on more substantive issues typically has many obstacles, reforming the burden of proof in certain instances may be emerging as the most likely candidate for significant legislative action.

In the Senate, on February 4, 2021, newly installed antitrust subcommittee chair Senator Amy Klobuchar (D-MN) introduced a bill that would overhaul existing antitrust laws. Among other reforms, it would lower the government’s burden of proof to block a merger, shift the burden of proof in certain cases and require the merging parties to justify the deal, and increase funding for both the DOJ Antitrust Division and the FTC. At the subcommittee’s March 11, 2021 hearing related to the bill, subcommittee ranking member Senator Mike Lee (R-UT) (who promptly released a statement noting his opposition to Ms. Khan’s nomination) made it clear that he firmly opposes “a sweeping transformation of the antitrust laws.” Throughout the hearing, however, there appeared to be bipartisan support for taking some sort of action to address these issues, and at the very least to provide increased funding to the DOJ and FTC. Even Senator Lee, who recently introduced a bill that would combine the DOJ and FTC to avoid inefficiencies in antitrust enforcement, acknowledged that agency leaders need the resources that are necessary to vigorously enforce antitrust laws.

So, what does it all mean?

In these circumstances, the most likely outcome appears to be antitrust officials creatively using their existing tools to enhance enforcement while not so quietly pressing Congress for additional assistance. On March 16, 2020, acting FTC Chair Rebecca Slaughter advocated for increased scrutiny of mergers between pharmaceutical companies. She also told the House antitrust subcommittee that the agencies “should consider withdrawing” the guidance for “vertical” mergers issued during the last administration to allow for more aggressive enforcement.[5] But at the same time, FTC Commissioner Noah Phillips explained that the agency would not be able to challenge certain deals without more funding. The Biden administration and the agencies will need to determine how to square those positions. Also, even assuming Congress could provide the agencies with additional funding quickly (on top of the additional $20 million Congress provided to the FTC in December 2020), using that funding to hire additional attorneys will take time.

The path for meaningful legislative reform remains **extremely complicated.** The prospect for reform depends **significantly** on whether members of Congress, congressional leadership, and the Biden administration are willing to expend the time and **p**olitical **c**apital **necessary** to pass a reform bill (which also assumes the relevant parties **can agree** on what should be included—**or**, **perhaps more importantly**, **excluded**—from that bill). In light of **competing priorities,** the absence of key personnel, and the already narrowing congressional calendar (**major** non-appropriations **legislation typically will not move after July in an election year** (2022)), **those prospects appear** to be **slim.** In the meantime, we expect that Congress will continue to focus attention on these issues with more hearings and new legislative proposals, but it remains to be seen when attention will become action.

**“unity” link turn wrong – the illusion of “consensus” falls apart at game-time. In *practice*, the GOP wants highly-mild approaches.**

**Browdie ‘21**

et al; Megan Browdie is a Partner at The Cooley Law Firm Megan is recognized by Super Lawyers and LMG’s Expert Guides as a “Rising Star” in antitrust and by Who’s Who Legal as a “Future Leader.” Megan was also recognized by the American Bar Association as a Top 40 Young Lawyer, which recognizes lawyers who “exemplify a broad range of high achievement, innovation, vision, leadership, and legal and community service.” At Georgetown University Law Center, Megan was the executive notes editor of the Georgetown Journal of Legal Ethics and interned at the Bureau of Competition at the Federal Trade Commission. Georgetown University Law Center, JD, 2010 - “BIDEN/HARRIS EXPECTED TO DOUBLE DOWN ON ANTITRUST ENFORCEMENT: NO “TRUMP CARD” IN THE DECK” - Concurrences – #1 - Feb 15, 2021 - #E&F – modified for language that may offend - available at (scroll down): https://www.concurrences.com/en/review/issues/no-1-2021/on-topic/the-new-us-antitrust-administration-en#abbott

VI. DRAMATIC ANTITRUST LEGISLATION UNLIKELY, THOUGH EXPECT SOME LEGISLATIVE MOVEMENT

34. Progressives in Congress are pushing a more aggressive antitrust enforcement agenda. As discussed above, the Subcommittee on Antitrust Law of the House Judiciary Committee recently issued a report calling for the antitrust laws to be updated. The Digital Competition Report proposed several reforms, including “[s]trengthening Section 7 of the Clayton Act, including through restoring presumptions and bright-line rules, restoring the incipiency standard and protection nascent competitors, and strengthening the law on vertical mergers.” The Committee also proposed “[s]trengthening Section 2 of the Sherman Act, including by introducing a prohibition on abuse of dominance and clarifying prohibitions on monopoly leveraging, predatory pricing, denial of essential facilities, refusals to deal, tying, and anticompetitive self-preferencing and product design.” [39]

35. Democrats have also been active on the Senate side. For example, Democratic Senator Klobuchar has also proposed legislation, the Anticompetitive Exclusionary Conduct Prevent Act, that, among other things, would amend the Clayton Act to prohibit “exclusionary conduct,” defined as conduct that “presents an appreciable risk of harming competition” and would create a presumption that conduct is exclusionary if undertaken by a company with a greater than 50% share in the relevant market. [40]

36. While House Republicans released a minority response largely supporting Democrats’ findings, they expressed concerns about **sweeping solutions** and instead advocated for refinements to current law. [41] For example, regarding nascent competition, the minority response to the Digital Competition Report explained that “Congress should look to reinvigorate the antitrust enforcement agencies’ ability to conduct proper oversight and bring enforcement cases based on **potential competition doctrine**. This may require legislation restoring the potential competition doctrine to its original Congressional intent while freeing it from its current overly restrictive standards.” The minority response also agreed that “[c]onservatives should consider supporting very **limited legislative changes** to provide consumers with a data portability standard that is similar to transferring cell phone numbers.”

37. There is also pending legislation introduced by Republicans that would more closely align FTC and DOJ processes (the SMARTER Act) and that would combine the agencies (the One Agency Act).

38. Current leadership at the agencies appear to agree with the Republicans’ more cautious approach. For example, Chairman Joe Simons, while having touted himself as “responsible for overseeing the re-invigoration of the FTC’s non-merger enforcement program” during his tenure as director of the FTC Bureau of Competition under Bush, has pushed back on these “expanded” theories of antitrust harm. For example, he argued in January 2020 that “U.S. antitrust laws are sufficiently robust to handle competition problems as they arise. Over the years, antitrust laws have proven to be very flexible and resilient in enabling enforcers to challenge conduct that harms competition in a broad range of markets. These laws have proved themselves effective even as the economy evolved with technological progress.” [42]

39. Given this disagreement, and that the Democrats, at best, will have a very thin majority in the Senate, we anticipate some modest modifications to the antitrust laws but expect **serious pushback** to **substantial overhauls of the** system or **laws.**

**1nr – pc wrong/fails**

**Biden’s PC is working – his personal involvement passing infrastructure proves – that’s Barron-Lopez – AND…**

**Brodey 11-6** (Sam Brodey, Congressional Reporter at Daily Beast, and Scott Bixby, White House Reporter at Daily Beast, “Democrats Hand Joe Biden His Long-Awaited Infrastructure Win,” The Daily Beast, 11-5-2021, updated 11-6-2021, https://www.thedailybeast.com/democrats-hand-joe-biden-his-long-awaited-infrastructure-win)

After a torturous series of never-ending Infrastructure Weeks, President Joe **Biden** and congressional Democrats took the largest step yet toward ending the political Groundhog Day.

On Friday night, House Democrats passed a $1.2 trillion bipartisan infrastructure bill, 228-206, with 215 Democrats and 13 Republicans voting for the bill, and six Democrats and 200 Republicans voting no.

Since the legislation has already passed the Senate, the so-called Infrastructure Investment and Jobs Act now heads to Biden’s desk for his signature, allowing the president to claim a major win as his approval ratings sag.

That victory only arrived after **Biden** and Democratic leaders **strong-armed progressive** lawmakers enough to get them to relent on what had previously been the party’s official position: that the infrastructure bill travel alongside a $1.75 trillion social spending bill titled the Build Back Better Act.

Progressives had successfully kept the two bills together for months, fearing that moderates wouldn’t vote for the latter without holding the former as leverage.

But with pressure growing from Biden and Speaker Nancy Pelosi (D-CA) to pass the infrastructure bill, progressives had little choice on Friday but to take a legislative leap of faith.

While Biden and moderates got their win, liberals left the Capitol with a **successful procedural vote** to advance **B**uild **B**ack **B**etter to the House floor—and with a **written promise** from **moderates** to vote for the legislation if it gets a positive fiscal analysis from Congress’ independent budget watchdog.

For progressives, the trade was not ideal. But lawmakers acknowledged it was about all they had.

“It erases a lot of the doubt,” Rep. Dan Kildee (D-MI), a member of Democratic leadership, told The Daily Beast. He admitted there was always doubt with these arrangements. "But I feel fairly confident," he said.

After a day that former Congressional Progressive Caucus chairman Mark Pocan (D-WI) dubbed “a clusterfuck,” the vast majority of the CPC decided the commitments from a few moderates to vote for the Build Back Better Act—as long as the Congressional Budget Office came back with a score in line with the White House’s—was enough.

After hours of suspense, at 11:25 p.m. Friday night, the bill passed the House, with Republicans providing the last crucial votes to get the legislation over the finish line.

Clearing the House is not the Build Back Better Act’s main issue, however. That claim to fame belongs to Sen. Joe Manchin (D-WV).

The centrist Democrat's opposition to key planks of the Build Back Better Act has already forced Democrats to cut the size of the bill in half. And he is still not committed to passing the legislation. He said this week it would take some time for him to consider it, but his tone during a Monday press conference seemed to solidify in the minds of progressives that Manchin may never get to yes.

On top of a tenuous path to becoming law, there are immigration provisions in the social spending bill—crucial for some House Democrats—that are likely to get stripped out because they don't conform to the Senate’s special rules for a bill that passes with just 51 votes in the 100-member chamber.

So, for those Democrats who support getting some kind of legislation enacted to fulfill the party’s promises on climate, health care, and the economy, their ability to keep the infrastructure bill tied to the Build Back Better Act has been critical for passing the entirety of Biden’s agenda. Now, they must hope House moderates keep their word—and **trust that Biden can** somehow **get Manchin to embrace** a package he has called a “recipe for economic disaster.”

It’s a gamble progressives very reluctantly took. And it’s one that could easily backfire. There’s **no guarantee the Senate will pass** the social welfare bill, which would include an expansion of universal preschool, investments in affordable housing, an expansion of Medicaid and Medicare benefits, and provisions to lower prescription drug prices for seniors, as well as tax credits for parents, low-income workers, and clean energy.

But faced with the prospect of continued Democratic inaction—and progressives catching the blame for blocking a bipartisan infrastructure bill—Progressive Caucus Chairwoman Pramila Jayapal (D-WA) moved off her earlier demand that the two bills pass both chambers to a new demand: both bills pass the House.

That would allow the infrastructure bill to become law while the **president** and other Democratic leaders try to **win over Manchin** on the Build Back Better Act. And that shift prompted **new optimism** that Democrats **could close compromises** to please their ideologically diverse and paper-thin majorities.

The problem with this plan, to pass both the bills in the House, was that a half-dozen moderates insisted on seeing a CBO score for the Build Back Better Act. That led Pelosi to develop a new plan, demanding even more concessions from progressives. The speaker wanted to pass the infrastructure bill, and then instead of passing the social spending bill, just set up debate for it.

Initially, the adapted plan was just too much for Jayapal and other progressives. They swore they would vote down the infrastructure bill if the Build Back Better Act wouldn’t pass the House too.

Nevertheless, Pelosi pressed ahead with a vote. She surprised Democrats by announcing votes on the infrastructure bill and the procedural vehicle for the Build Back Better Act for Friday night, and the Progressive Caucus had a marathon session to mull their response.

Members were **under immense pressure**; Jayapal, who had been open and talkative with the press throughout the process, left at one point without saying a word to journalists. CNN later reported that she was taking a call from Biden, and whereas **Biden** didn't explicitly ask for Democrats to pass the infrastructure bill last week—when a vote fell apart—he **repeatedly pressured** progressives to relent this time.

Progressives fumed that the handful of moderates who withheld their support for the Build Back Better Act were not subject to similar pressure. Aides vented publicly and privately about the narrative that progressives are the problem children of the party, when moderates hardly ever face the same criticism. And progressives can credibly claim they are trying to ensure that both planks of Biden’s agenda become law, while moderates leave ample room for doubt over whether they support anything beyond the infrastructure bill.

Still, progressives reluctantly coalesced around a plan to accept the word of a moderate faction that they have openly distrusted—and which has openly distrusted them.

Biden, who cancelled a planned trip to his Delaware vacation home at the last minute Friday, instead spent the evening in the residence alongside his legislative affairs team, “making calls and staying in close touch with leadership and members,” according to a White House official. Vice President Kamala Harris also joined in making calls.

“I am urging all members to vote for both the rule for consideration of the Build Back Better Act and final passage of the Bipartisan Infrastructure bill tonight,” Biden said in a statement released as he joined those calls. “I am confident that during the week of November 15, the House will pass the Build Back Better Act.”

The president, whose frequent calls for congressional Democrats to pass both measures in one go had become increasingly desperate, urged the Congressional Progressive Caucus earlier on Friday to vote on the BIF immediately, according to a White House official, with no mention of the massive social spending measure.

“The **president** is speaking with House leadership, progressives, and **moderates** in an effort to come to a solution,” the official said, “and he has been urging a vote tonight.”

Earlier on Friday, principal deputy White House press secretary Karine Jean-Pierre told reporters that the president had been “in close touch” with House members as he advocated for a “yes” vote on a bill that the caucus already supports.

“I can’t speak for the mechanism” on voting Friday, Jean-Pierre said when asked about timing, but “if it’s today, that’s wonderful, that’s great.”

Jean-Pierre was straightforward about the potential electoral effect that the months-long delay in passing the spending packages had on Democrats in elections this week, telling reporters that the loss of the Virginia governor’s mansion was evidence that “the American people felt we hadn’t moved quickly enough.”

“We just have to act—we cannot not deliver for the American public,” Jean-Pierre said, adding that the shortened patience of the American public had become clear to the administration. “The time is now to get this down—that’s how his assessment is.”

**Ultimately, Biden got what he wanted**. And as the House finished the infrastructure vote, Democrats cheered at a legislative accomplishment that has eluded multiple presidents.

**Manchin and Sinema are NOT immune – prefer empirics**

**Sirota 21** (David Sirota, award-winning journalist at The Guardian, editor and founder of The Daily Poster, editor for Jacobin, former speechwriter for the 2020 Sanders presidential campaign and former aide to then-Congressman Bernie Sanders in the 1990s before launching a career as an investigative journalist, “Joe Biden says his hands are tied on a $15 minimum wage. That's not true,” The Guardian, 3-1-2021, <https://www.theguardian.com/commentisfree/2021/mar/01/joe-biden-minimum-wage-democrats/>)

When a Republican is president, Democratic politicians, pundits and activists will tell you that the presidency is an all-powerful office that can do anything it wants. When a Democrat is president, these same politicians, pundits and activists will tell you that the presidency has no power to do anything. In fact, they will tell you a Democratic president cannot even use the bully pulpit and other forms of pressure to try to shift the votes of senators in his own party.

A tale from **history proves** this latter **myth** is **complete garbage** – and that tale is newly relevant in today’s supercharged debate over a $15 minimum wage.

In that debate so far, we have seen Democratic senators prepare to surrender the $15 minimum wage their party promised by insisting they are powerless in the face of a non-binding advisory opinion of a parliamentarian they can ignore or fire.

That explanation is patently ridiculous and factually false, so Democratic apologists are starting to further justify the surrender by suggesting that even if the party kept a $15 minimum wage in the Covid relief bill, conservative Democrats such as Joe **Manchin** and Kyrsten **Sinema** would block it anyway.

The White House itself is now falling back on the idea that it doesn’t have the votes to do much of anything, insinuating that Joe **Biden** – who occupies the world’s most powerful office – somehow has no **power to try to change the legislative dynamic**. And this **spin** is being predictably **amplified across** social **media**.

To be sure, there is no guarantee that Manchin or Sinema could be moved. Maybe they couldn’t, but maybe they could, considering they have both previously supported bills to increase the minimum wage. And **we know** they may be **sensitive to pressure**. After all, Manchin recently freaked out and whined that “no one called me” when Vice-President Kamala Harris dared to do one straightforward interview with a West Virginia television station.

Whether such pressure ultimately works, the point is indisputable: it is laughable and preposterous to argue that a newly elected president has zero power to even try to shift the dynamic.

And yet, whether you call this all deliberate deception or learned helplessness, this fantastical myth of the Powerless President will inevitably be used to shield Biden from criticism for abandoning his pledge to fight for a $15 minimum wage.

The apologism is particularly absurd because unlike his predecessor Barack Obama, who was a relative newcomer to politics, Biden’s major selling point was that he knows “how to make government work”. The guy explicitly pitched himself as the best Democratic presidential candidate by suggesting that in an era of gridlock, he knows how to make the Democratic agenda a reality and Get Things Done™, like master of the Senate Lyndon Baines Johnson.

That’s where LBJ himself comes in to destroy the narrative that Democratic presidents in general – and Biden specifically – are inherently helpless.