# International Obligations Paper

The 2025-26 policy debate topic should focus on changing domestic policy by undertaking international obligations.

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Note: Throughout this paper, we opted to reduce our use of inline evidence in favor of hyperlinks to evidence in the index. If you see [blue underlined text](#_top), you can Control + Click it on Windows, or just click it on Mac, to see the corresponding evidence.

### Elevator Pitch

1. This topic will force affs to undertake an international obligation that forces the US to depart from its current domestic policy or practice. The organizing question concerns the utility of communicating about unilateral policy changes in international legal terms.

2. Vote for this topic if you want an international topic that is not destroyed by Trump. Aversion to international commitments is a bipartisan reality. Trump's behavior and inability to credibly commit to policy courses influence aspects of the debate without sucking people in and without risking flipping the table every other week.

Trump certainly makes it difficult to credibly commit to an international obligation; this topic transforms that into a feature by allowing affirmative teams to take advantage of a sliding scale of durability and mechanism specification, improving their solvency at the cost of creating negative counterplan options.

3. Whether you like small or large topics, this paper contains scaffolding you can work with. A combination of weak functional limits (must be credible, must be international), strong functional limits (must be ratification / CEA), a list, or any combination can be used to calibrate 2A suffering to precisely the desired level.

4. Vote for this topic if you want to cover a diversity of subject matter. Want to talk about China? Read an aff about international economic law or debate about the relative merits of the US and China as formative actors in the international order. Want to talk about immigration? Read an aff about the refugee or statelessness conventions. While ‘international obligations key’ is a difficult requirement, there will be significant variance between the types of agreements that manage to clear the bar.

5. Want to read a topical K aff? Use the 'US' actor and legal informality of the phrase 'international obligations' to read an aff about the role of solidarity between communities and movements beyond national borders, and the role of 'nation' in cohering movement identity.

### Proposed Wording

The [United States / United States federal government]

--This topic can say ‘United States’ on the basis that domestic political divisions aren’t really relevant for purposes of international obligations and because we want to include topical K mechanisms.

--OR, we could write it to say ‘federal government’ on the basis that some of the treaties in question were primarily defeated based on their implications for federalism and defending federal action isn’t particularly difficult when talking about international obligations.

--We recommend the former. The states CP isn’t an important literature-based topic generic due to the intrinsically federal nature of treaty ratification and international law obligations.

--'United States’ is a better way to provide opportunities for topical non-state affirmatives than any alternative. It creates significantly more space for counter-interpretation than ‘federal government’ without undermining limits in policy debates, since expansive interpretations of ‘United States’ are unlikely to be successful in a debate between two traditional policy teams.

should [significantly] depart from its [domestic policy / domestic practice]

--The idea behind this phrase is to sideline the set of treaties where the US is already in full compliance but has not ratified for primarily domestic political reasons. We don’t want the topic to include cases that ratify obviously good and purely cosmetic ideas. Forcing a departure from current policy or practice means affs must select agreements with which the US had made an affirmative choice not to comply; this makes it highly likely that negs will be able to find substantive objections to the policy.

--Choosing ‘policy’ here is potentially disadvantageous for two reasons: 1) it limits out topical K affs, and 2) it allows affs to ratify a behavior that reflects the preponderance of current state practice as long as that state practice hasn’t been formally written down as part of a policy statement. Choosing ‘practice’ is potentially disadvantageous because it arguably allows teams to remedy small instances of noncompliance with treaties we already claim to comply with.

by [undertaking] an [international obligation].

--An [undertaking](#_Undertake) is a commitment to an obligation; an [international obligation](#_International_Obligation) is an obligation under international law.

--One important consideration is ensuring that the aff is able to align all aspects of policy with its new international obligations if the aff chooses to do so. We wouldn’t want affs to spend all year losing to ‘Trump doesn’t follow through’. Put another way, it must be topical to *implement* a *new* agreement, even as it is NOT topical to *merely implement* an obligation we’ve *already undertaken*.

--As far as I can tell, most of CIL is excluded by this particular phrasing; it is in the nature of law derived from custom that states undertake its associated obligations through their mere participation in the community of nations.

--If we wanted to allow more of that in, we might restructure the resolution to use a phrase like ‘incorporate into domestic law’—while not making the ratification PIC compete, this would actually force the aff to go beyond ratification by requiring domestic legal enforceability for international obligations rather than merely international legal commitments. To explain why would require a lengthier diversion into the debate about whether the US is truly a monist or dualist legal system with respect to international law. In truth it is somewhere in the middle. The constitution incorporates US international obligations into domestic law; modern domestic courts, however, do not enforce non-self-executing treaties that lack domestic law implementing mechanisms. The upshot is that affs would, under this wording option, be forced to defend self-execution or implementing legislation.

David Sloss 11, Professor of Law, Director of the Center for Global Law and Policy, Santa Clara University School of Law, "Domestic Application of Treaties," Santa Clara University School of Law, 4/29/2011, http://digitalcommons.law.scu.edu/facpubs/635

In contrast to European jurisprudence, self-execution doctrine in the United States is analytically incoherent.173 Courts and commentators agree that non-self-executing treaties are not directly applicable by domestic courts, but they do not agree why this is so. Some sources suggest that non-self-executing treaties are not incorporated into domestic law. A distinct view holds that non-self-executing treaties are part of domestic law, but they are a special type of law that courts are precluded from applying directly.174 Under the latter approach, there is further disagreement as to why courts are precluded from applying non-self-executing treaties.175 In practice, courts often hold that treaties are non-self-executing when an individual invokes a vertical treaty provision as a constraint on government action, but they almost never hold that transnational treaty provisions are non-self-executing.176 Thus, the net effect of judicial doctrine is that U.S. courts tend to adopt a transnationalist approach in cases involving transnational treaty provisions, but they tend to adopt a nationalist approach in cases involving vertical treaty provisions.177 In contrast, courts in Germany, the Netherlands, Poland and South Africa adopt a fairly consistent transnationalist approach for both vertical and transnational treaty provisions.

It would require incorporating the treaty into domestic law.

Lord Mackay of Clashfern 20, Member of the House of Lords, "Private International Law (Implementation of Agreements) Bill [HL]," Hansard, House of Lords, Lords Chamber, 06/03/2020, https://parallelparliament.co.uk/lord/baroness-kennedy-of-cradley/debate/2020-06-03/lords/lords-chamber/private-international-law-implementation-of-agreements-bill-hl#:~:text=amendments%20in%20the%20name%20of,restrict%20the%20power%20of%20Parliament

My Lords, the Act referred to in the Bill is dated 1982, which shows that we are concerned with the time when I was Lord Advocate and before devolution. I remember it lucidly. It fell to the Lord Advocate to deal, inter alia, with the Scottish position and what the detail involved. I strongly oppose the group of amendments in the name of the noble and learned Lord, Lord Falconer of Thoroton. My understanding of the principle that rules in this area is that when the United Kingdom undertakes an international obligation, that does not become part of the law of the United Kingdom until it becomes part of the domestic law of the United Kingdom and, since devolution, that may apply differently in devolved jurisdictions. A suggestion has been made that the principle goes further and requires that the result can be achieved only by primary legislation doing so directly, without the intervention of subordinate legislation. I do not agree with that. I can see no logical requirement to restrict the power of Parliament in that way.

#### Options for further limitation

1. If the topic committee wanted, they could replace ‘international obligation’ with a more technical term like treaty or CEA, or replace ‘undertaking’ with something narrower like ‘ratifying.’ We do not think this would be a good idea due to the force of the functional limits listed below, the oppressive CP generics created by terms like ratification, and the difficulty of reconciling kritikal options with such technical language.

2. Alternatively, the topic committee could limit the topic by listing areas or agreements. Areas might include categories like International Economic Law (IEL) or International Human Rights Law (IHRL). These areas are fairly fuzzy. Some of this ambiguity could be mitigated by using the categories established by the United Nations Secretary General, which can be found [here](https://treaties.un.org/pages/participationstatus.aspx)—thanks @Klarman!

If a category-based limit is not satisfying, listing specific agreements could be better. This would result in a topic that is quite small. Going even narrower, we could select just a few of the best vetted agreements and propose to debate just those. The narrower the object of the resolution, the less restrictive we should make the mechanism; the benefit of vetting individual agreements would be to ensure the existence of a robust debate.

### Ground---Aff Categories

Here are some areas of international agreements:

#### IEL = International Economic Law

Trade agreements, economic dispute settlement obligations, bilateral or multilateral. A great aff in this area is the [global minimum tax](https://www.icij.org/news/2025/02/trump-pulled-the-u-s-out-of-global-tax-agreements-and-negotiations-it-may-backfire/) agreement which Trump just destroyed but that the US has been [stalling for years](https://www.dw.com/en/oecd-global-minimum-tax-corporate-tax-reform-in-jeopardy-as-us-interest-wanes/a-69503104). This would establish a 15% corporate tax floor across countries to prevent tax avoidance by multinational corporations. It’s a tax accord so you can [imagine who’s writing neg cards](https://thehill.com/opinion/4856346-biden-administration-global-tax-code/). The CPTPP would create a major trade bloc across Pacific nations with labor and environmental standards attached.

#### IHRL = International Human Rights Law / International Humanitarian Law.

Human Rights Watch has an [overview page](https://www.hrw.org/news/2009/07/24/united-states-ratification-international-human-rights-treaties#:~:text=The%20US%20participated%20in%20the,administration%20did%20not%20sign%20and) that discusses many of these in broad strokes. We're already in compliance on most of these agreements, meaning they would be eliminated by the requirement to depart from the status quo. Some examples of these include the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which requires states to combat discrimination in employment, education, and family law. The Convention on the Rights of the Child establishes global standards for protecting children's rights. The Convention on the Rights of Persons with Disabilities mandates accessibility standards and prohibits discrimination. The Optional Protocol to the Convention against Torture establishes inspection systems for detention facilities to prevent abuse.

#### ICL = International Criminal Law

This area is the [Rome Statute / ICC](https://lieber.westpoint.edu/united-states-should-ratify-rome-statute/). The Rome Statute establishes the International Criminal Court, giving it jurisdiction over genocide, crimes against humanity, and war crimes when states are unwilling or unable to prosecute these crimes.

#### Arms Control / Disarmament

If we write a list, we may want to exclude this area due to overlap with the nukes topic. CTBT, test ban agreements, TPNW. But, there are conventional weapons aspects that stray pretty far from the Nukes Topic. This includes things like the [Ottawa Mine Ban Treaty](https://www.hrw.org/news/2009/07/24/united-states-ratification-international-human-rights-treaties#:~:text=The%20US%20participated%20in%20the,administration%20did%20not%20sign%20and) (though we’re already in compliance), [Convention on Cluster Munitions](https://www.hrw.org/news/2009/07/24/united-states-ratification-international-human-rights-treaties#:~:text=The%20US%20participated%20in%20the,administration%20did%20not%20sign%20and), which prohibits use, production, and transfer of cluster bombs that cause disproportionate civilian harm, and the [Arms Trade Treaty](https://www.stimson.org/2022/why-is-the-biden-administration-still-silent-on-arms-trade-treaty/), which regulates international weapons trade and requires risk assessments for transfers that might facilitate human rights abuses. This is relatively late breaking, but the ongoing negotiations with Iran may ripen into a reasonable case over the summer and during the season.

#### Environment

If we write a list, we may want to exclude due to overlap with the climate topic. This includes reentering Paris. But, there are areas beyond climate change. [Convention on Biological Diversity](https://www.vox.com/22434172/us-cbd-treaty-biological-diversity-nature-conservation) has some [good cards](https://illuminem.com/illuminemvoices/the-united-states-has-a-moral-imperative-to-ratify-the-convention-on-biological-diversity-now) and establishes commitments to conserve biodiversity, sustainably use resources, and share benefits from genetic resources equitably. [Stockholm Convention on Persistent Organic Pollutants](https://progressivereform.org/cpr-blog/everywhere-all-the-time-why-the-u-s-should-ratify-3-international-agreements-on-persistent-organic-pollutants/) requires elimination or restriction of long-lasting toxic chemicals. [Basel Convention](https://www.nyuelj.org/wp-content/uploads/2016/09/Yang_ready_for_printer_2.pdf) regulates transboundary movements of hazardous wastes and their disposal.

#### Ocean Law

The best aff in this area is [UNCLOS](https://education.cfr.org/teach/mini-simulation/should-united-states-ratify-law-sea). UNCLOS defines maritime boundaries, establishes rules for resource use, and creates a comprehensive legal framework governing all uses of the world's oceans. We are already in compliance with many aspects of UNCLOS, but some authors describe UNCLOS ratification as a departure from status quo policy.

#### Security Commitments

May want to exclude due to overlap with the nukes topic. [Security guarantee for Saudi Arabia](https://www.atlanticcouncil.org/blogs/new-atlanticist/a-us-saudi-deal-without-israel-heres-what-the-us-should-ask-for/) would formalize U.S. defense obligations through a treaty rather than through informal political arrangements.

#### Migration and Refugee Norms

There’s a lot of soft law stuff going on in this area that we’d probably want to limit out. But there’s also some binding stuff. [International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families](https://digitalcommons.law.villanova.edu/wps/art145/) protects migrants regardless of immigration status. US [revoke reservations](https://www.refworld.org/legal/modellaw/unhcr/2024/en/148327) to the 1951 Refugee Convention would strengthen asylum protections. [1954 and 1961 Statelessness Conventions](https://www.refworld.org/reference/news/unhcr/2010/en/76241) establish international protections for people without nationality and create obligations to prevent statelessness.

#### Topical K Affs

An expansive / non-governmental ‘United States’ interpretation adds additional layers. If you’ve had any exposure to debates about Afropessimism, you’re likely aware of the debate about whether inter-group solidarity is politicizing and empowering or enacts a parasitic and anti-black ruse of analogy. The term ‘international,’ however, can act as a springboard for a diverse and historically specific set of debates beyond the metaphysical. Ought we think about ‘black’ as diaspora or as a country? Ought we be cosmopolitans, or communitarians? Ought revolutionaries agitate against the enemy at home, or prioritize identifying affinities with similarly positioned groups abroad? Ought we [move beyond Westphalian categories](https://onlinelibrary.wiley.com/doi/abs/10.1111/j.1467-8330.2009.00726.x) when speaking about the subjects and objects of justice? On what moral grounds do national formations make claims to sovereignty? Have such claims served as a viable path to emancipation? Can they ever?

### Ground---Aff Constraints

Although the proposed wordings do not use list items to narrow ground, aff teams face several strategic dilemmas that produce a consistent set of neg objections.

#### Strategic Dilemma #1: Less Change = More Soft Power. But More Soft Power = More Links to Impact Turns and Ks.

It is difficult to impose an ex ante size restraint on the departure from current domestic policy or practice without listing specific treaties. Such a size restraint could be accomplished organically by the strategic imperatives that would structure aff-writing under this approach.

In brief, the less your case is about changing actual US behavior, the more you have to focus on the symbolic effects of ratification. These tend to fall into some fairly predictable buckets:

1. Normative legitimacy and moral leadership. These cards argue that international commitments are required to maintain the US’ international reputation.

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Writing in 2002, Harold Koh, former Assistant Secretary of State for Democracy, Human Rights, and Labor, bemoaned America’s abdication of its moral leadership: “From my direct experience as America’s chief human rights official, I can testify that our continuing failure to ratify CEDAW has reduced our global standing . . . hindered our ability to lead in the international human rights community . . . [and] challenge[d] our claim of moral leadership in international human rights . . . .” Today, ratifying the CEDAW would undoubtedly be an important foreign policy tool and would communicate to the global community that the United States considers dismantling all forms of discrimination to be an inalienable and universal obligation. However, we argue that the value of ratifying the CEDAW is not limited to its foreign policy implications: At a time of a mass public reckoning on equality, ratifying the Convention would also be a central vehicle for change for women in America, including minority women, to claim their rights in courts, in work-places, and in the family.

1. Legal enforceability and accountability. A formal commitment means we can be held to account by other countries via international legal instruments. It would also mean, to the extent we choose to make this part of the topic, that the legal system could be used to hold the US to its word.
2. Domestic symbolism.

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The domestic translation of the CEDAW varies situationally and illustrates the ways in which ideas and norms are transplanted in different cultural contexts in the image of a local idiom. While Margaret Keck and Kathryn Sikkink argue that the existence of transnational advocacy networks (“TANs”) can amplify the translation of women’s rights, 172 what we see is that women’s rights in turn amplify and accelerate the movements of advocacy networks and in fact provide the raison d’être of these developments. As Beth Simmons argues, the ratification of an international human rights treaty is much more than the symbolic act of ratification; it also provides legitimacy and authority to a lived experience on the ground: “A ratified treaty recommits the government to be *pre*receptive to rights demands. Ratification is not just a costly signal of intent; it is a process of domestic legitimation that some scholars have shown raises the domestic salience of an international rule.” 173

1. International alliance optics. That we haven’t ratified an agreement while others have is something that people can point to as singularly harmful.

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Beyond these economic considerations, there are several key strategic reasons why the United States should join the CPTPP. Crucially, joining the CPTPP allows the United States to reassert its influence in the Indo-Pacific against a rising China. The American withdrawal from the TPP created a strategic and economic vacuum in the region which China has since filled.[12] It has signed on to the ASEAN-led Regional Comprehensive Economic Partnership (RCEP)—the largest trading bloc to date—and formally applied to join the CPTPP. Against this backdrop of China’s active economic engagement, the conspicuous absence of the U.S. from these defining Indo-Pacific agreements is a stark contrast and risks placing it on the sidelines as China dictates the regional order.

The more your aff is about symbolism rather than conduct, the more you are susceptible to the dynamics in dilemma #2 below, and the more you have to tie your arguments back to a set of contestable premises about the US-led international order. The smaller your internal link to those premises is, the harder of a time you will have demonstrating that the boost provided by the plan is sustainable or otherwise impactful in the long-run. You will also be weak against kritiks of legalism or of international order. You will also be weak to the Trump alt cause unless you can say something incredibly recent and specific about instrumental foreign policy alignment.

#### Strategic Dilemma #2: More Credibility / Less Circumvention requires More Institutional Bindingness. But More Institutional Bindingness = More Domestic Institutional Ground.

The least restrictive mechanisms for aligning the US with an international obligation would be totally ineffectual in 2025. These cards will only get better as Trump continues acting like a wrecking ball to domestic and international political institutions. To get around this, a large number of affs will want to stake out some institutional mechanism discussion in their plans. The more this happens, the more the neg will be able to test the necessity of those institutional mechanisms with CPs.

This will require getting a little creative with prep. There isn’t a single CP option that is guaranteed to work against all affs on the topic. Instead, negs will have to think about CP options against affs that use a ladder of increasing stringency. Judicial involvement? Congressional involvement? Via treaty? CEA? Domestic law incorporation? Any of the above options will improve the aff’s case for commitment category. However, none of those options are normal means, and fiating any of them creates exposure to additional CP ground.

### Ground---Neg Categories

#### 1. Politics

[It’s](#_Neg---Politics_DA) the most significant obstacle to most of these treaties becoming domestic law. The stringent requirements for formal ratification make the link arguments even stronger if the aff chooses this approach.

#### 2. Soft Power Bad for Policy Reasons.

The US should not be able to leverage its credibility to hijack international forums. The US should cede its leadership over international forums so that they can [restructure](#_Multilat_Malthus) in a way that avoids overreliance on US support. The US should cede its leadership to another international power like China or [Europe](#_US_abandonment_of). The China leadership good DA from the climate topic is a prototype position for this idea.

#### 3. Objections to Specific Agreements.

All of these agreements have been argued to death; there is plenty to say against the ones the US is currently not complying with. This is the beauty of the ‘change domestic policy’ requirement; unlike those treaties where the US government’s only objection focuses on the loss of sovereignty required by formal ratification, the treaties included by this phrase have to be those with respect to which the United States has some kind of substantive objection.

#### 4. International Obligations PICs

These PICs use domestic law or non-binding international political commitments to make commitments [in lieu of international law](#_Neg---Non-Binding_CP). The net benefits to this strategy focus on the unique political and legal effects of altering United States policy on the basis of international law.

#### 5. Conditions CPs

These CPs refuse to domestically ratify treaties on the basis that there is a better deal to be had. This is the option that attempts to capture the case in a Trumpian way, arguably avoiding MAGA backlash. And, the prospect of US signature or alignment can provide leverage to renegotiate the agreement in a way that creates a better deal.

#### 6. Executive Power DA

Binding international obligations [restrict executive flexibility](#_Neg---Executive_Power_DA) in ways that domestic policy self-restraint doesn't. Once ratified, treaties become "supreme law" that constrains presidential authority across administrations through judicial enforcement and congressional oversight. This disadvantage argues that preserving executive discretion in foreign affairs and national security is vital for U.S. interests, enabling rapid responses to emerging threats and maintaining negotiating leverage.

#### 7. Backlash DA

Undertaking international obligations triggers [nationalist resistance](#_Neg---Backlash_DA) that can undermine both domestic governance and international cooperation. This disadvantage operates through sovereignty concerns (feeding "America First" narratives), partisan polarization (treaties becoming political wedge issues), institutional resistance (bureaucratic and state-level non-compliance), and cultural backlash from groups perceiving threats to traditional values. Impact scenarios include electoral gains for isolationist politicians, withdrawal from other international frameworks, credibility damage when agreements aren't fully implemented, and deteriorating international relations due to inconsistent compliance.

#### 8. Kritiks of international law and treaties

a. There are specific criticisms of agreements that allow for in depth exploration of UNCLOS, the ICC, arms treaties, global trade agreements, etc., while offering important alternative means of organizing outside of international law or through different frameworks for its application. This includes criticisms of western hegemony and the asymmetrical enforcement of treaties against non-western nations, while positioning themselves as exempt from treaty obligations. Criticisms of American exceptionalism that question the legitimacy of the U.S. empire as a model for international norms.

b. Kritiks of [militarism](#_K_of_Arms) from variety of perspectives. Feminst international relations scholars criticize the over-focus on realism, hegemony, and national security. Part of their argument is that the U.S. pursues their interests above all as a means of justifying military intervention instead of cooperation. Transnational feminists criticisms of purple-washing, such as the use of Muslim women as victims in need of U.S. military intervention.

c. [Indigenous communities](#_Settler_Colonialism) have continuously criticized treaties as tools of settler colonialism that took advantage of indigenous people via dispossession and refused to honor treaties with indigenous people that were meant to grant sovereignty. Specifically, the rolling back of protections on indigenous lands in order to take resources from indigenous communities to cultivate futures for colonizers. These approaches also question the accessibility of international organizations, which often exclude the populations most effected from conversations where international norms are set.

d. Criticisms of [international solidarity](#_National,_Not_International). Some of these approaches debate the political effectiveness of solidarity with international movements. Criticisms of solidarity draw attention to unequal power relations in those movements, in addition to tendency of Western activists who try and impose political solutions or non-violence on populations that may not agree with that. Marxist criticisms of solidarity criticize some of these as acts of performative solidarity without attaching them to material strategies for global revolution against capitalism and colonialism.

e. Criticism of international law’s focus on nation-states as the primary actors. Critiques of international vs. transnational frames for movements and political strategies. [Transnational](#_Transnational,_Not_International) frames de-center borders and boundaries of nation states to enable more revolutionary alternatives beyond Some of these criticisms are grounded in theories of coloniality and settler colonialism that interrogate the selective granting of sovereignty, while labeling indigenous and African nations as “unfit to govern themselves.” These approaches analyze colonial powers arbitrarily drawing borders, the trading of indigenous land in political deals with other western nations, and the understanding of citizenship to the nation state as a requirement for human rights.

#### 9. Kritiks of human rights as a starting point for politics

a. There is substantial research about human rights as a frame. Criticisms of universality as the basis for human rights, such as those from [transnational feminists](#_Feminism), urge us to move away from championing the universal over the particular. They argue that our conception of the universal is the particular in disguise, the focus on western, white, women, at the expense of particular experiences at the margins and strategies that can tend to those specific needs.

b. [Settler colonialism theory’s](#_Settler_Colonialism) criticism of genocide, dispossession, and legal frameworks that rendered indigenous people outside of the category of humanity. These perspectives are critical of colonial nations leading the discourse and advocacy for human rights due to their continual violation of indigenous human rights and sovereignty.

c. Criticisms of Western Man as the stand in for a universal western subject that is afforded rights and freedoms. These theories by criticizing those who are deemed as not-yet human and non-human. Indigenous, feminist, Marxist, and anti-blackness scholars have contributed to this conversation and provide various alternatives. Some alternatives suggest the possibility of a radical humanism, reconfiguring humanity away from white colonial subjects. Others push us to abandon the category of humanity entirely.

d. [Afropessimist](#_Negate_false_neutrality) criticisms of human rights as configured through western forms of humanism. Their argument further explains that rights and legal recognition have been used to legally identify Black people as outside of humanity and civil society. For some of these theorists, the identification of rights is understood in opposition to what they are not, enslaved. The recognition of human rights is seen as a mode of redress in a world that will continue to be anti-black. There are also specific criticisms of the way international law is configured and enforced, such as research about anti-African bias in the International Criminal Court.

### Novice Accessibility

First-year debaters can easily grasp the core controversy: should the United States formally commit to international rules that would change our domestic practices? This question engages fundamental concepts like sovereignty, cooperation, and legal obligation that students encounter in civics and history classes. The familiar tension between national independence and global cooperation provides an intuitive entry point that doesn't require extensive technical knowledge.

For affirmatives, novices can begin with straightforward symbolic advantages focused on leadership and international standing. These arguments rely on clear causal logic that new debaters can readily explain. As students develop, they can incorporate more sophisticated analysis about domestic implementation and substantive policy impacts. This scaffolded approach allows coaches to introduce complexity gradually rather than overwhelming beginners with technical details.

The negative ground similarly supports educational development. Beginners can start with fundamental objections like sovereignty concerns and specific policy disadvantages before advancing to more complex theoretical positions as the season progresses. The politics disadvantage operates on intuitive principles of political capital and partisan division that new debaters can understand and apply without extensive background in congressional procedures.

Perhaps most importantly, this topic allows for meaningful novice-level discussions about international relations without requiring the historical and strategic expertise that military topics often demand. Instead of debating complex nuclear doctrines or regional conflicts, beginners can engage with more accessible questions about global cooperation, human rights, and environmental protection that connect directly to their existing knowledge.

# Defintions

### Undertake

#### The legal definition of undertake is to promise to do a specific activity.

Fitter Law No Date, Legal Dictionary, "The Legal Definition of Undertake," https://fitterlaw.com/insight/legal-dictionary/define-undertake/#:~:text=As%20a%20business%20owner%2C%20it,to%20a%20legally%20binding%20contract

Mastering the Legal Definition of Undertaking: A Guide for Business Owners to Ensure Success and Avoid Legal Consequences

As a business owner, it is important to understand the legal definition of undertake. This term refers to a guarantee or promise to perform a specific task or engage in a particular activity. Undertaking can take many forms, from a simple promise to complete a project to a legally binding contract.

Undertaking is an essential aspect of business operations, as it allows companies to make commitments and follow through on their promises. For example, a construction company may undertake a project to build a new office building for a client. By doing so, the company is guaranteeing that it will complete the project on time and within budget.

Undertaking can also have legal implications. If a company fails to fulfill its undertaking, it may be liable for breach of contract or other legal consequences. Therefore, it is important for businesses to carefully consider the scope of their undertakings and ensure that they have the resources and capabilities to fulfill them.

Examples of undertakings in business include:

– Providing a service to a client

– Delivering a product to a customer

– Completing a project on time and within budget

– Meeting regulatory requirements

– Maintaining a safe and healthy work environment

Undertaking is not limited to business operations, however. Individuals may also undertake tasks or activities in their personal lives. For example, a person may undertake a home renovation project or undertake a commitment to volunteer regularly at a local charity.

Talk to a Fitter Law attorney: understanding the legal definition of undertaking is essential for business owners. Undertaking allows companies to make commitments and follow through on their promises, but it also carries legal implications if those promises are not fulfilled. By carefully considering the scope of their undertakings and ensuring that they have the resources and capabilities to fulfill them, businesses can build a reputation for reliability and trustworthiness

#### ‘Undertake’ is generally overcomplicated legalese, but precise in the context of assuming a legal obligation.

Rob Lunn 15, Legal Translator, MA in Legal Translation (distinction) from City University of London, Diploma in Translation from Chartered Institute of Linguists, Bachelor of Business from Queensland University of Technology, "Quick tip for translating contracts (2): don't use 'undertakes to'," legalspaintrans.com, 06/17/2015, https://legalspaintrans.com/legal-translation/quick-tip-for-translating-contracts-2-dont-use-undertakes-to/#:~:text=,p%2039

According to Tiffany Kemp in her book Essential Contract Drafting Skills (spoken about here), we shouldn’t use “undertakes to” because it’s legalese with no special meaning:

An undertaking is simply a commitment to do, or not do, a particular thing. It has no specific legal interpretation in English law, and adds no value to your drafting [translating, in our case]. p 39

Instead, she suggests using “shall” because it’s “shorter and clearer”.

Of course, if don’t like using shall, you’d just use whatever you use instead of shall but still avoid “undertakes to”.

Off the top of my head, I can think of cases where “undertaken by” still seems to be the best solution (e.g., when referring to obligations taken on by a party), but I’ll think about that next time it comes up.

#### It's a formal pledge to do something.

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un·der·tak·ing1

/ˈəndərˌtākiNG,ˌəndərˈtākiNG/

noun

1.

a formal pledge or promise to do something.

"I give an undertaking that we shall proceed with the legislation"

Similar:

pledge

agreement

promise

oath

covenant

vow

word

word of honor

solemn word

bond

commitment

guarantee

assurance

warrant

contract

compact

2.

a task that is taken on; an enterprise.

"a mammoth undertaking that involved digging into the side of a cliff face"

Similar:

enterprise

venture

project

campaign

scheme

plan

operation

endeavor

operation

endeavor

#### It is a promise or pledge required by law.

Merriam-Webster's Dictionary of Law 96, "Undertaking," FindLaw Legal Dictionary, https://dictionary.findlaw.com/definition/undertaking.html

Undertaking

undertaking n

1 : a promise or pledge esp. required by law

2 : something (as cash or a written promise) deposited or given as security esp. in a court NOTE: Undertakings are often required of one party during property actions (as for attachment) in order to compensate the other party should the court's action (as in attaching the property) be found unjustified later.

#### It refers to a legal promise or obligation.

Bayne Sellar Ertel Macrae 23, Law firm specializing in criminal defense, "Understanding Canadian Law: What Is An Undertaking?," 05/25/2023, https://bsbcriminallaw.com/understanding-canadian-law-what-is-an-undertaking/

Understanding the Undertaking in Canadian Law

The term “undertaking” is a legal promise or obligation made by a party in a legal proceeding. In the broadest sense, an undertaking can apply to numerous situations, from a commitment made by a lawyer regarding their client’s behaviour to a promise made by an accused individual in a criminal case.

### International Obligation

#### An international obligation is something owed by one or more subjects of international law to one or more subjects of international law, including erga omnes.

Hugh Thirlway 13, Principal Legal Secretary at International Court of Justice, Professor of International Law at Graduate Institute of International Studies Geneva, Visiting Professor at Bristol University, Visiting Professor at University of Leiden, "The Breach of an International Obligation," The Law and Procedure of the International Court of Justice: Fifty Years of Jurisprudence Volume I, 02/01/2013, pp. 586-602, https://doi.org/10.1093/law/9780199673377.003.0379

Extract

Inter-State Obligations\*

The essence of an international obligation is that it is something owed by one or more subjects of international law to one or more subjects of international law; and excluding the special case of the so-called ‘obligations erga omnes’, international responsibility only arises in relation to the State or States to whom the obligation alleged to have been breached was owed.167 The point arose in the Nicaragua case in the parallel context of the lawfulness of counter-measures: the United States had purported to justify its actions toward Nicaragua on the grounds (inter alia) of

alleged breaches by the Government of Nicaragua of its ‘solemn commitments to the Nicaraguan people, the United States, and the Organization of American States’. Those breaches were stated to involve questions such as the composition of the government, its political ideology and alignment, totalitarianism, human rights, militarization and aggression.168

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ICJ Reports, 1986, p. 130, para. 257.

#### This is a consistently defined term of art, including by the UN International Law Commission.

International Law Commission 1, "Responsibility of States for Internationally Wrongful Acts, with commentaries," Text adopted by the International Law Commission at its fifty-third session, in 2001, and submitted to the General Assembly as a part of the Commission's report covering the work of that session (A/56/10), Yearbook of the International Law Commission, 2001, vol. II, Part Two, as corrected, https://legal.un.org/ilc/texts/instruments/english/commentaries/9\_6\_2001.pdf#:~:text=apply%20to%20the%20whole%20field,Being%20general%20in%20character%2C%20they

(5) On the other hand, the present articles are concerned with the whole field of State responsibility. Thus they are not limited to breaches of obligations of a bilateral character, e.g. under a bilateral treaty with another State. They apply to the whole field of the international obligations of States, whether the obligation is owed to one or several States, to an individual or group, or to the international community as a whole. Being general in character, they are also for the most part residual. In principle, States are free, when establishing or agreeing to be bound by a rule, to specify that its breach shall entail only particular consequences and thereby to exclude the ordinary rules of responsibility. This is made clear by article 55.

#### Non-performance violates obligations.

Frederic L. Kirgis 97, Law School Association Alumni Professor, Washington and Lee University School of Law; Chair, ASIL Insight Committee, "Treaties as Binding International Obligation," ASIL Insights, vol. 2, no. 4, 05/14/1997, https://www.asil.org/insights/volume/2/issue/4/treaties-binding-international-obligation#:~:text=Many%20of%20Mr,some%20valid%20reason%20under%20international

Many of Mr. Bolton's assertions have to do with the effect of treaties in domestic (U.S.) law. As a matter of U.S. law, Congress does have the power to override a pre-existing treaty obligation that is binding upon the United States under international law. The effect would be that courts and other decision-makers within the United States would follow the Congressional directive, but the United States would be in violation of its international obligation to its other treaty partner(s) unless there is some valid reason under international treaty law to excuse U.S. performance.

# Evidence Appendix

## Aff---Inventory

### Inventory

#### Treaties / agreements the US is in “violation” of.

K.J. Noh 22, Journalist, Toward Freedom, "The U.S. Makes a Mockery of Treaties and International Law," Toward Freedom, 01/11/2022, https://towardfreedom.org/story/archives/americas/the-u-s-makes-a-mockery-of-treaties-and-international-law/.

For example, the United States refuses to sign or to ratify foundational international laws and treaties that the vast majority of countries in the world have signed, such as the Rome Statute of the International Criminal Court (ICC), CEDAW (the Convention on the Elimination of All Forms of Discrimination Against Women), ICESCR (the International Covenant on Economic, Social, and Cultural Rights), CRC (the Convention on the Rights of the Child), ICRMW (the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families), UNCLOS (the UN Convention on the Law of the Sea), PAROS (the Prevention of an Arms Race in Outer Space), the Ottawa Treaty (the Anti-Personnel Landmines Convention), and the majority of labor conventions of the ILO (International Labor Organization). In fact, the United States harbors sweatshops, legalizes child labor (for example, in migrant farm labor), and engages in slave labor (in prisons and immigration detention centers). Even the U.S. State Department’s own 2021 Trafficking in Persons Report acknowledges severe problems in the U.S. of trafficking and forced labor in agriculture, food service, manufacture, domestic service, sex work, and hospitality, with U.S. government officials and military involved in the trafficking of persons domestically and abroad. Ironically, the United States tries to hold other countries accountable to laws that it itself refuses to ratify. For example, the United States tries to assert UNCLOS in the South China Sea while refusing—for decades—to ratify it and ignoring its rules, precedents, and conclusions in its own territorial waters.

There are also a slew of international treaties the United States has signed, but simply violates anyway: examples include the Chemical Weapons Convention, the Biological Weapons Convention, UN treaties prohibiting torture, rendition, and kidnapping, and of course, war of aggression, considered “the supreme international crime”—a crime that the United States engages in routinely at least once a decade, not to mention routine drone attacks, which are in violation of international law. Most recently, the AUKUS agreement signed between the United States and Australia violates the Nuclear Non-Proliferation Treaty (NPT) by exploiting a blind spot of the International Atomic Energy Agency (IAEA).

There are also a multitude of treaties that the United States has signed but then arbitrarily withdrawn from anyway. These include the Joint Comprehensive Plan of Action (JCPOA) with Iran, the Agreed Framework and the Six-Party Talks with North Korea, the Geneva Conventions, the Intermediate-Range Nuclear Forces (INF) Treaty, and many others.

There are also approximately 368 treaties signed between the Indigenous nations and the U.S. government; every single one of them has been violated or ignored.

## Aff---Harm Areas

### Multilateralism

#### Trump has issued an executive order that mandates, within 180 days, a comprehensive review of every international organization, convention and/or treaty the US is party to. After which, the Secretary of State will recommend whether the US should withdraw from those commitments. This provides timely debates about the state of multilateralism and the necessity of sweeping commitments to keep it afloat.

Patrick 25 (, S. (2025) The Death of the World America Made. https://carnegieendowment.org/emissary/2025/02/trump-executive-order-treaties-organizations?lang=en. PhD, International Relations, Oxford University, MPhil, International Relations, Oxford University, MSt, European History, Oxford University, BA, Human Biology, Stanford University. [RP])

On February 4, 2025, President Donald Trump signed a sweeping **executive order** with the potential to upend decades of American global engagement. The directive **mandates** a **comprehensive review** within 180 days **of all current multilateral organizations** of which the United States is a member and all international treaties to which it is party. The explicit purpose of this exercise is to determine whether such support should be withdrawn. The **clock is** thus **ticking** **on** a distinctive and momentous aspect of post-1945 American **internationalism**: the strategic decision by successive Republican and Democratic administrations to embed U.S. power in multilateral institutions designed to support a peaceful, prosperous, and just world and to facilitate cooperation on shared global problems.

The immediate targets are narrow and unsurprising. The **order** **declares** that **the U**nited **S**tates **will** **withdraw** **from** the **UN** **H**uman **R**ights **C**ouncil, as it did during Trump’s first term; **reconsider** membership in **UNESCO**, a long-standing target of Republicans; and **cease** **all funding for** the **UN relief** agency **for** **Palestinian** **refugees**.

Of far greater import is the order’s decree that the **s**ecretary **o**f **s**tate shall **review** “**all international organizations**” of which the United States is a member and “all **conventions** and **treaties**” to which it is party, to **determine** **whether** **these** “**are contrary to the interests of the U**nited **S**tates and whether [they] can be reformed.” The secretary will then recommend to the president “whether the United States should withdraw” from those commitments. In principle, the **directive** could **lead** **to a** U.S. **abrogation** **of** **thousands of treaties** **and** a departure from hundreds of **multilateral** **organizations**.

The Trump administration has of course already pulled out of the Paris Climate Agreement, announced its intent to withdraw from the World Health Organization (WHO), and effectively renounced U.S. legal commitments under the 1951 Refugee Convention. The president also plans to dismantle international trade rules in favor of reciprocal bilateral tariffs, signaling the death knell of the ailing World Trade Organization.

This is only the beginning. Countless other international treaties and organizations could be on the chopping block—or in the wood chipper, if you will. It is even plausible that the Trump administration will conclude that an “America First” foreign policy requires pulling the United States out of the UN—and kicking the UN out of the United States. Both are long-standing objectives of conservative nationalists who contend, speciously, that the UN threatens American sovereignty. Such a momentous step would echo America’s 1919 repudiation of the Covenant of the League of Nations, but it would reverberate even more powerfully, given the UN’s centrality as the world’s foundational institution—by virtue of its universal membership, legally binding charter, unique responsibility (via the Security Council) to authorize armed force, and dozens of standing operational agencies. The White House could take similar steps to withdraw from international financial institutions—particularly the World Bank, as explicitly recommended by Project 2025—and eject them from Washington.

Among **legal scholars**, there is considerable **debate** and **ambiguity** **over** **whether** the **president** actually **possesses** **the constitutional authority** **to leave the UN** (which has no formal withdrawal provisions), much less to unilaterally abrogate thousands of treaties (particularly in the absence of a specific termination clause in the relevant instruments of ratification). **That is cold comfort**. As Trump’s first weeks in office have shown, this White House doesn’t do ambiguity—and there are many ways to wreck institutions without formally leaving them.

The World America Made

It is easy to take for granted America’s long-standing participation in multilateral organizations, alliances, and treaties—or to assume the nation has had no alternative. In fact, there was nothing inevitable about this particular U.S. approach to world order. Viewed in the light of history, the post-1945 decision by the world’s most powerful nation to champion and defend an open, rule-bound international order grounded in multilateral institutions was both anomalous and a choice of monumental importance.

Traditionally, globally dominant powers have been reluctant to accept significant constraints on their freedom of action, since they have so many unilateral and bilateral options available. Moreover, little in America’s experience between 1776 and 1945 suggested it would become the guarantor of an open world order. Through the nineteenth century, the United States pursued an insular, nationalist foreign policy, focusing on continental expansion, hemispheric dominance, and advancing its commercial interests.

That seemed poised to change under president Woodrow Wilson, who championed the League of Nations as a basis for international order after World War I. This episode proved a false dawn. The U.S. Senate ultimately rejected league membership and America retreated to a policy of detachment, failing to help stabilize a deteriorating global security and economic order in the 1920s and 1930s.

It was left to Franklin D. Roosevelt to complete the deal. On the heels of the Great Depression and in the midst of history’s most destructive war, his administration drafted blueprints for an open postwar world order based on Atlantic Charter principles, one realized during negotiations at Dumbarton Oaks and Bretton Woods. The U.S. scheme had three pillars. The United Nations, a new organization for peace and security grounded in international law, would replace traditional balances of power, spheres of influence, and secret alliances. A multilateral system of trade and payments, governed by international financial institutions and new trade rules, would replace patterns of autarky, imperial preference, economic nationalism, and beggar-thy-neighbor monetary policies. Finally, political self-determination would replace the era of empires with independent, self-governing, and ideally democratic nations.

To be sure, the post–World War II order that emerged diverged significantly from this blueprint. The Cold War’s rapid, unanticipated onset dashed America’s “One World” dreams, forcing the United States to adapt liberal internationalism to the perceived imperatives of containment and the defense of a narrower “Free World,” including through the NATO alliance. Likewise, abrupt decolonization transformed the UN’s composition and provided a platform for developing countries to reshape international rules, including for the world economy. Despite these adjustments, the contours of the U.S. multilateral world order vision persisted, and, with the end of the bipolar conflict, provided an institutional framework for deepening global cooperation.

The world America made was unlike anything that had come before. It was based not simply on U.S. hegemony but on America’s strategic decision to embed its might in an expanding framework of institutions and law open in principle to all countries. This order-building project was an act not of charity but of enlightened self-interest. American officials believed that institutional arrangements that cushioned U.S. dominance, gave lesser players some voice, and permitted all nations to advance common purposes would be regarded as more legitimate and thus less vulnerable to challenge. To understand the significance of this U.S. approach, one need only imagine how different the post-1945 world would have been had a different great power—say, Nazi Germany, imperial Japan, the Soviet Union, or even the British empire—emerged from World War II as the most powerful nation and set about on its own world-building project.

To be sure, the U.S. commitment to multilateralism has always been ambivalent and selective. The United States has often chafed at restraints on its freedom of action, particularly when these are said to collide with America’s unique responsibilities as the ultimate guarantor of world order. Moreover, the tradition of American exceptionalism underpins the widespread but mistaken belief that U.S. entry into international organizations and treaties invariably threatens its national sovereignty. Finally, the U.S. Constitution erects significant legislative hurdles to U.S. multilateral obligations, most notably in the two-thirds supermajority needed to approve treaties. The cumulative result is a pattern of American “exemptionalism,” whereby the United States sometimes holds itself apart from international treaties—such as the UN Convention on the Law of the Sea or the Convention on Biological Diversity—even when it spearheaded their negotiation and painstakingly obtained caveats limiting or tempering its obligations.

Notwithstanding these qualifications, the **U**nited **S**tates has **been the most important champion**, **sustainer**, and **defender** **of** an **open**, **rule-bound international system** grounded in multilateral institutions and international law. Thanks in large part to U.S. efforts, the eight decades since World War II have witnessed the emergence and accretion of a thickening latticework of multilateral institutions, including international treaties, formal organizations, and informal frameworks, to manage global interdependence and provide governance over a mind-boggling array of spheres, including the control of weapons of mass destruction, the allocation of orbital slots in space, the delivery of humanitarian assistance, and global responses to pandemic disease.

Present at the Destruction

This is the world that Donald **Trump seeks to destroy**. His ambition is to replace the international rule of law with the law of the jungle. Rather than a global order that constrains great power privilege, he envisions a regionalized one in which powerful nations pursue spheres of influence and throw their weight around, browbeating lesser actors (like Denmark and Panama, say). In this **purely** **transactional** **vision**, substantive **multilateralism** **yields** **to bullying bilateralism**. There is no ambition to invest in world order or standing international institutions, or any desire to nurture “diffuse reciprocity”—or expectations that the benefits of cooperation will balance out in the long run. Instead, every interaction is an opportunity for one-sided bargaining to improve America’s relative position against all others.

This is a dark vision of the future. **Trump**’s America First policies **will** **accelerate the fragmentation of a tottering world order** already beset by centrifugal forces—rising geopolitical competition, surging populist nationalism, stalled development, destabilizing technologies, and a deepening climate emergency. Well before Trump’s election, UN Secretary-General António Guterres lamented a multilateral system “gridlocked in **colossal global dysfunction**.”

This moment of peril cries out for far-sighted leadership to update multilateral institutions to address new threats and accommodate rising powers. Instead, the Trump administration seems intent on delivering a coup de grâce to existing bodies, without any positive vision of what comes next. This “stop-the-world-I-want-to-get-off” mindset is based on the fantastical assumption that the United States can replicate the capacities of multilateral organizations and the global public goods they provide through its own efforts or new, ad hoc arrangements. Trump’s WHO executive order, for instance, instructs his administration to “identify credible and transparent United States and international partners to assume necessary activities previously undertaken by the WHO.” This ignores the practical impossibility of recreating the WHO’s global capabilities—including surveillance functions and genomic data on which the Centers for Disease Control and Prevention depend–and overlooks the broader risks of a fragmented system of global health security.

In the end, the Trump administration’s critique of multilateralism boils down to three main complaints: international organizations and treaties infringe on American sovereignty, unduly restrict U.S. freedom of action, and simply cost too much. None are persuasive. First, the voluntary decision to join an international organization or become party to a treaty, undertaken consistently with the Constitution, is not a violation but in fact an exercise of U.S. sovereignty. Second, all parties that join treaties and international organizations accept reciprocal obligations, forswearing some options to obtain the benefits of predictability and collective effort. That is in fact the entire purpose of multilateralism. This does not mean all multilateral treaties and bodies merit U.S. support, but some reduced freedom of action is inevitable.

#### On multilateralism, MAGA represents continuity of substance even if it is a departure of form. Trump bookends a century of American ambivalence about international organizations.

Geoffrey Wiseman 25, Professor and Endowed Chair in Applied Diplomacy at Grace School of Applied Diplomacy, DePaul University, Chicago, CPD Blog Contributor, "The United States and fragmented multilateralism: bookending a century of US ambivalence towards formal international organisations," Third World Quarterly, 03/03/2025, https://doi.org/10.1080/01436597.2025.2465519

This article aims to encourage new ways of thinking about what factors undergird one of the most important relationships in international affairs: relations between the most powerful stakeholder in the international system, the United States (US), and the key Formal International Governmental Organisation (FIGO), the United Nations (UN). It considers how the relationship evolved between two presidential ‘bookends’ spanning just over a century, each representing two divergent worldviews about the US’s relationship with FIGOs: the Woodrow Wilson inspired liberal internationalism of 1919 and the populist nationalism of the Donald J. Trump era (Nye 2019; Sluga 2019).

The US has had an ambivalent, oscillating relationship with FIGOs, and the multilateral diplomacy associated with them (Luck 1999; Patrick and Forman 2002). Moreover, the US’s century-long, ‘dramatic inconsistency’ with FIGOs, to draw on Alynna Lyon’s phrase (2016, 251), has become even more problematic in the early decades of the twenty first century up to Trump’s dual presidential terms. This article contributes to the debate about prospects for the survival of formal multilateralism itself – the ‘contest’ between formal and informal approaches to multilateralism (Cooper 2023). Or, as Foreign Policy magazine stated succinctly on the cover of its Fall 2023 issue, ‘Multilateralism is at a dead end, but powerful blocs are getting things done’. If FIGOs are in serious, even terminal decline, and if Informal International Governmental Organisations (IIGOs) are displacing them, to what extent is the United States responsible for, or driving, that trend via its ambivalence towards the UN?

While recognising the impressive growing influence of IIGOs – e.g. OPEC, the BRICS, G7, and G20 – the formal-informal is not a hard binary. Many IIGOs have formal elements and underpinning the UN’s formal status is an important undercurrent of informal practices. This is evident, for example, in how the Security Council ‘transforms its practices on the fly’ (Pouliot 2021), how the selection process for appointing a new Secretary-General has evolved via ‘unprecedented practices’ (Pouliot 2020, 72; Wiseman 2015), how diplomats at the UN Human Rights Council use emojis in communications (Cornut 2022), how marginalised groups can occasionally disrupt the UN’s formal expectations of diplomatic decorum (McConnell 2018), how emotion undergirds UN diplomacy (Jones and Clark 2019), and how coalition building ‘happens out of the spotlight, in private and informal settings’ (Smith 2006, 11). In short, multilateral diplomacy ‘includes a mixture of formal and informal interactions’ (Eggeling and Versloot 2024, 57).1 Informal practices, however, provide both diplomatic opportunities and risks for all member states, begging the question whether weak(er) member states, especially from the Global South, can exploit informality to their advantage, or be further disadvantaged by the informal practices of the powerful UN states.2

The partisan divide largely explains the American approach towards FIGOs in general and the UN in particular. Democrats, led by their president, are generally supportive of multilateral organisations; Republicans, led by their president, are generally sceptical (Moore and Pubantz 2022). However, we need also to consider at least four other explanatory, or ‘potential mediating’, variables3: (1) UN secretaries-general, (2) US Permanent Representatives to the UN, (3) Venue, namely, the US as host country and New York as host city, and (4) Non-state actors that support US engagement with the UN. Such mediating diplomatic factors are neglected, especially by neo-realist scholarship on formal international institutions (e.g. Mearsheimer 1994–1995).

This article first sketches the American approach to FIGOs through the prism of the political party affiliation and leadership dispositions of US presidents from Wilson to Trump. Second, it considers the possible role of four factors that further clarify the US-UN relationship. While the article is not optimistic that long-standing US ambivalence towards the UN grounded in intense partisan differences will fundamentally change, it concludes that other factors, notably the evolving roles of non-state actors, offer some grounds for hope that UN multilateralism will survive Trumpism.

Presidential bookends: from Wilson to Trump

The complex US relationship with multilateral institutions involves a core puzzle in which administrations are variously supportive and by turns lukewarm or opposed to those institutions, even though their origins, design, and development often owe much to American ideas, leadership, and diplomacy. Between the historical and analytical bookends – Wilson’s liberal internationalism and Trump’s populist nationalism – we can identify three distinctive phases: the interwar years between 1919 and 1939, the Cold War and Decolonisation era from 1945 to 1989, and the post-Cold War era from 1989. The main thread that runs through these phases is the push-and-pull of presidential and domestic politics in which the American political left and Democratic Party usually exhibit a pro-multilateralist worldview in contrast to the Republican Party and wider conservative movement that on average display a sceptical or anti-multilateralist worldview.

Until the early twentieth century, American involvement in multilateral institutions was minimal, but not negligible. In the late nineteenth century, for example, the United States participated in technical conferences, such as the Universal Postal Union designed to improve postal services worldwide. During the 1904–1905 Russo-Japanese War, President Theodore Roosevelt proposed the convening of a Second Peace Conference in The Hague, which was eventually held in 1907. The US actively participated in the 1907 Conference, attended by 44 governments, a clear form of ad hoc multilateral diplomacy. The fact that a third conference was planned for 1915 reflected the pervasive view that multilateralism was intended to be informal and not institutionalised. However, President Wilson’s 1917 decision to bring the United States into the European War and his subsequent support for a League of Nations was a tipping point in American debates about diplomacy and its institutionalised, multilateral form.

A false start towards formal multilateralism: 1919–1939

After the First World War, the multilateral method was taken to a new institutionalised level with the creation of the League of Nations. Under the League, established in Geneva, diplomats conducting more open parliamentary-style, multilateral, or ‘new’ diplomacy would no longer meet for a few days in a European capital and then return home (on the Concert of Europe model). Henceforth, diplomats would also be permanently accredited to an international organisation, rather than to a single country. However, US ambivalence towards multilateralism appeared as it was being designed. Wilson’s sponsorship of US membership of the League, per the Treaty of Versailles, lapsed in March 2020 when the Republican-led Senate under majority leader Henry Cabot Lodge failed to ratify the Treaty; the first time the Senate had rejected a peace treaty. The Senate rejected the treaty 49–35, with some historians arguing that Wilson might have won ratification if he had shown more flexibility by accepting some of Lodge’s reservations. Moreover, Wilson’s presence in Paris during several months of treaty negotiations and his refusal to include senators in the US delegation was a political error, an early example of what political scientist Robert Putnam later famously theorised as the need to treat diplomacy as a two-level game, in which negotiators must pay close attention to the home front while bargaining with their international interlocutors.

While the United States never joined the League, it participated in a range of other international conferences and institutions in the interwar years. These included hosting the Washington Naval Conference (1921–1922), sponsoring with France the 1928 Kellogg-Briand Pact designed to outlaw war, and actively participating in the 1932–1934 Geneva World Disarmament Conference. In addition, the US entered the International Labour Organisation in 1934 (the only League body that it joined). Still, the fate of formal multilateral diplomacy in the interwar years was a story of the failure of the League to deal inter alia with Japan’s occupation of Manchuria, Italy’s occupation of Abyssinia (Ethiopia), and Hitler’s annexation of Austria. In sum, the Senate’s non-ratification of the Versailles Treaty kept the United States out of the League of Nations, thus undermining its capacity to contribute to international crisis management.

A fresh start: the US and the UN from 1945 to 1989

In stark contrast to the interwar era, the Allied victory in the Second World War led to a rough political consensus under Presidents Franklin Roosevelt and Harry Truman about the country’s new-found identity as a superpower. The United States was heavily involved in establishing the system of formal post-Second World War multilateral institutions, notably the United Nations and the Bretton Woods system as foundations of a ‘liberal international order’. As to the US role in the origin story of the UN, however, scholars have offered at least three possible interpretations.

In the Realist great power view, the UN was established by the victorious powers (the US, the Soviet Union, the United Kingdom, along with France and China), all determined to ensure that a system was created that would contain territorial aggression that led to the outbreak of war in 1939. Unlike the League, all the major powers would be members with mechanisms to guarantee that their own interests were secured (Bosco 2009). In the Liberal internationalist view, reflecting the legacy of Wilsonian liberal values about national self-determination in Europe, democracy, and collective security, the UN was created under US diplomatic leadership (Patrick 2009; Schlesinger 2003). In the Western imperial dominance view, the UN was constructed to allow cooperation in a ‘world of empires and great powers’, retaining European colonialism and perpetuating the global dominance of Britain and America while accommodating the unwelcome rise of the Soviet Union (Mazower 2009, 151).

There is some truth in all three explanations. What is important for our purposes is that the United States is typically deemed to play a key – primus inter pares, or first-among-equals, hegemonic – role in all of them. However, the widespread public, post-1945 optimism about the UN in the United States was soon overtaken by two massive developments: the Cold War and decolonisation. These developments introduced new dynamics and tensions along two axes – East-West and North-South – impacting many aspects of the UN’s deliberations in which the US was a central player.

On the East-West axis, Cold-War suspicions between the US-led democratic Western states and the Soviet-led communist states of Eastern Europe took hold at the UN soon after the Second World War’s conclusion. This rivalry impacted the US-UN relationship from the late 1940s to the late 1980s, often described as a period of paralysis at the UN, which was true enough in the Security Council’s ‘traditional security’ area, but not so in the work of UN agencies, funds and programs dealing with humanitarian and development issues. For the United States throughout the Cold War, as Barnes and Stucky have argued, anti-communism was the prime motivating factor for both Democratic and Republican presidents in dealing with the UN and within that construct, as Barnes and Stucky put it, ‘Democrats skewed toward the multilateral perspective while Republicans favoured bilateral strategies’ (2014, 56).

As for the North-South axis, the decades-long decolonisation process that challenged the Cold War dominance of the original 51-member UN system, especially in the General Assembly, was heralded with India’s membership in 1947. While numerous post-colonial countries identified and allied with one or the other superpower, many others sought to keep their political distance from both Cold War giants, forming quasi-formal groupings. The harbinger of these groups was the highly symbolic Afro-Asia Conference held in Bandung, Indonesia in 1955, that led in turn to the Non-Aligned Movement (NAM), officially created in September 1961, and the Group of 77 (G77), launched in 1964. Initially, the United States often supported the decolonisation cause, for example, President Eisenhower was critical of the 1956 invasion of the Suez Canal by British, French and Israeli armed forces, seeing its failure as vindication of his view ‘that empire had had its day’ (Mazower 2012, 260). However, US support for decolonisation eventually morphed into a contentious relationship with many newly independent states as they challenged US and Western primacy at the UN (and elsewhere) by pressing on issues of fundamental importance to the Global South, such as economic development, apartheid in South Africa, the Palestinian cause and demanding, for example, a New International Economic Order and a New World Information and Communication Order (Alleyne 1995).

The two axes intersected. The East-West conflict played out in the North-South context, often in undesirable ways for the developing world. Reinforcing the often-fraught relations between the US and many developing countries was the US’s unstinting support for Israel – a persistent driver of domestic American political interest in the UN, rising to a controversial crescendo in 1975 when the General Assembly adopted Resolution 3379 that equated Zionism with racism. The resolution produced furious criticism of the UN in Congress and later moves by Republican President Reagan to cut US dues to the UN and withdraw from UNESCO in 1984.4 Yet by the late 1980s, as the Cold War came to a close and the UN mounted a successful operation to manage Namibia’s successful independence from South Africa, the US-UN relationship entered a new, amicable phase, albeit one that was short-lived.

The post-Cold War era: 1989–present

The end of the Cold War in 1989 led to a period of relative harmony between the United States and the UN system, so much so that in the early 1990s the UN was seen as ‘fashionable again’ (Lyon 2016, 95). The clearest example was the UN-endorsed reversal of Iraq’s 1990 invasion of Kuwait by an international military coalition of over 30 countries – which was led by the United States under Republican President George H. W. Bush. The Security Council’s subsequent endorsement of Secretary-General Boutros Boutros-Ghali’s Agenda for Peace further reflected the optimistic zeitgeist of a new world order with the UN at its core.

However, as with the initial optimism of the post-1945period, widespread pessimism and American conservative – and indeed liberal – criticism of the UN ensued in the wake of humanitarian and peacekeeping disasters in Bosnia, Rwanda, and Somalia. US-UN relations worsened under Democratic president Bill Clinton, due to pressure from Congressional Republicans who gained control of Congress following the 1994 elections. Conservative Republican Senator Jesse Helms of North Carolina, Chairman of the Senate Foreign Relations Committee, criticised the UN for what he depicted as anti-American positions and mismanagement.5 Those depictions, however, were seen by many as reflecting lingering social strains of racism long associated with the American South and transposed to the postcolonial Global South. While the changing international context saw US-UN relations deteriorate rapidly in the early 1990s, what exacerbated the downward spiral even under a pro-UN Clinton administration was the domestic political context: the resurgent Republican Party’s control of both houses of Congress. With growing Republican criticism of the UN, the Clinton administration took the extraordinary step in 1995 of vetoing Boutros Boutros-Ghali’s bid for a second term as UN Secretary-General, discussed in the next section.

Clinton’s second term saw a lowering of the temperature in the relationship. However, deep Republican criticism of the UN resurfaced in 2002–2003 as the Republican George W. Bush administration sought to secure UN Security Council endorsement for its invasion of Iraq, a topic to which we return below.

The Democratic Obama administration (2009–2017) signalled a symbolic return to a pro– UN liberal internationalist approach with the appointment of Susan Rice as the US Permanent Representative for his first term. In his second term, Obama appointed Samantha Power, a human rights activist and author of a best-selling book on genocide. Both Rice and Power had reputations for encouraging positive US-UN relations (I return to their roles below). In public relations terms, they were fully supported by President Obama who made regular well-received, high-profile visits to the UN’s annual General Assembly during his eight years in the White House.

The generally pro-UN Obama administration was succeeded in 2017 by the first, unequivocally anti-UN, Trump administration. Under Donald Trump’s nativist, ‘America First’ worldview, the United States inter alia withdrew from the UN-sponsored Paris Climate Agreement and the UN Human Rights Council, and – during the Covid-19 pandemic – threatened to leave the World Health Organisation (WHO) that was leading the global effort to combat the virus. While Trump, a self-identified New Yorker, had little to no sympathy for the UN, his first ‘ambassador’ in New York, Nikki Haley, managed to soften the impact of ‘Trump’s fiery nationalistic speeches’ at the General Assembly (Kirkpatrick 2019). However, as Trubowitz and Harris argue, there was ‘little realistic chance’ that Trump’s America-First vision would ‘bridge the chasms that separate Republicans and Democrats, conservatives and liberals, internationalists and nationalists’ (2019, 637). Moreover, Trump’s verbal assaults on the UN were interpreted as a new and self-defeating form of American populist isolationism (Moore and Pubantz, 162). Legal scholar David Kaye captured the Republican ‘sovereigntist’ view of international treaties as ‘all constraint, no advantage’ to the United States (2013, 114; see also Mittelstadt 2025).

While Trump’s denigrations of the UN during his first term underscored the perceived wider fragility of the multilateral diplomatic order, his successor, President Joe Biden, reversed some of the reputational damage caused by Trump. Under Biden, the United States re-engaged with the Paris Climate Agreement, the UN Human Rights Council, and the WHO, all designed to redress Trump’s dismissiveness towards international organisations.

With the Cold War’s end in 1989, the most significant shift in US policies and practices towards the UN surfaced on the Republican side – from the pragmatic internationalism of George H. W. Bush to George W. Bush’s neo-conservative exceptionalism and then to Donald Trump’s populist nationalism from 2017 to 2021. Trump returned to these themes during the 2024 presidential campaign. In contrast, and consistent with this article’s argument, the Democratic candidate Vice President Kamala Harris expressed her support for US leadership, multilateral engagement, and alliances, while signalling a slightly tougher line regarding Israel’s war in Gaza. However, Trump’s 2024 electoral victory over Harris and (slim) Republican majorities in Congress foreshadowed another downturn, potentially more serious, in the history of US ambivalence towards the UN.

The picture that emerges from this century-long sketch is one of underlying – and indeed increasing – partisan ambivalence about how the country should relate to formal international governmental organisations, FIGOs, such as the UN. The ambivalence has been manifested most demonstrably in terms of whether a Republican or Democratic president is in the White House but also by party control of Congress. This review, however, raises the question whether there are other possible variables in explaining oscillating US-UN relations and it is to that question that the article now turns.

Mediating factors in US-UN relations

While the historical evidence suggests that the political party and leadership dispositions of US presidents explains much about the US-UN relationship, other variables need to be considered for a more nuanced appreciation of the relationship. This section explores four potential mediating factors, or variables, that seem to matter in the relationship: (1) UN secretaries-general, (2) US permanent representative to the UN, (3) Venue – i.e. the US as host country and New York as host city, and (4) non-state actors.6

The UN Secretary-General

UN secretaries-general are formally designated in the UN Charter as the organisation’s chief administrative officer. Officeholders have attracted a notable literature, covering their personal biographies, leadership traits, relationships with the powerful Permanent Five (P5) members and whether their role is that of secretary or general (Chesterman 2007), leader or lackey (Frank 2024; see also Kille 2024; Mouat 2014).7 However, less attention has focussed on whether the US-UN relationship has been significantly impacted by the actions and personality of individual secretaries-general. With that in mind, I offer three examples – Boutros Boutros-Ghali, Kofi Annan, and Ban Ki-moon – illustrating that the Secretary-General can be of consequence in the relationship (for other examples, see Newman 2018).

Boutros Boutros-Ghali

The Clinton administration’s astonishing decision in 1995 to veto a second term for UN Secretary-General Boutros Boutros-Ghali demonstrated that even a pro-UN liberal internationalist administration holds certain hegemonic expectations that include removing the ‘world’s pre-eminent diplomat’, as Thant Myint-U later portrayed the UN Secretary-General position (2024, 167).

By the mid-1990s, the early post-Cold War optimism at the UN, noted above, gave way to sharp criticism over the world body’s mishandling of the 1994 Rwandan genocide and the 1995 Srebrenica massacre in Bosnia. Much of the blame for these failures was unfairly levelled at Boutros-Ghali, portrayed by State Department press spokesman James Rubin as ‘a symbol of UN arrogance and UN incompetence’ (cited in Auger 2023, 10). The US Permanent Representative at the UN, Madeleine Albright, spearheaded the Clinton administration’s decision and campaign against Boutros-Ghali’s second term, as Vincent Auger’s (2023) study shows. The State Department view was that a change would make the UN ‘more credible and hopefully recapture the support of the U.S. Congress’, notably with Senator Helms about Washington’s funding arrears (Auger 2023, 18).

Underscoring the administration’s hegemonic hubris, spokesman Rubin also stated that ‘it was always unfortunate that Boutros-Ghali did not have the skills to manage the most important relationship for any Secretary-General, which is smooth cooperation with the United States’ (cited in Auger 2023, 22, 23. Emphasis added). Boutros-Ghali himself ‘believed he was sacrificed on the altar of U.S. domestic politics’ (22). He also believed, with some justification, that Albright considered him imperious, insufficiently reverent to US interests, and too sympathetic to the developing world – most of whom were among Boutros-Ghali’s ‘most important supporters’ (Auger 2023, 14).

Incensed by the US veto of a second term for the first Secretary-General from Africa, African states successfully pressed the candidature of the well-liked career Secretariat staffer, Kofi Annan of Ghana. During Clinton’s second term, the US was represented by the high-profile diplomat Richard Holbrooke and former Energy Secretary Bill Richardson, both having more congenial relations with the UN and the Secretary-General, more typical of Democratic administrations. However, US hegemonic expectations of the UN Secretary-General re-surfaced in 2003 when the Republican George W. Bush administration sought UN Security Council endorsement for its planned invasion of Iraq.

Kofi Annan

Many observers saw the Bush administration’s ‘neo-conservative’ approach to the UN over the 2003 Iraq invasion as another damaging US attack on multilateral institutions, involving spurious factual claims and expectations of a ‘hegemonic exception’ for its transgressions of diplomatic norms (Wiseman 2005). In the lead-up to the War, Bush administration officials criticised the United Nations for what it described misleadingly as years of inaction regarding Saddam Hussein’s Iraq following the 1990–1991 war over Kuwait. These allegations were made notwithstanding an extensive sanctions regime, UN weapons inspections for Iraq’s alleged weapons of mass destruction (WMD) programs, and a daring intercession in 1998 by Secretary-General Kofi Annan to open Saddam Hussein’s presidential sites to weapons inspectors. Thus, when President Bush foreshadowed the impending demise of the UN if it failed to act (in support of the US position) against Iraq, his remarks reinforced Republican and conservatives’ long-standing doubts about the UN’s utility.

When the UN Security Council denied the United States a crucial resolution specifically mandating the use of force against Iraq, the US organised an informal ‘coalition of the willing’ to execute an invasion that Secretary-General Annan declared violated the UN Charter and was ‘illegal’. Thus, whenever the US appealed for backing at the UN, it was seen to do so begrudgingly and for self-serving reasons. President Bush’s General Assembly speech in September 2002 and Secretary of State Colin Powell’s February 2003 presentation to the Security Council were seen in this light by many member states, especially countries in the Middle East and Global South. In Bush’s second term, however, Condoleezza Rice as Secretary of State toned down the anti-UN rhetoric, turning to the UN for support administering post-Hussein Iraq. Even if the US return to the UN was only tactical, it is significant that the administration felt compelled to legitimise at least some of its actions in terms of the multilateral norm (Williams 2024).

In the 2003 Iraq War, the Bush administration turned to an informal international coalition rather than battling it out at the UN against resistant member states and where Annan was regarded by the administration as an ‘activist’ Secretary-General insufficiently deferential to American interests.

Ban Ki-moon

As Kofi Annan’s 10-year tenure was ending in 2006, the US and the other Permanent Five members turned to selecting a successor. This timing coincided with President Bush’s contentious interim appointment of longtime UN critic John Bolton as his ambassador in New York. Bolton had long promoted a multilateral order dominated (rather than led) by the US, a view at odds with the declaratory liberal internationalism that animated, if pragmatically, most Democratic supporters of the UN. For our purposes, however, Bolton’s main consequential contribution was his management of the appointment of South Korea’s pro-American Ban Ki-moon to succeed Annan. As Bolton remarked in his 2007 memoir, Secretary of State Condoleezza Rice did not want a ‘strong Secretary-General’, and he worked to ensure that outcome (279).

Ban’s critics suggested that the George W. Bush administration got what it wished for (for a sharp conservative critique of Ban’s effectiveness, see Heilbrunn (2009); cf. Jesensky (2019)). However, historian Stephen Schlesinger argues that Bush rejected the UN more at the declaratory than at the substantive level. According to Schlesinger (2008), the US, even when Bolton was its representative, used the UN for its own purposes and sometimes quite skilfully. In short, even under conservative administrations, the US exploits multilateral diplomacy while often publicly denying multilateralism’s utility. James Traub is less generous about Bolton’s role at the UN, writing that senior UN officials were appalled at some of his incendiary tactics and indeed his clear disdain for Annan and his advisors in the Secretariat (Traub 2006, ch. 22). Schlesinger’s and Traub’s analyses are not mutually exclusive. However, Bolton’s ultimate damaging influence was how he fortified Republican Party and wider conservative antipathy towards the UN and undermined the core liberal idea that multilateralism benefits both Americans and others.

In all three cases, US administrations, both Democratic and Republican, shared a concern that the UN Secretary-General should be more secretary than general. Thus, Boutros Boutros-Ghali was denied a second term by an extraordinary US veto largely because he was seen as overly concerned with non-Western countries and not sufficiently respectful of American hegemonic leadership. Kofi Annan irked the Bush administration, for example, with his widely reported criticism that the Iraq invasion was illegal. And Ban Ki-moon was strongly promoted by the Bush administration for his presumed acquiescence to US hegemonic blandishments. In different ways, the Boutros-Ghali, Annan, and Ban cases strongly suggest that UN secretaries-general play some part in explaining the dynamics of US-UN relations.

America’s Permanent Representative to the UN

Another group of diplomatic actors that further explains the nature of US-UN relations are US Permanent Representatives to the UN (shortened here as ‘PR’ or the popularly used ‘Ambassador’). Practice theorists have highlighted the ‘rising prevalence’ of PRs in international organisations (Pouliot 2015, 81) which arguably challenges the view that informal international governmental organisations – IIGOs – are displacing formal international governmental organisations – FIGOs – such as the UN. Here I build on the practice theory view that PR’s ‘do much more than simply represent the views of their national governments’ to shape the character of US policy and US-UN relations (Pouliot 2015, 106).

The pantheon of US permanent representatives to the UN includes highly connected, politically experienced and well-known individuals. Since 1946, some two-thirds of the 31 PRs had Cabinet rank conferred on them by the president, affording them ‘significant influence and standing in UN fora’ (Congressional Research Service 2021). As both a member of the policy-formulating Cabinet and simultaneously its implementing diplomatic agent at the UN, PRs with Cabinet rank are well positioned to influence both policy formulation in Washington DC and policy implementation in New York (e.g. how they interpret instructions, time their representations, select the right tone, and craft reports). However, there is also a risk that PRs with Cabinet rank might, deliberately or inadvertently, ‘politicize’ their UN role, given their background in politics and high public profile – on being the ambassador that everyone at the UN knows.8 Here, I highlight briefly several cases to make the argument about the importance of PRs and to suggest a simple classification of PRs as confrontational or conciliatory towards the UN.9

As Republican President Gerald Ford’s UN ambassador in 1975–1976, Daniel Patrick Moynihan was the first to fit the high-profile confrontational model. Moynihan not only criticised his predecessors at the UN for being too passive, he also aggressively defended US policies, and challenged not only the communist Second World but also the Third World ‘new majority’ in the General Assembly. Significant in this latter respect was his response to the 1975 General Assembly resolution declaring Zionism as a form of racism. Moynihan rebuked the resolution – sponsored by the Arab League and several Muslim majority countries – in vehement terms, describing it at as an ‘infamous act’. As Alynna Lyon recounts, ‘For the first time in history, the US ambassador directly responsible for interacting with the UN turned from a vocal advocate to a combative opponent’ (2016, 76). The Zionism resolution led to intense criticism of the UN in the US Congress and from New York City leaders. Significantly, Moynihan was more strident than secretary of state Henry Kissinger who attempted to ‘moderate’ Moynihan’s tone and approach (Lyon 2016, 76, 91). Moynihan is a clear case of a UN ambassador shaping the character of US policy.

In contrast to Moynihan, Andrew Young and Donald McHenry – successive African American PRs and members of President Jimmy Carter’s Cabinet, followed a conciliatory model as PR, consistent with the generally more sympathetic Democratic approach to the UN and notably sensitive to issues of concern in the developing world such as development and apartheid in South Africa.

With Carter’s defeat by Republican Ronald Reagan in 1980, the new American PR Jeane Kirkpatrick took Moynihan’s confrontational approach to a new level. During her four-year tenure, Kirkpatrick ‘adopted an openly aggressive stance’ towards the UN, in both style and substance (Lyon 2016, 80). This led inter alia to cuts in – and restrictions on – US financial contributions to the UN, the UNESCO withdrawal in 1984, and refusal to sign the UN-negotiated Law of the Sea Treaty. As Lyon colourfully concluded, ‘From Kirkpatrick forward, conservatives within the Republican Party continued to view the UN as a hostile organisation hosting spies, terrorists, and rogue states’ (2016, 80; on dues, see Smith 2014). However, Kirkpatrick evidently had misgivings about her confrontation strategy. Moore and Pubantz describe how, less than two years into her tenure, Kirkpatrick expressed ‘significant evolution’ in her thinking about US-US relations that involved, in her words, ‘a ripening appreciation of the United Nations and of America’s possible role in the organisation’ (Moore and Pubantz 2022, 195). This change may well reflect Kirkpatrick’s belief that she had induced positive UN reform, but it also supports the thesis that the UN, as a social environment, induces socialisation at the everyday diplomatic level. Nonetheless, the US’s withdrawal from UNESCO suggests that it is hard to put the anti-UN genie back in the domestic-politics bottle. And, as a veteran American career diplomat put it in the late 1980s, ‘The experience of the Moynihan and Kirkpatrick incumbencies appears to suggest that the strategy of confrontation serves the interests neither of the United States nor the United Nations’ (Finger 1988, 457).

George W. Bush’s controversial ‘recess’ appointment to the UN of John Bolton in 2005–2006 followed the confrontational model enacted by Moynihan and Kirkpatrick. As noted above, Bolton personified and amplified Bush’s ‘distaste’ for international organisations (Moore and Pubantz 2022, 114) and his UN scepticism served, as Condoleezza Rice recalls (2011, 306), as ‘a corrective to the excessive multilateralism of our diplomats in New York’. Notably, Bolton relentlessly stiffened US policy positions on the nuclear activities of Iran and North Korea.

A well-publicised case involving the PR’s role during the Obama administration was Ambassador Susan Rice’s part in the 2011 Western-led military intervention in Libya that led to the overthrow of the regime and the death of Muammar Qadaffi. The controversy was whether the US, largely at Rice’s urging, pushed through Security Council resolution 1973 authorising intervention using ‘all necessary measures’ under the guise of protecting civilians in terms intended to resonate with the emerging Responsibility to Protect (R2P) norm, but in fact designed with the ulterior motive of removing Qadaffi from power. The resolution, adopted with 10 in favour and five abstentions (notably, Brazil, China, Germany, India, and Russia), led to a firestorm of international criticism of the ‘bombings and military activities’ that ‘far exceeded the mandate of civilian protection’ (Adler-Nissen and Pouliot 2014, 907). In their analysis of the Libya intervention, Adler-Nissen and Pouliot evaluate the case not in terms of Rice’s role but to show inter alia how the traditional Western powers – the P3, Britain, France, and the United States – are ‘masters of the multilateral game’ and play it competently ‘in ways that go beyond their formal positions in multilateral organisations’ (2014, 909, 910. Emphasis added). In a spirited defence of the Libyan intervention in her memoir, Rice strongly denied that regime change was ‘the original objective of the mission’ and argued that ‘the operation to protect civilians’ and spare Benghazi was ‘accomplished’. While acknowledging that Libya was ‘increasingly becoming a failed state’, Rice concluded that, ‘on balance’, the US and its allies ‘did the right thing to intervene in Libya and save thousands of innocent lives’ (2019, 291, 290, 293).10 For purposes of this article, what is abundantly clear is that Rice, as the PR for the United States, was a major decision-making factor in the Obama administration’s and Security Council’s Libyan intervention decisions.

Assessments vary of Samantha Power, Rice’s successor as Obama’s PR from 2013 to 2017. In Obama’s first administration, Power supported Rice’s advocacy of the Libyan intervention. As PR in New York in 2013, she again argued for US military action following the Syrian leader Bashar al-Assad’s deployment of sarin gas in rebel-held areas of Damascus, crossing Obama’s ‘red line’ (Borger 2019). Unlike in the Libyan intervention, Power was on the losing side of the argument within the administration, with Obama’s scepticism about ‘military entanglements’ winning out. In her autobiography, Power (2019) discusses the disconnect between her self-identification as an ‘idealist’ and the requirements of defending US policy at the UN. One striking example concerned the Palestinian Authority’s disputed application to join the International Criminal Court (ICC) in 2014. In Congressional testimony about the application, Power’s defence of US support for Israel and conditions for a negotiated peace settlement included an inflated claim that Palestinian membership of the ICC ‘poses a profound threat to Israel’. Yet, simultaneously, Power reiterated the traditional Democratic argument that the US punishes its own interests by cutting off funding to – or indeed withdrawal from – UN agencies that Palestine joins, because it leaves those organisation ‘at the mercy of … Russia, China, Cuba, Venezuela’ (Weiss 2014). In a critique of Power’s memoir, political scientist Michael Barnett sees Power caught in an ‘effectiveness trap’, which describes how people ‘cope with the disappointments and the possibility that one is merely contributing to greater harm’. Thus, Barnett applauds the ‘tongue lashing she gave at the UNSC directed towards Russia, Syria, and Iran’ for committing crimes against humanity in the Syrian civil war but laments her near silence on the ‘humanitarian nightmare’ in South Sudan and the mass atrocities against the Rohingya in Myanmar (2020, 251, 252). Such silences, along with what Barnett calls Power’s ‘tendency to displace responsibility’ and avoid ‘self-incrimination’ suggest that her impact was limited by cognitive dissonance arising from the tension between being a human rights advocate and a diplomat.

Following his election to the presidency in November 2016, Donald Trump selected former Republican Governor of South Carolina Nikki Haley for the PR post in New York, carrying Cabinet rank. On the critical question whether Haley shaped the character of US policy and practices at the UN – beyond representing what President Trump expected – evaluations by UN observers are mixed. The longtime UN ‘watcher’ Richard Gowan is relatively sympathetic, suggesting that her ‘efforts to balance US and foreign interests at the UN’ were ‘unexpectedly effective’ securing China’s support for an arms embargo on war-torn South Sudan and on a series of sanctions on North Korea for its missile and nuclear tests. Gowan further argued that Haley was ‘a consistent and forceful critic’ of Russia’s involvement in the civil war in Syria ‘in contrast to the administration’s lack of strategic direction over the conflict’ (2018). But on the Middle East – Israel, Palestine, and Iran – Gowan found that Haley ‘was far less pragmatic and far more focused on advancing the administration’s hard-line positions’. BBC correspondent Nick Bryant regarded Haley as ‘a human buffer between the White House and the UN’ who, as a senior member of the administration, ‘managed to maintain a measure of independence’, and who did ‘much to protect the United Nations from Donald Trump’s anti-globalist wrecking ball’ (2018). On the other hand, former Democratic PR Bill Richardson rebuked Haley for paying ‘little attention’ to countries of the Global South and for often slighting them (Kirkpatrick 2019). And human Rights advocates were unstinting in their criticism, citing her ‘main legacy’ as leading the US withdrawal from the Geneva-based Human Rights Council, her calling it a ‘cesspool of bias’, and ‘dismissing it as an ineffective institution that criticised Israel too much’ (Charbonneau 2018). Human Rights advocates criticised US policies and comments at the UN under Haley as self-defeating (Human Rights Watch 2018).

While Nikki Haley does not quite fit the confrontational Moynihan, Kirkpatrick and Bolton model, Trump’s second term nominee as PR, loyalist Republican Congresswoman Elise Stefanik, was more likely to do so, having adopted Trump’s ‘pugilistic style’ (Fandos 2024). Stefanik had become ‘one of the most outspoken supporters of Israel in Congress’, achieving national prominence in aggressive congressional hearings of how university presidents handled student protests about Israel’s war in Gaza (Halpert 2024). Rhetorically, Stefanik clearly fits the confrontationist category, criticising the Biden administration in October 2024 for allowing the UN to ‘rot with antisemitism’ (Stefanik 2024), when the administration was heavily criticised by others for its largely unquestioning public support for Israel’s military actions in Gaza, not least its controversial veto of ceasefire resolutions in the Security Council. At her Senate confirmation hearing, Stefanik inter alia denounced the UN as a ‘den of antisemitism’ and foreshadowed her intention to counter Chinese influence at the UN, adding that the US needed to engage with and reform the organisation (Demirjian 2025).

The pattern is imperfect but provides support for the argument that domestic political divisions impact the UN, and that those divisions became sharper under Republican presidents than under Democratic ones. That two-thirds of US presidents since 1946 have appointed their PR to the UN (that meets in New York) and to the Cabinet (that meets in Washington DC) serves as yet another reminder of how geography impacts diplomacy: the US is the only country that can easily manage this arrangement.11 This theme leads to yet another potential meditating factor that affects the US-UN relationship: whether and, if so, how the US–UN relationship has been complicated by the United States as host country and New York City as host city to United Nations headquarters.

Venue: the US as host country, New York as host city For diplomats, venue is a taken-for-granted strategic asset in diplomacy but is often neglected in International Relations scholarship (Coleman 2011; Kuus 2016; McConnell 2019). Since 1945, the US-UN relationship has been complicated by the paradox that the US, as host country, is the world body’s biggest financial contributor and yet often its biggest critic, at least under Republican presidents. As noted above, one potential advantage this offers the United States is that its PR resides in New York but is physically close to Washington DC and can thus serve in the President’s Cabinet. However, one of the practical difficulties as host country is that the United States does not recognise all UN member states, which is not a problem in Switzerland and Austria, countries that also host major UN institutions. As a solution, the US created a special visa status for diplomats from countries it does not recognise (or whose governments are not members of the UN). Still, there have been disputes over visas. One case involved the denial of a US visa for Palestinian Liberation Organisation leader Yassir Arafat to address the UN General Assembly in 1988. Two General Assembly resolutions were adopted ‘deploring’ the host government’s actions and calling for a special session of the Assembly, which subsequently re-convened in Geneva to hear Arafat (Rabie 1992, 61).

The political sensitivity of the United States’ role as host country is reflected and accentuated by New York City’s role as host city. UN secretaries-general understandably embrace the UN-New York City relationship, and city mayors generally welcome the UN presence, as they do for the large consular corps. One study found that in 2014, ‘the UN community directly and indirectly supported about 25,000 full-and part-time jobs in New York City, and total earnings paid to New York City employees in relation to the UN amounted to close to $2 billion’ (Ivanova 2021, 136). A venue implication for many Global South member states of the UN is the high cost of living in New York City’s midtown Turtle Bay area where the UN and many missions are located. This is a serious problem for smaller and poorer member states that must economise on staff numbers or have their missions in Washington DC cross-accredited to the UN, which clearly puts them at a disadvantage relative to bigger, wealthier members.

Notwithstanding the economic benefits to New York City, mayors have occasionally tried to score political points by criticising the United Nations, even ‘urging it to get out of town’ (Haberman 2007). In one case in 1995, Republican Mayor Rudolph Giuliani had Arafat expelled from a Lincoln Centre concert for world leaders attending the UN General Assembly, an action that Clinton administration official James Rubin described as ‘an embarrassment to everyone associated with diplomacy’ (cited in Firestone 1995). Clinton subsequently invited Arafat to a White House reception – a diplomatic gesture far less likely from a Republican president. Historically, the reasons for the host city’s ‘ambivalence’ have ranged from the quotidian – traffic jams and the non-payment of diplomatic parking fines – to the consequential – General Assembly resolutions highly critical of Israel in a city with a large Jewish community (e.g. Winder 2012).

The location of UN headquarters in New York City and in the United States produces a social and political dynamic arguably more complex than those of the other three major UN cities – Vienna, Geneva, and Nairobi. The Swiss and Austrian Governments and city leaders unreservedly welcome the UN’s presence, and it is widely supported in the public domain. Nairobi, the only UN headquarter city in the Global South and importantly host to the UN Environment Program (Ivanova 2021), is less like Vienna and Geneva’s hospitable-relations model and more like New York’s ambivalent-relationship. For example, when plans were reported in 2024 to relocate some 200 UN Population Fund (UNFPA) staff and their families from New York to Nairobi, a Kenyan Ministry of Foreign Affairs official welcomed UNFPA’s decision as reflecting ‘the strengthening of Nairobi as the multilateral capital of the Global South’ (Kariuki 2024). However, public reactions to the decision were decidedly mixed, ranging from practical concerns about the move’s impact on the city’s housing market and cost of living to misgivings about increased American and Western influence that typically leads to what Sam Okoth Opondo (pers. comm. December 5, 2024) describes as racial ‘enclaving’ and ‘class dynamics that a large expatriate presence creates in the city’. Regarding host-city– UN relations, Nairobi may therefore come closer to New York City’s more complex dynamic.12

Overall, the physical presence of UN headquarters in the United States has had the unintended consequence of bringing contentious US domestic politics into the UN, an effect that has been exacerbated by its New York City location.13 Venue matters as a mediating factor in the US-UN relationship.

Non-state actors

Another potential mediating factor in the US-UN relationship deserving of more attention is the role of internationalist-inclined non-state actors that might be considered ‘friends of the UN’, providing resources, expertise, and moral support to the organisation. While there is a deep-seated partisan split in American views of the UN between generally supportive Democrats and generally critical Republicans and their respective presidents, there are many more well-organised, left-leaning civil society groups and actors supporting positive US engagement with the UN than there are right-leaning ones opposed to, and generally critical of, that engagement. Three groups stand out at first glance: expert epistemic communities, civil-society groups, and high-profile individuals.

Epistemic communities are connected groups of highly skilled professionals such as nuclear scientists working on arms control and scientists working on climate change and sustainable development. Under that rubric, we could include, for example, the Academic Council on the UN System (ACUNS); major philanthropic foundations such as the Ford, Gates, and MacArthur foundations; the staff and scholarly networks of the UN University in Tokyo; think tanks such as the International Peace Institute; pro bono consultancies such as Independent Diplomat; and US academics and researchers with close UN ties.14 This list is not exhaustive, but these epistemic communities are striking both for their normative support of the UN system and for positive US engagement with it, backing that can often involve sharp disapproval of UN processes. An important example is the UN’s Women, Peace and Security (WPS) Agenda established under UNSC Resolution 1325 of 2000 that requires National Action Plans to implement the resolution. Feminist scholarship on the WPS Agenda is impressive and includes criticism of the US’s ‘outward-facing’ focus on countries in conflict zones and the Global South rather than on the United States itself, noting – consistent with this article’s theme – that any inward-facing, ‘institutionalization’ of WPS is highly dependent on whether the administration is Republican or Democratic and on bureaucratic politics (Henshaw 2022).

Civil-society groups include the 20,000-member United Nations Association of the USA (UNA-USA), a program of the UN Foundation (established with funding from CNN founder Ted Turner). Civil-society groups that seek to influence UN debates on a wide range of issues have one important point of access: the Economic and Social Council (ECOSOC). Nongovernmental Organisations (NGOs) have been accorded consultative status with ECOSOC since the UN’s founding and by 2024 had some 6784 NGOs with accreditation. Of this figure, 1288 are NGOs with headquarters in the US.15 Also significant is the non-profit organisation Model United Nations, the popular program at high schools and colleges in which participants simulate delegates to UN bodies and which has involved thousands of American students. These large numbers call into question the conservative claim that out-of-touch elitist and globalist cosmopolitans, detached from everyday citizens, support the UN. Moreover, as Paul Wapner has argued, ‘accredited NGOs have left their signatures … on almost all significant UN policymaking’ since the 1990s (2008, 258). Also relevant is that larger civil-society groups, from Amnesty International to the World Council of Churches (WCC), maintain representative offices at the UN.16 There are grounds to surmise that such groups – often well-connected with expert-based epistemic communities described above – help generate some American support at the governmental interagency level for the UN as a useful platform for norm development, for example, on climate change, human rights, and sustainable development.

High-profile individuals represent another group that support a collaborative US-UN relationship, with Ted Turner a notable example. The UN has successfully institutionalised this group in its decades-long Goodwill Ambassadors and the more recent Messengers of Peace program (comprising a dozen celebrities that include film actor Leonardo Dicaprio, cellist Yo-Yo Ma, and girls’ education activist Malala Yousafzai). While aware of the shortcomings of these programs, celebrity studies have provided evidence that Goodwill Ambassadors – e.g. actors Danny Kaye and Audrey Hepburn (UNICEF), Angelina Jolie (UNHCR) – have had a positive, if difficult to measure, impact on American public attitudes towards the UN (Cooper 2008; Wheeler 2011). Significantly, Goodwill and Messenger programs are often criticised by conservative American opponents of the UN (Drezner 2007).

Expert epistemic communities, civil-society groups, and high-profile individuals do not fully capture the array of non-state actor groups that support the UN, but this simple classification illustrates yet another mediating factor beyond the political predisposition of US presidents that impact and reflect a general left-right split in how Americans see the UN. Gallup polling on the UN’s image since 1953 has been ‘marked by long stretches of negativity and shorter periods of positivity’, the latter in 2002 after the 9/11 terrorist attacks on New York City. For the 18 consecutive years up to 2020, Gallup found that ‘more Americans think the UN is doing a poor job of trying to solve the problems it has had to face than say it is doing a good job −54% to 43%’. However, as Gallup further reports, from 2001 onwards, ‘a solid majority nonetheless say they would like to see [the UN] play a significant role in the world’. Moreover, consistent with this article’s themes, Gallup finds that for years, ‘Democrats are much more positive in their views of the UN than Republicans’ (Brenan 2020).

Member-state diplomats in New York are acutely aware of the powerful constraining presence of Washington DC and of American society and its perceived general antipathy to the UN, especially from the Right. However, I conclude that member-state diplomats increasingly engage with a wider diplomatic community of issue experts, civil-society friends of the UN, and high-profile individual supporters of better US-UN relations.

Conclusion

This article aims to contribute to research that seeks to explain the century-long ambivalence that the United States has exhibited towards Formal International Governmental Organisations (FIGOs) from 1919 and especially US-UN relations since 1945. The issue is of acute importance given the emergence of Informal International Governmental Organisations (IIGOs) and that the US is – for now – the most important stakeholder in the post-1945 international order and is therefore more responsible than any other single player in determining the future of multilateral international institutions (Nossel 2021).

The main contextual factor explaining this ambivalence is the intersecting dynamic of America’s international and domestic dimensions. The key international element of this dynamic is how the US defines itself and its role in the world. The key domestic element is how this world role is contested at home, a contest that is temporarily ‘resolved’ in four or eight-year intervals manifested by which political party holds the presidency and the partisan balance in Congress. Within an overall assumption that the two major political parties are fully aware of the US’s hegemonic status, this article shows a relatively consistent pattern of difference and dissonance between them. To generalise, the Democratic Party and presidents are generally supportive of liberal internationalist engagement with the UN; the Republican Party and Republican presidents are generally sceptical of it. Democrats tend to be more sympathetic to involving Global South countries in UN governance (including expanding the Security Council), Republicans less so. Democrats tend to see the advantages of UN engagement; Republicans tend to see the downsides.

Yet, I also suggest that focussing on the international-domestic intersection as mediated by which party holds the White House (and Congress) does not sufficiently explain the US-UN relationship. When we see these relations through a diplomatic practice lens and consider other mediating factors relating to the diplomacy of the UN, a more nuanced picture emerges. Recent UN secretaries-general such as Boutros Boutros-Ghali, Kofi Annan, and Ban Ki-moon have impacted the relationship. So too have US Permanent Representatives such as Daniel Patrick Moynihan, Jeane Kirkpatrick, and John Bolton on the Republican side, and Madeleine Albright, Susan Rice, and Samantha Power on the Democratic side. The US as host country and New York as host city have also worked as mediating, and sometimes complicating, factors. On the brighter side, non-state actors, such as communities of epistemic professionals, civil-society groups, and high-profile American citizens have leavened the relationship.

With Donald Trump’s capture of the Republican Party ominously bookending a century of US ambivalence towards formal international organisations, the presidential-partisan factor does not offer grounds for optimism that US-UN relations will ‘survive’ Trumpism (Carnegie and Clark 2024). However, the rise of informal multilateralism outside the US’s orbit – and the emergent role of non-state actors – might serve as competitive and countervailing influences incentivising more consistent American engagement with the UN, befitting the US’s responsibilities to its own citizens and its potential contribution to counter fragmented formal multilateralism and respond to global crises.

#### There is speculation over what post-liberal internationalism looks like.

Biersteker 25 (, T. (2025) Donald Trump and the Future of Multilateralism. https://theglobal.blog/2025/01/16/donald-trump-and-the-future-of-multilateralism/. Thomas J. Biersteker Professor of International Security at the Graduate Institute of International and Development Studies, Geneva. [RP])

Implications for world order

As Alexandre Dugin, allegedly one of Vladimir Putin’s political, philosophical, conceptual, and strategic influencers, said on X following the US election, “We have won…The world will be never ever like before. Globalists have lost their final combat.” **Illiberal nationalism** at the domestic level and spheres of influence at the international level **are the** apparent **winners**, not the liberal internationalist rules based international order of the post-1945 era.

In the 9 November 2024 issue of the Financial Times, Francis Fukuyama described classical liberalism as “a doctrine built around respect for the equal dignity of individuals through a rule of law that protects their rights, and through constitutional checks on the state’s ability to interfere with those rights.” When applied to the level of the international system, classic liberal institutionalism analogously supports the equal dignity of sovereign states, with a rule of law maintained by the articulation and performance of norms to protect their rights, and constitutional checks in the form of interventions by the UN Security Council to maintain international peace and security. All of these core elements of the rules-based order are now under threat. Liberal internationalism may be in the process of being replaced by Illiberal nationalism, with **spheres of influence** and **competitive** **power** **balancing** closer to the security governance system of the latter half of the 19th century than the 20th century with its consecutive efforts to institutionalize collective security, first in the League of Nations and subsequently in the United Nations.

How might the world respond to the demise of the post-WWII rules-based order?

**Some** might **pursue** forms of **self-reliance**, trying to insulate themselves from the weaponization of the US Dollar. This would entail an attempt to **de-Dollarize**, diversify reserve holdings, increase currency swap arrangements, and **create** **alternatives** to SWIFT that go beyond bilateral trade and financial arrangements. China appears to be pursuing this approach in broad terms, though the efficacy of a BRICS currency and moves to an alternative to the US Dollar are often exaggerated.

Others might choose to **step** **into** the **gaps** **left by the US withdrawal** from international organizations. **China** might **offer** to provide **funding** for organizations in exchange for institutional reforms, a greater say in how they are run, and more influence on how their resources are allocated. We might also see the further **creation of new informal institutions**, whether they be inter-governmental or issue-specific transnational entities composed of public and private actors. Some states might choose to underwrite the costs of new organizations to address contemporary governance challenges as they emerge.

Alternatively, we might see an increase in the **salience of regions**, as **trade** **becomes** less globalized and **more regionalized**. As a result, some of the **norms** **of the liberal** and rules-based **order** **may survive at the regional level**, such as democracy and human rights in Latin America, for example, or continued adherence to non-intervention within ASEAN.

#### American contempt for multilateral institutions comes and goes.

Harold James 25, Professor of History and International Affairs at Princeton University, specialist on German economic history, specialist on globalization, "Shock Therapy for Multilateralism," Project Syndicate, 01/02/2025, https://www.project-syndicate.org/commentary/trump-multilateralism-will-be-shaken-up-but-not-suspended-for-long-by-harold-james-2025-01

PRINCETON – No one doubts that US President-elect Donald Trump’s administration will show little regard for multilateralism. Even more globally oriented appointees like Secretary of the Treasury-designate Scott Bessent believe that the purpose of engaging with international institutions is to “win.” America should engage, but only so that its own interests do not suffer.

The typical American critique of multilateralism assumes that the existing order is fundamentally broken, and that a shock to international institutions is needed to remove threats to US interests or challenges to the American point of view. But what will come after the shock? There will need to be new ordering principles, and they will not come from simply demanding that everyone side with the United States.

Admittedly, the diagnosis is not completely mistaken. The feebleness of recent multilateral efforts reflects a deeper intellectual and political fragmentation. While the International Monetary Fund was holding its annual fall meeting in October 2024, the BRICS (Brazil, Russia, India, China, South Africa, and four new members) convened 36 national leaders in Kazan, Russia, where the discussion centered around replacing the dollar-based international monetary order.

Around the same time, the Conference of the Parties to the Convention on Biological Diversity was meeting in Cali, Colombia, and it was soon followed by a counterproductive climate summit in Baku, Azerbaijan, and then a futile G20 summit in Rio de Janeiro. If multilateralism was functioning well, these negotiations would all be joined up.

The pushback against the international order is not new, though. In the US, incoming Republican administrations in the early 1970s, early 1980s, and early 2000s all voiced contempt for multilateralism, demanding that America’s freeloading allies pay more for the security umbrella that it provides.

Richard Nixon and his Treasury Secretary, John Connally, did not hide their disdain for international institutions, arguing that only dramatically disruptive unilateral action could change things. Their shock therapy began spectacularly in August 1971, when Nixon ended the dollar’s convertibility into gold and imposed a general levy on imports. Other countries were left to deal with a world in which their exports had become more expensive.

Similarly, in the early 1980s, Ronald Reagan’s advisers were openly suspicious of the IMF; and many within George W. Bush’s orbit in the early 2000s argued that the recent financial crisis in East Asia had discredited the Fund, and that private capital flows could meet all development financing needs anyway.

In each case, however, a severe financial crisis eventually forced a reconsideration. In the 1970s, the depreciating dollar led oil producers to push up prices, and many oil-importing developing countries had to be rescued by a newly created IMF Oil Facility. In 1982, a soaring dollar and higher US interest rates produced a general debt crisis, leading the IMF to reconfigure itself to meet the demands of the moment. By 1983, Reagan was referring to the Fund as the linchpin of the international financial system.

Finally, the 2008 global financial crisis began in the final years of the Bush presidency. Soon enough, governments had come together at the G20 and in other global bodies to contain the fallout and set new rules of the road.

Recent history aside, there is a more fundamental reason why multilateralism will remain essential. In a world that seems to be segmenting into rival blocs, most countries are rightly focused on protecting their own interests. And since those interests do not neatly align with those of America, China, or any other aspiring global power, governments want to maintain contact with every party in the looming conflict.

A similar dynamic lay behind the Cold War-era Non-Aligned Movement, which brought together countries that refused to choose between America and the Soviet Union. Likewise, ASEAN developed out of a concern that Indonesia should not have to take sides; rather, it could assert itself by forging stronger ties with its neighbors. The European Community, which evolved into the European Union, also emerged because Europeans, though aligned with the US, did not want to be an extension of it. By 2008, in the middle of a new financial crisis, ASEAN wanted to move in the direction of becoming an EU-style community.

Everywhere you look nowadays, the message is the same: We don’t want to choose sides, and we shouldn’t be forced to do so. British Prime Minister Keir Starmer rightly argues that it would be “plain wrong” for the United Kingdom to pick between Europe and the US. In response, Trump’s adviser Stephen Moore suggests that Britons must choose European socialism or American-style free markets. But with every government now pursuing some sort of industrial policy, this juxtaposition is a chimera.

Challenging historical episodes always bring a realization that the world is not really constructed around zero-sum calculations. US Treasury Secretary Henry Morgenthau put it elegantly at the original Bretton Woods conference: “Prosperity, like peace, is indivisible. We cannot afford to have it scattered here or there among the fortunate or to enjoy it at the expense of others.” In the final months of World War II, US leaders saw that they could not win the peace by working only with those who adopted America’s playbook.

If a country as powerful as the US in 1945 still needed to win friends and influence people, today’s America certainly must do so. Shock therapy for multilateralism will bring disruption; but after that, it must bring more international cooperation, because there is no alternative.

#### There are advocates for Trump to re-embrace multilateralism.

Seshadri Chari 1/25, Former Editor at ORGANISER, Secretary General at FINS, Member of Governing Council at RIS, Chairman of China Study Centre at MAHE, Expert in international relations, geopolitics and strategic studies, "Great Again? Trump's America must re-embrace multilateralism," Deccan Herald, 01/25/2025, https://www.deccanherald.com/opinion/great-again-trump-s-america-must-re-embrace-multilateralism-3373187

During the run-up to the presidential election, Donald Trump appeared to have drawn inspiration from the April 1932 radio address by former president Franklin D Roosevelt, famously referred to as The Forgotten Man Speech. Roosevelt had drawn the attention of lawmakers to work for the well-being of the poor and the common American working-class citizen, “the forgotten man”, whose tireless efforts will make America great. Trump promised to work for the poor and ‘hard-working American citizens’, bring manufacturing back to America, end costly wars that drain the American exchequer, and Make America Great Again (MAGA).

Right on day one, Trump seems to have begun working on his promises, much to the euphoria of the working class and consternation in several world capitals, including in India. His amendments to the citizenship laws and anti-immigration policies could severely affect the job market in India, not to mention the setback to the IT industry in the country.

America has every right to become great, with or without Trump at the helm. It has been great all along these 80 years after World War 2, at least by two key parameters — military strength and economy. Trump should know that America cannot become great by making other countries, friends and foes alike, poor or mediocre, militarily and economically weak. Technology has greatly influenced the upgrading of military prowess of regional powers like China and India catapulting them to the global high table. The North-South divide has disappeared resulting in the emergence of a robust and united south-south cooperative framework.

The Trump administration will have to dismount the high horse and stop pretending that the world is out to destroy the present world order — an order that was not created overnight. There is a series of interconnected events, threats, setbacks and victories that culminate in a broad understanding and adherence to a set of rules, often framed by no single country but followed by everyone for common security and economic benefits. Soon after the end of World War 2 and the beginning of the Cold War, the then Soviet Union was seen as a major threat to the war-weary Western European states and the Communist ideology needed to be combated with a much stronger, united, and preferably institutionalised dogma.

Harry Truman and his Secretary of State Dean Gooderham Acheson, Truman's main foreign policy advisor from 1945 to 1947 during the early Cold War years, convinced Western Europe of the need for a “new sense of unity” with a “sense of urgency” and if not a ‘United States of Europe’, at least an Atlantic Alliance to prepare for the new Cold War and post-war economic reconstruction. The US envisaged the establishment of several Euro-Atlantic institutions, most importantly NATO and the Marshall Plan, aiming to guarantee security and prosperity of the member-countries during the Cold War and to protect liberal democracy and progressive values of an open society that unite them under multiculturalism.

The economic and military relevance of Atlanticism is over. Trump should understand that the need for a larger cooperative framework with countries of the South, and more prominently with India, will ensure both economic progress and global security under a robust world order. Therefore, in the light of emerging economies and middle powers gaining greater relevance, the Indo-Pacific, QUAD, and the Indo-Pacific Economic Framework (IPEF) require greater attention to secure peace and progress. Thankfully, the first serious multilateral meeting under Trump 2.0 was held between QUAD members and the US Secretary of State Mark Rubio. Incidentally, Trump took the lead in reviving the QUAD in 2017 and has been an ardent supporter of its agenda.

In 2000, the then Secretary General of NATO, Lord George Robertson, said, “There is an Indian saying that a bridge never sleeps,” alluding the metaphor of the bridge to Atlanticism. In the present context, it is India which is a bridge of “substance and permanence” linking continents, and the US and the multilateral world, in a commitment to one another.

Trump's idea of rolling out a new tariff regime could greatly impact international business, trade and commerce. Multilateral trade institutions and forums like BRICS and ASEAN may have to prepare to deal with a new trade regime. But Trump's tariff war will surely affect American industry, consumers and business. Just as he borrowed the ‘Forgotten Man’ idea, hopefully, he would take a leaf out of the same speech wherein Roosevelt said, “our factories can turn out more products than we as a Nation can possibly use ourselves.” He suggested that America should aggressively export but many countries cannot trade with the US because of the tariffs. Trump should know how imposing high tariffs on imports may not, after all, make America great again.

#### Trump is opposed to multilateralism but not minilateralism. There is still a space for binding international obligations.

Farah Al Zadjali 25, Research Analyst – SRMG Think, "How will Trump 2.0 Re-shape US-led Minilaterals?" SRMG Think, 02/04/2025, https://www.srmgthink.com/featured-insights/438/how-will-trump-20-re-shape-us-led-minilaterals

A new era of US leadership is taking shape under President Donald Trump’s second term. Within hours of taking office, he withdrew the US from key international agreements, including the World Health Organisation and the Paris Climate Agreement. Although this is nothing new – similar moves were taken during Trump’s first term – this time they appear to be part of a strategy to systematically reshape US engagement on its own terms. Under Trump’s “America First” policy, US interactions with alliances big and small will be transactional and shaped by Trump’s personal style of foreign policy. Placing American interests above all else, the US will adopt a tough stance towards coalitions that are deemed not to advance its goals.

This recalibration is particularly significant for US-led minilaterals – small, issue-focused coalitions that have grown in importance over the past five years, often at the expense of multilateral organisations. AUKUS, the powerful defence partnership between the US, UK and Australia in the Indo-Pacific, exemplifies this shift. However, Trump’s scepticism of coalitions both large and small means that minilaterals will come under renewed scrutiny in terms of what the US stands to gain. This shift is likely to have significant implications for key regional alliances, notably the I2U2 and the Quad.

The I2U2: A Test of Trump’s Diplomatic Skills

Under Trump, there are likely to be renewed efforts to revive the US-led I2U2 coalition between India, Israel and the UAE. The group emerged in 2021 following the Abraham Accords – Trump’s signature diplomatic achievement during his first term – which normalised ties between Israel and several Arab states. Its goal was to advance cross-regional economic integration, with region-wide challenges such as water, energy, and food security being a key focus.

However, since the outbreak of war between Israel and Hamas in October 2023, the I2U2 has been on pause. The Biden administration expressed a commitment in 2024 to advancing the group’s agenda, but no meaningful progress has been made. After October 7th, the UAE distanced itself from the dialogue, India adopted a "wait and watch" stance, and Washington’s interest appeared to wane. For Israel, the war became the overriding priority.

Reviving the I2U2 would depend on Trump’s ability to navigate intra-group sensitivities and rebuild trust. More significantly, it would require him to present the I2U2 as a building block for broader regional normalisation with Israel by linking Jerusalem’s interests with both Arab and non-Arab states. The key question is whether Trump will expand the group to include potential partners such as Saudi Arabia, making it an I2U2+ or seek an entirely new alliance. The value of I2U2 lies in aligning the interests of countries with a history of disagreement, which in turn benefits the US.

The Quad: A Potential Casualty of the “America First” Policy?

In contrast, Trump’s engagement with the Quad – an Indo-Pacific coalition comprising Australia, India, and Japan – is more uncertain. The grouping’s strategic objectives have changed in recent years from tackling regional challenges in the spheres of maritime security, climate protection, and health policy to counterbalancing China’s influence in the Indo-Pacific. However, under Trump, this alliance is likely to be deprioritised. Trump is sceptical of alliances he perceives as “free riding” on US commitments and is likely to reevaluate the value of the relationship through the lens of its cost to the US relative to its strategic returns. The Quad’s broad scope and soft focus may not resonate with Trump’s narrower strategic focus on countering China and advancing US interests in the Indo-Pacific.

The January 21 meeting of Quad foreign ministers in Washington, DC suggests that Trump has not yet shown overt disinterest or disengagement with the alliance. However, he is unlikely to support it out of sentimentality or loyalty; instead, he will demand that the alliance prioritise US interests first and foremost. If members fail to deliver, he may deprioritise the Quad in favour of transactional bilateral arrangements that are directly beneficial to American interests.

Shifting Dynamics in the Indo-Pacific

Trump’s foreign policy is based on an America First approach to diplomatic relations. However, the tactics he uses to serve US interests are often unpredictable and aim to “wrong foot” his counterparts. His approach to China is likely to be no different. His approach could swing between striking a trade deal with President Xi Jinping and escalating tensions through trade tariffs and sanctions. This uncertainty has already prompted Quad members to hedge their bets and seek to reduce tensions with Beijing. In December 2023, Tokyo announced Japan-China security talks; in October 2024, India agreed to ease border tensions with China; and in June of the same year, Australia renewed economic and diplomatic ties with Beijing after a period of strained relations.

The Path Ahead for US-Led Minilaterals

Looking ahead, Trump is likely to prioritise the I2U2 for its rewards while focusing on the Quad’s ability to deliver in line with his strategic priorities vis-à-vis China. He is expected to have little patience for funding initiatives that fail to align with, or advance, US objectives. This will prompt member states to rethink their approach to US engagement. To sustain Trump's attention and commitment, US partners in minilaterals will need to offer clear economic or strategic benefits in future negotiations.

#### Parts of the international order can be saved from collapse.

Heather Hurlburt 25, Associate Fellow, US and the Americas Programme, "Can the international order survive Trump 2.0?" Expert comment, Chatham House, 01/30/2025, https://www.chathamhouse.org/2025/01/can-international-order-survive-trump-20

During his first week in office, US President Trump took aim at the norms and institutions of the post-Cold War order, from global management of climate and health to international trade rules. For a decade or more, big players – including Washington – have edged away from the global governance ambitions set in the more internationalist 1990s. Trump’s actions therefore portend a permanent shift in the landscape – not just a switch that flips back in four years’ time.

Although the pullout from the Paris Climate Accords was expected, many observers were more surprised by Trump pulling the US out of the World Health Organization, and out of negotiations on a pandemic treaty intended to prevent another global crisis on the scale of COVID-19.

Another executive order re-opened the possibility of sanctions on the International Criminal Court and its key personnel, and Republicans are already attempting to move legislation to that effect through Congress.

Trump has also teed up a range of possible trade actions that would move the US further away from extant WTO rules, including across-the-board tariffs and ending US free trade with China. A short-lived back-and-forth with Colombia over its refusal to accept planeloads of deportees offered a glimpse of the new administration’s playbook: the matter was quickly resolved after Trump threatened to impose 25 per cent tariffs.

Not just the institutions but the norms of the post-Cold War order are under threat. A series of executive orders will effectively end US participation in global efforts to combat racial and gender prejudice and inequity, with programmes being disestablished and staff reassigned. A freeze on almost all US foreign aid – ‘pending review’ – has left in doubt the fates of US development and humanitarian assistance programmes and aid groups.

Meanwhile, the administration’s moves to turn back or deport migrants without allowing them to make asylum claims shines stark light on the growing gap between migration policy as now practiced globally and the international norms laid down in past decades.

So far, Trump and his Cabinet have focused less on the pillars of the post-1945 world order – NATO, the nuclear Non-proliferation Treaty (NPT), the UN, the World Bank and the IMF. The question remains whether Trump and those around him are willing to operate within these institutions or will target them next.

Trump’s team – including his Secretary of State Marco Rubio – have softened or reversed earlier rhetoric suggesting that the US might quit NATO or Asian defence partnerships, as well as on Ukraine and nuclear weapons. The administration’s timeline for a Ukraine peace deal has moved from the first 24 hours to the first 100 days. While Trump’s Project 2025 urged the Pentagon to prepare for the resumption of US nuclear testing, Trump surprised many by using his video remarks at Davos to call for US–Russia–China talks aimed at reducing nuclear arsenals.

Several commentators have argued that the actions taken so far do not add up to a radical agenda, or to an irreversible break with Washington’s traditional leadership of the global order. But many of the aspects of global governance that are seen in the US as secondary – or culture war fodder – are now fundamental elsewhere. Whether or not climate, trade and health count as national security issues in the US, they are matters of high policy in many parts of the world.

Global skepticism towards US commitment to a rules-based order and charges of hypocrisy are not new; the Gaza war is the most recent but far from the only example. But the Trump team explicitly and repeatedly rejects the post-Cold War assumption that there is a net benefit to the United States from consistent global rules.

The global landscape is also different now. Unlike in 2017, there are a host of state and non-state actors eager to take advantage of the US withdrawal from global norms and institutions. US actions offer permission, and even support, to other leaders looking to edge away from onerous financial commitments and policy restrictions – and the surge of illiberal populism has installed more such leaders.

In recent years, US support for international institutions has often been justified with the argument that, in Washington’s absence, Beijing would step in and turn the international order to its benefit. Trump’s administration is split between China hawks and would-be China dealmakers. But unlike the Biden administration and its more traditional Republican counterparts, neither faction sees international institutions as a key arena for competition.

To save the ambitions of post-Cold War global governance, strengthened recommitment will be required: from wealthy governments that can help pick up some of the slack, but also from business and philanthropy, and from emerging economies ready to remake global governance in their favour. During Trump’s first term, US cities and states as well as the private sector stepped up on climate policy, while philanthropy and other wealthy countries beefed up humanitarian and human rights support. 50 countries joined an ‘Alliance for Multilateralism’, launched by Germany and France.

It will not be as easy to fill the gaps this time. Governments elsewhere are also cutting back in the human rights and humanitarian space, and trimming their climate ambitions. Conservative activists have targeted climate investors and corporate climate targets, and threatened activist cities , states and private donors who focus on climate and rights.

This suggests that the parts of the international order that manage to survive Trump will require at least the complaisance if not the active support of Beijing. Which, in turn, means that the order that emerges will look different than it does today.

But Beijing is no straightforward saviour. While it has amped up its presence in many international institutions, China has avoided contributing proportionate to its standing as the world’s second-largest economy. For example, China is not even among the top 10 WHO donors, which include both governments and philanthropies. And at the WTO, China still wants to be treated as a developing economy on a par with the world’s poorest nations. Moving away from those positions will require major change – and major funding at a time when China’s economy is wobbly and a tariff war with Washington looms.

Beijing will certainly reap public affairs benefits at Washington’s expense, by presenting itself as a reliable, low-drama partner on trade and assistance and as a supporter of existing international organizations. But it is unlikely to step up to fill the funding and programmatic gaps – much less the gaping holes in global norms.

Supporters of global governance around the world are understandably worried, not least because of the challenges Trump’s approach poses to their own governments. But the question of what parts of the post-Cold War order can be saved – and for whom – will have to be tackled soon. This time, there is no turning back.

### Multilateralism---AT: Trump Destroys

#### Trump will stretch the multilateral order, but not break it.

Patrick Wall 1/26, Co-founder of Global Strategic Initiatives Group, Head of Strategic Partnerships at Institute for Global Negotiation, "Multilateralism under Trump 2.0? Not unless there's something to be gained for the US," Global News Donald Trump Opinion, 01/26/2025, https://genevasolutions.news/global-news/multilateralism-under-trump-2-0-not-unless-there-s-something-to-be-gained-for-the-us

During his first term in office, Donald Trump supported some multilateral initiatives where they suited his own agenda. This time around, however, his transactional approach to multilateralism could have more far-reaching consequences, writes Patrick Wall, a lawyer and co-founder of international affairs consultancy, Global Strategic Initiatives Group.

Just days before President-elect Donald Trump’s second inauguration, international Geneva is pondering what his return to the White House will mean for multilateralism and international cooperation. Will he burn the system to the ground, treat it with indifference, or use it to his own advantage?

The best answer seems to be that he will do whatever he feels will, in the moment, best advance his “America First” agenda. This will pose new and elevated challenges to the multilateral order.

Trump 1.0 stretched the multilateral order, but not to breaking point

The first Trump years were challenging ones for the international system. The United States withdrew from the Paris Agreement on climate change and began extracting itself from the World Health Organization (WHO). It disengaged from the Human Rights Council and UNESCO. It refused to participate in negotiations for the Global Compact for Safe, Orderly and Regular Migration. It voted against the Global Compact on Refugees, and suspended funding for the United Nations Population Fund and UNRWA, the United Nations agency that provides assistance and protection to Palestinian refugees.

The first Trump Administration's sceptical view of multilateral institutions and processes went beyond the United Nations, too. He withdrew from the JCPOA nuclear proliferation deal with Iran, as well as negotiations for the Trans-Pacific Partnership trade deal, and imposed sanctions against officials of the International Criminal Court. He excoriated NATO members for not spending enough on their own defence and mused about withdrawing from the alliance.

It would be a mistake, however, to say that, during his first period of residence in the White House, Trump was an anti-multilateralist. By all accounts, he enjoyed the pomp and circumstance of the General Assembly's high-level week in New York, and he had a warm relationship with secretary-general António Guterres. His administration deftly navigated around potential vetoes from China and Russia to impose Security Council sanctions on North Korea and vigorously pursued the Abraham Accords agreements that normalised relations between Israel and a number of Arab states.

Rather than outright hostility, Trump approached multilateralism with scepticism and with the same transactionalism that he applies to many issues of politics and policy. Where multilateral initiatives suited his short-term objectives and aligned with his vision of the world, he could support them; where they did not, he couldn't. Where he thought he could get a better “deal” through bilateral negotiations, he would eschew multilateral ones. It is said, for example, that he asked then-German Chancellor Angela Merkel \*eleven times \*to sidestep the European Union and negotiate a trade deal between the US and Germany alone.

Trump 2.0 will be the same, only more so

Commentators appear to agree that the second Trump administration will not be the same as the first. In 2016, Trump was an insurgent candidate who ran against the establishment of the Republican Party. He selected for his staff a mix of true believers and party insiders. The former were not used to governing; observers tend to agree that they struggled to be effective. Many of the latter, it turns out, were working to reign in his excesses.

Now, the Republican Party is Trump's party. The party insiders are true believers, and many of them have spent the last four years working out how they would most effectively use a return to power; a group of them even drew up an 887-page plan called Project 2025, intended to serve as a philosophy of government for the second Trump term. It is widely understood that Trump wants to eliminate the ”internal opposition” that sought to restrain him last time, with loyalty to him personally key to being appointed.

Moreover, Trump will return to office with a Republican Senate and a Republican House of Representatives. His legislation –especially legislation not subject to the filibuster – will meet minimal resistance, and the Senate confirmation of more than 1,000 positions (including judges, agency heads and ambassadors) is unlikely to pose problems in the vast majority of cases.

Add to these factors that Trump will not need to govern with an eye to a re-election campaign in four years, and that the Supreme Court has recently given him a wide-ranging immunity from prosecution for crimes committed when in office, and we have a recipe for “Trump unleashed”.

What will this mean for the administration's approach to multilateralism?

At a minimum, continuity. The US will almost certainly withdraw from the Paris Agreement again, just as the world reaches the mid-point of the so-called critical decade for action on climate change. Trump can also be expected to finish what he started five years ago and withdraw fully from the WHO, blowing a crippling hole in its already stretched budget and causing havoc in efforts to develop a new treaty on pandemic response. As in the first administration, Trump's affinity for tariffs will also likely lead to cases against the US at the World Trade Organization, though the US policy of blocking the appointment of judges to its appellate body, which started during the Obama administration, has left the system paralysed.

But the consequences could run deeper. Project 2025 describes the multilateral system in this way: “The woke Left today seeks a world, bound by global treaties they write, in which they exercise dictatorial powers over all nations without being subject to democratic accountability”.

“Project 2025 advocates a highly transactional approach to multilateralism which leaves little space for benefit-sharing or the making of concessions to advance the common good.”

Whilst it recognises that engaging with multilateral institutions and processes “can be tremendously useful” as “one relatively easy way for the US to defend its interests and to seek to address problems in concert with other nations”, it stresses that “membership in these organisations must always be understood as a means to attain defined goals rather than an end in itself”. It concludes that “[t]he United States must return to treating international organisations as vehicles for promoting American interests –or take steps to extract itself from those organisations”. In short, it advocates a highly transactional approach to multilateralism, which leaves little space for benefit-sharing or the making of concessions to advance the common good.

Unrestrained by some of the forces that held him back in his first term and animated by such an aggressively transactional approach to international cooperation, Trump 2.0 could withhold support for, or undermine, a range of multilateral initiatives seeking to address pressing international challenges and in which the participation of the US is essential for effective action.

The next five years will be crucial, for example, if there is to be any coordinated international governance of artificial intelligence. In adopting the Global Digital Compact this September, UN member states committed to “enhance the international governance of artificial intelligence for the benefit of humanity…with the full and equal representation of all countries”; they agreed that key principles for such governance will include “transparency, accountability and robust human oversight of artificial intelligence system”.

Such sentiments stand in stark contrast with the views of the “tech tycoons” Trump has chosen for key AI-related roles; David Sacks, who will be the White House's AI “czar”, is a lifelong critic of tech regulation. Michael Kratsios, who will lead the Office of Science and Technology, is also expected to advocate for looser regulation on AI. Trump, for his part, will probably view the development of artificial intelligence as a race to be won against China rather than a cooperative endeavour to be pursued for the greater good of humanity. If there is an effort to establish robust international governance of AI over the next four years, count the US out.

Beyond AI, the international community is currently negotiating international instruments to better respond to future pandemics (under the auspices of the WHO, which Trump despises), to curb the use of plastics (of which the United States is a major producer) and to develop a Framework Convention on International Tax Cooperation (one of the priorities of which will be “addressing tax evasion and avoidance by high-net-worth individuals”). The new Trump administration will see ample reason to withdraw from – or stay within but undermine – each of these processes.

A further setback for Security Council reform

Trump's return to the White House also comes at a terrible moment for those who thought that they had spotted the holy grail of multilateral policymaking on the horizon: the reform of the Security Council. Long considered impossible, progress towards reforming the council has inched forward in recent years under the auspices of an intergovernmental negotiation process in New York. During the Biden Administration, the US's position evolved to the point where, in 2024, it announced its support for amending the UN charter to create two permanent African seats and an elected seat for Small Island Developing States.

In the “pact for the future”, states committed to reform the council, noting the importance of expanding its membership and addressing the question of the veto. Although reform is intended to make the council “more representative, inclusive, transparent, efficient, effective, democratic and accountable”, it is difficult to find the kind of immediate transactional benefits the Trump administration will be looking for. To the extent that any reform reduces the ability of the US to use the council “as a vehicle for promoting American interests” (to use the words of Project 2025), we can consider it off the table.

A similar fate probably awaits efforts – agreed to in the pact for the future – to reform the international financial architecture to strengthen representation of developing countries, mobilise additional financing for the developing world, and act against climate change. Unless there is a clear benefit to the US in giving more money – and more of a say in how it is used – to the developing world (which Trump referred to as a 'shithole' during his first term), the potential scope of such reforms will also be severely curtailed.

Finally, António Guterres will leave office at the end of 2026. The United States' veto in the Security Council gives it the power not only to reject any candidate to replace him unilaterally but also to keep the position unfilled indefinitely. Although the second scenario seems unlikely and would bring with it considerable diplomatic pressure from allies and rivals alike, the US holding out for a preferred candidate is possible, even probable.

As opposition forces led by Hayat Tahrir al-Sham approached Damascus last month, the president-elect took to social media to declare: “Syria is a mess, but is not our friend, and THE UNITED STATES SHOULD HAVE NOTHING TO DO WITH IT. THIS IS NOT OUR FIGHT. LET IT PLAY OUT. DO NOT GET INVOLVED!”

This seems as good an omen as any for the way in which the new administration will approach international affairs. It will engage when it sees America's interests directly implicated, and otherwise sit on the sidelines.

#### MAGA can only become sustainable through alignment with international political bargaining.

Prosper Malangmei 4/13, Assistant Professor in the Department of Political Science at Maharaja Bodhchandra College, MPhil in Chinese Studies from Jawaharlal Nehru University, "The Paradox of Trump 2.0," E-International Relations, 04/13/2025, https://www.e-ir.info/2025/04/13/the-paradox-of-trump-2-0/

In his return to the White House, Donald Trump once again sounded the slogan “Make America Great Again” (MAGA), which echoed nationalist pride and nostalgic appeal. Yet, beneath the populist rhetoric lies a paradox: while claiming to restore American greatness, Trump’s political agenda systematically undermines the pillars that historically sustained it. From the liberal international order (LIO) and democratic institutions to America’s global economic leadership and soft power influence, Trump 2.0 appears not to be rebuilding American preeminence but instead dismantling its foundations. As the United States (U.S.) retreats from global leadership and veers into political polarisation, it risks ceding geopolitical ground to China and descending into domestic instability. What results is not a renewed era of greatness but a new phase of grief—economically, diplomatically, and ideologically.

To understand what is at stake, one must first ask: what made America great? The post-World War II LIO is central to the answer. Anchored by institutions such as the United Nations (UN), World Trade Organisation (WTO), International Monetary Fund (IMF), World Bank (WB), and North Atlantic Treaty Organisation (NATO), these institutions were primarily designed by the U.S. to foster peace, economic interdependence, neoliberalism, free trade and democratic norms. Coupled with this institutional architecture was America’s unparalleled soft power—a term coined by Joseph Nye (2004)—referring to its ability to influence global affairs not through coercion but through attraction. Hollywood, Silicon Valley, and the Ivy League exemplified a cultural and intellectual hegemony that inspired admiration and emulation worldwide. The American Dream, symbolising economic growth and individual liberty, became an aspiration for many who want a better living standard.

America’s economic leadership was dominant. The U.S. dollar functioned as the world’s reserve currency, its markets drove global growth, and its innovations—from microchips to vaccines—set the pace of technological progress. For decades, the U.S. was a military superpower and a beacon of democratic institution and capitalism, where academic freedom, meritocracy, and multiculturalism prosper. Trump’s recent political resurgence threatens to unravel this legacy. His nationalist and isolationist policy goes against multilateralism, rejects immigration, and erects trade barriers—all under the ruse of restoring sovereignty and MAGA. Yet, these policies conflict directly with the LIO, which enables America’s hegemony.

Perhaps the most conspicuous example is Trump’s antagonism toward U.S. alliances and multilateral institutions. His labelling of NATO as “obsolete”, withdrawal from the Paris Climate Accord, threats to exit the World Health Organisation (WHO) during a global pandemic, and his undermining of the WTO represent a radical break from years of bipartisan foreign policy consensus. Trump’s plan does not project strength but signals a cession from responsibility and leadership, creating a power vacuum increasingly filled by China, Russia, and regional powers in international politics. Trump and Zelensky’s clash in the Oval Office does not augur well for the allies to repose faith in the U.S. for security.

In economic terms, Trump’s “America First” trade policy led to tariff wars with allies and adversaries, particularly China. While framed as a strategy to protect American manufacturing, these trade wars resulted in increased consumer costs, retaliatory tariffs that hurt U.S. farmers, and disruptions in global supply chains. The rejection of multilateral trade agreements, such as the Trans-Pacific Partnership (TPP), allowed China to enhance its influence in Asia-Pacific markets unopposed. China has instituted a Regional Comprehensive Economic Partnership (RCEP) in the Asia-Pacific. Trump’s protectionist policies pose significant challenges to the American economy and the broader process of free trade, a domain in which the U.S. has historically played a leading and trendsetting role.

More disturbing is the erosion of American democratic norms under Trump’s presidency. The deportation of student protestors, cutting research funding to universities, curtailing scientific research collaboration, Trump supporters attacking Capitol Hill, threatening to cut funds for the DEI programme (Diversity, Equity, and Inclusion), reducing USAID (United States Agency for International Development) and Elon Musk’s interference in governance mark a significant democratic backsliding. America’s international image as a stable democracy—once a source of soft power—is now shadowed by internal strife and political extremism.

As the U.S. turns inward, China accelerates its global ascent, often occupying the very spaces the U.S. vacates. Through initiatives like the Belt and Road Initiative (BRI), China is expanding its geopolitical and economic footprint across Africa, Asia, and Latin America. Beijing now leads in renewable energy investments, scientific research, and infrastructure diplomacy, projecting itself as an alternative to U.S.-led LIO. China’s growing participation in UN peacekeeping, aggressive technological advancements in semiconductors and 6G further illustrate this shift. In contrast, Trump’s withdrawal from world forums surrendered normative and strategic ground to Beijing—transforming what was once a unipolar world led by the U.S. into a multipolar contest with authoritarian overreach.

The consequences of these policy shifts are deeply felt domestically and internationally. Domestically, America is experiencing rising political polarisation, cultural division, and economic recession. Globally, trust in American leadership is decreasing. Allies in Europe and Asia increasingly question U.S. reliability. Multilateral cooperation is strained by American unpredictability. Trump has asserted that both allies and adversaries have exploited the U.S., resulting in substantial national losses. By portraying America as a victim, Trump appeals to nationalist sentiments, encapsulated in his slogan MAGA. This narrative parallels China’s strategic invocation of its historical experience of foreign invasions and national humiliation, which contributed to the decline of the Pax Sinica. In contemporary world politics, both the U.S. and China appear to be mobilising nationalism to rejuvenate their respective nations—whether to sustain Pax Americana or to revive a new form of Pax Sinica.

If America continues on Trump’s trajectory, it will not result in greatness but in grief and, consequently, a decline of influence, legitimacy, and power. The U.S. may be on the verge of experiencing an economic downturn reminiscent of the Great Depression (1929–1939), a period marked by a catastrophic stock market crash and prolonged recession. Recent developments, such as the announcement of China’s DeepSeek AI—positioned as a potential rival to ChatGPT—have generated significant volatility in U.S. financial markets, contributing to investor uncertainty. Additionally, the ongoing tariff-driven trade tensions under Trump’s administration have fuelled bearish trends in the stock market. In this context, the slogan MAGA could transform into “Make America Grieve Again”, similar to the Great Depression.

Donald Trump’s MAGA rhetoric may appeal to those nostalgic for a bygone era of unchallenged American supremacy. However, the policy path it charts erodes the very foundations of that supremacy. America’s greatness was built not on walls and tariffs but on openness, alliances, leadership, and democratic integrity. In undermining these principles, Trump 2.0 risks replacing greatness with grief—imperiling the American exceptionalism and the global order it once led. If the U.S. is to reclaim true greatness, it must recommit to the ideals and institutions that elevated it, not retreat from them. Trump must understand that states run on statecraft, not on populism. Populism can win an election, but in the long run, populist policy is detrimental to the state.

### Multilateralism---Trump Undermines

#### Multilateralism is history. Global cooperation is irrecoverable.

Thomas Biersteker 1/16, Gasteyger Professor Honoraire, Geneva Graduate Institute, "Donald Trump and the Future of Multilateralism," Policy Briefs, The Essentials, The Global, 01/16/2025, https://theglobal.blog/2025/01/16/donald-trump-and-the-future-of-multilateralism/

Introduction

Eight years ago, I participated in a post-election panel discussion, following Donald Trump’s first election to the US Presidency. It was convened by the International Press Club in Geneva and the Director-General of the UN Office in Geneva was included on the panel. One of the first questions we were asked was what we thought were the greatest challenges facing the then relatively new UN Secretary-General, Antonio Guterres.

I responded, “his relationship with the incoming US president.” I made a reference to James Traub’s book on Kofi Annan’s troubled relationship with George W. Bush, titled Paved with Good Intentions. Here we are again, eight years later, with Donald Trump about to return to the White House, but I’m afraid we cannot apply Traub’s title to the present moment, because there are few, if any, good intentions on the Trump side.

Multilateralism and multilateral institutions

Mr. Trump dislikes multilateralism and prefers unilateral action and bilateral relations to the messiness and uncertainty of multilateralism. Multilateralism takes time, often involves compromises of narrow self-interests, and requires subsidies from wealthier and more powerful states to underwrite the costs of multilateral arrangements. None of these aspects – patience, compromise, or the underwriting of costs – are consistent with the “America first” policies articulated during Donald Trump’s campaign for the presidency or with the thinking of many of his recent cabinet appointees.

The last time Trump was in office, his administration withdrew from UN organizations, including the Human Rights Council, UNESCO, UNRWA, and the WHO. His administration withdrew funding from the World Health Organization during the COVID pandemic, weakened the security guarantees associated with NATO (arguments he frequently revisited in his recent campaign), and undercut the effectiveness of the WTO, dismantling its dispute settlement system by blocking the appointment of new judges to the WTO’s Appellate Body. We can anticipate volatility in US foreign policy and international relations going forward, along with renewed skepticism about the utility of multilateralism.

The rules-based international order

We are likely to see a further erosion of the rules-based international order that was constructed by, and has been associated with, the US since the end of the second World War. The US had already self-abandoned much of the rules-based order during the first Trump administration, by undercutting the World Trade Organization and periodically withdrawing from other treaty agreements. Trump abruptly withdrew from the Joint Comprehensive Plan of Action (JCPOA) intended to place restraints on the potential weaponization of Iran’s nuclear program in 2018, a successful product of intensive and patient multilateral negotiations. The JCPOA offered sanctions relief in exchange for verifiable controls on Iran’s nuclear program. The program was working at the time of the US withdrawal, and according to the IAEA, Iran was fully compliant with the inspection regime and the restrictions on the potential weaponization of its nuclear program. Trump declared his ability and intent to replace the multilateral agreement with something better, but like his approach to domestic policies like replacing Obamacare, Trump lacked strategic focus and never negotiated another agreement. All he came up with was “maximum pressure” sanctions that prompted Iran to defect from compliance with its side of the agreement.

One of the virtues of the first Trump Presidency was his occasional willingness to defy the conventional wisdom of his advisers and do something at radical variance with the prevailing consensus within the US foreign policy establishment. His opening to Kim Jong-un and the swift transition from threats of “fire and fury” in 2017 to a so-called “bromance” in 2018 between Trump and a leader who was actively challenging many global norms, particularly with regard to the acquisition of nuclear weapons, was a radical and potentially promising move. There were a few, important achievements at the Singapore summit in 2018, including a joint agreement to the eventual denuclearization of the Korean Peninsula. It was a fleeting achievement, however. It was undercut in part by the machinations of his own National Security Adviser at the time (John Bolton), but more importantly by the absence of a longer-term strategy and the willingness, patience, focus, and concentration to follow up effectively on the initial breakthroughs.

While the Biden administration reversed the tone of the rhetoric associated with the first Trump administration, it did not depart significantly from the core substance of many of the policies it inherited from its predecessor, from tariffs on China to the maintenance of broad sanctions on Cuba, Iran, and the DPRK, however unproductive they were in terms of stated policy goals. It appears that the US has abandoned the role of providing leadership for the world (which it historically offered, whether the world wanted US leadership, or not). The Trump administration was unpredictable, erratic, and not very strategic in abandoning its traditional role in global leadership during its first term, but many of the core policies of the first Trump administration were continued by its successor and will likely be intensified in his second term.

What do we know to date about the second Trump administration?

The appointments of Marco Rubio as Secretary of State and Michael Waltz as National Security Adviser suggest an adversarial approach to China, rather than a cooperative one, when it comes to addressing global challenges that cannot be solved by any country on its own, like climate change. Jamieson Greer, Chief of Staff for Trump’s former US Trade Representative, Robert Lighthizer, has been offered the senior trade position in the new administration. His former boss frequently clashed with the World Trade Organization, calling it a “mess” that had “failed America.”

During the campaign, Trump declared that he would pull the US out of the Paris Agreement on Climate Change. Although Trump tried to distance himself from the Heritage Foundation’s Project 2025 Report, he has drawn many of his senior advisers from the ranks of its authors.

They articulate a strategy to ensure that Trump will not be restrained by more moderate forces during his second term in office. Its chapter on the State Department argues that all State Department leadership positions should be replaced on 20 January, including all US ambassadors, not just political appointees. It also calls for ending all efforts to implement unratified treaties and the practice of enforcing treaties not ratified by Congress, which includes many human rights and arms control agreements. It states that they should be thoroughly reviewed and “most likely jettisoned.” When it comes to human rights, the focus should be on religious rights. With regard to international organizations (IOs) in general, “when they are against US interests, the US must be prepared to withdraw.” The report calls for a cost-benefit analysis of every international organization of which the US is a member, and argues that IOs should be considered as vehicles for promoting US national interests.

With reference to the Treasury Department, its focus should be on the international competitiveness of US business, not on equity issues or the global climate, concerns that guided the Treasury Department during the Biden administration. The US should withdraw from the Protocol amending the Convention on Mutual Administrative Assistance in Tax Matters. More significantly, Project 2025 suggested that the US should withdraw from the IMF and the World Bank, terminating its contributions to them, and redirecting all foreign assistance to bilateral aid programs.

Implications for the longer term

International norms long associated with the post WWII order have been degraded during the past decade. Norms against the use of force to resolve disputes have been shredded by Russia and Israel. Norms in support of the idea of sovereign equality and the territorial integrity of UN Member States have been disregarded by Russia. Norms in support of liberalizing trade and against mercantilist protectionism have been abandoned by the US. Finally, norms about the proportionate use of force have been disregarded by Russia and Israel, as have norms against attacks on civilian populations, schools and hospitals, and against the use of torture, ethnic cleansing, apartheid, and genocide. These norms have all been weakened or degraded during the past decade and may eventually disappear altogether unless they are articulated, re-articulated, and regularly performed by major actors like the United States. We might well be our way into a very different normative world.

The Russia-Ukraine war will probably end sooner than it would have ended had Kamala Harris been elected, but it will likely end on very bad terms for Ukraine. Vice-President-elect JD Vance’s peace plan sounded very similar to Vladimir Putin’s peace plan, ending the war, but on terms in Russia’s favor. The new administration might be able to claim a Pyrrhic victory for ending the conflict, but it will be in exchange for legitimizing inter-state military aggression and territorial annexation. Donald Trump’s recent musings about Greenland, the Panama Canal, and Canada further weaken norms against the use of force, the occupation and annexation of territory of neighboring states, and the very idea of sovereign integrity of UN Member States. Given Trump’s historical antipathy toward NATO and his wavering with regard to the US commitment to Article 5 of the treaty, the Russians are talking about the division of Europe.

Konstantin Malofeyev, a Russian Orthodox billionaire who has funded a conservative agenda promoting traditional Christian values declared on Telegram that it would be possible to negotiate with Trump, “both about the division of Europe and the division of the world. After our victory on the battlefield.”

Institutional resilience

In the 2016 Geneva Press Club briefing immediately following Trump’s first election, I commented that many social scientists were increasingly enthusiasts of experimental research and that the election of Donald Trump would be a huge social and political experiment. It would be a test of how well domestic US institutions performed in reigning in excesses of executive authority, as well as a test of how international institutions would respond to unpredictable behavior and radical changes of policy.

The US system proved largely resilient during Trump’s first term, and even many international institutions stepped up to the challenge, filling financial gaps when the US withdrew funding for political reasons, such as its support for the UN Population Fund. This time, the guardrails may be off, however, and the systems of checks and balances may fail at the domestic level. This is due to the nature of the electoral victory, winning all of the swing states, control of both houses of Congress, and even a plurality of the popular vote.

As Francis Fukuyama wrote in the Financial Times immediately after the election, “The breadth of the Republican victory, extending from the presidency to the Senate and probably to the House of Representatives as well, will be interpreted as a strong political mandate confirming these ideas and allowing Trump to act as he pleases.” More importantly, the Supreme Court’s ruling expanding executive privilege during the summer of 2024 and the stated intention to appoint senior officials from the ranks of loyalists, rather than on the basis of expertise, will also enhance Trump’s ability to influence the directions of US foreign policy. Although he tried to distance himself from Project 2025, they have a clearly articulated plan of action on how to ensure a major reversal of US government agencies in order to prevent the so-called “grown-ups” in the room from diffusing the impact of some of Trump’s impulsive policy ideas during his next administration.

Implications for world order

As Alexandre Dugin, allegedly one of Vladimir Putin’s political, philosophical, conceptual, and strategic influencers, said on X following the US election, “We have won…The world will be never ever like before. Globalists have lost their final combat.” Illiberal nationalism at the domestic level and spheres of influence at the international level are the apparent winners, not the liberal internationalist rules based international order of the post-1945 era.

In the 9 November 2024 issue of the Financial Times, Francis Fukuyama described classical liberalism as “a doctrine built around respect for the equal dignity of individuals through a rule of law that protects their rights, and through constitutional checks on the state’s ability to interfere with those rights.” When applied to the level of the international system, classic liberal institutionalism analogously supports the equal dignity of sovereign states, with a rule of law maintained by the articulation and performance of norms to protect their rights, and constitutional checks in the form of interventions by the UN Security Council to maintain international peace and security. All of these core elements of the rules-based order are now under threat. Liberal internationalism may be in the process of being replaced by Illiberal nationalism, with spheres of influence and competitive power balancing closer to the security governance system of the latter half of the 19th century than the 20th century with its consecutive efforts to institutionalize collective security, first in the League of Nations and subsequently in the United Nations.

How might the world respond to the demise of the post-WWII rules-based order?

Some might pursue forms of self-reliance, trying to insulate themselves from the weaponization of the US Dollar. This would entail an attempt to de-Dollarize, diversify reserve holdings, increase currency swap arrangements, and create alternatives to SWIFT that go beyond bilateral trade and financial arrangements. China appears to be pursuing this approach in broad terms, though the efficacy of a BRICS currency and moves to an alternative to the US Dollar are often exaggerated.

Others might choose to step into the gaps left by the US withdrawal from international organizations. China might offer to provide funding for organizations in exchange for institutional reforms, a greater say in how they are run, and more influence on how their resources are allocated. We might also see the further creation of new informal institutions, whether they be inter-governmental or issue-specific transnational entities composed of public and private actors. Some states might choose to underwrite the costs of new organizations to address contemporary governance challenges as they emerge.

Alternatively, we might see an increase in the salience of regions, as trade becomes less globalized and more regionalized. As a result, some of the norms of the liberal and rules-based order may survive at the regional level, such as democracy and human rights in Latin America, for example, or continued adherence to non-intervention within ASEAN.

The British underwrote the institution of free trade at the height of their power in 1870, the Americans did the same in 1945, and perhaps it is China’s turn in 2025. After all, only China has taken the lead in the creation of new formal inter-governmental, treaty-based organizations such as the New Development Bank and the Asian Infrastructure Development Bank in recent years. Ironically, despite the US domestic consensus about the need to focus on challenges from China, US abdication from global leadership might create possibilities for China that would have been foreclosed or long denied without it.

#### There is a laundry list of indirect ways Trump can undermine multilateralism, however international organizations have a toolbox of responses.

Carnegie 24 (, A. and Clark, R. (2024) Multilateralism Can Survive Trump. https://www.foreignaffairs.com/united-states/multilateralism-can-survive-trump. Allison Carnegie is Professor of Political Science at Columbia University. Richard Clark is Assistant Professor of Political Science at the University of Notre Dame. [RP])

THE ANTIGLOBALIST AGENDA

**Trump** **can** undermine international organizations in many ways. Most directly, he could pull the United States out of key bodies or agreements. In his first term, for instance, Trump withdrew from the Paris climate accord, UNESCO, and the UN Human Rights Council because he saw them as anathema to his “America first” agenda. He could exit more organizations in his second administration; he has been especially critical of the World Health Organization (WHO) and the World Trade Organization.

More subtly, Trump could disengage from international organizations by **neglect**ing to comply with their **rules**, **refusing to attend** critical **meetings**, or obstructing key agenda items. During his first term, Trump successfully sabotaged the WTO by refusing to confirm nominees to its appellate body, severely limiting its ability to enforce trade rules. Such noncompliance is destabilizing in itself, given that Washington is the most powerful government in the world and often a leader in international organizations. But it could also have dangerous knock-on effects. Institutions depend on mutual trust, and if the United States flouts the rules, others may follow suit—eroding the foundations of global cooperation.

Trump might also **manipulate** or **withhold** **vital** **information** from these bodies, which depend on accurate data from member states to function effectively. The World Bank, for example, needs economic metrics, the WHO relies on public health statistics, and environmental agencies require data on carbon emissions. By refusing to share such information—or providing false reports—the Trump administration could hamstring these institutions. More simply, Trump could **withhold money**. The United States is the largest funder of numerous organizations, and without Washington’s money, many would struggle to survive. When the Trump administration defunded the WHO during the COVID-19 pandemic, it hobbled the institution’s response to the crisis and eroded the WHO’s reputation worldwide.

Trump could also undercut existing organizations by **starting** competing ones. These **rival** **entities**, designed to drain their counterparts of resources and influence, would serve as platforms for grandstanding rather than substantive cooperation. Much like regional institutions backed by other populist leaders—such as the New Development Bank, which was started, in part, by Indian Prime Minister Narendra Modi—these bodies could provide the United States with a veneer of multilateral engagement while taking away business from the existing institutions that do more substantive work.

Finally, Trump could attempt to **co-opt international organizations** to align with his administration’s agenda by focusing their resources on narrow U.S. priorities or leveraging their legitimacy to pursue policies that serve domestic political goals instead of broader global interests. Such a strategy could effectively weaponize these institutions, **turning them into** **instruments of unilateralism** rather than forums for global collaboration. China, for instance, has used its control of the Asian Infrastructure Investment Bank to pursue its domestic interests while benefiting from the legitimacy of the institution’s diverse membership.

GETTING CRAFTY

Thankfully, **international organizations are not powerless** in the face of these threats. In fact, **they** **have** many **tools** and techniques **to protect themselves** from a populist in the White House. Perhaps the most basic is working to **minimize** **U.S. influence**, specifically by looking for resources elsewhere. When the first Trump administration withheld energy-related data from the World Bank, the organization signed information-sharing agreements with Arab multilateral development banks. Similarly, the UN expanded its capacity to acquire data on its own, such as through surveillance drones, which it deploys during peacekeeping operations. In doing so, it has become less reliant on governments for intelligence.

Having a **broad** **network of partners**—including companies, charities, think tanks, and other multilateral institutions—can help make an organization more resilient. UNICEF, for example, has successfully worked with the multinational company Unilever to secure funding and expertise. The World Bank has done the same with the Gates Foundation. Multilateral institutions should improve their ability to share data securely with one another to improve coordination. Local governments can also be valuable allies. When Trump withdrew from the Paris climate accord, UN officials worked with U.S. states such as California and cities such as New York to maintain climate commitments and preserve dialogue.

International organizations can save themselves.

International organizations can also get around Trump by **becoming** **more** **bureaucratically** **flexible**. WTO members came up with the Multi-Party Interim Appeal Arbitration Arrangement, a stopgap forum to arbitrate trade disputes, to circumvent obstacles put in place by the Trump administration. Similarly, the Paris accord’s voluntary and scalable commitments helped sustain momentum even after the United States exited the deal in 2017.

If working around Trump is infeasible (or even if it isn’t), groups can look for ways to force him to remain in their organizations by **raising the exit costs**. For instance, embedding withdrawal penalties—such as the sanctions clauses the European Union installs in many trade agreements—can deter treaty abrogation. **Lengthy** withdrawal **processes**, such as the one-year delay required under the Paris accord, provide time for domestic opposition to mobilize or for political leadership to change.

International bodies should also make it easy for countries to rejoin. UNESCO, for example, swiftly welcomed the United States back after Trump left office. The Biden administration was similarly able to quickly rejoin the Paris accord—the process required only Biden’s signature.

IF YOU CAN’T BEAT THEM

Another approach to surviving Trump is **appeasement**, which can involve offering the United States material benefits or expanding U.S. influence within an organization. This strategy comes with downsides: taken too far, it can sacrifice institutional legitimacy and raise accusations of bias. But there are ways to walk a fine line. Consider, for example, how NATO fared during Trump’s first four years in office. When Trump criticized NATO allies for spending too little on defense, Secretary-General Jens Stoltenberg encouraged allies to modestly increase their military budgets and publicly credited Trump for the changes, appealing to his ego. The approach appeared to work. Trump did not pull the United States out of NATO—as he had repeatedly threatened—and instead took credit for allies’ bigger defense budgets.

Multilateral institutions can also informally recalibrate their agendas to align, at least superficially, with Trump’s priorities. By focusing on issues such as trade fairness or counterterrorism—areas in which Trump has shown interest—international organizations can demonstrate their utility to him. For example, NATO has sought to mollify Turkey’s populist president, Recep Tayyip Erdogan, by paying lip service to the fight against terrorism, a big concern for him.

For organizations wary of escalating tensions with Trump, **retrenchment** is another solution. Institutions can minimize their exposure to populist ire while maintaining credibility by narrowing their focus to core functions and avoiding controversial areas. For example, the WTO has historically exercised judicial restraint on politically sensitive issues, and the World Bank has often rolled out reforms incrementally, in cooperation with resistant governments. Similarly, organizations may emphasize temporary or informal adjustments to policies, retaining the ability to reverse course as political conditions change. Such flexibility offers these institutions a way to work with populists without undermining their broader missions.

International institutions can also use regional organizations, such as South America’s Mercosur or the African Union, as **intermediaries** to get around Trump. Many regional organizations do not include the United States as a member, and those that do tend to fly under Trump’s radar, such as the Inter-American Development Bank. There are other benefits, too. Governments in the global South often see these smaller organizations as less intrusive and more sympathetic to their concerns than global ones. Many World Bank projects are cofinanced with regional development banks that have strong ties to member governments and can usually get more buy-in from recipient countries.

### Soft Power

#### Soft power in inherently perceptual, putting it in a precarious position with Trump 2.0.

Segers 25 (, G. (2025) Trump Is Undermining U.S. Soft Power at a Delicate Time. https://newrepublic.com/article/191174/trump-undermining-soft-power-consequences. Grace Segers is a staff writer at The New Republic. BA - Tufts University. [RP])

**Trump** Is **Undermining** U.S. **Soft Power** at a Delicate Time

Experts warn that Trump’s recent foreign policy decisions could signal to allies that the U.S. is no longer a reliable partner.

President Donald Trump’s recent actions on foreign policy—from his efforts to **gut** a **key international aid** organization to his threats to impose **tariffs** on critical allies, to the **allocation of po**wer to a billionaire adviser—could result in a decline in the global American “soft power” that the United States has enjoyed for decades.

While the Trump administration has little control over cultural soft power—typically defined as the influence a country has without turning to coercive measures—the recent foreign policy actions taken by the president will likely have far-reaching effects on political soft power, from potentially engendering distrust among long-standing allies to propelling struggling nations to seek assistance from China rather than the U.S. This ultimately may **result in** **diminished** U.S. **prestige** around the world, and the **enhanced** **standing** **of** our geopolitical **rivals**.

This is not a new concern. Trump has implicitly expressed his disdain for soft power since he first took office eight years ago, with his emphasis on an “America First” foreign policy that devalues traditional alliances and abjures the notion that foreign assistance packages might have a positive sum outcome for the U.S. This ethos has been back on display since he took office a second time last month. After Trump froze foreign aid last week, an action that has already had repercussions for companies and contractors across the world, billionaire adviser Elon Musk—aided by a cadre of young engineers—began to dismantle the U.S. Agency for International Development, or USAID. Musk announced on social media platform X that Trump “agreed” that his Department of Government Efficiency, an unofficial agency known as DOGE, should shut USAID down.

The **suspension** **of** foreign **aid** and the gutting of USAID will **signal** **to allies and adversaries** alike **that** **the U.S. is** “an **untrustworthy** actor,” said Daniel Drezner, professor of international politics at the Fletcher School of Law and Diplomacy at Tufts University.

“The whole essence of soft power as a concept is that you’re doing well by doing good, and that the promotion of American values and ideals and the execution of competent policy … are seen as natural attractors for the rest of the world,” said Drezner. “We’re no longer going to look like we’re competent in policy, because we’ve disrupted this for no reason whatsoever, and we’re clearly not promoting American values anymore, at least globally.”

Soft power has been an expression of American cultural and political global hegemony since the Cold War, from the careful construction of alliances to counter other powers—primarily Russia in the previous century and primarily China in the current one—to the international proliferation of American music, fashion, and fast food. Soft power manifests itself in a variety of ways, from the substantive to the quotidian. It can come in the form of tangible material benefits, or it could simply serve to expand the aura of American values. For example, the President’s Emergency Plan for AIDS Relief, or PEPFAR, is a foreign aid program credited with saving more than 25 million lives, particularly on the African continent. It has expanded American soft power, but the same can be said of the presence of a McDonald’s restaurant in dozens of countries worldwide. (Trump halted disbursement of funds from PEPFAR shortly after taking office.)

Drezner argued that gutting USAID could **benefit** **China and Russia**, by convincing countries that might otherwise turn to the U.S. for assistance that Americans are unreliable. With this vacuum thus created, China has a freer hand to make the case to other countries that they are more stable partners; Russia can now argue that their conviction that the U.S. was capricious was correct all along. “Russia can make the case of, ‘See? They are what we told you they are. And are we really that much different, are we really so much worse?’” Drezner said.

If dismantling the foreign aid apparatus causes other countries to view the United States with suspicion, so too will the threat of tariffs on allies. This week, Trump delayed by 30 days plans to impose 25 percent tariffs on imports from Canada and Mexico, the country’s two largest trading partners, after the countries made pledges to beef up border security. (It remains unclear whether this will result in increased deployments from these two nations or merely a continuance of pledges that had already been made.) Imposing these tariffs would be in contravention to the trade agreement Trump himself negotiated in 2018—a move that international observers would interpret as another layer of capriciousness. Tariffs on Chinese imports did go into effect on Tuesday.

Although the tariffs against our North American trade partners were postponed, they may still be instated next month; Trump has also threatened to tax imports from the European Union. Mexico and Canada have threatened to impose retaliatory tariffs on American goods, which could in turn have a negative effect on all three economies and drive up prices in the U.S. But Trump’s temporary decision to back down on the tariffs on Mexican and Canadian imports has further exacerbated uncertainty among foreign partners, said Elizabeth Saunders, political science professor at Columbia University. Not only can allies not trust that the U.S. won’t target them next, they can’t be sure Trump will actually carry out his threats.

“I think diversification away from dependence on the U.S. is going to be the name of the game,” Saunders said.

Regardless of the merits of U.S. soft power as a perceived international force for good, from an American perspective, it simply makes things “easier” when the country is viewed positively, Saunders continued. “Life is just easier when you’re not fighting with your neighbors,” she said, adding that the Trump administration’s actions over the past week are “just generating friction, uncertainty, and bad feeling.”

Even more concerning to allies than Trump’s inconsistency may be the access that Musk and his allies now have to classified information. Two top USAID officials were put on leave over the weekend after refusing to grant Musk allies access to internal systems. Katie Miller, who had been appointed to DOGE’s advisory board by Trump, confirmed on Sunday that DOGE personnel had gained access to classified information, although she claimed “no classified material was accessed without proper security clearances.”

But Saunders said that other countries may be concerned by the access that Musk and his allies in their early twenties now have to sensitive intelligence, particularly if it foretells DOGE gaining access to classified information from other, larger agencies, such as the Defense Department and the State Department.

“What would you think if you were a foreign intelligence officer right now … watching this happening? I’d be pretty concerned. And I’d be more concerned about giving 25-year-olds access to classified information at USAID even than tariffs on Canada,” Saunders said.

While Trump has demonstrated his disinterest in soft power since taking office, his pursuit of hard power—a desire to influence events through military or economic actions—is apparent. The president has expressed interest in acquiring four international territories in recent weeks: Greenland, Canada, the Panama Canal, and Gaza. Meanwhile, the Republican-controlled Congress has been largely supportive of Trump’s actions, even though efforts to shut down USAID without congressional input could be unconstitutional. Although congressional Democrats have raised concerns about the halting of USAID and the influence of DOGE, Republicans appear to have accepted Musk’s role in the administration and Trump’s actions as presidential prerogative.

That **passive** **acquiescence** may also **communicate** to the world **that the U.S. is** **no longer interested** **in** maintaining its own **democratic standards**, Drezner said: “You can’t just do this by executive fiat, unless, as it turns out, no one pushes back. And **if no one pushes back**, that is also going to send a **signal to** the rest of the **world** **that**, honestly, the **rule of law is not** all that **important** in the United States.”

#### Policies are the key internal link for Soft Power, which matters!

Nye 04 [Nye, J. S. (2004). Soft Power and American Foreign Policy. *Political Science Quarterly*, *119*(2), 255–270. <https://doi.org/10.2307/20202345> //cohn]

Anti-Americanism has increased in the past few years. Thomas Pickering, a seasoned diplomat, considered 2003 “as high a zenith of anti-Americanism as we’ve seen for a long time.”1 Polls show that our soft power losses can be traced largely to our foreign policy. “**A widespread and fashionable view is that the United States is a classically imperialist power**…That mood has been **expressed** in different ways by different people, **from the hockey fans** in Montreal who boo the American national anthem **to** the **high school** students in Switzerland who do not want to go to the United States as exchange students.”2 An Australian observer concluded that “the lesson of Iraq is that the US’s soft power is in decline. Bush went to war having failed to win a broader military coalition or UN authorization. This had two direct consequences: a rise in anti-American sentiment, lifting terrorist recruitment; and a higher cost to the US for the war and reconstruction effort.”3 A Gallup International poll showed that pluralities in **fifteen out of twenty-four countries around the world said that American foreign policies had a negative effect on their attitudes toward the United States.** A Eurobarometer poll found that a **majority of Europeans believe that the United States tends to play a negative role** in fighting global poverty, protecting the envi- ronment, and maintaining peace in the world.4 When asked in a Pew poll to what extent they thought the United States “takes your interests into account,” a majority in twenty out of forty-two countries surveyed said “not too much” or “not at all.”5 **In many countries, unfavorable ratings were highest among younger people.** American pop culture may be widely admired among young people, but the unpopularity of our foreign policies is causing the next generation to question American power.6 American music and films are more popular in Britain, France, and Germany than they were twenty years ago, another period when American policies were unpopular in Europe, but the attraction of our policies is even lower than it was then.7 There are also hints that unpopular foreign policies might be spilling over and undercut- ting the attractiveness of some aspects of American popular culture. A 2003 Roper study showed that “for the first time since 1998, consumers in 30 countries signaled their disenchantment with America by being less likely to buy Nike products or eat at McDonalds…At the same time, nine of the top 12 Asian and European firms, including Sony, BMW and Panasonic, saw their scores rise.”8 The Costs of Ignoring Soft Power Soft power is **the ability to get what you want through attraction rather than coercion or payments.** When you can get others to want what you want, **you do not have to spend as much on sticks and carrots to move them in your direction.** Hard power, the ability to coerce, grows out of a country’s military and economic might. Soft power arises from the **attractiveness of a country’s** culture, political ideals, and policies. When our policies are seen as legitimate in the eyes of others, our soft power is enhanced. Skeptics **about soft power** say not to worry. **Popularity is ephemeral** and should not be a guide for foreign policy in any case. The United States can act without the world’s applause. **We are so strong we can do as we wish**. **We are the world’s only superpower**, and that fact is bound to engender envy and resentment. Fouad Ajami has stated recently, “The United States need not worry about hearts and minds in foreign lands.”9 Columnist Cal Thomas refers to “the fiction that our enemies can be made less threatening by what America says and does.”10 Moreover, **the United States has been unpopular** in the past, yet **managed to recover**. We do not need permanent allies and institutions. **We can always pick up a coalition** of the willing **when we need** to. Donald Rumsfeld is wont to say that the issues should determine the coalitions, not vice-versa. But it would be a mistake to dismiss the recent decline in our attractiveness so lightly. It is true that the United States has recovered from unpopular policies in the past, but that was against the backdrop of the Cold War, in which other countries still feared the Soviet Union as the greater evil. Moreover, while **America’s size and** association with **disruptive modernity are** real and **unavoidable, wise policies can soften the sharp edges of that reality and reduce the resentments that they engender.** That is what the United States did after World War II. We used our soft power resources and co-opted others into a set of alliances and institutions that lasted for sixty years. We won the Cold War against the Soviet Union with a strategy of containment that used our soft power as well as our hard power. It is true that the new threat of transnational terrorism increased American vulner- ability, and some of our unilateralism after September 11 was driven by fear. But the United States cannot meet the new threat identified in the national security strategy without the cooperation of other countries. They will cooperate, up to a point, out of mere self-interest, but their degree of cooperation is also affected by the attractiveness of the United States. Take Pakistan for example. President Pervez Musharraf faces a complex game of cooperating with the United States on terrorism while managing a large anti-American constituency at home. He winds up balancing concessions and retractions. If the United States were more attractive to the Pakistani populace, we would see more concessions in the mix. It is not smart to discount soft power as just a question of image, public relations, and ephemeral popularity. As I argued earlier, it is a form of power—a means of obtaining desired outcomes. When we discount the importance of our attractiveness to other countries, we pay a price. Most importantly, **if the United States is so unpopular in a country that being pro-American is a kiss of death in their domestic politics, political leaders are unlikely to make concessions to help us.** Turkey, Mexico, and Chile were prime examples in the run-up to the Iraq war in March 2003. When American policies lose their legitimacy and credibility **in the eyes of others,** attitudes of distrust **tend to fester and further** reduce our leverage**.** For example, after September 11, there was an outpouring of sympathy from Germans for the United States, and Germany joined a military campaign against the al Qaeda network. But as the United States geared up for the unpopular Iraq war, Germans expressed widespread disbelief about the reasons the United States gave for going to war, such as the alleged connection of Iraq to al Qaeda and the imminence of the threat of weapons of mass destruction. German suspicions were reinforced by what they saw as biased American media coverage during the war and by the failure to find weapons or prove the connection to al Qaeda right after the war. The combination fostered a climate in which conspiracy theories flourished. By July 2003, one-third of Germans under the age of thirty said that they thought the American government might even have staged the original September 11 attacks.11 **Absurd views feed upon each other, and paranoia can be contagious.** American attitudes toward foreigners harden, and we begin to believe that the rest of the world really does hate us. Some Americans begin to hold grudges, to mistrust all Muslims, to boycott French wines and rename French fries, and to spread and believe false rumors.12 In turn, foreigners see Americans as uninformed and insensitive to anyone’s interests but their own. They see our media wrapped in the American flag. Some Americans, in turn, succumb to residual strands of isolationism, saying that if others choose to see us that way, “to hell with’em.” If foreigners are going to be like that, who cares whether we are popular or not. But to the extent that we allow ourselves to become isolated, we embolden enemies such as al Qaeda. Such reactions undercut our soft power and are self-defeating in terms of the outcomes we want. **Some hard-line skeptics might say that whatever the merits of soft power, it has little role to play in** the current **war** on terrorism. Osama bin Laden and his followers are repelled, not attracted by American culture, values, and policies. Military power was essential in defeating the Taliban government in Afghanistan, and soft power will never convert fanatics. Charles Krauthammer, for example, argued soon after the war in Afghanistan that our swift military victory proved that “the new unilateralism” worked. That is true up to a point, but the skeptics mistake half the answer for the whole solution. Look again at Afghanistan. Precision bombing and Special Forces defeated the Taliban government, but U.S. forces in Afghanistan wrapped up less than a quarter of al Qaeda, a transnational network with cells in sixty countries. The United States cannot bomb al Qaeda cells in Hamburg, Kuala Lumpur, or Detroit. **Success** against them **depends on close civilian cooperation**, whether **sharing intelligence**, **coordinating** police work **across borders**, **or tracing global financial flows.** **America’s partners cooperate partly out of self-interest, but the** inherent attractiveness of U.S. policies can and does influence the degree of cooperation. Equally important, the current struggle against Islamist terrorism is not a clash of civilizations but a contest whose outcome is closely tied to a civil war between moderates and extremists within Islamic civilization. The United States and other advanced democracies will win only if moderate Muslims win, and the ability to attract the moderates is critical to victory. **We need to adopt policies that appeal to moderates and to use public diplomacy more effectively to explain our common interests.** **We need a better strategy for wielding our soft power**. We will have to learn better how to combine hard and soft power if we wish to meet the new challenges. Beneath the surface structure, the world changed in profound ways during the last decades of the twentieth century. September 11 was like a flash of lightening on a summer evening that displayed an altered landscape, and we are still left groping in the dark wondering how to find our way through it. George W. Bush entered office committed to a traditional realist foreign policy that would focus on great powers like China and Russia and eschew nation building in failed states of the less-developed world. But in September 2002, his administration proclaimed a new national security strategy that declared “we are men aced less by fleets and armies than by catastrophic technologies falling into the hands of the embittered few.” Instead of strategic rivalry, “today, the world’s great powers find ourselves on the same side—united by common dangers of terrorist violence and chaos.” The United States increased its development assistance and its efforts to combat AIDS because “weak states, like Afghanistan, can pose as great a danger to our national interest as strong states.”13 The historian John Lewis Gaddis compared the new strategy to the seminal days that redefined American foreign policy in the 1940s.14 The new strategy attracted criticism at home and abroad for its excessive rhetoric about preemptive military strikes and the promotion of American primacy. Critics pointed out that the practice of preemption is not new, but that turning it into a doctrine weakens international norms and encourages other countries to engage in risky actions. Similarly, American primacy is a fact, but there was no need for rhetoric that rubbed other people’s noses in it. Notwithstanding such flaws, the new strategy responded to the deep trends in world politics that were illuminated by the events of September 11, 2001. The “privatization of war” is a major historical change in world politics that must be addressed. This is what the new Bush strategy gets right. What the United States has not yet sorted out is how to go about implementing the new approach. We have done far better on identifying the ends than the means. On that dimension, both the administration and Congress were deeply divided. According to the National Security Strategy, the greatest threats the American people face are transnational terrorism and weapons of mass destruction, and particularly their combination. Yet, meeting the challenge posed by transnational military organizations that could acquire weapons of mass destruction requires the cooperation of other countries—and cooperation is strengthened by soft power. Similarly, efforts to promote democracy in Iraq and elsewhere will require the help of others. Reconstruction in Iraq and peacekeeping in failed states are far more likely to succeed and to be less costly if shared with others rather than appearing as American imperial occupation. The fact that the United States squandered its soft power in the way that it went to war meant that the aftermath turned out to be much more costly than it need have been. Even after the war, in the hubris and glow of victory in May 2003, the United States resisted a significant international role for the UN and others in Iraq. But as casualties and costs mounted over the summer, the United States found many other countries reluctant to share the burden without a UN blessing. As the top American commander for Iraq, General John Abizaid reported, “You can’t underestimate the public perception both within Iraq and within the Arab world about the percentage of the force being so heavily American.” But, Abizaid continued other countries “need to have their internal political constituents satisfied that they’re playing a role as an instrument of the international community and not as a pawn of the United States.”15 Before the Madrid conference of potential donors to Iraq in October 2003, the New York Times reported that L. Paul Bremer, the chief occupation administrator in Baghdad, said, “I need the money so bad we have to move off our principled opposition to the international community being in charge.”16 Neoconservatives like Max Boot were urging conservatives not to treat marginalizing the UN as a core principle, and Charles Krauthammer, proud author of “the new unilateralism,” called for a new UN resolution because Russia, India, and others “say they would contribute only under such a resolution.” In his words, “the U.S. is not overstretched. But psychologically we are up against our limits. The American people are simply not prepared to undertake worldwide nation building.”17 **In the global information age, the attractiveness of the United States will be crucial to our ability to achieve the outcomes we want. Rather than having to put together pick-up coalitions of the willing for each new game, we will benefit if we are able to attract others into institutional alliances and eschew weakening those we have already created.** NATO, for example, not only aggregates the capabilities of advanced nations, but its interminable committees, procedures, and exercises also allow these nations to train together and quickly become interoperable when a crisis occurs. As for alliances, if the United States is an attractive source of security and reassurance, other countries will set their expectations in directions that are conducive to our interests. Initially, for example, the U.S.-Japan security treaty was not very popular in Japan, but polls show that over the decades, it became more attractive to the Japanese public. Once that happened, Japanese politicians began to build it into their approaches to foreign policy. **The United States benefits when it is regarded as a constant and trusted source of attraction so that other countries are not obliged continually to re-examine their options in an atmosphere of uncertain coalitions.** In the Japan case, broad acceptance of the United States by the Japanese public “contributed to the maintenance of US hegemony” and “served as political constraints compelling the ruling elites to continue cooperation with the United States.”18 Popularity can contribute to stability. Finally, as the RAND Corporation’s John Arquila and David Ronfeldt argue, power in an information age will come not only from strong defenses but also from strong sharing. A traditional realpolitik mindset makes it difficult to share with others. But in an information age, such sharing not only enhances the ability of others to cooperate with us but also increases their inclination to do so.19 As we share intelligence and capabilities with others, we develop common outlooks and approaches that improve our ability to deal with the new challenges. Power flows from that attraction. **Dismissing the importance of attraction as merely ephemeral popularity ignores key insights from new theories of leadership as well as the new realities of the information age. We cannot afford that.**

#### US Soft Power collapse is because of the gap between what we say and do.

Barrech and Khan 23 [Barrech, D. M., & Khan, M.(2023).US-China Growing Competition in Soft Power. Journal of Social Sciences Review, 3(2), 490-499.https://doi.org/10.54183/jssr.v3i2.288 //cohn]

Comparison between US and China Soft Power Joseph Nye coined the term "soft power" about three decades ago. The idea behind soft power is that a country's military forces, economy, and people should be complemented by its soft power. Soft power can be used in situations where hard power is not necessary. **The US has utilized soft power both economically and culturally.** Hollywood movies have been instrumental in projecting American influence worldwide, and American corporations such as McDonald's and Coca-Cola have spread the American brand globally. As Chaudhary explains, this is not an example of hard power but soft power. ( Aizaz Chuari) It has been observed that many countries are now interested in utilizing soft power, including China, which has a rich history and civilization dating back centuries. For instance, China has established Confucius institutes in over two-thirds of the world to promote its culture and values. China's economic progress and development initiatives in other countries, such as building sports stadiums and parliament buildings, are also contributing to the projection of its soft power. ( Siraj Bashir, Muhammad Arshad, Sadia Barech,2019). Similarly, the United States is using its soft power through its cultural influences, especially in English-speaking countries where Hollywood and American products have been popular for decades. While the United States is still leading in terms of soft power, China is quickly catching up, and both countries now recognize the importance of complementing hard power with soft power to enhance their global influence. (Ambassador Aizaz Ahmad Chaudhary, 2022) Although the idea of soft power is a relatively recent one, it has existed for some time and has been predominantly embraced by the Western world, particularly the US. The US believed that their value system and policies made them more attractive to others and that soft power would allow them to form winning partnerships. They believed that their political system, human rights, and liberal economic system were all components of their soft power that would make them appealing to others. China was slower to embrace the concept of soft power, and the Western world initially had the advantage over China in this area. However, China eventually realized that its history, culture, and civilization also contributed to its soft power and began to utilize it. (Ambassador Aizaz Ahmad Chaudhary, 2022) While the Western world still dominates in terms of soft power, the gap between them and China is narrowing over time. The Western world is losing ground **for a variety of reasons**, including inconsistencies between what they proclaim and what they actually do in practice**.** For example, the **US promotes democratic values**, **but** the recent **assault on democracy** within their own country **and** incidents of **racial oppression** and discrimination **undermine** their **claims**. The **US also claims** to advocate for peace and **human rights**, **yet** its actions in **Iraq, Libya, Syria, and Afghanistan suggest otherwise**, causing a **significant gap between their assertions and their actions.** As a result, the US's soft power is losing its appeal and becoming less effective.(Mushahid Hussain Syed, 2022) As a student, I had the opportunity to travel extensively throughout the United States and gained valuable insight into American culture and values. Comparing Pakistan to the United States, I believe the two cultures are more closely aligned than Pakistan and China. Unfortunately, in recent years, China has been unfairly stigmatized for its communist past and its use of advanced technology to achieve its goals, leading some to fear Chinese domination as the next global superpower. In contrast, the United States has effectively projected its soft power by promoting its values, such as human rights, women's rights, and children's rights, to the world. Consequently, China is often viewed through the lens of American perceptions. As a result, many individuals aspire to educate their children in the West. Students who study in China often encounter the issue of their degrees not being recognized by the Higher Education Commission (HEC). In today's world, perceptions are everything**, and the United States has been more successful than China in utilizing its soft power.** However, China is now beginning to challenge the US in this regard. In my opinion, it will take China some time to promote its culture and society in a manner that is as appealing to Western audiences as the US has been able to achieve. (Ambassador Nadeem Riaz, 2022) It is important to consider the potential military applications of a country's technological advancements when using them as a soft power tool. Soft power involves promoting values such as liberation and economic growth, which create job opportunities and attract individuals to a particular way of life. The US model has been successful in this regard and is widely admired globally. While we tend to align ourselves with the Western way of living, we still know very little about Chinese culture and society. The US and China have different models, and both intervene in other countries in their own ways. Pakistan has traditionally been aligned with the US, and Western culture is more attractive to the Pakistani people. We lack a comprehensive understanding of Chinese intentions, and there are hidden aspects of initiatives such as the CPEC and BRI that even the world does not know. People-to-people exchanges between China and Pakistan are controlled by both governments, and the general public is more likely to choose the US due to its abundance of opportunities and individual rights. There has not been enough clarity about China in academic discourse, and the negative aspects of Chinese society have not been projected to us.( Adil Sultan, 2022) In terms of their soft power in Pakistan, both China and the US have their distinct advantages. The US has been able to attract Pakistanis through its education, scientific institutions, and political systems. Pakistan has been aligned with the US since its inception in 1947 and has received military equipment, training, and scholarships for its agricultural sector from the US. Additionally, the US has provided trade and assistance to Pakistan through loans and grants, which has further enhanced its soft power in the country. On the other hand, China's soft power in Pakistan is rooted in its long-standing friendship and neighborly relations. Despite its economic struggles in the past, China has remained a sincere friend to Pakistan and has played a pivotal role in the industrialization of the country. Chinese products are also popular in Pakistan due to their affordability and quality and have gained worldwide recognition, including in the US. As a result, the US has refrained from imposing sanctions on Chinese products, as they are in high demand among consumers and more cost-effective compared to American products. (Ambassador Asif Durrani, 2022)

#### Pluralism is here and the United States can use it to flexibly affirm whatever commitments it wants.

Burke-White 15 [Burke-White, William W. Richard Perry Professor and Inaugural Director, Perry World House at the University of Pennsylvania and Professor of Law, University of Pennsylvania Law School. "Power Shifts in International Law: Structural Realignment and Substantive Pluralism" (2015). *All Faculty Scholarship*. 599. https://scholarship.law.upenn.edu/faculty\_scholarship/599 //cohn]

Writing in 1940, Morgenthau predicted that a “fundamental change in the social forces underlying a system of international law”—such as the power redistribution of the past decade—would result in “a competitive contest for power.” He anticipated that “change [in] the existing legal order will be decided, not through a legal procedure provided for by this same legal order, but through a conflagration of conflicting social forces which challenge the legal order as a whole.” 488 His prediction has not come to pass. Instead, over the past decade, the international legal system has accommodated an extraordinary redistribution of power. It has changed in the process, but has remained robust and durable. The preferences of states, as well as the distribution of power amongst them, matter to the processes and substance of international law. **New powers have embraced the system as a whole because it furthers their interests. They are using their newfound power to adapt it from within. Three implications of this redistribution of power have already become clear.** First, international law has transitioned from a unipolar structure to a multi-hub structure. In this new order, leadership has diversified such that far more states are capable of acting as hubs and driving international legal processes. This multi-hub structure is comprised of numerous, flexible sub- systems that operate in a kind of variable, issue-specific geometry. It is a structure in which **non-hubs often have multiple choices as to which hubs to follow on any given issue**. And it is a structure in which legal processes are migrating into these subsystems, **often at the expense of global-level alternatives.** Second, this multi-hub structure is promoting pluralism within international law. Whereas, during the transatlantic moment, the United States and Europe were largely able to limit international legal discourse and rule development in accordance with their preferences, the multi-hub structure fosters the articulation of alternative preferences. Pluralism **has already be- come** evident at three tension points: sovereignty**,** legitimacy**, and** economic development. Additional points of pluralism are likely to emerge in the years ahead. Even if these preferences themselves are not new, **the new power of the states that articulate them is altering the substantive development of international legal rules.** The distinct preferences advanced by hubs will challenge **the preferences** the United States **and Europe have successfully embedded in many international legal regimes over the past half century.** Overtime, these regimes will adapt to accommodate new preferences, both within separate subsystems and globally. Third, while this new pluralism will have distinct implications in specific areas of the law, a common element emerges from the alternative preferences for sovereignty, legitimacy, and economic development now being articulated. At each of these tension points rising powers are advancing a far more state-centric vision of international law. It is a vision of international law that reaffirms state sovereignty, bases the legitimacy of international legal processes and institutions on long-standing principles of sovereign equality, and puts the state back into the center of economic development. **This reassertion of the centrality of the state conflicts with the individualization of international law, a hallmark of the period of U.S. leadership**. For legal rules and regimes that seek to advance this individualization or draw their effectiveness from it—**human rights law, the law of investment protection, and the law of humanitarian intervention**, for example—the return of the state will likely have pronounced negative consequences. **Over time these regimes may be ratcheted back as international law returns closer to its Westphalian origins as a system of sovereigns, among sovereigns.** It is, however, premature to draw final conclusions. The multi-hub model, as developed here, depends on two assumptions that, while presently valid, could shift. First, the model has assumed that the preferences of rising powers are not consistently aligned 489 in a way that would create a stable coalition to replace U.S. hegemony. 490 Second, the model has assumed that hub leadership and subsystems remain flexible, changing on different issues, and providing non-hubs with choices as followers of different hubs and sub- systems. If either of these assumptions proves wrong, the resulting international legal system would look quite different and far less appealing from the U.S. perspective. Imagine two different versions of the international legal system that might develop if these assumptions are relaxed. First, should the preferences of rising powers coalesce such that a collective of new powers replaces the United States as hegemon, the system itself might look more like a bipolar one with the United States and Europe on one side, and rising powers on the other. The system might well break down into two larger, relatively rigid subsystems engaged in a protracted struggle. The preferences of the United States and Europe might prevail on one side of this competition, while a largely separate international legal system that reflects the preferences of rising powers would develop on the other. Or, should the assumption that hub leadership remains flexible prove in- correct, a second scenario arises. If several hubs developed such a predomi- nance of power in their respective regions that non-hubs had no choice but to follow, leadership would lock in and subsystems would become rigid. Variable geometry would give way to comprehensive spheres of influence. The behavior of some new hubs, notably Russia, suggests a desire to move in this direction. The resulting international legal system would be one of fixed, fragmented regions. International legal process would devolve into these subsystems of increasing rigidity, in which the substance of interna- tional law would develop separately. Substantive norms would divide and fragment as hubs impose their particular preferences on non-hubs in their subsystems. In the rare cases where global legal processes would still occur, outcomes would be determined by great power rivalry. Pluralism would be transformed into fragmentation and indeterminacy. The few international lawyers who have considered the implications of the redistribution of global power have largely agreed that it bodes poorly for the future of international law as an institution and, particularly, for the United States.491 Perhaps they have envisioned one of these two negative scenarios. The good news, however, is that neither of these scenarios seem likely today. Power and leadership remain diffuse. Preferences are differentiated. Subsystems remain flexible. Pluralism is enriching the normative con- tent of international law. The multi-hub system appears to be successfully accommodating both power shifts and substantive change. Perhaps most surprisingly, the multi-hub structure actually serves United States interests very well. Admittedly, in this new structure the United States will not be able to prevail on every issue or in every legal process. Even during the period of U.S. hegemony, however, it could not do so. Yet, the United States stands to benefit in the multi-hub system **for three reasons.** **First, the United States has long sought flexibility in international law so that it could use the system to advance whatever preference or strategic interest it might have at a given time.** As a hegemon, the United States enjoyed the flexibility that comes with shaping and running the system. 492 The greater pluralism of the multi-hub structure allows the United States to continue to enjoy this flexibility even as its hegemony declines. The United States can pick and choose among different preferences being articulated by other hubs or articulate its own preferences when necessary. Pluralism may mean that international law provides less constraint or certainty, but that is exactly what the United States has long sought. **Second, in a system in which legal processes migrate downward into flexible subsystems, the United States can advance its interests through international legal processes contained within such subsystems.** During the periodof U.S. hegemony, the United States often undertook the arduous and costly task of building global consensus. Relying on “coalitions of the willing” was a second best alternative subject to significant criticism. In the multi- hub system, in contrast, legal processes are occurring within such subsystems with greater regularity. As a result, the United States can work through smaller, less costly coalitions of states that share its interests on particular issues. Given the groundwork laid during the period of U.S. hegemony, the United States is the beneficiary when variable geometry becomes the norm, not the exception, for international legal processes. 493 **Third, the fact that rising powers have chosen to operate within the international legal system, rather than challenge the system itself, means that, in order to advance their own interests, rising powers will share the costs of leadership.** New hubs are beginning to lead legal processes within their own subsystems, assuming costs of enforcement, and helping bear the burdens previously carried by the United States alone. The United States may not always see its preferences articulated in the rules and interpretations other hubs are advancing. It may not always like the rules that new hubs choose (or refuse) to enforce. But, if it embraces pluralism, the United States can share the overall costs of managing a surprisingly robust system. Despite the seductiveness of prediction, history usually proves such efforts wrong. Ultimately, this paper seeks to open a conversation and research agenda on the ways that present power shifts are altering the structure of international legal processes and the substantive rules of international law. Future inquiries must be both country- and issue-specific. They must con- sider both power and preferences. This paper has sought to begin that effort by providing a first-cut analysis of structural changes that are already under- way and identifying the substantive tension points at which new pluralism is emerging. In so doing, it offers a starting point for further analysis. At the very least, it has sought to reorient the debate from the power of international law to the role of power within international law.

## Aff---K

### On International Solidarity

#### This topic presents the question of how we ought to engage in the practice of solidarity. Solidarity poses a dilemma for movement organization because of its dual potential to empower political demands while reflecting unequal power relations.

Leigh-Ann Naidoo 21, Educator at University of Cape Town, PhD Candidate, Activist, "Thinking Through Transnational Feminist Solidarities," Surfacing: On Being Black and Feminist in South Africa, edited by Desiree Lewis and Gabeba Baderoon, 2021, pp. 241-255

One of the most pressing questions for the work towards radical change and resistance is how to build solidarity locally and globally, across difference. The question of solidarity haunts me because there is power in numbers and yet building large movements across issues, time and space is so difficult. As we have repeatedly seen, mass resistance forces people in power to listen to our demands and can produce the kinds of change we want. It is therefore important, in addition to defending our progressive movements from external attacks, to address how we negotiate solidarity within our movements, knowing that unequal power relations can and are often reproduced in the very spaces of resistance we create to redistribute that power. The inability to deal with how power operates through us and our relations with one another results in us – often with the best of intentions – doing harm to one another and to the possibility of solidarity.

My experience of movements has included witnessing many moments of solidarity. What defined these moments for me was how activists relinquished their relative privilege and personal position in order to place themselves in political communion with others. My earliest recollection of such moments is of my father, Derrick Naidoo, who over his lifetime has committed acts of class suicide to live and work among working-class and poor people who did not have the educational and class privileges that he did. In 1981, he survived a 40-day hunger strike in prison aimed at raising international awareness of South African students who were tortured and imprisoned with him for their anti-apartheid politics. His anti-racist and anti-capitalist beliefs provided me with a model for tying one’s fate to others in political acts that oblige one to relinquish privilege and face extreme risks. I continue to be inspired and humbled by the many acts of bravery and sacrifice that I witnessed during the fight against apartheid. The vast majority of them were not memorialised, but are remembered in the personal stories of so many black South Africans.

Here, I reflect on ideas about solidarity, struggle and current challenges for radicalism that emerged afresh during my experience on the Women’s Boat to Gaza (WBG), on which I sailed in September 2016. WBG was created, in my estimation, as an act of transnational feminist solidarity with the women of Gaza and Palestine. South African participation in the WBG was organised through the Palestine Solidarity Alliance, and the invitation to put my name forward as a possible participant came during the massive student uprisings at South African universities in 2015/16. #FeesMustFall and #RhodesMustFall were among the most important protests since the end of apartheid, and my active participation in them as a postgraduate student, as well as my history of activism as a queer Olympic beach volleyball player, had caught the attention of the WBG organisers.

Challenges for feminist solidarity

The Gaza Strip is home to around 1.8 million Palestinians who have been living under siege since 2007. The land, air and sea blockade has created what many have described as a huge open-air prison. In addition to being occupied and isolated, Gaza is also under constant threat of military attack from the Israeli Occupation Forces (IOF). Palestine and South Africa have a historic relationship that dates back to the formal beginnings of both Israel and apartheid in 1948. Over the last 50 years, the Palestinian liberation movement and the anti-apartheid movement have forged a solidarity that has persisted in the post-apartheid period in South Africa, despite the active support of Zionism by organisations and individuals both inside and outside of the state.

Much has also been said about the similarities between South African apartheid and what has become known as Israeli apartheid. The violence and suppression of the indigenous people by settlers is an obvious similarity, as is the extreme segregation along with the inequality that it produces. I have participated in protests in support of Palestine since I was a young child. Because of this, and because of a commitment to responding to calls for solidarity and support against (neo-)colonialism and injustice, I was open to the idea of joining a protest that would highlight the continued struggle faced in Occupied Palestine and particularly in Gaza.

For the first time in the history of freedom flotillas, a boat made up of 13 women from around the world would cross the Mediterranean Sea in an attempt to reach the shores of occupied Gaza. In so doing, we would attempt to break the ongoing and devastating blockade of Gaza by taking a message of international solidarity. I had many questions about the mission’s politics. I was wary of the kinds of political work to which the category ‘woman’ was being deployed. At one level, the WBG would be a story of women’s achievements and sacrifice during a solidarity mission and would bring media attention to the particular experiences of women in Gaza, which are often under-reported. At another level, the all-women mission appealed both explicitly and implicitly to an associated idea of peace in the face of militarism, traditionally associated with masculinity. I was uncomfortable with this gendered stereotype of peace and militancy and especially of how the WBG might be construed as a mission of womanly peace in opposition to Israeli militarism. I stepped onto the boat imagining that the mission would entail the participants’ animated engagement with questions of power, gender, feminism, peace, resistance and, above all, the work of solidarity.

All of the activist women on the boat were involved in various struggles in their home countries, and some were involved in international ones. I was sure there would be a range of ideas and positions that would be debated and worked through amongst us. Although it was very interesting and important for me to hear about the work of the different women on the boat, what was not part of our conversation was our different political and social positions, our relationship to solidarity work and a discussion about how we constituted our collective mission. Overall, the mission was a remarkable political education for me. It allowed me to experience the satisfaction of an extraordinary transnational mission, and to learn about struggles from Aotearoa to Algeria. But it also taught me how deeply power relations are embedded even in our movements and missions, and how much more attention we need to pay to how we come together, and how we move together.

On the boat: The face of feminist solidarity

I left Johannesburg in September 2016 to join the WBG in Italy. Consumed by thoughts of what was transpiring at universities in South Africa, I spent five days in Messina meeting with participants and organisers from around the world to prepare for the last leg of the boat trip to Gaza. We set sail from Messina on the morning of 27 September 2016, excited, scared, and aware that, at the beginning of our nine-day sail to Gaza over very rough waters, seasickness would be the first challenge for us all to overcome.

Each of us came with a multitude of different experiences which, along with the global systems of power that structure all of our lives, should have presented us with fertile opportunities outside of the confines of our own local or regional concerns to engage each other collectively. We were in the unsettling but potentially productive situation of being away from our direct national struggles and networks. The highlights of the boat trip for me were the individual conversations I managed to have with other participants in getting to know them, their contexts and activism. I had the realisation that there were so many ongoing battles across the world. As we went further across the Mediterranean, we were also in satellite communication with organisations and people in Gaza who were preparing to meet us at the beach. As we counted down the miles, we started believing that we would make it. Our hopes were pinned on reaching the shores of Gaza without being intercepted by the IOF. We were a small boat and had made it known that we carried no supplies, weapons or materials other than our own sparse food and clothing. In the last few days of our voyage, our boat captain and our selected boat leader gathered us together for a discussion that would allow us to prepare for what would be the final day at sea. We were to discuss two eventualities. First, the more dangerous one, which would see us boarded by the IOF to prevent us from breaking the blockade. Second, the possibility of reaching the Gaza coast, one of the most structurally violent places in the world.

At the onset, the conversation went well. We were in agreement about what would happen should we be intercepted. We discussed and agreed to cede our voices to our boat captain, who would be the negotiator when the IOF made radio contact. She was knowledgeable and had dealt with radio communication between ship captains before. We also agreed on the same with our boat leader, who would be the only one to communicate with the soldiers if they boarded our boat physically. Again, she was the team member with the most military experience, being a retired US army colonel, and was calm under pressure, having been on previous flotilla missions. We would be acting as a team and had agreed to the selected leadership in the event of capture. Our leaders would present to the Israeli soldiers our message of peace and non-violence to clarify that we had no weapons or materials other than our solidarity with Gaza. Individual participants could only speak for themselves again when they returned to their home countries to recount the mission to local media, telling either of their experience of engaging with Gazans or the experience of capture, imprisonment and deportation.

What did not go as easily was the discussion about what would happen if we were to land in Gaza. The conversation started to heat up when it was proposed that the nature of our mission was one of spreading peace. I remember being uncomfortable with the idea that we would make landfall speaking only one message when we engaged the women of Gaza. I raised my concern: surely we couldn’t arrive in Gaza to present a single narrative of why we were there and were lending our support to Palestine? How could we get off the boat to engage with the women we would meet and declare that we were there in the name of peaceful, non-violent resistance? Would this not be patronising to the Palestinian resistance movement? How would they react to us taking a predetermined position that peace and non-violence was the only legitimate form of struggle to engage in?

I urged for engagement not from a singular position of supporting non-violent action, but from a dialogue about how we might be able to engage the ongoing struggles for Palestinian freedom. I wanted to ask critical questions about the relevance of different forms of struggle against extremely violent forms of oppression. Ours, I argued on the boat, was not a mission to convince Gazans of the merits of non-violent resistance but to show solidarity with their experiences and political priorities.

The conversation broke down very quickly. The two elders on the boat were international peace activists, one having spent years working in the military and seeing the devastating effects of military violence, the other a pacifist and (I discovered after the mission) an anti-abortion advocate. Some of us on the boat had lived through historical struggles for freedom that involved the strategic use of violence against brutal regimes and were not convinced that violence against an illegitimate regime was unprincipled. We all spoke from our personal experiences of violence and struggle, but our capacity to listen to each other’s views was strained and ragged. In particular, the question of peace and non-violence as universally applicable caused a lot of friction and was not at all settled in the group.

What became problematic from my perspective was not the diversity of experience and positions in relation to violence and the possibilities of non-violent resistance, but the rigidity of the stance that some adopted, which had the effect of silencing others. The conversation played out along familiar lines: the more privileged women on board were advocates of non-violence, while those of us from the Global South did not hold such a straightforward position. I observed that the privileged and mostly white women from the Global North were unwilling to recognise how the context of a deeply unequal (and structurally violent) world, in terms of raced, classed, geographic, and gendered inequality and exploitation, might provide a shifting reading of strategy in relation to the forms that resistance might take.

The breakdown of the conversation made me realise that the form of solidarity we were practising was not one that pushed us to understand one another’s positions and contexts and to grapple with the discomfort of recognising what our differences implied in practice. When the very real differences between us surfaced, it did not allow us to exercise political rigour to deal with those differences. Nor did it ask us to think about those differences in relation to the particular needs of Palestinian women. Rather, the conversation ended with a more privileged woman from the Global North (probably the most powerful in terms of social position and expertise) criticising our lack of ‘team spirit’. She implied that we had embarked on the mission under false pretences and that the insistence on acknowledging and contending with diverse views was not politically productive or necessary, but in fact destructive to the mission. It was made clear that the dominant definition of being a good member of the transnational collective meant conforming to a single view of what protest should entail. Additionally, it was the right of privileged members of the mission to define activist goals and methods. If there were multiple views held by the majority white women on the boat, this was made explicit not in the collective discussion but rather through individual conversation later or after the mission.

Perhaps it was too much to ask us to have these kinds of weighty political discussions on a small boat far from land, pushing through storms and broken rigging. Perhaps the only version of solidarity that could be practised was one that conceded to a clear premise and held a single line. But it was difficult not to feel the power dynamics on the boat and the creeping sense that something was wrong, and that an opportunity had been missed. This sense was to be dramatically confirmed after we were intercepted by Israeli soldiers just a day before we were due to reach the shores of Gaza.

Prison: The myth of women’s universal experiences

Of the 13 women who set sail to break the illegal Israeli occupation of the Gaza Strip, 11 were kidnapped in international waters and imprisoned. Two journalists from Al Jazeera, who had documented the journey through daily packaged episodes and numerous live feeds from the WBG, had signed papers which meant they were immediately deported back to their country of residence, where they could continue their reporting from the outside. The 11 of us who were imprisoned were taken to Ashdod Port, which was transformed into a military camp for processing. Then we were transported separately to Givon Prison. This process included officers from the Israeli navy, military, prison service and police. We were questioned individually by immigration officers and a number of strip-searches were conducted. A scene unfolded in the prison the next day that was startling. We were all taken out of our cells in the morning and put in an open courtyard. But we were not all afforded the right to sit on the wooden benches in the open air. Three of us were locked in a cage on one side of the courtyard, while the remaining eight sat talking on the benches. They were meeting their consular representatives and our shared lawyers to discuss the conditions of our capture and imprisonment and to negotiate our release. I realised that all of the white and Northern women were sitting on the benches. In the cage sat three of us, all broadly defined as black, two of us in hijab, two from the African continent. Looking out, I felt the same sense of wariness that I had felt in the conversation on the boat.

It is hard to know exactly why we three were caged while our eight comrades were allowed to walk about. On some level it might be as simple as we three had no one coming to visit us during the scheduled consular visit, because our governments did not have cosy relationships with Israel. But as the three of us sat in a four-by-four-metre holding cell in the courtyard of the prison, I remember my shock at being separated and treated differently from my comrades. Although I understood the inequalities that are always present between nationality and race, etc., my will to have acts of solidarity reduce those inequalities was still strong. The experience of being confined to this hierarchy against my most fervent aspirations of a solidarity mission was disappointing. Maybe it would have been more palatable if we were taken out of view from the rest of our group. But the cage functioned as the perfect viewing deck for me to see more clearly how power played out even in the context of a collective action meant to unite women from a dozen countries. While we shared the same boat and sea conditions, it was clear that we were in fact not on the same mission. Nor were we treated as equal participants. The experience in the courtyard complemented the difficult conversation on the boat: racial and national distinctions mattered in how decisions were made, how conversations unfolded and how care circulated.

For the two weeks leading up to our capture, we were struggling in concert against the elements of a sea voyage. Even though we had met only a week or two earlier, we quickly had to adjust to living with each other in a confined space, tackling the seasickness and sharing the many little tasks that keep a boat at sea working. The process of building a shared set of principles and ideas around our mission was not always smooth sailing, even before we stepped on board. And I was surprised at how much we were unable to explicitly discuss power and how it manifested internally, negatively affecting our mission.

I turned to the other caged women and asked if they too felt that this was a problematic way to be treated. We huddled together and felt some solace because at least we were experiencing the isolation together. Being prevented from reaching the Gaza shoreline, and being treated like terrorists by the Israeli regime, paled in comparison to being forgotten or not held in consciousness and care by our comrades. How could we as feminists register a mode of critical thinking and practice that is a condition for solidarity? Could it be that, throughout the mission and beyond, an important part of the work was to consider more critically the daily engagements and experiences of resistance and solidarity? Should we have acknowledged that through this struggle there would also inadvertently be experiences of discrimination, oppression or dehumanisation of some members?

At our request, our lawyer attempted to have us released so that we could join the rest of our group, but the prison guard brushed off his request without any explanation. One or maybe two of the uncaged women from our mission came over to us to see what was happening. It seemed they felt uncomfortable about the situation, but not enough to insist that our confinement end. The possibility of joining us in the cage did not seem to enter the minds of our comrades. And yet it seemed from the inside of the cage that the very least condition for a collective mission once captured was to hold the tension between having one vision and one voice, while also agreeing on how to work across difference together. Our different bodies, origins and contexts, as well as those of the Palestinians we were supporting, had to be contended with if we were to arrive at something that we might call critical solidarity. What does it take to consciously commit oneself in action and consequence to a position different from or outside of one’s own experience, privilege, desire and social position? Could this be the most difficult yet important aspect of solidarity?

Towards a conclusion

The question of how to express critical solidarity with Palestine took shape for me in the context of the two key incidents I have discussed: the conversation on the boat among the women, and our treatment by both the Israeli military and the women with whom we had believed we shared political ideals. These experiences led me to a series of questions. Who decides strategy when planning an action across national (or any other) contexts? Who sets the terms for an act of solidarity? How do we understand the principles of what constitutes a solidaristic effort? During the mission, would there have been less or no difficulty if the participants on the boat had similar experiences or were socially positioned more closely to each other? What is the relationship between solidarity and interest? Is it solidarity when you, for example, are marching with fellow workers for your own benefit? Or does solidarity have to involve some sort of act of sacrifice? Solidarity seems to be premised on the capacity to move beyond oneself, and to think about working not only for your own interest but for those of others; or at least being able to read something of your own experience into the experience of someone else. Does this translation across experience imply that solidarity is a greatly varied and complex act of communication and relation? Perhaps the more distant your own experience is from the experience of those to whom solidarity is expressed, the more translation work has to be done. Also, the more distant your experience, especially in terms of privilege, the more critically aware you have to be about how you do the work of moving beyond your own experience.

It seems it is precisely a knowledge of the intersecting and always evolving identities that shapes one’s capacity to be in relationships with others, and which contextualises the possibility of showing solidarity and empathy for others’ positions. This solidarity would require the development of a practice of moving oneself into another position, not with appropriation or force, but in order to decentre the self, to find technologies for correspondence across difference. If this careful practice is not at the centre of solidarity work, then it can devolve into something else quite quickly.

What this reveals for me is that there is a relationship between proximity and distance that enables solidarity. There is something about the hook of experience as well as the importance of difference that makes solidarity so necessary and yet so difficult. Because if you are just in the experience, then you can’t express real solidarity because you don’t do it beyond yourself. There is something about solidarity that implies distance, that implies the capacity to transcend one’s own direct experience, in order to be with other people. There is also something about the terrain of experience that you have lived through which possibly creates a different sensitivity to what the practice of solidarity looks like. If you don’t have some capacity to recognise how diversity of experience and opportunity have shaped firstly your own life and then other people’s lives, you are likely to reproduce your privileged experience. And this inevitably will impact those whom you have chosen to act in concert with.

The simplest way for me to keep thinking through solidarity is to continue to act in solidarity with those who have a different and less privileged position from mine and therefore different life experiences. In this way I practise a form of auto-critique, and in so doing contribute to a more complex practice of fighting oppressive power, while at the same time fighting it internally in our resistance processes and movements. I do this not alone but with other comrades of collectives, movements, organisations and campaigns.

### National, Not International

#### National political categories ought to be redeemed, not discarded. The national inevitably textures transnational theorizing.

Bryan Fanning 16, Lecturer in the Department of Social Policy and Social Work at University College Dublin, "In defence of methodological nationalism," Irish Adventures in nation-building, Chapter 2, pp. 15-24, Google Books

In 1992 Francis Fukuyama declared the end of history, suggesting that with the fall of the Berlin Wall liberalism had triumphed as the political and economic paradigm across a globalised world.1 In 1994 Yasemin Soysal amongst others and with less fanfare argued that an era of postnational citizenship had arrived.2 The development of discourses of universal human rights had extended into the nation-state from beyond. Rights no longer strictly depended on nation-states. Cosmopolitan ideals expressed through human rights conventions had reached into nation-states. States bought into these on behalf of their citizens but also acknowledged the rights of denizens. In liberal democratic states both civil rights and some social rights to welfare goods and services like education and health care came to be largely disconnected from formal citizenship. Borders were being dismantled within the European Union. Money and information moved instantaneously around the world. Airfares became cheaper. People started to migrate in new waves to countries to which they had no historic connection, colonial or otherwise.

The new globalisation paradigm implied that, by comparison, the cultures of the past were homogeneous, certain, bounded and fixed. The new watchwords were ‘hybridity’, ‘fluidity’ and ‘complexity’, as if human societies had never before experienced such characteristics.3 Influential intellectuals including Jurgen Habermas, John Rawls and Ulrick Beck emphasised how cosmopolitan humanism had come to influence norms of international reciprocity.4 The new cosmopolitan theorists argued that the nation-state was being challenged by the formation of transnational political and legal structures and the onset of global risks that no state could address on its own.5 Yet human rights continued to depend on what nation-states did about them under their laws. Cosmopolitanism was not a new notion. It was an Enlightenment idea – advanced notably by Immanuel Kant in Perpetual Peace (1795) – that had been sidelined by rise of nationalism as the dominant solidarity ideology of the nineteenth and twentieth centuries and by the rise of the nation-state as the main vehicle of political, civil and social rights. Universal principles continued to sit uncomfortably with nation-state politics.

For example, the asylum-seeker issue became politicised in a number of EU member states as a challenge to nation-state sovereignty.6 The Irish response was to transfer all responsibility for the welfare of asylum seekers to the government department responsible for security and borders. In Ireland as elsewhere the right to seek asylum set out in the UN Convention on the Rights of Refugees (1951) was trumped by the carrier liability legislation and other border controls aimed at frustrating the exercise of this right. Irish citizens, even cosmopolitan ones, expected the Irish state to be capable of defending national sovereignty by being able to control borders. This expectation might be understood as a social fact, to use Émile Durkheim’s terminology, about nation-states.7 When Ireland ratified the Convention in 1956 its obligations to refugees were theoretical. When tested by real refugees Irish responses fell short of cosmopolitan or human rights ideals. The new waves of migration that are the focus of studies of transnationalism elicited responses that can only be understood through some focus on host nation-states. The politics of immigration in Ireland as elsewhere suggest cognitive distinctions between ‘nationals’ and ‘non-nationals’, dominant senses of community rooted in earlier phases of nation-building, the persistence of ethnic chauvinism alongside open labour markets, the invisibility of large immigrant communities going about their transnational lives within a national imaginary that barely notices their existence.8

The intellectual rejection of nationalist beliefs does not necessarily prompt reflexive scrutiny of one’s own everyday nationalist practices or even – assuming for a moment that sociologists can stand outside of society – scrutiny of the bounded empathies and shared ‘us and them’ presumptions of their fellow citizens. These are summarised by Andreas Wimmer and Nina Glick Schiller in the following terms:

Modern nationalism fuses four different notions of peoplehood that had developed separately in early modern Europe. These are: the people as a sovereign entity, which exercises political power by means of some sort of democratic procedure; the people as citizens of a state holding equal rights before the law; the people as a group of obligatory solidarity, an extended family unit knit together by obligations of mutual support; and the people as an ethnic community undifferentiated by distinctions of honour and prestige, but united though common destiny and shared culture. These four notions of peoplehood are fused into one single people writ large. Democracy, citizenship, social security and national self-determination are the vertexes of a world order of nation-states as it matured after the Second World War.9

Similar social processes clearly affect different nation-states. Sociological theory is clearly useful in trying to understand these. But explanations lie in the detail. Alongside generic processes of social change there is a need to address specific contexts. The great European sociologists Karl Marx, Max Weber and Émile Durkheim knew this and acknowledged such contexts in their work even if their theories have often since been applied without reference to specific national contexts. To quote the opening sentence of their contemporary Leo Tolstoy’s novel Anna Karenina: ‘Happy families are all alike; every unhappy family is unhappy in its own way.’

Cages, containers and bounded communities

Much of my own work considers the Republic of Ireland as an object of understanding and a unit of analysis. One strand is exemplified by books with titles like Racism and Social Change in the Republic of Ireland (2012), New Guests of the Irish Nation (2009) and Immigration and Social Cohesion in the Republic of Ireland (2011). Another, focused on Irish intellectual history, is exemplified by books like The Quest for Modern Ireland: The Battle of Ideas 1912–1986 (2008) and An Irish Century: Studies 1912–2012 (2012). But I am also co-editor of Globalization, Migration and Social Transformation, a collection that emphasised the global and diasporic contexts of twenty-first-century Irish diversity.10 And I was a founding editor of Translocations, an online journal with a similar emphasis on locating the Irish case in transnational contexts or as put by my co-editor Ronaldo Munck: ‘Ireland in the World, the World in Ireland’.11 Translocations had the following manifesto:

While it is a ‘trans’ journal, Translocations is not another global studies journal disembodied and non-grounded. We are a trans-locational journal in the belief that global processes can only take shape in particular locations.12

The turn towards transnationalism has given rise to more fluid and pluralist understandings of migration compared to the old ‘push-pull’ theories that dominated economic and sociological interpretations.13 Yet, transnationalism as a phenomena ‘does not swirl blithely free of the political spaces of nation-states’.14 According to Anthony Smith, a sociologist of nationalism, ‘the world nation-state system has become an enduring and stable component of our whole cognitive outlook’.15 As put by Ulrick Beck, the nation-state came ‘to constitute the container of society and the boundary of sociology’.16 Methodological nationalism is a term used by sociologists to refer to social inquiry which is bounded by political borders. The term was coined by Hermino Martins in 1974 to refer to how statistics and social science research based on these came to focus on ‘national communities’ as the natural unit of social analysis.17 Social science came to equate society with the nation-state, and conflate national interests with the purposes of social science.18 It has taken for granted that the boundaries of the nation-state delimit and define the unit of analysis. Such presumptions have reflected and reinforced the identification that many scholars maintain with their own nation-states. Such methodological nationalism equated societies with nation-states and these as setting the parameters of social science analysis.19

Nationalism as an ideology assumed that humanity is naturally divided into a limited number of nations, which on the inside organise themselves as nation-states and, on the outside, set boundaries to distinguish themselves from other nation-states. The influence of such thinking in the Irish case can be seen in the emergence of the 1840s Young Irelander movement which like its European equivalents promoted national literatures, histories and music. Their efforts to promote cultural distinctiveness sought to assert that the Irish were a distinct nation deserving of their own nation-state.

During the nineteenth century states sought to cage nations, and ethnic groups sought states that demarcated those who shared the same culture and language from other cultural and linguistic groups. Nationbuilding goals of fostering cultural homogeneity and the creation of new mass identities co-existed alongside other forms of social modernisation. Sociologists who have focused on nationalism have emphasised shifts from Gemeinschaft to Gesellschaft within national containers. Such modernisation theory saw nation-building as a crucial component of developing an effective modern society, one capable of political stability and economic development.20 The educationally transmitted, literate shared cultures of modern industrial states emerged along national lines.

In Ireland as elsewhere the nation-state came to be portrayed as the most fundamental category of social and political organisation. Yet the Irish nation-state is less than a century old. The ideological conceptions of nation that were poured into its creation resulted in a political entity that some Irish nationalists opposed because as a container it left out six northern counties. From such a perspective the Irish nation and the Irish nation-state are not coterminous. A civil war after the war of independence did not settle the question even if what became the Republic of Ireland became a distinct political container and a specific unit warranting sociological analysis. The sociological imagination which developed during the nineteenth century came to be implicitly shaped by nationstate perspectives on society, politics, law, justice and history.21 Michael Mann argues that our primary twenty-first-century social cage remains the nation-state.22 In the Irish case this is a cage or container (Ulrick Beck’s term) that, for better or worse, excludes Northern Ireland and the millions of the Irish diaspora.

In recent decades social theorists like Smith, Mann, Ernest Gellner and Benedict Anderson have explicitly focused on nations and nationalism as sociological phenomena. Classical sociological theory postulated accounts of social relations and social change from one social structural type to another. The industrial revolution had been the seismic event of the early nineteenth century. It precipitated social change with no obvious link to political borders or inter-ethnic conflict. Smith has argued that the leading sociologist students of such change – Marx, Durkheim and Weber – spectacularly failed to develop conceptualisations of nationalism comparable to their classic analyses of capitalism, industrialisation, rationalisation and bureaucratisation. Gellner also has argued that such sociology, in its efforts to understand such change, placed little emphasis on nationalism.23 It would be more accurate to suggest that nationalism was never the main focus of such sociology, that within the social sciences more generally nationalism hid in plain sight. Nationalism both influenced how social science developed in specific contexts yet was often ignored as phenomenon. As put by Seán L’Estrange:

The human and social sciences do not have a great track record when it comes to nationalism. Not only have most disciplines allowed themselves to be shaped according to the ‘national idea’ of the particular society from which its practitioners have been drawn, thus creating distinct ‘national traditions’ in what are putatively universal scientific disciplines, but neither have they been particularly good at subjecting nationalism to systematic scrutiny with the full range of resources at their disposal.24

Max Weber’s sociology emphasised shifts from traditional to bureaucratic, legal and professional forms of organisation and authority in what he saw as an ongoing process of rationalisation in economy and society. But he also classified racial identities, ethnicity and nationality in ways that highlighted common presumptions shared between these. Racial identities were predicated on presumptions of common inherited and inheritable traits understood to derive from common descent. Ethnicity referred to human groups that entertain a belief in their common descent because of similarities of physical type or of customs or of both, or because of memories of colonisation or migration. Weber emphasised that ethnic identities depended upon such belief; it did not matter whether or not an objective blood relationship existed. Whether racial, ethnic or national differences were real or not was irrelevant to Weber. What mattered was the consequences of such beliefs for how societies were organised and segregated. He noted that beliefs in ethnic identities often came to set limits upon how a community was politically defined.25 Yet, ethnicity, as Weber understood it, only came to be a widely used concept from the 1980s.

Durkheim emphasised how patterns of social solidarity shifted with the division of labour in society. In peasant societies the basis of social interaction was the resemblance of one person’s life to their neighbour’s. The division of labour required by the industrial revolution altered this. Ferdinand Tonnies similarly postulated a shift from Gemeinschaft to Gesellschaft, terms that respectively denote communal identities based on similarity of ways of life and the complex social orders and interdependencies of the industrial era. The specific empirical focus of Tonnies’s work was on Germany.26 Durkheim, for his part, hoped that his sociology would help France to deal with the social crises thrown up by modernisation, the anomie that he saw as accompanying the unravelling of traditional communal social order.27

Marxism viewed capitalism as a global system, one that had been preceded by feudalism and would be succeeded by socialism. History for Marxists unfolded as the story of class conflict. They expected (or hoped) that national loyalties would be rejected by the exploited working class in favour of class consciousness; national loyalties, it was argued, made no more rational sense than for prisoners to develop feelings of loyalty towards jailers. But this was to underestimate, Gellner wrote in 1964 in sympathy with such Marxist analyses, the power and hold of the dark atavistic forces in human nature.28 Marxists envisaged that nationalism and patriotism would be swept aside by proletarian internationalism. But nationalism no less than religion became the opium of proletariats. Nationalism in the Irish case, more so than in most places, won out over class consciousness.29

Marx and Friedrich Engels gave some thought to how Irish nationalism might help to bring about socialism. In an 1882 letter to Karl Kautsky, reflecting on the revolutions of 1848, Engels wrote that it was ‘historically impossible for a great people’ to seriously address their internal circumstances ‘so long as national independence is lacking’. Engels had come to believe that socialism could only be realised through nation-states. He argued the Irish ‘were not only entitled but dutybound to be national before they are international’.30 In Ireland nationalism won out over socialism not least because Catholic social thought was designed explicitly to compete with the appeal of socialist ideals. Socialists around the world may have sung ‘The Internationale’ but in 1924 Joseph Stalin proclaimed the necessity of socialism in one country. In the Soviet Union the Second World War came to be called the Great Patriotic War. Obituaries for state socialism after 1989 proclaimed the end of history, meaning the dominance of liberalism as a social, economic and political engine of progress. But the spread of free markets was accompanied by new manifestations of nationalism. Yugoslavia split into warring nations. Serbians engaged in a programme of ethnic cleansing aimed at creating a mono-ethnic nation-state uncontaminated by non-nationals. In some other parts of Europe – Germany in the aftermath of the Second World War and Ireland chastened by the northern conflict – cosmopolitan political and intellectual elites have sought to keep a lid on atavistic expressions of nationalist sentiment.

The nation-states and host cultures that find themselves disrupted by immigration cannot be understood as static entities. For example, in the Irish case an ‘Irish-Ireland’ cultural nation-building project dating from the nineteenth century came to be displaced gradually from the mid-twentieth century by an economic developmental nation-building project, a victory of liberal utilitarianism over cultural nationalism that found expression as economic nationalism. This impacted not just on the goals of the Irish state (sometimes now referred to by media commentators as ‘Ireland PLC’) but arguably also upon the habitus of Irish citizens. But the kinds of social change that preoccupied sociologists during the second half of the twentieth-century – for example relating to urbanisation, individualism, secularisation and attitudes to sexuality – also reflected transnational patterns of social change. There is much about everyday life in twenty-first-century Ireland that is generically modern and pretty indistinguishable from day-to-day existence in many other Western countries be it shopping at Lidl or Aldi, the organisation of work, the use of social media or watching box sets on DVD or Netflix.

Nevertheless, perceptions that significant cultural differences persist between nation-states find ongoing expression in political responses to immigration. For example, ethnic nepotism, a term that refers to feelings of primary solidarity with co-ethnics or fellow citizens, can be identified in justifications for nation-states giving some immigrants lesser rights and entitlements to welfare goods and services.31 Ethnic nepotism was exploited politically during the 2004 Citizenship Referendum to accentuate cognitive distinctions between ‘nationals’ and ‘non-nationals’ in a context where citizens were overwhelmingly drawn from the majority host ethnic group. Almost 80 per cent of Irish nationals who voted in the 2004 Referendum seemingly endorsed ethnic nepotism. Furthermore, an Irish Times opinion poll in January 2006 suggested that almost 80 per cent of voters wanted a system of work permits to be reintroduced for citizens from the ten new European Union member states coming to Ireland.32 The findings of the Irish National Election Study (INES) 2002–07 were that some 62.4 per cent of respondents in 2002 (falling to 58.8 per cent in 2007) agreed or strongly agreed that there should be ‘strict limits’ on immigration.33 Gradations of rights between citizens and non-citizens, immigrant ‘guest’ workers, ‘illegal’ workers, refugees and asylum seekers have emerged in a number of Western countries that as recently as a century ago operated few restrictions on immigration. In such a context citizenship becomes not just a set of rights, but also a mechanism of exclusion.34

Whereas sociological metaphors depict nation-states as cages and containers, those of nationalists refer to motherlands, fatherlands and homeland security. Where cosmopolitan critics of nationalism have depicted it as a pathogen, Benedict Anderson has emphasised how nationalism from the inside has been framed by the language of love:

In an age where it is so common for progressive, cosmopolitan intellectuals (particularly in Europe) to insist on the near-pathological character of nationalism, its roots in fear and hatred of the Other, and its affinities with racism, it is useful to remind ourselves that nations inspire live, and often profoundly self-sacrificing love. The cultural products of nationalism – poetry, prose fiction, music, plastic arts – show this love very clearly in thousands of different forms and styles.35

‘Nationalism is not a moral mistake’, Craig Calhoun adds, for all that it has been implicated in atrocities and makes people think of arbitrary boundaries and contemporary global divisions as ancient and inevitable. 36 Cosmopolitan theorists, Calhoun suggests, underestimate the work done by nationalism and national identities in organising human life as well as the politics of the contemporary world. They treat nationalism as ‘a sort of error smart people will readily move beyond – or an evil good people will reject’. Their theories ‘grasp less well than they should the reality of the contemporary world’.37 But, ‘in failing to attend well enough to nationalism, ethnicity and related claims to solidarity, the otherwise attractive cosmopolitan visions have also underestimated how central nationalist categories have been to political and social theory, to practical reasoning about democracy, to political legitimacy and the nature of society itself’.38 Take nationalism seriously, he argues, especially if you don’t approve of it.

#### Critics of nationalism are too quick to conflate contingency with disutility. Sweeping rejection sacrifices constructive appropriation of patriotism.

Aviel Roshwald 22, Professor of History at Georgetown University, author of The Endurance of Nationalism, author of Ethnic Nationalism and the Fall of Empires, author of Estranged Bedfellows, coeditor of European Culture in the Great War, coeditor of The Cambridge History of Nationhood and Nationalism, "Does the History of Nationalism Still Matter?" in Rethinking Nationalism, AHR History Lab , March 2022, pp. 311-371

The flight from methodological nationalism has generated a wealth of productive scholarship and provocative historical reinterpretations over recent decades.18 Multinational empires, once seen as reactionary anachronisms—authoritarian at worst and paternalistic at best—whose disintegration was a foregone conclusion in a modern age of popular sovereignty and nationalism, have been reexamined as polities whose adaptive techniques of managing cultural diversity and interethnic tensions are deserving of serious examination.19 Conversely, historians have highlighted the role empires themselves have played in cynically sponsoring projects of self-determination as legitimizing mechanisms for their own informal expansion.20 For their part, nineteenth- and early twentieth-century nationalists have lost their former luster as selfless liberators of their people, reduced instead to the less glamorous role of “ethnopolitical entrepreneurs,” whose campaigns were driven and molded by the very indifference of the masses rather than by their eagerness to be “freed.”21 Even the inevitability of colonial empires’ disintegration into self-declared nation-states has been called into question by historians who have explored the democratic-federalist paths not taken during the period that has been retroactively labeled as the era of decolonization.22

It seems fair to say that the exploration of these alternative avenues of understanding has been driven by a combination of methodological and normative motivations. Finding ways of thinking outside the national box and highlighting the contingent aspects of historical trajectories from empires to nation-states clearly affords us the possibility of a critical perspective on a sociocultural and political construct (the nationstate) whose inevitability and inescapability can otherwise be taken almost unthinkingly for granted. A justifiable sense of horror about the brutalities and atrocities committed in the name of nationalism during the past century and more has also no doubt motivated the search for alternative historical scenarios and reawakened a degree of nostalgia for imperial models of dealing with diversity that appear in retrospect to have afforded greater latitude for ethnocultural hybridity and ambiguity than possible amid the reductionist pressures associated with the stereotypical twentieth-century nation-state.

But every methodology is bound to run into its own share of epistemological limitations, even as it opens up new avenues of exploration. Highlighting the role of the contingent in history has been a useful method of bringing critical perspective to the reductionist narratives of shared destiny and collective character typical of nationalist historiographies. Yet there can be analytical costs to the elevation of contingency to the status of historical explanation by default of all that appears unreasonable or irrational about the world as we find it.23 It is true that specific historical paths (such as the course of development leading to the triumph of one particular conception of ethnonational identity as the basis for any given state’s claim to political legitimacy) and certain pivotal moments (such as the tipping point leading to the disintegration of an empire) can be shown to have been rife with alternative possible outcomes. Compelling cases have been made to the effect that the idiosyncratic set of criteria that emerged as markers of belonging to any given nation—or the territorial and ethnodemographic contours that became the basis for any particular postcolonial state’s boundaries and composition—were contingent outcomes that could not necessarily have been predicted far in advance and that in fact remain fluid and subject to change. But it would be a mistake to therefore conclude that the existence of the global system of nationhood and nation-states (imagined and notional though they may be) in which we live is itself merely the fluke product of a highly contingent set of circumstances. The very fact that so many varied historical paths across multiple continents over the course of the past several centuries have led to the planet-wide emergence, in successive waves, of self-declared nation-states suggests that this has been a heavily overdetermined outcome—one that cries out for further exploration and explanation.

Illustrative of how our vision can be distorted by a preoccupation with contingency are those intriguing intervals in late imperial histories when representatives of peripheries centered their demands on equality within, rather than secession from, empires. On the face of it, these moments can be seen as evidence of the potential that empires had to reinvent themselves on the basis of federative equality and inclusivity. Yet in practice, the prospect of formerly subject populations or subordinate groups gaining equal access to power and resources almost invariably spooked core populations and metropolitan elites. Whether it be in the case of an eighteenth-century British Parliament refusing equal representation for American colonists or of a post-1945 French hexagon rejecting the new political geometry of empire-wide democratization, the prospects of such radical reform regularly produced backlashes at the center and consequent crises of legitimacy in the periphery that led—slowly, painfully, yet inexorably—to the disintegration of empires and the emergence, seemingly by default, of independent nation-states. Why was this so consistently the outcome? In my own view, this is intimately linked with the ubiquitous rise of popular sovereignty as the legitimizing principle for political authority. It seems hard to imagine a political system based on the concept of popular sovereignty that does not end up in some way incorporating and institutionalizing the idea of nationhood.24 Empires could certainly prove quite adept at handling the challenges of ethnocultural and religious diversity, but let us not fool ourselves: they did so most successfully, in their heydays, on the basis of relatively rigid status hierarchies and unapologetically institutionalized inequalities. Either alternatively or in tandem with such features, imperial states could and did propagate their own forms of militaristic patriotism and even “official nationalism”25 (not to speak of carrying out genocide in the case of the late Ottoman Empire), which once again points to the growing pervasiveness of the national idea in a modernizing world. But regardless of which factors one sees as decisive, recognizing the repeated triumph across time and space of the concept (contradiction-ridden though it is) of national self-determination over imperial-reform proposals constitutes an important corrective to the counterfactual scenarios that seem so appealing in telling the history of any particular case of imperial dissolution.

If frustration with the failings of the nation-state model fueled interest in earlier imperial models of ordered heterogeneity, the accelerating globalization processes of the late Cold War and early post–Cold War period contributed to a widespread perception that the nation-state was past its heyday, on its way to supersession by a growing complex of intersecting transnational networks, supranational institutions, and international norms. Western academics’ own facility at escaping the bounds of the nation via international travel, research, and conferences may have contributed to the widespread perception among scholars in the Global North that globalization was rapidly consigning the nationstate and nationalism to mothballs. It may also have reinforced a tendency to see such trends in a mostly positive light—as furthering the prospects of a borderless world of shared norms and convergent interests— even as one of the most notable points of intersocietal convergence was the growing income gap within each country.

The rise of such expectations has made the shock at the past few years’ resurgence of authoritarian chauvinism and virulent anti-immigrant sentiment in some of the world’s largest and most influential democracies all the greater. So how should scholars of nationalism respond? Academic researchers are rightfully wary of shifting paradigms abruptly in response to the ebbs and flows of contemporaneous events, but inevitably, our perspective on the landscape of the past is altered as the ground shifts beneath our feet. At the dawn of the second millennium’s third decade, we have become all too acutely aware that populist authoritarianism and politicized xenophobia can be just as readily disseminated via transnational linkages and communications as can pluralistic and universalistic values. The transnational is not intrinsically transcendent. It is, perhaps, not entirely coincidental that a growing body of work has been exploring the transnational and international connections among fascist movements of the 1930s and 1940s.26 This approach has proved analytically and conceptually valuable. It could fruitfully be adapted to the study of interlinkages among extremist nationalisms in Axis-occupied countries and client states in Europe and Asia during the Second World War, among other possible spheres of investigation.

By the same token, it may be timely to revisit the role of patriotism in the context of the nation-state—that is, attachment and loyalty to one’s nation or the state or movement that claims to embody it—as a frame of reference that can contribute in substantive, and sometimes even constructive, ways to shaping people’s political choices amid stressful domestic or global conditions, including in the face of illiberal transnational movements.27 It would, of course, be naive to reduce patriotism to a simple formula for distinguishing between honorable and dishonorable options in the public sphere. There is no denying that a broad range of agendas and interests can be and have been advanced—often quite cynically—by advocates wrapping themselves in their nation’s flag, to the point that patriotism may appear to consist of a hollow shell rather than a coherent set of values. It has certainly been used to try and stifle dissent in the face of injustice and to mobilize support for aggressive wars. Yet, as many others have argued, in the political arena it may be all the more important to deny chauvinists, racists, and militarists a monopoly on patriotism’s emotive power.

In the academic sphere, it may behoove us to complement the continued study of nationalism’s fallacies and excesses with scholarship that explores historical cases of democratic and progressive movements’ substantive engagement with patriotic or inclusively nationalist agendas, as in Erin Hochman’s eye-opening recent study of liberal-democratic and left-wing versions of Greater German nationalism in the Weimar Republic and interwar Austria.28 To be sure, these were not the versions of nationalism that ultimately prevailed in interwar central Europe, but the fact that they were actively propagated for some years seems no less significant a counternarrative than the fact that many people in linguistic borderlands were reluctant to embrace unidimensional ethnonational identities in the late nineteenth-century Habsburg empire.

More broadly, it may prove analytically productive to take seriously the possibility that patriotic values could contribute to defining the parameters of the politically plausible (be it reactionary or progressive, intolerant or inclusive) under a given set of historical conditions. On the face of it, this may seem absurd. Presented, for instance, with the trajectory of France during the Second World War from widespread public acceptance of an armistice and partial German occupation in 1940 to rejection of the Vichy regime and embrace of Charles de Gaulle’s Free French in 1944, all ostensibly in the name of patriotic values, one might conclude that patriotism was indeed nothing more than a set of empty symbols and phrases that could serve equally well as the packaging for radically opposed conceptions of the public good.29 Yet an approach to patriotism and national identity that takes them seriously but understands them dynamically could actually serve to illuminate how the geopolitical and military conditions of 1940 served initially to cast Marshal Pétain in the light of a benevolently patriotic grandfather figure. It might also explain why the evolution of circumstances over subsequent years made what had originally looked like an unrealistically and self-destructively romantic conception of patriotism and national pride on de Gaulle’s part much more compelling to a broad cross section of the public.

All this is not to suggest a wholesale retreat to a saccharine, nineteenth- century style historiographical cult of the nation. Taking the potential public resonance and substantive implications of nationhood and patriotism seriously does not mean thinking about them in ways that unreflectively internalize the very values and emotions under scrutiny. The methodological innovations of the past few decades of historical research into nationhood from a critical and skeptical perspective have provided the intellectual tools to explore the potential importance of ethnopolitical and patriotic concepts for ordinary people living in extraordinary times and for those who may have moved along the spectrum between the nationally indifferent and the nationally engaged.

#### Aff perm---The example of Paul Robeson illustrates that black internationalism is inextricable from national place and identification.

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Patriotism and Black Internationalism

In 1958, Paul Robeson published Here I Stand, a short but revealing autobiography, written with his friend Lloyd L. Brown. Robeson saw the book as an opportunity to put the record straight regarding his political views, insisting throughout the text, “I shall try to make clear exactly what my ideas are and how I came to hold them.”Footnote66 Here I Stand was an important avenue for Robeson to respond to the harassment he faced and to remind people of his American roots.Footnote67 The autobiographical form provided him another space to share his own thoughts on the meanings of home and patriotism.Footnote68 When grappling with this question, Robeson again pushed hard to identify a place for himself, and Black Americans more broadly, within the national narrative of the United States.Footnote69 As he argues in the preface to Here I Stand,

I am a Negro. The house I live in is in Harlem—in this city within a city, Negro metropolis of America. And now as I write of things that are urgent in my mind and heart, I feel the press of all that is around me here where I live, at home among my people… Yes, here is my homeground. Here, and in all the Negro communities throughout the land. Here I stand.Footnote70

Locating himself firmly in the unofficial Black capital of the United States, Robeson maintained that he was indisputably a product of, and would always belong to, Black America. Reflecting on how the experience of growing up in his father's church in Princeton, New Jersey, had bound him spiritually to figures such as Sojourner Truth and Harriet Tubman, who had earlier “played their part in the glorious tradition of our church,” he concluded by referencing a famous spiritual and defiantly asserting, “Yes, I've got a home in that rock!”Footnote71 Martin Duberman has interpreted Here I Stand as part of a broader effort from Robeson to rhetorically distance himself from the Soviet line and “refurbish” his image within the African American community.Footnote72 While it is certainly true that the anticommunist climate made such a move politically beneficial, this argument downplays the consistency of Robeson's Americanism as well as the extent to which his patriotic declarations were still intimately bound up with his radical Black international politics.

The question of home and belonging reappears in the text when Robeson recalls his travels and life overseas. Discussing his time in Britain, he notes that, “My experiences abroad, in the twelve years … that I made my home in London, brought me to understand that, no matter where else I might travel, my home-ground must be America.”Footnote73 Robeson deliberately grounded his foreign sojourns, along with the cosmopolitan friendships and political alliances, in terms of his “Americanness.” His time abroad, he argues, did not result in a distancing from the country of his birth, but in fact led him to further embrace the United States as his home and African Americans as “his people.” Robeson's historical situatedness—his formative experiences growing up Black in the United States, as well as the long, ongoing struggles of his people against white supremacy—were fundamental to his sense of self and played an important role in shaping his political worldview. As he made clear early on in Here I Stand,

I speak as an American Negro whose life is dedicated, first and foremost, to winning full freedom, and nothing less than full freedom, for my people in America. In these pages I have discussed what this fight for Negro freedom means in the crisis of today, of how it represents the decisive front in our struggle for democracy in our country, of how it relates to the cause of peace and liberation throughout the world.Footnote74

Robeson did not consider the insistence that the United States was his “home-ground” as a retreat from his global political activities.Footnote75 In fact, throughout his autobiography, he positions America as the specific location from which his cosmopolitan and Black international politics were necessarily articulated. For Robeson, his Blackness and close affiliation with ordinary Americans—the “Etcetera's and the And-so-forths, that do the work”—made it impossible for this activism to be contained within national borders.Footnote76 As he asks in the text, “What future can America have without the free and unfettered contributions of our sixteen millions? What place of honor can our country have in the new world a-borning if our heritage is still denied?”Footnote77 The success or failure of the African American freedom struggle would have global implications. Indeed, how could the United States engage with the rest of the world if African Americans continued to be oppressed? Robeson was in no way seeking to pave the way for further American expansion into Asia or Africa as the supposed “Leader of the Free World.” Nor was he positioning the need to eradicate Jim Crow as a means of bolstering American strategic interests on the world stage as part of the battle against global communism, as many African American liberals argued at the time.Footnote78 Rather, he called out racism and fascism in the United States as a means of pushing for the extension of human rights to people of color around the world.

Ruminating on the constituent parts of his identity Robeson commented that, “The belief in the oneness of humankind, about which I have often spoken in concerts and elsewhere, has existed within me side-by-side with my deep attachment to the cause of my own race.”Footnote79 Robeson's Blackness, his Americanism, and what the historian Nico Slate has termed “colored cosmopolitanism” were not mutually exclusive.Footnote80 White supremacy, imperialism, and capitalist exploitation crossed national borders and therefore demanded a coordinated international response. In Here I Stand, and in his broader resistance to McCarthyism, Robeson makes clear that his geographical location, experiences, and personal history in the United States meant that his activism was bound to the fate of peoples struggling against race and class oppression globally. In defiantly proclaiming his patriotism, and crucially insisting on the centrality of Black contributions to U.S. history, his “home-ground” was rhetorically transformed as the foundation for his radical Black international politics. As he commented when addressing the need for African Americans to join with the “rising colored peoples of the world” in large-scale political action,

This is not merely a matter of racial identification and common sentiments: the course of history has made it so. The plunder of Africa by the nations of Europe, which brought our ancestors to this hemisphere as slaves, was the beginning of the era that brought most of Asia, too, under white domination. Now when that era is ending, it is inevitable that our own destiny is involved.Footnote81

Robeson placed the history of American slavery and racism within its global imperial context, contending that Jim Crow and colonial exploitation were deeply connected and reinforced one another. Influenced by pioneering Black scholars such as Du Bois, as well as his engagement with international communism, Robeson traced the global contours of race and class oppression.Footnote82 He implored African Americans to recognize their status as world-historical actors and to actively engage with the global politics of decolonization.Footnote83 Robeson's patriotism was globally oriented, informed by the forces and connections that had shaped the lives of people of African descent across national borders. The imperial character of the U.S. nation meant African Americans could not isolate themselves from the rest of the world.Footnote84 Any radical reorientation of U.S. democracy required a fundamental reassessment of America's influence overseas, as well as the nation's historical and contemporary engagement with the racial politics of empire and colonialism.

### Transnational, Not International

#### Focusing on international, rather than transnational, provides a contestable stasis. Transnationalism, as distinct from internationalism, refers to processes beyond and over borders which rupture the boundaries of nation-states.

Giada Bonu 22, Scuola Normale Superiore of Pisa, Italy, "Diving into the Tide. Contemporary Feminist Mobilizations and Protests: A Global Perspective," AG AboutGender, vol. 11, no. 21, 2022, pp. 68-112, DOI: 10.15167/2279-5057/AG2022.11.21.1985

6. A Global Perspective

This article attempts to draw some suggestions to understand similarities and differences of contemporary feminist mobilisation. It does so from a global perspective. This perspective makes it possible to grasp the transnational scale which, although it has always existed, is in this specific case more structured and visible, and on the other hand to identify how precisely at the transnational level common frameworks have been elaborated between mobilisations in various parts of the world. In order to understand the relationship between global and local scales, I will elaborate on these two levels. I will then refer to transnational alliances and finally explore the role that social media and digital platforms have played in the global coordination of mobilisations.

6.1. G/local Mobilisations and Transnational Alliances

Contemporary mobilisations take place in a specific place and time: in a square, in a street, in a building, in a field, in a city. In this sense, they are closely linked to the territory in which they take place, they gather the demands of that territory and are elaborated from the grievances and shortcomings of the place. At the same time, they take place on a transnational scale, often in a coordinated manner. This double level is one of the strong features of contemporary movements.

As Gago develops (2019), the local dimension fuels the spread and radicality of feminist mobilisations. The proximity with the territory and its inhabitants allows processes of participation but also of effectiveness of demands. The struggle of the mothers of Plaza de Mayo in Argentina, the women involved in the critique of the development model in India, the claim of the right to drive in Saudi Arabia are just some of the specific and localised struggles that have fuelled large-scale feminist mobilisation processes (see DWF 2021). At the local level, the mobilisations were reformist and revolutionary in nature. Reformist in the sense of interaction with unions, parties, and institutions in the modification of unjust political structures, without losing at the same time a revolutionary tension towards the general modification of those structures, beyond local specificities. The new cycle of mobilisations has allowed these local mobilisations to find a common frame of reference, media resonance and thus increased effectiveness. How did this conjunction of local and global come about?

The concept of transnationalism, not internationalism, refers to the relations and processes among actors beyond and over borders, and/or to the symbolic rupture of the boundaries of the nation-state, and the multiplicity of territorial identifications that exist even within individual countries (Schiller et al. 1992; Go and Krause 2016). Since 2015, rather than a phenomenon of spreading mobilisations, a reverberation has occurred. Slogans, symbols, and claims have travelled between countries as they resonated with specific and situated struggles. This reverberation produced on the one hand a common frame, and on the other a common affective belonging to that frame (Taylor and Rupp 2002).

#### The nation-state ought to be discarded as an analytic. Nationalism is a anti-Black, imperial project. Methodological liberation requires not merely adding diverse perspectives, but abolishing ‘master’s tools’ of analysis based on the nation.

Kehinde Andrews 18, Birmingham City University, "Blackness, Empire and migration: How Black Studies transforms the curriculum," Area, 11/30/2018, DOI: 10.1111/area.12528

Student‐led campaigns, such as “#Why is My Curriculum White?” and “Rhodes Must Fall” emerged because of the Eurocentric nature of university knowledge. There is now a widespread movement to “decolonise” education and bring onto curricula a wider set of theories, voices and ideas (Arday & Mirza, 2018; Rhodes Must Fall 2018). However, as the movement gathers momentum we must be careful to not fall into the trap of only adding token diversity to the curriculum. The goal must be to truly transform the university knowledge base. Adding a few more diverse authors to reading lists or offering optional modules in subjects mostly neglected is not action enough. Oxford University announcing that its history students will be required to take one exam in non‐European history is exactly the kind of “difference that makes no difference” (Hall, 1993, p. 361). Decolonising the curriculum means using non‐Eurocentric perspectives to transform the core categories of knowledge.

We have been spearheading the development of Black Studies in Britain because the discipline calls for the necessary re‐examination of our basic assumptions. Rather than studying race or ethnicity as an addendum and through Eurocentric theory, Black Studies centres the concept of Blackness in order to transform our conceptual frameworks (Andrews, 2018a, 2018b). Black Studies aims to be the “science of liberation,” designing the conceptual tools and methodologies for social change (Staples, 1973, p. 168). Central to this notion is that the Eurocentric framework of knowledge is a part of the “masters tools,” fashioned to perpetuate the unequal status quo (Lorde, 1984, p. 110).

This paper will explore the transformative nature of Blackness and its rejection of European notions of race. We will also examine how Blackness necessitates moving beyond the limiting framework of the nation‐state, providing a different set of conceptual tools for understanding key contemporary issues such as migration. In doing so, the paper will argue that by drawing on the work of those engaged in the battle for liberation, like Claudia Jones and Malcolm X, Black Studies presents a counter hegemonic and liberatory knowledge basis for education.

2 | BLACK STUDIES

Black Studies is a new academic discipline in Europe. There were attempts to introduce Black Studies at the University of Kent in the 1970s, and there have been courses on African history and Black Studies ideas brought into the university by Black scholars. But in terms of developing a full Black Studies degree, with a cohort of staff who research in the area, the work at Birmingham City University is pioneering. In some sense disciplines like African Studies and Caribbean Studies are the closest subjects related to Black Studies, but in others they are the most distant and explain the need for new theoretical paradigms.

Both African and Caribbean Studies are rooted in colonial histories. European universities wanted to understand colonial subjects and sent in researchers to capture the natives’ realities. The aim in both is to study Black people, and historically this was from the perspective of a Eurocentric body of knowledge and analysis. Both disciplines have opened up to more critical post‐colonial work, and Black scholars. But the central aims remain to study Black people and while this is an important component of Black Studies it is not what distinguishes Black Studies as a discipline.

Black Studies emerged in the late 1960s in the USA, when Black students demanded a curriculum that challenged Eurocentric knowledge (Biondi, 2012). The movement was also part of a wider movement for de‐colonial knowledge, which demanded the creation of ethnic and Chicano studies (Pulido, 2006). One of the first Black Studies courses was founded at San Francisco State College in 1969, after a five‐month strike that included students and faculty, who were organising for a range of ethnic studies to be incorporated into campus. Nathan Hare (1972) called the emergence of Black Studies a “battle,” which is apt given that students at Cornell University felt the need to arm themselves in defence of threats by the KKK after they occupied Willard Straight Hall (Downs, 1999). Black Studies only emerged because of student and community mobilisations and was rooted in the Black liberation struggle of the time. This politics is absolutely indispensable in the transformative nature of the discipline.

Hare outlined the key principles that underline the intellectual work that is being done in Black Studies at Birmingham City University,

Black education must be education for liberation, or at least for change … All courses – whether history, literature, or mathematics – would be taught from a revolutionary ideology or perspective. Black education would become the instrument for change … crucial to Black studies, Black education, aside from its ideology of liberation, would be the community component of its methodology. This was designed to wed Black communities, heretofore excluded, and the educational process, to transform the black community. (Hare, 1972, p. 33)

Rooting Black Studies in the wider communities of knowledge should transform the work that we do. Including Black communities into the process of education cannot be done in a tokenistic gesture and is not just about the curriculum. It means making meaningful links with communities of practice and placing the work in the university in the service of liberation. In Britain, the long history of Black community education has been central to the work we are developing. For example, the Black supplementary school movement has been providing education in Black Studies in Black communities for over 50 years (Andrews, 2013; Dove, 1993; Simon, 2018). We have tried to bring the knowledge and pedagogy from such educational settings into the mainstream university. To do so means having to challenge some of the key assumptions on which our academic practice is based (Staples, 1973). One of the main ways to do this is by broadening what we mean by knowledge. Academia's credibility is largely based on the notion that it is the academy that presents authoritative knowledge, marked out by its professionalism from popular ways of knowing (Fals‐Borda & Rahman, 1991). At the basis of Black Studies is entirely the opposite position, that so‐called popular knowledge of activist figures who have attempted to change society is equal to, if not more important than, the attempts by academics to understand the world from the ivory tower. Therefore, the works of figures like Malcolm X and Claudia Jones (explored later) are foundational to the ontological and epistemological claims within the discipline. Going outside the confines of the academy for key definitions is essential, particularly because Blackness, or Black consciousness, is central to the discipline but anathema to most academic frameworks. Not much has changed since Essien Udom warned that:

The intelligentsia of the present have lost touch with [Black consciousness]. In their anxiety not to appear racist in their thinking they have repudiated all race conscious movement and organisations, but at the same time they find themselves, because of this repudiation, powerless to move the Negro masses. (1970, p. 17)

Underpinning Black Studies is the concept of Blackness, which is defined by embracing a connection to Africa and her diaspora, and using the link as the basis of political solidarity (Andrews, 2016). However, the concept of Blackness has been widely misunderstood in the academic literature by conflating Blackness with race, culture or anti‐racist strategies.

3 | BLACKNESS

Perhaps the most important step in decolonising knowledge is to separate Blackness from the Western construction of race. While Europeans viewed difference in racial terms that were used to enslave and colonise the globe, Blackness is a concept that derives in rejection of race and is not produced by it. Acknowledging the agency of those outside the West to create their own theoretical tools and understanding is an essential step to transforming knowledge.

Race is clearly a problematic concept, with a brutal history. In order to procure the materials necessary for the Industrial Revolution, European powers colluded to imagine the “Negro” as a sub‐human beast who could toil on plantations in the Americas and the Caribbean (Robinson, 1983). Racial hierarchy is best captured in Swedish botanist Linnaeus’ 18th‐century treatise on the species, Systema Naturae:

Europaeus albus: ingenious, white, sanguine, governed by law, Americanus rubescus: happy with his lot, liberty loving, tanned and irascible, governed by custom, Asiaticus luridus: yellow, melancholy, governed by opinion, Afer Niger: crafty, lazy, black, governed by arbitrary will of the master. (Niro, 2003, p. 65)

The global hierarchy of white supremacy was used to justify genocide, slavery and colonialism. Racialising the globe into various levels of inferiority has been an essential part of the Western project (Winant, 2001). Due to this history, hundreds of thousands of words have been spent by academics trying to retain the political link of Blackness but battling against the dogma of race (Andrews, 2018a, 2018b). Scholars are terrified of replicating the essentialism of race, which reduces Black people to a single, fixed and inferior essence. Authors like Gilroy (2002, p. 102) tie themselves in theoretical knots, like offering Blackness as an “anti‐anti‐essentialism” in order to avoid reifying race. These debates have missed the point because they are rooted in the Eurocentric body of academic thought. While race has been used, and exploited, as the primary definition of difference, it is by no means the only one. Blackness and race are two different and diametrically opposed concepts. Race is a top down, European construct, while Blackness is a concept from the grassroots, created in large part to dismantle Western racial hierarchy. To view Blackness as a production of race is to deny agency to forms of knowledge produced by Black people.

In the reflex to reject race, Blackness has been inadequately theorised as being a cultural expression. This has been done regressively in the cultural nationalism of groups who equate Blackness with some primordial and biological connection to an African past (Woodard, 1999). Just as problematically, Blackness has been reduced to the level of culture or representation. For instance, Gilroy (2002) talks about the cultural connections of the Black Atlantic, while Hall (1991) analyses how Blackness was used as a cultural signifier in order to oppress Black communities. Both authors articulate how these representations of Blackness are used to cement structural oppression but ultimately reduce the concept as one used to oppress or necessary as a form of cultural expression for Black communities (Andrews, 2018a, 2018b). Wright dismisses centuries of political organising around Blackness to argue that “political traditions serve only a limited use” (2004, p. 3) and that we need to understand the concept in relation to the literary fiction from the diversity of African and diasporic writers. When Blackness is defined solely in relation to cultural formations it becomes relative, subjective, the “difference that makes no difference” (Hall, 1993, p. 361).

In order to try and maintain a political grounding, while still avoiding the notion of race, a strategic essentialism of Blackness is to “make explicit the racist divide within society” and unite ethnic minorities (Cole, 1993, p. 671). “Political blackness” is therefore defined as including those who experienced racism on the basis of skin colour and is strategic because it is only utilised as an identity to fight racism (Maylor, 2009; Phoenix, 1998; Sudbury, 2001). There is a very real history of politically Black organising, but the problems within the concept are manifold, not least because it marginalises Asian and other minorities (Modood, 1994). Elsewhere, I explore in depth the serious limitations of political Blackness; here it is enough to highlight the reactive nature of defining a group in relation to their oppressor (Andrews, 2016). To define as “politically Black” is to construct our being on the principle of not being white. This is to normalise Whiteness and create an ontological position rooted firmly within the framework of dominant knowledge.

Blackness, in African ancestry, has always been political and is related to race only in the sense that the former is rejection of the latter. When Africans were taken in chains onto slave ships, they were purposefully mixed with different tribes so they could not communicate, stripped of their names to take away their identities and brutalised into submitting to the inhuman system (Williams, 1975). In response, enslaved Africans embraced the one connection that could not be taken away: the shared colour, which represented their common link to the African continent. That connection was used as a source of strength and resistance, maintaining cultural and political ties to each other and the continent (Andrews, 2018a). Malcolm (1971, p. 91) was drawing on this rich tradition when he declared in the 1960s that “there is a new type of Negro on the scene. This type doesn't call himself a Negro. He calls himself a Black man.” The Negro was seen to represent the image of the racists, those who conformed to the framework of race. Blackness overturned this, called for a new view of society and a radical reshaping of society. Unlike race, this link of colour was not based on biology or even a cultural essence. Blackness connected those in the diaspora to each other politically and demanded only a commitment to the politics of liberation. By centring Blackness we engage in new forms of social analysis that offer transformative knowledge about the world.

The most fundamental reframing of knowledge that Black Studies offers is to demonstrate how race is so woven into the fabric of both the political economy and the knowledge that it produces. Linnaeus’ racial hierarchy is not just a biased representation of humanity, it is the foundation on which society is built. It is no coincidence that Africa is the poorest continent and there are varying levels of development in other regions, with the West being at the pinnacle of wealth, dominated by white majority countries. The West is built on and maintained by global racial inequalities. Black Studies does not allow us to reduce racism to the margins in how we understand the world. A good example of how Black Studies transforms how we understand basic concepts is in its re‐examination of the nation‐state.

4 | EMPIRE, NATIONALISM AND MIGRATION

Nation‐states are central not only to how the politics of governance are organised but also to academic analysis. Following from Martins (1974), Beck argues that we have fallen into the trap of “methodological nationalism,” where we “equate society with nation‐state, and see states and their governments as the cornerstones of analysis” (2007, p. 286). Nations are treated as objective entities that are the containers for social research. In this climate even to engage in global research is to do so on a national basis, often comparing the experiences between distinct nation‐states. This is one of the main ways in which racism is limited to a secondary explanation, as we compare the situation in different nations, as though the nationstate has authority over the production of racism. The problem with methodological nationalism is that the nation‐state has never existed, let alone had the power that our analyses assume.

Rather than being hallmarked by great nation‐states who did battle to advance social progress, the West is in reality a collection of empires (Walker, 1999). Much is made of globalisation, and the decline of the power of nation‐states, but the global order is nothing new; after all, “what is more global than a few European countries colonising almost all of Africa, Asia, Australia and the Americas and organising them into a hierarchical world system?” (Allen, 2000, p. 470). Britain is the perfect example of the fallacy of nation‐state. In the 18th century, when Britain was competing with France for control of slavery in the Caribbean, it was British ships that carried half of all those Africans who were enslaved on French colonies (James, 1938). Even though the two nations were at war for most of this period, there was a great deal of collusion to maintain the system of racial domination that underpinned the West.

Seeing beyond the limits of the nation‐state is vital and ontological in Black Studies, particularly in relation to Blackness. The all‐encompassing “political Blackness” is founded on anti‐racist unity within a given nation‐state. But the embrace of Blackness is based on a diasporic connection that cannot be contained by nation‐state boundaries. One of the key concepts to emerge from American scholarship in the 1960s was the idea that the “Black ghetto” was an “internal colony” (Carmichael & Hamilton, 1968, p. 26). The aim was to avoid becoming trapped in the methodological nationalism of race relations. As Malcolm (1964) argued, the civil rights struggle kept activists under the “jurisdiction of Uncle Sam,” and by analysing the situation of those in the West using the idea of colonisation drew concrete links across the global struggle. Blackness insists that we analyse the world from a fresh perspective. Using colonialism to understand racism in Britain has similar but also different dimensions, given history of Empire.

Internal colonialism is a reminder of the concrete connection of the colonies to the mother country. African Americans migrated from the slaveholding South to the supposedly enlightened Northern cities to find themselves confined in segregated ghettoes, ruled by colonial principles. There are similarities, in particular, to the migration from the slaveholding Caribbean to the urban centres of Britain, where African Caribbeans found very similar conditions to their American counterparts (Andrews, 2018a, 2018b). Methodological nationalism prevents us from connecting these because Caribbeans coming to Britain are seen as foreign, economic, voluntary migrants, whereas African Americans are viewed as internal migrants within the nation‐state. The artificial boundary around the British Isles is the entirely wrong way to view the nation.

Britain's place in the world was established through the scope of the Empire where the sun never set. Being able to draw on almost a quarter of the globe for labour and material resources, as well as markets, secured the enormous wealth and political power of the small island. All of the success of Britain relied on support from the colonies, including victories in both world wars (Costello, 2015; Jackson, 2006). The post‐war social democratic settlement would not have been possible without labour from the colonies, with the NHS in particular relying on staff from the Empire (Kramer, 2006). Viewing Britain as a nation‐state is to ignore this reality. Those who migrated to the British Isles in the post‐war period were not foreigners migrating from one nation to another. They were internal migrants moving from one part of the Empire to the other. There has been a recent push to claim the history of Black people on the British Isles, with Olusoga's (2016) Black and British charting Black history back to Roman times, through the Tudor era and into the present day. Although it is true that there have been Black people on the island for centuries, this approach reifies methodological nationalism. We do not need to prove we were on the island to be part of the nation; Black people and the entire Empire were part of Britain no matter where they were located.

A figure like Claudia Jones is instructive for this discussion. Born in Trinidad in 1915, her family migrated to America when she was young. She became a prominent member of the Communist Party and was deported in 1955 for being un‐ American. Rather than deport her to Trinidad, where they feared her influence, the American authorities sent her to London, because on her passport it read “subject of the British Empire.” While in London, Jones continued her activist work, setting up the West Indian Gazette and being instrumental in establishing the Notting Hill Carnival, following race riots in 1958 (Boyce Davis, 2008). Jones died in London in 1964, meaning she was born and died in the British Empire. To view her as a foreigner is to misunderstand the totality of Britain.

Before her death, Jones was involved in fighting the Commonwealth Immigration Act, which was passed in 1962. The purpose of the law was to deny New Commonwealth migrants automatic rights to settle in Britain, and marked the beginning of increasingly strict controls to reduce non‐white migration to the island (Hansen, 2000). It is no coincidence that Trinidad, along with Jamaica, were granted their independence from Britain in the same year. A key motivation was to create separate nation‐states in order to control the movement of people. In this narrow nationalism, Britain is a great nation‐state that could no longer support the foreign intruders. Slogans like “keep Britain white,” or the jingoistic pull to vote for Brexit in order to return to the days in which Britain can “stand on her own two feet” (Hartley‐Brewer, 2016), are not just rooted in prejudice but are fallacies. Britain was never white; those in the colonies were just as central to the nation and Britain was powerful when it was an Empire, not from standing alone.

An understanding that Britain was in large part built by her Empire would change the very nature of the immigration debate. Appeals like Nigel Farage's to ban immigrants with HIV from using the NHS because “it's our national health service, not an international service” (Mason, 2015, n.p.) would be seen as the hollow and ignorant appeals they are. Restricting migration from the Commonwealth, which contributed so much to the nation, would be seen as the injustice that it is. Britain bears both debt and responsibility to the regions and people who were exploited to make her great.

Black Studies is based on knowledge produced in the struggle for liberation by figures such as Claudia Jones. Black internationalism has a long tradition that has never been limited by the borders of the nation‐state. Malcolm X insisted that racism was “not just an American problem, but a world one” (1965, n.p.) and in 1964 chastised the civil rights movement for being limited to the “jurisdiction of Uncle Sam” in their campaigns for liberal reforms. But even in the civil rights movement the struggle was never solely confined to the USA. Before he was assassinated, Malcolm had aimed to take the problem of racism to the United Nations, a move that had already been done by figures like WEB DuBois and the National Association for the Advancement of Colored People decades before (Anderson, 2003). Bayard Rustin was also deeply involved in building transnational alliances, as well as being the key organising force behind the very nation‐state‐framed March on Washington (Hodder, 2016). To organise on the basis of Blackness, it is impossible to ignore what Mandela (1996, p. 698) called the “unbreakable umbilical cord” between Africa and the diaspora. This is even more so for geographies of Black resistance in Europe, where migration, either directly or through family, is a feature of Blackness. Therefore there can be no methodological nationalism in Black Studies, the discipline is by its very nature global and demands theory that shatters the nation‐state academic consensus.

Concepts that we take for granted like the nation‐state are not benign or objective. How they are understood and applied are rooted in Eurocentrism. Academia must bear its share of the responsibility for narrow nationalism in the popular discourse. By accepting the nation‐state as the bedrock of analysis, universities have colluded in producing unequal knowledge. Nation‐states were imposed on former colonies as a key mechanism for controlling their political and economic destinies, as well as immigration (Andrews, 2017). Worse still, in embracing the racial hierarchy of nation‐states, methodological nationalism privileges the voice from the advanced, European‐centred world. In the same way that the wealth of the West could not have been accrued without the Empire, neither could the academic canon. Viewing Western thought as something emerging from the genius of those great, dead, White male Europeans who stood on their own two feet is the root problem of the university curricula. Black Studies transforms the curriculum by not only highlighting the complicity of Eurocentric knowledge in producing the racist world, but by giving a platform to the knowledge produced by those who are a victim of it. To decolonise the curriculum, the first step is to listen to those who have fought, and continue to fight, for liberation. To do so is to almost automatically see beyond the limits of the nation‐state and to begin to build the science of liberation.

#### ‘International’ requires a positive commitment to state-based forms of organization. Transnationalism implies organization beyond the framework of states.

Sune Lægaard 9, Associate Dean for Education at Department of Communication and Arts at Roskilde University, Associate Professor in Practical Philosophy, Co-editor of Res Publica, Member of Research Group for Criminal Justice Ethics, "Normative significance of transnationalism? The case of the Danish cartoons controversy," Ethics & Global Politics, vol. 3, no. 2, 10/21/2009, pp. 101-121, https://doi.org/10.3402/egp.v3i2.1977

The paper concerns the specific transnational aspects of the ‘cartoons controversy’ over the publication of 12 drawings of the Prophet Muhammad in the Danish newspaper Jyllands-Posten. Transnationalism denotes the relationships that are not international (between states) or domestic (between states and citizens, or between groups or individuals within a state). The paper considers whether the specifically transnational aspects of the controversy are normatively significant, that is, whether transnationalism makes a difference for the applicability or strength of normative considerations concerning publications such as the Danish cartoons. It is argued that, although some of the usual arguments about free speech only or mainly apply domestically, many also apply transnationally; that standard arguments for multicultural recognition are difficult to apply transnationally; and that requirements of respect may have problematic implications if applied to transnational relationships.

[PARAGRAPH INTEGRITY PAUSES]

Introduction The Danish cartoons controversy over 12 cartoons published under the title ‘The Face of Muhammad’ in the Danish daily Jyllands-Posten on 30 September 2005, was not merely or most importantly an ordinary political disagreement within a national society.Footnote2 This paper rather argues that the cartoons controversy was a distinctively transnational occurrence in the sense that it was not confined to the normal domestic public sphere and did not respect its governing logics, but occurred within a global public sphere transcending the control and authority of states. The paper asks what the normative significance of this kind of transnationalism is for the applicability and strength of certain kinds of arguments about how acts such as the publication of the cartoons should be assessed, namely arguments about free speech, multicultural recognition, respect, and civility. In practice, this is the question whether actors in transnational relations, e.g. Muslims in the Middle East, are obliged to respect the right to free speech of other transnational actors, e.g. Danes, or whether Danes to the contrary have a moral duty to refrain from certain utterances offensive or disrespectful to Muslims in the Middle East? The ambition of the paper is not to pass conclusive all things considered judgements on whether or not the Danish cartoons were morally permissible, either from the point of view of specific normative perspectives or when taking all of the relevant normative points of view into account. The question is rather the more theoretical one whether a number of normative perspectives usually thought relevant to cases like the cartoons controversy and actually advocated in relation to this particular case apply, and whether they apply in the same way, with similar weight, in transnational relations as in ordinary domestic political contexts. The paper highlights some of the predicaments involved in projecting arguments tailored to fit the domestic-public sphere onto transnational relations. It is not self-evident that normative values in the domestic context can be stretched or exported to the transnational context. The paper considers whether and to what extent this is possible in the case of standard arguments advanced in relation to the Danish cartoons.The reason for asking this question is twofold: on the one hand, once the distinctive features of transnational relations are highlighted (see below), it seems obvious that at least some arguments advanced in relation to cases like the cartoons controversy will not apply, or not apply in the same way, transnationally as domestically, e.g. if the arguments make essential reference to relationships holding only within the state. This seems to be the case both for some arguments in favor of free speech and for some arguments for limiting free speech. On the other hand, several commentators on the Danish cartoons actually made the claim that, precisely because of the transnational nature of the case, the popular framing of it in terms of freedom of speech was misguided or failed to take normatively relevant features of the context into account. This was a fairly common claim in ordinary newspaper columns and media commentary, where the fact that the cartoons were published, perhaps unintentionally or without the knowledge of the publishers, into a transnational social reality was taken as a reason why the publishers should not have published them after all. One widespread way of formulating this objection was that the editors should have taken account of the over one billion Muslims in the world that might be, and allegedly in fact were, offended and hurt by the cartoons. This and similar ways of objecting to the cartoons assumes that the relevant perspective from which to evaluate the publication is that of transnationalism and that, once this perspective is adopted, the normative question about whether it was permissible to publish the cartoons is cast in a different light. In other words: transnationalism is taken to be normatively significant. This apparently not uncommon view also made its way into several more academic and theoretical treatments of the case.Footnote3 So the assumption that transnationalism makes a normative difference for the assessment of cases like that of the Danish cartoons is not just a theoretical possibility, but an actually operating assumption and an at least in some cases explicitly formulated claim.It is this implicit assumption or explicit claim that the paper considers. The question is whether the transnational character of cases like the cartoons controversy does make a normative difference for whether publications like the Muhammad cartoons are permissible or not, or whether they should have been published or not. Given the transnational framing of the question, it follows that this is a primarily moral rather than legal question, since there are no transnational authorities able to systematically pass and enforce legislation regulating global free speech. So the question is more precisely whether transnationalism makes a difference for the applicability of specific types of arguments about the moral reasons for and against publications. But such moral reasons may of course be made the basis for national legislation, so in principle states may decide to enforce limits on free speech through national law even though the reasons for limiting free speech have to do with transnational features of the context of expressions.The paper is structured as follows: first, the notion of transnationalism is spelled out and explained, and it is noted how the cartoons controversy was a transnational incident. Then the most prominent normative arguments fielded in relation to the controversy, i.e. arguments about free speech, multicultural recognition, respect, and civility, are examined with a view to whether they presuppose a specific kind of context, viz. the state or domestic society, and how they fare outside this context. It is argued that, although some of the usual arguments about free speech only or mainly apply domestically, many also apply transnationally; that standard arguments for multicultural recognition are difficult to apply transnationally; and that requirements of respect may have problematic implications if appliedto transnational relationships.Some might think the claim that freedom of speech may be a right even in a transnational context unsurprising and as not warranting consideration in an entire paper like this. In response to that objection, I would first of all point to the already noted implicit assumptions and explicit claims about the normative significance of transnationalism, according to which it is not at all evident that arguments for free speech apply transnationally. So the present paper is actually contributing to a discussion by taking this assumption up for sustained treatment. Secondly, the paper is not simply rebutting this claim, since I argue that transnationalism does make a normative difference for some arguments. So while free speech is still relevant transnationally in a not entirely unsurprising way, there is still some truth to the assumption that transnationalism makes a normative difference. The paper spells out what this difference made by transnationalism is, and in what respects it is real.2 Transnationalism and the Danish cartoons

[PARAGRAPH INTEGRITY RESUMES]

What I mean by characterizing the cartoons controversy as ‘transnational’ can be brought out by locating it within a schematic typology of types of relations distinguished along two dimensions. The first dimension distinguishes relations qualitatively on the basis of whether they are legal–political, in the sense of involving actors or types of interactions defined in relations to the legal and authoritative framework of states, or social, in the sense of not involving actors in their legal–political capacities and modes of action. The second dimension distinguishes between relations on the basis of whether their scope is limited to or transcends the territorial or jurisdictional extent of the state.Footnote4 The combination of these two dimensions results in four types of relations: What might be called intranational relations take place within a state. These can be subdivided into *domestic legal–political* relations between citizens as legal subjects, rights holders, and participants in popular sovereignty and between citizens as such and their state, on the one hand, and *domestic civil society* relations between co-citizens in their social rather than legal capacities, on the other. Along the legal–political dimension, states, represented by their governments, may relate to other states rather than to their own citizens, which results in what is traditionally termed *inter*national relations, i.e. the relations of recognition between states as formally sovereign equals characteristic of classic diplomacy and international law. This leaves the type of social relations transcending state borders or jurisdictions, e.g. non-governmental actors interacting with other non-governmental actors outside their own state, which is what I will understand by *trans*national relations in this paper, i.e. relations that are neither intranational nor international.Footnote5

#### International agreements reflect coalitions between states or state delegates.

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This chapter focuses on the agents behind the drafting of such instruments for international legal change, so called transnational lawmaking coalitions (TLC).8 They are transnational in the sense that they are not coalitions between states or state delegates (thus not international) but are formed by experts in international monitoring bodies with professionals working in various professions relevant to human rights across borders, thus transnational. Transnational lawmaking coalitions are temporary and informal collaborations between one or more professionals and one or more member(s) of a treaty-monitoring body. Within a TLC, all involved actors coalesce around a like-minded goal of action: to develop, apply, or interpret a legal norm. Their interactive structure is thus temporary—in contrast to alliances, which operate long-term—maintained simply until the desired outcome is achieved.9 The type of actor we seek to describe as a TLC shows two characteristics which distinguish it from other actors in global governance literature: first, TLCs form around experts. Its members do not need to pressure, socialize, or persuade governments; rather, the targets of their activities are expert bodies. Secondly, their mode of operation is determined by the interpersonal relationships among the members of a TLC. This shift to their personal interactions comes at the cost of reaching the limits of common explanations for transnational actors’ influence—which are of lesser importance in lawmaking (eg the size of a non-governmental organization (NGO) or network or strategies employed to publicly reach a wide audience). So far, TLCs have been fruitfully applied to explain single drafting processes in the UN human rights treaty bodies.10 Yet, their significance for broader change processes in international law remains to be explored. I argue that UN experts and professionals act on legal change by influencing the development of international human rights law through TLCs. To illustrate TLCs and the conditions of their influence, the chapter discusses two interpretation processes within the UN. The interpretation of the right to decent working conditions by the Committee on Economic, Social and Cultural Rights and the inclusion of right to abortion under the right to life by the UN Human Rights Committee.

#### Transnational, not international. Methodological nationalism undermines effective social policy debate and formulation.

Stefan Kongeter & Luann Good Gingrich 17, Kongeter is with Social Pedagogy at TRANSSOS; Gingrich is with Social Work at York, "Transnational Social Policy: Social Welfare in a World on the Move," Eds. Kongeter & Gingrich, pp. 1-2

Social policy and social work are being transformed by accelerating transnationalization of economies, labour markets, education, and care within an increasingly asymmetrical global context. The nation-state has long established itself as the seemingly natural site where solidarity and welfare are produced and organized. This idea is based on an imaginary of the global society as divided into distinct nation-states, and all human beings are members of one nation-state or another: ‘National welfare states are by their nature meant to be closed systems. The logic of the welfare state implies the existence of boundaries that distinguish those who are members of a community from those who are not’ (Freeman 1986, 52). Particularly in social policy and political sciences, this nexus of nation-state and welfare institutions has been considered a quasi-natural unit of analysis (Ziirn 2003). Although inherently international in its orientation, the same applies to social work, as we can see even in the discourse of international social work (Lyons and Hokenstad 2012, Healy and Link 2012).

The general starting point of social work has been the national welfare state, which includes social services that are designed to meet the needs of residents within state boundaries, and are regulated and financed by institutions embedded within nation-states. The territories of the nation-state are often assumed to be the borders of welfare production (Powell and Barrientos 2004). This is also true for studies that claim to be international, such as comparative analyses of welfare architecture and production. The implicit assumption about the social world as divided into national entities has restrained the study of welfare societies; however, only in the last three decades have we identified an increase in theoretical reflections and conceptual critiques of this so-called ‘methodological nationalism’ (Wimmer and Glick Schiller 2002).

The idea of comparing national welfare states or welfare regimes reinforces the focus on national welfare institutions. Due to this strong comparative focus, welfare research not only neglects a broad range of welfare production and care work that is organized across national boundaries (Mahon and Robinson 2011), but also fails to recognize the increasing flow of both capital and labour (Swaan 1994a). Economic globalization facilitates the mobility of capital and has tremendous impacts on the welfare of people and the need for welfare policies (Gough 2000). Among other factors, such as war and natural disasters, this development promotes the mobility of people. As a consequence, this mobile population is situated in the precarious situation of moving across nation-state borders in order to work (e.g. in the care sector), but is at the same time confronted with national welfare states that restrict their entitlements to their long time resident population (see e.g. Righard in this volume).

This publication will explore the interplay of social policies, mobile populations and knowledge production about welfare within transnational spaces. Against the background of the increasing importance of the ongoing transnationalization of our everyday life (Mau 2010), we identify a lack of systematic research on social policies and their capacity to organize solidarity, to counter social injustice, and to attend to the well-being of people across national boundaries. The essays in this book develop a transnational social policy approach that is largely missing not only in social policy, but also in social work and political sciences. The term ‘transnational’, as a concept distinct from ‘international’, ‘supranational’, or ‘global’, refers to movement across the boundaries (borders, cultures, etc.) of nation-states (see Conrad 2011, Jones Finer 1998). It is an inherently paradoxical term, as the act of transgressing national boundaries challenges the integrity of boundaries, while also confirming those boundaries as a ‘fait social’ (Durkheim 1982). ‘Due to on-going interconnections and flows of people, labour, capital, objects, institutions, knowledge, ideas, and models across national boundaries’ (Glick Schiller and Levitt, 2006, 5) our social world is continuously transnationalized.

## Aff---CEDAW

### Aff---CEDAW

#### The United States should ratify CEDAW.

Ditte Bjerregaard 25, Center for Violence Prevention, "How the U.S. Abandoned Women's Rights at the UN—And What It Means for Global Gender Equality," 04/08/2025, https://wave-network.org/how-the-u-s-abandoned-womens-rights-at-the-un-and-what-it-means-for-global-gender-equality/#:~:text=The%20U,UN%20gender%20initiatives%E2%80%94at%20least%20rhetorically

At the United Nations’ Commission on the Status of Women (CSW69) in March 2025, the U.S. delegation made a quiet but historic break with international women’s rights. While Washington still claims to champion women and girls, its actions tell a different story. The U.S. refused to endorse the conference’s final declaration, rejected references to the UN’s Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), and dismissed gender quotas and climate policies as globalist overreach.

It was a remarkable moment: the world’s best branded democracy, once a key driver of international gender rights, distancing itself from the very institutions it helped shape. Meanwhile, Saudi Arabia—a country where women’s rights remain tightly restricted—led the negotiations. The irony was unmistakable.

This is not just a bureaucratic shift; it signals a deeper ideological transformation in U.S. domestic and foreign policy—one in which women’s rights are no longer framed as a matter of equality, but as a battle for nationalism, misogyny, and isolationist politics.

America’s Lonely Stance on Women’s Rights

The U.S. is the only G7 country that has not ratified CEDAW, the landmark treaty that serves as the foundation for gender equality in international law. Historically, however, Washington still aligned itself with UN gender initiatives—at least rhetorically.

That changed at CSW69. The U.S. delegation made clear that it does not recognize CEDAW and rejects any language that suggests non-signatories have obligations under the treaty. Even more dramatically, the U.S. refused to acknowledge the UN’s Sustainable Development Goals (SDGs) on gender equality, calling them a “globalist project” that threatens American sovereignty.

The shift is not just about treaties—it reflects a broader political agenda. Under the Trump administration, the U.S. has redefined “women’s rights” in a way that aligns with nationalist and socially conservative values. The new doctrine rests on three pillars: biological essentialism, anti-quota, anti-welfare rhetoric, which frames gender equality as a matter of individual responsibility rather than structural support; and weaponizing women’s safety for border control, linking gender-based violence to immigration as a justification for stricter border policies.

Why This Matters

For decades, the U.S. has played a critical role in shaping global gender policies. Even when it failed to ratify CEDAW, it pushed for women’s rights through diplomatic and financial means. That influence is now decreasing.

By stepping away from UN gender frameworks, the U.S. is emboldening conservative and authoritarian states that have long sought to weaken international commitments to gender equality. This shift also strengthens the growing global anti-gender movement—a network of far-right actors working to roll back women’s rights, LGBTQ+ protections, and reproductive freedoms worldwide.

Meanwhile, the leadership vacuum is being filled by other players. The European Union and Latin American nations are emerging as key defenders of feminist policies at the UN. Civil society groups and grassroots feminist movements are also taking on a prominent role in holding governments accountable.

The Beginning of the End for the U.S

This isolationist approach to gender rights is not just a foreign policy issue—it reflects deeper transformations within the U.S. itself. Trump’s policies at the UN mirror domestic battles over gender, race, and national identity. The rejection of international gender agreements aligns with the dismantling of reproductive rights, anti-LGBTQ+ laws, and the broader rollback of civil liberties under his administration.

The strategy is clear: redefine women’s rights as a conservative cause, sever them from global human rights frameworks, and use them to justify nationalist policies. This transformation has profound implications—not just for American women, but for gender equality worldwide.

Why Women Will Still Lead

Civil society groups are already mobilizing to counteract these setbacks, but it is important to remember that we cannot replace state power in setting international norms. Feminist movements have always been resilient in the face of political backlash. The question now is whether they can push back against a global tide of anti-gender politics—without the support of the world’s best promoted “democracy”.

#### CEDAW ratificaiton would be a positive even on a background of broadly weakening international commitments.

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Gender Equality and Re-Imagining the Obama Coalition

Second, while security has undoubtedly gained in importance in political debate, equality must remain a priority, too. For reasons of brevity, let me focus on one particular aspect: gender equality. Exit polls show that through all ethnic groups, Kamala Harris scored consistently around 10% worse with male than with female voters. Those voices who once referred to Prime ministers Gandhi, Thatcher and Merkel or to CEDAW being one of the most ratified international conventions worldwide in claiming that gender equality is a reality in developed States, are wrong. Male voters (and not only in the US) are apparently still not willing to elect a female leader: only around 20-25% of executive government leaders and members of national parliaments are currently female (see here). It is an interesting thought experiment whether the same would have held true for a gay candidate such as of Pete Buttigieg. One lesson of the election certainly is that we still need a strong women’s rights movement. This is true in international law, but in particular also in the US, which signed CEDAW under Jimmy Carter 24 years ago, but remains one of the few states worldwide that has not yet ratified the convention. Women’s rights proponents (both activists and scholars) need to re-affirm old alliances (e.g. with Black and Latino voters) and think about new ones (e.g. trade unions and the environmental movement). International lawyers must resist falling into the trap of reducing women’s rights to reproductive rights as has been the case in this election, and find ways to challenge a male lens in law and politics that still favors white (and orange) straight men. It has often been discussed that the 2008 and 2012 Obama coalition has fallen apart – maybe this devastating election can unfold a reuniting power of groups that have worked for equality, but too often for ‘my group’ rather than for all. The lesson for human rights lawyers then is to think about inequality more as an overarching challenge rather than getting lost in group-specific discussions or rivalry between different vulnerable groups. To paraphrase one of the phrases of the American revolution, maybe the election can make pro-equality actors realize that to fight discrimination, they need to ‘join or die’ – to fight their opponents, and not each other.

Putting up ‘Good Education’ Rather than a ‘Good Fight’

The third lesson concerns education. While the inter-connection between civil and political rights and economic, social and cultural (esc) rights has been stressed in the past (e.g. here), with second generation rights being an important stepping stone for first generation rights, hardly any right makes this insight as painfully clear as the right to education [Art. 13 of the International Convention on Economic, Social and Cultural Rights (ICESCR) – yet another human rights treaty all previous US Presidents failed to ratify (see here)]. One should not jump to quick conclusions here: it is not only uneducated voters that have voted for Trump. Around 42% of voters with college degrees voted for him too. Significantly, however, ‘democracy and its protection’ was an important factor for both Trump and Harris voters (even if in larger number for democrats). Given the stark contrast between the candidates in terms of their democratic record – specifically the history of one as an insurrectionist and convicted criminal and the other as a prosecutor –, this seems to indicate a certain failure of the education system to enable a healthy understanding of what living in a democratic political system with a functioning rule of law means. But how can we expect voters to make an informed political decision if half of them cannot name the three branches of government, or point on a map to where Israel or Ukraine even are? General Comment 13 of the ESCR-committee offers many valuable insights here: that the realization of the right to education requires education in human rights and democracy (GC 13, at. para 1), that states must prioritize education within their budgets, including for marginalized groups (CG 13, at para. 6), and that the obligation of non-discrimination is an immediate one (CC 13, at para. 43), as for all socio-economic rights (GC 3, at para. 1). One is not surprised that the US has not ratified the ICESCR when reading this interpretation of the Covenant. Maybe after 25 years – GC 13 is from the last millennium when digital education and social media plaid a much lesser role – it is also time for an update of the GC. More broadly speaking: education must step back into the spotlight of national and international legal and political discussion. In this sense, while much of the democrat rhetoric was, even in Harris’ concession speech, focusing on putting up a ‘good fight’, in truth, we need first and foremost a consorted effort to put up ‘good education’. At the very least, Europe and other parts of the world must avoid the US’ path of undermining democracy – not through subversion, but through simple ignorance of its foundations.

Embracing already existent realities

As Kanschat and Friedrichs have argued on this blog before the election, a second Trump presidency “could mark a significant shift in U.S. domestic and foreign policy, with far-reaching implications for the international legal order” and “weaken the international rules-based system and erode the credibility of multilateral institutions”. I agree. However, we must now not stop at lamenting the demise of international law. We must make the best of it and try to find also the positive, in order not to despair and move forward. In this vein, what unifies the three identified lessons is the hope that maybe we learn to embrace a reality that was there all along. Many who have known this intuitively might have tried to evade facing this truth by checking daily election forecasts and obsessively listening to political podcasts of our preferred flavor (I certainly have.). Many of us have much more time on our hands now, without these daily rituals. Maybe we should use this new spare time to act upon these and other lessons and reflect on what they mean for international law generally and in Europe (after all, populists are on the rise in many places) – so that there can be a silver lining to the election outcome after all.

## Aff---CPTPP

### Aff---CPTPP---Advocates

#### International trade agreements are important to discuss in the wake of an increasingly protectionist time. There is a lot of global discussion to be had about the United States’ involvement in things like the CPTPP, especially given that there has been opposition from congress to rejoin the agreement.

Toyoda et. al 24 [ Masakazu Toyoda 0 chairman and CEO of Japan Economic Foundatin. Alan Wolff, former deputy director-general of the WTO. Joost Pauwelyn, the Geneva Graduate Institute and the law firm of Cassedy, Levy, and Kent. Henry Gao, Singapore Management University. Akihiko Tamura, senior advisor of RIETI. 11-25-2024. "Roundtable on Trump 2.0 - How Can We Tackle Trade Policy Issues?" Published by Japan SPOTLIGHT, Vol. 44 Issue 1] //MSUCB

The third strategic component is to build path-finding agreements or model agreements with like-minded countries. This is most evident in the TPP. The TPP started out as the agreement Singapore signed in 2005 with three likeminded friends – New Zealand, Chile and Brunei – in order to build this high-standard agreement. Hopefully, the US will join and this would make it a global agreement. The original name of the P4 agreement was the TransPacific Strategic Economic Partnership (TPSEP); this evolved into the TPP and now the CPTPP. The other example is the Digital Economy Partnership Agreement (DEPA), which is basically the TPP for digital trade. Singapore again is trying to use the DEPA by teaming up with New Zealand and Chile as a way to design some new rules for digital trade and to then multilateralize this at the WTO level. This already happened to some extent with the conclusion of the substantive negotiations of the JSI on e-commerce. These three components comprise Singapore’s strategy and that tells us how a small country like Singapore, a country with the highest trade to GDP ratio in the world, as high as 400%, achieves balance in the face of all this great power competition, and the emergence of rising economic blocs. I think this provides very interesting lessons to other smaller economies.

Toyoda: Thank you very much. Prof. Pauwelyn, could you share your views?

Pauwelyn: The EU has been the absolute champion of Preferential Trade Agreements (PTAs). It now has preferential trading arrangements with most of its trading partners either because of PTAs in place (37 at the last count, covering close to 70 countries) or Generalized System Preferences (GSP) with many developing countries. However, given the high trade volumes of countries like the US and China with whom the EU does not have a PTA (it also stopped granting GSP to China), a large chunk of EU trade still happens under WTO (MFN) rules. Given the diversity in WTO membership and the consensus rule to conclude new agreements at the WTO, it is unsurprising that PTAs have thrived since the late 1990s. However, since 2015, the increase in new PTAs concluded has peaked. With the election of Trump in 2016 and his immediate withdrawal from the TPP, it is unlikely that the US is going to conclude new PTAs anytime soon. The EU has just reached a political agreement with Mercosur countries on a PTA, but the big question is whether EU member states will ratify it. Also, in Europe the appetite for traditional PTAs is dwindling. If anything, the trade agreements in vogue today are not so much about trade liberalization but about how to deal with trade spillovers, be they environmental or labor-related. They are not across-the-board PTAs but sectorspecific or even product-specific.

Toyoda: Thank you. Dr. Tamura, Japan has also concluded more than 20 FTAs and has four under negotiation. What is your assessment of Japan’s FTAs? Is it time to clean up the spaghetti bowl situation?

Tamura: Japan’s FTA policy began relatively late, compared with other more active and aggressive players in the field. The first Japanese FTAs, or EPAs, were enacted with Singapore and Mexico, early in the 21st century. Japan’s FTA policy has been based upon real business activity that had already unfolded mainly in Southeast Asia. We already had the de facto integration situation of our industry with ASEAN counterparts, including Singapore, Taiwan, Indonesia, and others. Our FTA policy has been built upon that real industry movement.

My view of the Japanese FTA with ASEAN and Asian counterparts is not necessarily negatively affected by this slightly complicated situation. Indeed, many people argue that the complexity of FTA webs are like a spaghetti bowl, as you mentioned. However, the positive side of our web of FTAs with ASEAN is much larger than the technical complexity of FTAs with ASEAN counterparts. One of the sources of complexity of many FTAs is the diversified style of rules of origin (ROO). Some FTAs adopt certain types of ROO, and others adopt different types.

However, our FTAs with ASEAN counterparts have been more or less standardized. Therefore, the downside of the complexity of the multiple styles of ROO has been reasonably addressed. Moreover, while the complexity of ROO has particularly a negative impact on manufactured products, which have to go through multiple manufacturing processes, at least as far as simpler products are concerned, including agriculture, there is much less of a downside to the spaghetti bowl. I think the spaghetti bowl effect has been exaggerated as far as FTAs in Asia are concerned. Rather, we should look at the positive side of FTAs particularly in the context of economic security. As I stated before, we are going through some shift of ideology or philosophy as the underpinning for the global trading order. I feel that we have to go through some supply chain adjustment process, or we may have to address our overdependence of trade or the economy on certain specific players. In order for us to address that, we may have to go for a certain level of friend-shoring. You may feel this pathway is a bit paradoxical, but I am of the view that a certain level of friend-shoring would rather help us regain confidence in the global trade order. FTAs may be considered as a rather effective way to form friend-shoring. Of course, it depends on the degree. However, the FTAs should not be considered as a negative standing block to move on to a more international order. Instead it should be considered an effective way to address ideological confusion currently incurred by the global trade order.

Toyoda: Thank you very much. Ambassador Wolff, the US has also concluded 14 FTAs with 20 countries. I understand that Congress has rejected the idea of entering into the TPP. The US-China conflict appears to be a constant background factor.

Wolff: I have learned a lot from the comments of my colleagues. The US did not have a coherent position with respect to FTAs. If you look at the FTAs of the US, they’re random, there’s no strategy. The US started with Canada, which made a lot of sense. The two countries are at a similar level of development and share a long common border. Their auto industries were deeply integrated already under the 1965 auto agreement, with an enormous amount of trade going back and forth across the border. Mexico was added in, without a lot of thought, other than it helped to stabilize a neighbor to our south. But each of the following FTAs do not have a particular theme. An FTA with Australia is not the same or motivated by the same issues as an FTA with Central America. The latter was to stabilize the region, so it had a foreign policy objective. Looking at the structure of the WTO, no one assumed back in the 1940s when GATT was drafted that Article 24, which gives permission to have discriminatory arrangements, was going to take as major a role as it ultimately did. That largely grew out of the colonial relationships that the EU, France and the UK in particular, had with emerging countries. The US insisted that they become free trade agreements rather than preferential arrangements that worked in one direction only, in favor of the former colonial master. The system grew up. Now we’re in an era when there’s been little multilateral trade liberalization at all during the WTO timeframe, other than the agreement on information technology products. So FTAs became a default. Countries could not make progress going forward on a multilateral basis, so they tried to make progress otherwise. Into this came the US competition with China. The TPP was designed to put the US very much back in the Asia-Pacific region in order to offset China. And then the US lost interest in liberalization, became very sensitive to trade liberalization, and did not join the TPP when Trump came into office in 2017. The first thing he did was to get the US out of the TPP.

So we, in the US, are left without a strategy for the use of free trade agreements. I think they perform a very useful role in the current international trading system. They allow for additional liberalization, but are also laboratories for going further with respect to rules, like the Digital Economy Partnership Agreement (though not strictly an FTA), which allows rule-making to proceed among a subset of those who are interested, and that trend is growing. The US salutes and has been supportive of ASEAN and regional integration in Africa, the African Continental Free Trade Agreement. It does not object to the RCEP and was supportive of Japan and others going ahead with the CPTPP. The US is absent from all of these arrangements and, in a move against trade liberalization, it plans to join none of them. I don’t see that changing in the next four years, and we’ll see who gets elected in the 2028 election. For most countries and the EU, RTAs and FTAs are a default arrangement as long as the WTO is unable to reach agreements or get past the consensus rule. But there are issues that have to be addressed with a multilateral approach to be effective. Climate change is not a regional problem. The digital economy is not a regional but a global issue. Pandemic preparedness is not a regional but a global question. So there’s a role for the WTO to come back in if it can cure its institutional deficiencies. One really hopes that this will occur.

Now, will the WTO rules be able to play any role whatsoever in the US-China competition? Potentially. I think that eventually there will be a new equilibrium reached in the US-China competition. It’s possible that the template partially exists within the WTO’s rules. Further work can be done to give guardrails to that competition. This will have to be addressed separately, I believe.

As far as the dispute settlement system is concerned, without an overhaul from the ground up, a complete change, I don’t see that as playing a role in the US-China competition. There’s a failure of transparency and in the rules. Moreover, WTO dispute settlement only works when there’s a rule to apply that has clearly been agreed. We don’t have sufficient rules on state involvement in the economy, or governing subsidies. So I don’t see WTO dispute settlement at this stage playing a role in normalizing US-China trade relations.

#### There’s potential for advantages surrounding posturing and trade. The politics links would be quite strong as well; there is strong political opposition from both sides of the aisle.

Toyoda et. al 24 [ Masakazu Toyoda 0 chairman and CEO of Japan Economic Foundatin. Alan Wolff, former deputy director-general of the WTO. Joost Pauwelyn, the Geneva Graduate Institute and the law firm of Cassedy, Levy, and Kent. Henry Gao, Singapore Management University. Akihiko Tamura, senior advisor of RIETI. 11-25-2024. "Roundtable on Trump 2.0 - How Can We Tackle Trade Policy Issues?" Published by Japan SPOTLIGHT, Vol. 44 Issue 1.] //MSUCB

Toyoda: Thank you very much. A very pragmatic view. Now, question number four. Of the RTAs, the CPTPP is said to be the highest level. Some believe that the CPTPP should be expanded with more participating countries, with the EU, and eventually with the US. What do you all think? Dr. Tamura, I understand that this is exactly what you are suggesting. What are your thoughts on China’s application to join the CPTPP? If China can meet the requirements and join the CPTPP, then many others will join, which is equivalent to transplanting the CPTPP into the WTO by consensus. What is your view on this CPTPP as a basis to promote more integration, first with the EU, then the US, and finally China?

Tamura: As far as the CPTPP is concerned, I see it as the crown jewel for Japanese trade policy. As you correctly pointed out, the CPTPP is one of the highest-level FTAs in global trade policy. So we have to be quite prudent and smart in how to utilize the FTA in order for us to carry out global trade policy. In that respect, qualified potential members can apply to join the CPTPP. Applications are welcome.

You refer to the EU, an economic unit with the highest-level and reform-minded regime. So we can consider how to make a connection between the CPTPP and the EU. As Ambassador Wolff correctly pointed out, one benefit of an FTA is its use as an experimental field for new ideas on rules. One possible experiment in collaboration between the EU and the CPTPP could be to find a new subsidy rule. No doubt the EU has its own ideas on how to set up rules on subsidy, and particularly the rules to distinguish between good subsides or bad subsidies. The CPTPP may want to discuss those rules with the EU. This discussion could be built upon the Japan-EU-US trilateral proposal on industrial subsides, which was submitted to the WTO in 2020. So there are many ways of utilizing the CPTPP to move on to the eventual goal of prosperous global trade and order. Regarding the application by China to the CPTPP, there must have been lots of discussion amongst members on whether China is qualified and whether China has the will and capability to continue to satisfy the conditions. Maybe I’m a little biased because I’m physically in Europe, but I currently feel that there is a consensus that we must reduce dependence on China and diversify the supply chain for the sake of economic security. So I personally don’t see any rationale for having the addition of an FTA with China on top of the RCEP. However, there must have been some discussion amongst members of the CPTPP about that.

Toyoda: Thank you very much. Ambassador Wolff, you worked for the WTO as a deputy director-general. May I ask you whether there is any possibility that the US will join the CPTPP under the Trump administration, or even after that? Why has the US, which was originally enthusiastic about the TPP, changed so much? You have already explained this to some extent, but could you please elaborate on the reasons why the US did not join the CPTPP?

Wolff: The US has shown no interest whatsoever in joining the CPTPP during either of the last two administrations, either the Trump administration, once it came out of the TPP, or the Biden administration, which had an opportunity, if it wished, to rejoin the CPTPP. There’s a reaction against trade liberalization, against free trade agreements, by both political parties in the US. Now, I hope that view will change after January 2029; it is not impossible that it will. Presidential leadership just has not been provided in the US to emphasize the value of trade. It’s a little like the EU and the UK on the benefits of the EU, that led to the Brexit vote. They did not sell the British people the importance of openness to trade, to the economy of the UK, and that risked losing other members as well. There are strong headwinds of populism or retrenchment. I understand it’s a very challenging environment. That does not mean that change cannot take place. The Congress was very protectionist in 1930. Just four years later, in 1934, Franklin Roosevelt came along and said, let’s have reciprocal trade agreements to open up markets home and abroad, and was successful in putting the US on this path. In 1970, there was major quota legislation, worse than tariffs, that was favorably considered by the congressional committees. And again, just four years later, in 1974, beginning with the leadership in 1973 of Richard Nixon, again, major authority was given to the executive to enter into trade liberalizing agreements. So presidential leadership makes an enormous difference. The US is going to experiment with high tariffs, obviously. That’s quite apparent from Trump’s statements. And there’ll be a reaction. The American people will decide whether it was a good thing to have high tariffs on all products from all countries and much higher tariffs on products from China, and we’ll see whether that experiment will change their view. The future is not told yet, but we can see possibilities from past history where protectionism gives way eventually to international cooperation and further interchange with trade. I look forward to that taking place.

Toyoda: Thank you very much. That is very optimistic thinking. I’d welcome that. Prof. Gao, Singapore is keen on FTAs. From Singapore’s or Asia’s perspective, what do you think of this idea? Can the CPTPP be expanded and somehow include the EU agreement and then invite the US to join?

Gao: As I said, Singapore was one of the initial founders of the TPP agreement. The original idea was to have this high-standard agreement, including all the key issues the US is interested in, like digital trade, competition, SOE rules, etc., and then attract the US to come in. Actually when the TPP was negotiated 20 years ago, the US did become interested and did indicate that it would like to join. But because of domestic political reasons, mainly problems with financial services and liberalization, the US didn’t join then, and it was only after Obama became president that it was announced in 2010 that the US would join the TPP agreement. So Singapore, and most of the countries in Asia, actually welcome the US to come back to the TPP. Because, to them, the US is like a friend, right? But China, which is in the neighborhood, is like a relative. You can choose your friends, but you cannot choose your relatives. You have to live with your relatives forever. So that is the reality here. That’s why, even though Singapore always welcomed the US to come back to the region, it also stated on numerous occasions that Singapore doesn’t want to choose between the US and China. It would welcome both because it realizes that, even though it would like to be friends with the US, China is not going away. China is going to be the relative in this region forever and it has to live with China.

#### US non-participation in the CPTPP cements its exclusion from Asian regionalism.

Lucio Blanco Pitlo III 4/22, President of Philippine Association for Chinese Studies, and Research Fellow at Asia-Pacific Pathways to Progress Foundation, "Trump's Tariff Tantrum May Give RCEP A Boost," China-US Focus, 4/22/2025, https://www.chinausfocus.com/finance-economy/trumps-tariff-tantrum-may-give-rcep-a-boost#:~:text=are%20already%20parties%20to%20RCEP,0

The barrage of tariffs unleashed by the United States under President Donald Trump ushered in the rise of a new global economic order that can upset free trade. It would trigger different responses with long-term implications.

First, unpredictability will push affected countries to reduce overreliance on the U.S. and diversify markets and sources of investments. It may revive suspended or stalled trade deals, such as the China-Japan-Korea Free Trade Agreement and the China-European Union Comprehensive Agreement on Investment. It may also accelerate the implementation of recently concluded ones, including the Regional Comprehensive Economic Partnership (RCEP). The World Trade Organization will be further eroded, and its trade dispute settlement mechanism will be marginalized as the tit-for-tat tariff war escalates. Bilateral and regional FTAs may be seen as alternatives, and countries may show more eagerness to join them.

For instance, more ASEAN countries may sign up with the Comprehensive and Progressive Trans-Pacific Partnership (CPTPP). The United Kingdom was the first European country to join CPTPP last year. Others may follow. UK Trade Minister Jonathan Reynolds will reportedly visit China later this year. All ASEAN members are already parties to RCEP. Hong Kong, Chile, and Sri Lanka expressed interest in joining RCEP. As such, these FTAs are expanding their geographic remit to include countries from beyond the region. Hence, while Trump’s tariffs put severe downward pressure on globalization, they also push other countries to rally behind free trade. We have seen this before and will see it again. While CPTPP members still hoped to see U.S. re-entry, they did not wait and went on. We may see a repeat of such behavior by countries navigating Trump 2.0.

Second, negotiating with the U.S. does not necessarily mean submitting or accepting this new form of global trade order featuring strong-arm intimidation, if not coercion. One should distinguish between understandable short-term response and long-term adjustments. Trump is applying pressure to secure leverage and force negotiation. The goal is to extract concessions. The U.S. may demand that tariffs on its goods or constraints to its investments be removed or further reduced. In the short term, due to the importance, if not heavy reliance, on the U.S. market or capital for some affected countries, they may have no option but to sit down with Washington to seek some reprieve. However, in the medium to long run, Trump’s tariff tantrum will push ASEAN and other countries to commit to economic diversification, including deepening ties with other partners like China, Japan, Korea, and the EU.

Third, U.S. tariff impositions may be part of Trump’s strategy to compete with China. In its dealings with other countries, Washington may try to isolate Beijing by cutting it off export markets or sources of raw materials. Long-arm pressure may be used to persuade other countries to restrict the flow of critical technologies that China needs or convince other countries to limit the intake of Chinese inputs in their manufacturing. Washington may apply more stringent rules of origin and refuse to admit goods with high Chinese input content. However, restrictions may only drive Beijing to double down on domestic innovation and risk engendering global technology fragmentation with disjointed supply chains and the rise of disparate systems and standards.

Fourth, as the biggest target of Trump’s tariffs, China may offer valuable lessons in diversifying partners and providing safety nets or mitigating measures to seriously affected sectors. There will be pains that must be endured and turbulence that must be weathered. Affected countries should compare notes.

Fifth, Trump’s tariff barrage may compel major target countries to not only diversify but even alter their investment and trade patterns. For instance, China may re-orient trade and investment towards developing and emerging economies in the Global South, including ASEAN and BRICS Plus. ASEAN and China have become both sides’ largest trade partners in recent years. This may give rise to some problems, like concerns about overcapacity and dumping. In response, some countries may roll out protectionist measures for vulnerable sectors or pursue dialogue to address trade spats. ASEAN countries may ask Chinese firms to produce in ASEAN to sell in ASEAN and beyond. This presents opportunities. Such capital and technology infusion may improve manufacturing and drive industrial upgrading in ASEAN countries.

For affected ASEAN countries, the China market may not substitute for the U.S., but it may soften the blow to exporters should Trump erratically impose further tariff or non-tariff barriers. China’s unilateral opening to ASEAN countries is a boon to ASEAN. For instance, planters from the region may step up to alleviate Chinese reliance on U.S. agricultural imports. ASEAN and China may fast-track the conclusion of the ASEAN-China Free Trade Agreement (ACFTA) third upgrade, which can boost digital and green economy trade and supply chain connectivity.

Despite reservations, the momentum for deeper economic integration in the region may get more traction. Regional FTAs like RCEP may bring Northeast and Southeast Asia closer together. The North American automobile sector is a highly integrated production, supply chain, and market. Trump’s blanket unilateral tariffs may produce something of that sort in East Asia and even go well beyond cars.

Lastly, RCEP needs serious discussion on how to make free trade more fair and beneficial for all parties. This can deny politicians the chance to opportunistically use some job losses, the demise of some inefficient and rent-seeking enterprises, and other unintended downsides to upend free trade deals, which were achieved after years of protracted negotiations. RCEP should not stagnate and should continue to evolve to meet the needs and expectations of member economies and their people. Free trade results in some losses, which should be recognized and mitigated. But overall, it is a net gain. Governments and leaders should communicate this to their public to defend free trade now under siege.

#### Affirmative teams could make arguments surrounding Indo-Pacific stability by having the United States join the CPTPP.

Hsieh 25 [Pasha L., Jean Monnet Chair Professor, Singapore Management University Yong Pung How School of Law. J.D., University of Pennsylvania; Ph.D. in Political Science, Free University of Brussels-VUB. Forthcoming 2025. “Beyond Non-Recognition: U.S.-Taiwan Trade Agreements in Indo-Pacific Dynamics” U. Penn. J. Int’l L., Vol. 47, forthcoming 2025.] //MSUCB

U.S.-Taiwan relations are closely intertwined with rapidly developing Indo-Pacific regionalism. The precursor to today’s U.S. Indo-Pacific strategy is the U.S.-led Trans-Pacific Partnership (TPP), which was the economic centerpiece of President Barack Obama’s “pivot to Asia.”17 Perceived as the most ambitious mega-free trade agreement (FTA), the TPP symbolized an enhanced level of regionalism that advanced America’s neoliberal world order. However, populist isolationism led President Donald Trump to withdraw the U.S. from the TPP on the first day of his first term and adopt unilateralism centering on a trade war that imposed tariffs on Chinese goods.18

Frustrated by Trump’s decision, the remaining TPP partiesforged a new deal based on the TPP, known as the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP).19 The United Kingdom’s accession to the CPTPP enables the 12-party pact to account for 15.4% of global gross domestic product (GDP).20 China, Taiwan, Ukraine, Indonesia and three Latin American countries have formally applied to join the CPTPP.21 Comprising 30% of global GDP, the other competing mega-FTA, the Regional Comprehensive Economic Partnership (RCEP), is the world’s largest trade pact by economic scale.22 The 15-party RCEP covers China, as well as U.S. allies including Australia, Japan and Korea.23 The United States is neither a party to nor intends to join the CPTPP and the RCEP.

Another key bloc for Indo-Pacific regionalism is the Association of Southeast Asian Nation (ASEAN), whose external FTAs with countries such as China and India have shaped the normative structures of the RCEP. 24 Like Canada and the EU, the U.S. Indo-Pacific Strategy “endorses ASEAN centrality” in the regional architecture.25 These allies have endeavored to negotiate trade agreements with ASEAN. 26 China has even accelerated the process by substantially concluding the negotiations for the ASEAN-China FTA 3.0 upgrade.27 In contrast, Washington lacks interest in pursuing any FTAs including the ASEAN-US FTA.28 President Joe Biden’s absence from ASEAN summits for two consecutive years further casts doubt on the “seriousness” of the U.S. Indo-Pacific strategy. 29

Complementary to security commitments for safeguarding “a free and open Indo-Pacific,” the Indo-Pacific Economic Framework for Prosperity (IPEF) constructs the trade framework of Biden’s Indo-Pacific Strategy.30 To advance a “worker-centered” trade policy, the 14-party IPEF is a new-style agreement that departs from conventional FTAs that liberalize trade in goods and services.31 Although the IPEF incorporates novel FTA norms “to tackle 21st century economic challenges,” it lacks traditional market access commitments.32 Asian governments are primarily concerned about the absence of incentives for entering the U.S. market, but their diplomatic priority of maintaining U.S. engagement in the region overrides economic hesitations.

FTAs typically follow the single-undertaking approach, which consolidates chapters on diverse regulatory issues and dispute settlement into one agreement. However, the IPEF entitles participating countries to opt in or opt out of separate agreements based on four different “pillars.”33 Panel-structure dispute settlement mechanisms commonly found in FTAs are also not included in the IPEF. At present, negotiating parties have concluded the overarching Agreement on the IPEF, along with three pillar agreements with substantive obligations on supply chain, clean economy, and fair economy.34 The process for the trade pillar agreement was halted due to the shifting U.S. position on digital trade issues concerning data flows and localization. 35

Akin to the TPP, the IPEF does not include Taiwan due to political considerations, as some Asian states “expressed discomfort about Taiwan’s” participation, which could entangle them in the U.S.-China rivalry. 36 In parallel with IPEF negotiations, Washington and Taipei instead launched bilateral negotiations of the U.S.-Taiwan Initiative on 21st-Century Trade (U.S.-Taiwan Initiative), which covers 12 major trade topics comparable to those under the IPEF.37 Seen as an “early harvest” deal under the Initiative, the “First Agreement” that encompasses five areas was concluded in 2023. 38 Ongoing negotiations for the “Second Agreement” will address the remaining issues

#### There are solvency advocates for the aff – they think things like national and economic security are advantage ground and also that there’s the lens of trying to outcompete China in the region.

Schott 25 [Jeffrey J., a senior fellow at the Peterson Institute for International Economics (PIIE). 01-20-2025. "The CPTPP: Past, Present & Future" Chapter 2 Expansion of Regional Agreement Session 1 Current Status & Issues of the CPTPP 2-1.1 URL: https://www.jef.or.jp/en/2-1.1\_Jeffrey\_J.\_Schott.pdf] //MSUCB

Could the US Rekindle an Old Flame & Join the CPTPP?

Pulling out of the TPP was a very costly mistake for the US both in economic and political terms; it gave China a huge advantage in important markets in Asia simply because US firms do not receive the same preferences accorded to Chinese firms in five of the seven countries that are in both the CPTPP and the RCEP. And it also looks bad for US officials to have rejected a deal drafted by them, and based on US law and practice!

Both Democrats and Republicans seem to have talked themselves out of joining the CPTPP despite the economic and national security reasons to do so and the strong support of large segments of the US business community. But political winds shift and with proper wordsmanship, what were once deemed “bad deals” can be restructured into “world class” trade deals. President Trump damned the North American Free Trade Agreement and the TPP but combined much of both into the USMCA that had his “fingerprints” on it and thus was good.

While unlikely, a US return to an updated CPTPP pact may be possible in 2025-2026 in the context of heightening US-China economic tensions. The CPTPP’s own efforts to expand membership and coverage of its provisions, especially in areas such as digital trade and cooperation on export controls, could prompt US officials to revisit their decision not to enter the pact, especially if coupled with commitments to encourage foreign investment in critical US industrial sectors.

CPTPP members need US participation to help balance Chinese economic initiatives in the region; the US needs support by key CPTPP countries in enforcing US export controls and economic sanctions. Expanded CPTPP membership and substantive coverage, particularly on economic security issues, could refocus US interest in the pact, especially if CPTPP membership were augmented with key US allies like South Korea and the EU.

The Challenge Going Forward

The current general review of the CPTPP and the new participation by the UK provides a great opportunity to build on and improve the already strong economic integration pact. Starting in 2025, CPTPP members will focus on both updating the CPTPP rulebook and expanding its membership with due regard for maintaining high-standard commitments that promote economic well-being for participants and develop innovative precedents that can inform and support reforms more broadly in the world trading system. This effort will have to advance in a difficult political environment of increasingly strident trade and investment tensions pitting the US and EU against China. Yet cooperation among these countries is also needed to address critical issues like digital trade and climate change. Managing the CPTPP’s relationships with the US and EU, while continuing to deliberate on China’s membership application, will test the diplomatic skills of officials throughout the region.

#### This one is more explicit about the US joining the CPTPP.

Atkinson & Ezell 25 [Robert D. Atkinson, Stephen Ezell, Dr. Robert D. Atkinson is the founder and president of ITIF. He holds a Ph.D. in city and regional planning from the University of North Carolina, Chapel Hill. Stephen Ezell is vice president for global innovation policy at ITIF and director of ITIF’s Center for Life Sciences Innovation. He also leads the Global Trade and Innovation Policy Alliance. His areas of expertise include science and technology policy, international competitiveness, trade, and manufacturing. 3-24-2025. "Toward Globalization 2.0: A New Trade Policy Framework For Advanced-Industry Leadership And National Power" The Information Technology And Innovation Foundation. URL: https://itif.org/publications/2025/03/24/globalization2-a-new-trade-policy-framework/] //MSUCB

Market Opening

2. The United States should reset and restart its trade agenda, including negotiating new and upgraded trade agreements with its closest trading partners (such as the United Kingdom) to ensure that trade arrangements reflect the state of global techno-economic competition and cooperation. This could include joining or initiating new digital economy agreements that combine legally binding and enforceable commitments on well-known digital trade issues (e.g., data localization) and soft commitments to cooperate on emerging regulatory issues (via memorandums of understanding, or MOUs).

3. Join the Comprehensive and Progressive Transpacific Partnership (CPTPP) agreement. The United States should integrate itself into the Asia-Pacific economy via a formal—and commercially meaningful—trade agreement, a critical component to both aligning and upgrading trade rules, and also garnering support for broader measures to counteract unfair Chinese trade and economic practices. As such, the next administration should join the CPTPP, ideally as a way to keep China out. And this time around, in contrast to the TPP negotiations, it should ensure the inclusion of enforceable currency manipulation rules and strict rules of origin requirements.

#### The thing preventing the US from joining in the past has been domestic political opposition. There’s a link to the politics disad.

Sawbridge 23 [Oliver Sawbridge, Oliver Sawbridge is a policy and insights manager at Economist Impact in its new globalisation practice, and is particularly responsible for research and analysis on international trade. As the global economy is being transformed by multiple forces including geopolitics, technological progress and climate change, the new globalisation practice works with clients to navigate these structural shifts. 6-19-2023. "The CPTPP Digest" Economist Impact - Perspectives. URL: https://impact.economist.com/perspectives/economic-development/cptpp-digest] //MSUCB

The US’ accession is possible as they negotiated the first iteration of the agreement, before President Trump pulled them out of it. Therefore, the current trading rules align with the US trading precedent. Furthermore, many see the Indo-Pacific Economic Framework as a stepping stone to the US joining CPTPP. The biggest blocker is politics on both sides of the House in the US; a difficult challenge, but not an insurmountable one.

#### Debates over international trade policy surrounding Southeast Asia are super timely.

Yeoh 25 [Tricia Yeoh, Dr. Tricia Yeoh is Associate Professor of Practice at the University of Nottingham Malaysia’s School of Politics and International Relations and Senior Fellow at the Asia Pacific Foundation of Canada. 4-15-2025. "Trump’s On-off Tariffs Could Disengage Southeast Asia from the US" Asia Pacific Foundation of Canada. URL: https://www.asiapacific.ca/publication/trumps-tariffs-could-disengage-southeast-asia-further-us] //MSUCB

The reciprocal tariffs announced by U.S. President Donald Trump on April 2 – what he referred to as “Liberation Day” – hit Southeast Asian economies particularly hard. While they and others received a brief respite in the form of a 90-day pause, with a universal lowered reciprocal tariff of 10 per cent, tariffs on goods from China spiked to 145 per cent. The increasingly inconsistent and erratic policymaking from the Trump administration will ultimately push Southeast Asia away from making deals with the U.S., an increasingly unreliable trade partner.

Given the questionable economic basis of Trump’s original tariff calculations, the relatively high tariffs initially imposed on the region can best be explained through political reasoning. The tariffs – which ranged from 49 per cent for Cambodia, 48 per cent for Laos, 46 per cent for Vietnam, 44 per cent for Myanmar, 36 for Thailand, and 24 per cent for Malaysia and Brunei – were most likely intended to pressure these developing countries to seriously reconsider their close economic ties with China.

However, Trump’s punitive tariff strategy may have the opposite effect as Southeast Asia disengages from the U.S. to be pushed into the welcoming arms of China. Already, China’s President Xi Jinping is making a much-publicized visit to Malaysia, Cambodia, and Vietnam from April 14-18, which will invariably result in high-level bilateral trade and economic commitments that will strengthen these countries’ relationships with China. This ‘charm offensive’ is a highly strategic move by President Xi, given Malaysia’s chairmanship of the Association of Southeast Asian Nations (ASEAN) this year, especially with ASEAN members Cambodia and Vietnam among the hardest-hit countries on Trump’s original (April 2) reciprocal tariffs list.

Before April 2, most Southeast Asian countries were unwilling to take a clear side in the U.S.-China trade war. That said, the State of Southeast Asia 2025 Survey, recently conducted by the ISEAS-Yusof Ishak Institute, revealed that the U.S. was preferred over China should the region be forced to align with one or the other. Events of the past weeks, however, may alter this sentiment – particularly since the previous year’s survey saw respondents preferring China over the U.S., indicating Southeast Asian economies will readily switch allegiances in their own strategic best interests.

That the U.S. is willing to force this decoupling is surprising given that it needs Southeast Asian allies in the region, particularly in the context of escalating disputes in the South China Sea, where China lays claim to territorial waters that are also claimed by Malaysia, the Philippines, and Vietnam. Even the Philippines, the U.S.’s longtime ally in the region, was slapped with a 17 per cent tariff.

Semiconductor-exporting countries in Southeast Asia breathed a sigh of relief when they saw that semiconductors were among the exemptions listed by Trump on April 11, with some pullback by the president just days later. Malaysia accounts for approximately 20 per cent of the U.S.’s semiconductor imports, while Vietnam accounts for more than 10 per cent of semiconductor chips imported by the U.S. As the White House continues to vacillate on this exemption, ultimately, it may not last. While some goods such as copper, pharmaceuticals, semiconductors, and lumber articles are not currently subject to the reciprocal tariffs announced on April 2, they may be subject to future tariffs under Section 232 of the 1962 US Trade Act.

These tariffs on semiconductors should not be surprising, as this sector represents precisely the type of manufacturing industry Trump envisions reshoring to the U.S. Trump himself had previously shared intentions of placing tariffs as high as 25 per cent on semiconductor imports. Further, not all semiconductors are exempt at present, such as graphics processing units (GPUs) and servers for training artificial intelligence models.

If Trump’s broader tariffs on Southeast Asia are followed through on, the implications will be severe and long-lasting. ASEAN countries combined accounted for 7.2 per cent of global Gross Domestic Product (GDP) in 2024 and 8.7 per cent of global GDP growth over the past decade (2014-2024). If an economic recession were to hit Southeast Asia, those with the lowest GDP per capita, such as Myanmar, Laos, and Cambodia, would be especially hard hit. Myanmar, which has been embroiled in a civil war since 2021 and was recently hit by a devastating earthquake with a death toll of more than 3,500, will be left in shambles.

There are already anecdotes of Chinese investors based both in Mainland China and Vietnam looking to diversify their manufacturing bases elsewhere in the region. Malaysia and the Philippines, which are facing relatively lower tariff rates, may stand to gain, but at the expense of their neighbours. Meanwhile, individual Southeast Asian countries may be increasingly tempted to impose trade barriers on Chinese goods to protect their domestic industries, as exports that would otherwise have been destined for the U.S. are redirected to Southeast Asian markets. This move, however, could be economically self-defeating given the region’s tightly interlinked supply chains and shared reliance on Chinese inputs. It would also run counter to the principle of ASEAN centrality and economic integration.

Ultimately, Southeast Asia may not be able to break ties completely with the U.S. American foreign direct investment (FDI) into ASEAN represented 32.4 per cent of the region’s total FDI inflows in 2023. As a result, all Southeast Asian countries have prioritized diplomacy, sent negotiation teams, and committed to working closely with Washington.

Malaysia, as ASEAN Chair in 2025, is leading a unified regional response to the April 2 tariff announcement. At a Special ASEAN Economic Ministers’ Meeting on April 10, ASEAN articulated a common position to engage in a “frank and constructive dialogue with the U.S. to address trade-related concerns” and not impose any retaliatory measures in response.

This position, however, may just be about safeguarding economic interests and diplomatic relations with the U.S. in the current moment while the bloc simultaneously works out alternative long-term measures. Those measures may include upgrading the ASEAN Trade in Goods Agreement (ATIGA), finalizing negotiations on the ASEAN Digital Economy Framework Agreement (DEFA), and, importantly, upgrading the ASEAN-China Free Trade Agreement (ACFTA) and ASEAN-India Trade in Goods Agreement (AITIGA), as recently suggested by Malaysia’s Minister of Investment, Trade and Industry.

Moving in on these measures would indicate that Southeast Asia is indeed seeking deeper economic co-operation with China in the immediate future. The Regional Comprehensive Economic Partnership (RCEP), the free trade agreement that brings together China and the 10 ASEAN member states, as well as Japan, South Korea, Australia, and New Zealand, will also be an increasingly attractive instrument to solidify partnerships within the Asia Pacific region.

Amid this confusion and the flip-flopping of policies from the Oval Office, there is a unique opportunity for Canada to be the reliable and stable trading partner that Southeast Asian economies seek. Canada’s 2022 Indo-Pacific Strategy can be strengthened and updated to reflect current circumstances. A statement issued by the ASEAN Economic Ministers on April 10 drew parallels with that strategy and reaffirmed ASEAN’s support for a “predictable, transparent, free, fair, inclusive, sustainable and rules-based multilateral trading system”.

Canada, along with other regional bodies such as the European Union, should now brandish its credentials as a stable and reliable global player that adheres to these rules-based norms, helping to shore up the certainty that Southeast Asia currently needs. The institutions the U.S. was once part of creating but is now dismantling should continue to be upheld. While the existing free trade system may have weaknesses, a complete dismantlement of the global order at this speed – predicated on economic protectionism alone – cannot be absorbed by the majority of the world’s economies, least of all those in Southeast Asia. Canada’s participation in the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), which brings together 12 member countries, including Singapore, Malaysia, Brunei and Vietnam, also gives it an advantage the U.S. does not have.

Trump’s tariff policies are pushing Southeast Asia further away from the U.S. at a time when Washington needs regional allies in both economic and security matters. The long time lag for reshoring manufacturing to the U.S. will mean that in the near term, America will still require goods that are critical for its supply chains; even cars made in the U.S. will need auto parts from the rest of the world. Even if Southeast Asian countries would prefer a more balanced and diversified trade relationship that still includes the U.S., the region’s short-term strategic adjustments to shift its focus to China might become a long-term, permanent shift if current U.S. policies and tariff regimes endure. Will the U.S. recognize that there are severe long-term consequences of its recent actions in time to mend already fractured relations, or will it cede economic leadership in the region for good in its own misguided self-interest?

#### CPTPP used to be a mechanism for expanding US influence over Asian regional politics.

Chad de Guzman 11/8, Reporter at TIME, Singapore bureau, "How Asia Is Bracing for Trump's Second Term," TIME, 11/08/2024, https://time.com/7174087/trump-second-term-foreign-policy-asia-approach/

Donald Trump’s comeback is now certain, after he decisively won re-election to the White House, but there is growing uncertainty over how his second-term administration will deal with the Asia-Pacific—a region of increasing strategic relevance and home to a number of international economic and security concerns for the U.S.

Experts tell TIME that Trump’s first term, as well as his promises on the campaign trail, can offer clues about his potential approach to Asia. Shortly after his inauguration in 2017, Trump withdrew the U.S. from the Trans-Pacific Partnership, a trade deal involving many Asian states, signaling his dislike of multilateralism. As President, Trump did not regularly show up at regional summits. If he did, he attacked member-states of international groups, accusing them of abusing trade relations with Washington.Trump also questioned the fairness of mutual defense treaties that rely on American military power.

In 2018, Trump launched a trade war against China—placing tariffs on hundreds of billions of dollars worth of Chinese goods. And he’s vowed to double down on tariffs in his next term. Yet he’s also said that he “had a very strong relationship” with Chinese President Xi Jinping and aims to “have a good relationship with China.”

Joseph Liow, dean of the College of Humanities, Arts, and Social Sciences at Nanyang Technological University (NTU) in Singapore, tells TIME that unlike in 2017, the fact that Trump already had a first shot at dealing with Asia means that come 2025 he’ll be “more prepared.” The people that make up his new Cabinet will also be insightful. The names of China hawks like Sen. Marco Rubio (R-Fla.), former trade representative Robert Lighthizer, and former Secretary of State Mike Pompeo have been floated. Derek Grossman, senior defense analyst at California-based think tank RAND, says that more “isolationist” personnel may also hold senior posts, reflecting Trump’s broader, transactional outlook on foreign policy.

But there’s a limit to how much can be anticipated. Ben Bland, Asia-Pacific Programme director at London-based think-tank Chatham House, tells TIME that “in Asia, as elsewhere, Trump will be unpredictable because that is both his nature and his modus operandi.” Kevin Chen, associate research fellow at NTU’s S. Rajaratnam School of International Studies (RSIS), adds: “He might say one day that we would like to support our allies in the region … but the next day he might decide, ‘I think we’ve paid too much.’”

Here are some of the ways in which Trump’s second administration can be expected to engage with the region.

Economy

Trump has called himself “a Tariff Man,” as trade levies are at the centerpiece of his economic platform, despite critics warning of the risk of an immense cost burden that would be placed on Americans. Trump has said he plans to impose a 60% tariff on Chinese goods and a 10-20% tariff on goods from other countries.

Asian economies that benefited from the previous trade war—after China moved manufacturing to these countries to avoid American levies—may suffer this time around, as Trump is expected to balk at U.S.-China trade flows simply being rerouted through other countries.

Stephen Nagy, visiting fellow at the Japan Institute for International Affairs, tells TIME that he believes there will be pressure on Asian countries “to recalibrate or selectively diversify from China” lest they face tariffs too. “This likely means that it’s going to be more and more difficult for South Korea and Japan, Taiwan, Southeast Asian countries, Australia, etc., in doing business with China, because they’ll also be subject to tariffs.”

Such a tariff-heavy foreign policy could significantly impact Asia’s trade-dependent economies. Southeast Asian states on average have a trade intensity—measured in trade-to-GDP ratio—that is double the global average, according to the Asia-based, trade-focused philanthropic group Hinrich Foundation. Al Jazeera and the Economist reported that global consultancy Oxford Economics found that Trump’s tariffs would make “non-China Asia” a net loser, with American imports from the region expected to fall by 3% and exports to the region expected to fall by 8%.

Multilateral trade partnerships in the region also face risks. Last year, Trump said he would junk the Indo-Pacific Economic Framework between the U.S. and 13 other countries, many of which are in Asia, if he wins the election. Trump “believes the U.S. is better able to leverage its strength and size by working on bilateral ties,” says RSIS research fellow Adrian Ang, adding that Trump doesn’t want to be “tied down” by multilateral agreements.

While the possibility of U.S. removal from multilaterals can leave Asian economies exposed, Ang clarifies that, just like Trump, governments around the world are “more prepared” and “more resilient” against a “more protectionist” Washington. For example, after the U.S. withdrew from the TPP, Japan took leadership, and the Comprehensive Trade Agreement for the Trans-Pacific Partnership deal was launched in late 2018. The CPTPP aspires to be the “gold standard” for free trade agreements, and other significant economies like China and Indonesia have since applied.

Diplomacy

In his first term, Trump engaged with authoritarian leaders like North Korea Supreme Leader Kim Jong Un and Russian President Vladimir Putin.

Experts tell TIME that Trump is willing to engage with Kim again, given that he’s spoken of his relationship with the North Korean leader throughout his campaign, claiming it was their personal ties that stopped Pyongyang, which has been steadily nuclearizing, from launching missiles. “I get along with him,” Trump has said. “I think he misses me.”

Putin has also expressed interest in reviving Moscow’s relationship with Washington, which has languished because of U.S. support for Ukraine. Trump has suggested he would curtail that support as President.

When it comes to more traditional allies, experts think Trump, based on his transactional nature, will expect those in Asia to prove their worth. “They [the administration] will try and squeeze as much money as they can out of those allies,” says RSIS’s Chen, who adds that with Trump as the “final arbiter” of U.S. foreign policy as President, even countries that have established mutual defense treaties with the U.S. will have to convince him that they’re deserving of not being forsaken. Last month, Trump said he’d have South Korea—whom he calls a “money machine”—pay $10 billion annually to host U.S. troops in the country.

Since the election, Japan and South Korea’s leaders have expressed a desire to work more closely with Trump, but they’ve also already been showing that they are willing to pull their weight. Japan has pledged to hike its defense spending, and in 2022 it approved $8.6 billion to cover the cost of hosting more than 54,000 U.S. troops, who are mostly stationed in Okinawa east of Taiwan. Just before the election, Seoul and Washington inked a new five-year cost-sharing deal for the presence of more than 28,000 U.S. troops in South Korea. As part of the deal, South Korea will increase its contribution to 1.52 trillion won (over $1 billion) in 2026, an 8.3% rise from 2025’s planned spending.

Trump is also expected to veer away from “values-based” alliances, experts say. In his first term, Trump signed bipartisan bills against human rights violations towards Hong Kong’s democracy protesters and Uyghurs in Xinjiang. However, Grossman warns that Trump may be “more circumspect,” as he reportedly was at times during his first term, about non-economic measures that could harm his relationship with Xi and challenge any potential trade deals.

Regional security

“I’m not going to start a war, I’m going to stop wars,” Trump said during his election victory speech. But experts aren’t so sure.

During his first term, his administration came up with the Indo-Pacific strategy, which seeks to ensure that the region is “free and open” to all, amid China’s increasing influence and assertiveness and which has continued under President Joe Biden. Grossman, like other experts have previously told TIME, says he does not see any sign that Trump will abandon this strategy in his second term.

The South China Sea, however, despite being an emerging conflict area in the region, will likely not be high on Trump’s list of priorities, says NTU’s Liow. But the U.S. may maintain a certain level of commitment as it’s “viewed in the larger context of the competitive relationship with China, which is not going to let up.”

And on Taiwan, the self-governing island which China has long claimed and the U.S. has unofficially supported, RSIS’s Chen tells TIME that Trump may choose to avoid U.S. involvement in potential conflict by striking a deal with Beijing. In October, Trump told the Wall Street Journal, “I would say: If you go into Taiwan, I’m sorry to do this, I’m going to tax you”—referring to tariffs—“at 150% to 200%.” When he was asked if he’d use military force, Trump said: “I wouldn’t have to, because [Xi] respects me and he knows I’m f— crazy.”

“Beijing might actually be able to take Taiwan without too much U.S. interference and if that's the case I fear a greater kind of destabilization across the region,” Chen says, noting that allies in the region would be fearful that the U.S. is unilaterally dropping protections for other countries in Asia. And while Trump has promised to stop wars in the Middle East and Ukraine, Nagy, the Japan-based scholar, says he’s unlikely to try to do the same for the ongoing civil war in Myanmar. “I suspect he’ll say, ‘It's not my problem. It’s the regional countries’ issue, and they need to deal with it,” says Nagy. “If they’re not willing to commit to dealing with Myanmar, then why should the United States put its resources into putting Myanmar back together?’”

Nagy also says navigating northeast Asia’s security threat will be different this time. “The equation has changed,” he says. On top of nuclearization, Trump is faced with a North Korea that has been increasingly tied with Russia. Pyongyang has supplied millions of munitions and deployed North Korean soldiers to Russia to aid in its fight against Ukraine.

Ultimately, experts suggest, if Trump’s anti-war stance means that he’ll negotiate with and make concessions to threatening players in the region like North Korea and China, then traditional allies in the region will resort to beefing up their firepower. “I feel that if countries cannot trust the U.S. nuclear umbrella then they might need to explore their own nuclear deterrent,” Chen says. It won’t feel safer. “It will be a tremendous mess.”

### Neg---CPTPP---Cap K

#### There is substantial research criticizing the CTPP and global trade agreements as strengthening global systems of capitalism.

Essien 24 [(Essien Oku Essien, “The Intersection in Marxist New International Politics and Derrida’s Philosophy: A Meta-Analytics Inquiry of Its Impacts on Western Macro-Economy,” *American Journal of Economics and Business Innovation (AJEBI)*, January 26, 2024, Volume 3, Issue 1. ISSN: 2831-5588 (Online), 2832-4862 (Print) DOI: https://doi.org/10.54536/ajebi.v3i1.2366 <https://journals.e-palli.com/home/index.php/ajebi>) kb]

Globalization, and Neoliberalism

O’Regan (2021) notes that globalization, the expansion of economic and informational linkages between countries, has been greatly aided by capitalist institutions. Capitalism’s focus on market forces and trade liberalization has led to a rise in cross-border economic activity as national economies have been linked into a single global marketplace (Petit & Thrift, 2022). The exponential growth of international commerce over the last several decades is a concrete example of how capitalism has contributed to globalization. Peet and Thrift (2022) further found out that from $6.4 trillion in 2000, exports of products throughout the world were expected to grow to $20 trillion in 2019. This meteoric increase in commercial activity may be traced back to capitalist policies, such as those that encourage the use of comparative advantage, specialization, and the reduction of trade barriers via organizations like GATT and the WTO. Hirst et al. (2019) showed that recent decades have seen a significant influence from capitalism and its ideological progeny, neoliberalism, on economic policies on a global scale. Neoliberalism’s basic principle is the priority of market forces over government control. There have been repercussions for global banking giants like the IMF and the World Bank because of these practices (Hirst et al., 2019).

The growth of bilateral and regional trade agreements is one way neoliberalism has impacted global economic governance. Capitalist economies have been actively pursuing these agreements to further liberalize trade and reduce barriers to investment (Balibar, 2016). Just to name a few, there’s the Trans-Pacific Partnership (TPP) and the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP). Peters (2014) identifies that the neoliberal push for unbridled market forces inspired these pacts, the aims of which are to increase market access, safeguard intellectual property, and advance investor protections. **Capitalism’s hegemony in global commerce** often **results in the exploitation of developing countries**, according to research by Jackson and Peters (2021). Western businesses often relocate to developing nations in search of lower labor costs. They may take advantage of the region’s low salaries to boost their profits. The global power imbalance is exacerbated when firms from wealthier nations exploit the weak negotiating position and regulatory framework of poor countries (Montgomerie, 2017). Consequently, many nations still have difficulties with low pay, breaches of workers’ rights, and dangerous workplaces.

CONCLUSION

The long rule of capitalism ideas and practices in the West has had a significant influence on international economic ties. While capitalism has been essential to the economy’s spectacular expansion and the development of cutting-edge technologies, its impact on global commerce has contributed to the maintenance of many existing disparities. It is shown that capitalism has transformed the dynamics of Western international commerce, with negative effects on developing countries, on worker exploitation, and on environmental degradation receiving particular attention. Capitalist markets have rigorous restrictions that might trap poor countries in a never-ending loop of aid need and depletion of natural resources. The voracious thirst of capitalist economies for raw materials and resources from these countries may lead to depletion of natural resources, deforestation, and environmental damage in the name of preserving economic development and competitiveness. This tendency **does double damage by making impoverished countries even more susceptible to the catastrophic repercussions of climate change**.

## Aff---CTBT

### Aff---CTBT

#### The United States should ratify the CTBT. This would violate the requirement to depart from domestic policy since the US does not test.

John Erath 25, Senior Policy Director at Center for Arms Control and Non-Proliferation, oversees policy team, guides work on Iran Russia North Korea China and U.S. domestic nuclear policy, "Putting America First: 3 Practical Suggestions for the New (Old) Administration," Center for Arms Control and Non-Proliferation, 1/16/2025, https://armscontrolcenter.org/putting-america-first-3-practical-suggestions-for-the-new-old-administration/

2) Reinforce the Moratorium on Nuclear Testing

There is no benefit to the United States from resuming nuclear weapons tests. In fact, the opposite is true as the de facto global moratorium on testing effectively preserves the large U.S. advantage in test data from the Cold War era. An “America First” policy should look to preserve this edge. Moreover, the U.S. nuclear modernization program was designed not to require testing to be completed, as certified by the Department of Energy during each of the last three administrations. Should the United States resume testing, Russia and China will likely follow suit, allowing them, presumably, to improve exotic weapons designs for potential use against the United States. Instead, the administration should reiterate the U.S. commitment not to test, particularly in the context of nuclear states not building the arsenals. It should also submit the Comprehensive Test Ban Treaty (CTBT) for ratification and support and expand the Treaty’s monitoring system to expose any potential circumvention.

## Aff---FMCT

### Aff---FMCT

#### The United States should ratify the FMCT.

John Erath 25, Senior Policy Director at Center for Arms Control and Non-Proliferation, oversees policy team, guides work on Iran Russia North Korea China and U.S. domestic nuclear policy, "Putting America First: 3 Practical Suggestions for the New (Old) Administration," Center for Arms Control and Non-Proliferation, 1/16/2025, https://armscontrolcenter.org/putting-america-first-3-practical-suggestions-for-the-new-old-administration/

3) Advocate for Rapid Conclusion of a Fissile Materials Cutoff Treaty (FMCT)

Negotiation of a FMCT has been stalled since the 1990s by China (often with a Pakistani front) because China requires more fissile material to build more nuclear weapons. This proposed treaty is in the U.S. interest because it would prohibit states from producing the most important ingredients of nuclear weapons, substances of which the United States has a large quantity from dismantled Cold War-era weapons. A FMCT would, when implemented and verified, effectively stop China’s buildup, cap Iran’s ambitions and impose a critical barrier to other states building nuclear weapons in the future. FMCT has broad international support but little momentum; a U.S. push for negotiation would renew energy toward a practical non-proliferation step that should be a necessary prerequisite for nuclear disarmament. By backing it, the Trump administration would divide China and Russia and put the former in an awkward position of either going against the mainstream, or accepting a de facto cap on its nuclear arsenal.

The opportunities are there for the incoming administration to make a strong start on nuclear issues. These three suggestions build on policies that have been supported, actively or passively, by previous administrations, and, taken together, would leave the United States safer and in a stronger position to manage nuclear risks going forward.

## Aff---ICC

### Note

The Rome Statute Aff could be a great option for soft left debaters. Aligning with international norms over accountability for military actions, possible arms sales arguments, preventing Trump’s attempts to disrupt international justice broadly and specifically for Putin, etc., might be an interesting route for those who want to be topical but don’t necessarily care to focus on traditional policy impacts like hegemony good and “vote Aff so we don’t go to war with China” arguments on an international topic that will undoubtedly have its fair share of those.

### Aff---ICC---T ‘Depart’

#### The Trump FG’s frequent and consistent sanctions on the ICC can be described as a domestic policy or practice against the ICC’s function.

Human Rights Watch ’20 [Human Rights Watch, Dec 14 2020. Human Rights Watch “US Sanctions on the International Criminal Court” https://www.hrw.org/news/2020/12/14/us-sanctions-international-criminal-court] // ***mosu*Q**

On September 2, 2020, the United States government imposed sanctions on the International Criminal Court (ICC) prosecutor, Fatou Bensouda, and another senior prosecution official, Phakiso Mochochoko. In addition, US Secretary of State Michael Pompeo announced that the United States had restricted the issuance of visas for certain unnamed individuals “involved in the ICC’s efforts to investigate US personnel.”

The sanctions on Bensouda and Mochochoko implemented a sweeping executive order issued on June 11, 2020 by President Donald Trump. This order declared a national emergency and authorized asset freezes and family entry bans against ICC officials who were identified as being involved in certain activities. Earlier, the Trump administration had repeatedly threatened action to thwart ICC investigations in Afghanistan and Palestine. In a precursor step, in 2019, the Trump administration revoked the prosecutor’s US visa.

#### Congress voted to sanction the ICC, as well, showing a fairly complete domestic policy/practice.

Zengerle ’25 [Patricia Zengerle, Washington-based national security and foreign policy reporter; recipient of the Edwin M. Hood Award for Diplomatic Correspondence. Jan 10 2025. Reuters “US House votes to sanction International Criminal Court over Israel” https://www.reuters.com/world/us-house-votes-sanction-international-criminal-court-over-israel-2025-01-09/] // ***mosu*Q**

WASHINGTON, Jan 9 (Reuters) - The U.S. House of Representatives voted on Thursday to sanction the International Criminal Court in protest at its arrest warrants for Israeli Prime Minister Benjamin Netanyahu and his former defense minister over Israel's campaign in Gaza.

The vote was 243 to 140 in favor of the "Illegitimate Court Counteraction Act," which would sanction any foreigner who investigates, arrests, detains or prosecutes U.S. citizens or those of an allied country, including Israel, who are not members of the court.

#### Similarly, it is effectively written into United States law not to ratify the Rome Statute, or at least to not *comply* with the ICC if charged.

Kharfia ’23 [Saadna Kharfia, University of Batna 1. May 15 2023. *Journal of Legal and Political Thought, Vol 7, No 1* “US Strategy To Immunize Its Citizens Before The International Criminal Court – Afghanistan Case”] // ***mosu*Q**

1- Congress’ Guaranties to Protect US Soldiers Abroad:

Within the framework of the American approach to opposing the International Criminal Court and its powers, and in support of The Article 98 conventions, the US Congress ratified two laws:

1.1- American Service Members Act (ASPA)

During the campaign led by the United States of America to fight terrorism in the world resulted in the invasion of Afghanistan as a first ground where crimes were committed required accountability before the International Criminal Court. The first steps in its policy of opposition to the Court at the internal level and the official manifestation of its position were Americans Soldier Protection Act abroad.

(1) Among the most important provisions contained in this law and its perspective are the following:

(a) Prohibit all forms of US cooperation with the International Criminal Court, including:

 Prohibit cooperation by not providing any financial assistance to the Court or assisting it in the investigation, arrest, or exchange of any US person or foreign person permanently resident in the United States of America.

 Prevent any further action by the Court on US.

This prohibition applies to US organs and bodies, US courts, local governments, and federal governments. (2)

(b) Limiting the participation of US forces in United Nations peacekeeping operations except under Chapters VI and VII of the Charter of the United Nations, and that such operations must be in countries that are not parties to the International Criminal Court; however, the President of the United States of America may allow US forces to participate in operations only if one of the following conditions is met:

 A Security Council resolution guaranteeing the immunity of the US armed forces(3).

 The existence of a convention of the type of agreement in Article 98 between the United States of America and the country in which military operations are carried out.

 The existence of a national interest that highlights participation in the process.

(c) Prohibit the direct or indirect exchange of any confidential information or documents with the International Criminal Court that impacts the national security(4).

### Aff---ICC---T ‘International’

#### Despite the unity of its allies, the United States has not ratified the Rome Statute to become party to the ICC.

Scheffer ’23 [David Scheffer, American lawyer and diplomat who served as the first United States Ambassador-at-Large for War Crimes Issues, during President Bill Clinton's second term in office; Mayer Brown/Robert A. Helman Professor of Law at Northwestern University School of Law, where he directed the Center for International Human Rights. July 17 2023. Lieber Institute, West Point “The United States Should Ratify the Rome Statute” https://lieber.westpoint.edu/united-states-should-ratify-rome-statute/] // ***mosu*Q**

A quarter century ago today the Rome Statute of the International Criminal Court (ICC) was completed following years of negotiations. I led the U.S. delegation in those talks. The Clinton Administration decided not to support the final text of the treaty on July 17, 1998, but after two more years of talks on supplemental documents, I signed the treaty on behalf of the United States on December 31, 2000. Despite the fact that 123 nations, including almost every American ally, have joined the ICC, the United States has not yet ratified the Rome Statute and thus has not become party to the ICC. That fact need not be the final chapter. The time has finally arrived to acknowledge some evolutionary developments and move towards American ratification of the treaty.

There is longstanding American policy that while the United States remains a non-party State to the Rome Statute, the ICC has no jurisdiction over U.S. nationals for actions undertaken even on the territory of a State Party of the Rome Statute. The same standard would apply to any other non-party State (like Russia) and its nationals acting on State Party territory (or territory of a non-party State—like Ukraine—that has fallen under the jurisdiction of the ICC voluntarily or because of a UN Security Council mandate). I term this the “immunity interpretation,” which makes it difficult for the United States to fully embrace the ICC’s investigations of Russian suspects for atrocity crimes (war crimes, crimes against humanity, genocide) committed in Ukraine.

### Aff---ICC---UQ

#### Trump has sanctioned the ICC.

Kenneth Roth 25, Executive Director of Human Rights Watch, "Trump's sanctions against the ICC are disgraceful," The Guardian, 02/09/2025, https://www.theguardian.com/commentisfree/2025/feb/09/trump-icc-sanctions

Donald Trump’s executive order reauthorizing sanctions against international criminal court (ICC) personnel reflects a disgraceful effort to ensure that no American, or citizen of an ally such as Israel, is ever investigated or prosecuted. Quite apart from this warped sense of justice – that it is only for other people – the president’s limited view of the court’s powers was rejected in the treaty establishing the court and repudiated by the Joe Biden administration and even the Republican party. But that didn’t stop Trump.

The US government traditionally has had no problem with two of the three ways that the court can obtain jurisdiction because it could control them. Washington is fine with the court prosecuting citizens of states that are members of the court because it has no intention of joining them. And it accepts that the United Nations security council can confer jurisdiction because it can exercise its veto to block prosecutions it doesn’t like.

But the court’s founding document, the Rome Statute, allows a third route to jurisdiction. The court can investigate or prosecute crimes that occur on the territory of a member state, even if the perpetrator is the citizen of a non-member state. That was why Trump in his first term objected to an ICC preliminary examination in Afghanistan (and imposed sanctions – freezing assets and limiting travel – on the chief prosecutor at the time, Fatou Bensouda, and one of her deputies) because the investigation might have implicated CIA torturers in that country under George W Bush. Trump in his new executive order alludes to the prosecutor’s actions in Afghanistan, but it is a non-issue because the current ICC chief prosecutor, Karim Khan, has made clear that those past crimes are not his priority.

The real issue is Israel. That same territorial jurisdiction is how the ICC was able to charge Benjamin Netanyahu and his former defense minister, Yoav Gallant, for their starvation strategy targeting Palestinian civilians in Gaza. Israel never joined the court, but Palestine did, conferring jurisdiction for crimes committed on Palestinian territory, including Gaza, regardless of the perpetrator’s citizenship.

Referring to the United States and Israel, Trump’s executive order says: “Neither country has ever recognized the ICC’s jurisdiction, and both nations are thriving democracies with militaries that strictly adhere to the laws of war.” These claims are legally irrelevant.

The US opposition to territorial jurisdiction was rejected by the drafters of the ICC treaty by an overwhelming vote of 120-7. The only governments to join the United States in opposing it were China, Iraq, Israel, Libya, Qatar and Yemen.

Moreover, there is no ICC exception for “thriving democracies” or governments that purport to respect the laws of war. As any justice institution should, its jurisdiction applies to governments regardless of their character or stated policy. The sole exception is under what is known as the “principle of complementarity”, in which the court defers to good-faith national investigations and prosecutions.

But Israel has no history of prosecuting its leaders for war crimes, and despite the ICC charges against Netanyahu and Gallant, it has announced no investigation of their starvation strategy in Gaza. To the contrary, Israel’s Mossad intelligence agency threatened Bensouda – the former ICC prosecutor – and her husband. That hardly reflects good-faith pursuit of possible war crimes.

For two decades, the US government objected to territorial jurisdiction, but when the ICC charged Vladimir Putin, it abandoned that position. Putin was charged for kidnapping Ukrainian children and taking them to Russia. Russia has never joined the court, so the sole basis for the court acting was territorial jurisdiction – Putin’s alleged crime took place in Ukraine, which had conferred jurisdiction.

That was a game-changer. Biden called the charges “justified”. Even prominent Republicans such as Lindsey Graham, one of the foreign policy leaders in the Senate, shifted. Joined by a long bipartisan list of sponsors, he secured unanimous adoption in March 2022 of a resolution endorsing the ICC’s prosecution of war crimes in Ukraine. Graham said that Putin’s “war crimes spree” had “rehabilitate[d] the ICC in the eyes of the Republican party and the American people”. Other Republicans visited the ICC prosecutor to support the prosecution of Putin.

Yet this shift turned out to be only tactical. It did not survive the Israel exception to human rights principles. Now that senior Israeli officials have been charged, Trump has resurrected the objection to the ICC’s territorial jurisdiction.

There is nothing the least bit radical about asserting jurisdiction over people who commit a crime on foreign territory. If I, an American citizen, murdered someone in London, Washington could hardly object if British authorities prosecuted me. By the same token, Britain would have every right to delegate that power to the ICC if, because of a crisis such as an occupation, it were unable to pursue the matter itself.

Trump is inviting trouble with his unprincipled stand. Article 70 of the Rome Statute authorizes prosecution for what Americans call “obstruction of justice” if anyone tries to impede or intimidate an official of the court because of their official duties. Bensouda essentially turned the other cheek when Trump sanctioned her. I would be surprised if Khan, the current prosecutor, were so understanding. The court would have jurisdiction over Trump because he is interfering with a pending prosecution.

Trump might try to shrug off ICC charges, figuring that no one would dare to arrest him, but he would face other consequences. Because all 125 ICC member states would have a legal duty to arrest him were he to show up, they would probably tell him quietly that he is not welcome. Trump should ask Putin, who had to skip the August 2023 Brics summit in Johannesburg for the same reason, what it feels like to be a global pariah.

Israel has other options. It could open a genuine, independent investigation of the starvation strategy and let the chips fall where they may. Netanyahu and Gallant, if they have a defense, could show up in the Hague and contest the charges, the way former Kenyan president Uhuru Kenyatta did. But Trump obstructing justice is not the answer.

### Aff---ICC---Arms Sales ADV

#### It is currently unclear whether the ICC can charge countries that sell arms to offending nations with complicity in war crimes/crimes against humanity. The concept has been theorized by experts and inferred by the ICC but never committed to as an action. What *is* known for *all* discussions about what can and cannot be done to in this regard under the Rome Statute is that it *requires* the nation to be a signatory party. Here’s an example about US arms sales to Israel making it complicit in crimes against Palestinians in Gaza.

Shamim ’24 [Sarah Shamim, Reporting Fellow at the Pulitzer Center and Aljazeera; Medill School of Journalism at Northwestern University Qatar. Nov 22 2024. Aljazeera “Arms to Israel: Will countries halt sales in wake of ICC arrest warrants?” https://www.aljazeera.com/news/2024/11/22/arms-to-israel-will-countries-halt-sales-in-wake-of-icc-arrest-warrants] // ***mosu*Q**

Western nations which sell arms to Israel may be forced to re-evaluate their trade agreements after arrest warrants issued by the International Criminal Court (ICC) against Israeli Prime Minister Benjamin Netanyahu and his former Defense Minister Yoav Gallant for “war crimes” and “crimes against humanity” in Gaza, experts say.

The warrants came amid Israel’s continuing bombardment and military campaign on the Gaza Strip, where more than 44,000 Palestinians have been killed since October 7, 2023, according to health officials.

All 124 countries which are signatories to the Rome Statute of the ICC are now legally obliged to arrest Netanyahu and Gallant if they set foot on their territory.

The question of whether countries supplying arms to a country whose leaders are accused of crimes against humanity could be considered complicit is unclear, but experts say some suppliers will have to consider carefully if they wish to continue to support Israel in its war on Gaza.

Which countries provide arms to Israel?

Stockholm International Peace Research Institute (SIPRI) estimated that between 2019 and 2023, Israel was the 15th largest importer of arms globally.

It said the United States, Germany, the United Kingdom, France and Spain export arms to Israel.

A United Nations report published on February 23, 2024 says Canada and Australia have also exported weapons to Israel.

The US

Israel imported 69 percent of its weapons from the US between 2019 and 2023, according to SIPRI. The principle of ensuring that Israel has a “qualitative military edge” was enshrined in US law in 2008.

After October 7, 2023, when Israel launched its ongoing assault on the Gaza Strip following a Hamas-led attack on villages and army outposts in southern Israel, the US further ramped up the transfer of weapons to Israel. Last month, Washington announced it would send its advanced Terminal High Altitude Area Defense (THAAD) missile defence system to Israel, along with US soldiers who would operate the system.

On Wednesday, the US Senate voted down an effort led by independent Vermont Senator Bernie Sanders to block a series of planned weapons sales to Israel. Sanders introduced the bill against a $20bn weapons deal which had been approved by the administration of President Joe Biden.

So far, the US, which is not a signatory to the Rome Statute of the ICC, has shown no signs of being prepared to reduce or halt weapons to Israel. “We fundamentally reject the court’s decision to issue arrest warrants for senior Israeli officials,” White House spokeswoman Karine Jean-Pierre told reporters. This sentiment was shared by many politicians from both parties in the US.

Germany

SIPRI estimates weapons sent by Germany constitute 30 percent of Israel’s weapon imports, a tenfold rise in 2023 compared with 2022. Germany mostly sends naval equipment to Israel, including frigates and torpedoes.

In March, Nicaragua filed a case at the International Court of Justice (ICJ), asking the court to order Germany to immediately stop exporting arms to Israel because “this aid is used or could be used to commit or to facilitate serious violations of the Genocide Convention, international humanitarian law or other peremptory norms of general international law”.

On April 30, the court rejected the request, saying the monetary value of the weapons for which Germany granted export licences had decreased. In June, several Palestinians in Gaza filed requests to an administrative court in Berlin to stop the German government from exporting weapons. These requests were also rejected.

In September, a spokesperson for the German Ministry for Economic Affairs said: “There is no German arms export boycott against Israel.”

The UK

SIPRI data shows that while the UK has not provided Israel with major arms since the 1970s, it has provided components for various systems such as the F-35 combat aircraft.

“No lethal or other military equipment has been provided to Israel by the UK Government since 4 December 2023,” then-Minister of State for the Armed Forces Leo Docherty told Parliament in April 2024.

Official data on export permits in June 2024 showed that 108 licences, for which Israel was listed as a recipient, had been approved since October 7, 2023.

In September this year, the UK suspended 30 licences out of a total of 350. These 30 pertained to weapons that the UK believed were being used in military operations in Gaza.

Which other countries have restricted arms sales over the course of the war?

France

According to data by SIPRI, France did not send weapons to Israel between 2019 and 2023, and the last time it sent weapons was in 1998.

However, France does supply components used to build weapons.

In June, French investigative media website, Disclose, revealed that France had sent electronic equipment for drones suspected of being used to bomb civilians in Gaza.

In October, French President Emmanuel Macron told French media: “I think that today, the priority is that we return to a political solution, that we stop delivering weapons to fight in Gaza.” He added: “France is not delivering any.”

Italy

SIPRI estimates that Italy’s weapons sent to Israel accounted for 0.9 percent of Israel’s weapons imports between 2019 and 2023. Italy mostly sent light helicopters and naval guns.

The Italian government made repeated assurances that Italy had not sent weapons to Israel since the war broke out.

Prime Minister Giorgia Meloni said in the Italian Senate in October this year: “The government immediately suspended all new export licences, and all agreements signed after October 7th [2023] were not implemented.”

However, in March this year, Italian Defence Minister Guido Crosetto said despite these assurances, Italy had sent some weapons to Israel.

Crosetto said these were the weapons for which orders were signed before October 7.

Independent Italian media outlet Altreconomia analysed data from statistics agency ISTAT and reported that Italy had sent 2.1 million euros ($2.2m) in arms and munitions to Israel in the last three months of 2023.

Spain

The Spanish Ministry of Foreign Affairs, European Union and Cooperation issued a news release in February 2024 saying arms sales to Israel had not been authorised since October 7, 2023.

Euronews reported that Spanish investigative journalists found that in November 2023, munitions worth 987,000 euros ($1.03m), were sent to Israel under a licence approved before October 7, 2023, however.

Canada

In February this year, Canadian Foreign Affairs Minister Melanie Joly said Canada would stop all arms shipments to Israel.

However, campaigners claimed that Canada was sending weapons to Israel via the US instead.

In September, Joly said Canada had suspended 30 permits for arms sales to Israel. It is unclear how many permits in total exist.

Joly added that Canada had cancelled a contract with a US company that would sell Quebec-manufactured arms to Israel.

Belgium, Japanese company

Belgium and a Japanese company have also suspended weapons exports to Israel.

How might the ICC arrest warrants affect arms sales to Israel?

By issuing the arrest warrants for Netanyahu and Gallant, relating to war crimes and crimes against humanity, “the ICC has also made a certain demand on Western countries both in North America and throughout Europe,” Neve Gordon, professor of international law at Queen Mary University of London told Al Jazeera.

“And that has to do with the kind of trade agreements that they have with Israel – first and foremost with the trade relating to arms.”

He added: “If leaders of Israel are charged with crimes against humanity, then this means that the weapons provided by Western nations are being used to commit crimes against humanity.”

The ICC decision could well therefore lead more Western countries to place embargoes on weapons exports to Israel, Eran Shamir-Borer, the director of the Center for National Security and Democracy at the Israel Democracy Institute told Israeli newspaper Haaretz. Shamir-Borer was formerly part of the Israeli military.

Most countries have a memorandum of arms trade which sets out the conditions under which arms can be traded, Gordon said.

In each memorandum, a provision clearly states that the country “cannot send weapons to an entity that uses the weapons to carry out serious violations of international humanitarian law such as the 1949 four Geneva Conventions and the 1977 Additional Protocols”.

He said, so far, many countries had either ignored these provisions or only slightly limited the types of weapons they send.

However, now that the warrants have been issued, those countries could also possibly be considered to be complicit in war crimes and crimes against humanity.

#### The concept was also called upon and written about previously in reference to European arms sales to the Saudi Arabia/UAE Coalition and those weapons’ use in Yemen, showing *some* consistency or awareness in the possibility of the “complicity” argument being viable against arms supplying nations that are signatory parties to the Rome Statute.

Amnesty International ’19 [Amnesty International, Dec 12 2019. Amnesty International “ICC must investigate arms company executives linked to Yemen war crimes allegations” https://www.amnesty.org/en/latest/press-release/2019/12/icc-investigate-arms-companies-yemen-war-crimes-allegations/] // ***mosu*Q**

The Prosecutor of the International Criminal Court (ICC) must investigate the role of executives of European arms companies and licensing officials in violations of international humanitarian law that could amount to war crimes in Yemen, Amnesty International said today, as it joined the European Centre for Constitutional and Human Rights (ECCHR) in an official request to the ICC.

The ECCHR, supported by five NGOs, has submitted a 300-page Communication and supporting evidence to the ICC’s Office of the Prosecutor (OTP), calling on the ICC to investigate whether high-ranking officials, from both European companies and governments, could bear criminal responsibility for supplying arms used by members of the Saudi Arabia/UAE-led Coalition in potential war crimes in Yemen. It requests an investigation into their potential complicity in 26 specific airstrikes which unlawfully killed or injured civilians, and destroyed or damaged schools, hospitals and other protected objects.

“An ICC investigation would be an historic step towards holding arms company executives accountable for their business decisions. The reality is that everybody involved in selling weapons to the Saudi Arabia/UAE-led Coalition bears some responsibility for how those weapons are used. This includes company executives as well as government officials,” said Patrick Wilcken, Arms Control Researcher at Amnesty International.

“The ICC Prosecutor can send a clear message that it will hold corporate actors to account if they are involved in the most serious crimes.”

Despite mountains of evidence of serious violations in Yemen built up over nearly five years of the conflict, some European states have continued to export to members of the Coalition, which has bombed schools, houses and hospitals. These exports are a flagrant violation of the international Arms Trade Treaty, as well as European and domestic laws.

Governments are responsible for approving export licences, and many arms companies argue this exempts them from responsibility. But government approval does not absolve company executives from discharging their own reponsibilities to respect human rights across their business operations, including by not exporting weapons that risk being used to commit crimes under international law.

This excuse is especially weak when governments issuing licences are themselves being challenged over their decisions to export weapons which risk being used in possible war crimes and other violations.

“Any company executive can read a newspaper and understand that the human rights risk assessments of some European governments have failed catastrophically,” said Patrick Wilcken.

“Company executives have had ample time and access to plenty of reliable information to reassess their decisions to supply the Coalition in the light of the horrific events in Yemen. Hiding behind flawed government decision-making is not good enough – now they could face criminal charges before an international criminal court.”

The Communication focuses on the role of the following companies: Airbus Defence and Space S.A.(Spain), Airbus Defence and Space GmbH (Germany), BAE Systems Plc. (UK), Dassault Aviation S.A. (France), Leonardo S.p.A. (Italy), MBDA UK Ldt. (UK), MBDA France S.A.S. (France), Raytheon Systems Ltd. (UK), Rheinmetall AG (Germany) through its subsidiary RWM Italia S.p.A. (Italy), and Thales France.

Background information

The ECCHR and its partners (Mwatana for Human Rights, Amnesty International, Campaign Against Arms Trade (CAAT), Centre Delàs and Rete Disarmo) are calling on the OTP to investigate the responsibility of high level corporate officers, as well as high-ranking government officials from arms export licensing authorities, for their potential complicity in these alleged crimes under international law.

The ECCHR Communication focuses on companies from Spain, Germany, France, Italy and the UK, the biggest European exporters of arms to the Coalition. It provides factual information on 26 air strikes – on residential buildings, schools, hospitals, a museum and world heritage sites – which may amount to war crimes under the Rome Statute of the International Criminal Court.

The ICC may exercise its criminal competence over genocide, crimes against humanity and war crimes committed in any territory subject to the jurisdiction of a state party (all EU states are parties to the Rome Statute) or over their nationals, wherever crimes are committed.

#### Though, as anyone who remembers the 2019 high school topic knows, a majority of Saudi’s weapons were bought from the US. Had the US been a signatory party to the Rome Statute, they would have been theoretically more than complicit and up for discussion similar to Europe.

Riedel ’21 [Bruce Riedel, nonresident senior fellow in the Center for Middle East Policy; previously served as director of The Intelligence Project at Brookings; former CIA operative; too many qualifications to type. Feb 4 2021. Brookings Institute “It’s time to stop US arms sales to Saudi Arabia” <https://www.brookings.edu/articles/its-time-to-stop-us-arms-sales-to-saudi-arabia/>] // ***mosu*Q**

The war in Yemen is America’s war. Saudi Arabia has spent a fortune buying arms from America to prosecute a war that has killed almost a quarter of a million people — the world’s worst humanitarian catastrophe in our lifetime. Two American administrations have enabled the war. It’s long past time to stop.

According to the Stockholm International Peace Research Institute, the preeminent think tank tracking arms sales, Saudi Arabia was the world’s largest arms importer from 2015 to 2019, the first five years of the Yemen war. Its imports of major arms increased by 130% compared with the previous five-year period. Despite the wide-ranging concerns in the U.S. and the United Kingdom about Saudi Arabia’s military intervention in Yemen, both Washington and London continued to export arms to Saudi Arabia from 2015 to 2019. A total of 73% of Saudi Arabia’s arms imports came from the U.S., and 13% from the U.K.

#### Although the Israeli and Russian campaigns have most of the world and debate community’s attention, arms sales to Saudi Arabia are continuing under the Trump administration.

Department of State ’25 [US Department of State. Jan 20 2025. US Department of State “U.S. Security Cooperation With Saudi Arabia Fact Sheet” https://www.state.gov/u-s-security-cooperation-with-saudi-arabia/] // ***mosu*Q**

The United States and Saudi Arabia are working collectively toward the common goal of a stable, secure, and prosperous Middle East. Saudi Arabia is a vital U.S. partner on a wide range of regional security issues, and a founding member of the Global Coalition to Defeat ISIS. Saudi Arabia hosted the inaugural conference in Jeddah in September 2014, enacted and continues to enforce tough criminal penalties for those facilitating terrorism or traveling to fight in foreign conflicts, and issued multiple statements against ISIS/Da’esh as “Enemy Number 1 of Islam.” Saudi Arabia also leads Coalition efforts to disrupt ISIS financial and facilitation networks and build Coalition members’ capacity to identify and target such networks by increasing information sharing and developing structural measures to counter illicit financial flows. The United States works with Saudi Arabia and other members of the Gulf Cooperation Council to increase cooperation on border security, maritime security, arms transfers, cybersecurity, and counterterrorism.

Supported by U.S. security cooperation efforts, the Kingdom foiled numerous terrorist attempts against Saudi and foreign targets and successfully deterred external attacks. The United States remains committed to providing the Saudi armed forces with the equipment, training, and follow-on support necessary to protect Saudi Arabia, and the region, from the destabilizing effects of terrorism, countering Iranian influence, and other threats. Toward that end, the United States will continue to collaborate with Saudi Arabia to improve training for special operations and counterterrorism forces, integrate air and missile defense systems, strengthen cyber defenses, and bolster maritime security.

The U.S. has $126.6 billion in active government-to-government sales cases with Saudi Arabia under the Foreign Military Sales (FMS) system. Since the May 2017 signing of the $110 billion commitment to pursue Saudi Armed Forces modernization, we carried out an increase in FMS and DCS cases. To date, this initiative resulted in over $27 billion in implemented FMS cases.

FMS sales notified to Congress are listed here , and recent and significant prior sales include: Terminal High Altitude Area Defense (THAAD) anti-missile systems; Patriot Advanced Capability-3 air defense systems; follow-on support for the Royal Saudi Air Force; M1A2 Abrams Main Battle Tanks; High Mobility Multi-Purpose Wheeled Vehicles (HMMWVs); Light Armored Vehicles; F-15SA, C130J, and KC-130J aircraft; AH-64D Apache, UH-60M Blackhawk, AH-6I Light Attack, MH-60R Multi-Mission, and CH-47F Chinook helicopters; Multi-Mission Surface Combatant ships; Mark V patrol boats; Airborne Warning and Control System (AWACS) modernization; Phalanx Close-In Weapons System; modernization of the Saudi Arabian National Guard, and Javelin and TOW-2B missiles.

Since 2014, the U.S. also authorized the permanent export of over $8.2 billion in defense articles to Saudi Arabia via the Direct Commercial Sales (DCS) process. The top categories of DCS to Saudi Arabia include: tanks/military vehicles, military electronics, munitions, and launch vehicles.

The Saudi-led Coalition is supporting the legitimate Yemeni government and defending its territory from attacks on civilian targets by Houthi rebels. The United States continues to work with the Saudi-led Coalition to minimize civilian casualties in this conflict. The Saudi government is taking measures to improve its targeting processes and also adopted mechanisms for investigating alleged incidents of civilian casualties and addressing them operationally, as appropriate.

The Saudis received and will continue to receive training from U.S. forces on Law of Armed Conflict (LOAC), air-to-ground targeting procedures, and best practices for mitigating the risk of civilian casualties. Future bilateral and multilateral training is designed to improve the Saudi security forces’ understanding of identifying, targeting, and engaging correct targets while minimizing collateral damage and civilian casualties.

#### Trump has also re-designated Yemen as a terrorist state and ordered strikes against Houthis, possibly revitalizing the Saudi-led Coalition’s campaign and the United States’ position as arms supplier and accomplice to future atrocities.

Ware & Asmar ’25 [Jacob Ware, professor at Georgetown University’s Edmund A. Walsh School of Foreign Service and at DeSales University; research fellow at the Council on Foreign Relations; MA in security studies from Georgetown; MA (Hons) in international relations and modern history from the University of St Andrews; and Amir Asmar, instructor of Middle East strategic issues at the National Intelligence University; nonresident senior fellow with the Scowcroft Middle East Security Initiative at the Atlantic Council’s Middle East programs; former national intelligence fellow at the Council on Foreign Relations; multiple former positions at the Defense Intelligence Agency. Mar 19 2025. Atlantic Council “Trump’s military cudgel in Yemen will not achieve US regional objectives” https://www.atlanticcouncil.org/blogs/menasource/trump-military-yemen-will-not-achieve-us-regional-objectives/] // ***mosu*Q**

On 15 March, US President Donald Trump announced a series of strikes on targets associated with the Yemeni Islamist group Ansar Allah—led by the Houthi family—in the most significant military operation of his second term so far. The strikes may be only the start of a campaign against the Houthis. They follow one of the less publicized moves from Trump’s first week back in office, when he re-designated Yemen’s Ansar Allah as a “foreign terrorist organization”(FTO) over its Gaza war-related attacks on Israel and shipping in the Red Sea. “The Houthis’ activities threaten the security of American civilians and personnel in the Middle East, the safety of our closest regional partners, and the stability of global maritime trade,” the White House order said.

ABut the Trump administration risks falling into a US pattern dating back to the post-9/11 Global War on Terrorism, opting for short-sighted military action at the expense of constructing a sustainable plan for Yemen. Multiple US administrations have neglected the conflict’s complexities, leading to failure in executing an enduring strategy that protects Washington’s interests in Yemen and the wider region. Yemen’s many overlapping conflicts and dire humanitarian conditions will not be resolved by US military action, which will likely further institutionalize war, weapons flows, foreign interference, fragmentation, weak governance, and humanitarian catastrophe.

### Aff---ICC---Restorative Justice ADV

#### Restorative Justice and Transitional Principles can be applied to ensure equality in the ICC. These frameworks focus on the importance of victims being a part of the process so that they can ensure reconciliation.

Sarkin 25 [(Jeremy Julian Sarkin, Why the International Criminal Court Should Apply Restorative Justice and Transitional Justice Principles to Improve the Impact of Its Criminal Trials on Societies around the World, International Journal of Transitional Justice, February 22, 2025. ijaf005, <https://doi.org/10.1093/ijtj/ijaf005>. Pgs. 11-13.) kb]

Greater Victim Participation

**Greater victim participation in the ICC is** however **essential.** It is true that, in a significant breakthrough within the field of international criminal law,77 the ICC provides victims with a more active role in trials and grants them the status of participants in criminal proceedings. This contrasts with the past, when they were mere witnesses tasked with providing the necessary facts to build a case. These new features of the ICC significantly empower victims within the Court’s proceedings and do contribute somewhat to fostering reconciliation in the transitional settings where the ICC exercises its jurisdiction.

However, such features, despite occupying a central role in restorative justice, do not possess a restorative nature on their own.78 This is not least because they have already been generally recognized within the framework of conventional criminal justice and constitute integral components of transitional justice. Moreover, in practice, their effective implementation has been constrained, most notably, among other factors, by a general limitation of funds in the ICC and by the formality and inflexibility that characterize the Court’s typically conventional criminal proceedings. In the case of victim participation, this is exemplified by the large number of individuals who may qualify as victims due to the mass nature of the crimes. This has led to the use of legal representatives, which detracts from direct participation. Thus, it has been proposed that victim participation in the ICC would more accurately be described as a profoundly retributive approach that includes victim participation.79

Thus, if victims seek such processes, **there also should be a more direct role for victims and direct interaction between victim and perpetrators.** The Special Court of Sierra Leone denied this when victims sought to have the perpetrators appear before the Sierra Leone Truth Commission. That would have allowed some form of restoration to occur. More broadly**, such processes would allow victims and perpetrators the opportunity to engage in truth recovery and reconciliation.**

In this regard, there has been criticism of the Court for its indirect victim participation,80 its use of constrained legal representation,81 its inability to allow meaningful victim participation as in the Bemba trial chamber ruling82 and its failure to fully give expression to victims’ right to direct participation pronounced in the Lubanga decision.83 The role of the Court in this respect has been lampooned as ‘short-sighted,’ and for making the Court appear both ‘utopian’ or ‘hypocritical.’84 These criticisms highlight significant shortfalls of the ICC in its goal of becoming more restorative.

A Greater Victim-Centred Approach

As can be seen above, the **ICC’s restorative approach must be victim-centred so that victims can participate in the proceedings meaningfully.** As such, their dignity and relationship with their community is restored.85 At present, the ICC’s trial proceedings only involve the indirect participation of victims through legal representation, who are not even party to the trial in a strict sense.86 This legal representation makes submissions to the Court but remains separate and distinct from the defence and prosecution teams.87 The humanity and experience of victims are thus constrained to these submissions. Therefore, it can be argued that this form of victim participation falls short of the direct and meaningful benchmarks. Logically, assessing every single victim of mass atrocity crimes like ethnic cleansing and genocide would render the ICC’s proceedings drawn out and would impede the urgency that justice demands. However, this is no excuse for such limited victim participation.

In the Gambia v Myanmar genocide case, Myanmar deliberately chose a strategy that sought to deny the existence of a distinct Rohingya people.88 The Agent for Myanmar, Aung San Suu Kyi, and multiple other top military and government officials refused to use the word ‘Rohingya’ in reference to the victims and survivors of such a brutal genocide. In response, the Canadian government financed a group of Rohingya people to travel to The Hague and attend the trial. The **physical presence of Rohingya in the courtroom served as an ‘obdurate material refutation’ of Myanmar’s alleged invisibility and denial of the Rohingya existence.** While **Myanmar had planned to exclude the Rohingya from the bounds of sovereign state protection, it could not deny their physical existence**. Unfortunately, this case’s proceedings were disrupted by the pandemic, and physical occupation of the courtroom by the Rohingya became nearly impossible. Thus, the Gambia’s legal team secured video conference trial proceedings. While their presence was not physical, the fact that some Rohingya were able to attend these virtual proceedings still evoked the presence of Rohingya in the Court. By allowing victims access to the Court, the International Court of Justice was able recognize the Rohingya not as passive and ‘mute’ **victims but as active witnesses to and survivors of their own experience of mass atrocity crimes**.89sß

### Aff---ICC---Soft Power ADV

#### There is a lot of literature on the ICC and Rome Statute that discusses international norms, governance, cooperation, justice, and so on. This evidence sums up the literature base in a concise, broad stroke.

Manurung ’24 [Felix Broson Manurung, writer for ModernDiplomacy; BA, political science, international relations, University of Brawijaya; MA, international relations, Universitas Gadjah Mada. June 20 2024. ModernDiplomacy “The Importance of International Criminal Law Norm in Fostering International Cooperation” https://moderndiplomacy.eu/2024/06/20/the-importance-of-international-criminal-law-norm-in-fostering-international-cooperation/] // ***mosu*Q**

As the world becomes increasingly interconnected, international cooperation has emerged as an important aspect of global governance, allowing states to deal more effectively with complex transnational issues (Song, 2012). Within the framework of international cooperation, one of the fundamental components that can significantly shape the way states engage and cooperate in solving problems of global interest is international norms (Shany, 2012). International norms are generally accepted rules that define how states should act in the realm of international politics. They are elements of the social structure that inform judgments about foreign policy and are enforced by a logic of appropriateness about what constitutes appropriate behavior for a state. These norms are not just common behaviors. They are maintained by mutual agreement and are deeply embedded in routine international interactions, which influence decision-makers about what to do in a certain situation (Raymond, 2020).

Why do norms matter?

There are several reasons why international norms are so important. First, norms are important for creating stability and unity. In an anarchic international political system, norms can provide stability and unity because of certain expectations. Norms also enforce change when norm shifts restructure the international community (Finnemore and Sikkink, 1998). Second, international norms are important as constraints on foreign policy. They can constrain foreign policy choices and behavior, and even alter states’ conceptions of national interest (Shannon, 2017). Third, the ambiguity and plurality of meanings of norms used as a result of the enactment of norms that are generally ambiguous in different contexts can encourage human diversity and the plurality of global life (Linsenmaier et al., 2021). Fourth, international norms are important because they often reflect ethical considerations, such as respect for human rights (Jain, 2022). The last reason is that norms are important as regulation or regulation of interactions. International norms regulate interactions among autonomous political entities even in the absence of a central authority. Norms have facilitated trade, commercial mediation, exchange of ambassadors, and other forms of cooperation (Raymond, 2020).

International Criminal Law Norm

One of the most influential international norms is International Criminal Law. International criminal law is the law that governs the procedures for the investigation, prosecution and punishment of certain categories of acts considered to be significant crimes, and holds perpetrators individually accountable for their actions. Given the gravity of certain offenses, which are classified as war crimes, it is particularly important to suppress grave violations of international humanitarian law in order to maintain respect for this branch of law. International criminal law is based on a number of fundamental principles. The need to coordinate respect for these principles is becoming increasingly urgent as international crimes incorporate extraterritorial elements, necessitating increased interaction between states. States are required to maintain these principles while adhering to the principles of their own national criminal law and the specific principles described in the instruments of the regional bodies of which they are members (ICRC, 2014).

International criminal law norms have provided a common legal basis for states to cooperate in addressing egregious human rights violations and mass atrocities (Song, 2012). The codification of these norms in various international treaties and conventions has established universal standards of behavior that transcend national boundaries, creating a shared understanding of unacceptable behavior and a shared responsibility to address such violations. This clearly defined framework of international criminal law has been a catalyst for increased cooperation between states, as they recognize the importance of working together to investigate, prosecute and hold accountable those responsible for the most serious offenses, regardless of their position or nationality (Shany, 2012).

International Criminal Law norms are essential in promoting international cooperation. They play an important role in addressing transnational crimes such as drug trafficking, money laundering, cybercrime and terrorism, which transcend national borders (Ilchyshyn, 2023). They also play an important role in preventing serious violations of international humanitarian law, particularly war crimes, which the international community as a whole has an interest in punishing. In addition, international criminal law norms encourage multilateral cooperation, which is crucial in countering the rapidly changing landscape of organized crime (Dandurand & Jahn, 2021). Finally, international criminal law norms also facilitate justice and reparations by providing evidence that can link crimes to individuals, securing funds for possible compensation to victims, covering legal aid costs, and contributing to the prevention of further crime. In short, ICC norms are essential in encouraging international cooperation, promoting ethical behavior, and maintaining order in the international community (ICC, n.d.).

An example of an international criminal law norm that encourages international cooperation is the United Nations Convention against Transnational Organized Crime (UNTOC). The practical implementation of Article 27 on UNTOC law enforcement cooperation is the focus of the 2023 Constructive Dialogue on International Cooperation discussions. The Convention encourages cooperation between states to combat transnational organized crime (UNODC, 2023). Another example is the International Criminal Court (ICC). Since the Rome Statute entered into force in 2002, the ICC has continued to work to promote cooperation, complementarity and universality, which are essential components for the effective functioning of the Rome Statute legal system. The ICC has hosted more than 50 events, gathering more than 1,000 external participants from over 90 states and non-state actors, along with more than 40 international and regional organizations, national bar associations, and civil society organizations. These examples illustrate how International Criminal Law norms can foster international cooperation by encouraging dialogue, collaboration, and joint efforts in addressing transnational crime. They also highlight the importance of multilateral cooperation in the international crime prevention and criminal justice agenda (ICC, n.d.).

In summary, the importance of International Criminal Law (ICL) norms in fostering international cooperation cannot be overstated. These norms serve as the backbone for a collective legal response to transnational crimes and serious violations of humanitarian law, which no single nation can combat effectively on its own. By establishing common legal standards and procedures, ICL norms enable countries to work together seamlessly, whether it’s through extradition treaties, mutual legal assistance, or joint investigations. The United Nations Convention against Transnational Organized Crime (UNTOC) and the International Criminal Court (ICC) are prime examples of how these norms facilitate cooperation across borders. UNTOC provides a platform for law enforcement collaboration, while the ICC’s efforts to promote cooperation, complementarity, and universality have led to significant advancements in international criminal justice. These institutions and their associated norms not only help bring perpetrators to justice but also deter future crimes by signaling an international commitment to uphold the rule of law. Ultimately, ICL norms are vital for creating a safer, more just world by encouraging nations to unite in their pursuit of justice and accountability.

#### It's a two-fer. The US is key to stabilizing international norms; partaking in international norms is key to US soft power.

Kuo ’24 [Felisha Kuo, . May 10 2024. Bruin Political Review “Analyzing the United States in International Law: A Case for U.S. Membership in the International Court of Justice (ICJ) and International Criminal Court (ICC)” <https://bruinpoliticalreview.org/articles?post-slug=analyzing-the-united-states-in-international-law-a-case-for-u-s-membership-in-the-international-court-of-justice-icj-and-international-criminal-court-icc->] // ***mosu*Q**

Despite being the global superpower with the ability to evade international law, the United States still has stakes to consider when it comes to its image and soft power. Unlike hard power, which illustrates military might and economic wealth, American soft power is its ability in diplomacy to appeal to other states, such as through cultural influences or the attractiveness of American democratic values. Part of what influences the level of soft power is the public image of the State. However, the United States is losing grip on its influence on the global platform. Immediately after World War II, the United States was able to easily push forth its agenda, convincing its allies to support its policies by appealing to them with a vision of democracy and human rights without the use of military force or economic coercion. This is not the case today and the United States should be concerned with the soft war it is losing as its image plummets on the international stage [1].

Historically, the United States has a record of signing treaties and promptly withdrawing or refusing to ratify UN Security Council treaties regarding human rights. Its track record is more than horrific when it comes to human rights violations. For example, the United States lost its seat in the UN Human Rights Council in 2002 after the Bush Administration insisted on constructing a nuclear missile defense system– a flagrant violation of the 1972 Anti-Ballistic Missile Treaty. A few years later, the U.S. alone abstained from voting in a 2009 UNSC resolution calling for a ceasefire in the war in Gaza. This trend of violating international law and unilateralism continues today as the U.S. repeatedly vetoes the UNSC resolutions calling for a humanitarian ceasefire in Gaza. Egypt’s foreign affairs minister warns that the U.S. “is losing a tremendous amount of credibility in the Arab world” as it continues to support Israel militarily [2].

In the international arena, these actions translate to the United States abandoning multilateralism and international law. But even in the glaring hypocrisy of its actions, the past and present United States administrations have been reluctant to join or support the ICC. When first established, the Clinton administration, fearing that the ICC’s jurisdiction would infringe on the U.S.’ sovereignty over its military personnel and citizens, considered the statute incompatible with the U.S. Constitution, further citing an unchecked power and politicization. U.S. hostility towards the ICC grew during the Bush administration. In the same year the ICC started its operations, President Bush signed the so-called “Hague Invasion Act,” which “authorizes the President to use all means necessary to bring about the release of covered U.S. persons and allied persons held captive by… the Court” [3]. The law then takes additional steps to ensure that its troops get immunity from prosecution, threatening the withdrawal of military assistance from countries ratifying the ICC treaty [4]. This obstructs the ICC from prosecuting any United States citizen, rendering international law inapplicable to Americans.

In addition to the hostility towards ICC investigations concerning the United States, Congress has attempted to obstruct ICC investigations in its allies, such as in 2021 when Secretary of State Antony Blinken stated the United States “firmly opposes and is deeply disappointed” by the decision to open an investigation into the Palestine situation [5].

To regain its soft power, the United States should ratify the Rome Statute. The United States could regain its legitimacy as a legal actor in international law among global actors, and increasing legitimacy is an investment in soft power. Furthermore, by signing the Rome Statute, the United States can help reshape the ICC’s legal infrastructure in the direction of the United States’ interests and address its current critiques of the Court. As the Court’s efficacy depends heavily on the amount of financial and legal resources its member states are willing to contribute, the United States could gain opportunities to explore changes to the Court’s structure.

### Aff---ICC---War ADV

#### The clash in this area would be endless as deterrence theories are used consistently across the literature base to posit that the Rome Statute plays a hand at chilling warmaking from signatory parties. This extends to the United States.

Vindman ’23 [Yevgeny Vindman, former colonel in the U.S. Army JAG Corps who served as deputy legal advisor on the White House National Security Council from 2018 to 2020. Apr 11 2023. Foreign Policy “It’s Time for the United States to Join the ICC” https://foreignpolicy.com/2023/04/11/russia-putin-ukraine-war-icc-united-states-crimes-arrest-warrant/] // ***mosu*Q**

But many short-sighted critiques of the ICC miss the larger point that support for this body is not just the morally correct choice; it’s also the strategically correct one for U.S. foreign policy. A demonstrated commitment to accountability will strengthen the United States’ own institutions and make U.S. leadership of international institutions more credible and viable. Further, ICC membership would potentially chill U.S. political leaders’ appetite for unjust wars that could land them in dicey moral and legal terrain. An added layer of restraint and accountability may prevent future foreign-policy follies, whether by the White House or even by an expansionist China eyeing Taiwan.

#### Iraq can be used as an empiric example to apply this theory of restraint due from threats of accountability or repercussions.

Kuo ’24 [Felisha Kuo. May 10 2024. Bruin Political Review “Analyzing the United States in International Law: A Case for U.S. Membership in the International Court of Justice (ICJ) and International Criminal Court (ICC)” <https://bruinpoliticalreview.org/articles?post-slug=analyzing-the-united-states-in-international-law-a-case-for-u-s-membership-in-the-international-court-of-justice-icj-and-international-criminal-court-icc->] // ***mosu*Q**

The ICC operates under the principle of complementarity, giving the state of which the accused is a national priority jurisdiction [6]. It is only when states do not have the infrastructure or the willingness to investigate amid blatant human rights violations the ICC can instigate an investigation. Considering the United States’ well-established military court system, an ICC investigation on U.S. nationals is highly unlikely. Joining the ICC, then, will encourage senior U.S. officials to make more careful choices when it comes to decisions that involve military force. With 750 military bases across eighty different countries, the United States’ large military presence must be accompanied by thorough decision-making as any use of military force could further escalate ongoing conflicts.

Reflecting on the history of American military adventurism, whether in Vietnam, Iraq, or Afghanistan, most are wars of choice. Given that the choice rests on high-level officials and military personnel, considering the legal liability encourages careful consideration of the human and financial costs of war. It will also encourage better attempts at trialing and self-enforcing military guidelines when it comes to war crimes.

Take the Iraq War in 2003, where a U.S.-led coalition overthrew the Saddam Hussein government, justifying the intervention by citing evidence for weapons of mass destruction. Seven years and more than $3 trillion U.S. dollars later, the defeat of the Iraqi army signaled the end of the war [7]. However, the U.S.’ supposed evidence of weapons of mass destruction and biological weapons were unfounded. “The Americans lost a lot of credibility from this war,” says Dr. Karin von Hippel, the director-general of the Royal United Services Institute think tank in an interview with BBC.

The Americans did not just lose credibility in terms of intelligence. Allegations of gross human rights violations in secret detention centers and the indiscriminate cluster bombings against the U.S. followed. Legal experts of international law concluded that the attacks were disproportionate and indiscriminate, violating international humanitarian law which prohibits “attacks which employ a method or means of combat which cannot be directed at a specific military objective,” [8].

Now, 13 years after the end of the war, the United States has shielded its military officers from international law by staunchly opposing investigation attempts by the ICC. Even in domestic courts, the U.S. has failed to instigate an investigation of high-ranking U.S. officials, and no senior U.S. officials have been trialed or brought to justice. Had the United States considered international legal repercussions under pressure from the ICC before deciding to invade Iraq, the outcome could have involved fewer civilian deaths. ICC membership will also pressure the United States to conduct a more thorough trial of its military officials and learn to avoid fighting another unnecessary war.

#### Affirmative options for war impacts extend past US self-restraint. The ICC has been taking steps to prosecute Putin for the war in Ukraine. The timeliness of these warrants and their implications mean fairly straightforward arguments exist for the US’ ratification of the Rome Statute creating necessary support to end the conflict.

Vindman ’23 [Yevgeny Vindman, former colonel in the U.S. Army JAG Corps who served as deputy legal advisor on the White House National Security Council from 2018 to 2020. Apr 11 2023. Foreign Policy “It’s Time for the United States to Join the ICC” https://foreignpolicy.com/2023/04/11/russia-putin-ukraine-war-icc-united-states-crimes-arrest-warrant/] // ***mosu*Q**

On March 17, the International Criminal Court (ICC) took a momentous step. For only the second time in its history, the ICC issued a public arrest warrant for a sitting head of state: Russian President Vladimir Putin. No sanctions, weapons, or ammunition delivered to Ukraine since the start of Russia’s full-scale invasion in February 2022 has targeted Putin as directly as this action. And even if the immediate prospect of Putin appearing in the dock at the Hague is remote, there will still be significant ramifications resulting from the ICC’s announcement.

Founded in 1998 after nearly a century of major-power wars and conflicts, the ICC was designed to hold individuals accountable for genocide, war crimes, and other serious international crimes. The ICC is a critical pillar of the rules-based international order and has played an important role in getting justice for victims of regimes that flaunt human rights and international norms. However, despite touting the importance of this order and having called for accountability for Russia’s war crimes, the United States has declined to join or recognize the jurisdiction of the ICC in the 25 years since its founding.

Even if the arguments against cooperation with the ICC were compelling in the past, the costs of not supporting the court are now too high in a world where authoritarian empires are once again embracing aggressive neocolonial warfare against their sovereign neighbors. The time for straddling the fence is over: The United States should cease its objections and robustly support—and perhaps even finally join—the ICC. Doing so will not only benefit justice efforts in Ukraine but will also strengthen U.S. foreign policy and international leadership for decades to come.

#### Failing to support the pursuit of Russia sets a precedent that leads to more war.

Odarchenko & Zaburanna ’24 [Kateryna Odarchenko, ; and Lesia Zaburanna, . Oct 8 2024. Atlantic Council “Ending Russian impunity: Why Ukraine needs justice as well as security” https://www.atlanticcouncil.org/blogs/ukrainealert/ending-russian-impunity-why-ukraine-needs-justice-as-well-as-security/] // ***mosu*Q**

With no end in sight to the Russian invasion of Ukraine, some members of the international community are now advocating for a negotiated settlement that risks rewarding Moscow for its aggression. The idea of offering the Kremlin concessions is dangerously shortsighted and overlooks the central importance of justice in any future peace settlement. Failing to hold Russia accountable for crimes committed in Ukraine would set a disastrous precedent for the future of international security, and would create the conditions for more war.

Since the start of Russia’s full-scale invasion, the Ukrainian authorities have been vocal about the need to document Russian war crimes and bring the perpetrators to justice. Many of Kyiv’s partners have provided extensive backing for these efforts. Meanwhile, the International Criminal Court in The Hague has initiated investigative proceedings, and has issued a number of warrants for the arrest of senior Kremlin officials including Russian President Vladimir Putin on war crimes charges. This trend is welcome and must continue.

The pursuit of justice for Russian war crimes is not just a matter of upholding the law. It is a key component of Ukraine’s broader strategy to safeguard its sovereignty and rebuild its war-torn society. If Ukraine is unable to secure justice for the millions who have suffered as a direct result of Russia’s invasion, this could seriously weaken the legitimacy of the Ukrainian authorities and lead to the long-term destabilization of the country.

Crucially, enforcing accountability for atrocities will also send a powerful signal to Russia and the wider international community that war crimes will not be tolerated. The Russian invasion of Ukraine has sparked the largest European war since World War II, and has directly violated many of the core principles of international law. If the invasion ends in an ugly compromise that leaves Moscow unpunished, much of the progress made since 1945 will be undone.

Russia currently stands accused of war crimes in Ukraine including mass killings, deportations, torture, the systematic abduction of children, and the deliberate targeting of civilian infrastructure. However, previous generations of Russians have faced very similar war crimes accusations without ever encountering legal consequences. This has helped foster a sense of impunity in modern Russian society that has paved the way for the atrocities currently taking place in Ukraine. Addressing Russian impunity must therefore be central to any meaningful peace process.

#### There is potential for backslide arguments to be made for the larger rules-based IO.

Vindman ’23 [Yevgeny Vindman, former colonel in the U.S. Army JAG Corps who served as deputy legal advisor on the White House National Security Council from 2018 to 2020. Apr 11 2023. Foreign Policy “It’s Time for the United States to Join the ICC” https://foreignpolicy.com/2023/04/11/russia-putin-ukraine-war-icc-united-states-crimes-arrest-warrant/] // ***mosu*Q**

Since World War II, the United States has helped build, reinforce, and lead an international order in which countries play by predictable rules. Conflicts, at least between major powers, are resolved through negotiation and consensus instead of force. This system of postwar institutions provides a bedrock of stability that has allowed for a climate of relative peace among global powers and economic prosperity for the American public. Russia’s aggression in Ukraine is the most serious attack on this system since at least the collapse of the Soviet Union and the greatest threat to peace on the European continent since World War II. As one of the guardrails put in place to maintain the rules-based international order, if the ICC’s warrant is ignored, then the other remaining guardrails to prevent illegal warfare may erode, too. Inversely, abiding by international legal norms, including those enforced by the ICC, has the potential to walk back the damage Russia has already done to the rule of law. If the global community can put up a united front to hold Russia accountable for its crimes, other would-be aggressors—especially Russia’s backers in Beijing—would take note.

### Aff---ICC---Solvency

#### U.S. ratification of the Rome Statute improves ICC credibility.

Martin Fee 23, candidate for the degree of LLM in Human Rights and Transitional Justice from Ulster University, 2023, “And Justice for All? How the Relationship Between the US and the ICC Since 2017 Has Affected the Legitimacy of the ICC and the Credibility of the US in International Criminal Justice,” Dissertation, pp. 63-64, https://nihrc.org/assets/uploads/Martin-Fee.-The-US-and-the-ICC.pdf.

The US-ICC relationship since 2017 damaged the ICC’s legitimacy and the US credibility in ICJ. The US should repeal ASPA and ratify the Rome Statute. It appears logical that if major powers, particularly the US, ratified the Rome Statute, perceptions of the ICC’s legitimacy worldwide would likely improve. The US is unlikely to make these steps at this stage. Undoubtedly, many would see this as bestowing credibility on the US in ICJ, which could seriously bolster the fight against impunity in the long term.

#### This Aff area could make for some really interesting case debating that we seem to be lacking lately (see: any policy judge’s paradigm). A few different factors can be large solvency hits against an Aff about the Rome Statute/ICC. Some relate to fundamental issues with the Court, like its structure within the United Nations, which has issues itself.

Isakoff ’24 [Mickey Isakoff, judicial law clerk; JD, Cleveland State University College of Law; BA, communications, Ohio State University. Apr 6 2024. *Et Cetera, Cleveland State Law Review, Vol 72* “Remodeling the Fruitless Link Between the Security Council and the International Criminal Court: Why Amending the UN Charter Could be the Greatest Tribute International Politics Has Ever Paid to International Law” https://engagedscholarship.csuohio.edu/cgi/viewcontent.cgi?article=1024&context=etcetera] // ***mosu*Q**

One way the ICC can lawfully exercise jurisdiction is by referral—in the form of a resolution—from the UN Security Council. The language of Charter of the United Nations and the Rome Statute collaborate to provide an avenue for the Security Council to grant the ICC jurisdiction over atrocity crime situations. Such resolutions grant the ICC full jurisdiction over the suspected criminal individual(s), regardless of whether the party has per se accepted ICC jurisdiction.

But, there is a problem. The ICC has been accused to be “all bark, no bite” by some, and as being “a giant without limbs” by others because of its scant conviction record. This has induced calls to amend or abolish the ICC. Even more troublesome is the ICC’s less-than-fruitful association with the Permanent Five members of the Security Council: China, France, Russia, the United Kingdom, and the United States. The incessant disagreement among the Permanent Five has, in effect, tied the jurisdictional hands of the ICC, permitting dozens of perpetrators of atrocity crimes to go without proper adjudication by the ICC.

International law is inherently political, and it can be difficult, if not impossible, to separate Security Council political interests from legal analysis. Therefore, a dramatic reform of pertinent articles of the UN Charter must be considered in an effort to both resolve Security Council paralysis and foster greater influence of the ICC.

The Security Council’s damaging influence on the utility of the ICC has its roots in two sources: (1) the political motives of the Permanent Five and (2), the permissive text of the UN Charter. In statutory terms, those sources are Article 27 of the UN Charter, which empowers each of the Permanent Five with an unrestricted veto when the Security Council is voting to pass a resolution, and Article 41, which affords great deference to the Security Council in determining if an atrocity crime situation is worthy of considering jurisdiction to the ICC. As a result, the Security Council has consistently neglected to draft resolutions—let alone vote on them—concerning alleged crimes and proposing ICC jurisdiction, harmfully keeping the ICC on the sidelines.

#### This provides a clear approach for the Neg to debate solvency. If the Court can’t actually *do* anything, what good is the US’ ratification? Further to this point, links/advantages based on the *perception* of the US holding itself accountable for international norms or order can be argued through the same perception lens---the power of the Security Council veto is a pretty serious issue. The Affirmative may be able to fiat that the US ratifies the Rome Statute, but are they able to fiat that the US *complies* with it and breaks from its tradition of vetoing every resolution that involves prosecuting it or its allies?

Kuo ’24 [Felisha Kuo. May 10 2024. Bruin Political Review “Analyzing the United States in International Law: A Case for U.S. Membership in the International Court of Justice (ICJ) and International Criminal Court (ICC)” <https://bruinpoliticalreview.org/articles?post-slug=analyzing-the-united-states-in-international-law-a-case-for-u-s-membership-in-the-international-court-of-justice-icj-and-international-criminal-court-icc->] // ***mosu*Q**

Created by the Rome Statute in 2002, the ICC is the first treaty-based court that serves to try four specific crimes: genocide, crime against humanity, war crimes, and the crime of aggression. Unlike past tribunals, the ICC has the power to initiate an investigation without the referral of a State under certain circumstances, which makes it more independent from states. Under the Rome Statute, the United Nations Security Council (UNSC) has the power to pause ICC investigations for up to a year. The United States, equipped with veto power as one of the five permanent members of the United Nations Security Council, has the ability to undermine international law. With its veto power, the United States can vote against the ICC from proceeding with a case, which it has done many times.

#### Another solvency question would be how the Aff interacts with existing US law in the Hague Invasion Act (ASPA) which prevents prosecution of US personnel/citizens and ensures their immunity. Can the Aff fiat that the US and Trump no longer care for laws that protect its personnel/citizens and that they simply stop utilizing immunity already given?

Kuo ’24 [Felisha Kuo. May 10 2024. Bruin Political Review “Analyzing the United States in International Law: A Case for U.S. Membership in the International Court of Justice (ICJ) and International Criminal Court (ICC)” <https://bruinpoliticalreview.org/articles?post-slug=analyzing-the-united-states-in-international-law-a-case-for-u-s-membership-in-the-international-court-of-justice-icj-and-international-criminal-court-icc->] // ***mosu*Q**

In the international arena, these actions translate to the United States abandoning multilateralism and international law. But even in the glaring hypocrisy of its actions, the past and present United States administrations have been reluctant to join or support the ICC. When first established, the Clinton administration, fearing that the ICC’s jurisdiction would infringe on the U.S.’ sovereignty over its military personnel and citizens, considered the statute incompatible with the U.S. Constitution, further citing an unchecked power and politicization. U.S. hostility towards the ICC grew during the Bush administration. In the same year the ICC started its operations, President Bush signed the so-called “Hague Invasion Act,” which “authorizes the President to use all means necessary to bring about the release of covered U.S. persons and allied persons held captive by… the Court” [3]. The law then takes additional steps to ensure that its troops get immunity from prosecution, threatening the withdrawal of military assistance from countries ratifying the ICC treaty [4]. This obstructs the ICC from prosecuting any United States citizen, rendering international law inapplicable to Americans.

#### The ICC’s dropped investigation of the US in Afghanistan could be used to make 2 broad arguments against solvency in this vein---1.) that these roadblocks like the ASPA, sanctions, and Security Council vetoes that are inevitable under Trump *do* disrupt the efficacy of the Court, and therefore the Aff solvency; and 2.) that means solvency based on perception is bad solvency---the US continuing to evade the jurisdiction of the ICC even as a signatory to the Rome Statute could be perceived nothing changing, bringing internal links to norms, accountability, justice, deterrence, etc., into question.

Kalu & Miebaka ’24 [Benjamin Okezie Kalu and Nabiebu Miebaka. 2024. *Advances in Law, Pedagogy, and Multidisciplinary Humanities, Vol 2, No 1* “The International Criminal Court: Analyzing Its Efficacy in Combating International Crimes in the 21st Century” <http://103.133.36.82/index.php/alpamet/article/download/751/486>] // ***mosu*Q**

In 2021, the ICC’s new prosecutor Karim Khan succeeding Fatou Bensouda has decided to drop the investigation relating to international crimes committed by U.S. soldiers and CIA on Afghan soil during the subsistence of the armed conflict as alleged by his predecessor Bensouda. Karim Khan defended his decision by stating that he had arrived at this decision after considering the gravity of crimes committed by the Taliban and the ISIS which will now remain at the center of the investigation (Case, 2023).

The prosecutor’s decision seems justified to some extent in the sense that former president Trump’s administration had adopted a very hostile attitude towards the ICC ever since the former prosecutor Bensouda had decided to prosecute U.S. nationals and due to this hostility it was unlikely that the ICC would have let the investigations and prosecutions in relation to any other case under the Afghan situation to come to fruition. Therefore, sometimes, one ought to trade lesser evil for prosecuting greater evil.

### Neg---ICC

#### Neg teams could argue that joining the treaty on its own is insufficient, since the U.S. views international criminal jurisdiction in a way that’s completely at odds with ICC practice. Without changing other aspects of U.S. foreign policy, joining the treaty could undermine the ICC’s credibility.

Caleb Wheeler 22, Lecturer in Law at Cardiff University, 8 December 2022, “Should the ICC Allow the United States to Become a State Party?” *Opinio Juris*, https://opiniojuris.org/2022/08/12/should-the-icc-allow-the-united-states-to-become-a-state-party/.

The actions and statements of the last five presidential administrations suggest that they do not fully understand what the ICC actually does and that they are not particularly interested in finding out. They have only been interested in engaging with the Court as a tool to be used against others rather than as a real instrument designed to combat impunity. This was made clear in a recent statement by Linda Thomas-Greenfield, the US Ambassador to the United Nations. When asked about trying Putin at the ICC, she responded that it remained available as an option and that the United States has always been supportive of the Court taking action ‘when action is required.’ Implicit in this statement is the idea that holding Americans accountable is never required.

The problem with this approach is that the United States’ understanding of when action is required differs from that of the Court. The ICC was founded on the principle of ending the impunity of individuals committing genocide, war crimes, crimes against humanity and the crime of aggression regardless of their official position or national affiliation. From the Court’s perspective, action is required when it can help achieve that purpose. The United States takes a different approach to deciding when action is required. It only believes in action against its enemies or citizens of those countries that is does not really care about. When the United States or its friends are threatened with prosecution, even in the face of overwhelming evidence of criminality, it rejects that action as an impermissible infringement on sovereignty. In the end, these two approaches are incompatible.

That leaves the Court with a choice. It can either change its mission to secure American membership or stay the course and continue to pursue its goal ending impunity. The first path would likely result in the ICC receiving greater political, intelligence and financial support from the United States, making it easier for the Court to conduct investigations and prosecutions. In exchange, it would almost certainly need to institute a policy exempting American citizens from prosecution in at least some situations. This could lead other states, particularly those that also regularly participate in peacekeeping efforts, to seek similar protections for their own citizens. That would result in the development of a two-tiered jurisdictional structure at the ICC under which individual criminal responsibility would depend as much on the citizenship of the accused as the circumstances surrounding their alleged criminality. Such a change would fundamentally alter the Court’s mission by making full accountability for atrocity crimes an unattainable goal. Until the United States is willing to drop its objections to how the ICC exercises its jurisdiction, the Court is better off without the United States as state party and should resist any attempts it might make to join.

#### The primary substantive objection to ratifying the Rome Statute is the sovereignty DA.

Lee A. Casey 18, Adjunct Professor of Law at the George Mason University School of Law, partner in the law firm of Baker & Hostetler, October 2018, “The Case Against Supporting the International Criminal Court,” https://law.washu.edu/wp-content/uploads/2018/10/The-Case-Against-Supporting-the-International-Criminal-Court.pdf.

The United States should not ratify the ICC Treaty. There are two fundamental objections to American participation in the ICC regime. First, U.S. participation would violate our Constitution by subjecting Americans to trial in an international court for offenses otherwise within the judicial power of the United States, and without the guarantees of the Bill of Rights. Second, our ratification of the Rome Treaty would constitute a profound surrender of American sovereignty, undercutting our right of self-government – the first human right, without which all others are simply words on paper, held by grace and favor, and no rights at all.

#### Critics argue that the subjective nature of human rights law gives broad latitude for the ICC to engage in arbitrary or politically motivated prosecutions that undermine U.S. foreign policy interests.

Lee A. Casey 18, Adjunct Professor of Law at the George Mason University School of Law, partner in the law firm of Baker & Hostetler, October 2018, “The Case Against Supporting the International Criminal Court,” https://law.washu.edu/wp-content/uploads/2018/10/The-Case-Against-Supporting-the-International-Criminal-Court.pdf.

Significantly, in their report the prosecutors openly acknowledged the very elastic nature of the legal standards in this area, further highlighting the danger that the United States will be the subject of such politically motivated prosecutions in the future: “[t]he answers to these question [regarding allegedly excessive civilian casualties] are not simple. It may be necessary to resolve them on a case by case basis, and the answers may differ depending on the background and values of the decision-maker. It is unlikely that a human rights lawyer and an experienced combat commander would assign the same relative values to military advantage and to injury to noncombatants. Further, it is unlikely that military commanders with different doctrinal backgrounds and differing degrees of combat experience or national military histories would always agree in close cases.”8

These are, in fact, “will build to suit” crimes. Whether prosecutions are brought against American officials will depend entirely upon the motivations and political agenda of the ICC.

#### There’s also a strong politics DA link. Conservatives have opposed the ICC since its inception.

Caleb Wheeler 22, Lecturer in Law at Cardiff University, 8 December 2022, “Should the ICC Allow the United States to Become a State Party?” *Opinio Juris*, https://opiniojuris.org/2022/08/12/should-the-icc-allow-the-united-states-to-become-a-state-party/.

A great deal of what each American president has said about the ICC is rhetoric directed at galvanising support amongst their political base. This is particularly true of the two republican presidents, Bush and Trump, whose position on the Court was largely formed by John Bolton. Bolton was a protégé of former republican Senator Jesse Helms, a leader of the conservative movement in the United States and vehement opponent of the ICC. Like Bolton, Helms also railed against unaccountable international prosecutors and judges and once stated during a meeting of the Senate Committee on Foreign Relations that any exercise of ICC jurisdiction over American citizens would be ‘nonsense’. He went on to say that the Court represents a threat to the national interests of the United States and that the country should actively oppose the ICC ever coming into being. During the same meeting, Senator Rod Grams referred to the Court as ‘a monster’ that needed to be slain. These views reflect the thinking of many American conservatives about the ICC, and the criticisms levelled against the Court during the Bush and Trump administrations were little more than the espousal of that long-standing position.

#### The U.S. could address the aims of the Rome Statute without joining the treaty by adopting domestic legislation.

David Scheffer 23, former U.S. Ambassador at Large for War Crimes Issues, Senior Fellow at the Council on Foreign Relations and Professor of Practice at Arizona State University, 17 July 2023, “The United States Should Ratify the Rome Statute,” *Lieber Institute*, https://lieber.westpoint.edu/united-states-should-ratify-rome-statute/.

Lawmakers still have work to do on complementarity. For many years, Senator Durbin has advanced legislation to fill the gaps in federal criminal law for genocide, war crimes, and crimes against humanity. If the gaps can be filled, then the United States can demonstrate its capacity to investigate and prosecute the atrocity crimes found in the Rome Statute and thus, if addressed properly, avoid ICC scrutiny. This is the same goal shared by our allies, which are almost all States Parties to the Rome Statute, and many have amended their criminal codes accordingly.

Durbin has almost reached the finish line. Laws of essentially universal jurisdiction have been adopted for commission of genocide and war crimes. The next step should be the Crimes Against Humanity bill, which Durbin introduced on July 12 as an amendment to S. 2226 authorizing appropriations for fiscal year 2024 for the Department of Defense. One should not expect a mirror image of Article 7 of the Rome Statute in the Durbin bill, but if adopted it will be the first opportunity to bring crimes against humanity into the federal criminal code.

Administration and Congressional negotiators should be able to get it over the finish line this year given the impetus afforded by the Russia-Ukraine war, the recent enactment of the Justice for Victims of War Crimes Act, and the new legal authority for cooperation with ICC investigations in Ukraine. Senator Charles Grassley of Iowa (R-IA) stepped forward in 2022 to co-sponsor the Justice for Victims of War Crimes Act and thus build bi-partisan support for it.

Even though at present the United States is not a State Party to the Rome Statute, the consequence of these legislative acts would be that any Russian soldier or government official involved in atrocity crimes in Ukraine and who steps foot in the United States, including Disney World with his family, would risk arrest and prosecution in federal criminal court for the crime of genocide, war crimes, or crimes against humanity. Even though President Vladimir Putin, Foreign Minister Sergey Lavrov, and Defense Minister Sergei Shoigu, if they dared to visit the United States, could claim head of state immunity as the most senior officials of the Russian Government and thus avoid sustained arrest, the fact that a federal criminal indictment and an arrest warrant could be issued would present legal jeopardy and public shaming none of them may wish to risk. Of course, if the United States were a State Party to the Rome Statute, any ICC arrest warrant against such individuals should be honored if they were to visit this country.

### Neg---ICC---Engagement

#### Constructive engagement with the ICC can be valuable even without ratification.

Mileno Sterio 19, Professor of Law and Associate Dean for Academic Enrichment, Cleveland-Marshall College of Law, "The Trump Administration and the International Criminal Court: A Misguided New Policy," Case Western Reserve Journal of International Law, vol. 51, no. 1, 2019, pp. 201, https://scholarlycommons.law.case.edu/jil/vol51/iss1/19

IV. Conclusion: A Better Policy Vis-à-vis the ICC: Constructive Engagement

As opposed to stating that the ICC is “dead to us,” as Bolton did,51 it would be in the United States’ interests to constructively engage with the Court and to support its mandate. While the United States is not a state party to the Rome Statute,52 nothing precludes the United States from working to support the work of the Court, in order to foster the global goal of ending impunity. The United States could adopt a pro-ICC policy, which would allow the United States to work with the Court—through funding and other investigative and prosecutorial support. In addition, the United States could encourage other countries to support the ICC in a similar fashion. The United States could also work with the Court as well as with other national jurisdictions to build prosecutorial capacity over atrocity crimes, as well as to enhance prospects for their prevention. Such constructive engagement with the court would not undermine United States’ interests, and would advance both American and global interests in ending impunity and deterring the commission of atrocity crimes. As Jane Stromseth has argued,

We can protect U.S. personnel and U.S. interests effectively without assaulting and undercutting the possibilities for justice for victims of egregious atrocities that the ICC can offer, or its work in catalyzing meaningful accountability at the national level—the primary and most important foundation for justice and the rule of law.53

In sum, Bolton’s newly announced ICC policy is based on erroneous facts. It is misguided, and contrary to the United States’ national security interests and to the global goals of justice.

### Neg---ICC---K

#### ICC has a postcolonial account of sovereignty that undermines non-Western states claims to sovereignty

Moran 23 [(Clare Frances Moran, Ph.D., Aberdeen Law School. Clare Frances is a lecturer in law at Aberdeen Law School, where she teaches and researches international criminal law. She has published widely on the problem of defences in international criminal law, particularly that of duress, and the question of the authority of international criminal law. Clare Frances has held visiting research positions at Columbia University, New York, and the Max Planck Institute for Foreign and International Criminal Law. She is a listed Assistant to Counsel at the International Criminal Court. The Authority of International Criminal Law: A Controversial Concept. Cambridge, United Kingdom; Cambridge University Press, 2023. Pgs. 95-101.) kb]

6.2 a postcolonial understanding of sovereignty

Where colonies may have attempted to break free from colonial rule, both the **international system and colonial rule decreed their inability for self-government**. There is **a stark contrast in approach towards emerging States in Europe and those in Africa, the former of which were afforded great opportunities to self-govern, while the latter were considered incapable of self-government**. Instead, the European powers decreed that they were bound by the ‘sacred trust of civilisation’ 7 to maintain control over colonies. However, **the notion of sovereign equality is deeply flawed, yet has an enduring effect on the system.** Nesiah holds that **‘the state is perhaps the supreme icon of postcolonial modernity**,’ 8 while acknowledging that landscapes can’t be reduced to mere territory, but rather they become ‘constitutive of the heterogenous voices that define conceptions of the nation.’ 9 Nationhood, however, **has been relegated in international law, replaced by statehood as the defining characteristic of those who exercise power on the international stage.** As part of this, as Brolmann highlights, **nationality became key.** Its emergence can be traced to the rise of nation statehood in Italy and Germany, with connected protections created for those in the minority linked to a majority population elsewhere.10 This development was contemporaneous with the development of ‘distinctly artificial’ borders and states in Africa, which Mutua notes as an ‘interruption’ of the natural evolution of political conditions in Africa. Consequently, colonial nations continued to try to aspire to the new system imposed on them; to ‘develop.’ This development is problematic because of its unnaturalness, and he notes that it has not worked frequently.11 Decolonisation, he argues, ‘decolonised the colonial state, not the African peoples subject to it.’ 12 **Self-determination** therefore **was exercised by the West, not those who were subject to it.**

**This inconsistent approach to internationalism**, **dependent entirely on one’s geographical position**, was illustrated in the previous part to this work and can be seen throughout the development of the ideas of sovereignty and statehood: Mill put forward the idea that the Native Americans lacked the capacity for self- government,13 disregarding the established understanding of sovereignty, credited to Salvius Julianus, as being derived from the will of the people.14 Instead, the system continued to focus on the fiction that certain States in existence cannot be ‘fully . . . members of (the) family’ of nations ‘because their civilisation, if any, does not enable them and their subjects to act in conformity with the principles of international law.’15 He characterises mandate or colonised States as under the protection of European States and suggests that the postcolonial position as protectorate prevents them from exercising any political influence.16

Oppenheim offered the example of France colonising Madagascar in 1896, as a good example of a people which ‘relied’ on France’s support for anything they may need.17 Indeed, according to Oppenheim, protection is the first step to annexation. However, he did say that it could be possible for the protected entity to ‘shake off by force’ the protectorate, with the situation of Abyssinia rejecting Italian control and colonisation being cited with approval. His complete disregard for the ability of non-European states to offer examples of sovereignty or even self-determination was not even countenanced. Colonies were to be considered ‘territories of the motherland’ and so the Commonwealth, under the Law of Nations, was entirely British.18

However, the development of the idea of sovereignty is not unknown to international jurists, including Oppenheim: He notes the introduction of the term ‘sovereignty’ into political science by Bodin in ‘De la république’ in 1577.19 Previously, the term sovereign meant the highest power, be it political or legal. Bodin identified sovereignty as the ‘highest form of power’ and noted that it cannot be constitutionally limited, but only limited by the law of nature, without defining it as anything in particular. Oppenheim uses this idea of sovereignty to develop a set of conditions which should be met before statehood is achieved. These include the existence of a people, a country, a government relating to one or more persons who represent the people and are bound by the rule of law. He explicitly excludes anarchy. A sovereign government should also be present, exercising independent and supreme authority.20 It is extremely difficult to accept that other countries, non- Western and, more often than not, non-Christian, could not meet a version of these conditions. Indeed, Anghie argues that sovereignty was improvised out of the ‘colonial encounter’21 and that the obsession with Westphalian states underlines the idea that there is too great a focus on Western identity. He mentions Vitoria and states that he noted the Spanish entitlement to a ‘friendly hearing’ without saying why they should be entitled to such.22 However, I would contest the notion, based on the points made here, that sovereignty is an improvised concept. Rather, the view taken here is that sovereignty is a concept which has been **applied selectively to certain States to benefit the existing power structure.**

The selective application of the rules has privileged Western and Christian states as a means of maintaining power, not of creating a rule of law to which everyone adheres. This is particularly problematic in the sphere of international criminal justice, where the focus from a participation- and jurisdiction-based perspective is on States, who create the rules around its application. Anghie argues along similar lines, but more forcefully: he puts forward the idea that **international law conceals colonialism and undermines any attempt at reparation.**23 Koskenniemi makes similar points, noting that sovereignty is always underpinned by an ideology which justifies it, but that it can only been seen when the positive rules which support or obscure it are removed.24 In his view, the ideology was ‘**civilisation’** which **permitted the exploitation of African natural resources and the people within the colonised territories**. This approach **undermined any ‘sovereignty’ non-Western nations may have had**, returning to the **same logic** as John Stuart Mill, who felt that India and **the Indians ‘required’ colonisation because of their lack of capacity**.25

Analyses of older texts demonstrate a consistency in approach to non- Western nations. Anghie’s reading of Vattel also notes that the Native Americans were unable to wage a just war because they lacked a recognisable sovereign.26 Sovereignty was therefore a specific set of practices, or a specific way of doing things, which disempowered any and all non-Europeans.27 He makes this point again, where the treaties with non-European states were made, but unless the criteria were met they continued to lack sovereignty.28 As part of this, positivism has dominated international law, as supported by Oppenheim. The divination of law from the behaviour of states and institutions is problematic,29 because it **reinforces** these **power asymmetries**. Work in the area rarely challenges this understanding of treaties and their connected institutions, with recent work noting that the system established at Versailles was the beginning of our reliance on institutions for support.30 Given the process of decolonisation began in the decades following Versailles, there is little evidence that a process of decolonisation has reached international institutions as well. This is particularly problematic for the authority of the ICC because of the way in which it has been created by sovereign States and is considered to have a bias against non-Western States. The ways of enforcing international criminal justice can appear Euro centric and focused on the failings of non-Western States, rather than the abuse of power by whoever may commit it.

The **international law position of treaties and institutions as ways of making meaningful, enduring, and genuinely international law is flawed**: the **acceptance of such methods to make decisions undermines** the **sovereignty of certain nations, because it requires a Western conception of sovereignty, and one which does not** necessarily **pay** much **attention to the will of peoples, preferring States.** As noted earlier, nationhood has been subsumed in favour of statehood, to concentrate power in the hands of those who conformed to the post-Westphalian model of governance. Arguably, there is a lack of self-reflection through the constant recourse to institutions in international law, and one which creates significant problems for postcolonial States. It is not just the way in which they are constituted, but rather the settled nature of Western States, and the absence of any significant conflict for several decades on their home soil. Power has protected such States, making situations such as September 11 the exception rather than a common occurrence. States which have experienced war, violence, and instability on a systemic basis have few opportunities to develop and acquire power in a meaningful way. The impact of colonisation, the power struggles which have followed colonisation, and the ethnic tensions which remained long after they were exploited by the colon- isers have an enduring impact on such States.

Such effects continue to have ramifications in these States. Because of this, the allegation that the Court focuses too much on Africa, **acting in favour and rarely against Western States, is a charge which should be interrogated.** The question of anti-African bias has been the subject of widespread discussion, both general and in greater depth, as well as the enduring question of how to ensure justice for victims on a continent scarred by instability and war. The issue of anti-African bias is particularly relevant because it presents a significant challenge to the authority of the Court, in that **there can be no legitimate exercise of power in international criminal justice where that power is used to continue a system of oppression**. As such, any **evidence of bias would create a strong challenge to the Court’s authority**.

#### There are criticisms of anti-African bias in ICC’s targets and proceedings

Moran 23 [(Clare Frances Moran, Ph.D., Aberdeen Law School. Clare Frances is a lecturer in law at Aberdeen Law School, where she teaches and researches international criminal law. She has published widely on the problem of defences in international criminal law, particularly that of duress, and the question of the authority of international criminal law. Clare Frances has held visiting research positions at Columbia University, New York, and the Max Planck Institute for Foreign and International Criminal Law. She is a listed Assistant to Counsel at the International Criminal Court. The Authority of International Criminal Law: A Controversial Concept. Cambridge, United Kingdom; Cambridge University Press, 2023. Pgs. 101-103.) kb]

6.3 the question of anti-african bias

The argument that **the ICC is biased against African States is borne out very clearly by a simple reading of the numbers**.34 As of 2022, there are seventeen current investigations by the Court. Eleven of these are African States, all of which are former colonies of Western European States. The preliminary examinations, as of 2022, in ten different States in total, are a little more balanced, with three focused on situations concerning African States. However, the **prosecutions to date have all been of African defendants**, which makes it very difficult to argue that the Court is not focused on one continent. The first Prosecutor of the Court had focused on a number of African cases, including the infamous Kenyatta case,35 an approach considered necessary because of the lack of judicial accountability and the failure to prevent atrocities in a number of African States.36 In his noted article on the problems with African perceptions of the Court, Jalloh quotes President Kagame of Rwanda stating that Rwanda will never be a State Party because, ‘as long as you are poor, weak there is always some rope to hang you**. ICC is made for Africans and poor countries**.’37 This perception, although perhaps not rooted fully in evidence, holds much sway within the African Union. Writing in 2009, Jalloh discussed the conflicts which were then under scrutiny by the Court38 and noted the criticisms of the Court by the African Union, urging the Court to take them more seriously.39 The idea that African countries are targeted by the Court is not a minority perspective, although the self-referrals to the Court by African States depict a complicated reality. Interestingly, much has happened since then, and the central problems are possibly less connected to African acceptance of the Court and more to the Court’s approach to Western and African States. The Court’s approach to African States, beyond the acceptance of its legitimacy and its work as a legitimate exercise of power, is distinct from how they approach it.

Thus, the historical, postcolonial dimension cannot be overlooked. The use of tribunals can be viewed as selective, confirming the way in which international law still ‘consecrates the West as the sole trustee of law, justice, and morality’ by favouring an approach to justice that follows a Western tradition.41 This links to the idea that international law has a problem with its history; the efforts it makes to liberate itself from this and focus on fairness, morality, and justice are undermined by its colonial past.42 The shadow imperialism casts over international criminal law and the ICC in particular undermines its legitimacy.43 A clear-eyed view of the history of international humanitarian law has only recently been the focus of scholarly endeavours. Recent contributions note, among other things, the sad reality that Henri Dunant was a coloniser himself,44 despite having made an enormous contribution to international humanitarian law. This amply demonstrates the way in which a legal realist approach is undermined by a failure to acknowledge the influence and role of colonialism.45 Although postcolonialism is frequently cited by works on international criminal justice, including international humanitarian law, there are not many studies which discuss the ideas in depth. None of the major works on the Court discuss postcolonialism46 and many others mention postcolonialism as an issue, rather than a dimension to the Court’s work.47 It is difficult to understand how the Court’s authority can be properly assessed when this critical aspect of its work is so frequently relegated to the footnotes. The school of thought known as Third World Approaches to International Law offers a different path through this problem.

Third World Approaches to International Law (TWAIL) **offer some perspectives on the ideas, demonstrating the importance of colonialism to the development of international law**.48 As a school of thought, it **can support better approaches to justice through prioritising local remedies and domestic prosecutions**. The Hague’s argued hegemony as the centre of justice is considered problematic because it **removes justice from the local area and transports it back to Europe, echoing an approach of Euro- or Westerncentrism**.51 There is also a general suspicion of international law, justifiably so given the previous approach of **colonisers who disregarded domestic legal systems in favour of imposing those familiar to them.** The fear that Africa would be a laboratory for the ICC is accidentally proven by Hault’s work, when he concludes that the survival of the ICC depended on African cases54 and that its track record has provided a wealth of knowledge, improving the rule of law and the protection of human rights.55 It is not argued that the intention was to do so by either the Court or the funders, but instead there appears to be a sort of thoughtlessness which operates in the policies undertaken by the Office of the Prosecutor (OTP) at that time. The same thought- lessness would be difficult to countenance with more powerful States, and therefore it is not argued that it is entirely innocent, but rather an approach which disregards the equality of States. A carefully considered approach is **required to avoid undermining the authority of international criminal justice to aim for justice in this way**, while appreciating the way in which African cases have supported the development of the Court.

## Aff---ILO

### Aff---ILO

The United States has ratified some conventions of the ILO but not all. Below is the list of all the US has and has not.

#### Summary of Ratification / In Force

ILO No Date, "Ratifications of ILO conventions: Ratifications for United States of America," International Labour Organization, No Date, https://normlex.ilo.org/dyn/nrmlx\_en/f?p=NORMLEXPUB:11200:0::NO::p11200\_country\_id:102871.

14 Conventions

* Fundamental Conventions: 2 of 10
* Governance Conventions (Priority): 1 of 4
* Technical Conventions: 11 of 177
* Out of 14 Conventions ratified by United States of America, of which 10 are in force, No Convention has been denounced; 4 instruments abrogated; none have been ratified in the past 12 months.

#### Supplement---Ratified Conventions

ILO No Date, "Ratifications of ILO conventions: Ratifications for United States of America," International Labour Organization, No Date, https://normlex.ilo.org/dyn/nrmlx\_en/f?p=NORMLEXPUB:11200:0::NO::p11200\_country\_id:102871.

Fundamental

Convention Date Status Note

C105 - Abolition of Forced Labour Convention, 1957 (No. 105) 25 Sep 1991 In Force

C182 - Worst Forms of Child Labour Convention, 1999 (No. 182) 02 Dec 1999 In Force

Governance (Priority)

Convention Date Status Note

C144 - Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) 15 Jun 1988 In Force

Technical

Convention Date Status Note

C053 - Officers' Competency Certificates Convention, 1936 (No. 53) 29 Oct 1938 Not in force Abrogated Convention - By decision of the International Labour Conference at its 109th Session (2021)

C054 - Holidays with Pay (Sea) Convention, 1936 (No. 54) 29 Oct 1938 Not in force Instrument not in force

C055 - Shipowners' Liability (Sick and Injured Seamen) Convention, 1936 (No. 55) 29 Oct 1938 In Force

C057 - Hours of Work and Manning (Sea) Convention, 1936 (No. 57) 29 Oct 1938 Not in force Instrument not in force

C058 - Minimum Age (Sea) Convention (Revised), 1936 (No. 58) 29 Oct 1938 In Force

C074 - Certification of Able Seamen Convention, 1946 (No. 74) 09 Apr 1953 Not in force Abrogated Convention - By decision of the International Labour Conference at its 109th Session (2021)

C080 - Final Articles Revision Convention, 1946 (No. 80) 24 Jun 1948 In Force

C147 - Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147) 15 Jun 1988 In Force

C150 - Labour Administration Convention, 1978 (No. 150) 03 Mar 1995 In Force

C160 - Labour Statistics Convention, 1985 (No. 160)

Acceptance of all the Articles of Part II has been specified pursuant to Article 16, paragraph 2, of the Convention.

11 Jun 1990 In Force

C176 - Safety and Health in Mines Convention, 1995 (No. 176) 09 Feb 2001 In Force

#### Supplement---Unratified Conventions

ILO No Date, "Up-To-Date Conventions and Protocols Not Ratified by United States of America," International Labour Organization, No Date, https://normlex.ilo.org/dyn/nrmlx\_en/f?p=1000:11210:0::NO:11210:P11210\_COUNTRY\_ID:102871.

Fundamental

Instrument

C029 - Forced Labour Convention, 1930 (No. 29)

C087 - Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)

C098 - Right to Organise and Collective Bargaining Convention, 1949 (No. 98)

C100 - Equal Remuneration Convention, 1951 (No. 100)

C111 - Discrimination (Employment and Occupation) Convention, 1958 (No. 111)

C138 - Minimum Age Convention, 1973 (No. 138)

C155 - Occupational Safety and Health Convention, 1981 (No. 155)

C187 - Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187)

P029 - Protocol of 2014 to the Forced Labour Convention, 1930

Governance (Priority)

Instrument

C081 - Labour Inspection Convention, 1947 (No. 81)

C122 - Employment Policy Convention, 1964 (No. 122)

C129 - Labour Inspection (Agriculture) Convention, 1969 (No. 129)

Technical

Instrument

C012 - Workmen's Compensation (Agriculture) Convention, 1921 (No. 12)

C014 - Weekly Rest (Industry) Convention, 1921 (No. 14)

C077 - Medical Examination of Young Persons (Industry) Convention, 1946 (No. 77)

C078 - Medical Examination of Young Persons (Non-Industrial Occupations) Convention, 1946 (No. 78)

C088 - Employment Service Convention, 1948 (No. 88)

C094 - Labour Clauses (Public Contracts) Convention, 1949 (No. 94)

C095 - Protection of Wages Convention, 1949 (No. 95)

C097 - Migration for Employment Convention (Revised), 1949 (No. 97)

C102 - Social Security (Minimum Standards) Convention, 1952 (No. 102)

C106 - Weekly Rest (Commerce and Offices) Convention, 1957 (No. 106)

C110 - Plantations Convention, 1958 (No. 110)

C115 - Radiation Protection Convention, 1960 (No. 115)

C118 - Equality of Treatment (Social Security) Convention, 1962 (No. 118)

C120 - Hygiene (Commerce and Offices) Convention, 1964 (No. 120)

C121 - Employment Injury Benefits Convention, 1964 [Schedule I amended in 1980] (No. 121)

C124 - Medical Examination of Young Persons (Underground Work) Convention, 1965 (No. 124)

C128 - Invalidity, Old-Age and Survivors' Benefits Convention, 1967 (No. 128)

C130 - Medical Care and Sickness Benefits Convention, 1969 (No. 130)

C131 - Minimum Wage Fixing Convention, 1970 (No. 131)

C135 - Workers' Representatives Convention, 1971 (No. 135)

C137 - Dock Work Convention, 1973 (No. 137)

C139 - Occupational Cancer Convention, 1974 (No. 139)

C140 - Paid Educational Leave Convention, 1974 (No. 140)

C141 - Rural Workers' Organisations Convention, 1975 (No. 141)

C142 - Human Resources Development Convention, 1975 (No. 142)

C143 - Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)

C148 - Working Environment (Air Pollution, Noise and Vibration) Convention, 1977 (No. 148)

C149 - Nursing Personnel Convention, 1977 (No. 149)

C151 - Labour Relations (Public Service) Convention, 1978 (No. 151)

C152 - Occupational Safety and Health (Dock Work) Convention, 1979 (No. 152)

C154 - Collective Bargaining Convention, 1981 (No. 154)

C156 - Workers with Family Responsibilities Convention, 1981 (No. 156)

C157 - Maintenance of Social Security Rights Convention, 1982 (No. 157)

C159 - Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159)

C161 - Occupational Health Services Convention, 1985 (No. 161)

C162 - Asbestos Convention, 1986 (No. 162)

C167 - Safety and Health in Construction Convention, 1988 (No. 167)

C168 - Employment Promotion and Protection against Unemployment Convention, 1988 (No. 168)

C169 - Indigenous and Tribal Peoples Convention, 1989 (No. 169)

C170 - Chemicals Convention, 1990 (No. 170)

C171 - Night Work Convention, 1990 (No. 171)

C172 - Working Conditions (Hotels and Restaurants) Convention, 1991 (No. 172)

C173 - Protection of Workers' Claims (Employer's Insolvency) Convention, 1992 (No. 173)

C174 - Prevention of Major Industrial Accidents Convention, 1993 (No. 174)

C175 - Part-Time Work Convention, 1994 (No. 175)

C177 - Home Work Convention, 1996 (No. 177)

C181 - Private Employment Agencies Convention, 1997 (No. 181)

C183 - Maternity Protection Convention, 2000 (No. 183)

C184 - Safety and Health in Agriculture Convention, 2001 (No. 184)

C185 - Seafarers' Identity Documents Convention (Revised), 2003, as amended (No. 185)

C188 - Work in Fishing Convention, 2007 (No. 188)

C189 - Domestic Workers Convention, 2011 (No. 189)

C190 - Violence and Harassment Convention, 2019 (No. 190)

C191 - Safe and Healthy Working Environment (Consequential Amendments) Convention, 2023 (No. 191)

MLC, 2006 - Maritime Labour Convention, 2006 (MLC, 2006)

P081 - Protocol of 1995 to the Labour Inspection Convention, 1947

P089 - Protocol of 1990 to the Night Work (Women) Convention (Revised), 1948

P110 - Protocol of 1982 to the Plantations Convention, 1958

P155 - Protocol of 2002 to the Occupational Safety and Health Convention, 1981

## Aff---Iran

### Aff---Iran

#### Trump should negotiate a new Iran deal.

Jonathan Panikoff 4/17, Director of Scowcroft Middle East Security Initiative at Atlantic Council, Senior Fellow at GeoEconomics Center, former US intelligence officer, JD from Syracuse University College of Law, MA in International Relations from Maxwell School at Syracuse University, "Trump can't afford to simply revive Obama's Iran nuclear deal," Atlantic Council, 4/17/2025, https://www.atlanticcouncil.org/blogs/new-atlanticist/trump-cant-afford-to-simply-revive-obamas-nuclear-deal/#:~:text=Today%2C%20that%20time%20no%20longer,weapon%E2%80%9D%20in%20the%20traditional%20sense

Last Saturday’s mostly indirect negotiations between US Special Envoy Steve Witkoff and Iranian Foreign Minister Abbas Araghchi marked an abrupt turnaround for US President Donald Trump. In 2018, during his first term, Trump ended US participation in the Joint Comprehensive Plan of Action (JCPOA) negotiated by his predecessor, President Barack Obama, and criticized the deal’s sunset clauses, sanctions relief, and failure to address Iran’s ballistic missile program and regional malign influence.

Despite those legitimate critiques of the deal, many Iran-watchers (myself included) believed that the JCPOA was the best of a lot of bad options because it provided the one thing that is the hardest to cultivate: time.

In 2015, it was widely understood that Iran was still months to years away from having a workable nuclear weapon. In buying time, there was an opportunity to use it to try to reach an agreement that permanently and fully resolved the issue, with the knowledge that if Iran cheated on the deal, it would still be months to years away from having a nuclear weapon.

Today, that time no longer exists. Any deal, therefore, would have to be far more stringent than the JCPOA because Iran is now one to two weeks from having enough 60 percent enriched uranium to fuel a nuclear bomb, with the ability to fuel up to five additional bombs in the months to follow. Moreover, Iran has advanced efforts for a crude nuclear device, even if US intelligence is correct that the country is not “building a nuclear weapon” in the traditional sense.

Trump’s decision to leave the JCPOA did increase pressure on Iran, largely through sanctions. But it also provided the country an excuse to speed ahead on its efforts to enrich uranium and advance its nuclear program, beginning the process of leading Iran’s nuclear program to where it is today. Ongoing debate within the Trump administration over the right approach to Iran continues to cause confusion as to the president’s ultimate strategy, even as negotiations are already underway. In February, Trump signed a National Security Presidential Memorandum that reimposed “maximum pressure” on Iran and explicitly called for denying Iran not only nuclear weapons but also intercontinental ballistic missiles and for countering its terrorism activities.

Last month, National Security Advisor Mike Waltz emphasized the key points of the memorandum in multiple interviews in which he highlighted that “all aspects of Iran’s [nuclear] program” have to be addressed, not just enrichment but also ballistic missiles, weaponization, and Iran’s support for terrorism. In other words, a deal with Iran needs to be holistic, not just narrowly focused on its nuclear program.

Except, in the days before negotiations began, Trump said, “I’m not asking for much, they can’t have a nuclear weapon.” Witkoff, intentionally or not, went even further, indicating that Iran could keep its nuclear program operating with a cap of 3.67 percent uranium enrichment—an amount in line with a civilian nuclear program—and separately said, “Where our red line will be, there can’t be weaponization of [Iran’s] nuclear capability.” Earlier this week, he seemingly walked back those statements to align closer with Trump’s statement, even as it remains uncertain if the president would agree to Iran having a civilian nuclear program.

Trump is typically transparent about his preferences in policy matters. Too often, his explicit statements are not taken seriously, leading many to be surprised when he actually follows through on them (see the reaction to his imposition of sweeping tariffs). The potential that Trump, always eager to make a deal, might be content with an agreement that only addresses Iran’s nuclear program should not be underestimated.

It’s not without precedent for Trump to seek a deal very similar to one he previously spoiled. In 2019, Trump replaced the North American Free Trade Agreement, which he called a “disaster,” with the United States-Mexico-Canada Agreement, which had relatively minor differences.

And while it’s worth exploring if Iran could be convinced to fundamentally change its traditional redlines and agree to restrictions far more stringent than in the JCPOA—including that conditions placed on its nuclear program be permanent and not time-bound—such a result is highly unlikely. That leaves the possibility of a narrow agreement, which risks doing more harm than good.

It would kick the nuclear can down a far more dangerous road than existed in 2015, and it would provide sanctions relief that is likely to be used to bolster terrorist partners such as the Houthis and help reinvigorate a now diminished Hezbollah, all while advancing Iran’s ballistic missile program.

Moreover, as seen following the JCPOA, such a deal would ensure there is insufficient leverage remaining for the United States and its allies to negotiate over these broader challenges and little Iranian interest in doing so.

Malign influence, terrorism, and ballistic missiles may not be existential threats for regional allies, especially Israel, in the same way a nuclear-armed Iran would be. But these are the issues, not Iran’s nuclear program, that have been the root cause of conflict, death, and destruction in the Middle East over the last three decades. Viewing them as less important than the nuclear issue probably guarantees not only increased conflict in the coming years but also wars that are more lethal, as barriers and access to advanced technologies diminish.

As negotiations are set to continue this weekend in Rome, Trump is right to try to seek a deal before okaying, or participating, in military action against Iran. But he should keep in mind that, unlike in 2015, time is almost up.

#### Trump’s transactionalism will enable him to negotiate a new nuclear deal.

Mohamad Bazzi 4/25, Director of the Hagop Kevorkian Center for Near Eastern Studies at New York University, Professor of Journalism at New York University, Former Middle East Bureau Chief at Newsday, "Trump's transactional instincts could help forge a new Iran nuclear deal," The Guardian, 04/25/2025, https://www.theguardian.com/commentisfree/2025/apr/25/trump-iran-nuclear-deal#:~:text=Today%2C%20in%20his%20second%20term,broke%20nearly%20seven%20years%20ago

In May 2018, Donald Trump unilaterally withdrew the US from the Iran nuclear deal and reimposed American sanctions that crippled the Iranian economy. Trump tore up the 2015 agreement, which had taken years for Iran to negotiate with six world powers, under which Tehran limited its nuclear program in exchange for relief from international sanctions. Trump insisted he would be able to negotiate a better pact than the one reached by Barack Obama’s administration.

Today, in his second term as president, Trump is eager to fix the Iran deal he broke nearly seven years ago.

While Trump’s overall foreign policy has been chaotic and has alienated traditional US allies in Europe and elsewhere, he has an opportunity to reach an agreement with Iran that eluded Joe Biden. Since Trump walked away from the original deal, Iran has moved closer to having a nuclear weapon than it has ever been. It has enriched enough uranium close to weapons-grade quality to make six nuclear bombs, according to the International Atomic Energy Agency (IAEA). But analysts believe that even after enriching enough uranium for a bomb, Iran would still need up to a year to develop an actual nuclear warhead that could be deployed on a ballistic missile.

Last month, Trump sent a letter to Iran’s supreme leader, the 86-year-old Ayatollah Ali Khamenei, saying the US wanted to negotiate a new deal. Trump followed up with a public threat, saying if Iran’s leaders did not agree to renewed talks, they would be subjected to “bombing the likes of which they have never seen before”. After Trump’s threats and a buildup of US forces in the Middle East, Iran’s military said it would respond to any attack by targeting US bases in the region, which house thousands of American troops.

But Iranian leaders also agreed to indirect negotiations, rather than the direct talks Trump had proposed. Trump dispatched his special envoy, the real estate developer Steve Witkoff, to lead a team of US negotiators to meet indirectly with top Iranian officials, including the foreign minister, Abbas Araghchi. The two sides held two rounds of productive talks so far this month, under the mediation of Oman. And the US and Iranian teams are due to meet again this weekend in Muscat, the capital of Oman, where they will start talks on technical details of a potential agreement.

While Trump and Iran’s leaders both changed their tones in recent weeks, there are many obstacles before a deal can be reached, including hardliners in Iran and Washington, as well as opposition from Israel’s rightwing government, led by Benjamin Netanyahu, who has spent years working to undermine negotiations between the US and Iran. The main barrier will be whether the Trump administration insists on a total dismantling of Iran’s nuclear program – the so-called “Libya model”, named after the late Libyan dictator Muammar Gaddafi, who decided to eliminate his country’s nuclear weapons program in 2003 under pressure from the US. But that decision deprived Gaddafi of a major lever to stave off western military intervention after the Arab Spring uprisings in 2011, which led to his regime’s fall and his killing by Libyan rebels.

Some foreign policy hawks in Washington, including Trump’s national security adviser, Michael Waltz, and the secretary of state, Marco Rubio, insist on this maximalist strategy, which echoes Netanyahu’s demand that Iran must completely dismantle its nuclear enrichment activity and infrastructure as part of any deal with the US. If Trump takes a similar approach, negotiations would probably break down and Trump could follow through on his threat to carry out military strikes.

Iran has made clear that it will not agree to the total end of its nuclear program, but would accept a verification-based approach, as it did under the 2015 deal negotiated by the Obama administration along with China, France, Russia, the UK and Germany, together with the European Union. That type of agreement would place strict limits on Iran’s ability to enrich uranium and impose an inspections regime involving international monitors. Several of Trump’s advisers, including Witkoff and the vice-president, JD Vance, seem to favor this solution.

“I think he wants to deal with Iran with respect,” Witkoff said of Trump’s outreach to the Iranian regime, in a long interview last month with Tucker Carlson, the rightwing media host who has been highly critical of Republican hawks agitating for war with Iran. “He wants to build trust with them, if it’s possible.”

Iran’s leaders apparently got that message – and have tried to stroke Trump’s ego and convey that they respect him in ways they never respected Biden. In a Washington Post op-ed published on 8 April, Iran’s foreign minister seemed to be speaking to Trump directly when he blamed the failure of earlier negotiations on a “lack of real determination by the Biden administration”. Araghchi also played to Trump’s oft-repeated desire to be a peacemaker who ends America’s legacy of forever wars, writing: “We cannot imagine President Trump wanting to become another US president mired in a catastrophic war in the Middle East.”

And the minister appealed to Trump’s reputation as a deal-maker, citing the “trillion-dollar opportunity” that would benefit US companies if they could gain access to Iran after a diplomatic agreement. Iran’s leaders evidently understand that Trump loves to frame his foreign policy as being guided by his desire to secure economic deals and benefits for American businesses.

In this case, Trump’s transactional instincts and bulldozer style of negotiations could lead to a positive outcome, avoiding war with Iran and undermining the hardliners in Washington, Iran and Israel. Trump has already adopted a significant shift toward Tehran from his first term, when he had insisted that Iran was the world’s leading state sponsor of terrorism and the greatest threat to US interests in the Middle East.

After he took office in 2017, Trump wanted to tear up the Iran deal partly because it was one of Obama’s major foreign policy accomplishments. Trump also surrounded himself with hawkish advisers who reinforced the danger of an Iranian threat, including HR McMaster, who served as national security adviser, and James Mattis, who was defense secretary. Both men commanded US troops during the occupation of Iraq, and they fought Iraqi militias funded by Iran. Trump later appointed John Bolton, another neoconservative and advocate of the 2003 US invasion of Iraq, as his national security adviser.

In his second term, Trump has banished most of the neocons from his administration. Trump also seems to realize that Netanyahu could become one of the biggest obstacles to an Iran deal, as he was during the Obama and Biden administrations. It was no accident that the president announced his plan for renewed talks with Iran while Netanyahu sat beside him at an Oval Office meeting on 7 April. Netanyahu had arranged a hasty visit to Washington to seek an exemption from Trump on new tariffs on Israeli exports. But he left empty-handed and embarrassed by Trump’s Iran announcement. That meeting was a signal to Iran’s leaders: that Trump would not allow Netanyahu to steamroll him, as the Israeli premier had done with other US presidents.

If Trump continues to resist Netanyahu, along with hawkish Republicans and some of his own advisers, he might well be able to negotiate a dramatic deal with Iran – and repair the nuclear crisis he unleashed years ago.

## Aff---Pandemic Agreement

### Aff---Pandemic Agreement

#### US anti-internationalism doesn’t blow up the Pandemic Agreement, but stringency depends on the extent of political support.

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On February 17, 2025, debates will resume over the World Health Organization (WHO) Pandemic Agreement. Negotiators are returning to the table with less optimism about and leeway to explore multilateral compromise than a year ago, particularly after center- and far-right parties have taken power in the United States and across Europe. The work of pandemic risk reduction, however, will take longer than any one administration. The Pandemic Agreement will shape health over the next century, much as the Paris Agreement has shaped the response to climate change, and negotiations as well as implementation are likely to continue with or without any one country. When negotiators and advocates return to the table next month, they should come with clear, commonsense proposals that can gain global support ahead of the World Health Assembly in May.

Member states have just four months to build consensus on two potential deal-breakers. First, the treaty needs to address the millions of excess deaths caused by inequitable sharing of COVID-19 vaccines. A partial solution, the proposed Pathogen Access and Benefit-Sharing (PABS) System (Article 12) would allow the WHO to share small quantities of vaccines, drugs, and diagnostics on the basis of public health needs. Second, the treaty needs to find a way to reduce the risk of future pandemics. According to the One Health concept, animal pathogens with pandemic potential can be identified before they reach humans (Article 5). Mitigating the ecological drivers of zoonotic spillover (primary prevention), and improving outbreak detection and response (secondary prevention), both reduce the odds that wildlife or livestock pathogens ever become a human health emergency (Article 4).

Those two goals—making future pandemics less deadly and having fewer pandemics altogether—are at the heart of the Pandemic Agreement. The emerging tension between the two, however, poses an existential threat to the treaty: High-income countries may not agree to the creation of the PABS System unless the treaty takes clearer and bolder action on prevention. So far, negotiators have struggled to land on more specific language about potential obligations. As a result, some negotiators are pushing to finalize the treaty and leave specifics on prevention, and potentially PABS, to a separate annex or protocol that can be negotiated after May 2025. At the final negotiating sessions of 2024, however, tensions boiled over as negotiators from low- or middle-income countries expressed hesitation about agreeing to additional obligations without clarity on their potential scope and cost.

The Current Treaty

Early in the COVID-19 pandemic, pandemic prevention advocates called for ambitious multilateral action to mitigate the drivers of zoonotic disease emergence, such as eliminating wildlife farming in China or halving deforestation in the tropics. Unfortunately, the decision to develop the Pandemic Agreement under the WHO's constitutional authority—and not through the UN General Assembly, or the UN Environment Program (UNEP)—narrowed the scope of potential policy. Even the strongest voices for prevention in the negotiations, such as the European Union, acknowledge that the treaty cannot take broad action on "environmental conservation and protection" or "climate change mitigation and adaptation."

Civil society organizations (CSOs) and infectious disease experts have criticized negotiating drafts for giving less attention to primary prevention than to secondary prevention, preparedness, or response. The current negotiating text, however, reflects many relevant concepts and framings. The preamble recognizes both the One Health concept as well as the importance of prevention, and establishes the WHO's "directing and coordinating authority" on pandemic prevention—an important departure from narrower readings of their constitutional mandate. Articles 4 and 5 similarly recognize the role of global environmental change as a driver of pandemic risk, the need for interventions that prevent pathogen spillover at the human-animal-environment interface, and the importance of multisectoral One Health collaboration to design and implement those interventions.

More important, Articles 4 and 5 create an unambiguous, binding obligation for parties to develop policies that reduce pandemic risk in several ways, among them "prevention of infectious disease transmission between animals and humans, including zoonotic disease spillover." The specifics are currently left for parties to decide, for important reasons: They will need to develop different strategies based on underlying differences in wildlife and pathogen communities, risk factors for emergence, and—as recognized in the preamble—different capabilities, capacities, and resources.

Without losing this flexibility, those obligations would be strengthened by greater specificity about categories of intervention. Those could be informed by recommendations from the Quadripartite's One Health Joint Plan of Action, which outlines several priority areas for national policy reform, such as safer, sustainable "wildlife-based economies" and animal agriculture. Countries also need to look beyond direct regulation of natural resources and address the economic drivers of unsustainable resource use. This will be particularly important given that high-income country demand is the driving force behind both the international wildlife trade and deforestation and land conversion in hotspots of zoonotic disease risk.

The Pandemic Agreement could also borrow a tool from the Convention on International Trade in Endangered Species of Fauna and Flora (CITES), and establish a national legislation project that tracks these policies and their implementation. This would help countries create their own legislation, facilitate efforts to monitor and evaluate the effectiveness of national policies (Article 17), and, most important, serve as a nonpunitive and public tool for accountability.

Dedicated Financing for Prevention Programs

Advocates often emphasize that primary prevention is cheaper than pandemic response, but most prevention measures are still expensive, especially in low-resource settings. Countries will need to develop and maintain One Health and law enforcement workforce, invest in new diagnostic capacity and scientific research, and reduce or replace extractive industries, which provide both revenue and employment. The burden that places on low- or middle-income countries could be significant, particularly alongside other new costs related to preparedness and response.

Current negotiating text on prevention only vaguely references cooperation on "technology transfer and financing." The mandate of the proposed Coordinating Financing Mechanism (CFM), as laid out in Article 20, however, expressly includes "expanding capacities for pandemic prevention." If the World Bank–administered Pandemic Fund steps into this role, prevention is unlikely to take a back seat to preparedness and response. Many of the 47 projects already supported by the fund take a One Health approach or explicitly address prevention. A competitive national grantmaking mechanism like the fund's is, however, poorly suited for supporting rapid-turnaround efforts to contain animal health emergencies before they become human health emergencies (e.g., H5N1 influenza in cattle). The CFM may also be less likely to support long-term investments in "deep prevention," such as efforts to replace extractive industries. Parties could contribute to a dedicated line of funding within the CFM, or create a separate Prevention Fund in Article 4, that supports one or both of these areas.

Supporting Science and Data Sharing

The WHO's greatest success with the One Health approach predates the One Health concept by 50 years: The Global Influenza Surveillance and Response System (GISRS) coordinates influenza sample and data sharing—from both humans and animals—among national influenza centers and laboratories in 130 countries. GISRS also forms the basis for the Pandemic Influenza Preparedness (PIP) Framework, the treaty that provided the template for the PABS System.

Since the GISRS was established, the world has faced four influenza pandemics (in 1957, 1968, 1977, and 2009) and two pandemics of other zoonotic viruses (HIV and SARS-CoV-2). Influenza may be the perennial pandemic threat, but scientists now know that tens of thousands of viruses could someday make the jump to humans.

Existing language on surveillance in Articles 4 and 5 could be reframed around the creation of a Global Pre-Emergence Pathogen Surveillance and Response System (PREP System) focused on other zoonotic and vector-borne pathogens with pandemic potential, including national focal points for scientific coordination and emergency response, with clear lines of communication to WHO and, as appropriate, the World Organization for Animal Health and the Food and Agriculture Organization; international hubs for scientific research and countermeasure development; and channels for rapid sharing of wildlife and livestock pathogen samples, sequences, and surveillance data.

This would help solve long-standing problems with the International Health Regulations (IHR). Under Article 6, countries are required to tell WHO about zoonotic disease outbreaks only after they have the potential to become a public health emergency of international concern; countries' risk assessment can be subjective and inconsistent; and no obligation exists to share scientific data on pre-emergence pathogens that could someday pose a risk to human health. The PREP System could also eventually support a PIP-like mechanism that complements and future-proofs the PABS system: If future pandemic products are developed based on high-risk wildlife viruses, such as universal betacoronavirus vaccines, they might fall outside the scope of PABS.

Targeted Action on Wildlife Trade

COVID-19 has brought unprecedented attention to the risks associated with wildlife trade, including wildlife farms, supply chains, markets, consumption, and pets. Only 7% of zoonotic viruses are associated with wildlife trade, but they include several pathogens with pandemic potential, including coronaviruses, primate retroviruses, and avian influenza viruses.

Wildlife trade brought conservation and animal welfare organizations to the table in Geneva. Those groups, with their nearly singular focus on wildlife trade, have been among the most engaged and effective CSOs. It may not be possible to conclude negotiations without specific action on this issue, especially given the continued risk of another COVID-19-like pandemic. As negotiations come down to the wire, however, the scramble to define primary prevention might lead negotiators to reach for clear proposals such as a global ban on wildlife trade or fur farming at the expense of the treaty's political viability (and pushing the limits of the WHO's constitutional authority in matters related to animal health and welfare).

Realistically, it will not be possible to develop a detailed global framework for wildlife trade regulation by May 2025. If Article 4 negotiations stall on this issue, the best path forward would be a plan to develop an annex or protocol modeled on the CITES appendices system, where narrowly defined groups of species would be subject to outright restriction or regulation of international trade; species could be added to these lists over time based on evolving assessments of zoonotic risk. Such an instrument would need to learn from the failure points of CITES by including substantial dedicated financing and creating channels for the participation of scientists and law enforcement professionals.

Conservation and animal welfare CSOs may also push for stronger enforcement mechanisms than CITES, such as sanctions. Negotiators should approach these tactics with caution. Sanctions and other punitive measures invariably create perverse incentives that could undermine compliance and transparency and potentially even outbreak reporting under the IHR. Recent history speaks directly to these risks. Early in the COVID-19 pandemic, limited transparency about the wildlife traded in Huanan Seafood Wholesale Market hindered scientific consensus-building on the origins of SARS-CoV-2, exacerbated tensions between the United States and China, and created a rift between China and the WHO that could undermine global health security far into the future. To avoid recreating this problem, member states could instead consider a model like the new IHR Standing Committee, which focuses on nonpunitive approaches such as collaboration and sharing technical expertise.

What Comes Next

As it stands, the proposed Pandemic Agreement represents a significant step forward in the WHO's ambition related to primary prevention and—especially with relatively minimal additions—could meaningfully reduce the risk of future pandemics. However, scientists and pandemic prevention advocates will also have more opportunities for global reforms after this particular treaty is finalized. They can start this process by identifying other UN fora with a more compatible mandate, such as UNEP or the Convention on Biological Diversity, as possible homes for new instruments and soft law.

Knowing that the work will continue after May 2025, these advocates should throw their weight behind the treaty and behind the strongest possible language, not only for Articles 4 and 5, but also for Article 12. Doing so would build trust between the global health, conservation, and animal welfare communities, demonstrating an ability to work outside narrow silos of advocacy. Failing to do so risks gambling the treaty itself, opening the door to a future with no progress on pandemic prevention or preparedness.

#### The United States should ratify the Pandemic Treaty. Failure to do so costs the framework agreement US institutional capital.

Avery Keatley & Miles Parks 25, Keatley and Parks are reporters for NPR, "WHO countries finalize historic agreement to help prevent next pandemic," NPR, 4/19/2025, https://www.npr.org/2025/04/19/nx-s1-5368253/who-countries-finalize-historic-agreement-to-help-prevent-next-pandemic#:~:text=of%20its%20kind%20in%20the,WHO%20when%20he%20took%20office

MILES PARKS, HOST:

This week, more than 190 member states of the World Health Organization finalized a treaty to help prevent the next pandemic. It's the first agreement of its kind in the world. Countries have agreed to share data, technology and vaccines in the event of another disease outbreak. It took more than three years of negotiations before the pandemic treaty was finalized, and it was done without the U.S.'s involvement after President Trump announced his intention to pull the U.S. out of the WHO when he took office.

Here to tell us more about the talks and the treaty is Precious Matsoso. She's the former director general of the South African National Department of Health, and she served as co-chair of the group tasked with creating the treaty. Welcome, Precious, to ALL THINGS CONSIDERED.

PRECIOUS MATSOSO: Thank you so much for inviting me.

PARKS: So I'm sure this gets in the weeds really quickly, but I'm hoping to kind of talk about the broad strokes of what all of these countries agreed to in this treaty. Let's start there.

MATSOSO: Well, I think the first thing is that they agreed to having prevention measures. As you know, prevention was weak during the COVID pandemic, but also countries were ill-prepared. So the preparedness measures are actually enhanced in this pandemic agreement. The second is provisions for ensuring equitable access to pandemic health-related products, and these are vaccines, diagnostics, as well as therapeutics.

But in addition, there's a very important provision, and this has to do with pathogen access and benefit sharing. As you know, there's always been some biological materials and information that are shared during pandemics. In this regard, those who share these biological materials are of the view that it is important that they should also benefit.

PARKS: Well, that's what I was going to ask because the pathogen access and benefit sharing seems to be, to me, one of the most interesting parts of this treaty because I know in the past - right? - countries have had an issue with sort of giving up information on pathogens and not feeling like they were then rewarded or something with access to the medicines that came from giving that information. Can you explain that a little bit more?

MATSOSO: When there's an outbreak, particularly of a pathogen of unknown origin, it is very important to quickly characterize it - how it is spread, how virulent it is. So for that to happen, there must be timely access to that pathogen. That's the first thing. But the argument is that it cannot just be sharing of the pathogen, biological materials or information. There must also be benefits that are accrued from that.

PARKS: Well, that makes a lot of sense to me, especially in theory, but I guess I wonder, once we're down the road, whether it's in a few years or decades, how will some of these decisions that you all came to over the course of these years of negotiations - how will they actually be enforced when things - like they were back in March or February or April of 2020 - when things are kind of going crazy in the beginning of one of these moments, how will this treaty actually be enforced?

MATSOSO: Well, there are a number of institutional arrangements that have been considered. The first one is that of creating a conference of parties that will be a governance body. The second is having a global logistics network that is supposed to ensure that the products move across different parts of the world, across different regions. As you know, different regions also have their own mechanisms, so you need a network that ensures that there's some information exchange across different regions, different countries, so that at any point in time, you have a fair understanding of where the quantities are and where they - of vaccines, huge quantities, oversupply, stockpiles - so that these can be measured against where the need is.

PARKS: So how did it impact negotiations when the United States announced their intention to pull out of the WHO earlier this year?

MATSOSO: The United States has played a very important role during negotiations. As I can confirm, U.S. has the best experts in the world, and they were able to bring these experts, when needed, to guide and advise and bring technical knowledge to the discussions, which were quite valuable. In fact, when the U.S. announced its withdrawal, it was quite clear that, you know, it's a loss. It's a loss because the whole institutional and intellectual capital that the U.S. has will be lost.

But of course, we do know that countries have their national interests. It is for that reason that when you have an agreement, any treaty or convention, there'll always be provisions that allow for reservations. And our view was that one would have thought that the U.S. would have joined and only reserved in those areas where they were uncomfortable, rather than just withdrawing completely from the negotiations. It is unfortunate.

PARKS: Can I ask kind of broadly, as you think about ahead of whenever the next pandemic does occur, how confident are you that the response will be better than what we saw with COVID?

MATSOSO: You know, I'm quite confident. And coming from the African region, which has been hit by multiple, multiple crises - pandemics, outbreaks, epidemics and natural disasters - happening all at once, we've seen the kind of response - and the recent example is a beautiful one, actually - that of Rwanda dealing with a outbreak, Marburg. And they were able to deal with this within - in less than hundred days. And we're beginning to see that trend in other countries, so I'm very confident that countries will respond appropriately.

PARKS: That's global health expert Precious Matsoso, who worked on this new pandemic treaty. Thank you so much, Precious, for joining us.

MATSOSO: Thank you so much for inviting me.

#### The absense of the US from the treaty leaves a huge gap in the treaty architecture, even if most of the world is a formal member.

Celeste Biever 4/16, Chief News and Features Editor at Nature, MChem in Chemistry from Oxford University, "First global pandemic treaty agreed — without the US," Nature, 04/16/2025, https://www.nature.com/articles/d41586-025-00839-0#:~:text=What%20the%20WHO%E2%80%99s%20new%20treaty,mean%20for%20the%20next%20pandemic

For the first time — and despite fears that it might never happen — nations have agreed a series of measures to prevent, prepare for and respond to pandemics. The terms of the first global pandemic accord were still being hashed out at the World Health Organization (WHO) headquarters in Geneva, Switzerland, up until the early hours of 16 April.

“This is a definitive moment in the history of global health,” says Lawrence Gostin, a specialist in health law and policy at Georgetown University in Washington DC, who followed the negotiations closely. The accord “sets out some very important norms to keep the world safe”, he says.

The accord was agreed without the United States, which withdrew from the pandemic treaty the day that US President Donald Trump was inaugurated in January. This reduces its power, says Gostin, but is also a source of strength. “Instead of collapsing in the face of President Trump’s assault on global health, the world came together.”

The treaty is not perfect, but it represents a major achievement, says Michelle Childs, policy-advocacy director at the Drugs for Neglected Diseases initiative, a non-profit organization in Geneva. “People didn’t think that they’d get to this stage of agreeing at all.”

“I even have goosebumps because I can’t believe we finally finished,” says Precious Matsoso, co-chair of the WHO intergovernmental negotiating body created to draft the treaty in 2021. “It’s been a long journey.”

Pathogen sharing

The treaty lays out the broad outline of a ‘pathogen access and benefit sharing’ system, which grants pharmaceutical companies access to scientific data, such as pathogen samples and genomic sequences, in return for more-equitable sharing of drugs, vaccines and diagnostics during a pandemic.

During the COVID-19 pandemic, vaccines were distributed much slower in low-income countries than in high-income ones, and some countries were accused of hoarding vaccines.

A sticking point for the treaty — which has taken more than three years to negotiate — was reassuring poor countries “that the inequities that we saw in COVID will be addressed”, says Childs. Countries with strong pharmaceutical industries, meanwhile, were concerned about agreeing to share their technology. “It started with some member states saying ‘no’,” says Matsoso. “But eventually, over time, I think there was what I would call the voice of reason.”

The details of how exactly the system will work have yet to be hashed out. But the accord states that there must be provisions for the “rapid and timely” sharing of information, and that manufacturers participating in the agreement must make at least 20% of the vaccines, drugs and diagnostics that they produce available to the WHO during a pandemic.

A spokesperson for the Geneva-based International Federation of Pharmaceutical Manufacturers and Associations says that it’s important that the agreement is translated into a “practical plan” that incentivizes pharmaceutical companies of all sizes to invest in research on pathogens. “Innovation is not guaranteed. It requires the right environment to thrive.”

The draft agreement will be presented at the World Health Assembly in May and will need to be ratified by member states if adopted — a process that could take months or years.

Technology exchange

As well as promoting equitable access to health products, the treaty states that countries should “promote and otherwise facilitate or incentivize” the exchange of technology and know-how to enable manufacturers in low-income nations to produce their own drugs and vaccines. “That should help poorer regions like Africa to become more self-sufficient in the face of a pandemic,” says Gostin.

It also stipulates that governments attach conditions to research into drugs and vaccines that they fund — either at universities or companies — to “promote timely and equitable access” during pandemics. Such conditions could include allowing other companies to manufacture the products, affordable pricing policies and the publication of relevant clinical-trial protocols and results.

“Concretely, this means that, when the next pandemic hits and a life-saving medicine developed thanks to taxpayer funding is unaffordable or unavailable, a government will be able to intervene for the benefit of its citizens and people in need around the world,” says Childs. By contrast, during the COVID-19 pandemic, she adds, governments did not always have a say in how knowledge was shared, even when they had funded the research.

“One of the greatest benefits that can be shared is the data and the scientific activity around the data,” says Guy Cochrane, head of the European Nucleotide Archive at the European Molecular Biology Laboratory in Hinxton, UK.

No US presence

The pandemic treaty will be weaker without buy-in from the United States, given its dominance as a producer of drugs, vaccines and diagnostics, says Gostin. “There is no sugar-coating it. The absence of the US leaves a gaping hole,” he says.

But Gostin thinks that the country’s “destructive” behaviour since Trump became president was key to the treaty eventually being agreed. “This is the world reacting to Donald Trump, determined to show that multilateralism and global solidarity still are important, as well as the rule of law,” he says.

Pathogen data produced in the United States “are typically freely and openly shared”, says Cochrane. “I hope that this approach continues.”

Before the United States exited the process, US scientists “brought enormous expertise to the negotiations”, says Matsoso. But “we still have experts in different parts of the world who can work towards making sure we achieve our goals”, she says. “In this gloomy political environment, this gives us hope.”

## Aff---Paris

### Aff---Paris

#### The US should reenter Paris.

Patrick Greenfield 24, Biodiversity and Environment Reporter, The Guardian, The Observer, "A second US exit could 'cripple' the Paris climate agreement, warns UN chief," The Guardian, 11/01/2024, https://www.theguardian.com/environment/2024/nov/01/a-trump-presidency-could-cripple-the-paris-climate-agreement-warns-un-chief-antonio-guterres#:~:text=The%20world%20needs%20the%20US,accord%20for%20a%20second%20time

The world needs the US to remain in the international climate process to avoid a “crippled” Paris agreement, the UN secretary general has warned, amid fears that Donald Trump would take the country out of the accord for a second time.

António Guterres said the landmark 2015 agreement to limit global heating would endure if the US withdrew once again, but compared the prospective departure to losing a limb or organ.

“The Paris agreement can survive, but people sometimes can lose important organs or lose the legs and survive. But we don’t want a crippled Paris agreement. We want a real Paris agreement,” the UN secretary general said.

If the Republican candidate wins, his administration could withdraw the US from the UN climate negotiating framework entirely, according to reports. If he does so, it could require Senate approval for the US to rejoin.

It raises the prospect of international cooperation on the climate falling apart by emboldening other countries to leave, which could result in catastrophic temperature rises globally and more extreme weather.

Speaking to the Guardian at the Cop16 biodiversity summit in Cali, Colombia, Guterres urged the US to stay and play its part in limiting global heating to 1.5C degrees above preindustrial levels.

“It’s very important that the United States remain in the Paris Agreement, and more than remain in the Paris agreement, that the United States adopts the kind of policies that are necessary to make the 1.5 degrees still a realistic objective,” he said.

The US became the first country in the world to formally withdraw from the Paris agreement in November 2020 after Trump announced it would leave in June 2017. Due to complicated rules about leaving the accord, there was a substantial delay between the decision and the formal departure.

Joe Biden rejoined the Paris agreement on the first day of his presidency in January 2021, with the US returning as an active participant in the UN climate process.

While the climate has been a peripheral issue in campaigning for the 2024 US presidential election, Trump – a frequent climate denier – has pledged to unleash a new wave of investment in fossil fuels, and cut support for electric cars and renewable energy.

Michael Mann, a climate scientist at the University of Pennsylvania, previously warned that a second Trump presidency would be a serious blow to US action on the climate.

“A second Trump presidency is game over for meaningful climate action this decade, and stabilising warming below 1.5C probably becomes impossible,” he said.

## Aff---New START

### Aff---New START

#### The US should negotiate New START. This affirmative would be excluded under our proposed wording because compliance with New START reflects current US policy and practice.

Xiaodon Liang et al. 3/20, Liang is Senior Policy Analyst; Kuramitsu is Research Assistant; Flatoff is Operations and Program Assistant; Shetty is Scoville Peace Fellow, "Trump and Putin Talk in the Shadow of New START," Nuclear Disarmament Monitor, 3/20/2025, https://www.armscontrol.org/blog/2025-03-19/nuclear-disarmament-monitor#:~:text=The%20members%20of%20Congress%20also,%E2%80%9D

U.S. President Donald Trump and Russian President Vladimir Putin held a two-hour call on March 18 on the war in Ukraine, reaching a limited agreement to stop attacks on electrical infrastructure. The Kremlin mentioned in its readout of the call that the two sides had discussed cooperation on nuclear nonproliferation, while the U.S. statement said the presidents addressed “the need to stop proliferation of strategic weapons.”

What is not yet clear is whether the two presidents have begun to discuss ideas regarding how to manage the U.S.-Russian nuclear relationship and what arrangements might replace the New Strategic Arms Reduction Treaty, which expires on February 5, 2026.

Russian officials continue to indicate they are ready to discuss arms control and strategic stability more generally with the United States. Trump has by now shown that his call for “denuclearization” is not a passing interest.

Trump has said on three occasions in recent weeks he wants to engage Russia in China in talks on nuclear arms control. In January, in response to a question about China-U.S. relations, he said: “Tremendous amounts of money are being spent on nuclear, and the destructive capability is something that we don’t even want to talk about .... So, we want to see if we can denuclearize, and I think that’s very possible.”

But Russian spokesman Dmitry Peskov has made clear that the onus is on the United States to bring China into talks if it insists – and if it can. The Chinese foreign ministry, as recently as late February, has not deviated from the country’s traditional view that the U.S. and Russia have a “special and primary responsibility for nuclear disarmament.”

Thus, the clearest path forward toward keeping caps on the nuclear arms race remains a bilateral U.S.-Russian agreement to maintain New START limits until such time as a fuller arms control treaty can be negotiated.

On February 19, twenty members of Congress co-signed a letter organized by the co-chairs of the Nuclear Weapons and Arms Control working group calling on the administration to pursue such an agreement. The co-signatories included Sen. Jack Reed (D-R.I.), the ranking member of the senate armed services committee, and Sen. Angus King (I-M.E.), the ranking member of the committee’s strategic forces subcommittee.

The letter urges the president “to work with Congress to replace New START and prevent a dangerous and costly arms race between the United States and Russia, the world’s two largest nuclear powers. We also ask that the Department of State provide a briefing on the Administration’s plan for New START in a timely manner.”

The members of Congress also wrote that: “The Trump Administration has a historic opportunity to initiate high-level talks for a new pact and, until those talks reach completion, to mutually agree to respect the limits of New START using existing technical means of verification. Given the time it would take to negotiate a new agreement, an executive understanding that both sides will adhere to New START limits would help to reduce uncertainty in this interim period. It is critical that the Administration not increase the U.S. arsenal above New START limits or resume nuclear testing, which would set back the bipartisan progress made on nuclear nonproliferation and arms control.”

#### The United States should negotiate a new New START that covers more countries.

John Erath 25, Senior Policy Director at Center for Arms Control and Non-Proliferation, oversees policy team, guides work on Iran Russia North Korea China and U.S. domestic nuclear policy, "Putting America First: 3 Practical Suggestions for the New (Old) Administration," Center for Arms Control and Non-Proliferation, 1/16/2025, https://armscontrolcenter.org/putting-america-first-3-practical-suggestions-for-the-new-old-administration/

It is 2025, and with the New Year, we will see a change in government in the United States, with the return of the Trump administration. Nuclear issues seem to have taken greater urgency since 2021, particularly given the war in Ukraine and China’s buildup, but they did not feature much in the Presidential campaign, despite our best efforts. It will fall to the incoming administration to deal with a world where the threat of nuclear war seems higher than any time since the end of the Cold War and where U.S. leadership remains of critical importance. This will not be easy. There are, however, several areas in which the U.S. government can help set conditions for a safer world, including three modest suggestions for policies that could be enacted or reemphasized promptly. Each is consistent with policies followed during the previous Trump administration and shows that an “America First” security policy can lead to lower nuclear risks globally.

1) Maintain Limits on Nuclear Weapons

The New Strategic Arms Reduction Treaty (New START) is set to expire in just over a year. In 2020, then-President Trump hesitated to extend the treaty because it did not include China. As a bilateral treaty, there was no way to include China in 2020, but with New START expiring, there is an opportunity to replace it with a more inclusive arrangement. Negotiating one will not be easy, given Chinese resistance, and any progress will be slow. As an interim measure, the United States should propose that all nuclear states refrain from building and testing new weapons pending the completion of a new arms control framework. In other words, the United States and Russia will abide by New START limits, while everyone else stays where they are. Again, this will prove difficult for China, but Beijing will have to choose between curtailing its buildup or standing out as the one country favoring continuing arms race policies. The two following steps will provide confidence that the arms race is not being run without America.

## Aff---Refugee Convention

### Aff---Refugee Convention

#### The U.S. is a party to the 1967 Protocol Relating to the Status of Refugees but not the 1951 Convention Relating to the Status of Refugees. There isn’t really a substantive reason why this distinction matters, because the Protocol incorporates most provisions of the earlier Convention, and U.S. law is very similar to other provisions of the Convention.

Joan Fitzpatrick 97, Professor of Law and Foundation Scholar, University of Washington School of Law, 1997, “The International Dimension of U.S. Refugee Law,” *Berkeley Journal of International Law*, vol. 15, pp. 1-2, https://lawcat.berkeley.edu/record/1115939?ln=en&v=pdf.

The regulation of transboundary migration inherently implicates relations between nation states. Refugee law, in particular, draws heavily upon agreed international standards. The United States chose to join the international refugee regime by ratifying the 1967 Protocol relating to the Status of Refugees (Protocol) in 1968.1

[BEGIN FOOTNOTE 1] Protocol relating to the Status of Refugees, done Jan. 31, 1967, entered into force Oct. 4, 1967, 19 U.S.T. 6223, T.I.A.S. No. 6577, 606 U.N.T.S. 267 [hereinafter Protocoll. By ratifying the Protocol, the United States bound itself to respect Articles 2 through 34 of the 1951 Convention relating to the Status of Refugees, done July 28, 1951, entered into force Apr. 22, 1954, 189 U.N.T.S. 137. [END FOOTNOTE 1]

In enacting the Refugee Act of 1980,2 Congress pointedly signaled its intention to conform U.S. refugee law to our international legal obligations.3 A striking similarity in terminology exists between Article 1 of the 1951 Convention relating to the Status of Refugees4 (Convention) and the U.S. asylum provisions, §§ 101(a)(42)(A) and 208 of the Immigration and Nationality Act5 (INA). Especially significant is the close resemblance between the domestic provision on mandatory withholding of deportation, INA § 241(b)(3)(A) (formerly § 243(h)),6 and Article 33 of the Convention, which reads:

#### The Protocol is actually broader than the Convention and removed many limitations present in the original Convention.

UNHCR 11, United Nations High Commissioner for Refugees, September 2011, “The 1951 Convention Relating to the Status of Refugees and Its 1967 Protocol,” https://www.unhcr.org/sites/default/files/legacy-pdf/4ec262df9.pdf.

The 1967 Protocol broadens the applicability of the 1951 Convention. The 1967 Protocol removes the geographical and time limits that were part of the 1951 Convention. These limits initially restricted the Convention to persons who became refugees due to events occurring in Europe before 1 January 1951.

#### Most of the controversy in this area is about how it implements its existing obligation. Since the only obligations created by the Protocol relate to treatment of refugees within a country’s borders, countries like the U.S. can limit its applicability by using domestic immigration law to control the definition of who constitutes a “refugee” entitled to admittance.

Andrew Freiberger 10, JD from the Washington University School of Law, 2010, “The United States’ Response to Humanitarian Refugee Obligations: Inconsistent Application of Legal Standards and Its Consequences,” *Journal of Law & Policy*, vol. 33, pp. 297-298, https://journals.library.wustl.edu/lawpolicy/article/id/1233/.

One of the defining events of the twentieth century, World War II, occurred simultaneously with the genocide of millions of men, women, and children in the Holocaust.' After such atrocities, the international community recognized an obligation to never again enable the persecution of innocent populations.2 In 1948, the countries of the United Nations ("U.N.") adopted the Universal Declaration of Human Rights ("Declaration").3 The Declaration formally asserted the right to seek and receive asylum from persecution.4 At the 1951 Convention Relating to the Status of Refugees ("1951 Convention"),5 this right was developed into the principle of non-refoulement, whereby signatories agreed not to return anyone to a country in which there was a danger of 6 persecution.

As a practical matter, these rights are implemented through domestic asylum policies. 7 Immigration laws generally dictate that a refugee within a country's borders has legal status and is permitted to stay.8 In addition to its domestic asylum policy, the United States implements a voluntary overseas resettlement program, through which it brings refugees harbored in other countries to the United States. 9

Although the principle of non-refoulement requires countries to give legal status to refugees within their borders, countries have discretion in determining who meets the definition of a refugee. 10 By altering how refugee status is determined, countries can, in effect, control and limit whom they admit and the humanitarian obligation they assume. 1 This control is of great interest to the United States, which has historically been opposed to accepting unquantifiable and uncontrollable obligations. 12 The United States has aligned its adjudication process to channel refugees through the voluntary resettlement process, as opposed to the domestic asylum process. " In terms of obligations imposed by international humanitarian law, admittances through the overseas resettlement process are completely voluntary, as opposed to admittances of refugees located within a country's borders, which are required by the duty of nonrefoulement.1 4

#### Here's one example of a solvency advocate in this area. The Supreme Court should adopt a standard of deference to the UNHCR’s interpretations of the Refugee Convention.

HLR 18, Harvard Law Review, March 2018, “American Courts and the U.N. High Commissioner for Refugees: A Need for Harmony in the Face of a Refugee Crisis,” vol. 131, no. 5, https://harvardlawreview.org/print/vol-131/american-courts-and-the-u-n-high-commissioner-for-refugees-a-need-for-harmony-in-the-face-of-a-refugee-crisis/.

In order to further the goal of a unified treaty regime and provide a more consistent message to the lower courts — and to people applying for asylum in this country and worldwide — the Supreme Court should adopt a more explicit standard of deference to the UNHCR. This Note argues that the UNHCR’s key role in a treaty regime that Congress elected to join, as well as its substantial expertise in interpreting and implementing the Convention, suggest that U.S. courts should presume the correctness of the UNHCR’s interpretations of text in U.S. law derived directly from the Convention, unless this interpretation clearly conflicts with other domestic law or the UNHCR’s own positions.

#### Deference to the UNHCR promotes international unity and legal clarity surrounding refugee law.

HLR 18, Harvard Law Review, March 2018, “American Courts and the U.N. High Commissioner for Refugees: A Need for Harmony in the Face of a Refugee Crisis,” vol. 131, no. 5, https://harvardlawreview.org/print/vol-131/american-courts-and-the-u-n-high-commissioner-for-refugees-a-need-for-harmony-in-the-face-of-a-refugee-crisis/.

The lack of a clear standard for engagement with the UNHCR is concerning for two major reasons. It undermines the international unity of the treaty regime, which is bad both for the displaced individuals this regime aims to serve and for implementing countries. It also creates confusion among domestic courts, as well as executive enforcement agencies.

## Aff---Statelessness Convention

### Aff---Statelessness Convention

#### Solvency advocate for acceding to the Statelessness Conventions. That improves international cooperation on issues of statelessness, improves U.S. human rights credibility, and helps stateless individuals in the U.S.

Asako Ejima 21, JD candidate at Case Western Reserve University, 2021, “Ghosts in America: Working Towards Building a Legal Framework for Stateless Individuals in the United States,” *Case Western Reserve Journal of International Law*, vol. 53, pp. 388-389, https://scholarlycommons.law.case.edu/cgi/viewcontent.cgi?article=2604&context=jil#:~:text=There%20are%20%E2%80%9Cghosts%E2%80%9D%20living%20in,live%20and%20the%20international%20community.

As a threshold issue, the United States should accede to the 1954 Convention and the 1961 Convention. 28 8 First, due to increased global migration and intermarriages between citizens of different States, more individuals have to deal with complicated legal and procedural requirements to establish their citizenship. 289 By acceding to both statelessness conventions, there will be increased legal transparency and predictability with respect to other States, as more States accept the rules contained in these treaties. 290 Second, if more States accede to the statelessness conventions, there will be greater international cooperation to prevent statelessness. 291 Third, in acceding to the statelessness, States undertake to identify potential stateless populations and take measures to prevent and reduce statelessness within their borders. 292 Identifying and addressing the risks of statelessness could have a positive impact in allowing for larger parts of society to participate fully in a country's economic and social development. 293 And finally, by acceding to the statelessness conventions, the United States demonstrates a commitment to human rights and its cooperation with the international community to reduce and eliminate statelessness and respect the dignity of all individuals in need of protection. 294

#### Expanding international ratification of the Convention makes it more effective.

Asako Ejima 21, JD candidate at Case Western Reserve University, 2021, “Ghosts in America: Working Towards Building a Legal Framework for Stateless Individuals in the United States,” *Case Western Reserve Journal of International Law*, vol. 53, pp. 369-370, https://scholarlycommons.law.case.edu/cgi/viewcontent.cgi?article=2604&context=jil#:~:text=There%20are%20%E2%80%9Cghosts%E2%80%9D%20living%20in,live%20and%20the%20international%20community.

Despite the efforts of their well-intentioned drafters, the two statelessness-specific conventions have inherent weaknesses that have impeded a successful international resolution to statelessness.11 0 The main issue is that the two conventions have not gained widespread acceptance. 11 Only 94 countries are contracting parties to the 1954 Convention, 11 2 and only 75 countries are contracting parties to the 1961 Convention. 11 3 Increased ratification efforts of relevant instruments will contribute to a more overall effective international legal framework.11 4

### Neg---Statelessness Convention

#### There are inherent weaknesses in the Convention’s legal framework.

Asako Ejima 21, JD candidate at Case Western Reserve University, 2021, “Ghosts in America: Working Towards Building a Legal Framework for Stateless Individuals in the United States,” *Case Western Reserve Journal of International Law*, vol. 53, pp. 370, https://scholarlycommons.law.case.edu/cgi/viewcontent.cgi?article=2604&context=jil#:~:text=There%20are%20%E2%80%9Cghosts%E2%80%9D%20living%20in,live%20and%20the%20international%20community.

There are also problems with the conventions' normative content.115 The 1954 Convention only requires that Contracting States "shall as far as possible facilitate the assimilation and naturalization of stateless individuals" (Article 32).116 In other words, the Convention does not impose an obligation on States to confer nationality on stateless individuals.11 7 Without a conferral of nationality, a stateless individual remains stateless and at risk of all the consequences discussed above.118 Furthermore, the 1954 Convention only applies to stateless individuals who are lawfully present or lawfully staying in the Contracting State."9 The 1961 Convention fails to oblige States to bestow or retain nationality.12 0 Therefore, an individual can still become or remain stateless in that State.12 1 Furthermore, neither Conventions, nor the international legal framework as a whole, guarantees an individual a "home state" to which he or she can always return and from which he or she cannot be expelled.1 22

#### The politics link to this aff is strong given how anti-immigration Congress is.

Asako Ejima 21, JD candidate at Case Western Reserve University, 2021, “Ghosts in America: Working Towards Building a Legal Framework for Stateless Individuals in the United States,” *Case Western Reserve Journal of International Law*, vol. 53, pp. 395-396, https://scholarlycommons.law.case.edu/cgi/viewcontent.cgi?article=2604&context=jil#:~:text=There%20are%20%E2%80%9Cghosts%E2%80%9D%20living%20in,live%20and%20the%20international%20community.

S. 744 2.0 is a politically desirable option for the United States to adopt while it waits for an international solution to statelessness. It works within the realm of the United States' existing immigration legal framework while also harmonizing with the international legal framework, the Statelessness Convention, and the recent guidance published by UNHCR in the Statelessness Handbook. 359 Unfortunately, it is arguably not a politically viable option. S. 744 was a bipartisan bill when it was first introduced to Congress in 2013.360 However, the political attitude towards immigrants and immigration has changed dramatically for the worse since 2013.361 The current administration is unabashedly hostile towards immigrants.36 2 They have sharply cut legal immigration, tried to build a "wall" across the entire U.S.-Mexico border, increased arrests and removals of unauthorized immigrants, banned nationals from eight countries from entering the U.S., tried to cancel the Deferred Action for Childhood Arrivals (DACA) program, and reduced refugee admissions to the lowest number since the statute guiding refugee resettlement was enacted in 1980.363 Additionally, political anti-immigrant and anti-immigration rhetoric has strongly impacted how many Americans view immigrants. 364 Nearly a quarter of Americans call immigration a "problem." 36 That is "more than double the percentage who characterized it that way in 2015, and the highest share since Gallup began asking that question a quarter-century ago." 366 The sharp decline in immigration's popularity makes it unlikely that we will see comprehensive legislation that expands the United States' legal immigration framework.

## Aff---UNCLOS

### Aff---UNCLOS

#### The UN Convention of the Law of the Sea remains unratified by the United States. We instead rely on customary international law and a “patchwork of legal authorities” to regulate our conduct at sea. This leaves us excluded from the governing body that determines international obligations and permissions governing the sea.

**Cole 25**, United States Coast Guard’s National Security Fellow at Harvard University (Leah, “Lawfare, Not Warfare” Harvard Kennedy School Belfer Center for Science and International Affairs, Feb 4th, 2025, <https://www.belfercenter.org/research-analysis/lawfare-not-warfare>) rose

The UN Convention on the Law of the Sea (UNCLOS) is a comprehensive legal framework governing all uses of the world’s oceans and seas, and their resources. The international treaty also allows for further development of specific areas of the law of the sea. It is the globally recognized framework for adjudicating all matters relating to maritime law, governing areas including, but not limited to, environmental control, marine scientific research, economic and commercial activities, and the settlement of disputes relating to ocean matters. The treaty was opened for signature on December 10, 1982, and was entered into force on November 16, 1994. 157 Nations have ratified it because it sets forth a comprehensive legal regime governing activities on, over, and under the world’s oceans. Ratifiers include all major industrialized countries, including China, Russia, and all European Union member states. To date, the United States has failed to ratify the treaty, despite urging from environmental, scientific, labor, and industry organizations.

Presently, the United States continues to use customary international law, the 1974 International Convention of Safety of Life at Sea (SOLAS)11, the International Maritime Organization, the Freedom of Navigation Operations12, and domestic legislation for the “Rules of the Road”13, as well as title 10 and title 14 authorities. However, this patchwork of legal authorities coupled with an eroding sense of “customary” in the maritime commons is not sustainable nor suitable for conduct of nations at sea.

Throughout Reagan’s presidency, the United States did not ratify UNCLOS because of fears among conservative Republicans that it would undermine U.S. sovereignty by transferring “ownership” of the high seas to the United Nations.14 This fear was sowed by corporations who opposed the idea of the seabed as the common heritage of mankind. This thinking is now outdated and, in the nearly 40 years since, over 100 countries have adopted UNCLOS, these fears have proved to be unfounded. Further, in its absence, the UN Seabed Authority has already begun to grant licenses for deep seabed mining, putting U.S. corporations at a great disadvantage unless American corporations are granted access to the licensing system of the Seabed Authority. The very same industry that once lobbied against ratification of UNCLOS forty years ago is now risking billions of dollars of lost revenue if they do not lobby for ratification with the 119th Congress.

In the 1990s, President Clinton submitted UNCLOS and the 1994 implementing agreement to the U.S. Senate for advice and consent.15 While the Senate Foreign Relations Committee did not schedule a single hearing, 143 nations, including all NATO states, China, and Russia, had already become party to the Convention. In effect, this was the beginning of the U.S. ceding governance of the maritime commons and relying on diplomatic and operational challenges to excessive maritime claims, leaving stronger, more desirable legal framework and additional methods of resolving conflict on the table.16

In the 2000s, President Bush said, “Joining [the convention] will serve the national security interests of the United States, including the maritime mobility of our armed forces worldwide.”17 Following his statement, the Senate Foreign Relations Committee held hearings on UNCLOS in summer 2007. During President Obama’s first term, he and the U.S. Senate pledged support for UNCLOS while the U.S. Coast Guard strongly, and officially, supported efforts to join international partners as a party nation to UNCLOS. There was also support from the Joint Chiefs of Staff, the Secretary of State, the Secretary of Homeland Security, and a wide spectrum of maritime industry, environmental, and ocean policy experts. By 2009, although the Senate Foreign Relations Committee recommended approval by the full Senate, no floor vote was taken. This was the closest the United States has come to ratifying UNCLOS. At the end of President Trump’s first term, revived efforts emerged on the anniversary of the signing of the treaty in 2019. Sen Hirono (D-HI) and Sen Murkowski (R-AK) introduced a bipartisan resolution urging the U.S.’ ratification of the law of the sea treaty, but this bipartisan effort was not successful and UNCLOS was never brought to a vote.

#### Ratifying/becoming party to UNCLOS is a debatable topic area – affirmative teams could argue the ability to participate in UNCLOS gives us greater influence over ocean-related decisions, which is important economically and strategically. Negative teams could argue that ratification or full compliance limits US economic and strategic flexibility. This creates rich link vs link turn debates.

**Council on Foreign Relations 24**, think tank, publisher of Foreign Affairs. (“Should the United States Ratify the Law of the Sea?” Council on Foreign Relations, July 3rd, 2024, <https://education.cfr.org/teach/mini-simulation/should-united-states-ratify-law-sea>) rose

The Situation

The world's oceans are teeming with life and valuable resources. In 1982, the United Nations established UNCLOS to ensure fair and sustainable management of those vast shared waters. UNCLOS acts as a global rulebook. It governs safe ship passage, fair access to ocean resources, and the protection of marine environments.

Despite many nations becoming signatories to UNCLOS, the United States opted against joining. That decision was driven by concerns over certain clauses. These clauses required sharing mining technology and profits with other nations. This clashed with U.S. commitments to free-market principles and economic independence. Historically, the United States tends to prefer bilateral agreements, valuing its ability to navigate its affairs independently without being bound by overarching international frameworks.

By staying out of UNCLOS, the United States retains autonomy in its maritime policies, offering flexibility and control. Supporters argue that independence protects economic interests and allows strategic maneuvering on the global stage. However, not being part of UNCLOS limits the United States’ ability to shape international ocean regulations. Not joining could weaken the county’s influence on crucial security and economic issues. This is particularly risky as China gains prominence among signatories of the convention.

#### A lot of this debate centers on deep-sea mining – without joining, the US might be left behind in the race for abundant REMs on the ocean floor. Teams might tie this to reliance on China or environmental concerns. But accelerating deep-sea mining is environmentally controversial – it carries significant risks, and negative teams might forward criticisms of this extraction or disadvantages about more nations participating in the process. The negative, alternatively, could propose a counterplan that mines without UNCLOS approval – which risks international backlash but might solve the advantage better without linking to any of the disadvantages to ratifying UNCLOS.

**Council on Foreign Relations 24**, think tank, publisher of Foreign Affairs. (“Should the United States Ratify the Law of the Sea?” Council on Foreign Relations, July 3rd, 2024, <https://education.cfr.org/teach/mini-simulation/should-united-states-ratify-law-sea>) rose

One key economic interest driving the ongoing debate is the United States’ pursuit of critical minerals. An abundant supply of minerals like lithium, cobalt, and nickel lies on the seabed. These minerals are essential for developing technologies such as solar panels, wind turbines, and electric vehicles. These technologies are crucial for advancing clean energy solutions. However, potential access to this mineral supply via deep-sea mining in international waters depends on regulations set by the International Seabed Authority. An international organization established under UNCLOS.

If international mining rules are implemented and companies can start extracting minerals commercially, the United States faces a significant roadblock as a non–UNCLOS member. American companies cannot directly obtain those licenses. They will require sponsorship from a UNCLOS member nation, creating a dependence on potential competitors. This is concerning because China, already a dominant player in the critical minerals market, actively seeks further control. Reliance on foreign sources, especially China, raises national security anxieties. It limits the United States’ ability to control its own energy future.

The United States could technically mine the deep seabed without joining UNCLOS. Although, doing so could harm international cooperation. If the United States bypasses the Law of the Sea, other countries may follow suit. This would undermine the idea of working together in good faith. Without international accountability, it becomes difficult to manage global resources globally. This could have devastating environmental consequences, leading to chaos and competition.

Deep-sea mining holds promise for supporting clean energy technologies, yet it also carries significant environmental risks. Scientists caution that rushed mining activities could severely harm marine ecosystems. Mining the sea-bed could disrupt habitats, and release toxins, and pose long-term threats to ocean life. Many experts advocate for cautious approaches and augmented research before expanding mining operations. If the United States goes it alone, it could follow its own rules as it sees fit on the trade-offs of environmental protection and resource access. On the other hand, membership in UNCLOS would give the United States a voice in shaping responsible and sustainable resource extraction policies. This influence could help ensure the oceans’ long-term health while allowing access to valuable resources.

Overall, the International Seabed Authority’s approval of global regulations for deep-sea mining is complex and uncertain. This uncertainty adds to the United States’ considerations when weighing the benefits of giving up some control for broader global objectives.

Decision Point

The upcoming rules on deep-sea mining present a critical decision for the United States. Joining UNCLOS would allow the country to help shape global maritime laws. This is important as global demand grows for minerals essential for technology and industry. On the other hand, not ratifying allows flexibility. It avoids compromising control over maritime activities and potential conflicts over resource sharing. Should the United States ratify UNCLOS to gain a voice in global maritime law, despite potentially compromising some control? Or should it maintain observer status to retain flexibility, even though this could limit its influence on future rules?

#### Here is an example of the kind of cost-benefit analysis debating this area would involve, including three potential courses of action:

**Council on Foreign Relations 24**, think tank, publisher of Foreign Affairs. (“Should the United States Ratify the Law of the Sea?” Council on Foreign Relations, July 3rd, 2024, <https://education.cfr.org/teach/mini-simulation/should-united-states-ratify-law-sea>) rose

NSC members should consider the following policy options, either alone or in combination:

The United States joins UNCLOS. Joining would give the United States a pivotal role in shaping international maritime laws. It would enable the United States to influence regulations concerning deep-sea mining and navigation rights. This is especially important as countries such as China expand their influence. Yet, the decision would not come without costs. Joining the agreement would likely require the United States to give up some control over its maritime resources and activities. The U.S would become subject to international dispute resolution, potentially facing lawsuits about its actions at sea. The U.S. may also have to share access to certain oil and gas reserves with other member nations. Overall, UNCLOS regulations would not always align with U.S. interests, particularly on resource sharing.

The United States remains nonparty to UNCLOS but observes and respects global maritime laws. In this business-as-usual approach, the United States would maintain its nonparty status within UNCLOS. Even though it would not be a party, it could adhere to customary international law governing the seas in an aim to uphold a commitment to international order. Not ratifying could allow the United States to have flexibility in domestic maritime activities. However, not ratifying would mean that theUnited States would not hold a formal role in shaping future regulations. This is especially important in emerging fields such as deep-sea mining. It could disadvantage the United States as it would have limited influence on developing legal frameworks.. This could limit U.S. access to resources if the country continues to follow the rules of UNCLOS, without having a role in shaping it.

The United States remains nonparty to UNCLOS but mines deep-sea resources in international waters, potentially violating international regulations. This option prioritizes immediate resource access. By disregarding UNCLOS entirely and pursuing deep-sea mining independently, the United States could secure valuable minerals quickly. This route would avoid international regulation and profit sharing. However, it’s a choice that would carry significant risks. Legal challenges would be likely from other countries that may accuse the United States of violating international law and territorial rights. In general, such a unilateral approach could damage the United States’ reputation as a proponent of international cooperation and rule of law. This could affect its global standing and relationships with other countries.

#### The plan would be politically controversial – conservatives tend to hate multilateral treaties and have staunchly resisted becoming party to UNCLOS. This demonstrates controversy and politics-related negative ground.

**Kraus 23**, Research Associate at the Institute for Defense Analyses, (John, “Unmoored from the UN: The Struggle to Ratify UNCLOS in the United States” The SAIS Review of International Affairs, June 26th, 2023, <https://saisreview.sais.jhu.edu/unmoored-from-the-un-the-struggle-to-ratify-unclos-in-the-united-states/>) rose

The main obstacle to UNCLOS ratification remains Senate Republicans’ philosophical aversion to multilateral institutions. In 2019 and 2021, representatives from the U.S. Subcommittees on Seapower in the House and Senate [introduced](https://www.hirono.senate.gov/news/press-releases/senators-hirono-murkowski-kaine-introduce-resolution-calling-on-the-senate-to-ratify-un-convention-on-the-law-of-the-sea#:~:text=The%20United%20States%20signed%20UNCLOS,%2C%20labor%2C%20and%20industry%20organizations.) resolutions calling for the Senate to ratify UNCLOS.⁶⁵ However, neither action has prompted the SFRC to review the treaty again. The outcome of the 2012 SFRC hearing illustrated a highly organized Republican opposition to the treaty. Such dynamics persist in the Senate today, in which a ratification proposal to the Senate floor would be considered dead on arrival. Thus, champions of American independence from multilateral bodies like UNCLOS have proven to be a powerful minority.

#### The aff might argue UNCLOS ratification is critical to deal with a host of existential threats relating to the oceans. This could be a broad, laundry-list-esque “ocean governance” advantage.

**Cole 25**, United States Coast Guard’s National Security Fellow at Harvard University (Leah, “Lawfare, Not Warfare” Harvard Kennedy School Belfer Center for Science and International Affairs, Feb 4th, 2025, <https://www.belfercenter.org/research-analysis/lawfare-not-warfare>) rose

A groundbreaking new report from the United Nations Institute for Disarmament Research (UNIDIR)[18](https://www.belfercenter.org/research-analysis/lawfare-not-warfare#footnote-18) identifies twenty critical challenges poised to shape the maritime security agenda in the coming years, demonstrating why the ratification of UNCLOS is an urgent issue. The report’s identified critical challenges range from cybersecurity risks and the proliferation of low-cost uncrewed systems to the impacts of climate change and biodiversity loss. Moreover, the report underscores the increasingly complex nexus between environmental concerns and traditional security threats, requiring more dynamic strategies to safeguard global maritime zones. UNIDIR is raising the alarm over a fragmented and insufficient approach to global maritime security, calling for urgent action to address growing vulnerabilities at sea. This comprehensive study exposes a widening array of threats in maritime zones worldwide, ranging from missile and drone proliferation to illicit arms trafficking and the protection of critical maritime infrastructure. It argues for closer integration between maritime governance and international arms control frameworks to counter these emerging risks effectively. The report’s release is timely, coinciding with the adoption of the UN’s Pact for the Future, which emphasizes enhanced international cooperation to secure oceans. Notably, Action 22 of the Pact urges improved governance, environmental protection, and conflict prevention at sea—echoing the key themes in UNIDIR’s findings. The U.S. faces a looming crisis on the high seas unless we can take decisive, sweeping action by ratifying UNCLOS and immediately challenging bad actors via the established legal framework and international tribunal.

#### They might claim advantages based on UNCLOS’ dispute resolution mechanisms – that could take the form of either peaceful resolutions to disputes with other seafaring nations, or property rights resolutions that serve our economic interests through Exclusive Economic Zone (EEZ) expansion.

**Cole 25**, United States Coast Guard’s National Security Fellow at Harvard University (Leah, “Lawfare, Not Warfare” Harvard Kennedy School Belfer Center for Science and International Affairs, Feb 4th, 2025, <https://www.belfercenter.org/research-analysis/lawfare-not-warfare>) rose

As our national security concerns continue to grow in the maritime domain, especially with China’s excessive maritime claims and the rapid expansion of Chinese maritime military forces, including the China Coast Guard and Peoples Liberation Army-Navy, UNCLOS provides an essential dispute settlement process. Most maritime issues that cannot be resolved bilaterally can be taken to a special panel for arbitration, while issues involving military activities may be exempted from the dispute-settlement process. Although it must be noted that the convention limits the uses of the world’s oceans for “peaceful purposes,” it does not restrict military training exercises, the inherent right of self-defense, nuclear deterrent patrols, or the rights of belligerents during military conflicts.

An additional, critical understanding is the burgeoning economic imperative for the United States to ratify UNCLOS. The provisions on the 200-nautical mile Exclusive Economic Zone (EEZ) guarantee nations’ sovereign rights and exclusive jurisdiction over all the living and mineral resources within their EEZs. The convention also permits nations to secure sovereign rights over the vast mineral resources of the continental shelf beyond two hundred nautical miles. This would provide the United States with legal rights to explore and develop oil, gas, and mineral resources on the extended continental shelf off Alaska and the Gulf Coast. The deep-seabed-mining provisions, as modified in the 1994 Implementing Agreement, allow mining companies to pursue free-market-oriented approaches to seabed mining. The agreement eliminated any obligation of mining companies to transfer their technology. Convention revisions from 1994 guarantee the United States a unique, significant role in decision-making as the United States would have the equivalent of a veto power on key decisions. The environmental provisions provide a framework for developing effective and efficient measures to combat maritime pollution and to promote the health of the world’s oceans consistent with US national priorities. The environmental provisions are fully consistent with U.S. maritime environmental protection programs, including Coast Guard efforts to keep substandard and polluting vessels out of U.S. ports and waters. In addition, as rich energy and mineral sources and their seabed extraction technology become commonplace, the U.S. must invest in responsible and legal dispute resolution framework[19](https://www.belfercenter.org/research-analysis/lawfare-not-warfare#footnote-19) on behalf of U.S. corporations and economic enterprise.

#### Here's another card to support the maritime conflict advantage – China’s boundary-pushing in the squo might threaten escalation absent US participation in the primary international institution that can challenge abuses of the law of the sea.

**Cole 25**, United States Coast Guard’s National Security Fellow at Harvard University (Leah, “Lawfare, Not Warfare” Harvard Kennedy School Belfer Center for Science and International Affairs, Feb 4th, 2025, <https://www.belfercenter.org/research-analysis/lawfare-not-warfare>) rose

The ratification of UNCLOS by the U.S. relates to Sen’s idea of a realization focused comparative approach[22](https://www.belfercenter.org/research-analysis/lawfare-not-warfare#footnote-22), as it would set a firm global standard and reduce comparativist ability to evolve, shape shift, or bully one’s idea of maritime claims. In today’s global context, a comparative approach in the maritime commons is failing and creating geopolitical flashpoints that have the potential to create conflict. For this reason, the public order of the oceans is best established and better maintained by a stable, universally accepted convention that promotes the key interests of the United States, its allies, and its trading partners.

Recently, across Southeast Asia, nations that ratified UNCLOS have begun to file legal claims publicly calling out sovereignty and conduct abuses at sea leveraging UNCLOS’ established legal framework and tribunal process. The Philippines filed and won its case unanimously against China’s “excessive” maritime claims. These cases are current and, while several have yet to be decided, they each have major implications for setting future international norms and interpretations. In response, China is openly ignoring the international tribunal’s orders to attend legal proceedings. Without treaty ratification, the U.S. has been prevented from taking a leadership and advocacy role in shaping these critical legal frameworks, perceivably allowing this behavior without legal ground or recourse. Perhaps most important to ratification is that “U.S. accession would enhance the authoritative force of the Convention, likely inspire other states to join, and promote its provisions as the governing rules of international law relating to the oceans…and would be in a stronger position invoking the treaty’s provisions to which it is party, in a bi-lateral disagreement where the other country does not understand or accept them.”[23](https://www.belfercenter.org/research-analysis/lawfare-not-warfare#footnote-23) If the United States had a seat at the table, nations violating UNCLOS regulations may be held accountable.

#### Ratifying UNCLOS would open the US to environmental lawsuits – this could be bad for oil/LNG reasons, bad for international perception reasons, or good for environmental reasons!

**Groves 12**, fellow in the Margaret Thatcher Center for Freedom, Heritage Foundation, “The Law of the Sea: Costs of U.S. Accession to UNCLOS,” June 14th, 2012, <https://www.heritage.org/testimony/the-law-the-sea-costs-us-accession-unclos>) rose

Acceding to UNCLOS would expose the U.S. to lawsuits on virtually any maritime activity, such as alleged pollution of the marine environment from a land-based source or through the atmosphere. Regardless of the merits, the U.S. would be forced to defend itself against every such lawsuit at great expense to U.S. taxpayers. Any judgment rendered by an UNCLOS tribunal would be final, could not be appealed, and would be enforceable in U.S. territory.

Unlike a resolution passed by the U.N. General Assembly or a recommendation made by a human rights treaty committee, judgments issued by UNCLOS tribunals are legally enforceable upon members of the convention. Article 296 of the convention, titled “Finality and binding force of decisions,” states, “Any decision rendered by a court or tribunal having jurisdiction under this section shall be final and shall be complied with by all the parties to the dispute.”

Judgments made by UNCLOS tribunals are enforceable in the same manner that a judgment from a U.S. domestic court would be. For example, Article 39 of Annex VI states that “The decisions of the [Seabed Disputes] Chamber shall be enforceable in the territories of the States Parties in the same manner as judgments or orders of the highest court of the State Party in whose territory the enforcement is sought.” In other words, if the United States accedes to the convention, the U.S. government will be required to enforce and comply with SDC judgments in the same manner as it would enforce and comply with a judgment of the U.S. Supreme Court. In other words, the U.S. court system will serve not as an avenue for appeal from UNCLOS tribunals, but rather as an enforcement mechanism for their judgments.

The domestic enforceability of UNCLOS tribunal judgments was confirmed by U.S. Supreme Court Justice John Paul Stevens in the landmark 2008 case, Medellin v. Texas. In Medellin, Justice Stevens, writing a concurring opinion, cited Article 39 of Annex VI for the proposition that UNCLOS members—presumably including the United States if it accedes to the convention—are obligated to comply with the judgments of the convention’s tribunals.

U.S. accession to the convention would provide an opportunity and legal forum for other UNCLOS members to initiate lawsuits against the U.S. challenging the adequacy of its efforts to protect the marine environment. Although current U.S. law may satisfy many of the general environmental obligations set forth in the convention, the U.S. might nevertheless be forced to defend itself in a costly and politically embarrassing lawsuit challenging the sufficiency and enforcement of U.S. domestic environmental laws and regulations. One such lawsuit—the MOX Plant Case (Ireland v. United Kingdom)—has already been litigated in UNCLOS tribunals.

Acceding to UNCLOS would commit the U.S. to controlling its pollutants, including alleged “harmful substances” such as carbon emissions and other greenhouse gases (GHG), in such a way that they do not negatively impact the marine environment. The U.S. would also be obligated to adopt laws and regulations to prevent the pollution of the marine environment from the atmosphere and could be liable under international law for failing to enact legislation necessary to prevent atmospheric pollution. Moreover, such domestic laws and regulations “shall” take into account “internationally agreed rules, standards and recommended practices and procedures.” The “internationally agreed rules, standards and recommended practices” that could be invoked by UNCLOS litigants may include instruments such as the U.N. Framework Convention on Climate Change (UNFCCC) and its Kyoto Protocol.

A consensus has emerged within the international environmental and legal community that the United States is the best target for an international climate change lawsuit. One law professor has characterized the United States as a likely target because it is a developed nation with high per capita and total GHG emissions, adding that the “higher the overall historic and present contribution to global emissions by the defending party, arguably the better the chance of a successful outcome.”

Over the past decade, there has been a steady drumbeat to initiate an international climate change lawsuit against the United States, and UNCLOS tribunals have featured prominently among the potential forums identified as a venue for such a case.

In 2002, the prime minister of Tuvalu, a Pacific island nation consisting of a chain of nine coral atolls, stated his intention to initiate a climate change lawsuit against the United States because of its failure to adopt the Kyoto Protocol. That year, at the World Summit for Sustainable Development held in Johannesburg, Tuvalu’s government lobbied other small island nations to join them in such a suit at the International Court of Justice.

In 2003, the Washington, D.C.-based Environmental Law Institute published “The Legal Option: Suing the United States in International Forums for Global Warming Emissions” by law professor Andrew L. Strauss. According to Strauss, the U.S. rejection of the Kyoto Protocol “makes the United States the most logical first country target of a global warming lawsuit in an international forum.” The article proposed various forums for initiating a lawsuit against the United States, including UNCLOS tribunals, but Strauss lamented, “As the United States has not adhered to the Convention, however, a suit could not be brought directly against it under the Convention.”

In her 2005 book Climate Change Damage and International Law, law professor Roda Verheyen posed a hypothetical case that could be brought against the United States for its alleged responsibility in melting glaciers and causing glacial outburst floods in the Himalayas. The claim would include compensation for flood damages as well as additional funds to monitor glacial lakes and prevent future floods. Verheyen based liability for such damages on the U.S.’s alleged violation of its commitments under the UNFCCC and failure to ratify the Kyoto Protocol.

In December 2005, the Inuit Circumpolar Council, an international nongovernmental organization representing Inuit peoples in Alaska, Canada, Greenland, and Russia, filed a petition against the United States at the Inter-American Commission on Human Rights (IACHR), a human rights body operating within the Organization of American States. The petition requested that the IACHR direct the United States to adopt mandatory measures to limit its emissions and to provide assistance to help the Inuit adapt to the impacts of climate change.

In 2006, the International Journal of Sustainable Development Law & Policy published “Potential Causes of Action for Climate Change Damages in International Fora: The Law of the Sea Convention,” in which law professor William C. G. Burns cited UNCLOS’s marine pollution provisions as a basis for a cause of action for rising sea levels and changes in ocean acidity. Burns named the United States as “the most logical State to bring an action against given its status as the leading producer of anthropogenic greenhouse gas emissions, as well as its failure to ratify Kyoto,” but noted that the U.S. “is not currently a Party to the Convention.”

In a September 2011 speech to the U.N. General Assembly, Johnson Toribiong, president of the Pacific island nation of Palau, called upon the General Assembly to seek an advisory opinion from the International Court of Justice “on the responsibilities of States under international law to ensure that activities carried out under their jurisdiction or control that emit greenhouse gases do not damage other States.”

In sum, the United States would be at the top of the list of potential defendants in an UNCLOS climate change lawsuit, if the U.S. accedes to the convention. Thus far, the United States has denied potential climate change claimants their day in international court by refusing to accede to UNCLOS. Clearly, accession to the convention would open the door to these litigants as well as to their advocates in the international academic, environmental, and nongovernmental organization communities.

#### Ratification mechanism is specifically important for US influence in the Indo-Pacific.

Aristyo Rizka Darmawan 21, Lecturer in International Law at Universitas Indonesia, Researcher at Centre for Sustainable Ocean Policy, "The USA and UNCLOS: Time to Ratify," Fulcrum, 02/22/2021, https://fulcrum.sg/the-usa-and-unclos-time-to-ratify/

Actions speak louder than words. Ratifying UNCLOS would strengthen the US’ stabilising role in the Indo-Pacific.

“America is back. Diplomacy is back at the center of our foreign policy.”

“US foreign policy must start with diplomacy rooted in America’s most cherished democratic values including respecting the rule of law.”

President Joe Biden’s first foreign policy speech two weeks not only outlined the foreign policy priorities and direction of his administration, it signaled a dramatic change from that of his predecessor Donald Trump.

On his first day in the Oval Office, the president got down to the business of reorienting US foreign policy from that of his predecessor by signing several important executive orders. These included ones to rejoin the Paris Agreement on climate change, revise immigration enforcement policies, and end the bans on entry to the U.S. of individuals from designated majority-Muslim countries.

Biden realises that the Indo-Pacific will be the main crucible where this reorientation will be tested. Soon after his inauguration, he appointed a top-notch diplomat, Kurt Campbell, a former Assistant Secretary of State for East Asian and Pacific Affairs under the Obama administration, as the first-ever Indo-Pacific coordinator at the National Security Council (NSC). Emily Horne, the NSC spokesperson, confirmed that the Indo-Pacific team is the largest National Security Council directorate.

There is some unfinished business in the US foreign policy from well before Donald Trump’s single term as president that the Biden Administration and Democrat-controlled Senate should complete. Ratifying the United Nations Convention on the Law of the Sea (UNCLOS) would advance the administration’s foreign policy priorities and help it in Southeast Asia and the wider Indo-Pacific live up to its rhetoric on American leadership and multilateralism.

Despite participating in all of the UNCLOS negotiations from 1974 to 1982, the US only signed the convention in 1994. Since then the Senate has failed to ratify it despite the introduction of an UNCLOS implementing agreement to address American reservations about the seabed chapter that delayed US signing on. The executive’s last serious effort to convince the Senate to ratify UNCLOS came in 2004 when the Joint Chiefs, the Chief of Naval Operations, all combatant commanders, and energy companies with seabed interests encouraged the Senate to consider ratification. Currently, the US only recognises most parts of UNCLOS as customary international law, a weaker position than ratification and one that leaves the US open to criticism from UNCLOS ratifiers like China. President Biden should seek to leverage his years in Congress and the relationships he has built over this time in the Senate to mount a larger ratification campaign than the one that failed fifteen years ago.

Currently, the US only recognises most parts of UNCLOS as customary international law, a weaker position than ratification and one that leaves the US open to criticism from UNCLOS ratifiers like China.

Seasoned US legal experts though think that UNCLOS ratification will remain in the “too hard basket” and the Biden administration will seek to revive US leadership elsewhere. The latest developments in the Indo-Pacific, however, suggest there has never been a more important time for the US to join the 168 parties that have ratified the convention of the global maritime rules-based order. As China’s influence grows and challenges to the international maritime legal order mount, particularly in the South China Sea, American efforts to push back and rally others against this Chinese challenge are undercut by UNCLOS non-ratification.

In the last several years, China has become more aggressive in asserting its extensive claims in the South China Sea. There has been a serious standoff involving the China Coast Guard and other claimant states such as the Philippines, Malaysia, and Vietnam. Earlier this year, China enacted a Coast Guard Law that authorises its Coast Guard to fire on foreign vessels in their claimed maritime area if deemed necessary. With this new law, it is most likely that there will be more maritime incidents and more dangerous ones in the South China Sea.

In response, even though the US has not ratified UNCLOS, it has tried to defend and enforce the freedoms of the sea as provided for by UNCLOS by conducting regular freedom of navigation operations (FONOPs) to challenge the maritime rights claimed by coastal states that the US holds as unlawful under UNCLOS. These include China’s unlawful claims in the South China Sea. Last year, the US Coast Guard issued its illegal, unreported, and unregulated fishing (IUUF) strategic outlook that underscores the importance of a US leadership role in eradicating IUUF. US FONOPs and IUFF activities in Southeast Asia would gain more support and legitimacy if the US ratified UNCLOS as would the pursuit of its desired leadership role. It would also preclude further Chinese criticisms of US non-ratification.

It is the US’ interest to underwrite the rules-based maritime order for the peaceful and secure freedom of navigation and to counter China’s hegemonic and bullying actions in the South China Sea. Taking into account the changing geopolitical situation and the maritime security challenges that face the Indo-Pacific today, US ratification of UNCLOS would enhance the legitimacy and acceptance of US FONOPs and show America’s strong commitment to preserving international law and the rules-based international order in the Indo-Pacific. President Biden and the US Senate the time has come to join UNCLOS.

#### Failure to ratify UNCLOS compromises national security through economic and deep sea mining access effects.

Bill Whitaker et al. 24, Whitaker is an award-winning journalist and 60 Minutes correspondent who has covered major news stories, domestically and across the globe, for more than four decades with CBS News; Chasan is a Digital Content Producer for "60 Minutes" and CBSNews.com, has previously written for outlets including PIX11 News, The New York Daily News, Inside Edition and DNAinfo, covers trending news, often focusing on crime and politics, "National security leaders worry about U.S. failure to ratify Law of the Sea treaty," CBS News, 60 Minutes Overtime, 03/24/2024, https://www.cbsnews.com/news/national-security-economic-concerns-us-law-of-the-sea-treaty-60-minutes/

Hundreds of former national security, military and political leaders are calling on the Senate to ratify the United Nations' Law of the Sea, warning last week in a letter to lawmakers that China is taking advantage of America's absence from the treaty.

Countries that ratified the Law of the Sea treaty are now rushing to stake claims on the international seabed for deep sea mining. At stake are trillions of dollars worth of strategic minerals strewn on the ocean floor, essential for the next generation of electronics. China has five exploration sites, 90,000 square miles –the most of any country. The U.S. has none. It is blocked from the race because of the Senate's refusal to ratify the Law of the Sea.

"We are not only not at the table, but we're off the field," lawyer John Bellinger, who was a legal adviser to former President George W. Bush, said. "The United States probably has got the most to gain of any country in the world if it were party to the Law of the Sea Convention, and conversely, we actually probably have the most to lose by not being part of it."

What can be gained from the Law of the Sea Treaty and deep sea mining

Vast quantities of minerals are scattered across the ocean floor. Researchers have found potato-sized lumps of rock, known as nodules, filled with cobalt, nickel, manganese and copper — some of the most valuable metals on earth. They're vital for everything from electric cars to defense systems.

To avoid a free-for-all, 168 countries, including China, have signed onto the United Nations Law of the Sea treaty, which divides the international seabed.

The United Nations adopted the Convention on the Law of the Sea (UNCLOS) in 1982. Often called the constitution for the ocean, the treaty codifies existing international law on freedom of navigation. It also created the International Seabed Authority, which regulates the new deep sea mining industry.

President Bill Clinton signed the treaty, but it was dead on arrival in the Senate who refused to ratify the treaty, saying it undercut American sovereignty.

Why the U.S. won't ratify the treaty

Despite broad bipartisan support — including efforts by five presidents — the treaty has hit a wall in the Senate year after year.

Bellinger, who was a legal adviser to former President George W. Bush, testified in favor of the treaty at Senate hearings in 2012. While Bush was not a fan of U.N. treaties, Bellinger said Bush supported the Law of the Sea Treaty, not only for codifying access to the ocean floor, but also because the treaty guarantees the freedom of navigation around the world that's so important to the Navy.

In 2012 – the last time the Senate held hearings on the treaty – the Law of the Sea had the support of the president through the intelligence community, big oil, major business groups and the U.S. military, Bellinger said. He thought it was a slam dunk.

It failed.

The conservative Heritage Foundation convinced 34 Republican senators to vote against the treaty, saying it would subjugate the U.S. to the U.N.

"The opposition was not on national security reasons or on business reasons," Bellinger said. "It to me seemed just a reflexive ideological opposition to joining the treaty."

Heritage Foundation senior policy analyst Steven Groves also testified in 2012. He said the U.S. didn't need anyone's permission to mine the seabed. His views haven't changed.

"What businessman in their right mind said, 'I'm going to invest tens of billions of dollars into a company that I will then have to go…and ask permission from an international organization to engage in deep seabed mining,'" Groves said.

He insists American companies are staying away not because the U.S. hasn't ratified the treaty, but because deep sea mining isn't viable.

"If China wants to go and think that it's economically feasible to drag those nodules up to the surface and process them, let them do it" Groves said. "The United States has decided to stay out of the game. The one U.S. company that had rights to the deep seabed got out of the game, that's Lockheed Martin."

But Lockheed Martin has not entirely quit. The defense giant had rights to four Pacific seabed sites; it sold two and is holding onto two in case the treaty passes.

But Lockheed told "60 Minutes" that if the U.S. doesn't ratify the treaty, it can't dive in.

Ambassador John Negroponte, a former director of National Intelligence in the Bush administration, said the Heritage Foundation is still standing in the way.

"What Heritage is saying is 'we don't even want to give 'em a chance. We have—we know the answer already. And I, you know, I think that's sort of hypothetical thinking," Negroponte said. "The pragmatic approach would be to say, 'OK, let us have access and see what happens.'"

How the U.S.'s failure to ratify the treaty could hurt American business, empower China's economy

With seabed mining starting as early as next year, China is in place to dominate it. China already controls a near monopoly of critical minerals on land. Now it wants to extend that control to the ocean floor. If it succeeds, there are national security fears the U.S. could end up even more dependent on China for these critical minerals.

"If they end up being the largest producer and we're not producing at all from the ocean…I think then that might place us in a difficult economic position," Negroponte said.

In the years since 2012, China has become more assertive on the international scene, especially in the South China Sea, Negroponte said.

"And then with respect to deep seabed mining, they're eating our lunch," he said.

Unless America ratifies the treaty, it won't have a say in drafting environmental rules for seabed mining that are underway now. With the U.S. absent, China is the heavyweight in the room at the International Seabed Authority.

"We are conceding," Negroponte said. "If we're not at the table and we're not members of the Seabed Authority, we're not going to have a voice in writing the environmental guidelines for deep seabed mining. Well, who would you prefer to see writing those guidelines? The People's Republic of China or the United States of America?"

Military concerns over the U.S. failure to ratify the treaty

Concerns over China's expansive powers in the deep sea are about more than mining. Many national security, military and political leaders are warning that China is taking advantage of America's absence from the treaty to pursue overall naval supremacy.

Thomas Shugart, a former U.S. Navy submarine warfare officer and a senior fellow at the Center for a New American Security, said being outside the treaty undercuts American credibility while China is laser-focused on building its maritime power. Shugart said China's deep sea miners have a second mission: collecting information for the Chinese military.

"If you're going to find submarines in the ocean, you need to know what the bottom looks like. You need to know what the temperature is. You need to know what the salinity is," Shugart said. "If China is using civilian vessels to sort of on the sly do those surveys, then that could improve their ability to find U.S. and allied submarines over time as they better understand that undersea environment."

Shugart also said China is flexing its maritime muscle by claiming the South China Sea as its private ocean.

The country has challenged the treaty's navigation laws that ensure safe passage by harassing passing ships, including the U.S. Navy. China has fired water cannons at its neighbors, caused collisions and even flashed a military-grade laser at ships.

For Groves, of the Heritage Foundation, that's why the treaty is meaningless.

"It's China who is a party to the treaty who doesn't obey the rules of the road," Groves said. "They're the ones getting into near collisions with U.S. vessels in the South China Sea. The United States respects and adheres to international law. It is the Chinese who are the scofflaws here. And the idea that the U.S. joining the treaty would somehow change that Chinese behavior has no basis in reality."

But Shugart said that when the U.S. calls out China for violating the law, China responds, "well you're not a signatory… so what do you have to say about it?"

"We are in a messaging contest and an effort to win hearts and minds all over the world against what is clearly our greatest strategic competitor," Shugart said.

In Washington, Negroponte's group continues to lobby the Republican holdouts in the Senate as China forges ahead. When "60 Minutes" reached out to those senators who torpedoed the treaty in 2012, their opposition today was as strong as ever.

"It just doesn't make sense to a conservative to say, 'these minerals that are in the deep seabed are so important to the United States, we are done without those, let's put an international bureaucracy in charge of getting us access to them,'" Groves said.

Sen. Mike Lee, a Republican from Utah who opposed the treaty in 2012, maintains that there's nothing in the Law of the Sea that advances America's interests.

"The U.S. needs to reject the constant impulse to cede sovereignty by allowing unelected and unaccountable global bureaucrats [to] regulate away new frontiers," Lee told "60 Minutes" in a recent statement. "Ratification today would be a win for the climate lobby and the global elites who feel entitled to govern from the shadows. I remain opposed to ratification of UNCLOS because the price of admission is a nonstarter."

### Aff---Right to be Rescued

#### You could read a UNCLOS aff could recognize the right to be rescued at sea” as a means of establishing international legal frameworks for the protection of migrants

Papachristodoulou 25 [(Aphrodite Papachristodoulou, “Euphemisms of success : AI technology in European border management and the rights of migrants at sea,” European journal of legal studies, 2025, Vol. 16, No. 2, pp. 117-154 - <https://hdl.handle.net/1814/78207>. Pgs. 148-151.) kb]

The aforementioned contemporary manifestations of State power exercised through remote control practices at sea, including abandonment at sea and/or omissions in rescue activities, privatised push-backs,92 and refoulement activities, ostensibly **undermine the human rights of migrants**. Remarkably, Hélène Tigroudja, in her individual opinion in the A.S. and others v Italy, admitted that the Human Rights Committee’s majority views in the case were an attempt to address **‘maritime legal black holes’ which give substance to an emerging ‘right to be rescued at sea’.**93 Manifestly, such explicit reference is a first step toward the formal recognition of the existence of a right to be rescued at sea in international law. In the A.S. case, the Committee highlighted that failure to respond to distress situations in a due diligent manner amounts to an exercise of human rights jurisdiction by the State and, thus, found a violation of the right to life under the Covenant. In light of the above, judicial authorities should always be guided by normative considerations and push beyond the traditional approach in order to extend necessary human rights protections to situations that are difficult to govern.

Looking at the law of the sea framework,individuals that are affected by State activities taking place in the maritime space are duty-recipients (of the duty to rescue) but are not perceived as right-holders.This is so as theUNCLOS does not grant, explicitly at least, individual rights that can be claimedor ‘received’. Hence, **it is posited that the law of the sea offers the means which make it possible to realise the ends of international human rights law and**, in this case, **the protection of human life at sea.** Relatedly, the ECtHR increasingly takes into account the legal contours of the law of the sea when deciding upon cases relating to maritime migration that have human rights ramifications.94 Undoubtedly, the purpose of international human rights regimes’ architecture is to provide a bulwark, safeguarding the individual against human rights abuses. By formally recognising a right to be rescued at sea as part of lex lata, judicial institutions will be in a position to explore the content and scope of such a right by delineating the substantive protections that will flow from it, including extraterritorial human rights obligations to take strong preemptive and precautionary measures when subjecting individuals to remote sensing and control. Even though States are entitled to control their borders, they are also under a duty to appreciate when human lives and human rights will be exposed to danger and, accordingly, adopt preventive measures that, in a reasonable manner, aim to avoid risks from materialising. It is telling that a recent judgment of the Strasbourg Court in this domain reiterated the obligations of States to respect the lives of migrants at sea in the context of maritime operations when it found Greece to be in violation of a Syrian refugee’s right to life when its coastguard shot at a vessel carrying migrants.95 It can be, in turn, argued that the right to be rescued at sea is activated at the same moment as the duty of the State to provide SAR services is and, thus, positive obligations to protect human life at sea arise. On this account, unduly delaying or negligently handling a rescue operation, handing it knowingly to an incompetent authority to execute, or not responding to digital information indicating a distress situation at sea will arguably amount to an exercise of jurisdiction as the State will be acting in the knowledge that the life of individuals is at risk.

As I have argued elsewhere, the adoption of a ‘pro-homine’ reading of the duty to render assistance, which prioritises the human person, endows a correlative ‘right to be rescued at sea’ to individuals. Along these lines, apart from the mismanagement of the duty to rescue, there lies another justification for the recognition of this right, and that is as a response to the challenges brought about by the (ab)uses of AI systems in migration control, including surveillance technology that leads to an increasing number of maritime interceptions. Instead, aerial surveillance conducted by Frontex should be used in the pro-active service of rescue, and unless requested for other emergencies, its aircraft and drones should remain on-site when they detect boats to monitor the situation and document rescue or interception activities.97 Hence, the **recognition of the right to be rescued at sea will advance** the cause of the safety of life at sea and will promote the rule of law by strengthening State accountability in complying with international obligations when using technologies at external borders in the context of maritime operations. This understanding stems from the inherent and tantamount value of life, justifying the imposition of obligations to safeguard life in danger of being lost at sea.

Considering the foregoing, it is posited that the right to be rescued at sea also serves as a bulwark against refoulement practices and an attempt to fill the vacuum of human rights protection at sea created by migration policies. This is so as the obligations stemming from UNCLOS to provide SAR service and to deliver rescued persons to a ‘place of safety’ should be exercised in line with obligations from international refugee law, that is, **protection against maltreatment, including return to a country where their life would not be at stake**.98 As such, the prohibition of refoulement under international refugee law ties into the disembarkation of persons to a ‘place of safety’ for a rescue operation to be considered successfully completed.99 As a corollary to this, States should be required to consider the right to be rescued at sea when designing policies and rely on technologies of surveillance to tackle migrant flows, and accordingly, incorporate into their border practices an effort to minimise lethal side-effects (including foreseeable deaths of individuals and refoulement practices). By recognising and upholding this right, international law imposes an obligation on States to adopt proactive measures – beyond merely responding to emergencies – that actively safeguard life at sea. In particular, this could include the allocation of resources for pro-active monitoring and the development of multi-authority cooperative frameworks to ensure effective collaboration between (capable) emergency response units and operational efficiency. The necessity of technological innovation to navigate evolving challenges is thus crucial for enhancing the effectiveness of joint operations at sea and, ultimately, for saving lives at sea.

### Aff---AT: Trump

#### People contemplate Trump’s effect on the LIO when arguing for ratification.

Scott Benowitz 17, Staff Writer at Afterimage Review, MSc in Comparative Politics from The London School of Economics & Political Science, B.A. in International Studies from Reed College, "Will Trump Support Ratification Of UNCLOS Treaty?," The Pavlovic Today, 04/10/2017, https://thepavlovictoday.com/spirit-mutual-understanding-cooperation/

The Trump administration so far has been pretty silent about UNCLOS treaty. Why should we be concerned?

The Trump administration will face the same challenges as previous administrations when managing coastal borders. International waters are more fluid than land borders, with disputes over the precise locations of coastal borders, undersea mineral and petroleum exploration, commercial fishing and preserving areas as marine wildlife refuges, the Trump administration will now have to address many with many of the same issues that their predecessors within the Obama, the Bush II as well as the Clinton administrations had to. With specific regard to defining borders within waterways, our disputed coastal borders with Canada still have not been resolved.

There were similar disputes with Mexico, but those were finally resolved in June, 2000. The U.S. government had to find a compromise solution because the dispute could have led to potential problems with the terms of the NAFTA agreement. The dispute was resolved with a bilateral treaty with no involvement with the United Nations or with the International Seabed Authority.

The Trump administration will also now be faced with issues which the preceding Presidents did not have to, such as the PRC constructing artificial islands within the Spratly Islands archipelago in the South China Sea, and whether the UN has the authority to order the PRC to cease constructing these artificial islands.

The U.S. government’s potential ratification of the United Nations Convention On The Law Of The Sea would effectively solve all of these issues.

Brief History Of The UNCLOS Treaty

The first series of United Nations meetings addressing Convention On The Law Of The Sea were held in Geneva, Switzerland between 1956 and 1958. The 1956- 58 meetings did result in 4 treaties, which were entered into effect between 1962 and 1966. There was a series of subsequent UNCLOS meetings in 1960, and then the UNCLOS III meetings were held between 1973 and 1982. 167 countries have now signed party to the UNCLOS, including the U.S., although while the U.S. government signed party to the Convention in 1994, we’ve still not ratified the convention.

“Signatory” Compared With Ratification

Briefly: The terms “signatory” and “ratification” have very specific definitions with relation to UN treaties. With regard to UN treaties, countries have the option to sign party to a treaty without ratifying it. When a government opts to sign party to a treaty without ratifying it, the government is stating that they approve of the principles, the objectives and the terms of a treaty, but they are not yet willing to be legally bound by the treaty. In some instances, some governments will sign party to a treaty without ratifying it because their government needs to get approval from their national legislative bodies before agreeing to ratify a treaty.

Why haven’t we ratified?

1994 was 23 years ago, so why haven’t we ratified this convention? The President of the United States cannot directly order our ambassador to the UN to ratify this treaty without getting approval from the two-thirds of the Senate. So far, no President since we signed party to this treaty has been able to get approval from the Senate. This treaty has seemed to have been more of a priority for some Presidents than it has been for others. Both former President Bush II, as well as former Secretary Of State Clinton, had encouraged the Senate to approve ratification of the UNCLOS treaty, but neither of them was able to secure the votes within the Senate to do so.

Will Trump support ratification of this treaty?

I do wish that I could answer that question. I really do. But I can’t, and neither can any other journalists. The Trump administration so far has been pretty silent about this particular treaty. As of April 2017, neither President Trump nor anyone within his cabinet staff has yet to issue any official statements stating whether or not the Trump administration supports or opposes urging Congress to approve ratification of the UNCLOS treaty.

It is not my role as an editorial columnist to guess what our politicians may or may not be thinking. I will go so far as to assume that because President Trump and his cabinet staff have been so silent about the UNCLOS treaty so far, this issue is a relatively low priority in their agenda.

Why should we be concerned?

There are a number of reasons that the UNCLOS is now more relevant than ever for a number of issues that our Federal government will need to address throughout the course of the upcoming decades of the first half of the 21st century.

In addition to defining precise borders, this treaty addresses the issues of mineral and petroleum rights, constructing international subsea pipelines and telecommunications lines, commercial fishing rights, commercial freight vessels, resolving disputes regarding salvage rights, law enforcement along coastal borders, preventing international smuggling of narcotics, weapons, counterfeit merchandise and human trafficking along coastal borders as well as rescue missions during emergency situations and natural disasters.

In our May 22nd, 2016 issue, I’d written an article in which I’d discussed the coastal waterways between Maine and New Brunswick, between Washington and British Columbia, between Alaska and British Columbia, and a section of the Arctic which borders northern Alaska and the Yukon Territory which are currently claimed by both Canada and the U.S. Decisions regarding commercial fishing rights, tourism revenue, recreational fishing and mineral exploration need to be made regarding all of these waterways, and it there is still no clear agreement between the U.S. and the Canadian governments as to precisely where our borders within these aforementioned waterways are located. The Canadian government ratified the UNCLOS in 2003, though without the U.S. government ratifying the treaty, there are no easy ways to resolve any of these issues.

Those who read the articles that I write for The Pavlovic Today know that I try to keep up with the current research relating to green technologies. However, even if all issues relating to industrial pollution were to be solved within the next few years (which no one actually believes is possible yet), most credible climatologists believe that it will take many decades to reverse the effects of global warming. As temperatures rise, arctic glaciers keep melting and ships can in fact now travel through the Northwest Passage is now possible during the warmest parts of the summer months. Decisions regarding allowing commercial cargo ships, fishing ships, military ships as well as cruise ships to travel through the Northwest Passage need to be made, as well as precisely where ships will be crossing through international borders between Russia, the U.S., and Canada, where customs inspectors will need to board and inspect ships, and which governments, if any will be receiving tax revenue from ships that travel through this region. There is still no agreement between the governments of the U.S., Russia, and Canada regarding where the boundaries within the Northwest Passage are now located or who is going to resolve those decisions. If we were to ratify this treaty, this would solve all of these disputes about these coastal waterways.

The disputed waterways in the Beaufort Sea are becoming increasingly important to solve because someone has to decide how much of the sea is to be set aside as a marine wildlife refuge, and what sections, if any are to be opened for mineral exploration or for commercial or recreational fishing. With both the U.S. as well as Canada claiming a section of the Beaufort Sea which borders Alaska and the Yukon territory, it is not clear who will be making these decisions regarding this sea in future years. At present, both countries have banned commercial fishing in the Beaufort Sea, though mineral exploration is still permitted.

There are also three uninhabited Caribbean islands, Navassa Island, Serranilla Bank and Baja Nuevo Bank whose ownership is presently claimed by the U.S. as well as other countries, including Jamaica, Nicaragua, Haiti, Honduras and Colombia. Although there are no residents on any of these three islands, issues relating to whether or not these should become wildlife refuges or whether they should be open to commercial fishing or mineral exploration need to be addressed, and with their ownership in dispute, no one will be able to address these issues. If the U.S. were to ratify the UNCLOS, this could become a possible means to effectively solve the ownership of these three disputed islands.

We also had a disputed waterway boundary with the government of Mexico regarding precisely where our coastal waterway borders within the Gulf Of Mexico are to be located due to the definition of the outer continental shelf. The Clinton administration had worked with the Zedillo administration in Mexico to address this issue, and this particular dispute was resolved in June of 2000. This dispute was resolved with a bilateral agreement, this dispute could have very easily been avoided entirely if the U.S. government had ratified the UNCLOS, and the governments of any of the countries that are located within the northern regions of the Caribbean Sea could easily begin to dispute these same coastal waterway boundaries if we don’t ratify the UNCLOS.

In recent months, we’ve been seeing stories in newspapers and on television news shows showing that the PRC’s Ministry Of National Defense seems to be constructing artificial islands in the Spratly Islands in the South China Sea, which defense experts believe are probably intended to house missiles. The government of the PRC has repeatedly denied that these artificial islands that they are constructing are intended for defense purposes, however satellite surveillance has revealed that while there is no commercial fishing equipment or equipment related to industrial mineral exploration or petroleum drilling located anywhere on any of these newly created islands, the PRC is presently moving a lot of military equipment onto them.

Our media was very quick to point out that the PRC’s construction of these islands is a violation of the UNCLOS. However I saw notably little mention on television news shows or newspapers in the U.S. of the fact that if our government attempts to criticize the PRC for violating the terms UNCLOS treaty, our government’s commentary will be very difficult for any other countries to take seriously, because while the PRC did ratify the UNCLOS in 1994, we have yet to do so here.

So why aren’t we hearing more about this treaty?

I also wish that I could provide some more detailed answers to that question. The mainstream television news shows and newspapers seem to mostly concentrate their efforts on covering the issues that candidates and politicians are paying attention to, and they also cover issues that candidates and politicians are ignoring when those issues cause serious problems. If candidates and politicians are ignoring an issue, but that issue is not causing obvious or immediate problems, we usually don’t hear much about it. Most UN treaties and conventions are not a particularly popular topic in the U.S., UN treaties and conventions have been a particularly unpopular topic in the U.S. dating back to earliest sessions of the United Nations back in 1946. You’ll find no shortage of articles about UN conventions and treaties in academic journals such as Political Science Quarterly or Foreign Affairs, but articles or segments about these treaties only appear very infrequently on television news shows and newspapers in the U.S., or in the “U.S./ Americas” sections of foreign-based news shows and the newspapers in other countries. Occasionally, you’ll find segments on some of the news shows on PBS which mention UN treaties, but I only see the news shows on PBS mentioning treaties such as the UNCLOS infrequently too.

For those who have followed 2000, 2004, 2008, 2012 and the 2016 Presidential campaigns closely, do you recall any mention of The United Nations Convention On The Law Of The Sea by either of the two major parties?

There is a reason for that. Candidates from the two major parties understand that many millions of Americans, the “silent majority” to borrow a phrase from the Nixon administration’s speech writers from the late 1960’s and the early 1970’s, are not terribly comfortable with the entire concept that international law supersedes the authority of domestic U.S. law. Candidates from the two major parties know that once they begin proposing ratifying a number of UN treaties and conventions, they are fast-tracking themselves to an almost certain loss of millions of votes.

Why? Where does this fear of UN treaties and conventions come from? Again, if we look at the last 20+ years of Presidential campaigns, we’ll see hints of answers. It seems that some conservatives do still feel that our military and our government are subject to what they refer to as “God’s Laws,” and that is the only higher authority that they are willing to recognize. From what I keep reading, much of the religious right does seem to be notably uninterested in UN treaties and conventions, but they are not the entirety of the reason that we hear so little about UN treaties and conventions in the mainstream media; the religious right represents certain segments of the voting population. For the most part, I think that people who are intimidated by UN treaties really just aren’t familiar with what many of these treaties are intended to accomplish.

The issues that the UNCLOS addresses are all non-emergency issues. Leaving the ambiguities about our coastal borders with Canada and Mexico, a handful of unpopulated Caribbean atolls and the Arctic seabed will not result in riots, skirmishes or wars, for the most part peoples’ daily lives will not be immediately impacted, and so our government’s continued refusal to consider ratifying these treaties will largely go unnoticed.

However as the host country of the main branch offices of the UN Headquarters, if we do want to show the rest of the world that we are willing to show the same respect for international law, international treaties and international conventions that many other governments do, then we need to ratify a number of UN treaties, including the UNCLOS.

### Neg---UNCLOS

#### There are strong debates about whether ratification is key. There are costs and benefits to both sides.

CFR 24, Mini Simulation from Climate & Energy and International Institutions & Global Governance, "Should the United States Ratify the Law of the Sea?" Council on Foreign Relations, 07/03/2024, https://education.cfr.org/teach/mini-simulation/should-united-states-ratify-law-sea

The Situation

The world's oceans are teeming with life and valuable resources. In 1982, the United Nations established UNCLOS to ensure fair and sustainable management of those vast shared waters. UNCLOS acts as a global rulebook. It governs safe ship passage, fair access to ocean resources, and the protection of marine environments.

Despite many nations becoming signatories to UNCLOS, the United States opted against joining. That decision was driven by concerns over certain clauses. These clauses required sharing mining technology and profits with other nations. This clashed with U.S. commitments to free-market principles and economic independence. Historically, the United States tends to prefer bilateral agreements, valuing its ability to navigate its affairs independently without being bound by overarching international frameworks.

By staying out of UNCLOS, the United States retains autonomy in its maritime policies, offering flexibility and control. Supporters argue that independence protects economic interests and allows strategic maneuvering on the global stage. However, not being part of UNCLOS limits the United States’ ability to shape international ocean regulations. Not joining could weaken the county’s influence on crucial security and economic issues. This is particularly risky as China gains prominence among signatories of the convention.

One key economic interest driving the ongoing debate is the United States’ pursuit of critical minerals. An abundant supply of minerals like lithium, cobalt, and nickel lies on the seabed. These minerals are essential for developing technologies such as solar panels, wind turbines, and electric vehicles. These technologies are crucial for advancing clean energy solutions. However, potential access to this mineral supply via deep-sea mining in international waters depends on regulations set by the International Seabed Authority. An international organization established under UNCLOS.

If international mining rules are implemented and companies can start extracting minerals commercially, the United States faces a significant roadblock as a non–UNCLOS member. American companies cannot directly obtain those licenses. They will require sponsorship from a UNCLOS member nation, creating a dependence on potential competitors. This is concerning because China, already a dominant player in the critical minerals market, actively seeks further control. Reliance on foreign sources, especially China, raises national security anxieties. It limits the United States’ ability to control its own energy future.

The United States could technically mine the deep seabed without joining UNCLOS. Although, doing so could harm international cooperation. If the United States bypasses the Law of the Sea, other countries may follow suit. This would undermine the idea of working together in good faith. Without international accountability, it becomes difficult to manage global resources globally. This could have devastating environmental consequences, leading to chaos and competition.

Deep-sea mining holds promise for supporting clean energy technologies, yet it also carries significant environmental risks. Scientists caution that rushed mining activities could severely harm marine ecosystems. Mining the sea-bed could disrupt habitats, and release toxins, and pose long-term threats to ocean life. Many experts advocate for cautious approaches and augmented research before expanding mining operations. If the United States goes it alone, it could follow its own rules as it sees fit on the trade-offs of environmental protection and resource access. On the other hand, membership in UNCLOS would give the United States a voice in shaping responsible and sustainable resource extraction policies. This influence could help ensure the oceans’ long-term health while allowing access to valuable resources.

Overall, the International Seabed Authority’s approval of global regulations for deep-sea mining is complex and uncertain. This uncertainty adds to the United States’ considerations when weighing the benefits of giving up some control for broader global objectives.

Decision Point

The upcoming rules on deep-sea mining present a critical decision for the United States. Joining UNCLOS would allow the country to help shape global maritime laws. This is important as global demand grows for minerals essential for technology and industry. On the other hand, not ratifying allows flexibility. It avoids compromising control over maritime activities and potential conflicts over resource sharing. Should the United States ratify UNCLOS to gain a voice in global maritime law, despite potentially compromising some control? Or should it maintain observer status to retain flexibility, even though this could limit its influence on future rules?

NSC members should consider the following policy options, either alone or in combination:

The United States joins UNCLOS. Joining would give the United States a pivotal role in shaping international maritime laws. It would enable the United States to influence regulations concerning deep-sea mining and navigation rights. This is especially important as countries such as China expand their influence. Yet, the decision would not come without costs. Joining the agreement would likely require the United States to give up some control over its maritime resources and activities. The U.S would become subject to international dispute resolution, potentially facing lawsuits about its actions at sea. The U.S. may also have to share access to certain oil and gas reserves with other member nations. Overall, UNCLOS regulations would not always align with U.S. interests, particularly on resource sharing.

The United States remains nonparty to UNCLOS but observes and respects global maritime laws. In this business-as-usual approach, the United States would maintain its nonparty status within UNCLOS. Even though it would not be a party, it could adhere to customary international law governing the seas in an aim to uphold a commitment to international order. Not ratifying could allow the United States to have flexibility in domestic maritime activities. However, not ratifying would mean that theUnited States would not hold a formal role in shaping future regulations. This is especially important in emerging fields such as deep-sea mining. It could disadvantage the United States as it would have limited influence on developing legal frameworks.. This could limit U.S. access to resources if the country continues to follow the rules of UNCLOS, without having a role in shaping it.

The United States remains nonparty to UNCLOS but mines deep-sea resources in international waters, potentially violating international regulations. This option prioritizes immediate resource access. By disregarding UNCLOS entirely and pursuing deep-sea mining independently, the United States could secure valuable minerals quickly. This route would avoid international regulation and profit sharing. However, it’s a choice that would carry significant risks. Legal challenges would be likely from other countries that may accuse the United States of violating international law and territorial rights. In general, such a unilateral approach could damage the United States’ reputation as a proponent of international cooperation and rule of law. This could affect its global standing and relationships with other countries.

#### Ratification of UNCLOS is unnecessary and not worth the price of admission.

Steven Groves 22, Director, Policy Campaigns and Margaret Thatcher Fellow at The Heritage Foundation, "Should the U.S. Ratify the U.N. Convention on the Law of the Sea?" The Heritage Foundation, 06/13/2022, https://www.heritage.org/global-politics/commentary/should-the-us-ratify-the-un-convention-the-law-the-sea

The question of whether the United States should ratify the U.N. Convention on the Law of the Sea is for the U.S. Senate to answer, and it has declined to join the treaty for nearly three decades. And yet the United States and its Navy have somehow managed to survive without UNCLOS membership.

How? Because the United States is the premiere naval force on the planet. To be sure, the United States adheres to UNCLOS's myriad provisions regarding navigational freedoms and maritime boundaries. The United States also leads the world in curbing excessive claims made by other nations through its Freedom of Navigation Program.

It's simply unnecessary for the United States to ratify UNCLOS to protect its maritime rights.

But the proponents of UNCLOS ratification have a new buzzword—China! China! China! Apparently, U.S. ratification of UNCLOS is essential to deter Chinese aggression in the South China Sea. That assertion is fact-free.

China—an UNCLOS member—has proven time and again that it has zero respect for the treaty. In 2016, Beijing famously lost a major UNCLOS arbitration case to the Philippines regarding China's chronic treaty violations in the South China Sea. Did China respect the arbitral tribunal's decision and reform its behavior? Of course not. Nor will it, regardless of U.S. ratification.

That's just not how treaties work. The United States and China are both members of the International Convention on the Elimination of Racial Discrimination, but that doesn't stop China from putting its ethnic minority Uyghur citizens into “political education centers.” Likewise, China will not suddenly respect maritime law if the United States ratifies UNCLOS.

Even if U.S. membership in UNCLOS could magically curb China's maritime transgressions, ratification comes with significant costs.

U.S. membership in UNCLOS would expose the nation to international lawsuits, including specious suits attempting to fleece the United States for its alleged contributions to global climate change. Environmental activists, law professors and even some nations have long explored suing the United States in an UNCLOS tribunal to advance the climate change agenda.

Also, joining UNCLOS would require the United States to pay royalties from oil and gas production on its “extended continental shelf” to an international body in Jamaica for redistribution to other countries. Ratification would amount to an open-ended commitment to forgo an incalculable amount of royalty revenue for no appreciable benefit.

No treaty known to man can guarantee America's rights and freedoms. UNCLOS is no exception.

### Neg---Colonialism K

#### UNCLOS is used to legitimize settler colonial projects, annexing parts of land for the development of military bases, redrawing borders, and selective recognition of sovereignty.

Beltran 25 (Robert Beltran, LLM, “The Disenfranchisement of the Chagossian People on the Future of the Chagos Archipelago,” March 19, 2025. <https://www.humanrightsresearch.org/post/the-disenfranchisement-of-the-chagossian-people-on-the-future-of-the-chagos-archipelago>.) kb]

The Chagos Archipelago would not gain geopolitical relevance until the mid-20th century at the height of the Cold War. Stuart B. Barber was the director of long-range planning at the U.S. Navy during the late 1950s.[14] Barber would acknowledge that he came up with the concept of a naval base in the Chagos Archipelago particularly on the atoll of Diego Garcia.[15] Barber found the atoll to be ideal for a military base, particularly its natural harbor. It had enough land for a large airstrip and its location was within striking distance of potential conflict zones.[16] Moreover, its isolation would keep it safe from an attack while still being within striking distance of Southern Africa, the Middle East, South Asia, and Southeast Asia.[17]

During the decolonization process of Mauritius, the Kennedy and Johnson administrations proposed an idea to the British government.[18] The proposal was to detach the Chagos Archipelago from Mauritius and retain the former as a British territory where the military base would be built, which the Americans would lease “without charge.”[19] The British willingly obliged in exchange for a $14 million dollar discount on its purchase of the Polaris nuclear weapons from the U.S.[20] To formalize this, the United Kingdom and Mauritius entered into the Lancaster Agreement of 1965, granting Mauritius its independence and separating the Chagos Archipelago from the latter, which was retained as a British territory.[21]

As part of the deal, the U.K. compensated Mauritius with £3 million pounds for the detachment of the Chagos Archipelago.[22] Even at the time, the deal faced tremendous backlash as it was contrary to UN General Assembly Resolution 1514 which provided that “[a]ny attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country is incompatible with the purposes and principles of the Charter of the United Nations.”[23] Nevertheless, the construction of a military base at the atoll of Diego Garcia proceeded.[24]

To ensure the security of the base, the U.S. required that the base be uninhabited and limited access to the islands.[25] Starting in 1967, the **UK forcibly removed the Chagossians from the Archipelago and resettled them in Mauritius**, Seychelles, and the U.K., where they struggled and lived in poverty.[26] The military base, now known as “Naval Support Facility Diego Garcia”, houses long-range bombers by the U.S. Air Force and accommodates U.S. Navy submarines.[27] The base **played a significant role in the initial invasion of Afghanistan** after the terrorist attacks on 9/11.[28]

Legal Battles

The Chagossians would later on fight to return to their homeland. In 1997, the Chagossians filed a lawsuit against the British government in the British High Court challenging the legality of their removal.[29] The High Court sided with the Chagossians, ruling that their removal from the islands was illegal and that they had the right to return home.[30] However, the House of Lords overturned the ruling in a 3-2 decision in 2008.[31]

In the U.S., the Chagossians also filed a lawsuit in federal court against the U.S. government.[32] The lawsuit **alleged the U.S. government of harm, including forced relocation, cruel, inhuman, and degrading treatment, and genocide.**[33] In 2004, the U.S. District Court for the District of Columbia dismissed the case, ruling that it raised a political question and that, since the matters on foreign affairs are vested in the executive branch of government, judicial interference would violate the separation of powers.[34]

Mauritius also made its legal claims over the Chagos Archipelago in international courts. Initially, they brought a case against the U.K. with the Permanent Court of Arbitration (PCA) in 2011, pursuant to the United Nations Convention on the Law of the Sea (UNCLOS).[35] The issue disputed was whether the establishment by the U.K. of a “Marine Protected Area” (MPA) over the Chagos Archipelago was in accordance with the UNCLOS.[36] The establishment of a MPA of the Chagos Archipelago effectively banned the fishing and other extracted activities within 640,000 km of the archipelago on the ground of environmental protection.[37] This, in effect, prevented anyone from getting close to the archipelago. Unsurprisingly, an exception was granted to people on the military base to fish.[38]

In 2015, the PCA ruled that the Chagos MPA “was not in accordance with the provisions of the Convention, the Tribunal has taken no view on the substantive quality or nature of the MPA or on the importance of environmental protection.”[39] In other words, the MPA was not per se illegal, but the U.K. could rectify the issue by consulting with Mauritius in establishing the MPA to give due regard to the latter’s rights.[40] The PCA narrowed its decision-making process to how the MPA was established rather than its legality and merit as a marine protected area around the Chagos Archipelago.[41]

In June 2017, the United Nations General Assembly (UNGA) voted to refer the dispute between the U.K. and Mauritius to the International Court of Justice (ICJ).[42] The final vote at the UNGA was 94 in favor of the referral and 15 against the referral.[43] In 2019, the ICJ, in an advisory opinion, held that the U.K.’s administration of the Chagos Archipelago was illegal and it was instructed to end its administration of the islands as “rapidly as possible.”[44] The ICJ ruled that the decolonization of Mauritius was not complete because of the unlawful detachment of the Chagos Archipelago.[45] It further stated that the detachment was not the “free and genuine expression of the people concerned.”[46] In 2021, the International Tribunal on the Law of the Sea (ITLOS) reiterated the advisory opinion of the ICJ on a collateral issue in a maritime dispute between Mauritius and the Maldives.[47] The dispute involved the Chagos Archipelago because Mauritius used it as a baseline to determine the extent of its exclusive economic zone.[48] The Maldives raised a jurisdictional question on the ground that the sovereignty over the Chagos Archipelago was still in dispute, which the ITLOS shot down.[49]

Initially, the U.K. government refused to recognize the ICJ’s advisory opinion on the grounds of its non-binding nature. They determined that the settlement ought to be settled bilaterally between the U.K. and Mauritius.[50] However, in 2022, the new Conservative government of Prime Minister Liz Truss initiated negotiations to hand over the Chagos Archipelago to Mauritius, with the notable exception of Diego Garcia.[51] The negotiations were stopped when Rishi Sunak took over as Prime Minister.[52] In October 2024, the newly elected Labour government led by Prime Minister Keir Starmer announced a deal to handover the Chagos Archipelago to Mauritius while allowing American and British militaries to remain at Diego Garcia on a 99-year lease.[53] Furthermore, the U.K. would pay Mauritius £9 billion as part of the deal.[54] Coincidentally, Mauritius elected a new government, and their new Prime Minister, Navin Ramgoolam, criticized the duration of the 99-year lease on Diego Garcia.[55] Currently, the deal is on hold to give the new Trump administration an opportunity to examine the deal.[56]

Nevertheless, the initial announcement of the deal was met with criticism on many fronts. Former Foreign Secretary James Cleverly, who led the negotiations under the Truss premiership, criticized the deal as “weak, weak, weak.”[57] The new Leader of the Opposition, Kemi Badenoch called it an “immoral surrender.”[58] The leader of Reform UK and the Brexit movement, Nigel Farage, said the Chagos deal could seriously fracture the U.S. – U.K. Special Relationship.[59] Even Labour Member of Parliament Peter Lamb, who represents Crawley where most Chagossians live in the U.K., opposes the deal, putting him at odds with his own party.[60] Mr. Lamb laments the fact that his Chagossian constituents were not consulted by the government on the deal. Furthermore, he also states that he has not heard of a single Chagossian constituent who favors Mauritian sovereignty over the Chagos Archipelago.[61]

One reason for this is the fact that Mauritius has suggested that only those Chagossians who have a Mauritian passport would be allowed to return to the islands, excluding Chagossians in the U.K. and the Seychelles.[62] Former Maldives President Mohamed Nasheed criticized the deal, calling it “unacceptable,” especially since the Maldives itself has a claim on one of the atolls at the Chagos Archipelago.[63]

In November 2024, Chagossians in the U.K. held a rally in London protesting the deal.[64] Jean Francois Nellan, a spokesperson for the Chagossian Voices, a Chagossian grassroots organization, stated that they “have a right for self-determination, this is what we’ve been asking. Do a referendum and ask us if we want to be British or Mauritian.”[65] The British Foreign Office claimed that the deal with the Mauritian government respected the interest of the Chagossian people.[66] Frankie Bontemps, the acting chair of Chagossian voices, said that whenever they asked about the negotiations, they were told that what was happening couldn’t be disclosed as it was a discussion between the U.K. and Mauritian governments.[67]

Mr. Bontemps, whose mother was born in Diego Garcia, gave birth to him in Mauritius.[68] In 2006, he moved to the U.K. Mr. Bontemps said that **Chagossians were treated as second class citizens in Mauritius**.[69] Many Chagossians actually feel that Mauritius sold them out for their independence back in the 1960s.[70] Now, Mr. Bontemps feels like history is repeating itself with the U.K. – Mauritius deal.[71]

The Right to Self-Determination

As for the ICJ’s pronouncement in its advisory opinion to garner the “free and genuine expression of the people concerned,” the “people concerned” are unequivocally the Chagossians. Their “free and genuine expression” has not been heard in the territorial dispute between the U.K. and Mauritius. The right to self-determination is deeply embedded in customary international law.[[72]](https://www.humanrightsresearch.org/post/the-disenfranchisement-of-the-chagossian-people-on-the-future-of-the-chagos-archipelago#_ftn72) Nevertheless, the right has been reinforced several times by numerous international treaties such as the U.N. Charter and the International Covenant on Civil and Political Rights (ICCPR).[[73]](https://www.humanrightsresearch.org/post/the-disenfranchisement-of-the-chagossian-people-on-the-future-of-the-chagos-archipelago#_ftn73)

For better or worse, the U.K. has been selective in affording the right to self-determination to the inhabitants of its remaining overseas territories. In 2002, the government of Gibraltar, a British Overseas Territory, held a referendum on a proposal by the U.K. government to share sovereignty over the territory with Spain.[[74]](https://www.humanrightsresearch.org/post/the-disenfranchisement-of-the-chagossian-people-on-the-future-of-the-chagos-archipelago#_ftn74) The proposal was rejected in a landslide by the inhabitants of Gibraltar.[[75]](https://www.humanrightsresearch.org/post/the-disenfranchisement-of-the-chagossian-people-on-the-future-of-the-chagos-archipelago#_ftn75) In 2013, the Falkland Islands held a referendum on whether or not they supported the continuation of their status as a British Overseas Territory.[[76]](https://www.humanrightsresearch.org/post/the-disenfranchisement-of-the-chagossian-people-on-the-future-of-the-chagos-archipelago#_ftn76) Again, in a landslide, the inhabitants of the Falklands voted to remain a British Overseas Territory.[[77]](https://www.humanrightsresearch.org/post/the-disenfranchisement-of-the-chagossian-people-on-the-future-of-the-chagos-archipelago#_ftn77) On the other hand, the U.K. handed over the sovereignty of Hong Kong to the People’s Republic of China (PRC) in 1997 without holding a referendum on what the people of Hong Kong actually wanted.[[78]](https://www.humanrightsresearch.org/post/the-disenfranchisement-of-the-chagossian-people-on-the-future-of-the-chagos-archipelago#_ftn78) Today, the PRC has all but eroded civil liberties in Hong Kong.[[79]](https://www.humanrightsresearch.org/post/the-disenfranchisement-of-the-chagossian-people-on-the-future-of-the-chagos-archipelago#_ftn79)

In essence, two questions must be answered for the Chagossians: Was the Chagos historically part of Mauritius? And do the Chagossians, as indigenous people, have a right to self-determination, independent of any state? On the first question, Mauritius was terra nullius, or “no man’s land”, until European explorers inhabited it. The first recorded visit was made by Arabs in the 10th century but there is no evidence of their inhabitation of the island.[[80]](https://www.humanrightsresearch.org/post/the-disenfranchisement-of-the-chagossian-people-on-the-future-of-the-chagos-archipelago#_ftn80) The Portuguese visited the island in the 16th century.[[81]](https://www.humanrightsresearch.org/post/the-disenfranchisement-of-the-chagossian-people-on-the-future-of-the-chagos-archipelago#_ftn81) It was the Dutch who can be said to have first colonized the island in 1638.[[82]](https://www.humanrightsresearch.org/post/the-disenfranchisement-of-the-chagossian-people-on-the-future-of-the-chagos-archipelago#_ftn82) In fact, the Dutch were the ones who named it Mauritius after Prince Maurice of Nassau, the Prince of Orange.[[83]](https://www.humanrightsresearch.org/post/the-disenfranchisement-of-the-chagossian-people-on-the-future-of-the-chagos-archipelago#_ftn83) The Dutch inhabited Mauritius until 1710.

France took possession of the island in 1715, renaming it the “Isle de France.”[[84]](https://www.humanrightsresearch.org/post/the-disenfranchisement-of-the-chagossian-people-on-the-future-of-the-chagos-archipelago#_ftn84) As mentioned, the island that we now know as Mauritius was ceded by France to Great Britain in 1814 under the Treaty of Paris which included the Chagos Archipelago.[[85]](https://www.humanrightsresearch.org/post/the-disenfranchisement-of-the-chagossian-people-on-the-future-of-the-chagos-archipelago#_ftn85) Mauritius only became an independent state in 1968.[[86]](https://www.humanrightsresearch.org/post/the-disenfranchisement-of-the-chagossian-people-on-the-future-of-the-chagos-archipelago#_ftn86) As an independent state, it never included the Chagos Archipelago, which it received in compensation from the British as part of the Lancaster Agreement.[[87]](https://www.humanrightsresearch.org/post/the-disenfranchisement-of-the-chagossian-people-on-the-future-of-the-chagos-archipelago#_ftn87) In other words, Mauritius itself never possessed or exercised sovereignty over the Chagos Archipelago.[[88]](https://www.humanrightsresearch.org/post/the-disenfranchisement-of-the-chagossian-people-on-the-future-of-the-chagos-archipelago#_ftn88) Thus, it is not accurate to state that Mauritius has a vested right over the Chagos Archipelago.

On the second question, the answer is an unequivocal yes. Chapter 1, Article 1, Part 2 of the U.N. Charter states that “to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace.”[[89]](https://www.humanrightsresearch.org/post/the-disenfranchisement-of-the-chagossian-people-on-the-future-of-the-chagos-archipelago#_ftn89) Both Article 1’s of the **ICCPR and the International Covenant on Economic, Social, and Cultural Rights provide that “[a]ll peoples have the right of self-determination**.[[90]](https://www.humanrightsresearch.org/post/the-disenfranchisement-of-the-chagossian-people-on-the-future-of-the-chagos-archipelago#_ftn90) By virtue of that right, they can freely determine their political status and freely pursue their economic, social, and cultural development.”[[91]](https://www.humanrightsresearch.org/post/the-disenfranchisement-of-the-chagossian-people-on-the-future-of-the-chagos-archipelago#_ftn91)

All three provisions speak about the right to self-determination of “peoples.” Currently, there is no universally recognized definition of “peoples” in international law. This means there is no distinction of what kind of people have the right to self-determination. It doesn’t matter whether it’s indigenous people or stateless people. It means all kinds of people have a right to self-determination without exception and that includes the Chagossians.

## Neg---Trade-Off

### EU Trade-Off

#### US abandonment of its commitments is an opportunity for the EU to step out into the light as an independent policy actor.

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The election of Donald Trump as US president is a critical moment for the European Union to rethink its global strategy and internal cohesion. Trump's ‘America First’ agenda during his first term has revealed the limitations of relying on US leadership, especially in areas such as climate change, trade, defence, global public health and multilateralism. Now that he is back in power, Europe has a new window of opportunity to accelerate its march towards strategic autonomy and strengthen its global influence. No wonder several EU high-flyers see advantages in Trump’s election. It seems an uncomfortable truth, but the better prepared the EU is to step up to independent decision-making in case that the United States are going to be ruled in an increasingly authoritarian way and might accelerate confrontation scenarios in international trade, the more it can increase its own global influence and deepen its relations with partners that are at risk of being let down by the US. Here is a 3-part overview on the spaces that the Trump government is likely to leave for the EU to fill with strategic decision-making in its very own interest:

Less need for alignment with the US in foreign policy

Under Trump’s past presidency, the US has withdrawn from key international agreements from the Paris Agreement to the Iran Nuclear Deal, and pursued trade policies that often put the EU at odds with its historical ally. The unpredictability of US foreign policy highlighted Europe's vulnerability to external power shifts. For the EU, Trump's re-election should act as a catalyst to deepen inner integration and pursue a more coherent, independent foreign policy. This is necessary to protect the European way of life, which may perhaps not enamour the likes of Elon Musk, but is definitely worth defending. It is high time for the EU to complete the single market in financial service and capital, for example, and to decrease administrative hurdles and the plethora of reporting obligations. While the EU has already taken steps towards a more unified defence strategy, the need for much greater action in this area, as well as in other important fields such as diplomacy and trade, remains urgent. The EU needs to prepare itself for a long solitary game: things are unlikely to go back to normal if the world sits out the upcoming four years of Trumpist rule: Trump’s concentrated power, immunity and disruptive decision-making are likely to distort the US governmental system for some years to come, possibly even leading to further “problematic” follow-up US presidencies. Europe must thus conclude that it will be majorly left to its own devices for several years. This, in turn, should be seen as a chance, and boost Europe’s self-confidence to secure its interests on the world stage. Partners that rely on the EU are, in fact, eager to see the EU step up. This goes particularly for the case of Ukraine, where crucial decisions on defence aid need to be made, and for the enlargement process.

Integrating EU ‘strategic autonomy’ with long-term visions of international partnership

The concept of ‘strategic autonomy’ has gained ground in EU discussions and a second term for Trump could force the Union to accelerate its implementation. This means, among other things, reducing defence dependency on the US through NATO, and ensuring that Europe has the political and economic tools to manage crises on its own. A united EU would foster a balanced approach to global governance, while continuing to promote a rules-based international order. Collaboration in defence with the UK, in particular, could reignite closer alignment across the greater European region as a larger spatial unit in global geopolitics. Ultimately, it may lead to better collaboration between the EU and UK in other important areas, such as trade. Thinking even further ahead, an enhanced European investment in diversified partnerships could, in the long-term, help stimulate a gradual reorganisation of the multilateral global order. The EU should focus on strong partnerships with regions that, over the coming decades, are going to be the most populous, and demographically the youngest and most dynamic, especially South- and Southeast Asia, Sub-Saharan Africa, as well as Latin America. Similarly, the previous Trump-administration was less inclined than either President Obama or President Biden to actively forge working alliances with democratic countries across the globe, or in promoting global public health policies. It is in Europe’s interest that such alliances are effective, and playing the leading role in this should become an ever more important goal of its foreign policy. Wherever the Trump administration disengages in these regions, the EU should quickly fill in partnership gaps, if the terms of partnership are promising.

Approach the transatlantic relationship with a clear priority on resilience

Trump's protectionist trade policies, including announced tariffs on European products, have underlined the need for the EU to diversify its economic and trade relations. While the EU has a strong trade network, the challenge remains to conclude agreements that serve the EU's interests while minimising the risks of aggressive economic tactics from the US. With Trump back in the White House, the EU would be wise to forge new trade partnerships especially with other democratic nations, and strengthen its single market to keep Europe economically resilient in an increasingly fragmented global economy. Europe needs to be prepared that the transatlantic relationship is going to become much more complicated through trade issues alone; more and more voices in Brussels and single EU Member States consider a trade war created by new US tariffs on EU imports to be highly likely. Europe, including the UK, for example, have to prepare to have their markets flooded by cheap Chinese products as the on-going trade war between the US and China deepens. Harsher regulations on Chinese imports will be necessary, which, in turn, is going to deepen the political divide with China as well. China readily frames alignment in the Western world as a “US-led conspiracy” with the aim to break China’s power.

The election of Trump thus presents challenges for Europe’s resilience, but also an opportunity for the EU to shape its relations with the US in a different way than the traditional – and much criticised, particularly in the US – dependency, instead working towards a more equal partnership. The EU can shift the foundation of its ties with the US more to a mutual recognition of each other's sovereignty and shared democratic values, each defending its own economic interests. This might even help both sides focus more effectively on selective key global issues where consensus seems attainable, without the burden of unresolved loyalties. And there are plenty of issues where the EU can align itself with Trump, above all in simplification (decreasing administrative hurdles) and in working on being less reliant on China. This is important, since the transatlantic alliance will remain a cornerstone of European foreign policy in the long term. Wherever opportunities of alignment can be found, these should be exploited. Nonetheless, the EU should be prepared for external uncertainties: China has demonstrated in the past that it is willing to sacrifice mutual economic benefits for the sake of power politics, and the coming Trump administration may be capable of the same.

Reassessing global leadership: a wake-up call for European unity

The EU has long been a proponent of multilateralism, and the chaos of Trump's first term has reminded us of the value of a stable and cooperative approach to global affairs. Europe has an opportunity to be the best in areas such as climate change, international trade and human rights - issues that the US has shown less interest in under Trump. By playing a greater role in shaping global norms and institutions, the EU can reaffirm its commitment to a cooperative and peaceful world order.

A quick and correct assessment of the real-time implications of Trump’s election will be of utmost importance: the EU will no longer be able to afford slow decision-making. Trump’s new term will undoubtedly make the US political system more authoritarian; as a noticeable side effect, the Trump government will drive accelerated decision-making in international politics. China and Russia are likely to eagerly pick up on the acceleration, as it helps them to deepen their rivalrous ambitions and increase pressure on other actors, especially on Europe. Ironically, the current occasional conservative to ultra-conservative voting majority in the European Parliament may have better technical tools for this than previous majorities, although this majority will often seek to advance the wrong policies. And not to forget that far-right forces in the EU, who often sympathize with Trump, have just received a huge confidence boost, and may be now able to use new levers to push for a gradual normalisation of far right-leaning policies in various fields and play out any individual alignment with the Trump administrations in the EU Institutions. But at the core, all depends on EU Member States’ foresight and will for unity: if they can find a clear joint stance on an independent geostrategy, the EU can use the current element of uncertainty to its advantage, and prioritize decisions that give it maximum agency over its own economic stability. The required reforms are quite a big ask, but they make sense. EU Member States, especially those with the most weight in Brussels, must proactively strive for greater unity in the bloc, and ensure that voters understand the scope of the situation. By promoting unity, embracing strategic autonomy and asserting its global influence, the EU can ensure it remains a strong and resilient player on the world stage, no matter what happens in Washington.

### Multilat Malthus

#### Multilateralism can survive Trump’s unilateralism by becoming more flexible. In the long-run this will help institutions, not hurt them.

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U.S. President-elect Donald Trump has made his disdain for the United States’ international commitments abundantly clear. Throughout his first term, he condemned multilateral institutions and railed against what he depicted as an unaccountable, “globalist” elite. He withdrew from key agreements, such as the Paris climate accord, and disengaged from organizations that form the backbone of the liberal international order. True to his populist ethos, he chafed against constraints imposed by multilateralism, preferring instead to put “America first.”

Trump is one of many ascendant populists who emphasize inward-looking policies and challenge global cooperation. The French politician Marine Le Pen, for example, has proclaimed that she is “for local, against global.” Hungarian leader Viktor Orban rallies his supporters with a cry of “Hungary first.” Yet Trump’s position as president of the United States—the largest funder and primary backer of numerous international organizations—makes his antagonism uniquely consequential.

Many observers anticipate that Trump will be even more emboldened and organized when he attempts to reshape the global order in his second term. He has openly threatened to exit, undermine, or radically renegotiate Washington’s commitments to institutions such as the World Trade Organization (WTO), NATO, and even the United Nations. Trump’s nascent plan to levy new tariffs on Canada and Mexico threatens to undo the U.S.-Mexico-Canada Agreement. Attacking these institutions is central to his goal of sidelining the practice of multilateralism in favor of one in which states act largely alone. Should this vision materialize, the ripple effects could destabilize an already fragile international system.

The stakes could hardly be higher. Humanity faces an array of transnational challenges that no single country can resolve alone. Climate change, pandemics, economic inequality, artificial intelligence, and other existential risks demand international responses. Indeed, Trump’s proposed retrenchment from global organizations could not have come at a worse time.

But international institutions do not have to passively accept their fate. They have agency and the capacity for self-preservation. They can adapt to Trump by working around him, appeasing him, secretly working with him, or appealing to his supporters. If international organizations learn to bend instead of break, they can save themselves. If they don’t, governments will lose the infrastructure through which they work together on the world’s toughest problems.

THE ANTIGLOBALIST AGENDA

Trump can undermine international organizations in many ways. Most directly, he could pull the United States out of key bodies or agreements. In his first term, for instance, Trump withdrew from the Paris climate accord, UNESCO, and the UN Human Rights Council because he saw them as anathema to his “America first” agenda. He could exit more organizations in his second administration; he has been especially critical of the World Health Organization (WHO) and the World Trade Organization.

More subtly, Trump could disengage from international organizations by neglecting to comply with their rules, refusing to attend critical meetings, or obstructing key agenda items. During his first term, Trump successfully sabotaged the WTO by refusing to confirm nominees to its appellate body, severely limiting its ability to enforce trade rules. Such noncompliance is destabilizing in itself, given that Washington is the most powerful government in the world and often a leader in international organizations. But it could also have dangerous knock-on effects. Institutions depend on mutual trust, and if the United States flouts the rules, others may follow suit—eroding the foundations of global cooperation.

Trump might also manipulate or withhold vital information from these bodies, which depend on accurate data from member states to function effectively. The World Bank, for example, needs economic metrics, the WHO relies on public health statistics, and environmental agencies require data on carbon emissions. By refusing to share such information—or providing false reports—the Trump administration could hamstring these institutions. More simply, Trump could withhold money. The United States is the largest funder of numerous organizations, and without Washington’s money, many would struggle to survive. When the Trump administration defunded the WHO during the COVID-19 pandemic, it hobbled the institution’s response to the crisis and eroded the WHO’s reputation worldwide.

Trump could also undercut existing organizations by starting competing ones. These rival entities, designed to drain their counterparts of resources and influence, would serve as platforms for grandstanding rather than substantive cooperation. Much like regional institutions backed by other populist leaders—such as the New Development Bank, which was started, in part, by Indian Prime Minister Narendra Modi—these bodies could provide the United States with a veneer of multilateral engagement while taking away business from the existing institutions that do more substantive work.

Finally, Trump could attempt to co-opt international organizations to align with his administration’s agenda by focusing their resources on narrow U.S. priorities or leveraging their legitimacy to pursue policies that serve domestic political goals instead of broader global interests. Such a strategy could effectively weaponize these institutions, turning them into instruments of unilateralism rather than forums for global collaboration. China, for instance, has used its control of the Asian Infrastructure Investment Bank to pursue its domestic interests while benefiting from the legitimacy of the institution’s diverse membership.

GETTING CRAFTY

Thankfully, international organizations are not powerless in the face of these threats. In fact, they have many tools and techniques to protect themselves from a populist in the White House. Perhaps the most basic is working to minimize U.S. influence, specifically by looking for resources elsewhere. When the first Trump administration withheld energy-related data from the World Bank, the organization signed information-sharing agreements with Arab multilateral development banks. Similarly, the UN expanded its capacity to acquire data on its own, such as through surveillance drones, which it deploys during peacekeeping operations. In doing so, it has become less reliant on governments for intelligence.

Having a broad network of partners—including companies, charities, think tanks, and other multilateral institutions—can help make an organization more resilient. UNICEF, for example, has successfully worked with the multinational company Unilever to secure funding and expertise. The World Bank has done the same with the Gates Foundation. Multilateral institutions should improve their ability to share data securely with one another to improve coordination. Local governments can also be valuable allies. When Trump withdrew from the Paris climate accord, UN officials worked with U.S. states such as California and cities such as New York to maintain climate commitments and preserve dialogue.

International organizations can also get around Trump by becoming more bureaucratically flexible. WTO members came up with the Multi-Party Interim Appeal Arbitration Arrangement, a stopgap forum to arbitrate trade disputes, to circumvent obstacles put in place by the Trump administration. Similarly, the Paris accord’s voluntary and scalable commitments helped sustain momentum even after the United States exited the deal in 2017.

If working around Trump is infeasible (or even if it isn’t), groups can look for ways to force him to remain in their organizations by raising the exit costs. For instance, embedding withdrawal penalties—such as the sanctions clauses the European Union installs in many trade agreements—can deter treaty abrogation. Lengthy withdrawal processes, such as the one-year delay required under the Paris accord, provide time for domestic opposition to mobilize or for political leadership to change.

International bodies should also make it easy for countries to rejoin. UNESCO, for example, swiftly welcomed the United States back after Trump left office. The Biden administration was similarly able to quickly rejoin the Paris accord—the process required only Biden’s signature.

IF YOU CAN’T BEAT THEM

Another approach to surviving Trump is appeasement, which can involve offering the United States material benefits or expanding U.S. influence within an organization. This strategy comes with downsides: taken too far, it can sacrifice institutional legitimacy and raise accusations of bias. But there are ways to walk a fine line. Consider, for example, how NATO fared during Trump’s first four years in office. When Trump criticized NATO allies for spending too little on defense, Secretary-General Jens Stoltenberg encouraged allies to modestly increase their military budgets and publicly credited Trump for the changes, appealing to his ego. The approach appeared to work. Trump did not pull the United States out of NATO—as he had repeatedly threatened—and instead took credit for allies’ bigger defense budgets.

Multilateral institutions can also informally recalibrate their agendas to align, at least superficially, with Trump’s priorities. By focusing on issues such as trade fairness or counterterrorism—areas in which Trump has shown interest—international organizations can demonstrate their utility to him. For example, NATO has sought to mollify Turkey’s populist president, Recep Tayyip Erdogan, by paying lip service to the fight against terrorism, a big concern for him.

For organizations wary of escalating tensions with Trump, retrenchment is another solution. Institutions can minimize their exposure to populist ire while maintaining credibility by narrowing their focus to core functions and avoiding controversial areas. For example, the WTO has historically exercised judicial restraint on politically sensitive issues, and the World Bank has often rolled out reforms incrementally, in cooperation with resistant governments. Similarly, organizations may emphasize temporary or informal adjustments to policies, retaining the ability to reverse course as political conditions change. Such flexibility offers these institutions a way to work with populists without undermining their broader missions.

International institutions can also use regional organizations, such as South America’s Mercosur or the African Union, as intermediaries to get around Trump. Many regional organizations do not include the United States as a member, and those that do tend to fly under Trump’s radar, such as the Inter-American Development Bank. There are other benefits, too. Governments in the global South often see these smaller organizations as less intrusive and more sympathetic to their concerns than global ones. Many World Bank projects are cofinanced with regional development banks that have strong ties to member governments and can usually get more buy-in from recipient countries.

PUBLIC RELATIONS

International organizations have long relied on public support to sustain their work, but in recent years they have struggled to court the masses as populist leaders have stirred up antiglobalist resentment. Confronting the incoming president’s hostility thus requires not only engaging him directly but also finding ways to manage his supporters. That will sometimes require discreet, behind-the-scenes diplomacy. By working covertly, international organizations can allow Trump to quietly reap the benefits of multilateralism—economic growth, better security, and access to critical technical expertise—while shielding him from the political costs.

Many organizations already do a good job at affording secrecy to their members. The UN Security Council frequently conducts closed-door meetings on sensitive issues, ensuring that frank discussions can take place without public scrutiny. Similarly, the International Monetary Fund classifies the positions expressed by member states during board meetings for up to seven years. And the WTO redacts adjudication documents to protect proprietary or politically sensitive information.

Building effective secrecy mechanisms, however, requires significant investments in technology, infrastructure, and bureaucratic capacity. Encryption tools, secure communication channels, and data storage are essential to maintaining the confidentiality of sensitive discussions. Multilateral organizations may also need clear protocols outlining who can access confidential materials, under what circumstances, and for how long. This might involve granting clearance to select staff, contracting with specialized cybersecurity firms, or enhancing internal information technology capabilities. Although advancements in technology have made such solutions more accessible, they also expose organizations to new risks, including cyberattacks and leaks. Addressing these vulnerabilities is important to ensuring confidentiality.

Organizations that do not want to work around Trump voters might try appealing to them directly. Populist leaders denounce international organizations as elite driven and out of touch. But if these institutions more effectively communicate the benefits they provide to everyday people or align their messaging with populist rhetoric, they make multilateralism harder to vilify. In 2020, for example, UN Secretary-General António Guterres thanked Trump for his engagement with UN initiatives and wished him a swift recovery from COVID-19, even as the president had sought to rein in U.S. financial contributions to the UN. Trump, in turn, praised Guterres for “working hard to ‘Make the UN Great Again.’” Americans generally know little about the benefits they get from international organizations, such as lower prices on goods thanks to fewer restrictions on international trade. By better communicating their upsides, these institutions can help sustain their legitimacy and create a constituency of supporters.

STAYING ALIVE

For international organizations, strategies to weather another Trump presidency are not without risks. Trying to sideline Trump may provoke more hostility from his administration. And appeasement could lead to accusations from other member states that multilateral institutions are compromising their principles.

But both approaches are better than the alternative—doing nothing or reacting in an ad hoc fashion. The stakes are simply too high for global organizations to not be proactive. The world’s multilateral architecture is the best mechanism humanity has for confronting existential transnational threats. Allowing it to rot, weaken, or otherwise unravel would leave all countries far too vulnerable in an increasingly volatile world.

#### Collapse of US multilateral commitments enables the development of a non-US-centric set of international institutions.

--The rest of this article is behind a paywall I was unable to get around

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The rupture occurred on February 14, during the Munich Security Conference: US President Donald Trump, through his vice president, JD Vance, announced the end of the West and the Atlantic alliance as geopolitical players. In the process, he also declared an all-out war on culture and values. Europe became the enemy, and Russian President Vladimir Putin's Russia became the ally. This shift in alliances opened new perspectives for all actors on the international stage.

Trump, who is pushing for a trade war and shows little concern for the worsening climate crisis, and his policies are exacerbating contemporary issues. Despite being prepared through a detailed program (Project 2025) and supported by powerful economic forces, his second presidency is nevertheless marked by erratic decisions, fueling financial instability. After an initial stock market euphoria, uncertainty is already slowing down American investment and consumption and could lead to a recession.

Rather than lamenting these turbulences, we must seize this opportunity to lay the foundations of a new multilateralism, temporarily without the United States, that respects Europe's values on the global challenges of the coming decades: climate change, new digital technologies, immigration, inequality and the rise of far-right populism.

Against transactional mercantilism

The new multilateralism will need narrative foundations. In opposition to the nihilism of the law of the strongest, it is essential to reaffirm humanist progressivism and international law. Against transactional mercantilism, we must demonstrate the need for global and coordinated economic policies to address the challenges of the environmental transition and its impacts on the poorest countries and populations.

We must therefore invoke the spirit of economists John Maynard Keynes and Joseph Schumpeter, as the transition to a decarbonized economy will require public investments to stimulate the private sector, public scientific research for innovation and compensatory social policies to strengthen social consensus.

## Neg---K vs Policy Aff Survey

### Antiblackness

#### Negate false neutrality and adopt a Race Approach to International Law, it solves rampant marginalization of people of color in the field.

Roman 2K [Roman, Ediberto. (2000). race approach to international law (rail): is there need for yet another critique of international law. U.C. Davis Law Review, 33(4), 1519-1546 //cohn]

Recently, a pointed critique of the positivist paradigm by the pol- icy-oriented camp observed that positivism's **"focus on 'existing' rules, emanating solely from entities deemed to be equally 'sover- eign' does not properly reflect the reality of how law is made, ap- plied and changed.""** They noted that **positivism** "**remains fixated on the past**, trying to reap from words laid down, **irrespective of** the **context** in which they were written, the solution to a problem that arises today **or** tomorrow in very different **circumstances**."' 5 Thus, the thrust of the **critiques of** the **traditional liberal international law paradigm** has been **whether** the **paradigm** **can adequately ad- dress** and respond to **the needs of those who are affected by actions of nation-states.** Given this deficiency, some of the critics, such as the policy- oriented approach and the international relations approach, have expounded alternative approaches to reach solutions for interna- tional law.46 While others, such as the feminist critique, rather than discerning ultimate truths or explanations to international issues, have tried to shift the positioning of the discourse so as to insure that certain issues are not marginalized.47 This latter group, build- ing on deconstructionist philosophies, has **introduce**d **different** **perspectives or modes of emphasis that were omitted from the traditional discourse**. 8 Some of these critics have concluded that in- ternational regimes that seem too weak to pursue an intended po- litical program and, unable to withstand scrutiny, are also too technocratic to assist those in need.49 Despite the differences, a common trend exists among all critics. They all assert that the **philosophical and theoretical structures justifying nation-states' compliance with the rules of international law have failed to cause nation-states to comport with these rules.** This has produced incoherence in the application of international law, which in turn **marks** the **utter failure of international law to achieve the reforms that were the impetus for its creation**.5 0 These critiques of the dominant formulation often also assert that the liberal foundations of the internationalist edifice fail to address the **problem of indeterminacy**. 5' This problem of indeterminacy may display itself in different fashions. Namely, the indeterminacy may arise from decision-making that is not predictable, which is particularly troubling in the vast array of international context in which issues may arise. In addition, indeterminacy may arise from unpredictable value clashes. 2 Professor David Kennedy, quite possibly the leading explorer of the traditional paradigm, has apparently come to a similar conclu- sion. He described the methodology of international public law as giving the appearance of movements from imagined origins to a desired end, but in actuality existing precariously and ever fluctuating among the constructed imagined points. 53 This critique of the positivist paradigm also recognizes that a considerable amount of cynicism stems from the traditional discourses anointment of the sovereign state as the core being of international order.54 Related to this critique is the argument that the dominant liberal tradition of international law also produces policies and practices that are skewed against progressive politics. 55 In part because the new stream approach has introduced **issues of** consequence, such as **culture and race**, that had **previously not** been **addressed**, this pa- per will further explore this new wave of critiques.56 The new stream or new approaches group has attempted to shift the forms of international legal scholarship from analysis of doc- trine to acceptance of the determinative quality of culture and pol- icy. The leader and founder of the New Approaches to Interna- tional Law, or NAIL group, David Kennedy, recently described the traditional international law theorist as being constantly worried about the ability of international law to accurately reflect the sover- eign's will and to bring sovereign behavior within its ken. 5s He added that the traditional theorist is virtually always searching for better methods to enforce norms in international society and feels the need to defend international law even when enforcement seems unlikely.5 9 Kennedy notes that for the traditional theorist, law and culture occupy different stages of development. In fact, cultural differences precede the move to the moral high ground of the law.61 Kennedy argues that the internationalist seeks to build bonds among states by being agnostic about culture, by having no culture. 62 Another writer similarly observes **western** legal theoryviews law as **an autonomous,** abstract**, and rational entity** distinct from 63 the society it regulates. To the internationalist, the problem of culture disappears because it is equated with the notion of the na- 64 tion-state. In what perhaps would be of interest to critical race theorists, one of Kennedy's most recent works emphasized this point by means of the narrative mode of discourse, also referred to as explanation by metaphor. This story or metaphor will be the starting point of a movement that my colleague Tayal Mahmud in a panel at this conference somewhat fancifully characterized as a RAIL or Race Approaches to International Law. In order to reveal the shortcomings of the traditionalist, Ken- nedy asks us to envision the traditionalist as a photographer, and the sovereign as the subject of his photograph.65 Kennedy likens the traditionalist focus on the global to the local to that of a pho- tographer's adjustment of the lens to capture the lake behind Aunt Betty's head. 66 Like Uncle Chuck, whose insistence on getting into the picture would be annoying to the photographer, culture throws a wringer into the international scene or snapshot.67 According to Kennedy, culture may embody a host of issues and identities - ethnic, religious, familial, gender, racial, and indigenous.6 Mean- while, Aunt Betty, much like the sovereign is, as the result of the intrusion, no longer the focal point of the picture. She is reduced to merely a participant in the picture. At this point Kennedy's story essentially ends and a RAIL critique would begin. What could RAIL effectuate? **A** Race Approach to International Law **could have the effect of** including voices of people of color**, even if they may be part of the intellectual elite that** heretofore had not been adequately heard. **While these voices may not represent all race perspectives, they may force the dominant gaze to consider differing perceptions of reality.** A RAIL critique would invite race-centered international discourses from both within and without the United States. This is not to say that there have not been voices from the third world. However, there are numerous cultures within the United States. In a sense, because of the amalgam of cultures, nationalities, and races within this country, the United States has within itself the so- called first through third world, and as many as possible of those voices should be heard. The multicultural make-up of this country virtually ensures that international issues will affect people in this country. In particular, the voices of immigrants whose family originate from the so-called third world are often directly as well as indirectly affected by international law, but are rarely examined. Some examples of this impact include the recent incarnations of immigration and free trade issues arising in this country's relations with Mexico. 69 As the Chinese exclusion cases also demonstrate, the racialized history of U.S. immigration laws has literally affected the color of the migration of people into this country, who all too often live with immutable characteristics of both citizen and alien or foreigner status. 70 Similarly, the "free-trade benefits" of NAFTA which do not include "free or unrestricted migration," implicate the alien as well as those here who, because of race and ethnicity, are all too often treated as aliens.71 A RAIL critique could expand upon NAIL's cultural critique generally and Critical Race and LatCrit theories' focus on race in particular. It will likely be similar to the feminist international **critique** by seeking to examine the effect of **international legal processes and norms that emanate from a western and accordingly white Eurocentric construction**.72 A RAIL approach would also likely reject the assumption that there is some overarching neutral standpoint, a nonpolitical aca- demic standard that allows this method of politics to be discussed from the outside of particular methodological or political controversies.13 RAIL will likely **question** the **normativity of the nation- state since it often is a mere reflection of majority voices and given the dominant international structure all too often promotes a form** 74 **of European or western domination.** As was recently observed, "international law owes its origins to European Cultural norms which maintained that nation's owed duties to others of the same race." 75 "International law was a distillation of European cultural norms into a system of rules." 76 A clear division of the world into European and non-European realms marked international law.

#### International law / human rights law constructs and exports a racial superstate where blackness is abject

Sow 24 [Sow, Marissa Jackson. (2024). Whiteness as contract in the racial superstate. UC Irvine Law Review, 14(2), 457-520 //cohn]

**RIGHTS WITHOUT REMEDIES: PEOPLE OF COLOR AND EXISTENTIAL PURGATORY WITHIN PUBLIC INTERNATIONAL LAW** The 43d Session of the UN's Human Rights Council, held in Geneva in June 2020, provides a compelling example of how public international law-through the UN's human rights **mechanisms-**supports the Racial Superstate **by** constructing Afro-descendant people outside of **the possibilities of** justice and, therefore, removing **them** from **the** global body **politic and the bargaining power attached to full membership therein.** 78 The Session offers a microcosmic glance at the current state of the global political order and its use of force, or the threat thereof, to exclude Black and nonwhite people and nonwhite-led member states from exercising political power and availing themselves of their human rights before the United Nations. This Part of the Article offers up a discussion of how, in the face of promises of legal remedies for human rights violations, contracting activity within the UN system maintains national andinternational systemsthatsustain violent racist oppression. A. Case Study: The 43rd Session of the Human Rights Council and the Black American Dilemma In June 2020, all fifty-four African nations led a "bold ... unprecedented" 79 condemnation of anti-Black racism in the United States at the UN Human Rights Council. With the support of over 600 human rights organizations and the families of George Floyd, Philando Castile, Breonna Taylor, and Michael Brown,80 the bloc of nations known as the Africa Group demanded that Council convene an urgent debate on George Floyd's death and the larger issue of police brutality in the United States. 81 The Africa Group submitted a resolution to the Human Rights Council calling for a commission of inquiry into systemic racism and police brutality in the United States that would report back to the Human Rights Council with its findings in a year's time. The Africa Group's demand for a commission to investigate and issue a report on American anti-Blackness and police brutality was the **most aggressive legal stance the Global South could ever have hoped to take against the West** using the UN's mechanisms. Though no one involved in the process was ever under the impression that a report would solve the problem of the systematic terrorization and slaughter of Black Americans and abuse of journalists and protesters by American law enforcement officers, the public exposure of the narrative of American benevolence and supremacy as a myth8 2 was the Africa Group's most immediate objective. As with all name-and-shame campaigns, the larger goal was to leverage public outrage to pressure the American government into the desired reforms. **The Human Rights Council agreed to hold** the **convening**, and the debate was held during a special session during the height of the COVID-19 pandemic. Donning masks and respecting social distancing guidelines, diplomats, UN officials, activists, and victims spoke passionately-even casting aside normal diplomatic euphemisms to call **systemic racism** **in** the **United States of America** by its name. E. Tendayi Achiume, legal scholar and Special Rapporteur on Contemporary Forms of Racism, was particularly forceful in her statements: speaking in a video message, she condemned what she viewed as an erosion of commitment to anti-racism by the UN, and she urged the Council to vote in favor of a commission of inquiry empowered to investigate systemic racism in law enforcement not just in the United States, but globally.83 Importantly, Achiume also flatly rejected the arguments of Western states who claimed that a commission of inquiry should be reserved for human rights violations more serious than deadly police brutality, pointing to the global uprisings as evidence of how serious the world's citizenry considered such violations to be.84 Though **the United States withdrew from the Council in 2018**,85 alleging bias by the Council against Israel, 86 a senior U.S. diplomat defended the United States during the proceedings. Per the representative: [American] transparency, commitment to a free press, and insistence on the right to justice allow the world to see our problems and openly engage on our efforts at finding solutions ... And when violations of people's rights are committed, we hold people accountable through independent courts, and through an independent media.87 The diplomat then attempted to deflect attention from the United States by claiming that other nations' human rights records deserved the Council's attention and ire: "It is countries that hide the truth, violently silence their critics, don't have democratic accountability, and refuse even to recognize fundamental freedoms that merit censure." 88 Ironically, the Africa Group had requested the Human Rights Council session because of its belief that the United States was guilty of these exact offenses, as video had emerged of police arresting on-duty journalists at protests 89 and brutalizing nonviolent protesters 90 and numerous police officers had been able to kill Black Americans with impunity prior to Derek Chauvin's murder of George Floyd, as well as days afterward. 91 Thus, **the United States** and the European-allied WEOG bloc9 2, including Brazil and the United Kingdom, **appealed to a familiar hagiography of liberal democratic and Euro-American moral superiority**. They **sought to minimize** the **severity** and degree **of** the **human rights violations by law enforcement** in the United States **through deflection-racism**, they **claimed**, is a problem of which **all are guilty**-in support of a case against focused attention on the violations of one state the gravity of such violations (which the United States also sought to downplay)93 notwithstanding. They appealed to national sovereignty-ironically so, at the UN 94-and the rule of law, claiming that any race-based human rights violations that tookplace in the United States would be remedied through the American justice system, 95 even though the uprisings were themselves an indictment of the failures of the American justice system to adequately to protect Black people, protesters, and journalists from state violence. These appeals were nothing less than bargaining, renegotiating the terms of the global racial contract in the face of evidence of its potential voidability. In so bargaining, the United States gaslit the Council, the Africa Group, and even George Floyd's brother, who also spoke passionately during the debate in support of the commission of inquiry.96 **Ultimately, the Council voted against a commission of inquiry**, opting instead for a report from the High Commissioner on Human Rights for presentation to the Human Rights Council, followed by interactive dialogue. And so,the UN's racial contract remained intact, reinforced once again. 97 According to Achiume: At the conclusion of the Urgent Debate, the Human Rights Council adopted a consensus resolution that was a shadow of the Africa Group's strong proposal. Rather than authorizing an independent commission of inquiry for the United States, the Human Rights Council directed the High Commissioner of Human Rights to prepare a thematic report on systemic anti-Black racism in law enforcement. The progression from an unpublished draft of the resolution to the introduced Draft Resolution, to the finalized Human Rights Council Resolution illustrates the gradual erosion of accountability for the United States. ... 98 Though several Global South and Black-led nations spoke out strongly against anti-Black violence throughout the proceedings, with several diplomats declaring on the Human Rights Council floor that "Black Lives Matter," White-led and Western states rallied to the defense of the United States.99 The WEOG bloc also threatened Global Southern states with loss of foreign aid from the United States if those countries spoke up about the American police brutality and systemic racism issues. Per Achiume: Although the United States had withdrawn from the Human Rights Council two years earlier, some diplomats reported informally that the United States had threatened their capitals with cuts to intemational aid if they insisted on the commission of inquiry. In the period of formal and informal negotiations among Human Rights Council member states, I had conversations with diplomats, civil society actors, and even UN functionaries who noted the use of political and economic threats by the United States and some of its WEOG allies designed to eliminate the possibility of an intemational inquiry focused on the United States.100 Thus, the opportunity to use the UN's racial justice architecture to substantively combat racism "w[as] thwarted by WEOG-including through economic and political threats against weaker states."101 The United States' use of diplomatic back channels to coerce compliance **from poor Black and Brown nations**1 02 **so that it could preserve a narrative of innocence-even if the face of evidence to the contrary-is as troubling as it is** typical;1 03 **such is the solidarity it enjoys with other White-led settler colonial states.** In a statement, the ACLU accused WEOG countries of "maintaining and perpetuating entrenched systems of white supremacy."1 04 The role of contracting in the Urgent Debate cannot be overstated: the ability of the United States and allies to leverage agreements to provide aid to poorer countries outside of the international law structure proved that private bilateral agreements between states (and especially when one state has outsized power and influence) can act as a barrier to international law enforcement. WEOG states used the power of contracts to ensure that the United Nations' racial contract-a social contract that guarantees its position as a world superpower- remained undisturbed. The politics and ensuing outcome of the June 2020 Human Rights Council Debate demonstrate **how** **people of African descent are constructed out of the global body politic-despite formal participation therein-at the UN, and more broadly within the** sphere of international law. The governance structure at UN, which is perpetuated by financial commitments and raw, racialized geopolitical power built up through colonial extraction, sustains a racist balance of power that disempowers African and Caribbean nations, as well as the discontented Black citizenry of Global Northern nations. The UN's rules and procedures support this geopolitical arrangement, which are such that the interests and voices of Black people in Global Northern nations are swallowed up by the states' interests in state sovereignty, the appearances of exceptionalism, immunity from censure and penalty, and, certainly, the saving of face. Despite the exceptional solidarity exhibited by the African nations, procedure allowed WEOG states to block their initiative. As discussed, infra, these barriers to racial justice are not unfortunate happenstance, but rather, the result of structure as well as concerted, "formidable opposition"105 by Western powers to the real momentum of anti-racist and decolonial justice that exists within and outside of the UN's walls.

### K of Arms Control

#### International arms control relies on logics of militarism and neoliberal governance that sustain invisible forms of global warfare

**Stavrianakis ’19** (Anna, Professor of International Relations Community and Business at University of Sussex, “Controlling weapons circulation in a postcolonial militarised world”, Review of International Studies (2019), 45: 1, ppg. 60-67, https://www.cambridge.org/core/services/aop-cambridge-core/content/view/D38DCEA6562E2246FC1361060EF7E2ED/S0260210518000190a.pdf/controlling-weapons-circulation-in-a-postcolonial-militarised-world.pdf)

Others have been less sympathetically critical. For Neil Cooper, initiatives like the ATT ‘do not represent a novel post-Cold War development that symbolizes progress on an emancipatory human security agenda’. 14 Post-Cold War arms trade regulation has been based on a ‘discourse around humanitarianism, human security and weapons precision’ that has served to legitimise high-tech military technologies.15 Cooper and others emphasise the deep historical roots of the way humanitarian impulses intersect with economic and security ones, including in late nineteenth-century efforts to regulate the supply and circulation of weapons in the imperial peripheries that are remarkably resonant with contemporary efforts.16 Historically minded scholars remind us that surplus and obsolete weapons have long circulated in the peripheries of empire, and new weapons tested there; and political authorities were licensing weapons exports as early as the sixteenth century – in part to avoid blowback.17 Arms trade regulation, then, has a ‘historically contingent’ character, marked by the ongoing importance of ‘power, interest, economy, security’. 18

Militarism emerges as a core concern out of such critiques and provides the jumping-off point for this analysis. In particular, there are long traditions of historical sociological and feminist scholarship on militarism,19 defined here as ‘the social and international relations of the preparation for, and conduct of, organized political violence’. 20 In relation to arms control, I have argued elsewhere that the ATT has been mobilised by liberal democratic states primarily to legitimise their arms transfer practices.21 And Cooper concludes that ‘campaigners need to return to a strategic contestation of global militarism rather than searching for tactical campaign victories dependent on accommodation with the language and economic and security paradigms of contemporary military humanism’. 22 This is part of a political economy critique of the way ‘the regulation of pariah weapons might alternatively be described as “arms control from below within the logic of militarism from above”’, 23 in line with a wider critique of human security as having been ‘institutionalised and co-opted to work in the interests of global capitalism, militarism and neoliberal governance’. 24 Neil Cooper and David Mutimer, surveying the history of and prospects for controlling the means of violence, argue that ‘the longer term, indirect effect should be to reduce militarism and promote cultures of peace’ or ‘at the very least, avoid further embedding cultures of militarism’. 25 How, then, should we think about the impact of the human security agenda on militarism, and vice versa; and what are the ramifications for weapons control?

The 1994 UNDP Human Development Report, which formalised the human security agenda, was explicit about the role of ‘excessive militarization and the international arms trade’ as a ‘critical source of insecurity’. 26 Arising from ‘the world’s previous preoccupation with deterrence and territorial security’, arms transfers, military assistance, proxy wars, excessive military spending, politicised militaries in developing countries, and the military-industrial complex, were all identified as impediments to the realisation of human security.27 The report identified concrete policy recommendations, including an international agreement to phase out military assistance; a list of prohibited items for transfer; a strengthened UN Register reporting system; the regulation and elimination of subsidies; and a tax on arms sales to finance peacekeeping.28 Such moves, alongside increased spending on demilitarisation efforts, were envisaged as ‘an important step towards achieving human security’. 29 While there was an emphasis on ‘Third World disarmament’, the report was clear that this must be one component of a ‘blueprint for global disarmament’. 30

So here we have an agenda for practical action on the weapons trade, challenging militarism to improve human security. The UNDP report identified the nation-statist ideologies of deterrence and territorial security, as well as the transnational practices of military assistance and proxy wars, as key causes of insecurity. Simultaneously, it reopened the debate about the link between security and development ‘that had been closed since the somewhat sterile polemic around the link between disarmament and development’ of the 1970s and 1980s.31 This earlier, now ostensibly out-dated debate surmised that ‘the North (that is, both sides of the East–West conflict) should disarm, and devote the resources freed up by arms reduction to development in the South’. 32 As part of this shift in debate, the move away from state-centred definitions of security was accompanied by an acknowledgment of the legitimate and crucial role of the state in providing security – especially as security was emphasised as a precondition for development. So the anti-militarist call that identified the state as a creator of insecurity was balanced against recognition of the legitimate role of the state in providing security. There was also a downgrading of military threats as a particular type of threat to human security: military threats do not appear as one of the seven main categories articulated in the report (economic, food, health, environmental, personal, community, political). Rather, threats from war (defined as ‘threats from other states’) are listed under the category of ‘personal security’, alongside threats of physical torture and ethnic tension, as well as crime, rape, domestic violence, and suicide.33

The analytical and political move made in the 1994 UNDP Report was to equate war with the state and move away from a concern with territorially based definitions of security and inter-state war, which it equates with militarism. There is a shift in focus to the spectrum of armed violence and non-conflict violence, which are to be remedied in the name of human security, in part through the (re)construction of legitimate coercive apparatuses. The shift away from militarism and towards human security claims to acknowledge the changing character of conflict and the role of the state in monopolising legitimate violence, without privileging it unthinkingly. Research in this vein has flourished in the years since the 1994 report, and brings significant advantages to bear over traditional state-centric analyses, such as the ability to account for the geographical diversity of rates of armed violence within as well as between states; sustained and distinct attention to gendered patterns of violence, including the specific character of femicide as a distinct form of violence; and the incorporation of questions of public health and socioeconomic inequality into discussion about weapons transfers.34

For all these developments, the human security agenda’s take on war, conflict, and armed violence has not been without its critics. It has been described as the ‘new orthodoxy’ that is ‘unable to provide the basis for a substantive change of the system of international security’, despite finding ‘the old language of interstate war and conflict … lacking’. 35 Similarly, its emphasis on ‘progressive’ initiatives such as ‘eliminat[ing] certain types of weapons’ stands accused of failing to adequately examine ‘the pathologies inherent in the structure of the international system’ that generate such challenges.36 And when the ‘human’ in human security is naturalised as masculine, the inclusion of novel threats and new actors leaves the parameters of security untouched, meaning that ‘state-based, militarised security remains unchallenged’. 37 Feminist scholars have critiqued the gendered concepts and practices of war, peace, militarisation, peacekeeping and soldiering, going well beyond the human security framework in the process.38

Feminist critiques that challenge the parameters of human security can usefully be combined with postcolonial accounts of IR that emphasise the ways in which the discipline ‘can both deny empire while simultaneously normalizing an imperial perspective on the world’. 39 Some of the main themes of the human security agenda are illustrative of the need for an imperial perspective in how we understand the challenges facing weapons control. By this I mean interpreting them with the aid of scholarship that challenges methodological nationalism and Eurocentrism in its analysis, mobilises feminist critiques of militarism, and puts the legacy of empire and colonialism, and the racial, gendered, and classed politics of imperial control, front and centre in its assessment of contemporary challenges.40 Deploying such resources gives us a chance to rethink some of the key assumptions around human security and the prospects for regulating weapons circulation.

Three core themes of the human security agenda are ripe for an imperial critique. First, the claim that the character of conflict has changed, from inter-state war towards internal conflict, has become axiomatic in much of IR, including the human security literature.41 The greatest threats to human security are deemed to stem from internal conflict and criminal violence, or the state itself, rather than from an external adversary as per the traditional security agenda. As such, ‘international security traditionally defined – territorial integrity – does not necessarily correlate with human security’. 42 Second, the changing character of conflict requires a shift in the referent object of security, according to the human security agenda: away from the state and inter-state war, and towards the individual and the broader range of threats they face. 43 And third, the human security agenda nonetheless emphasises the importance of the state’s monopoly on legitimate violence and role in security provision.44 Yet the circumstances have been transformed with the end of the Cold War. Kaldor attributes a ‘profound restructuring of political authority’ to the new wars, and sees human security as an opportunity for ‘reconstructing political authority in the context of the processes we call globalisation’. 45 Hence the need for security sector reform (SSR), demobilisation, disarmament, and reintegration (DDR) and other reforms of coercive practices and apparatuses.

Each of these three themes is premised on the significance of the rupture that occurred with the end of the Cold War. But understanding the Cold War as predominantly an East–West ideological and geopolitical confrontation marginalises longer historical patterns of North–South power relations and conflict, and of hot war in the South. And the increased focus on internal conflict, while fruitful in terms of changing the scale of analysis, risks disconnecting the micropolitics of violence from broader systems and structures of war preparation, ignoring one of the key lessons of feminist scholarship, which is that the scales or so-called levels of analysis are interdependent. As Laura Sjoberg and Sandra Via put it, ‘absolutely distinguishing between the personal, national and international level of war and militarism lacks conceptual and empirical rigor at best’: feminist attention allows us to understand both the impact of war and militarism on people (especially, but not only, women) as well as the gendered construction of war and militarism.46

A longer historical view that is not hamstrung by a state-centric ontology allows us to see that arms transfer practices have long been part of the simultaneously transnational and asymmetrical constitution of force. Historical scholarship on the arms trade emphasises the importance of decolonisation as the shift from empire to a system of formally sovereign states in which North– South power asymmetries continue to resonate. One of the key transformations in weapons transfer practices that came with decolonisation was a shift on the part of the Soviet Union and China from support for national liberation movements, to the defence of sovereignty as a means of resisting US-led domination, in either anti-capitalist or anti-imperialist modes.47 The supply of weapons and military training was a common feature of both Soviet and US relations with the Third World: despite their differences, North–South politico-military relations had much in common between the two blocs.48

Ostensibly new or transformed challenges of the post-Cold War era, such as Somali piracy, new wars in Africa, or insurgency and counterinsurgency in Afghanistan, are thus better understood in postcolonial terms, with militarised transnational continuities as well as changes associated with the end of superpower rivalry.49 Amina Mama and Margo Okazawa-Rey emphasise the continuities between colonial and contemporary militarism that not only led them to prefer the terminology of postcolonial conflicts over that of new wars, but also emphasise the fundamentally gendered characteristics of the physical and structural violence at stake.50 And as Cooper argues, arms control regimes have long featured both ‘proscription and permission’ 51 operating in tandem, challenging the optimism of accounts premised on the end of the Cold War as the changed permissive factor that allows humanitarian concerns to be the core objective of weapons control. This emphasis on history and power generates scepticism about the optimism and presentism of most accounts of the emergence of the ATT, and the linear, benevolent account of history found therein.52 A longer historical perspective allows us to see how state security (whether national or imperial) and (what is today called) human security have long been two sides of the same coin.

There are thus continuities of imperial forms of practice despite the turn to formal sovereignty. A focus on the systematic or organised and North–South character of much armed violence is not to return to Cold War politics or the ‘sterile polemic’ of past debates about weapons issues mentioned earlier. Rather, it is to emphasise that historical weapons supply routes and power relations continue to resonate; that massive and uneven levels of global military spending and proxy wars continue to matter; and that clients continue to use weapons in ways that are often unanticipated by patrons. Ostensibly civil or internal wars are enmeshed in wider regional and international projects.53 There are internationalised sources of much of what counts as domestic, civil or intra-state, including colonial legacies and internationalised weapons supply chains. In many accounts, human security has been mobilised as an attempt to ‘cope with [the] pathological results’ of how security has been defined in postcolonial states in the South.54 Yet this encourages internalist analysis that sees the problems of armed violence as having their sources primarily within the global South. In conceding the terms of debate to ‘traditional’ security studies, and seeking to shift inwards from the state to the individuals living within it, rather than critiquing the conception of the international system, the human security agenda continues to ‘occlude and distort imperial relations’ in the way that more traditional ‘Westphalian terms of reference’ do.55

In the human security agenda’s account of the shift from wars between states to wars within them, war falls off the agenda as it is deemed analytically outdated and politically regressive. Yet neo-realist, Cold War accounts of national security were never adequate, and in trying to overcome them, many human security accounts take them at face value and get the critique wrong. With its emphasis on the enduring power of war preparation, the concept of militarism suggests that much contemporary violence remains coordinated or facilitated (by state, paramilitary, militia, or other organised actors), and systematic within society, despite the shift towards discussion of armed violence and intentional homicide, which is suggestive of disorganised violence. So how are we to mobilise the concept of militarism in light of the imperial turn, in ways that help us think more productively about weapons control?

First is to defend the use of the concept at all. According to Mary Kaldor, the concept of militarism has outlived its usefulness as it is ‘drawn from the Cold War and before’: the changes with the end of the Cold War necessitate new terms.56 To capture the ways that organised violence blurs state/non-state and national/foreign boundaries, whether in the form of paramilitary groups, organised crime or terrorist cells, or in the form of peacekeeping troops, Kaldor coins the terms ‘Netforce’ and ‘Protectionforce’ respectively.57 Kaldor restricts the concept of militarism to ‘the new American militarism’ and the ‘neo-modern militarism’ (‘the evolution of classical military forces in large transition states’ practising inter-state war or counterinsurgency) of states such as Russia, China, and India.58 But in differentiating some types of organised violence as not-militarism, we lose the opportunity to compare them, to see the overlaps, similarities, and differences in modes of organised violence. Feminists have long been able to capture this with the concept of militarism, showing us that ‘it is not quite so easy to set aside “ordinary” aggression, force or violence as “not war”’59 – especially when we pay attention to the experience of violence in the global South.60

Second, and relatedly, the specificities of combinations of actors, degrees of state support, and so on, are subject to empirical and historical specificity, and a common rubric of militarism helps us understand similarities and differences between them. Working in a historical sociological tradition, Bryan Mabee and Srdjan Vucetic draw up a typology of forms of contemporary militarism.61 They contrast Michael Mann’s concept of civil society militarism – ‘the use of organized military violence in pursuit of social goals that is “state-supported, but not state-led”’62 – to ‘nation-state militarism’ in both its authoritarian and liberal forms; to ‘neoliberal militarism’ structured around socioeconomic liberalisation; and to ‘exceptionalist militarism’ seen in practices associated with the War on Terror. Feminists tend not to operate in such formal typological ways, but have long been articulating the idea of war and militarism as a spectrum or a system, in which the forms, intensities, and characteristics may vary, but the gendered basis of violence is central.63 And a focus on militarism can be usefully mobilised to consider the connections and feedback loops between Northern and Southern practices, giving a more internationalised account that is better attuned to the operation of power in contexts of armed violence. Indeed, Rita Abrahamsen refers to ‘global militarism in Africa’ because ‘while militarism is always specific (and often national), it is also simultaneously global’, and the ‘analytical challenge is to capture at one and the same time the global and the local, and their intersection in particular locations’. 64

Third, while I want to defend the concept, and think about types of militarism in relation to each other, it is crucial to acknowledge that contemporary militarism and human security have shaped each other in the last twenty years. Human security, with its emphasis on human rights and IHL, has become a mediating element in the relation between war and society. Post-Cold War processes of democratisation have ‘often coincided with new forms of militarism’ that tend to be analysed under the rubric of policy-oriented concepts such as security sector reform.65 As Abrahamsen argues, ‘The securitization of underdevelopment … is the condition of possibility for a global militarism justified in the name of human security and development.’ 66 We must take heed of Abrahamsen’s warning that ‘Paradoxically, transformations that initially entailed a critique of militarization and militarism have ended up according a new importance to security actors and laying the groundwork for new expressions of militarization and militarism.’ 67 Human security has – against its self-image as a progressive social force – facilitated a resurgent as well as transformed militarism.

#### Arms limitation consolidates and preserves US military superiority and hegemonic domination

Cooper ‘06 – Neil, Department of Peace Studies @ University of Bradford, “Putting Disarmament Back into Frame,” *Cambridge Review of International Studies*, 32.2, pg. 353-376, card p. 361-4

However, whilst it is important (if only to counter the pessimistic discourse surrounding this issue) to recognise the various disarmament outcomes that have been generated under the current arms limitation system, it is also important to recognise the context in which these have occurred. In particular, both disarmament and broader arms limitation initiatives are now taking place as part of an asymmetrical arms limitation system that has replaced the emphasis on balance between the superpowers that dominated Cold War practice. 34 It is sufficient at this juncture to note that what characterises this system of arms limitation is the way in which it is structured to consolidate and preserve the military superiority of the US in particular and the West in general. Moreover, rather than reinforcing security this profound military imbalance promotes insecurity – both by creating incentives for other actors to pursue asymmetric technologies (NBC) or strategies (terrorism) that offset the US’s conventional superiority,35 and by diverting resources that could be expended on human security to militarism. At best, the contemporary arms limitation system aims to keep the lid on such contradictions by setting in place a variety of disciplinary mechanisms that attempt to constrain asymmetric military responses whilst simultaneously preserving the asymmetrical advantages of the West. At worst, in attempting to contain pressures that may ultimately be uncontainable, the contemporary arms limitation system may promote an illusion of relative security whilst positively fostering a variety of insecurities. However, a few more comments are in order before we proceed to consider this system of asymmetrical arms limitation in more detail. Stuart Croft and arms control as threat construction The corollary of the preceding critique of arms control theory is of course a requirement to develop conceptual frameworks (and framings) that are capable of simultaneously challenging the hegemonic discourse within the discipline and of producing greater explanatory value. To date this attempt has been most convincingly pursued by critical theorists and postmodernists such as Mutimer,36 and Krause and Latham.37 Even within the mainstream literature on arms limitation however, there has been some attempt to reconceptualise arms limitation practice. Most notably, Stuart Croft in Strategies of Arms Control explicitly rejects the distinction between arms control and disarmament as a basis for framing discussions of arms limitation.38 Instead he develops a typology based around five different strategies of arms control: arms control at the conclusion of major conflicts, arms control to strengthen strategic stability, arms control to create norms of behaviour, arms control to manage the proliferation of weapons and arms control by international organisation. This certainly represents an improvement on more traditional discussions of arms limitation. However, there are also a number of problems with his analysis. First, Croft locates his typology in a broader analysis that emphasises the idea that arms control as an activity has been constantly widening (in the sense that there has been a gradual accretion of strategies deployed to achieve it) and that arms control agreements have become ever ‘deeper’ (in the sense that agreements have become more detailed, arrangements for verification have become both more common and more sophisticated, and the likelihood of agreements taking on the qualities of a regime have increased). Consequently, although Croft states that he is determined to avoid making judgements on the success or failure of arms control both as theory and practice, he nevertheless manages to produce a profoundly teleological (and indeed optimistic) account of the history of arms control/arms limitation. However, there has not been a straightforward accretion of arms limitation activity. Partly this is because the relevance of many arms control agreements has simply declined with the advent of new military technology. But even where this has not been the case, politics and power have constantly intruded both to kill off arms limitation initiatives and to influence their depth. Examples include Japanese and German disarmament after the Second World War, and the US decision to renounce the ABM Treaty. Similarly, the two page SORT Treaty highlights how the inexorable increase in depth described by Croft in 1996 was, at best, a function of historically contingent Cold War practices rather than some evolutionary manifest destiny.39 Second, Croft states that investigation of the motivation for arms limitation is outside the remit of his book. Despite noting the influence of politics and power on arms limitation then, what Croft presents is a largely mechanistic and apolitical analysis of the subject. Indeed, the development of arms limitation practice is depicted as an essentially autonomous process – as if, to paraphrase Cox, arms limitation were not always for some purpose and for someone.40 This is not untypical of the majority of the literature in this field which tends to focus on the technical minutiae of military strategy, diplomatic texts or policy battles. The problems that arms limitation deals with are generally taken as given and the purpose of such activity (just like arms control theory itself) is to engage in producing ‘problemsolving’ solutions to these issues. What Croft, and mainstream arms controllers in general ignore, is the role that arms limitation activity plays in both reflecting broader constructions of threat and in reinforcing them. Moreover, whilst the idea that arms limitation represents an arena where political power is exercised is taken as axiomatic, power is generally understood to be expressed in the relations between states (or internal bureaucracies) negotiating (or sometimes imposing) specific treaties, and measured in terms of who wins or loses in these negotiations. The myriad ways in which hegemonic power is expressed through developments in the dominant modes of arms limitation thinking and practice rarely intrude. For example, the power expressed as a result of the role played by discourse and action over arms limitation in affirming hegemonic projects of securitisation; the power manifested in the specific ways in which the system of arms limitation contributes to maintaining particular military and social hierarchies whether internally, within the state, or throughout the global system; and the relationship between the interests of power and the ways in which arms limitation reflects and reinforces powerful political, economic and cultural tools of legitimation/delegitimation surrounding military technology. In other words (from a critical security studies perspective at least), the key questions surrounding arms limitation are not so much who wins or loses in negotiations over a specific treaty or how effective/ineffective that treaty turns out to be. Rather, the principal concern is with how the dominant discourse and practice of arms limitation (not always the same thing) contributes to processes of securitisation and othering as well as military and broader hegemonic practices.

### K of Arms Control---FMCT

#### FMCT/Nuclear risk reduction reps - Risk reduction logics are a nuclear PR scheme, intended to manipulate the public into perpetual maintenance and build-up of the arsenal

**Pelopidas and Egeland ’24** (BENOÎT PELOPIDAS, Associate Professor and the founding director of the Nuclear Knowledges program at the Center for International Studies, Sciences Po, Paris, France, AND KJØLV EGELAND, Dr Kjølv Egeland is Marie Skłodowska-Curie Postdoctoral Fellow in Security Studies at Sciences Po, focusing on strategic narratives and global nuclear order. He completed his DPhil at the University of Oxford in 2018, “The false promise of nuclear risk reduction”, International Affairs 100: 1, 2024, ppg. 359-360, https://academic.oup.com/ia/article/100/1/345/7506700)

The indeterminacy of the risk reduction agenda means that progress cannot be verified. By extension, those in power cannot be held accountable for their actions one way or another. The risk reduction agenda, in other words, lends itself to public relations efforts by powerful nuclear actors eager to reassure members of the public that the perpetual retention and rebuilding of nuclear armouries in an anarchic world remains safe. As pointed out also by some of the risk reduction framework’s proponents, ‘nuclear-armed States often cite improvements to the safety, security and reliability of their nuclear weapons in describing their extensive modernization programmes’.83 Indeed, it is notable that the re-emergence of the nuclear risk reduction framework in nuclear policy discourse in recent years has coincided with the initiation by all nuclear-armed states of **large-scale nuclear build-ups or modernization programmes**. As Charles Perrow reminds us, often, the function of those working to assess or reduce risks ‘is not only to inform and advise … , but also, should the risk be taken, to legitimate it and reassure the subjects’.84

Conclusion

The nuclear risk reduction framework has received renewed attention in recent years. According to its proponents, nuclear risk reduction offers a straightforward, apolitical framework for addressing nuclear dangers. We disagree, maintaining instead that the nuclear risk reduction agenda offers a false promise for those seeking durable, shared solutions to the nuclear predicament and, by extension, actual risk reduction over the long term. We have offered three arguments to substantiate this claim. First, accurate risk analysis requires a level of knowledge and foresight that is not achievable in nuclear weapons politics. Second, risk analysis invites a faith in managerial control that invariably plays down luck and contingency, fosters potentially dangerous overconfidence, and helps normalize civilizational vulnerabilities. Third, the risk reduction agenda is too indeterminate to offer political guidance or direction. While some argue that risk reduction demands stockpile reductions or the adoption of no first use nuclear policies, others argue that risk reduction is best achieved through nuclear modernization programmes and brinksmanship. Risk taking in the short term can often be argued to reduce risks in the longer term, and risk reduction efforts in one area can frequently increase risks in others. In the absence of better information, risk analysis offers no tools to adjudicate these competing claims. Proponents of the nuclear risk reduction agenda would be right to point out that the current international security environment does not look particularly conducive to radical nuclear policy changes. Implementing common-sense measures of restraint would be better than doing nothing, they might argue. We do not disagree. Our objection is that the radical uncertainty that defines the nuclear world renders ‘risk reduction’ a poor frame for diplomatic action. If what proponents of ‘nuclear risk reduction’ really want to do is to promote nuclear de-alerting, new or improved communication hotlines, ‘deterrence only’ postures, or the adoption of no first use policies, they should just do that and not invite a discussion about unmeasurable risks that can easily be co-opted by those eager to renew nuclear testing programmes, resist doctrinal changes or advance nuclear modernization efforts. It should also be noted that some of the most significant nuclear arms control and disarmament measures that have ever been reached, such as the 1987 Intermediate Range-Nuclear Forces (INF) Treaty, came about on the back of periods of acute hostility and tension.85 Finally, those involved in the debate should be wary of allowing policy dialogue to grow too narrow. Confining discussions to modest managerial adjustments risks narrowing the gamut of policy options deemed feasible by future policy-makers. Contrary to what its proponents often claim, the risk reduction agenda is severely circumscribed by the putative requirements of nuclear deterrence. Deterrence practices, after all, are necessarily ‘risky’, as the credibility of nuclear deterrence, in particular extended nuclear deterrence, depends on ‘threats that leave something to chance’, i.e. the deliberate maintenance of nuclear risk. Accordingly, the notion that ‘all States—irrespective of their stances on nuclear weapons—share an interest in the urgent pursuit and implementation of measures to reduce the risk of use’ is not particularly meaningful.86 States that have based their security on nuclear deterrence have an interest in maintaining the risk of use. The underlying bet, of course, is that the risk of retaliation and ensuing nuclear escalation helps suppress the risk of straightforward (nuclear) aggression. In the late 1980s, former US National Security Advisor McGeorge Bundy argued that it was ‘a mathematical law’ that ‘if you keep reducing the risk, your chance of durable safety can be very good’. For example, ‘if the overall chance of general nuclear disaster per decade was one in fifty in the decade of the sixties … and if it is one in two hundred two decades later, if we can make it one in eight hundred for the first decade of the twenty-first century and so on after that, the chance of permanent escape will be 99 percent’.87 If this sounded too good to be true it probably was. As Bundy added in a cautionary footnote: ‘I am warned by my tutors that such formulas are indicators of possibilities, not predictors.’88 Around the same time that Bundy was writing his book, the author privately conceded to the historian Martin Sherwin that ‘crisis managers cannot manage everything … and that’s where luck comes in.’89

#### FMCT/Nuclear risk reduction - nuclear risk reduction fails and relies on faith in human control and management of escalation

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A second key assumption underpinning the risk reduction framework is that nuclear arms and deterrence practices are straightforward tools or instruments without emergent properties, a view described in Science and Technology Studies as ‘instrumentalism’.53 Analytically, this assumption encourages faith in human management and control. As argued by Esther Eidinow, risk thinking is about ‘control, and faith in that control’.54 Faith in control is clearly visible in the analysis of leading nuclear risk theorists, including Thomas Schelling and Albert and Roberta Wohlstetter. For example, in a 1960 RAND memo, Schelling expressed confidence in the ability of nuclear-armed leaders to perform ‘a controlled loss of control’ to bolster the credibility of necessary, risk-reducing deterrent threats.55 In The strategy of conflict, published soon after the RAND memo, Schelling doubled down on the ability of leaders to exercise managerial control, arguing that ‘a limited war can get out of hand by degrees. At any point one has some notion or sensation of how much “out of control” it is.’56 According to Ned Lebow, mainstream analysts downplayed luck, and Schelling totally denied its role. At a conference on the missile crisis held several decades later he told a small group of us over dinner that there was never any doubt in his mind that the Soviets would capitulate … As for his fellow Harvard professors who had worried about war during the crisis, they were ‘a bunch of nervous nellies’.57 In fact, Schelling saw the Missile Crisis as a welcome development that had allowed the United States to demonstrate resolve in the face of Soviet pressure and thus reduce the risk of general war; it was ‘the best thing to happen to us [the United States] since the Second World War’.58 This judgement grew out of Schelling’s views, firstly, that the Soviet Union was an intransigent, expansionist power that could only be deterred through credible threats of nuclear violence, and, secondly, that the probability of nuclear war in the near term was minute.59 As discussed below, however, current historiography suggests that Schelling almost certainly overestimated the Soviet Union’s expansionist ambitions (or at any rate its capacity to expand) while underestimating the likelihood of nuclear war.60 Ultimately, Schelling’s estimate of risk was ‘entirely arbitrary’.61 Albert and Roberta Wohlstetter, for their part, concluded in a 1965 Adelphi Paper that ‘in the end it was President Kennedy’s and Chairman Khrushchev’s decisions that determined events’ during the Missile Crisis. While admittedly expressing some concern about the possibility of miscommunication, the Wohlstetters added that ‘the United States and the Soviet Union were both in full control of their nuclear forces’.62 Were they? Three decades after the Cuban Missile Crisis, following the surfacing of a wealth of evidence about several highly contingent incidents that took place during October 1962, Scott Sagan concluded that ‘President Kennedy may well have been prudent. He did not, however, have unchallenged final control over U.S. nuclear weapons.’63 The same applied to Khrushchev. Both leaders had delegated the authority, or at least capability, to use nuclear weapons to field commanders.64 Both had made threats that left something to chance; both were eager to reduce risks. And yet the world was brought to the brink of global pandemonium. Consider, for example, an episode that occurred the night of 27–28 October 1962. While the historical accounts diverge on certain details, they each show that perfect control alone cannot account for the absence of unwanted nuclear explosions. According to historian Serhii Plokhy, an American aircraft fired tracer bullets at a Soviet submarine that had been shadowed and forced to the surface by American surface vessels. Under fire and with American flares going off in the sky, the submarine captain concluded that he was under attack. He promptly gave the order to dive and prepare the nuclear torpedo for firing. However, on the way down from the bridge, ‘the signals officer got stuck with his searchlight in the shaft of the upper hatch of the conning tower, thereby delaying the commander’.65 This fortuitous delay gave the Soviet officers time to receive an apology sent via searchlight from one of the American surface vessels. The Soviets could thus conclude that they were not under attack after all, and the order to prepare the torpedo for firing was reversed. Historian Martin Sherwin’s account does not mention the stuck searchlight or strafing by a tracking aircraft. Sherwin instead emphasizes the decisive role of one of the officers on board, Vasili Arkhipov, who is claimed to have opposed the order to fire the nuclear torpedo, in large part because of his first-hand experience of the effect of radiation following an accident fifteen months earlier.66 In either case, ‘although they did not know it at the time’, the American seamen appear to have been ‘moments away from being killed or shipwrecked by the tremendous waves that a nuclear explosion would produce’.67 The strategic consequences of such an explosion might well have proved considerable. Plokhy concludes: ‘In response to a nuclear attack on the US Navy, the president would have had little choice but to order an air strike against Soviet targets. The Soviets would have had little choice but to retaliate, whether they wanted to do so or not.’68 RAND analyst Albert Wohlstetter, however, continued to deny the leaders’ imperfect control of events in the crisis, even after the surfacing of persuasive evidence to the contrary. In fact, Wohlstetter continued to deny the fact that field commanders would have had the ability to launch nuclear weapons even after the explicit admission by Kennedy’s National Security Advisor McGeorge Bundy that this had indeed been the case. ‘I doubt very much there had been such predelegation or that Mac [Bundy] would have known if there had been’, Wohlstetter persisted.69 As late as 1986, Wohlstetter still believed in a narrative of perfect control, writing that he did not believe the superpowers had been ‘anywhere near the brink of nuclear war’ or that either side ‘came close at all to letting things get out of control’.70 Along similar lines, Maxwell Taylor, chairman of the US Joint Chiefs of Staff at the time of the Missile Crisis, argued a few years earlier that ‘if at any time we were sitting on the edge of Armageddon, as nonparticipants [in the crisis] have sometimes alleged, we were too unobservant to notice it.’71 Taylor had previously described himself as ‘a practicing optimist, having found long ago that pessimism plays into the hands of the enemy’.72 Although the Cuban Missile Crisis is often regarded as having ushered in a series of risk reduction measures that reduced the probability of nuclear war, nuclear close calls continued to bubble under the surface of the ostensible nuclear ‘order’ established in the 1960s.73 In some of these cases, the non-catastrophic outcome of the incident cannot be fully explained by the implementation of control practices or risk management. In other words, humanity was obliged to rely, in part, on luck.74 For example, errors at the North American Aerospace Defense Command in the US and with the Soviet early warning system fostered dangerous incidents in the 1970s and 1980s. Further, given that it took over three decades to get a relatively complete picture of the Cuban Missile Crisis, and given the lack of transparency in most nuclear-armed states about past close calls, it is very likely that we underestimate how many close calls there have been, including in the age of nuclear risk reduction and ‘order’. The risk reduction agenda relies on an implicit bet that luck will be on our side in the future.

### Bataille

#### International law cannot restrict excess – the basis of all conflict as expenditure.

Meiches 20 [Meiches, B. (2020). Wars of excess: Georges Bataille, solar economy, and the accident in the age of precision war. Security Dialogue, 51(2/3), 268–284. https://www.jstor.org/stable/26979848]

Introduction The relationship between war and excess is a common theme in the literature on armed conflict. For Clausewitz (1982: 29–39), war becomes excessive in the ‘tendency of the extreme’. For traditional international relations, the anarchical character of the international system results from the fact that war is an activity in excess of legal and political constraints (Waltz, 1986: 90–92). International humanitarian law **and the** laws of war **likewise** interpret war as excessive **and** seek toregulate **this** excess **in order** to create more humane forms of conflict (Kennedy, 2006; Kinsella, 2011). Whatever the explanation, there is a consistent articulation of a connection between war and excess. In most cases, **descriptions of excess and war** mark a point **or threshold** where war transitions from legitimate to problematic **activity.** **This model implicitly presupposes the existence of an unproblematic or non-excessive form of war.** Over the past three decades, critical scholars of war and security have challenged this image of war by turning to thinkers in the continental tradition. In these studies, the concept of excess makes frequent appearances. Excess allegedly plays a key role in the drive to securitize otherness; in colonial encounters; in the regulation of gender, sex, and other identities; and in the global inter- connections fostered by armed conflict (Barkawi, 2006: 91–126; Debrix, 2017: 6–8; Wilcox, 2015: 202–204). In these studies, the notion of excess is typically developed in reference to the writings of Michel Foucault, Paul Virilio, Gilles Deleuze, and others, and is used to help theorize different dimensions of biopolitical or technocratic warfare (Abrahamsen and Williams, 2009; Amoore, 2014; Bilgin, 2010; Chamayou, 2015; Debrix and Barder, 2012; Dillon, 1996; Evans and Reid, 2014; Glezos, 2013; Howell, 2014; Larrinaga and Doucet, 2008). To be clear, this scholarship crucially opened up war as an arena of discourse and practice, enhanced the sensitivity of the dis- cipline to speeds and intensities, introduced new models of power, and offered more expansive critiques of the gendered, raced, colonized, and sexed character of global politics (Anievas et al., 2014; Hobson, 2012; Weber, 2016). However, excess is never an issue of significance or serious object of critical scrutiny, nor do critical security scholars posit excess as having any distinctive relationship to war. Thus, while the purpose for which critical scholarship invokes the notion of excess – namely, to deconstruct the distinction between problematic and unproblematic forms of warfare – differs from that of more classical studies of armed conflict, excess is never the focal point of analysis. In security studies, excess is a motif in the dialogues about war, but not one sub- ject to rigorous analysis, descriptive consistency, or critical investigation. This article, in contrast, focuses directly on the concept of excess and its relationship with war. It explores the theoretical significance of this relationship by turning to the **long-neglected writings of Georges Bataille**. Specifically, the article argues that **Bataille’s vision of excess offers valuable insights into the becoming, mobilization, and encounter of armed conflict** (Bousquet et al., 2020). In general, Bataille’s oeuvre offers a multiplicity of interventions into literature, art criticism, eco- nomics, eroticism, anthropology, politics, and warfare. The author of Story of the Eye and creator of the secret society Acephalé, Bataille’s explorations in fiction, theology, and transgression pow- erfully influenced the generation of Foucault, Virilio, and Deleuze (Kendall, 2007; Noys, 2000; Surya, 2002). However, Bataille’s thought has been largely ignored in the context of political sci- ence and security studies, only rarely appearing in connection to discussions of sovereignty or religion (Debrix, 2017; Lautsen and Wæver, 2000: 710; Mbembe, 2003, 37–38; Meiches, 2013). In part, this oversight is a result of explicit attacks on Bataille’s work as fascist despite his well-doc- umented hostility toward fascism (for critiques, see Habermas, 1984; Wolin, 1996; for Bataille’s relation to fascism, see Surya, 2002: 359–362). The omission of Bataille’s oeuvre from critical security and war studies is problematic partly because Bataille offers a highly original discussion of sociality, one that makes excess a foundational problem for human societies and a generative condition for armed conflict. **Indeed, unlike existing critical accounts, Bataille views excess as an ontological feature of living on the planet and one that has a genetic relationship with the develop- ment of armed conflict in human societies.** Bataille’s thought thus provides both a provocative account for the dynamics of armed conflict and an interesting explanation for why so many ortho- dox and critical accounts of war speak of a connection between excess and war. In brief, Bataille views excess as a problem that originates from a condition that he terms **‘solar economy’.** Solar economy is best understood as a **planetary predicament characterized by the ceaseless movement of energy from the sun to the earth.** This flow of energy produces a situation of perpetual energetic excess, which all living organisms and ecosystems, from microbes to mas- sive social systems, confront. **War**, Bataille argues, **emerges as** one of several mechanisms of what he calls **‘expenditure’ or the consumption of excess for human societies**. However, Bataille con- tends that the rise of modern industrial modes of social organization introduced new principles based on rationality, accumulation, and utility that eliminated many practices of expenditure. In the context of armed conflict, this process altered martial practices by making a primary mode of expenditure, warfare, into a source of accumulation and conservation. For Bataille, the shift to industrial warfare transformed armed conflict from an intense, emotive exercise into a dispassion- ate, utilitarian cruelty, one more interested in survival than in the value of life. Writing in the after- math of Hiroshima, Bataille (1991b: 507) describes this period as one where **‘the need to make life secure wins out over the need to live’.** This article contends that Bataille’s work on excess and solar economy offers a new lens for interpreting many of the developments in late warfare. Unlike other critical readings of armed conflict, Bataille views war as a crucial response to the predicament of solar economy. **As such, Bataille predicts that** human societies will maintain strong emotive, psychological, and political attachments to war **in spite of the rise of dispassionate, calculative forms of armed conflict.** In this sense, Bataille anticipates that desires and drives to commit violence will remain dominant in con- temporary societies despite efforts to curtail, limit, or restrict the use of violence. Indeed, these later efforts paradoxically backfire by underlining the transgressive character of warfare and its function as a mode of expenditure. This observation, the article asserts, poses an important chal- lenge to many of the practices of critique, desecuritization, and protest that critical security schol- ars deploy as a means of contesting securitization.

### Baudrillard

#### Baudrillard has a lot to say about international law, human rights, and all that arises from affirmative obligations.

Schwabach 03 [Schwabach, A. (2003). Kosovo: Virtual War and International Law. Law and Literature, 15(1), 1–21. doi:10.1525/lal.2003.15.1.1 //cohn]

It would be easy, after reading such statements, to dismiss Baudrillard’s entire work as having no relevance to the development of international law. He does, though, see a central role for international law in post-Soviet era warfare, although he is apparently not well-versed in the subject. **“**It is the deintensified state of war, that of **the right to war under the green light of the UN** and with an abundance of precautions and conditions. It **is the bellicose equivalent of safe sex:** make war like love with a condom!”24 In addition, “[t]he Gulf War is the first consensual war, the first war con- ducted legally and globally with a view to putting an end to war and liquidating any confrontation likely to threaten the henceforward unified system of control.”25 Notwithstanding that some unreconstructed (or undeconstructed) modernist historians may have thought that World War I was the first such war, Baudrillard is correct about the increased role of international law and international legal structures (including NATO and the Security Council) in post-Cold War conflicts**.** Baudrillard does not distinguish between the Security Council and other organs of the United Nations, and apparently has nothing to say on the topic of the Uniting for Peace Resolution.26 It is true, though, that the Gulf War was the first war carried out under the authority of a Security Council resolution and thus arguably the first war since the initiation of the Security Council regime to be unequivocally legal, since assertions of defense inevitably involve disputed facts. In fact, it is the absence of the Security Council’s “green light” (at best, the Security Council provided an amber light) that casts doubt on the legality of NATO’s war against Yugoslavia.

### Capitalism

#### Global economic agreements misidentify the problem as individual instances of corruption, rather than a flaw with global capitalism and ensure the smooth flow of capital to powerful nations under the guise of cracking down on corruption.

Bittle and Frauley 25 [(Steven Bittle, Ph. D and Jon Frauley, Ph.D, are Professors in the Department of Criminology at the University of Ottawa specializing in Corporate Crime and Political economy. “The OECD and Ritualized Isomorphism: Anti-Corruption Monitoring, the ‘Narrow View’ of Corruption and the Transnational Political Order.” *Association for Critical Sociology*, 0(0). <https://doi.org/10.1177/08969205241310197>.) kb]

Purposes and Implications Beyond Bribery: Isomorphism and Effecting Supports for Global Capitalism

The OECD’s monitoring of the GOC’s anti-corruption law and policy serves several mutually reinforcing purposes. Importantly, as critical socio-legal scholars remind us, when examining law, it is essential to look beyond its coercive function, if not only because it barely exists at the top end of the social hierarchy, but because law is not simply a body of external rules that acts directly on its target. Law has an important productive or ideological role in (re)producing social relations (Brabazon, 2016a, 2016b; Hunt, 1993). Hunt (1993) argues, a la Gramsci, that law is a form of ideological domination in that it conveys a ‘complex set of attitudes, values, and theories about aspects of society’ and can serve to secure consent to these. Law gives effect to social relations in attempting to smooth over the very contradictory and disordered relations and struggles that are in the backdrop (Hunt, 1993: 121). There is, in other words, effectivity to legal ideology – consensus around something such as ‘corruption is bribery’ or ‘corruption is bad’ is ‘produced and mobilized’ through ideological domination (Hunt, 1993: 53). It is not predefined but achieved. ‘The normative content of law provides authoritative definitions of social relations’ (Hunt, 1993: 54). This is important given the transnational origins of anti-corruption law. In addition, law has always been an important mechanism for forcibly subordinating actors to market relations such as waged labour for subsistence and subjecting some to violent coercion if they should attempt to circumvent the sanctioned means installed to facilitate this and simultaneously reproduction of capitalist social and economic relations (Gordon, 2009; LeBaron and Roberts, 2010; Roberts, 2017; Robinson, 2020).

Law is a vehicle for diffusing values, norms and practices from the transnational to the national arena. It provides one avenue of diffusing globalized cultural and cognitive models of structural organization and social action that play into isomorphism between states (Meyer et al., 1997: 149). As Hunt (1993) remarks, ‘the real power and influence of law in capitalist society’ (p. 32) is found in its dual functioning: its practical effectivity of **concretizing dominant interests as everyone’s interests, and its ability to provide ‘justification or legitimation for these interests in terms of some higher and apparently universal interest of all’.** From this vantage point, anti-corruption law is important to the (re)production and transformation of social relations (Brabazon, 2016a, 2016b; Hunt, 1993). The universal interest appears to be corruption, but it is what this represents in the global arena on a more fundamental level: the costs of wealth extraction, corporate values and norms.

Narrowing Corruption to Bribery

The OECD Convention on bribery and related monitoring efforts (re)produce a narrow definition of corruption, which reduces the corruption problem to a largely technical matter requiring the right mix of tools and enforcement. It reinforces the idea that corruption is a narrow set of behaviours concerning bribe taking by greedy government officials in other countries who are willing to break the law. Current debates about the ‘new normal’ of corruption tend to draw from narratives about the changed character of individuals, who have become greedier, or whose moral compass has gone awry (Wiegratz, 2015: 50). Corruption from this perspective ‘. . .is generally seen as a kind of pathology’ (Miller, 2015: 61).

This idea that corporations are victims, not offenders, and that corruption is the result of individual greed obscures the fact that the OECD anti-bribery convention leaves corporate power relatively unchecked and works towards the protection of ‘free’ markets on behalf of corporate wealth extraction. Bribery is simply seen as an opaque cost of doing business that must be eliminated as it dissuades foreign investment. This individualizes the corruption ‘problem’ and downplays the role of law itself in creating the conditions for corporations to dominate markets and public interest globally (Galanis, 2020).

An individualized account also emerges from the assumption that corruption is a ‘public sector problem’ in which there is too much decision-making authority in the hands of government officials, leading to corrupt practices. The WB definition of corruption focuses on the ‘abuse of public office for private gain’, creating a false distinction between public and private and leaving the impression that corruption is only problematic when it enters the public realm. It is the idea that the state has been captured by private interests, and weak governance is therefore the culprit (Whyte, 2015: 6–7). **There is**, thus, **an overall tendency to put the onus on so-called developing countries – corruption is not about us, but them (the ‘others**’).

Corresponding to the idea of corruption, as a problem of greedy individuals, not of corporations or systems and institutions, OECD evaluators raised concerns about the role of organized crime in cases of corruption. As a remedy, they recommend that officials at the Canada/US border be made aware of possible bribes from criminals involved in smuggling operations (OECD, 2004: 8), raising the spectre that conventional criminals are infiltrating an otherwise efficient system. The individualizing effect also emerges in the discussion of whether the CFPOA’s reference to ‘for profit’ was clear enough to include non-profit organizations. As the OECD’s (2004) Phase 2 report notes, the CFPOA’s bribery offence ‘. . . applies in respect of a person who bribes “in order to obtain or retain an advantage in the course of business”’, and section 2 defines ‘business’ as ‘any business, profession, trade, calling, manufacture or undertaking of any kind carried on in Canada or elsewhere for profit’ (p. 28). As the lead examiners note, ‘. . . the term “for profit” in the CFPOA is very unclear’ and express concern ‘. . . about the possibility of the non-application of the CFPOA to non-profit companies’, resulting in ‘the non-coverage of a sizable sector in the Canadian economy’ (OECD, 2004: 30). While the report also notes that some for-profit companies might hide their bribes within non-profit transactions, the dominant focus obscures the link between the profit motive of corporations and corruption.

A narrow, legalistic approach also downplays the role of corporations in both causing corruption and benefitting from anti-corruption(ism). Nyberg (2021) is critical of definitions that fixate on ‘quid pro quos’ and instead focuses on the corruption of democracy by corporations and corporate interests. Corruption is not episodic, from his perspective, but rather normalized through the efforts of powerful corporate actors to infiltrate the political realm. This creates a profoundly anti-democratic scenario that is ripe with corruption, or what Nyberg (2021) likens to government policymaking being ‘“captured” by private business interests’ (p. 3). Whyte (2015) also draws attention to the ‘distortion of the public realm by private interests’ (p. 6). For Whyte (2015), ‘[c]orruption can be understood as part of ‘the neo-liberal harvest’, in which unrestrained self-interest and aggressive economic self-maximisation are constructed as the logical aims of economic policies’ (p. 10). Focusing on corruption in ‘weak’ states therefore obscures the class interests at play in the institutional corruption throughout the Global North.

Critical scholars also point to the very structure of corporations and the state’s support of this legal fiction as being at the heart of the corruption problem (Glasbeek, 2002; Tombs and Whyte, 2015). For Galanis (2020), as capitalism took root – and with it the proliferation of ideas around the ‘free market’ and the inherent good of economic ‘progress and growth’ – the entire idea of a ‘market society’ took precedence to the point that it is now something that almost completely subjugates ‘private goals to private economic ones’ (p. 298). Corruption is therefore not the result of flaws or a breakdown in otherwise efficient and effective political and economic systems, but instead a product of routine practices that serve to maintain and extend ‘the power of corporations, governments and public institutions’ (Whyte, 2015: 5).

Protecting ‘Free’ Markets (Neoliberal Capitalism and Wealth Extraction)

A significant theme emerges in relation to the CFPOA’s overall purpose to protect free markets. As every GOC annual report to the Parliament baldly states, the Convention ‘aims to stop the flow of bribes and to remove bribery as a non-tariff barrier to trade, producing a level playing field in international business’. In this sense, it is important to recall that a driving force behind the Convention was US-led claims of unfair competition for American companies that were subjected to their Foreign Corrupt Practice Act (FCPA), while companies from other jurisdictions without such laws were free(er) to run amok (Katzarova, 2019). The **Convention is thus rooted in concerns with corporations being victimized by other companies that do not play by the rules.**

For instance, following a discussion in the Phase 2 Report of the foreign trade by Canadian companies, including US$3 billion of commodity exports to China in 2001 and another US$940 in ‘Canadian direct investment’ in Russia in 2000, the OECD (2005) notes ‘. . . a potential for Canadian companies engaging in foreign trade to be exposed to demands for bribes’ (p. 9). The OECD (2011) further states this observation was ‘. . . confirmed by a lawyer for small and medium enterprises (SMEs) who stated that in his experience SMEs involved in foreign trade are encountering these kinds of situations’ (pp. 5–6). Likewise, there is reference to Canada’s export credit agency, Export Development Canada (EDC), and its efforts ‘to inform customers of the potential risks they face if exposed to corrupt business practices, and to encourage the development of corporate best practices in this area’ (OECD, 2003: 3). The same goes for the extractive industry, which despite its sordid reputation, is positioned as a victim of corruption. As the OECD’s Phase 3 (OECD, 2011) report states:

[h]aving regard to the strength of the Canadian extractive industry, it is notable that representatives from that sector, and from civil society, explained during the on-site visit that high risks of bribe solicitation are present in a number of countries where the extractive industry operates. (p. 8)

In the same report, a representative from ‘one of Canada’s most well-known and respected companies globally’ states that despite Canada’s reputation as an honest society, we should not forget that Canadian companies operating abroad ‘. . . face the same pressures as companies from other countries to engage in corrupt practices’ (OECD, 2011: 9). At worst, these claims characterize corporations as victims of bribery; at best they position them as passive players in the corruption phenomenon, only becoming involved when subjected to the demands of corrupt foreign governments and individuals.

Further indications that facilitating trade and advancing economic interests are the Convention’s underpinning motivation emerges in the GOC’s reporting of its anti-corruption measures. Take, for instance, the introduction of the Extractive Sector Transparency Measures Act (ESTMA) in 2015, which the GOC claims as a key measure in ‘global efforts to deter corruption and promote transparency in the extractive sector’ (GAC, 2015: 6). The ESTMA requires extractive companies to ‘report payments including taxes, royalties, fees, and production entitlements of $100,000 or more to all levels of government in Canada and abroad’. However, the Canadian extractive industry has long been plagued by allegations of corruption, environmental degradation and various human rights abuses (Gordon and Weber, 2008, 2016). Despite these allegations, the GOC’s goal is to ensure Canada’s extractive industry continues to ‘prosper and to provide the broad economic benefits that are fundamental to Canada’s success’ (GAC, 2015: 6; emphasis added).

The debate around facilitation payments also speaks of the Convention’s underlying concerns with the smooth flow of capital. Originally, the CFPOA exempted facilitation payments, such as a ‘loan, reward, advantage or benefit . . . made to expedite of secure the performance by a foreign public official of any act of a routine nature that is part of the foreign public official’s duties or functions’ (OECD, 2011: 14). Although repealed in 2017 after the OECD (2011) expressed concerns the Canadian Revenue Agency was ill-equipped to differentiate between a ‘reasonable expense’, ‘facilitation payment’ and a bribe (p. 48); the fact that this exemption was originally part of the CFPOA, as well as the nature of the debate which ensued, reveals the underlying economic motivations. On one level, its original inclusion was expressly about small payments that helped ‘speed up’ a process in which it was the ‘official’s job to do’ (OECD, 2004: 27). Likewise, during the OECD’s evaluation process, some representatives from the business sector suggested it was common for ‘companies to make a payment to expedite or secure the performance of some act by a foreign public official, and that facilitation payments are rarely recorded in corporate books and records’. Accountants and auditors who participated in the OECD’s (2011) review process agreed and stated they paid little attention to facilitation payments when auditing a company because ‘those payments usually do not materially affect the corporation’s financial statements’ (p. 14). In many ways this discussion is about what constitutes a tolerable level of bribery – that is, when greasing the wheels goes too far and perverts the ‘free’ market beyond reason.

Viewing corruption narrowly as bribery and holding corporations to be victims of corrupt state officials speaks of how states have downplayed corporate harms. In effect, the anti-corruption agenda helps maintain the ‘favourable political terrain’ (Jessop, 2010: 42) for corporations to exploit profit-making opportunities on a global scale – the very pathways that create the conditions for orthodox corruption to occur via so-called free markets that are highly competitive and lucrative and in which companies can and will do what it takes to get ahead. In this respect, paradoxically, anti-corruption(ism) helps (re)cement the very conditions that underpin the corruption phenomenon.

Myth of the Corporation as Benevolent and Responsible Citizen: Corporate Victimization and Corporate Social Responsibility

The various anti-corruption measures that flow from the CFPOA and OECD evaluations (re)produce the belief that corporations are inherently good and rational entities capable of functioning within the confines of the law and without unnecessary government intervention. As such, while punishing the odd corporate miscreant (i.e. bad apples) is expected, the predominant focus is investment in corporate social responsibility (CSR) and spreading awareness of the CFPOA to ensure corporations and corporate actors ‘do the right thing’. It thus reproduces the myth of the corporation as a friendly, responsible citizen capable of self-regulation (Tombs and Whyte, 2015).

CSR is a significant point of discussion throughout the OECD’s monitoring process. For instance, in their Phase 2 report, the OECD praises Canada for promoting

corporate social responsibility, which includes counselling Canadian businesses against engaging in foreign bribery, to the range of services provided by the Trade Commissioner, and the DFAIT intranet website (Horizons) now provides information to Canadian trade officers on how to counsel businesses abroad on the CFPOA and the risks of bribery (OECD, 2004: 7).

The idea that companies are inherently responsible and can self-manage CSR expectations is further evidenced by positive reviews in the same report of the large Canadian companies with codes of conduct that refer to the CFPOA (OECD, 2004: 10).

CSR is also a significant component of the OECD’s (2011) Phase 3 evaluation. As the lead examiners recommend:

. . . the implementation and enforcement of internal controls, ethics and compliance programmes by Canadian companies . . . is integral to the global fight against foreign bribery. While current efforts to promote corporate social responsibility go some way to encouraging the development of internal company controls, the merging together of corporate social responsibility programmes, which are encouraged but not legally required, and compliance programmes designed to prevent and detect CFPOA violations, has caused some confusion among the private sector. The lead examiners therefore recommend that Canada take steps to increase focus on promoting compliance programmes and measures specific to the CFPOA . . . (pp. 47–48; emphasis original)

The theme continues in the OECD’s most recent evaluation, with Transparency International Canada’s (TI Canada, 2023) submission to the lead examiners promoting ‘alternative avenues to make corporations and individuals accountable for wrongdoing and to reduce incentives to engage in corruption’ (p. 26). As part of this, TI outlines the potential of beneficial ownership registries, the ETSMA, Canada’s integrity regime that includes debarment for those found guilty of corruption (although they raise concerns about the 10-year debarment being too rigid and it should be more flexible to allow for context/specific facts of a case), and stakeholder engagement. When it comes to stakeholder engagement, TI recommends civil society work with governments and the private sector to address ‘corruption risks’. Cited is the example of the Maritime Anti-Corruption Network, which is an industry-led effort to address corruption in the shipping industry, as what can be done – ‘to use a collective voice for improved integrity in ports around the world’ (TI Canada, 2023: 31).

Discussion of CSR is most prominent starting in 2006, when the GOC reports on Foreign Affairs and International Trade (DFAIT) Canada’s CSR Roundtables. As the GOC states, this initiative was introduced so ‘government, NGOs, labour organizations, businesses and industry associations’ could examine ‘. . . ways to strengthen approaches to managing the external impacts of international business activities to benefit both businesses and the communities within which they work’. It emphasizes that discussions at the Roundtables will ‘touch on a wide range of CSR-related issues including corruption’ (2006: 9). As a result, the GOC announced a new CSR policy in 2009 that (once again) focuses on the extractive industry, Building the Canadian Advantage: a CSR Strategy for the Canadian International Extractive Sector. From the GOC’s perspective, the policy’s purpose is to ‘help’ Canadian extractive companies manage their ‘social and environmental risks’ when operating abroad. The policy contains four pillars, including supporting ‘host country capacity-building’, promoting ‘international CSR’, introducing an ‘Extractive Sector CSR Counsellor’ and developing a ‘CSR Centre of Excellence’.

CSR is thus positioned as a key cog in the anti-corruption wheel despite little empirical evidence of its efficacy (Faucet, 2006; Fleming and Jones, 2013). Furthermore, when it comes to the OECD’s monitoring process, CSR serves an ideological role in promoting corporations as rational organizations capable of self-regulating, while at the same time downplaying the role of the state as a central figure in regulating corruption. In fact, the GOC’s promotion of CSR, coupled with what the OECD (2023) characterizes as an ‘exceedingly low’ CFPOA enforcement record (p. 5), demonstrates how the monitoring process actively removes the state from responsibility for the corruption ‘problem’ in favour of measures that promote the self-regulating interests of Canadian businesses abroad.

Awareness and Shaming

Rooted in beliefs that corporations are rational and motivated to operate within the confines of the law, the **OECD’s monitoring process also emphasizes ‘raising awareness’ as key to implementing the Convention and preventing corruption.** The Phase 2 report, for instance, stresses the need for the GOC to improve awareness of the CFPOA across all government departments responsible for oversight of the Convention (e.g. the Justice and Foreign Affairs), as well as in the areas of enforcement and agencies most likely to come into ‘contact with companies engaging in business abroad’. It also calls on the GOC to monitor this awareness (OECD, 2004: 10). The federal government’s response to the Phase 2 evaluators was they were working hard to spread awareness of the law throughout the responsible departments, who subsequently spread the information to each of their relevant stakeholders, including private companies. In turn, there are claims that private companies, particularly small and medium-sized enterprises (SMEs) simply do not know about the law, and if they did, they would perhaps avoid situations in which they are asked for a bribe. EDC is cited approvingly as posting ‘. . . information on its website about corruption and bribery, including the CFPOA, the Convention, and the OECD (2004) Export Credits Group Action Statement on Bribery and Officially Supported Export Credit’ (p. 9). Meanwhile, a lawyer of SMEs states that most of his clients are unaware of the law, and those who are ‘aware of the CFPOA perceive that there is a small risk of being punished’ (OECD, 2004). Once again, the message is that if companies know the law, they will not get involved in bribery.

All the OECD reports and the GOC’s annual reports to Parliament are technocratic in orientation by routinely including certain indices that conform to the OECD monitoring processes rather than offering serious consideration of corruption as a national or global problem. Each report includes sections on enforcement, prosecutions, awareness-raising and monitoring information, along with updates about the ratification of the Convention in other jurisdictions. This reporting mechanism, along with the OECD’s monitoring, creates a feedback loop in which the OECD’s vision of corruption and anti-corruption(ism) is reinforced. An example of this is the GOC’s response to the OECDs recommendation to raise further awareness of the CFPOA, in which the GOC lists more than a dozen different awareness-raising activities as indications of their anti-corruption efforts, including presentations at conferences and meetings, specialized training, updated polices and newsletters. On one hand, raising awareness is seen as necessary for ensuring people know the law so that they can avoid running afoul of it. On the other hand, it is based on certain assumptions that there are individual bad apples operating in an otherwise good and efficient system, and we therefore need to raise awareness about these situations so that the ‘good’ people can root out the ‘bad’. What is more, reporting these awareness-raising activities is **relatively risk and consequence free,** as there is **no way to determine** their **effectiveness or** to link them to **enforcement activities,** especially in the face of such few charges and convictions. **It gives the illusion that something is being done to combat corruption without having to prove otherwise.**

Raising awareness is linked to shaming. Awareness puts the failings observed in the monitoring process into the public spotlight. This puts pressure on states to ‘do something’. Countries are thus shamed into implementing and enforcing the Convention and to regulate corporate behaviour in lockstep with other member states, which are also in lockstep with the needs of the multinational corporations to reduce the costs of wealth extraction, particularly as concerns developing markets. Although cooperation could possibly be elicited from the WB, IMF and other financial institutions, the OECD itself has no coercive mechanisms to force states to comply with the Convention. Instead, it employs something akin to Braithwaite’s ‘reintegrative shaming’ (Ayres and Braithwaite, 1992; Braithwaite, 1982, 1989; Braithwaite and Fisse, 1985, 1987). It is an approach that emphasizes persuasion and education (i.e. awareness) to ensure organizations comply with regulations. This is to adopt the belief that individuals are ‘reasonable, of good faith, and motivated to heed advice’ (Braithwaite, 1989: 131), and that corporations and corporate actors are not ‘true’ criminals (Pearce and Tombs, 1990, 1997, 1998; Tombs and Whyte, 2007) Rooted in rational actor theory, Braithwaite’s pyramid of regulation advocates persuasion first, providing corporations with opportunities to learn from their mistakes and take the necessary corrective action. This approach avoids the assumption that all corporations are potential offenders; it reduces the defensiveness and resistance of corporations by turning to education and persuasion instead of punishment (Braithwaite, 1989: 132–133). Without abandoning punishment strategies, he cautions against an over-reliance on criminal laws since they are rarely enforced and fail to deliver deterrence (Braithwaite, 1989: 150; Pearce and Tombs, 1997: 96–97).

For those corporate crime scholars who view private, for-profit corporations as inherently criminogenic (Pearce and Tombs, 1998; Tombs and Whyte, 2015), compliance models of regulation ignore the reality that corporations simply will not self-regulate in the absence of external pressures (Slapper and Tombs, 1999: 184). Given that the OECD’s monitoring process does not make sanctions available, one wonders if awareness and shaming are enough to motivate compliance. In this sense, while cooperative models tout flexibility as consistent with market efficiency, in the end they work to the advantage of powerful corporate interests (Noble, 1995: 271–272), effectively ignoring how the organizational imperative to accumulate maximal profits can and does take precedence.

These specific purposes and implications all work towards producing isomorphism among states. The **OECD Convention offers a model of good governance** – cultural and cognitive models – made available to states for use in conforming to **‘best practices’ not only for what is defined as ‘good’ governance but also what it means to be a successful capitalist democracy rather than a failed one.** It goes without saying that state compliance with collectively agreed upon standards requires a host of ‘functionaries and offices that are direct reflections of world institutions and professions’ (Meyer, 2010: 12). As standards for these professions change at a global level, so too will practices change at the local level. Thus the ‘industry’ in anti-corruption as much as the OECD Convention is key for creating isomorphic political and economic conditions among states that are favourable to corporations.

Conclusion

This paper has demonstrated many things, but one major issue is that laws as they apply to powerful corporations are rarely about controlling or punishing corporate offenders. Moreover, these laws and related policies and practices serve a more insidious and ideological role. They are much more than simply illusions of control; they are productive in helping carve out, maintain and reinforce the conditions within which companies exploit globally. In the end, to paraphrase Pearce and Tombs (1990), the OECD’s anti-corruption efforts are based on the inherent belief in the legitimacy of corporate capitalism and the illegitimacy of policing it.

Many of the laws and policies implemented at a national level, such as anti-bribery laws, originate in the transnational domain first as either binding legal norms or simply as strongly advised guidelines (Rose, 2015; Shelton, 2009). States then may decide or be pressured to incorporate these into their domestic legal regimes. This is the case with the OECD Convention and recommendations resulting from the monitoring process. Although recommendations do not have the same legal status, they both have nevertheless greatly impacted Canada and other member states. As Rose (2015) concludes, the OECD Convention ‘reflects the relatively narrow interests’ of a ‘relatively exclusive group of states’ (p. 218). These states are major capital exporting economies and are home to the world’s most powerful and influential corporations. The monitoring process of the OECD’s Convention has had a profound impact on pressuring member and non-member states to accept the narrow definition of corruption as bribery and to enforce this, giving effect to a fictive reality, while ignoring undue influence by corporate power on democratic (and other forms of) decision-making and the expansion of global capitalism and a transnational capitalist class. Bureaucratic corruption has been criminalized but the Convention is silent on political corruption. In addition, OECD monitoring is not limited to examining how well states have implemented the Convention. It also monitors compliance with non-binding recommendations that accompany the Convention, and which change over time. It is this ‘soft law’ that is the ‘standard form for norm-creation at the OECD’ and its legitimacy is questionable, particularly as these norms enter into and restructure the social, economic and political infrastructure of member states (Rose, 2015: 218).

States are important and active partners for realizing social, political and economic policies required to support the Convention. State-law that implements the Convention at a national level takes an economic policy position in that these laws criminalizing bribery are oriented to the needs of the private sector (corporate commercial activity). The express concern is with ensuring a uniform playing field for all corporations participating in wealth extraction (i.e. foreign investment) in economies outside the powerful capitalist economies of the Global North. These target economies include the former Soviet states as well as those of so-called underdeveloped and poorer states. We can also view the Convention as social policy as it is expressly concerned with the (re)distribution of wealth/capital. Agents of ‘foreign’ governments are not entitled to a share in this capital or in profits from Western investment and any corporation that distributes capital in this regard will be punished. Thus, the law sets out what is a legitimate and illegitimate form of distribution of resources. The Convention is concerned also with political policy as it requires member states to criminalize bribery of foreign officials by agents of corporations. To enact criminal law (i.e. law-making and criminalization), and to allocate dedicated state resources to engage criminal enforcement and prosecution as well as adjudication by criminal courts is a political policy decision.

There could be a great many reasons for why OECD member and non-member states have implemented and (not) enforced its anti-bribery norms. This is an empirical question that has not been well-answered (Rose, 2015: 219–220). But as Carroll (2018) and Robinson (2011), and others have shown, there has been growing business activism since the 1980s to promote and consolidate global neoliberal capitalism and to link and integrate economies and economic elites worldwide. The global anti-corruption movement factors into this growth, expansion and consolidation. Since many of the economies of concern are ‘foreign’ and beyond the territories of the most powerful and influential capitalist democracies whose corporations are those of primary concern to world commerce, and as the OECD represents these powerful states and their giant firms, supply-side criminalization is seen as the only viable solution for removing bribery as an opaque transaction cost and to reduce the ‘victimization’ of corporations by corrupt public officials. The singular focus on bribery concerns what is seen as a barrier to entry to foreign markets in an era where economies globally have been liberalized and many industries privatized and deregulated.

Our analysis does not contend that anti-corruption efforts are only a fool’s errand. However, when the OECD Convention and monitoring practices are scrutinized, it becomes apparent that ‘corruption’ is not the object of regulation. In effect, anti-corruption laws and related enforcement and policy efforts are manufactured in a manner that artificially and strategically narrows the problem of corruption to bribery. There is a significant ideological dimension that reinforces a particular vision of states as autonomous, corporations as benevolent victims of greedy state officials, and of free markets as the key to social and economic development and for the spreading of democracy. These are all, paradoxically, at the heart of a corruption problem that the Convention and monitoring are said to address.

If corporate crime scholars are correct about the criminogenic structure of the corporation, that these organizations do produce and engage in a wide variety of socially injurious actions (Michalowski and Kramer, 1987; Pearce, 1976; Pearce and Tombs, 1998; Tombs and Whyte, 2015), and if as we have argued the Convention facilitates removal of opaque transaction costs to enable more lucrative corporate plundering while securing the conditions for a global capitalist accumulation regime, then the Convention’s narrow view of corruption likely will facilitate a wide variety of socially injurious actions.

### Feminism

#### International law is overwhelmingly male dominated despite advancements and thus recreates and legitimizes the patriarchy on global scales.

Chanel 22 [Avril Chanel, 23 December 2022, "How “gendered” is the international Law? Feminist critiques of the international legal system," Institut du Genre en Géopolitique, https://igg-geo.org/en/2022/12/23/how-gendered-is-the-international-law-feminist-critiques-of-the-international-legal-system/ //cohn]

Law is commonly believed to be an autonomous and objective entity, distinct from the society it regulates. In reality, the political, economical, and social context cannot be separated from the legal system. Societal phenomena such as **gender inequality influence the different branches of law, its actors, principles, and norms.** Although perceived to be based on universal and moral values, international law is not exempt from gender bias. It is a male-dominated field that perpetuates the unequal position of women in the world. States, the primary subjects of the international legal system, and international organisations, are represented mainly by men. As a result, women’s needs, such as the prosecution of gender-based violence, are undermined by international law. **The masculine structure of the international legal system** International law is traditionally defined as the body of legal rules, customs and principles that apply between sovereign states. A state is considered as such when it possesses a permanent population, a defined territory, a government, and the capacity to enter into relations with other nations. Feminist theorists have criticized this definition which is entirely neutral to the conduct of the state[1]. A state could deny fundamental human rights to its population and still be considered as sovereign and allowed to maintain relationships with other nations. Saudi Arabia, for instance, is a Member state of the United Nations (UN) even though it violated women’s basic political rights by denying them the right to vote until the 2015 elections, and by still restricting this capacity with barriers including holding an identity card and conservative social pressure. States, and increasingly international organisations, are the primary architects of the international legal system, by making, executing, applying law. However, women are either unrepresented or underrepresented inside these arenas. In 2021, 22 women were serving as heads of state and/or government, out of 193 states recognized by the UN[2]. At the global level, women accounted for 21.9% of ministers[3]. 53 states had women speakers of parliaments and 25.5% of all parliamentarians were women[4]. In contrast, international organisations are making more of an effort to include women. For example, in 2019, 49.5% of staff at headquarters of the UN and its agencies were women, and 41.2% in non-headquarters[5]. Nevertheless, **a “persistent inverse relationship continues between the representation of women and seniority – as grade levels increase, the proportion of women decreases**[6]”. Organisations focused entirely on the creation and application of international law are no exception in terms of the over-representation of men. In 2018, women represented 25% of the judges of international courts[7]. One of the most important institutions in the development of international law, the International Law Commission, has seven women out of 229 members[8]. Alongside these depressing figures, women lawyers such as Rachel Saloom have complained that they are not always well received in the field of international law[9]. Their research is often met with scepticism and their theories are rarely applied to the international system. Professor Roland Bleiker talks about “doorkeepers” who determine which theories are deemed acceptable by a society and “make sure that the discipline’s discursive boundaries remain intact[10]”. **When feminist** lawyers **try to demonstrate the gendered aspects of international law or the way it perpetuates the unequal position of women, the doorkeepers quickly** exclude them from the field**.** Thus, the international legal system is predominantly male-led and reproduces the patriarchal society found inside states. As a result, the content of international law is gendered, with **issues that traditionally concern men being seen as general human matters, while “women’s issues” are silenced or relegated to a special category.** **The invisibilisation of “women’s needs” under international law** Historically, international law only governed relations between states such as the use of force, trade, or diplomacy. Since 1945, this theory has gradually expanded to include individuals, with the emergence of international human rights law such as the Universal Declaration of Human Rights (UDHR, entry into force in 1948). After the Holocaust, states agreed that sovereignty had its limits and a state’s actions inside its territory could concern the international community. Although this was a breakthrough in the field, legal scholars such as Rosa Brooks have argued that the most prevalent forms of female injury and oppression are invisibilised by international law[11]. The **responsibility of a state arises when an act or omission is attributable to it** under international law and when that conduct constitutes a breach of its international obligations. **However, most crimes against women, such as gender-based violence or sex trafficking, are not usually caused by a state actor**. Such acts are considered to be internal affairs of the state and the **international community cannot interfere under the principle of non-intervention**. Law professor Frances Olsen argues that this principle bears a striking resemblance to the protection of the “private” sphere of family from state regulation[12]. There is a universal pattern of identifying women’s concerns as private, therefore of lesser value, and immune to legal protection, whether at national or international level. Under the right to development, for instance, aid organisations frequently omit the domestic work accomplished by women thus excluding them from these programs. Another example of this detrimental dichotomy is the importance granted to civil and political rights as opposed to social, economic, and cultural rights. For women, the second category is generally more important but is more of a “private” concern and difficult to implement. For instance, if you live in an abusive family, you may not be interested in your right to vote. **The international community has long resisted putting these two types of rights on an equal footing.** Moreover, certain states have a history of blocking international organisations’ decisions related to women’s needs. For example, the UN General Assembly resolution A/RES/68/181 on women human rights defenders was adopted at the expense of any reference to the risks faced by those working on sexual and reproductive health issues[13]. Another crucial paragraph was removed, calling on states to refrain from invoking custom, tradition, or religious consideration to avoid obligations related to the elimination of violence against women[14]. Thus, feminist legal theorists argue that the actions and inactions of the international community are gendered and perpetuate the marginalization of women and their needs[15]. **The situation is unlikely to change until women are properly represented in international law circles, but there is still work to be done in this respect, considering the figures presented earlier.** **Recent legal developments and persistent structural barriers** There are some positive changes to be noted over the last thirty years. Feminist lawyers have begun to challenge the public-private dichotomy notably by arguing that typical female harm such as sex trafficking must be part of international human rights law[16]. Their argument is based on the fact that violence against women is possible when state structures encourage, tolerate, or consistently fail to remedy it. In other words, the definition of state inaction must be expanded to recognize deliberate passivity in order for gender-based violence that affect women to appear. These legal developments include for example the inclusion of rape as an international crime by international criminal tribunals or the increasing responsibility of non-state actors for violations of human rights law. The UN Human Rights Council has also appointed relevant independent experts to report and advise, inter alia, on “violence against women and girls, its causes and consequences” and on “the trafficking in persons, especially women and children” . Another recent example is the creation of the UN Entity for Gender Equality and the Empowerment of Women by the UN General Assembly in 2010. However, like all international organisations, they do not have the power to take legally binding decisions without the approval of all Member states. **This article could not omit to discuss women’s rights protected by treaties such as the Convention on the Elimination of All Forms of Discrimination against Wom**en (CEDAW, entry into force 1981) and the more recent Convention on Preventing and Combating Violence against Women and Domestic Violence (“Istanbul Convention”, entry into force 2014). The principle of state sovereignty has limited the ability of these treaties to affect the situation of women. States have made a number of reservations modifying or excluding the legal effect of certain provisions of the CEDAW, which are the subject of much debate (e.g., Article 16, concerning the equality of women in marriage and family life, is subject to over 20 reservations[17]). It can also be noted that states such as the United States of America have not ratified the CEDAW and Turkey has recently withdrawn from the Istanbul Convention. According to international law professors, Hilary Charlesworth, Christine Chinkin, and Shelley Wright, these examples show that “the international community is prepared to formally acknowledge the considerable problems of inequality faced by women, but only, it seems, if individual states are not required as a result to alter patriarchal practices that subordinate women[18]”. **Progress is seen through goodwill, education and changing attitudes rather than structural, social, or economic change for women.** International law has also been challenged by the Global South as a product of colonialism, particularly because of its European origins and its use to justify colonies. Hence, non-Western women face the burden of both colonial and patriarchal rules of international law. In addition, **Northern feminists often ignore or misunderstand the demands of their Southern counterparts, thus contributing to their double marginalisation.** Living as a woman in the Global South is not the same as living in the Global North. For example, what could a group of privileged white women lawyers have in common with women under the Taliban rule? Nevertheless, **feminists around the world**, though unevenly resourced, **share a common goal of dismantling patriarchy**. They must challenge the structures that exclude their voices and permit male domination, although the structures may differ from society to society. **Towards a feminist and decolonial international law As it stands, international law cannot be separated from its social context, and is therefore a gendered and patriarchal field.** Despite weak developments, the international legal order, governed mainly by states and international organisations, remains controlled by men. **Consequently, the content of international law reflects male perspectives, ensuring their dominance and perpetuating the unequal position of half of humanity.** The international legal system is a replication of the national apparatus as illustrated by the public-private dichotomy which renders women’s needs invisible at both levels. Even international organisations or conventions on women’s rights, which are considered to advance progressist causes, fail to change the current reality. Structural barriers persist and can be combined with other exploitative practices, especially for women in the Global South who are doubly constrained by colonial and patriarchal rules of international law. As long as the world is gendered, international law will not be free of gender bias.

### Feminism---vs Women’s Rights

#### There are criticisms from transnational feminists of attempts to universalize women’s human rights and criticism of human rights framing, more generally.

Yoneyama 24 [(Lisa Yoneyama, “Intersectionality and Humanity: A Keynote for ‘Remapping the Feminist Global.’” Asian Journal of Women’s Studies 30 (3): 128–44. February 2, 2024. doi:10.1080/12259276.2024.2307720. Pgs. ) kb]

Universalizing women’s injuries through law and the state

Critique of the feminist universals has increasingly gained visibility since around the turn of our new century. Arguably, one of the most contentious criticisms of feminist universals has evolved around the U.N.-based global feminist advocacy for the Women’s Human Rights (WHR) regimes and the latter’s prioritizing of gender and sexual violence against women as the foremost common feminist agenda. Critics **of WHR have questioned the human rights discourse’s efficacy in addressing the social and economic injustice affecting women.** Building on the works by such scholars as Gayatri Spivak, Rajni Kothari, and Adetoun O. Ilumoka, Grewal (1999), among others, sharply criticized the judicialization of human rights and asked if the notion of economic and social justice, rather than the rights-based justice through law, can better serve the purpose of eliminating poverty, domestic violence, and gender inequity for women in certain contexts. According to Grewal, the human rights regimes have emerged in the aftermath of the failure of the U.N. campaign for “Decades of Development” but “to ensure the **continued authority of knowledge production by the “developed world” of the “developing world” within the existing capitalist international-national system”** (p. 338). Grewal summarized the problem of WHR regimes as that of universalism in law and humanism. “The hegemonic forms of Western feminism,” Grewal asserts, “have been able, through universalizing discourses, to propose the notion of common agendas for all women globally and to mobilize such discourses through the transnational culture of an international law that can serve the interests of all women globally. Human rights discourse emerges from such notions of law, relying on international treaties and instruments to set down universalized notions of what it means to be human and what rights accompany this humanity” (p. 340). Cautioning against the global feminists’ inclusionary claim to understand “women’s rights as human rights” within such a milieu of continuing asymmetrical order of knowledge, Grewal proposed to reject WHR’s “simplifying narratives of “global” sisterhood in which “common” ground theories can be used” (p. 352).

The compulsion to include “women’s rights” under “human rights” Grewal has identified in the WHR regimes emanates from liberal political modernity’s foundational premise of sameness and disavowal of difference. In her critique of the Habermasian ideals concerning the modern public sphere, Fraser (1990) succinctly located the problem of liberalism in its disavowal of difference. The European liberal political sphere, which evolved out of the refusal of Ancien Règime, was premised on the normative idea that its individual members ought to be treated and act “as if” their differences should not matter, that they should be regarded universally as equal, regardless of class, decent, religious affiliation, etc. Historically, then, women, the poor, and people of color are the latecomers to this sphere. And **yet, this liberal disavowal of difference and the assumption about universal sameness and equality of the abstracted individuals have simultaneously foreclosed the possibilities of addressing those asymmetries, oppressions, and dispossession that originate from the “actually existing,” historically sedimented differences.** The **liberal premise of inclusion of those worthy of membership, moreover, thrusts into the “politics of recognition”** those who have previously been relegated outside the public sphere due to their class, racial, and other differences, thereby **forever marking them either as belatedly included or condemned to be excluded** (Yoneyama, 2003a). Building on Sylvia Wynter’s indictment of the coloniality of universal humanism, Tadiar (2022) further problematized the antagonistic social dynamics, set out by political modernity’s promise of inclusion for all, by calling it “a war to be human” (p. 5). Tadiar summarizes the current manifestation of the problem as follows: “Even as the meaning of being human undergoes revision in the face of contemporary social and technological forces undermining the tenets of bourgeois humanism, still the inheritances of this colonial history continue to determine the subjective and material protocols ensuring human as a status of primacy and globopolitical belonging. Such a status confers the rights, powers, and enjoyments by definition denied to or deferred for those at pains to claim it – those I refer to as the becoming-human – descendants of “the wretched of the earth” whose damnation to a status of the non- human or subhuman in the centuries-long process of establishing colonial humanism [who] set the parameters for a global relation [...]” (p. 6).

It goes without saying that the asymmetry of “knowledge production by the “developed world” of the “developing world”” the international WHR regimes entail has much longer trajectories in the history of Anglo-European colonialisms. Such cultural theorists as Dipesh Chakrabarty, Uday Mehta, Susan Buck-Morss, and Lisa Lowe, among others, have illuminated the pitfalls of the Anglo-European liberal political philosophy in which the **universality of rights and freedom for some have dialectically rested on the presence of colonized and racialized others whose rights, freedom, and humanity have been negated by the same liberal values and governance**. Chakrabarty (2009), in particular, clarified how John Stuart Mills’ liberal philosophy posited self- rule as the end of modern historical progress, as well as how such historicist argument was at once premised upon and **produced a hierarchy between those** already **fit to self-govern and who were deemed “not yet civilized enough to rule themselves**” (p. 8). As Chakrabarty puts it, “Mill’s historicist argument thus consigned Indians, Africans, and other “rude” nations to an imaginary waiting room of history. In doing so, it converted history itself into a version of this waiting room” (p. 8). Likewise, Lowe (2015) has identified what she calls the “economy of affirmation and forgetting” in the Euro-Amer- ican political philosophy’s formalization of modern humanism and the concept of freedom. As Lowe succinctly put it: “**Colonial labor relations on the plantations in the Americas were the conditions of possibility for Euro- pean philosophy to think the universality of human freedom, however much freedom for colonized people was precisely foreclosed within that philosophy”** (p. 193).

Moreover, the WHR regimes’ assumption about its own universal applicability and translatability has made it possible to blame factors deemed particular to specific geohistorical and cultural locations for the failure of human rights enforcement. The success and viability of human rights practices must be measured and explained according to the putative geographical and cultural differences. Volpp (2001) and other critical race theorists have observed the asymmetrical ways in which the international WHR regimes, while blaming religion and culture for violence against Muslim women, do not consider the Christian far right’s attack on reproductive rights and sexual minorities in relation to any particular cultural practice or beliefs in the United States. Extending critique of Chakrabarty and others, Hua (2011), in her analysis of the U.N. campaign against women’s trafficking, went on to characterize this divide as one drawn between “human-rights enacting subjects” in the global north and “the not-yet” who are in need of protection by the WHR regimes. “The idea of human rights,” wrote Spivak (2004), “may carry within itself the agenda of a kind of social Darwinism – the fittest must shoulder the burden of righting the wrongs of the unfit” (p. 524).

What the above argument suggests, then, is that liberal political modernity and its premise of universal rights and freedom have extended globally and colonially against and through the asymmetries of geography and culture. The global telos of women’s human rights leads yet again to the historically and geographically rooted asymmetries between universalism and particularism. As Etienne Balibar has articulated in his observation of Islamaphobia in France, universalism functions as an ideology that sustains the historically produced racial and colonial divides by valorizing “the universalistic” over “the particularistic,” even as the former is in fact the particular masquerading as the universal. Feminist international formations that assume unity and commonality of women share with post-Enlightenment liberal humanism the problematic legacies of universalism and historicism. Its telos is to set free individual women as normative modern subjects through the colonial dialectics of Enlightenment.

The other, closely related skepticism toward feminist international formations of the new millennium has concerned women’s self-mobilization for the wars in Afghanistan and Iraq and the subsequent decades of the “War on Terror.” In the immediate aftermath of the crisis of September 11, 2001, the Feminist Majority Foundation based in North America extended its support to the U.S.-led international war machine in the name of gender justice to save women in Afghanistan from Muslim fundamentalists’ abuse. As Russo (2006) reflected, “rather than critiquing the Bush administration’s cynical appropriation of gender inequality to justify its “war on terrorism”, the Feminist Majority Foundation welcomed the post-9/11 focus on the Tali- ban’s gender segregation” (p. 563), even as many critical transnational feminists opposed the Bush’s war and denounced its civilizing rhetoric. In particular, Russo insisted on the urgency for feminists to question the United States’ history as an empire especially by emphasizing the way in which empire has intersected with “patriarchy, white supremacy, capitalism and heterosexuality in terms of both oppression and privilege” (p. 576).

Earlier in “Transnational Feminist Practices Against War” (2002), Paola Bacchetta et al. offered “an antiracist, antinationalist feminist analysis” as an alternative to the militarized response to the crisis. Reminding the readers that “many women in Afghanistan are starving and faced with violence and harm on a daily basis not only due to the Taliban regime but due also in large part to a long history of European colonialism and conflict in the region” (p. 133), Bacchetta et. al. problematized and refused to pursue “solutions to the contemporary crisis that rely on a colonial, Manichean model whereby “advanced capitalist freedom and liberty” is venerated over “back- ward extremist Islamic barbarism”” (p. 132). They forcefully argued for the need to account for the histories and rhetoric of colonialism, empire, neoliberal capitalism, and racialized nationalism especially within the U.S. domestic contexts.

The crisis of 9.11 and the ensuing global milieu of “War on Terror” have thus generated much discussion about the intimate relation between the colonial rhetoric of “saving women” and the (re)legitimation of U.S. political, economic, and military dominance. Remarkably, however, that the United States’s ascendance to liberal empire through its claim to the universal rhetoric of gender justice goes further back to the mid-twentieth century – and to a great extent through the war against Japan – was largely elided in the discussion. As Camacho and Shigematsu put, “long before the advent of these recent militarized conflicts [in Afghanistan and Iraq], the United States defined its national interests not along the borders of the continental United States but in Asia and Pacific” (2010, xxv). As I will discuss below, the United States’ ability to exercise the Cold War “benevolent supremacy”2 – which consistently conflated the American military violence with the act of liberation, rescue, and democratization in all U.S. wars fought in Asia since the WWII’s end – would not have been possible without its transwar, transpacific entanglement with Japan (Yoneyama, 2016).3

### Kant

#### International law is the embodiment of Kant’s ideal of self-legislation, but is that something we should strive for?

Aristodemou 14 [Maria Aristodemou, A Constant Craving for Fresh Brains and a Taste for Decaffeinated Neighbours, European Journal of International Law, Volume 25, Issue 1, February 2014, Pages 35–58, https://doi.org/10.1093/ejil/cht080 //cohn]

**B Self-Legislation as a Limit?** Can self-legislation perform the function of the limit? **For Kant what is right and what is wrong, what ought I to do, can be decided by reason only.** At the same time, Kant appreciated that ‘pure reason’ left a ‘vacant place’ in its account of the world and set out to fill it with his account of ‘practical’ or ‘moral’ reason.44 What does practical reason demand? For Kant pure practical reason enjoins the subject to act in such a way as she would wish for her action to be a universal law. **The resulting moral duty**, therefore, **is not imposed on the subject but autonomously assumed by the subject herself**: the individual acting in accordance with the moral law identifies her will with the principle behind the law so the moral law is not dictated but self-posited. For Kant, therefore, self-legislation is expected to function as the indispensable limit of the system. **Yet is self-legislation, whether in domestic or international law, possible or even desirable?** For Kant law is paramount because he sees man as a legislative being; international law seems especially appealing and in line with Kant’s principles **because it is based on the ideal of self-legislation and consent.** While in domestic law the concept of self-governance has become a long-lost ideal and distant memory, with self-governance meaning, at best, governance by the majority or the representatives who may or may not represent the ‘self’, in public international law this ideal is supposedly still alive. **The fact that, public international law’s main sources are the customary practice of states and the** obligations **they** voluntarily entered into through treaties suggests that the state’s ‘will’ is still paramount. In the case of the individual, self-rule is not necessarily universally welcome, nor is everyone convinced by Kant’s celebration of the ‘dignity’ of the free will. France’s Michel Houellebecq does not take long to dismiss Kant’s pretensions: ‘According to Immanuel Kant’, he muses, ‘human dignity consists in not accepting to be subject to laws except inasmuch as one can simultaneously consider oneself a legislator. Never had such a bizarre fantasy entered my mind. I was quite happy to delegate whatever powers I had.’45 The inverse of us creating our own duties is the injunction not only to perform that duty, but to choose what duty we have to perform and take responsibility for its consequences. Such a duty, the duty to choose one’s duty, and further to choose the correct duty, far from liberating the modern subject, weighs on her with the tyranny of responsibility; what if I make the wrong choice? No wonder we are often left hoping that someone or something would please choose for us. Exercising free will and choosing one’s duty, a duty that one would will, at the same time, to be a universal law, and then acting in accordance with that duty is no easy task. No wonder we often watch states reacting to or colluding in other states’ desires. In psychoanalytical terms, like hysterical patients states, rather than choosing or determining their own will, often copy or imitate the will of other states, in particular of a powerful state. How often do we witness countries like the UK for example appear to let the US choose their desire for them?46 Like Freud, Kant agrees that in the absence of international institutions states live in a state of nature, that is, in a state of war with each other: ‘nations engaged in a war’, he writes, ‘are like two drunkards bludgeoning each other in a china shop’.47 Yet his hope that reason could be the foundation for the moral law extended to international law in his famous essay ‘Perpetual Peace’. The attempt again is to ground peace between nations not on the existence of God but on reason and on the rule of law. **In** modernist international law **as conceived by Kant the principle of sovereignty and sovereign equality means that states are bound only by norms they have themselves agreed on. If the ideals of the rule of law and self-legislation work in domestic law,** then, Kant insists, they will do so ‘even in a race of devils’. Self-legislation, then, is the transcendental norm, with the sovereign state taking the place of Kant’s self-legislating individual in the international legal order. Kant’s set of ‘preliminary articles’ for reducing the likelihood of war include the prohibition of annexation of one state by another, the abolition of standing armies, and a ban on interference by one state in the internal affairs of another.48 In addition his ‘definitive articles’ include the insistence that every state shall have a republican civil constitution so it is the people who decide whether there will be a war.49 Rulers who wage war without their people’s consent are using their subjects as property, as a means rather than an end in themselves: ‘[c]itizens must give their free assent, through their representatives, not only to waging war in general but to each particular declaration of war’.50 Kant, while conscious of the fact that individuals as well as states are not angels but a race of devils looking out for their own self-interest, still insists that that minor inconvenience can be catered for ‘if only they are intelligent’. A big if as it turns out. For Kant what underlines it all is not altruism but self-interest: when states are ruled in accordance with the wishes of the people, their self-interest will provide a consistent basis for pacific relations: The problem of organizing a state however hard it may seem, can be solved even for a race of devils, if only they are intelligent. The problem is: Given a multitude of rational beings requiring universal laws for their preservation, but each of whom is secretly inclined to exempt himself from them, to establish a constitution in such a way that, although their private intentions conflict, they check each other, with the result that their public conduct is the same as if they had no such intentions.51 The bad man, the ‘devil’ for Kant, as Hannah Arendt emphasized in her Lectures on Kant’s Political Philosophy, is someone who is inclined secretly to exempt himself from the rule. The point here is ‘secretly’ because, for Kant, ‘[i]n politics, as distinguished from morals, everything depends on public conduct’.52 Publicity therefore is key to Kant’s political thinking and, we trust, to public international law. The trust is that evil deeds can only be done in secret. As Hannah Arendt summarizes, ‘publicness’ is a criterion in Kant’s moral philosophy: morality is the coincidence between the public and the private. To be evil is to withdraw from the public realm. Morality means being fit to be seen and ‘[p]ublicness is the transcendental principle that should rule all action’.53 **Lest we think that Kant’s ideal of a rule of law ruling the nations was always naïve and certainly by now outdated, we only need to look at contemporary debates to find, for instance, Jean L. Cohen’s renewed ‘plea for a re-articulation of Public International Law along the lines of the rule of law’.**54 Cohen sets out to update international law by asking for a renewed ‘strengthening of supranational institutions, formal legal reform, and the creation of a global rule of law that protects both the sovereign equality of states based on a revised conception of sovereignty and human rights’. She acknowledges, of course, that ‘international law can also be instrumentalized by the powerful. But the principle of sovereign equality and its correlate, nonintervention, provides a powerful normative presumption against unwarranted aggression. Abandoning it’, she concludes, ‘would be a mistake.’55 **Once again we see a focus on administration and impersonal rules to eliminate the political;** can such rules and administration however, eliminate the extimate?A few serious problems immediately present themselves: first, despite Kant’s optimism, not all people are necessarily intelligent, even when it comes to their own self-interest. Secondly, unfortunately people are willing to commit evil deeds publicly. Thirdly, if self-legislation is a distant memory in the domestic sphere where private individuals hardly get to choose the laws they are governed by, does it have any meaning in the international arena? In the case of public international law and self-legislation by states, what does freedom to create one’s own laws actually mean in the 21st century? Are states free to choose any and all types of laws? Not surprisingly, we find that it is only ‘some’ systems and ‘some’ states that enjoy this freedom to choose. It is obviously forbidden not to be a democrat: indeed it is taboo to question the desirability or self-evident goodness of democracy. As Slavoj Žižek and Alain Badiou have been pointing out, the only choice we are told we have today is between liberal democracy and fundamentalism.56 Political freedom in the 21st century, rather than the grand ideal of self-legislation dreamed of by the Enlightenment, is reduced to the freedom to choose a particular lifestyle, indeed only one lifestyle: global capitalism. Yet it is obvious that democracy is not open at the fundamental level of the economy: as Žižek points out simply, International Monetary Fund chiefs are not elected by the billions of people whose decisions they affect. Global capitalism in effect excludes democracy at a structural level, and therefore appeals to neo-Kantianism risk appearing as a form of state philosophy: as propaganda, in other words, for neo-liberalism.57

### Lacan

#### International law exists only as a prohibition to desire which, if left unchecked, would destroy the subject.

Aristodemou 14 [Maria Aristodemou, A Constant Craving for Fresh Brains and a Taste for Decaffeinated Neighbours, European Journal of International Law, Volume 25, Issue 1, February 2014, Pages 35–58, https://doi.org/10.1093/ejil/cht080 //cohn]

**A Freud and the Categorical Imperative: a Perverse Modern Taboo?** Modern man tried to imitate God’s injunction against proximity to the raw Real by inserting formal law in the empty place; in Kant’s case, this has taken the form of the categorical imperative. For Freud, however, the workings of the categorical imperative, in particular its compulsive nature, render it indistinguishable from the workings of taboos in pre-modern societies. For Freud the categorical imperative is a remnant of the primitive within modernity: ‘taboos still exist among us. Though expressed in a negative form and directed toward another subject-matter, they do not differ in their psychological nature from Kant’s “categorical imperative”, which operates in a compulsive fashion and rejects any conscious motives.’39 **For Freud** law’s origins are not unknowable, but unconscious**; that is, our unconscious knows them,** but our conscious selves strive to keep **that** knowledge well and truly repressed. And no wonder we choose to repress them, as those origins inevitably include an originary crime which has left us with the memory of guilt though not of the crime itself. **Our guilt therefore,** as Joan Copjec has put it, **is all we know of the law and its origins.**40 In contrast to Kant, therefore, for Freud the only reason we have rules is not because we are rational but because we are guilty. And why are we guilty? **Because we have already performed, or desired to perform, that prohibited action in our unconscious. ‘The basis of taboo’**, as Freud puts it, disarmingly simply, **‘is a prohibited action, for performing which a strong inclination exists in the unconscious’**.41 Which leads us to articulate Freud’s obvious, yet neglected, insight into the **relationship between law and desire: ‘where there is a prohibition there must be an underlying desire’**, he insists.42 And it is because these desires are so strong that ‘the most severe measures of defense’ against them are needed.43 Taboos, categorical imperatives, moral and conventional prohibitions, all share the same origin, and that is none other than desire. The origin of law, we can say clearly, is desire. For psychoanalysis the proscriptions of international law, like of all law, are precisely based on desire. **Public international law, like all law, prohibits what is most desired: if there were no desire then there would be no need for prohibition.** Since the origin of law is desire, **the function of law**, as Lacan insisted, **is not to prevent access to our desires but to act as a defence against unlimited desire and thereby unbearable enjoyment.** Access to unbridled enjoyment would be unbearable for the subject so law acts as a limit, not to our freedom, but to limitless, and therefore unbearable, enjoyment. **Law’s limit on enjoyment is reassuring because it makes it look as if what we cannot attain due to our inherent lack is instead prohibited. So in the case of international law, small or weak states can conveniently claim ‘we don’t attack or invade other states, not because we can’t, but because it is prohibited’.**

### Security

#### International law relies on a discourse of liberalism and democracy. That’s a guise for Western imperialism and rooted in securing an anti-black project of citizenship

**Ohenewah ’15** (Christine, Department of International Relations at the University of Chicago, “Liberalism: An Obstacle to Black Unification”, Tapestries: Interwoven voices of local and global identities: Volume 4, Issue 1 Threats to the American Dream, Article 21, https://digitalcommons.macalester.edu/cgi/viewcontent.cgi?article=1105&context=tapestries)

International discourse has long rendered liberalism as an ideology of optimism, aiming to attain specific objectives: the **proliferation of democracy**, support for **human rights, capitalist expansion**, international cooperation, and pacifism. Liberal ideology affirms that the establishment of ‘correct’ political systems and domestic groups is likely to encourage states to engage in international cooperation. Although seemingly benign in its efforts to reinforce international harmony, I contend that liberalism augments cultural hegemony and homogenization. As a mode of Western imperialism, it assumes the guise of world peace to ensure self-interests and ‘ideal’ paradigms, while increasing the global jurisdiction of dominant nation-states. Scholar Patrick Morgan asserts, “It is not that international politics must eventually embrace and inculcate these particular norms, but that, as an elaborate social activity, international politics needs elements of community including a structure of norms. Liberalists are busy pushing their preferred norms with this in mind.” Said another way, states must seek cooperation rather than sovereignty and autonomy and be flexible towards embracing normalized values. We must however question the ‘acceptance of norms’ as a feature of liberalism. In analyzing the mission to spread liberalism to other non-democratic countries, we must interrogate which actors are promoting preferred norms and practices for the international community and at whose expense these norms are being enforced. My chapter responds to the following questions: How is mid-20th century liberalism in tandem with White citizenry? Does liberalism embody a global manifestation of White citizenship? In what ways does liberalism impede the progress of Black unification? Finally, how does liberalism bear resemblance to colonialism? In chapter one we recall that White citizenry predicates itself on norms based in Whiteness, (i.e. hard work, education, high socioeconomic status). Similarly, liberalism comprises of democratic, capitalist, and human rights values. Both systems determine the acceptance of a minority group or nation-state, given that they follow the aforementioned paradigms. Using Ghana as a case study to delve into Kwame Nkrumah’s Pan-African leadership, I argue that liberalism is an ideology rooted in colonialism and serves as a global index of White citizenship. Its disruption of transatlantic Black unification efforts further relies on three elements: primitivism, patronization, and the manipulation of power. In the course of this chapter, I first trace the damaging outcomes colonialism induced within Ghana’s infrastructure. I subsequently discuss the role that late Ghanaian leader Kwame Nkrumah played in buttressing the Pan-African Movement and how Pan-African efforts were curbed by liberal agendas within international politics. Finally, I explain the similarities that modern liberal ideology shares with White citizenry and recapitulates colonial iniquities. If we consider that liberalism resembles colonialism, which ignited calamities within Ghana’s infrastructure, it would then hold that liberal ideology is non-ideal for all nation-states and operates to homogenize the rest of the international community according to Western tradition. Pan-Africanism’s Black unification agenda would thus stand in opposition to an empire of Western governance that has been solidified by colonial conquest. Remembering that antiBlackness works to sustain White supremacy by degrading Black culture, we must then recognize that anti-Blackness and White citizenry function globally through liberalism. We must further recognize that liberalism is an ideology fueled with self-interests that enhance the authority of the West at the expense of nations who refuse Western paradigms. Ghana’s Pan-African Movement, which represented historic collaboration between Africans and African Americans, challenged such paradigms and thus became a target for the West. Attached to various meanings and agendas, liberalism on the one hand is perceived as a progressively humanitarian endeavor whose mission is to bestow peace and democracy unto states in extreme turmoil. On the other hand, liberalism is viewed as a homogenizing scheme, seeking to maintain the global power and selfinterests of Western entities. The subsequent sections serve to outline these two opposing views and provide a comprehensive understanding of the way liberal ideology is situated within international discourse. Proponents of liberalism argue that liberalism is fundamentally optimistic, calling for positive interaction among international actors and chances for a peaceful world (Morgan, 2013). In a liberal framework, international politics is an evolving atmosphere characterized by interdependence, cooperation, peace, and security. Under acceptable models of liberal political systems and domestic groups, states are viewed as being more capable of achieving international cooperation. Proponents also view capitalism as an additional benefit of liberalism, due to its perceived ability to cultivate wealth and higher living standards. The **production and accumulation of wealth** are thus more rapid and efficient if private actors run economic activities in accordance with the “dictates” of markets (Morgan 2013). Promoting a capitalist or ‘free trade’ society further circumvents the possibility of war, thereby reducing the influence of elites who have historically been devoted to military conquests and national glory (Solingen 1998). Proponents also defend that liberalism is marked by a strong support for democracy, which is crucial to the legitimacy of governmental systems. Western nations have historically upheld this belief by advocating democracy as a means to restore peace within a region. In this vein, scholars contend that sovereignty is not simply a right to national autonomy; it is the responsibility of a government to treat its society with decency. Failure to do so may result in international intervention. Said another way, liberalism refuses to endorse violence as a coercive method unless the political order in question denies all opportunity for peaceful, democratic transition (Martin 1948). Proponents of liberalism finally observe that liberal ideology supports rights and opportunities for women, religious freedoms, and civil rights, among many others. They argue that within liberal ideology, the preservation of human rights is one of its most salient characteristics, as it is derived from states’ long-held concerns about how their prominent religious and ethnic groups are treated by neighboring states. Diplomatic pressures, military interventions, and peace agreements further agitate such concerns (Krasner 1999). Where human rights are involved, liberalism further encourages self-determination, or the acceptance of the present world order’s norms and values, over separatism, claiming that states should deemphasize sovereignty and autonomy. Because most countries are multiethnic, endorsing separatism would invite chaotic dissolutions by fracturing the unity of international states. In examining the arguments in favor of liberalism, it is clear that proponents view this ideology as a means of fostering international cohesion. States are generally non-strict about their autonomy and center sovereignty on their government’s obligation to treat its society with decency. A nation’s inability to do this, however, may result in international intervention. Liberalism further commits itself to propagating capitalist and democratic values on a global scale, and in addition to defending human rights, the notion of selfdetermination is also one of its essential components. The above claims portray liberalism as a wholly optimistic approach that holds the interests of states at heart and offers a resolution for enhancing world peace. I however contend that liberalism’s attempts to reduce state autonomy, expand capitalism and democracy, and augment international cooperation convey a fundamental hypocrisy. Proponents of liberalism fail to deeply examine whom the values of capitalism and democracy are modeled after, who benefits from promoting such norms, and which entities bear their repercussions. This nod towards world homogenization reveals a colonial remnant within modern-day liberalism that reinforces global White supremacy. In contrast to its proponents, opponents of liberalism defend that the ideology reflects Western dominance. In its more forceful version, liberalism is an updated expression of Western imperialism; a rationalization of **hegemonic efforts to spread Western values so that the global environment remains palatable** for the West. As Ayers (2009) asserts, “In particular, the regime of ‘democratisation’ and the curtailing of democratic freedom constitute a principal means through which imperial rule is articulated.” This means that Western governments are consistently eager to see the overturn of numerous political systems along with a drastic alteration of their social and economic structures. Ayers further refutes the notion of self-determination that liberalism’s proponents support. For Ayers, self-determination is a concept based in non-autonomy and signifies the freedom to “embrace rules, norms, and principles of the emerging liberal global order.” Opponents of liberalism further observe that Western ideas of democracy do not well align with other cultural milieus (Faust 2013). In this vein, liberalism possesses an inherent favoritism towards the Western colonial state. Baudrillard (1975) argues that the emphasis on capitalism, for instance, acts as a Western lens through which peripheral societies are perceived, therefore obstructing the cycles of symbolic exchange that mark other “Third-World” states. Robinson and Tormey (2009) likewise posit that when liberalism assumes a mission of ‘global justice,’ aiming to instill Western cultural norms and values, it imposes a ‘global-local’ conception that reproduces colonial epistemology. This enables a Western reasoning that demonizes non-liberal societies as failed states that are corrupt, lacking, and insufficiently stable. In summary, opponents of liberalism contend that the ideology reflects Western hegemonic modes of influence. For opponents, the notion of self-determination is based in the freedom to accept rules, norms, and values that align with those of Western global powers. Liberalism as a mission of global justice further alienates states by ‘otherizing’ them and thereby emulating colonial epistemologies and practices. While opponents of liberalism thoroughly unearth liberalism’s Western origins and name the violence it launches on other states, they do not adequately locate the factors that continue to sustain liberal longevity. The two aforementioned positions on liberalism provide a helpful overview on the strengths as well as pitfalls of liberal ideology. I however believe that scholars who take a more critical standpoint on liberalism effectively consider its negative reverberations, which contradict aims of world peace and international cooperation. While it is arguable that liberalism, like any ideology, may contain fallacies, there is a marked distinction between “international cooperation” and “international cooperation with Western nation-states.” Thus, I concur with opponents who suggest that liberalism promotes colonial epistemologies and practices that distort the functions of perceived “weaker” entities rather than honoring their self-governance and interests. To expand this body of thought further, I identify the particular elements on which liberalism thrives: primitivism, patronization, and the manipulation of power. Identifying these elements will help contextualize the way liberalism, like White citizenry, has served to dislodge Black unification efforts and will further sustain my claim that liberalism is rooted in a colonial enterprise that maintains global White supremacy. In the sections below, I provide a timeline for the demise of the Pan-African Movement by first discussing the detriments of British colonization on Ghanaian infrastructure.

### Settler Colonialism

#### International law allows settler nations to claim sovereignty over Indigenous land, thinking which must be challenged.

Irani 24 [Freya Irani, By What Jurisdiction? Law, Settler Colonialism, and the Geographical Assumptions of IR Theory, International Political Sociology, Volume 18, Issue 2, June 2024, olae004, https://doi.org/10.1093/ips/olae004 //cohn]

When I ask the question, **“by what jurisdiction?”,** **my understanding of jurisdiction differs from the way in which this term is commonly understood** in IR and **by many international lawyers**. Sundhya Pahuja (2013, 69) describes this common understanding: “[i]n the technical idiom of international law [and, I would add, IR], jurisdiction is an exercise of sovereignty, and sovereignty is an attribute of the state.” Pahuja (2013, 70) writes that such an **understanding casts jurisdiction as “a technical question concerned with whether a particular sovereign state or any judicial or quasi-judicial body constituted according to international law, can exercise legal authority over a territory, dispute, person or issue.**” She (2013, 70) suggests an alternative: “from another point of view, sovereignty is a practice of jurisdiction. In this way of thinking, jurisdiction comes before sovereignty. **Sovereignty is demystified, and understood as a historically specific collection of practices through which authority is exercised, and in which the categories of ‘territory’ and ‘population’ are particular forms into which life is shaped through techniques of administration.”** In recent years, a number of scholars have highlighted the **importance of jurisdiction in settler colonial contexts**, approaching jurisdiction as both technique or mechanism of rule and resistance, and as a **helpful analytical frame** (Dorsett 2002; Ford 2011; Simpson 2014; Stark 2016; Pratt and Templeman 2018, 336; Panepinto 2019). Particularly important here is Shiri Pasternak's (2017) study of the historical and ongoing struggles between the Algonquins of Barriere Lake and multiple settler authorities (including the governments of Canada and Quebec). Like Pahuja, Pasternak (2017, 12) points to a need to disentangle jurisdiction from sovereignty, but she stresses the particular political importance of such a disentangling in settler colonial contexts. For her, the notion that sovereignty and jurisdiction are fused is a product of particular faulty (and dangerous) assumptions: that settler legal authority over a particular “national” space is complete, that settler jurisdiction has come to be absolute over a particular territory, and that Indigenous authority has been extinguished in such a territory. Pasternak draws on Lisa Ford's (2011) work to describe how, **over the course of the nineteenth century**, **settlers increasingly attempted to subordinate Indigenous jurisdiction to the jurisdiction of settler authorities**. They **did so through** local, **everyday practices**, attempting to **subordinate Indigenous bodies to settler courts** in specific cases, often involving criminal law (see also Stark 2016). In settler accounts, Pasternak (2017, 12) points out, these attempts to subordinate Indigenous jurisdiction were portrayed as successful: “From the settler-colonial perspective, this distinction [between jurisdiction and sovereignty] collapsed throughout the nineteenth century as sovereignty “perfected” itself by extinguishing recognition for Indigenous jurisdiction over their nations and territories, forming a “legal trinity between sovereignty, jurisdiction and territory.” But Pasternak (2017) disputes such accounts, arguing instead that formal pronouncements of sovereignty (or absolute authority, **including legal authority**, over territory**) often did not correspond with the extent of settler control (or jurisdiction) on the ground**. Rather, she states that “the assertion of sovereignty over Indigenous lands in the British settler colonies was disengaged for centuries from colonial officials’ capacity to exercise authority over Indigenous peoples in their territories” (Pasternak 2017, 4). And, in fact, Pasternak (2017, 5) shows that the Algonquins of Barriere Lake continue to “assert[] the authority of the Mitchikanibikok Anishnabe Onakinakewin, their sacred constitution, against the delegated authority of the state.” She points to this contemporary legal authority in order to show that “[t]he perfection of settler sovereignty—that is, the fusing of [settler] sovereignty claims with the effective exercise of territorial jurisdiction over Indigenous lands—remains unfinished today” (Pasternak 2017, 14–15). Canadian legal authority (or jurisdiction) remains incomplete, and it is not the only jurisdiction at play. Pahuja and Pasternak's understandings of jurisdiction—ones that places jurisdiction before sovereignty and point to sovereignty as only one way of organizing jurisdiction—would fundamentally shift the inquiry in extraterritoriality scholarship. If legal authority does not easily and simply derive from territorial statehood, scholars can no longer simply assume such authority is possessed by states. As a result, scholars must place such authority alongside rival authorities, which might not have previously been recognized by IR scholars as rival authorities at all. **Pluralizing legal authority in this way means not only considering the multiple laws that are at play in settler colonial contexts but also considering our own relations to such laws,** consider**ing to which** legal systems we grant authority when we designate territory or land**.**

## Neg---Backlash DA

### Neg---Backlash DA

#### Even small affs can link to the backlash DA theme. It’s a net benefit to the domestic law CP.

Eric Posner 17. Kirkland & Ellis Distinguished Service Professor, University of Chicago Law School; JD, Harvard Law. “Liberal Internationalism and the Populist Backlash.” University of Chicago Law Public Law and Legal Theory Working Paper No. 606. Jan. 2017. https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=2071&context=public\_law\_and\_legal\_theory.

III. What Accounts for the Backlash?

The answer to this question is speculative but clues lie about, and they can be put together into a suggestive theory. The overwhelming impetus to backlash lay in popular opinion across countries. Many ordinary people, left behind by globalization, have united in their opposition to further international legalization. They have lost faith in international institutions (as illustrated best by Europe) and in the national leaders who supported them. They now seek new national leaders who will advance the national interest rather than global ideals.

The backlash should not come as a complete surprise. As we saw, worries about the democratic deficit in Europe are as old as European integration. While most scholars supported European integration, either because they believed that the democratic deficit was mythical, or that the benefits of integration exceeded any costs to democracy,43 the dissenting view persisted if only because it was impossible to ignore the evidence. 44 Public opinion surveys showed that many Europeans distrusted European institutions. European politicians successfully ran on anti- Europe campaign promises. Voters in some European countries rejected the European constitution and the Lisbon Treaty. And pro-integration mainstream leaders took the democratic deficit seriously enough to try to address it by strengthening the European Parliament. Brexit only ratified a longstanding worry.

In the United States, the debate took place in a lower key. The United States is not bound by any international institutions whose strength and authority is comparable to that of the European institutions. Indeed, the United States has disproportionate influence over most major international institutions, and nearly always can protect itself with veto rights. However, from time to time, a relatively minor question of international law erupted into public consciousness. The possibility that the International Criminal Court could have jurisdiction over American soldiers provoked Congress to pass a law in 2002 that appeared to authorize a military invasion of the Netherlands if an American was ever held for trial.45 Roper and related cases caused a public outcry, leading some state legislatures to pass statutes that blocked courts from relying on “foreign law.”46 The American political system is suspicious of human rights treaties, and the Senate has become increasingly reluctant to give its consent to any treaty at all—although this is partly an artifact of a 2/3 majority rule and the disproportionate influence of rural populations in that body.

The academic debate in the United States also received little attention. In the 1990s, no one thought in terms of a democratic deficit. The dominant view was that international law was good, and therefore judges, bureaucrats, and other officials should use it as much as possible to bind the United States.47 Yet dissenting views were aired from time to time. In 2003, Robert Bork argued that incorporation of international law into domestic constitutional law by the courts violates the “rule of law” by depriving the people of influence over policy through legislation.48 In 2005, Jeremy Rabkin argued that this style of “global governance” violated Westphalian sovereignty as well as democratic principles.49 In a 2007 article, John McGinnis and Ilya Somin argued that international law lacks a democratic pedigree because it reflects compromises with foreign states, most of them authoritarian, and therefore American courts should not incorporate it into domestic law unless Congress and the president has authorized them to.50 And in 2012, Julian Ku and John Yoo argued that this style of judicial activism violated the U.S. Constitution.

McGinnis and Somin see international law as the work of global elites.51 They argue that elites across the world create, interpret, and enforce international law, and that their incentives are not to create international law that benefits everyone or reflects the values of the global population, but to create international law that benefits themselves and reflects their own values. However, in allowing that international law should be enforceable if incorporated by Congress and the president, McGinnis and Somin missed an important feature of the political landscape. The president and members of Congress are members of the elites themselves. The populist backlash against international law encompasses international law with impeccable democratic credentials like NAFTA and the WTO system, both of which were incorporated into domestic law by the president and Congress.

Still, in their normative argument we see a germ of a positive theory of international backlash. Any type of international cooperation involves centralization. A greater distance is opened up between the ordinary people and the decisionmakers with effective power. As centralization occurs, more valuable public goods can be created, but agency costs increase as well. Since ordinary people cannot observe whether the decisionmakers act for the public interest, they can only accept on faith the assurances of their national leaders. When people’s ordinary experience contradicts the assurances of those leaders, they lose faith in them. This is what happened as a result of the financial crisis and the ensuing global recession—especially as ordinary people learned that only the very wealthy in western countries have benefited from globalization, while most people have been harmed or unaffected. This last fact seems to confirm the suspicion that global and national decisionmakers act in the interests of the elites, not of the ordinary people. While this idea is a simplification, it has enough basis in fact to produce significant political resonance, igniting the global populist backlash.

Thus, in Europe and the United States, international institutions have provided a convenient target for populists, as have the national leaders who have supported them. The populists have been able to blame globalization and international law for insecurity and economic dislocation as a way to undermine the establishment elites who constructed them. The populists can make a powerful argument, supported to some extent by scholarly research, that the international institutions—or the process of globalization they have facilitated—have benefited the elites while leaving behind ordinary people.

While Europe does not have a history of populism in the way that the United States does, the anti-European parties—UKIP in Britain, Law and Justice in Poland, the People’s Party in Denmark, the National Front in France, Syriza in Greece, and many others—bear the hallmarks of populism. They claim (not always wrongly) that problems in their countries are due to corruption at high levels of government, caused by an establishment consisting of cosmopolitan elites, who disregard the well-being of ordinary people. The right-wing populists are nationalist, and either endorse or flirt with racist and xenophobic positions, while left-wing populists like Syriza seek wealth redistribution. Like populists throughout history, they make promises they can’t keep, or vague promises that mean little, and use sometimes violent or vulgar language that appeals to the crowd and burnishes their anti-establishment credentials. And they draw support from less educated people who feel left behind and vulnerable to the influx of workers and immigrants, and the threats of terrorism and economic dislocation.52

In the United States, Donald Trump rode to victory on his anti-internationalism as well. He attacked international institutions, including the UN, the WTO, and NATO; repudiated America’s longstanding commitment to free trade; and advocated a nationalistic, isolationist position, while blaming the elites on left and right for failing to defend American interests. He attacked international treaties, human rights, and the laws of war. His anti-elitism, along with his anti-immigrant stance, marked him out as a populist like the European leaders.

## Neg---Executive Power DA

### Notes

There are debates but important thing is that because treaties have dramatically declined, most agreements are either non-binding or CEAs. I think a reasonable argument would be normal means is a CEA absent plan specification given the state of international agreement negotiations.

### Neg---Executive Power DA

#### Negative teams can use ‘political commitments’ that comes ‘with all the consequences’ of a binding agreement.

Durney ’17 [Jessica Durney; Trial Attorney in the Environmental Enforcement Section; 2017; “Defining the Paris Agreement: A Study of Executive Power and Political Commitments”; *Carbon & Climate Law Review*, vol. 11]

Political commitments are defined by Harold Koh, Legal Advisor to the US Department of State, as ‘memorializing arrangements or understandings that we have on paper without creating binding legal agreements with all the consequences that entails.’34 As a way to provide nations with the ability to make agreements without the same level of binding domestic legislation required by a treaty, political commitments lack an inherently legal obligation, and instead, impose political ones.

#### Uniqueness, most current agreements are made through nonbinding commitments that congress has no control over.

Bradely et al. ’23 [Curtis Bradley; Professor of Law at UChicago; Jack Goldsmith; Professor of Law at Harvard Law School; Oana A. Hathaway; Professor of International Law at Yale Law School; September 2023; “The Rise of Nonbinding International Agreements: An Empirical, Comparative, and Normative Analysis”; The University of Chicago Law Review, vol. 90]

In the United States, executive branch use of binding international agreements has been declining for decades.2 In 2005, amidst that decline, a lawyer in the State Department Legal Adviser’s Office observed that nonbinding agreements had shown a “marked increase.”3 As this Article documents, the U.S. government’s reliance on nonbinding international agreements has accelerated since then. Most of the consequential (and often controversial) international agreements made by the last three presidential administrations were nonbinding.4 Yet as this Article shows, these high-profile agreements are the tip of the iceberg of a vast nonbinding-agreement-making practice that has been taking place mainly outside of public view

One reason for this trend is that the executive branch has many incentives to make agreements nonbinding rather than binding. In contrast to Article II treaties and congressional-executive agreements, the executive branch can make nonbinding international agreements without congressional authorization or approval.6 And in contrast to sole executive agreements, which most commentators believe are limited to matters that relate to the president’s independent constitutional authority, the executive branch maintains that it can make nonbinding agreements on practically any topic.7 Nonbinding agreements have also permitted the executive branch to avoid accountability and transparency mandates.8 The executive branch has long had a legal duty to report to Congress all binding agreements other than Article II treaties, and to publish the important ones.9 But it has skirted these duties by making nonbinding agreements, which historically it did not need to report or publish.10 In a world in which foreign policy challenges persist but Congress is gridlocked, it is no surprise that the executive branch was drawn to a form of agreement that it could make on any topic, without congressional approval or review, and without any obligation to make it public.

#### Uniqueness. Ex Ante CEA are 80-85% of binding agreements

Bradley and Goldsmith ’18 [Curtis Bradley; Professor of Law at UChicago; Jack Goldsmith; Professor of Law at Harvard Law School; March 2018; “Presidential Control Over International Law”; Harvard Law Review, vol. 131]

We can now see why the sharp decline in the percentage of treaties and the rise in executive agreements indicate a sharp drop in meaningful interbranch collaboration and a rise in presidential unilateralism in the making of international agreements. Genuine interbranch collaboration via Article II treaties or ex post congressional-executive agreements occurs for approximately 6–7% of binding U.S. international agreements. Approximately 80–85% of U.S. international agreements are ex ante congressional-executive agreements that involve no meaningful interbranch collaboration.35 Executive agreements pursuant to treaties, which we estimate make up approximately 1–3% of U.S. agreements, involve no more meaningful interbranch collaboration than ex ante congressional-executive agreements, and basically for the same reason.36 And about 5–10% of U.S. agreements are sole executive agreements, which Presidents make unilaterally on their own constitutional authority.37 While it is impossible to tell precisely the percentage allocation of these three instruments, one can say with confidence that they together make up close to 94% of all binding U.S. agreements.

In her 2009 study of congressional-executive agreements, Hathaway concludes that the task of making international agreements “has come to be borne almost entirely by the President alone.”38 The President’s unilateral powers have only increased since that time with the precipitous decline in the use of treaties under President Obama. Two other developments, to which we now turn, have left the President in an even more dominant position when it comes to making international agreements for the United States.

#### New binding international law obligations empower executive authority.

Ingber ’16 [Rebecca Ingber; Associate Professor, Boston University School of Law; Winter 2016; “International Law Constraints as Executive Power”; *Harvard International Law Journal*, vol.57]

The Constitution generally entrusts the President with executing—not making—the law. Of course, there is significant debate over where the one ends and the other begins, and the devil is often in the details. Certainly, Congress delegates to agencies within the executive branch a vast amount of authority, and interpreting the scope of that authority is, to a large extent, understood to be an executive prerogative.139 Interpretation of law itself is necessary to its execution and the power to interpret entails some core power to effect legal change in both large and small ways.140 The amalgamation of phenomena described in this Article—in which international law, interpreted largely by the executive branch, is invoked to understand domestic authority—leaves the executive branch with significant authority to determine the outer parameters of its own domestic power. Perhaps not surprisingly, the executive at times relies upon international law interpretations that are sharply contested and that provide the President with significant flexibility and authority, at times well beyond what many might construe either international law or domestic law to permit.

International Law Triggers the Deference Reflex

The dangers in the international law empowerment phenomenon discussed in this section are compounded to an immeasurable degree by the role that international law plays in triggering the reflex—by courts and Congress—to defer to executive interpretation and discretion.

There is a longstanding debate in scholarship and practice over the extent to which the executive branch should receive deference to its activities in the realm of foreign affairs and national security, and to a lesser degree over whether it should receive such deference on matters of international law interpretation.141 In practice, and despite their mandate “to say what the law is,”142 courts often defer considerably to executive positions on international law interpretation.143 This may rest in part on the “sole organ” doctrine: the desire that “the United States speak with one voice” in this realm.144 It may also lie in part in the means through which international custom evolves, whereby the Executive’s actions and statements of law can have the effect of “creating or modifying international law.”145 Whatever the underlying purpose, in many areas where judicial oversight of executive action ostensibly exists, while the Executive’s interpretation does not always wholly determine the judicial outcome, courts have nevertheless historically given the executive interpretation “great weight,” and that interpretation is often dispositive of the matter at hand.146

Moreover there are some areas in which the Executive simply acts alone with little or no oversight of its legal positions. In addition to those areas where courts may engage but defer to executive interpretations, executive interpretation also takes place in contexts where the courts may never see the matter at hand at all, or may abdicate to the political branches on other grounds, with the frequent effect of leaving such decisions in the hands of the Executive.147 Congress for its part has shown little appetite for engaging or dissecting the Executive’s international law interpretation in many of the critical areas discussed in this Article.148

The Executive thus often has significant discretion in interpreting what international law requires—and permits—of the United States. Though the rationale for this flexibility may lie largely in a desire to grant the Executive flexibility on the international plane, the phenomena discussed here demonstrate that this authority has ripple effects in domestic law. And to the extent that international law is used as a means of defining the parameters of domestic executive authority, deference or abdication to the Executive on the content of that international law means ceding to the Executive significant discretion to define the parameters of its domestic power.

2. International Law in Flux and the Power of Interpretation

The Executive’s flexibility in interpreting international law—based largely in judicial deference and congressional acquiescence to executive positions—is often further compounded by the evolving state of that international law.

As with many areas of law, international law compliance does not operate in a perfectly binary fashion—compliance or violation. Instead there is a spectrum, along which sits legal interpretation. While some interpretations may be uncontroversial or, by contrast, entirely beyond the pale, much legal interpretation rests in some grey zone between the two.149 Areas of significant judicial oversight might see more or less finality in interpretation on at least some matters, but in many matters of international law multiple interpretations may persist for a significant period. Even where consensus may start to congeal on the international plane, the United States may nevertheless continue to assert a unique view. In many of these areas, and without necessary regard for whether the position is taken in good faith or is a plausible view of the law, the position taken by the U.S. Executive will be accepted by some and sharply contested by others. The evolving state of international law in many of the areas discussed in this Article exacerbates the Executive’s flexibility in this realm, granting it greater discretion to argue that its interpretation is simply one among many and well within an accepted margin of appreciation, rather than a true outlier.150

This phenomenon, and the resulting potential for aggrandizement of executive power, is no anomaly. Throughout history the Executive has asserted controversial international law positions and concomitant enhanced domestic authority. An early example is President Washington’s proclamation of neutrality in the face of war between England and France in 1793. In order to avoid being drawn into the war, Washington imposed on the nation a disposition of strict neutrality through executive fiat, in the Neutrality Proclamation of 1793.151 He relied in part for this unilateral action on the assertion that strict neutrality was a “duty” required by the law of nations, one under which he additionally derived authority to prosecute violators.152

Yet the international law from which Washington derived the nation’s neutrality obligations was far from clear. In fact, Washington’s position required parsing a number of controversial legal questions, including the status of treaty obligations that the United States owed the belligerents as well as the aggressiveness of the neutrality required by international law.153

As it happened, the Washington Administration chose a position that accorded with its policy interests in staying out of the war; moreover, couching this policy as a legal obligation included the additional political advantage of attributing its policy to an external source when defending its actions to the warring parties. Scholars have thus long argued over the extent to which Washington was simply attempting to enforce the state’s obligations under international law, or instead strategically employing international law to impose a policy he deemed important.154 He may very well have been doing both. Certainly he deemed reliance on international law essential to his asserted authority, as did Chief Justice John Jay and Justice James Wilson, who provided the jury charges in the ensuing (and unsuccessful) prosecutions.155 Ultimately, Congress ratified Washington’s actions in the Neutrality Act of 1794.156 In the intervening space the Washington Administration relied on its own, contested, view of international law to enhance its authority domestically—to impose a position of neutrality on the nation and to prosecute violations of it without congressional legislation.

The evolving landscape of foreign immunity doctrine provides a more current example of international law in flux and of controversial executive interpretation, in an area where that interpretation is invoked to disrupt the ordinary course of domestic law. As discussed above, immunity doctrine within the U.S. domestic system has evolved considerably over the last century. Today the Executive retains considerable power in the areas of head-of-state and foreign official immunity to either suppress or permit to go forward the claims of petitioners for redress against foreign officials through its substantive decisions regarding the immunity doctrine. The Executive premises these decisions in part on its understanding of customary international law, but its interpretation of that law has evolved over time,157 and its contemporary position is hardly uncontroversial. In particular, there is ongoing debate among states, scholars, and courts regarding the extent to which the immunity of foreign officials for their acts (as opposed to for their status) attaches to conduct that violates jus cogens norms.158 U.S. statements of interest in these cases have to date weighed in against permitting an exception to immunity, but have not affirmatively argued that jus cogens violations will necessarily be considered official acts.159 Some U.S. courts have engaged this international law debate and refused to recognize jus cogens violations as official acts meriting immunity;160 others have relied entirely on the Executive’s interpretation of the state of the law and assertions of immunity.161 The actor charged with interpreting the international law norm—the courts in cases governed by the FSIA and those others mentioned above, and the Executive in head-of-state immunity cases and foreign official immunity cases in which it continues to command deference—thereby wields significant power to dictate the outcome of these domestic cases.

Wartime provides numerous aggressive examples of the empowerment phenomenon. As demonstrated in Part I, the executive branch often asserts wartime authority to act, at a minimum, to the limits of international law. And due to a mix of judicial deference, abdication, and congressional acquiescence, the content of the particular international law theory espoused by the Executive is often effectively the only legal constraint on executive authority. In areas where the laws applicable in war are evolving or controversial, such as in nontraditional conflicts like that with Al Qaeda, the Executive claims significant flexibility in asserting compliance with an expansive understanding of its own authority.

The Executive relies for its wartime empowerment on its international law-based assertions of, inter alia, an armed conflict with Al Qaeda; expansion of that conflict both to other “associated forces”162 and, geographically, to locations beyond the “hot” battlefield;163 status-based detention and targeting of individuals based on their membership in these groups rather than for particular acts;164 and the use of force in another state’s territory against a nonstate actor who poses a broadly-understood “imminent” threat.165 The substantive international law theories for each of these issues—and in fact every component of the Executive’s asserted legal architecture for the conflict with Al Qaeda—have been the subject of significant international debate. And in each the Executive puts forward an expansive view of the United States’—and in effect the Executive’s own166—authority to act.167 Moreover, in many areas—such as the geographic scope of the conflict or the constellation of activities that define “membership” in a party to the conflict sufficient to render an individual detainable or targetable—while the Executive justifies its actions through reliance on international law, it has never proffered a specific interpretation of the outer parameters of the limits of that law.168 In fact, the Executive itself has repeatedly acknowledged, and even stressed, the ambiguities and evolving nature of the international law governing this area.169 Yet in significant areas it holds out these ambiguous, evolving international law theories as providing the sole constraints on its own domestic authority.

In effect, the operation of normal domestic laws and process, including constitutional protections regarding deprivation of liberty for citizens and noncitizens alike, all give way to the Executive’s unilateral and at times undisclosed theories of international law, theories that need not necessarily be shared by any foreign state, let alone guided by international consensus.

#### Ex-ante CEAs destroy separation of powers. Sole executive agreements don’t.

Hathaway ’09 [Oana Hathaway; Professor of International Law at Yale Law School; 2009; “Presidential Power over International Law: Restoring the Balance”; Yale Law Journal, vol. 119]

As shown in Part I above, most executive agreements are not concluded on the President’s constitutional authority alone, but are instead ex ante congressional-executive agreements—agreements entered by the President pursuant to prior congressional statutory authorization. These agreements, therefore, rely upon the shared constitutional authority of Congress and the President, and are not limited to the bounds that constrain sole executive agreements. Although the agreements rely on the two branches’ joint authority, most ex ante congressional-executive agreements involve very little true interbranch cooperation. Once Congress grants authority to the President to conclude an agreement, it has little or no involvement in the agreement making process. Congressional-executive agreements possess the form of congressional-executive cooperation without the true collaboration that it implies.

As noted above, when the President acts alone (as, for example, when he concludes a sole executive agreement), he is limited to the actions that are within his own independent powers. Yet “[w]hen the President acts pursuant to an express or implied authorization of Congress, his authority is at its maximum, for it includes all that he possesses in his own right plus all that Congress can delegate.”234 Hence, the President’s authority is markedly strengthened when his or her actions have the approval of Congress.235 A sole executive agreement—particularly a controversial one relating to an issue of intense domestic political debate—does not carry the same force.

Congressional-executive agreements also have much greater preemptive power than do sole executive agreements. Sole executive agreements, which are concluded by the President alone, carry force only so long as they are not inconsistent with a federal statute. In a clash between ordinary federal legislation and a sole executive agreement, the legislation is given primacy unless the sole executive agreement was expressly intended to effect a treaty obligation, in which case the last-in-time rule is applied.236 Moreover, a sole executive agreement that exceeds the President’s own constitutional authority is also likely to be found unenforceable in domestic court. It is as yet not entirely settled whether an ex ante congressional-executive agreement that conflicts with an earlier statute is similarly unenforceable. Many, however, argue that ex ante congressional-executive agreements have the force of federal law.237 That means that if such an agreement conflicts with an earlier statute, the later-in-time agreement will likely take precedence.

When Congress authorizes the President in advance to conclude an executive agreement, that authorization expands the permissible scope and the legal force of the agreement. And yet, as we have seen, true congressional participation is minimal. Many agreements today are concluded under broad ex ante authority granted to the President by Congress four or five decades earlier in a vastly different context. Indeed, the label given to the agreements— “congressional-executive agreements”—suggests a collaboration in making the agreement that does not really exist. Even though the agreements have been “approved” by Congress in the narrow legal sense, there is little genuine cooperation between the President and Congress in the process of creating the agreements.

As a result, most ex ante congressional-executive agreements, while narrowly legal, are inconsistent with the basic underlying principles of the U.S. constitutional order. At a minimum, they evade the central purpose of the constitutional separation of powers among the branches. The separation of powers requires interbranch cooperation to govern and allows each branch to “check and balance” the others. Most significant acts of governance require the separate branches to work together. In this way, the Constitution facilitates a degree of specialization, provides for government policy that reflects a variety of constituencies, and protects the public from a single bad decision or wayward institution.238 Congressional-executive agreements upset this delicate balance. When Congress gives away very broad international lawmaking authority to the President, the agreements that result are rarely a product of interbranch cooperation. Once it has given away the power to conclude agreements on a given topic, Congress generally has no involvement in shaping the agreements and is nearly powerless to prevent an agreement with which it disagrees from becoming law.

The absence of genuine cooperation between the branches of government in creating the agreements is not simply inconsistent with abstract constitutional principles. It also gives rise to two concrete problems. The first is the absence of democratic accountability that results when law on a wide range of issues—some bearing on important issues of national interest—is made by a single branch of government. The second is that the agreements that result from this lopsided process may in fact serve the national interest less well than they would were Congress more involved in the international lawmaking process. I turn now to outlining each of these concerns in more detail.

#### CEAs wreck separation of powers because it empowers congress over the executive.

Yoo ’01 [John C. Yoo; Professor of Law at UC Berkely School of Law; 2001; “Laws as Treaties?: The Constitutionality of Congressional Executive Agreements”; Michigan Law Review, vol.99]

Under standard internationalist theories, interchangeability could allow statutes to enjoy the less stringent application of the separation of powers to treaties. This could happen in one of two ways. First, treaties could transfer powers among the branches, or create hybrid forms of government power, that would prove unconstitutional if undertaken solely by domestic law. In United States v. Curtiss-Wright Export Corp. ,237 for example, the Court observed that the nondelegation doctrine would not apply with the same force in foreign affairs, a proposition the Court recently re-affirmed in Clinton v. New York.238 Some have argued further that treaties are limited, at best, only by "radiations" from the separation of powers.239 Second, the treatymakers could delegate authority that normally resides with the executive or judicial branches to international organizations.240 Under standard internationalist doctrine, a treaty could transfer authority from Congress to the executive branch or to an international organization, as some argue that the U.N. Charter actually does,241 when a statute could not. Theoretically, interchangeability allows statutes to enjoy the loosened restrictions that would apply to treaties in these situations.

Used in these ways, congressional-executive agreements can undermine the separation of powers in both of its inter-branch aspects. First, suppose that a statute required the transfer of law enforcement or judicial power to an international agency or tribunal. Officials of the international body would not generally be removable by the President, because the very point of creating international regulatory institutions often is to free them from the direct influence of different nation-states.242 Even under the loose standards of Morrison v. Olson243 or Mistretta v. United States,244 a domestic effort by Congress to completely shield individuals who exercise executive authority from presidential removal would fall afoul of either the Appointments Clause, the Article II vesting clause or the Take Care Clause, while efforts to transfer the federal judicial power might violate Article Ill's vesting clause. Yet, some international and constitutional law scholars argue that such standards should not apply to international agreements because they involve foreign affairs.245 Second, if statutes are to enjoy the same status as treaties, and if treaties are not subject to the usual structural constraints of the separation of powers, then presumably Congress could restructure the separation of powers when acting through the congressional-executive agreement, even though it could not with an identical statute that concerned domestic affairs.

## Neg---Politics DA

### Neg---Politics DA Links

#### The politics DA link is strong against a wide range of affs. Conservatives have turned international law into a third rail, where opposition is “untethered from any given substantive battle” and has “become a generalized grievance.”

Rebecca Ingber 24, Professor of Law at Cardozo Law School and a Crane Fellow in Law and Public Policy at the Princeton School of Public and International Affairs, 25 October 2024, “Confronting the War on International Law in the United States,” *Just Security*, https://www.justsecurity.org/104268/international-law-united-states/.

Underlying each of these proposals is one harsh and unspoken background reality: international law is becoming a third rail in American politics today. International law plays a significant role in so many aspects of American life, from business to communications to the food we eat to public health to preserving natural resources to peace and security. Yet political rhetoric today suggests widespread ignorance about what international law even means, and often advances misinformation and fear about what it can do.

In stark contrast to longstanding precedent, judges today often deny a role for international law as a rule of decision or tool of interpretation in U.S. courts. The presidency, which has as a result amassed almost exclusive control over the making, interpreting, and breaking of international law for the United States, siloes its expertise in a legal office within the State Department that wields little power within the government and rarely in recent years even gets a politically confirmed head. And the United States’ ability to ratify treaties has been drying up as the Senate refuses to provide advice and consent to agreements—or even consider whether to do so.

There is thus a justifiable fear today that if a reckless president withdraws the United States from critical institutions or treaties, they may face few political consequences for doing so, and the United States may never be able to rejoin.

This is not to say that the United States has become a lawless nation on the global plane, as some might believe. Reasonable minds can certainly differ on the U.S. legal position on any particular matter, but consideration of compliance with existing law is—at least for now—a significant mainstay of U.S. government decision-making. Strategic vision for how to deploy the tools of international law and institutions looking forward, on the other hand, is a primary casualty of the war on international law. The net result of the undermining of international law domestically is an undermining of U.S. interests internationally, which all branches of government should work to correct.

How We Got Here

The undermining of international law as law within U.S. politics and the domestic legal system did not happen by accident. In modern history, a conservative movement that lost its battles on the substance of certain international law norms—be it human rights, climate change, war, or racial discrimination—turned to process as a second bite at the apple. Having failed to halt the developing norms they found distasteful, they found ways to undermine the field of international law in the U.S. legal system.

They have been wildly successful. So successful has this war been that the rejection of international law has become untethered from any given substantive battle and has become a generalized grievance. We have reached the point where today a Supreme Court nominee of either party apparently believes they must denounce (51:06), or even entirely misstate (54:09), a role for international law in the U.S. legal system law in order to be confirmed.

#### The link applies even to affs which should nominally have bipartisan support. Opposition to international obligations is a matter of process, not substance.

Rebecca Ingber 24, Professor of Law at Cardozo Law School and a Crane Fellow in Law and Public Policy at the Princeton School of Public and International Affairs, 25 October 2024, “Confronting the War on International Law in the United States,” *Just Security*, https://www.justsecurity.org/104268/international-law-united-states/.

But the attenuation between process and substance means that the crusade against international law can threaten to take down even those institutions and agreements many conservatives want to retain. NATO. The WTO. Tax treaties. Cooperative security agreements. All depend on strategic vision and hearty engagement with international law and institutions.

#### Political considerations the primary reason the U.S. has failed to ratify most treaties. Policymakers frame treaties as infringing on national sovereignty, and interest groups often lobby against ratification.

Anya Wahal 22, intern for the International Institutions and Global Governance program at the Council on Foreign Relations, 7 January 2022, “On International Treaties, the United States Refuses to Play Ball,” *Council on Foreign Relations*, https://www.cfr.org/blog/international-treaties-united-states-refuses-play-ball.

The United States enters into more than two-hundred treaties each year on a range of international issues, including peace, defense, human rights, and the environment. Despite this seemingly impressive figure, the United States constantly fails to sign or ratify treaties the rest of the world supports. It has failed to ratify treaties that tackle biodiversity and greenhouse gas emissions, protect the rights of children and women, and govern international waters. For a country frequently looked to as a global leader, the United States has consistently failed to step up in international partnerships. In fact, the United States has one of the worst records of any country in ratifying human rights and environmental treaties.

Why hasn’t the United States stepped up to the plate? According to scholars and policymakers, one major reason is the fear of treaties infringing on national sovereignty. The United States shuns treaties that appear to subordinate its governing authority to that of an international body like the United Nations. The United States consistently prioritizes its perceived national interests over international cooperation, opting not to ratify to protect the rights of U.S. businesses or safeguard the government’s freedom to act on national security. Politics also poses a significant barrier to ratification. While presidents can sign treaties, ratification requires the approval of two-thirds of the Senate. Oftentimes, the power of special interest groups and the desire of politicians to maintain party power, on top of existing concerns of sovereignty, almost assures U.S. opposition to treaty ratification.

#### Sovereignty concerns are a core part of the Republican party platform.

Anya Wahal 22, intern for the International Institutions and Global Governance program at the Council on Foreign Relations, 7 January 2022, “On International Treaties, the United States Refuses to Play Ball,” *Council on Foreign Relations*, https://www.cfr.org/blog/international-treaties-united-states-refuses-play-ball.

If President Joe Biden wants to prove that “America is back,” he should attempt to make progress on signing or ratifying several of these major international treaties. Unfortunately, any attempts of ratification will be a tall order in the Senate. Several Republican Senators even resist approving routine political appointments. Furthermore, petty political disputes and foreign policy aims, on top of the Republican priority of defending natural sovereignty and protecting the U.S. Constitution, signal potential political opposition to ratification. After the Trump administration, sovereignty has become almost inextricably linked to the Republican party platform. If the United States wants to maintain its position as a global leader and further important global and regional policy goals, it must move away from its self-defeating sovereignty obsessions and overcome political barriers, despite the odds.

#### Affirmatives on this topic would be especially politically salient given that they are directionally opposed to the current “America First” policy trend.

Stewart Patrick 25, senior fellow and director of the Global Order and Institutions Program at the Carnegie Endowment for International Peace, 19 February 2025, “The Death of the World America Made,” *Carnegie Endowment for International Peace*, https://carnegieendowment.org/emissary/2025/02/trump-executive-order-treaties-organizations?lang=en.

On February 4, 2025, President Donald Trump signed a sweeping executive order with the potential to upend decades of American global engagement. The directive mandates a comprehensive review within 180 days of all current multilateral organizations of which the United States is a member and all international treaties to which it is party. The explicit purpose of this exercise is to determine whether such support should be withdrawn. The clock is thus ticking on a distinctive and momentous aspect of post-1945 American internationalism: the strategic decision by successive Republican and Democratic administrations to embed U.S. power in multilateral institutions designed to support a peaceful, prosperous, and just world and to facilitate cooperation on shared global problems.

The immediate targets are narrow and unsurprising. The order declares that the United States will withdraw from the UN Human Rights Council, as it did during Trump’s first term; reconsider membership in UNESCO, a long-standing target of Republicans; and cease all funding for the UN relief agency for Palestinian refugees.

Of far greater import is the order’s decree that the secretary of state shall review “all international organizations” of which the United States is a member and “all conventions and treaties” to which it is party, to determine whether these “are contrary to the interests of the United States and whether [they] can be reformed.” The secretary will then recommend to the president “whether the United States should withdraw” from those commitments. In principle, the directive could lead to a U.S. abrogation of thousands of treaties and a departure from hundreds of multilateral organizations.

The Trump administration has of course already pulled out of the Paris Climate Agreement, announced its intent to withdraw from the World Health Organization (WHO), and effectively renounced U.S. legal commitments under the 1951 Refugee Convention. The president also plans to dismantle international trade rules in favor of reciprocal bilateral tariffs, signaling the death knell of the ailing World Trade Organization.

This is only the beginning. Countless other international treaties and organizations could be on the chopping block—or in the wood chipper, if you will. It is even plausible that the Trump administration will conclude that an “America First” foreign policy requires pulling the United States out of the UN—and kicking the UN out of the United States. Both are long-standing objectives of conservative nationalists who contend, speciously, that the UN threatens American sovereignty. Such a momentous step would echo America’s 1919 repudiation of the Covenant of the League of Nations, but it would reverberate even more powerfully, given the UN’s centrality as the world’s foundational institution—by virtue of its universal membership, legally binding charter, unique responsibility (via the Security Council) to authorize armed force, and dozens of standing operational agencies. The White House could take similar steps to withdraw from international financial institutions—particularly the World Bank, as explicitly recommended by Project 2025—and eject them from Washington.

## Neg---Non-Binding CP

### Neg---Non-Binding CP

#### Binding i-law = treaties, CEAs, or sole executive agreements. Formal, nonbinding agreements are distinct from all three, can be made on any subject, and are “functionally similar to … binding agreements” because they can include informal enforcement mechanisms like reciprocity and reputation

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INTRODUCTION

The field of international law, as the name implies, is largely organized around legally binding sources, especially treaties and customary international law. International law casebooks and syllabi, and the bulk of scholarship related to international law, reflect this focus. On the domestic front, similarly, the statutory framework that requires publication and reporting of U.S. international agreements has historically applied only to the legally binding agreements made by the president: “treaties” made pursuant to the process specified in Article II of the Constitution, which requires the consent of two-thirds of the senators present; “congressional-executive” agreements that are authorized or approved by Congress; agreements authorized by a prior Article II treaty; and “sole” executive agreements based on the president’s independent constitutional authority.1

The prevailing focus in teaching, scholarship, and regulation on binding international agreements reflects an assumption that these forms of agreement are the most important and consequential ones in international relations. This assumption is misleading to the point of being false. As this Article seeks to show, international relations are increasingly conducted by nonbinding international agreements. A nonbinding international agreement is one between two or more sovereign states (or between a state and an international organization) that is not governed by international law—meaning it does not trigger the international law rules relating to compliance and state responsibility for breach. Yet because international law often relies on informal enforcement mechanisms such as coordination, reciprocity, and reputation, nonbinding agreements often operate in ways functionally similar to many binding agreements.

In the United States, executive branch use of binding international agreements has been declining for decades.2 In 2005, amidst that decline, a lawyer in the State Department Legal Adviser’s Office observed that nonbinding agreements had shown a “marked increase.”3 As this Article documents, the U.S. government’s reliance on nonbinding international agreements has accelerated since then. Most of the consequential (and often controversial) international agreements made by the last three presidential administrations were nonbinding.4 Yet as this Article shows, these high-profile agreements are the tip of the iceberg of a vast nonbinding-agreement-making practice that has been taking place mainly outside of public view.5

One reason for this trend is that the executive branch has many incentives to make agreements nonbinding rather than binding. In contrast to Article II treaties and congressional-executive agreements, the executive branch can make nonbinding international agreements without congressional authorization or approval.6 And in contrast to sole executive agreements, which most commentators believe are limited to matters that relate to the president’s independent constitutional authority, the executive branch maintains that it can make nonbinding agreements on practically any topic.7 Nonbinding agreements have also permitted the executive branch to avoid accountability and transparency mandates.8 The executive branch has long had a legal duty to report to Congress all binding agreements other than Article II treaties, and to publish the important ones.9 But it has skirted these duties by making nonbinding agreements, which historically it did not need to report or publish.10 In a world in which foreign policy challenges persist but Congress is gridlocked, it is no surprise that the executive branch was drawn to a form of agreement that it could make on any topic, without congressional approval or review, and without any obligation to make it public.

We are not the first to highlight the growing phenomenon of nonbinding international agreements.11 But none of the past studies have sought to discern the extent and nature of the U.S. practice of concluding nonbinding agreements. Such agreements have been difficult to study because the systems that track international agreements have not included nonbinding agreements. Article II treaties are published by the Senate,12 listed in the Treaties in Force compilation prepared by the State Department,13 and registered with the United Nations;14 executive agreements are collected by the State Department and reported to Congress under the Case-Zablocki Act,15 and are published in both public and private databases.16 However, nonbinding agreements have had no central repository and have not been subject to any rules about transparency or publication.17 The relatively few nonbinding agreements that have been made available to the public are scattered across the internet based on the varying preferences of the dozens of agencies and departments that make them.

In the face of these challenges to empirical study of nonbinding agreements, we built the first-ever databases of U.S. nonbinding agreements for the two most significant forms of nonbinding agreements between U.S. government representatives and their foreign counterparts: (1) joint statements and communiques; and (2) formal nonbinding agreements.18 Joint statements and communiques are generally in the public realm. Some formal nonbinding agreements are too, but many are not. We supplemented our collection of public documents with Freedom of Information Act (FOIA) requests to more than twenty federal agencies in order to obtain their nonpublic records. Our two databases together include over three thousand nonbinding agreements that we have coded and analyzed to provide an unprecedented quantitative empirical glimpse into the U.S. nonbinding agreements practice.

We also supplemented these data collection efforts with interviews of government officials in several agencies about their experiences in connection with the drafting and conclusion of nonbinding agreements.19 These interviews provided valuable information about why agencies choose to conclude nonbinding agreements and the processes that they follow. We also reached out to experts and officials in other countries to learn more about how their legal and regulatory systems address nonbinding international agreements. The surveys of foreign experts and officials gave us a broader comparative perspective from which to view U.S. practice than prior scholarship, and they revealed that many countries have witnessed a shift from binding to nonbinding arrangements similar to the one that we document in this Article.20 Although our chief focus is the United States, the transformation we describe is a global phenomenon.

The key contribution of this Article, then, is to uncover and describe a growing practice relating to international law. Nonbinding agreements, we show, are not just an important part of the international agreement landscape; they are, increasingly, the dominant part. The field of international law—in the United States and globally—must reorient itself to this new reality. Increasingly, international cooperation is shaped by commitments that claim not to be governed by law. This development has important ramifications for how international law is taught and studied, both in the United States and elsewhere, and it raises fundamental questions about the nature of the international legal system.

The growing importance of nonbinding agreements also raises the question—largely unaddressed in prior scholarship— about how such agreements should be regulated domestically.21 In the United States, nonbinding agreements—especially formal nonbinding agreements—often serve the role once reserved for Article II treaties and binding executive agreements. And yet until 2023, they were entirely exempt from the reporting and publication requirements that apply to binding agreements. A new law enacted in December 2022, as part of the National Defense Authorization Act for Fiscal Year 202322 (2023 NDAA), establishes transparency mandates for nonbinding agreements for the first time, but only for a subset of these agreements.23

#### This debate centers on the flexibility-credibility tradeoff. Nonbinding agreements are easier but hold less weight because they don’t tie our hands

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D. The Choice of Nonbinding Versus Binding Agreements

There is an enormous literature on why nations sometimes prefer nonbinding over binding agreements.118 Some explanations are general, and some are highly context dependent, based on, for example, the type of agreement at issue or a nation’s particular allocation of agreement-making power under domestic law. This Section summarizes some of the primary insights of this literature as applied to the U.S. situation, and in particular to the motivations of the U.S. executive branch that makes international agreements for the United States. And, where relevant, it draws on interviews we conducted with U.S. agency officials. Precisely because the reasons for making an agreement binding or nonbinding are context-dependent, it is difficult to generalize from them, and sometimes reasons that will support one approach in one setting will lead to a different approach in another. The key point is that negotiators often perceive that there are advantages to making an agreement nonbinding rather than binding.

The main attraction of nonbinding agreements, as we have already explained, is their flexibility. The president and his or her subordinates can make a nonbinding agreement on practically any topic, without any input (much less authorization or approval) from Congress. Until the Case-Zablocki reforms in the 2023 NDAA enter into effect in late 2023, they can also continue to make such a nonbinding agreement without any need to report it to Congress and without any need to make it public. The reforms will subject some, but far from all, nonbinding agreements to reporting and publication requirements.119 These elements make nonbinding agreements relatively easy to negotiate and enter into, compared to their binding counterparts.120 Such agreements are also generally easier to exit because they implicate no international or domestic legal obligation to comply and because the reputational and other costs of exit are often perceived to be smaller compared to binding agreements.

Flexibility is aided by a less cumbersome legal and bureaucratic process. To conclude a binding executive agreement, an agency needs to request and receive approval from the State Department to initiate negotiations.121 It then must submit the concluded agreement to the State Department.122 At each stage, lawyers at the State Department may offer input—and the process of review may take time. The final agreement must then be reported to Congress. While it is rare for Congress to raise concerns, it could do so. None of these regulatory requirements apply to nonbinding agreements, which gives agencies considerably more flexibility. Even those agencies that voluntarily share nonbinding agreements with the State Department find that the consultation process is simpler. The Associate Director of the Office of International Affairs of the Federal Trade Commission (FTC) explained that the review process itself “is pretty simple. We send an email to [the Office of Treaty Affairs], and they sen[d] an email back saying it’s ok[ay], or maybe saying change ‘shall’ to ‘intend to,’ and we go ahead.”123

Sometimes nonbinding agreements are used in conjunction with binding agreements to provide a mechanism for flexibility in future cooperation. For example, a Department of Defense official described a practice of concluding a binding “Chapeau Agreement” that satisfies legal requirements for matters such as logistical support, liability, and property rights. Then nonbinding follow-on agreements—styled as, for example, “memoranda of understanding,” “annexes,” “amendments,” or “appendices”—can more quickly and flexibly specify particular programs or areas of cooperation without need for an extensive legal or political process.124

These elements of flexibility can come at the cost of less credibility in the commitment to the agreement, since as a general matter nonbinding agreements “communicate less strong or less intense expectations of future behavior than do treaties.”125 Nonbinding agreements cannot be enforced in court, whether domestic or international.126 Nonbinding agreements are also not subject to international law limits on withdrawal and termination, and they do not implicate international law remedies for breach.127

To be sure, because international law often lacks formalized enforcement, the distinction between the obligations associated with binding agreements and those associated with nonbinding ones is often far from clear. Compliance with both types of agreements frequently depends on some combination of self-interest, reciprocity, reputation, and informal sanctions. Even when this is true, binding agreements often create what are regarded as stickier obligations. There are many reasons why this may be so. The process of open legislative debate and consent required for binding agreements—at least for treaties and ex post congressionalexecutive agreements—may convey more information to agreement partners about the breadth and intensity of U.S. domestic support for an agreement than the executive official’s word alone.128 In addition, the perceived reputational harm done by violating a binding agreement may be greater than that for violating a nonbinding one.129 That may be why officials generally prefer binding agreements when seeking to increase the likelihood that the other side will live up to its side of the bargain. An official at the Office of International Programs at the Nuclear Regulatory Commission (NRC) explained that her office generally prefers to conclude information-sharing arrangements as binding agreements, because that “provides greater emphasis on the commitment.”130 A State Department lawyer similarly explained that the United States has preferred binding agreements when “they wanted the country to pay attention to the agreement.”131

#### What’s a solvency deficit? Nonbinding agreements spill over.

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Relatedly, a nonbinding agreement might be chosen as the first step in an iterative cooperative learning or negotiation process that leads to a binding agreement with more serious commitments. The Antitrust Division of the Department of Justice (DOJ), for example, sought binding agreements early on, when the Department was interested in securing the assistance of foreign law enforcement in enforcing agreements that reflected a model of antitrust law that the U.S. was actively seeking to export.134 Later, once the U.S. approach to antitrust law had become more widespread, the United States became more cautious about entering binding antitrust agreements with foreign partners, particularly agreements that would obligate the United States to assist in law enforcement. Such agreements were reserved for countries with which there were longer-standing connections, collaboration, and trust.135 Agreements with other countries were concluded as nonbinding memorandums of understanding. As a DOJ Antitrust official put it, “Nonbindings can be thought of as trust-building exercises.”136 He added, “We tend to use MOUs with China, India, Russia or other countries newer to the business of antitrust enforcement or where we have a less developed relationship. Usually you develop a relationship, trust with each other, then you might later want to memorialize that relationship with a binding agreement.”137

#### You might want a binding agreement when the subject of the agreement exceeds the president’s authority AND you don’t want to loop in Congress.

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U.S. domestic political constraints also can play a significant role in the decision. In the United States, a president may choose a nonbinding agreement because the agreement is important but [they] he cannot secure consent from Congress or the Senate, and the Constitution precludes [them] him from making a binding sole executive agreement. These were the main reasons why the Obama administration insisted that both the Iran deal and the emission reduction provision in the Paris Agreement be made nonbinding; otherwise, the United States likely would not have been able to join either agreement.144

#### Sometimes a negotiating partner wants one or the other.

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Sometimes the choice of whether to make an agreement binding will be driven by the aims or preferences of the other parties. In a process that led to a 2003 weapons reduction agreement, for example, President George W. Bush initially proposed a nonbinding agreement with Russian President Vladimir Putin, but President Putin insisted on a legally binding document in part to ensure that the United States was firmly committed.138 Often, however, foreign counterparts prefer nonbinding agreements. Indeed, for many foreign partners, binding agreements are more difficult to conclude because they cannot be made in their countries at the agency level. As an NRC official explained, “There are a lot of partners that cannot negotiate binding agreements agency-to-agency. A lot of our partners can only sign a nonbinding arrangement at the agency level. That’s true of all the common law countries—for example Canada, Australia, India.”139 In such cases, concluding a binding agreement “means elevating it and a lot more process, which can take years.”140 For an agency in Colombia to conclude a binding agreement, for example, “they have to go to the highest authority in their nation to get approval to sign it. It effectively takes an act of Congress. So with them we do it as a nonbinding.”141 Another interviewee agreed: “A lot of it is driven by what our partner wants.”142 According to several agency employees with whom we spoke, this is more true now than ever. As the NRC official explained, “[T]he preference for nonbinding agreements seems to be broadening around Europe.”143

#### Nonbinding agreements aren’t formally domestic law. BUT, they can be implemented internally by the executive, be incorporated into law by Congress, and preempt state laws

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3. Nonbinding agreements and domestic law.

Nonbinding agreements do not have the status of domestic federal law. By definition, nonbinding agreements create no legal obligation. And they do not fit within the instruments identified in the Supremacy Clause—the Constitution, treaties, or “Laws of the United States . . . made in Pursuance” of the Constitution.66 The Supreme Court has recognized that some “sole” executive agreements operate as federal law that preempts state law.67 But these decisions to date have been limited to legally binding executive agreements.68 And the Court has emphasized, in the context of the president’s long-established power to settle claims via executive agreement, that the power to make binding domestic law via executive agreements is “narrow and strictly limited.”69 The Court has also more generally emphasized that the president in our system is not a lawmaker.70 Given that the scope of the president’s power to make nonbinding agreements is practically limitless, it would be an unfathomable expansion of presidential power, and a disruption of the domestic legal system, if these instruments also had the status of domestic law. These are some of the reasons why no one has ever seriously suggested that nonbinding agreements have that status.

Nonbinding agreements can, however, influence or become part of domestic law. First, executive branch officials often implement or comply with nonbinding agreements within the executive branch bureaucracy.71 For example, the international banking rules reflected in the nonbinding Basel Accords “are the basis for binding domestic regulations of the banking industry.”72 Second, Congress can incorporate nonbinding agreements into binding domestic legislation. For example, Congress in the Clean Diamond Trade Act73 implemented the Kimberley Process Certification Scheme, a nonbinding agreement that aims to remove conflict diamonds from the global supply chain.74 Third, it is conceivable that some elements of nonbinding agreements might preempt state law under the theory of executive branch foreign policy preemption suggested in American Insurance Ass’n v. Garamendi.75

#### A nonbinding agreement creates no international legal duty to comply or consequences for noncompliance. It can influence legal obligations but does not directly create them

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I. NONBINDING INTERNATIONAL AGREEMENTS IN U.S. LAW AND PRACTICE

Nonbinding international agreements can be bilateral or multilateral and can take many forms.24 [[BEGIN FN 24]] Different terms have been used to capture what we call nonbinding international agreements, including “political commitments,” “informal agreements,” “informal arrangements,” “nonbinding arrangements,” “nonbinding documents,” “nonbinding instruments,” “nonbinding arrangements,” “soft law agreements,” and (in an earlier era) “gentlemen’s agreements.” See, e.g., ANTHONY AUST, MODERN TREATY LAW AND PRACTICE 18 (3d ed., 2013); Memorandum from Robert Dalton, Assistant Legal Adviser for Treaty Affs., U.S. Dep’t of State, International Documents of a Non-Legally Binding Character (Mar. 18, 1994) (on file with authors). Although some observers might think that the word “agreement” connotes bindingness, we use “nonbinding agreements” because it best reflects the role that these documents play in the international system. The term has, moreover, been used in recent international discussions of the topic. See infra Part III. [[END FN 24]] A common element among all forms of these agreements is that they are not governed by international law—a characteristic that has implications for why nations make them and how they operate in practice. This Part provides background on nonbinding agreements made by the United States to set the stage for the empirical, comparative, and normative analysis that follows. It begins by defining nonbinding agreements. It then explains the historical use of these agreements by the United States and their place in the U.S. domestic legal system. Finally, it examines contemporary U.S. practice concerning nonbinding agreements and organizes the agreements into two categories for purposes of analysis.

A. What Is a Nonbinding International Agreement?

A nonbinding international agreement can best be understood by comparison to a binding international agreement, which in international law nomenclature is called a “treaty.” A treaty is “an international agreement concluded between States in written form and governed by international law.”25 Any agreement that meets these criteria, regardless of what it is called in a state’s domestic legal system (for example, a “congressional-executive agreement”) is considered a “treaty” under international law. Important legal consequences of a legally binding treaty include pacta sunt servanda (a duty to observe the terms of the treaty), state responsibility for violations, and legal remedies for breach, such as reparations and countermeasures.26

A nonbinding international agreement is an agreement between nations that is not governed by international law.27 Such an agreement imposes no international legal duty to comply with its terms, and breach or noncompliance with the agreement implicates no international legal consequences. This does not mean that nonbinding agreements lack any relationship to binding international law. To the contrary, nonbinding agreements can serve as the basis for or precursor to binding instruments made later;28 provide interpretive guidance for binding agreements;29 clarify or expand upon the requirements of binding obligations;30 be embedded or incorporated into a binding obligation or instrument;31 and influence the development of customary international law.32 But nonbinding agreements do not create direct legal obligations.33

#### Nonbinding agreements are exempt from transparency and accountability measures, such as publication requirements.

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4. Limited domestic regulation.

Another remarkable characteristic of nonbinding international agreements is how differently they have been regulated compared to binding agreements. Congress long ago imposed transparency and accountability requirements on the executive branch with respect to binding international agreements. Under the 1972 Case-Zablocki Act, the executive was required to report to Congress “any international agreement . . . other than a treaty” within sixty days after it takes effect.76 There was also a statutory obligation to publish important agreements on the State Department’s website within 180 days after they take effect.77

As we have documented elsewhere, there were a number of deficiencies in this regime,78 but it did not apply at all to nonbinding agreements. The State Department interpreted the transparency requirements to apply only to binding agreements.79 And within the executive branch, the usual standards for approving and keeping track of executive agreements historically did not apply to nonbinding agreements.80 The State Department’s “C-175” process, named after a circular issued in 1955, is designed to “facilitate[ ] the application of orderly and uniform measures to the negotiation, conclusion, reporting, publication, and registration of U.S. treaties and international agreements, and facilitate[ ] the maintenance of complete and accurate records on such agreements.”81 Pursuant to this process, before negotiating an agreement, an executive agency must obtain pre-approval from the State Department.82 After the agreement is negotiated, the agency must receive additional C-175 approval from the State Department to conclude the agreement. Furthermore, after conclusion of the agreement, the agency is supposed to transmit a copy to the State Department for central collection.83 None of these accountability provisions that applied to binding agreements have applied to nonbinding ones.84

#### Formal nonbinding agreements resemble binding agreements, but they don’t require congressional approval.

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2. Formal nonbinding agreements.

The second category consists of what we call “formal nonbinding agreements.” In contrast to joint statements or communiques, these agreements typically have many of the trappings of binding international agreements, such as content organized by articles, entry-into-force and termination provisions, and sometimes even dispute resolution provisions. But the parties to such agreements nonetheless do not intend the agreements (or significant parts of the agreements) to be binding under international law. Formal nonbinding agreements can be either bilateral or multilateral. And they cover a wide variety of types of commitment.

Many of these agreements concern regulatory cooperation between administrative agencies of the United States and foreign administrative agencies. Such agreements typically include commitments to exchange information, cooperate on enforcement measures, consult with the other party prior to taking certain actions, and align regulatory standards.105 Nonbinding agreements of this sort have grown in response to the increasing globalization of goods, services, and persons. One sign of the increased importance of these agreements is a 2012 executive order entitled “Promoting International Regulatory Cooperation,” which through various means encouraged agencies to engage in international regulatory cooperation “consistent with domestic law and prerogatives.”106

While most formal nonbinding agreements foster technical regulatory cooperation in various ways, many such agreements are more ambitious.107 Recent examples include a multilateral agreement known as the Artemis Accords that concerns the conditions for the safe and peaceful exploration of space,108 the Organization of Economic Cooperation and Development (OECD)/G20 agreement on global tax reform,109 and the nonbinding agreement with the Taliban calling for the United States to withdraw all forces by the end of May 1, 2021 (later extended to August 31).110 This latter agreement underscores the practical importance of formal nonbinding agreements even though they are not enforceable under international law. President Joe Biden explained that the agreement protected U.S. persons during the withdrawal and emphasized that if the United States missed the August 31 deadline, the Taliban likely would have carried out attacks on U.S. troops.111

Two important formal nonbinding agreements concluded during the Obama Administration—the Iran nuclear deal and the emissions reduction pledge in the Paris Agreement on climate change—warrant special mention due to the ways the administration relied on the distinction between binding and nonbinding obligations.112 Many commentators argued that both agreements required congressional approval because they were so consequential and because they could not be fully justified by prior congressional authorization. Congressional consent was a high hurdle to the deals, however, because there was significant Republican opposition.113 The agreements posed additional challenges because both made pledges that required domestic implementation. The United States in the Paris Agreement agreed to undertake economy-wide emission reduction targets, and in the Iran deal it agreed to eliminate certain sanctions against Iran.

The Obama Administration took two innovative steps in concluding these agreements. First, it insisted on concluding the Iran deal and the emissions pledge in the Paris Agreement as nonbinding agreements.114 This allowed the administration to conclude the agreements without seeking congressional approval. Second, it changed domestic law to meet the commitments in these agreements by invoking preexisting authority delegated from Congress. For the Iran deal, the administration exercised the power that Congress had given it to waive the sanctions in accordance with the national interest.115 And for the Paris Agreement, it made new regulations pursuant to authority granted earlier in several domestic statutes.116

The Iran deal and the emissions pledge in the Paris Agreement were in the public realm. But many formal nonbinding agreements are not, sometimes because an agency simply fails to have a policy about publishing such agreements, and sometimes because the agency affirmatively seeks to keep the agreements nonpublic.117 The ones that are in the public realm are not centrally organized, making comparisons and generalizations difficult.