# 1AC

### 1AC – Adv – Customary International Law

#### The right to strike is Customary International Law, but the US fails to meet *opinio juris* standards. Perception of US insufficiency breeds uncertainty with confidence in international law and spirals into noncompliance – that causes a legitimacy crisis. No alt causes to legitimacy – FOA is central to the ILO and the biggest internal link.

Brudney 21 [James; 2/8/21; Joseph Crowley Chair in Labor and Employment Law, Fordham Law School; “The Right to Strike as Customary International Law,” THE YALE JOURNAL OF INTERNATIONAL LAW, Vol 46, <https://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=1710&context=yjil>] Justin \*\* Brackets in original

II. THE INTERNATIONAL RIGHT TO STRIKE AS CIL

That an international right to strike is widely recognized by governments does not mean the right has assumed the status of CIL. This Part seeks to forge that link, to show how the international right to strike qualifies as CIL. It begins (II.A) by identifying the two basic elements of CIL and explaining why the right to strike is an integral textual and conceptual component of FOA. It then establishes (II.B and C) that FOA and the right to strike satisfy both elements of CIL—a general practice accepted by States, stemming from a sense of legal obligation. While there are variations and qualifiers at the national level, the contours of CIL status are clear: a basic right subject to three substantive restrictions; a recognition that strikers retain their employment relationship during the strike itself; and certain procedural prerequisites or limitations. 105

This Part next demonstrates (II.D) that the two U.S. practices discussed earlier as deviating from the international right to strike—denying all public employees the right and authorizing permanent replacement of lawful strikers— co ntravene core aspects of the right to strike as CIL. Finally (II.E), this Part introduces the complexities of the U.S. position on FOA and the right to strike as international rights, reflected in the failure to ratify Convention 87 while both Congress and the executive branch embrace Convention 87 principles including the right to strike.

A. Initial Definitions and Considerations

1. CIL Standards

The two basic elements that determine the existence and content of a rule of CIL are first, the requirement of a general practice by States, and second, the requirement that the general practice be undertaken from a sense of legal right or obligation (opinio juris).106 The first element is objective: whether there is a sufficiently widespread and consistent practice of States endorsing and adhering to the rule. Evidence of such a general practice may include governmental conduct in connection with treaties; legislative or administrative acts; decisions of national courts; conduct in relation to resolutions adopted by an international organization; diplomatic acts and correspondence; and executive operational conduct on the ground.107 The second element, opinio juris, is more subjective: the general practice must be undertaken based on its acceptance as law, rather than being accepted based on mere usage or habit or some pragmatic motive. As is true for general practice, evidence of acceptance as law may come in a range of forms. These include public statements made on behalf of States; government legal opinions; decisions of national courts; treaty provisions; diplomatic correspondence; and conduct related to resolutions adopted by an international organization.108

2. The Right to Strike as Integral to FOA

Freedom of association is one of the core principles on which the ILO was founded and continues to exist. 109 As set forth under Convention 87, FOA includes a series of integral elements, of which the right to strike is one. The two ILO supervisory mechanisms that have regularly applied or interpreted Convention 87 have understood it to include the right to strike from the early days of the Convention’s existence.110 Leading U.N. human rights covenants also recognize FOA as a basic right, including the right to strike as a component. 111 And the labor provisions of the 2019 U.S.-Mexico-Canada trade agreement include the following statement: “For greater certainty, the right to strike is linked to the right to freedom of association, which cannot be realized without protecting the right to strike.”112 Accordingly, if FOA is seen as Customary International Law (CIL), and the right to strike is an essential component of FOA, then the right to strike should also be understood to be part of CIL.

Consider in this regard the following integral elements of Convention 87. The fact that as part of FOA, workers and employers “shall have the right to establish and . . . to join organizations of their own choosing without previous authorization”113 means the State may not impose unreasonably high membership requirements that hinder the establishment of organizations, or require that members may not join several different organizations. 114 Similarly, the fact that under FOA, workers and employers “shall have the right to . . . elect their representatives in full freedom [and that] public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof,”115 means the State may not impose limits on candidates due to their nationality, literacy, political opinions, moral standing, or for workers, their non-employment in the employer’s occupation or enterprise. 116 And the fact that as part of FOA, workers “shall have the right . . . to organize their. . . activities and to formulate their programs” free “from any interference [by the public authorities]”117 means that worker organizations, in order to defend the occupational interests of their members, have the right to hold trade union meetings, the right to have access to places of work and to communicate with management, and the right to organize nonviolent protest action including strikes. 118

B. FOA and the Right to Strike as General Practice

There is ample support that FOA is widely accepted in objective terms. Convention 87 has been ratified by 155 countries, or 83 percent of the 187 ILO Member States. 119 In addition, the ILO Constitution, endorsed by all members, specifies the critical role of FOA both in its 1919 founding document and the 1944 Declaration of Philadelphia as a constitutional addition.120 More recently, ILO Declarations issued in 1998 and 2008, again embraced by all members, make clear that even Member States that have not ratified Convention 87 are obligated to act in good faith to respect and effectuate FOA principles.121

Beyond the ILO realm, workers’ freedom of association, including the right to form and join trade unions and expressly the right to strike, is recognized in the International Covenant on Economic, Social and Cultural Rights (ICESCR), adopted by the United Nations General Assembly to be effective 1976.122 The Covenant has been ratified by 171 countries, including two of the four large-population countries that have not ratified Convention 87.123 Another major UN Human Rightstreaty, the International Covenant on Civil and Political Rights (ICCPR), also adopted by the U.N. General Assembly to be effective in 1976, recognizes FOA including the right to form and join trade unions. 124 The ICCPR has been ratified by 173 countries, including three of the four largepopulation countries that have not ratified Convention 87; its human rights committee has consistently recognized the right to strike as part of FOA under the Covenant. 125 Indeed, of the 187 ILO Member States, only 11 relatively smallpopulation countries have not ratified at least one of Convention 87, the ICESCR, or the ICCPR.126

FOA is also expressly recognized in a labor setting in the European Convention on Human Rights, which has been ratified by all 48 countries in the Council of Europe. 127 At a national level, the vast majority of constitutions provide for freedom of association, although some use general language that (unlike the international instruments just mentioned) does not specify workers or trade unions. 128

Apart from States’ nearly-universal embrace of FOA as a general matter, the right to strike itself has been broadly accepted by governments. As noted earlier, more than 90 countries have made a public commitment to the right to strike in their constitutions. 129 These commitments have translated to actual practice when national courts have relied on guidance from the CEACR and CFA in assuring compliance with their constitutional right to strike. Judicial interpretation of the international right as part of applying a domestic constitution often involves assuring compliance by governments or employers,130 though it also may require compliance by unions. 131 And compliance with the international right to strike may even emanate from application of a national constitution that endorses FOA without being explicit about the right to strike.132

Among the many national courts that have invoked the CEACR and/or CFA in support of a right to strike,133 two other cases worth noting involve Brazil and Kenya because neither country has ratified Convention 87. In 2012, the Labour Court in Brazil ordered reinstatement of workers terminated for participating in a work stoppage. 134 Under Brazil’s Constitution, “norms that define fundamental rights and guarantees are directly applicable.”135 Given that the Court found that the employer’s conduct had violated the principle of freedom of association and the free exercise of the right to strike, it seems that the “principle of freedom of association” was being directly applied as a matter of customary international law rather than through a ratified treaty or convention.136 In 2013, the Industrial Court of Kenya ordered the reinstatement of five workers dismissed for participating in a strike and strike-related activities. The Court’s reasoning derived from Kenya’s general participation in the ILO, including “respect for International Labour Standards,” rather than direct application of fundamental norms as in the Brazil case.137 The Industrial Court invoked a report by the CEACR and decisions by the CFA to support its decision; its recognition of FOA as an accepted international standard suggests that reports from the ILO supervisory bodies served as evidence of CIL.138

Finally, states’ widespread practice is reflected in the negotiation of trade agreements over the past two decades that recognize both FOA and the right to strike. Since 2003, labor provisions in U.S. trade agreements have regularly featured linkages to FOA as one of the fundamental ILO norms. 139 The commitment by signatory states to FOA as understood under the 1998 ILO Declaration has been progressively strengthened during this period—from providing that parties “shall strive to ensure” protection of FOA under domestic laws140 to specifying that parties shall “adopt and maintain [FOA rights] in [their] statutes and regulations, and practices thereunder.”141 The latest trade agreement, involving the United States, Mexico, and Canada (approved as a successor to NAFTA) expressly provides that the right to FOA necessarily includes protection for the right to strike.142 Trade agreements involving EU countries also feature commitments to respect and implement under domestic law the principles of FOA as understood in the ILO context. 143 This wide network of similarly worded, mostly bilateral trade agreements addressing the subject of FOA constitutes additional evidence of general practice for CIL purposes. 144

The pervasive nature of actual practice regarding FOA and the right to strike does not mean that the right’s content is static or fixed. To be sure, there is broad acceptance of the two previously discussed features on which U.S. law is out of step: the prohibition on permanent replacements145 and public employees’ right to strike with certain exceptions. 146 And although particular limits on the right may vary from one country to another, there is an international consensus that the right exists and that any limits should be reasonable.147 The International Court of Justice (ICJ) does not require uniformity in practice in order to establish CIL, and indeed, it has countenanced some degree of variation:

The Court does not consider that, for a rule to be established as customary, the corresponding practice must be in absolutely rigorous conformity with the rule. In order to deduce the existence of customary rules, the Court deems it sufficient that the conduct of States should, in general be consistent with such rules.148

C. FOA and the Right to Strike as Opinio Juris

There is also considerable support for the proposition that the general practice of states on FOA and the right to strike stems from acceptance as a matter of legal obligation. Admittedly, while the existence of opinio juris may be inferred from a general practice, the International Court of Justice (ICJ) has at times noted the insufficiency or inconclusiveness of such practice, instead seeking confirmation that “[states’] conduct is ‘evidence of a belief that this practice is rendered obligatory by the existence of a rule of law requiring it.’”149 Trade agreements, for instance, may represent treaty law and may qualify as evidence of general practice, but they are typically entered into by States that have specific economic or political objectives rather than from a desire to embrace obligations arising under international law.150 Further, it is possible that even with respect to ILO conventions, widespread ratification is in part a function of acculturation, insofar as endorsements across a region contribute to socialized acceptance of norms on FOA, reassuring peer countries that protecting rights to association including the right to strike will not place them in an inferior competitive position.151

That said, the ICJ often does infer the existence of opinio juris from a general practice and/or from determinations by national or international tribunals.152 And there are ample reasons to draw such an inference here. To start, FOA is consciously accepted as an obligation by ILO member states not simply through ratification of Convention 87 (covering more than 80 percent of them) but by virtue of membership itself. The ILO Constitution expressly requires support for FOA principles, and these principles are further imbedded through a tripartite governance structure that allocates power-sharing roles to worker organizations alongside governments and employers.153 Thus, ILO members understand there is an underlying obligation to respect FOA in law and practice.154

A second reason is that domestic law can provide relevant evidence regarding the presence of opinio juris among states. Commitments to FOA expressed in national constitutions, statutes, and court decisions are not necessarily evidence of a state’s belief that the principle is international as opposed to domestic law. Nonetheless, the International Law Commission has made clear that evidence of acceptance as law (opinio juris) “may take a wide range of forms,” including but not limited to “official publications; government legal opinions; [and] decisions of national courts.”155 In this regard, the CEACR in 2012 identified 92 countries where “the right to strike is explicitly recognized, including at the constitutional level”; the list includes six countries that have not ratified Convention 87.156

Recognition in domestic law of a right to strike alongside a conscious decision not to ratify Convention 87 could give rise to an inference that these six countries are rejecting the right as a principle of international law. However, as explained earlier, national courts for two of the six non-ratifying countries (Brazil and Kenya) expressly invoke ILO membership and/or principles as guidance in their domestic law decisions. 157 In addition, Canada—a country not listed among the 92 endorsing the right to strike in the 2012 General Survey— has since recognized a constitutional right to strike under national law, relying in part on international law principles including CEACR and CFA determinations. 158 The Canadian Supreme Court had previously been explicit in invoking Convention 87, ICESCR, and ICCPR as “documents [that] reflect not only international consensus but also principles that Canada has committed itself to uphold.”159

Further, a third country in the group of six—South Korea—has affirmed in its trade agreements with the United States and the EU its obligation to “adopt and maintain in its statutes and regulations, and practices” FOA in accordance with the ILO Declaration.160 And in various CFA complaints against South Korea for violating FOA principles, including the right to strike, the Government has disputed the facts of the complaints while at the same time recognizing that such rights are embedded in international law.161 Accordingly, a more relevant reference point in this setting may be that “when States act in conformity with a treaty provision by which they are not bound . . . this may evidence the existence of acceptance as law (opinio juris) in the absence of any explanation to the contrary.”162

Stepping back, domestic law on FOA and the right to strike, which for many countries developed after Convention 87 and its initial applications by the CEACR and CFA, may be viewed in part as a window into countries’ sense of obligation in law and practice. A state may at times adopt labor provisions of a trade agreement for reasons of comity or relative competitive advantage. These reasons may play a more modest role with respect to adoption of certain human rights treaties or ILO conventions. 163 But evidence of practice and obligation in the domestic law sphere—especially when informed by regard for international instruments—seems almost by definition to be a function of acceptance as law rather than susceptibility to strategic motivations. In this regard, there are numerous instances in recent years where governments have expanded their legislative protections for the right to strike following a period of dialogue with the CEACR, and that committee has recognized and applauded the changes in law.164 Of particular relevance to the U.S. setting, these expansions have included assuring the right to strike for public sector employees and prohibiting the hiring of replacements for strikers.165

A third reason to infer opinio juris (in addition to the centrality of FOA principles within the ILO Constitution and the strong evidence of FOA and rightto-strike practice and obligation under domestic law) involves recent statements from high officials in the United Nations indicating that the right to strike is understood by its leaders as CIL. In his 2016 report to the U.N. General Assembly, the U.N. Special Rapporteur on the rights to freedom of peaceful assembly and association explained, “The right to strike has been established in international law for decades, in global and regional instruments, and is also enshrined in the constitutions of at least 90 countries. The right to strike has, in fact, become customary international law.”166

In 2018, responding to a press briefing on a strike by U.N. employees following announced pay cuts, the Deputy Spokesman for the U.N. SecretaryGeneral reiterated the U.N. view that the right to strike is indeed CIL and did so in the context of the right being asserted by public employees not involved in the administration of the state:

Question: Does the Secretary-General believe that U.N. staff have a right to take part in industrial action?

Deputy Spokesman: We believe the right to strike is part of customary international law.167

These statements did not simply materialize in recent times. Two major U.N. Human Rights treaties—the ICESCR and the ICCPR—have been interpreted by their relevant treaty bodies to include a right to strike; these bodies have reaffirmed their joint commitment to the right to strike as part of FOA, and they regularly monitor governments’ record of compliance with this right. 168 And as noted earlier, the two treaties—each ratified by over 80 percent of U.N members—include a clause explicitly identifying respect for ILO Convention 87.

In sum, the principles of FOA including the right to strike would appear to satisfy both prongs of the CIL test. The widely recognized general practice on strikes has sufficient shape and contours: a basic right, three substantive exceptions (public servants involved in administration of the state, essential services in the strict sense of the term, and acute national emergencies), a recognition that strikers retain their employment relationship during the strike itself, and certain procedural prerequisites or attached conditions. 169 There are variations in national practice and also disagreements at the margins about what the right to strike protects, but these aspects are not different in kind from diversity and contests regarding international rights prohibiting child labor, or for that matter domestic constitutional rights involving freedom of expression or the right to bear arms. As for opinio juris, a broad range of sources combine to establish that the general practice stems from a sense of acceptance and obligation: ILO foundation and structure; two widely endorsed United Nations human rights treaties; national constitutions; government representations; domestic legislative and judicial decisions that expressly refer to or impliedly accept international standards and practices; and contemporary U.N. leadership.

#### That prevents harmonization of norms and throws the functioning of international institutions into question – prefer empirics.

Seifert 21 [Achim; 2021; Full Professor of Private Law, German and European Labor Law and Comparative Law at the University of Jena (since 2011). He holds both German State Exams in Law and a PhD of the Johann-Wolfgang-Goethe-University of Frankfurt (1998). After his Habilitation [Post-Doc] in 2006 at the University of Frankfurt and several short-term Replacements at the Universities of Frankfurt and Trier (2006-2008), he became an Associate Professor of European and International Labor Law at the University of Luxembourg (2008). His main fields of interest are the Labor Law of the European Union and Comparative Labor Law, including the methodology of Comparative Law. Achim SEIFERT serves as co-editor of the Comparative Labor Law and Policy Journal (CLLPJ) and is a member of the editorial board of the European Labour Law Journal (ELLJ) as well as of the Revue de droit comparé du travail et de la sécurité sociale (RDCTSS). He is an associated member of the International Academy of Comparative Law (since 2013) and fellow of the European Law Institute (ELI) (since 2014); furthermore he has been member of the Jean-Monnet-Centre of Excellence at the University of Jena (2013-2016). He has been visiting Professor at the Universities of Bordeaux, Nantes, Paris 1 (Panthéon-Sorbonne), Luigi Bocconi/Milan and Leuven (Global Law Programme) and has taught as adjunct professor at the University of Luxembourg between 2011 and 2016; “Book Review,” European Labour Law Journal, <https://sci-hub.se/https://doi.org/10.1177/2031952521994412>] Justin

For several decades, the right to strike has been one of the most controversial parts of the law of the International Labour Organisation (ILO). Even though it has not been explicitly enshrined in the Conventions on the right to freedom of association (especially not in Convention 87 on Freedom of Association and Protection of the Right to Organise (1948) and in Convention 98 on the Application of the Principles of the Right to Organise and to Bargain Collectively (1949)), since the early 1950s, the ILO supervisory bodies have recognised the right to strike as an essential element of trade union rights enabling workers to collectively defend their economic and social interests. Since its seminal recommendation in the United Kingdom of Great Britain and Northern Ireland case of 1952,1 the Governing Body’s Committee on Freedom of Association (CFA) has considered that Article 3 of Convention 87 also guarantees the right to strike, and has developed, since then, detailed ‘case law’ which has been summarised by the International Labour Office in a ‘Digest’ and since 2018 in a ‘Compilation’.2 The Committee of Experts on the Application of Conventions and Recommendations (CEACR), another body established by the ILO Governing Body, has taken the same path since the late 1950s.3 Despite this long-standing interpretive practice of these two important supervisory bodies in respect of Convention No. 87, the right to strike has become controversial since the end of the Cold War. In the 81st session of the International Labour Conference (ILC) in 1994, it was already being challenged by the employers’ group.4 But the Rubicon was definitely crossed in 2012, when the employers’ representatives on the ILO Conference Committee on the Application of Standards (CAS) refused, for the first time, to deal—as it had done previously—with a list of Member States that had seriously violated Conventions of the ILO as long as the workers’ group would not accept a revision of the mandate of the CEACR.5 At the heart of this incident was the recognition of the right to strike by the CEACR even though, according to the view of the employers’ side, the Committee was not empowered to interpret ILO law with binding effect. This incident temporarily resulted in an institutional crisis within the ILO supervisory system, since the ILO’s tripartite structure which underlies the constitution of the ILO presupposes that the three constituents cooperate in good faith within the organisation’s bodies. An attitude of refusal on the part of only one of the constituents therefore necessarily brings into question the functioning of the ILO.

#### Independently frictions in International Law prevent cooperation over international issues.

Brudney 21 [James; 2/8/21; Joseph Crowley Chair in Labor and Employment Law, Fordham Law School; “The Right to Strike as Customary International Law,” THE YALE JOURNAL OF INTERNATIONAL LAW, Vol 46, <https://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=1710&context=yjil>] Justin

It is worth emphasizing this series of developments. United States political diplomacy and input from executive branch experts has helped the transnational legal process to strengthen the international right to strike. The U.S. has been a leading advocate on the international stage promoting both FOA principles and the right to strike—in its trade legislation, bilateral and regional trade agreements, and official positions at the ILO Governing Body. That the U.S. has not ratified Convention 87 does not mean it is somehow undemocratic or improper for U.S. officials to be bound by rules that U.S. influence helped create. To be sure, Sosa recognizes that Congress may “shut the door to the law of nations” explicitly or implicitly by treaties or statutes that occupy the field.271 And there is some domestic law that is inconsistent with the right to strike set forth in CIL. As discussed in Part I.C, this law notably includes a 1935 statutory provision exempting states as “employers” under the NLRA, thereby relegating public employees to state-by-state regulation of FOA and the right to strike; and a 1938 Supreme Court decision allowing private employers to hire permanent replacements for strikers.272 But these expressions of domestic law do not appear to be “controlling” in the relevant sense of addressing or responding to the CIL that is asserted here. The 1935 statutory provision and 1938 Supreme Court decision predate the promulgation of Convention 87 by a decade or more—hence they are not in any way responsive to the existence of FOA or the right to strike at an international level.273 The Court has relied on its 1938 statutory interpretation decision approving of permanent replacements in more recent decades.274 And there were legislative efforts in the early 1990s to overturn the permanent replacement doctrine that did not succeed. 275 It is possible to contend that despite the absence of legislative approval for permanent replacements, the Court’s continuing endorsement of its jurisprudence, and Congress’s failure to override those decisions, are sufficiently controlling in this context. On the other hand, there is a respectable and perhaps persuasive argument that these judicial decisions and instances of congressional inaction do not amount to a sufficiently comprehensive scheme of statutes and regulations addressing the precise issue.276 Relatedly, there is no indication that either the Court or Congress acted with a purpose to preclude the application of CIL in the right-to-strike setting, or even with an awareness that relevant CIL existed.277 In this regard, it is noteworthy that the international right to strike assumed increased visibility and importance beginning in the mid to late 1990s, following elevation of FOA as one of the eight fundamental ILO conventions and the promulgation of the 1998 Declaration. The Supreme Court in the context of admiralty law—relying on the law of nations—has applied recent CIL to overrule its own precedents, or to bypass or distinguish earlier statutory provisions. 278 In doing so, the Court has recognized the primacy of evolving developments in CIL so long as these changes in the law of nations are not directly contradicted by earlier federal statutory text. 279 Violations of CIL, like violations of international law generally, can produce friction between nations that hinders the accomplishment of foreign relations goals.280 As noted earlier, government officials and scholars have expressed concern in recent decades that failure to ratify Convention 87 and other fundamental ILO conventions can undermine U.S. standing on matters of international labor and human rights law.281 At the same time, the U.S. has been a leading advocate on the international stage promoting both FOA principles and the right to strike—in its trade legislation, bilateral and regional trade agreements, and official positions at the ILO Governing Body. And again, while CIL can give way when there is genuinely controlling positive law, such law must be meant to control an otherwise applicable CIL. The mere presence of a relevant statutory provision or judicial decision, without evidence that Congress or the court was aware the CIL existed, is unlikely to qualify. Moreover, if there is a potential conflict between established CIL and sufficiently clear federal statutes, the relative timing of these two sources of law becomes important. The Court has made clear that Congress can override CIL based on subsequent clear legislation.282 It is also well-settled that federal statutes and treaties are equal in authority such that “if a treaty and a federal statute conflict, ‘the one last in date will control the other.’”283 Given the status accorded to CIL as federal law comparable to treaties, it should follow that the last-in-time rule also applies to resolve any differences between an earlierenacted federal statute and a later CIL norm, at least one that meets the Sosa standard of definiteness, specificity, and widespread acceptance.284 Applying the last-in-time rule in our setting, the two most prominent divergences between CIL and existing federal statutory law would be resolved in favor of CIL. The NLRA doctrine allowing employers to permanently replace lawful strikers is not addressed at all in the text. It was derived from the 1935 law as part of a 1938 Supreme Court interpretation that has been relied upon in subsequent Court decisions through the late 1980s. The exemption of state and local government workers from federal law was itself part of the 1935 statute. Both the Court decisions establishing a permanent replacement doctrine and the text exempting state and local governments arose well before—and with no evident awareness of—the establishment and evolution of CIL on FOA and the right to strike. This CIL began emerging in the late 1960s and became fully developed from the late 1990s, continuing to the present.

#### Scenario one is SDG:

#### Harmonizing international labor standards are key to Sustainable Development Goals – compliance is key.

ILO 15 [International Labor Organization; The International Labour Organization is a United Nations agency whose mandate is to advance social and economic justice through setting international labour standards. Founded in October 1919 under the League of Nations, it is the first and oldest specialised agency of the UN; “The benefits of International Labour Standards,” No date stated but most recent event cited is 2015, <https://www.ilo.org/global/standards/introduction-to-international-labour-standards/the-benefits-of-international-labour-standards/lang--en/index.htm>] Justin

International labour standards are first and foremost about the development of people as human beings. In the Declaration of Philadelphia (1944), the international community recognized that “labour is not a commodity”. Labour is not an inanimate product, like an apple or a television set, that can be negotiated for the highest profit or the lowest price. Work is part of everyone’s daily life and is crucial to a person’s dignity, well-being and development as a human being. Economic development should include the creation of jobs and working conditions in which people can work in freedom, safety and dignity. In short, economic development is not undertaken for its own sake, but to improve the lives of human beings. International labour standards are there to ensure that it remains focused on improving the life and dignity of men and women. Decent work resumes the aspirations of humans in relation to work. It brings together access to productive and suitably remunerated work, safety at the workplace and social protection for families, better prospects for personal development and social integration, freedom for individuals to set out their claims, to organize and to participate in decisions that affect their lives, and equality of opportunity and treatment for all men and women. Decent work is not merely an objective, it is a means of achieving the specific targets of the new international programme of sustainable development. At the United Nations General Assembly in September 2015, decent work and the four pillars of the Decent Work Agenda – employment creation, social protection, rights at work and social dialogue – became the central elements of the new Sustainable Development Agenda 2030 . Goal 8 of the 2030 Agenda calls for the promotion of sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all. Moreover, the principal elements of decent work are broadly incorporated into the targets of a large number of the 16 Goals of the United Nations new vision of development. An international legal framework for fair and stable globalization Achieving the goal of decent work in the globalized economy requires action at the international level. The world community is responding to this challenge in part by developing international legal instruments on trade, finance, the environment, human rights and labour. The ILO contributes to this legal framework by elaborating and promoting international labour standards aimed at making sure that economic growth and development go hand-in-hand with the creation of decent work. The ILO’s unique tripartite structure ensures that these standards are backed by governments, employers and workers alike. International labour standards therefore lay down the basic minimum social standards agreed upon by all the players in the global economy. A level playing field An international legal framework on social standards ensures a level playing field in the global economy. It helps governments and employers to avoid the temptation of lowering labour standards in the hope that this could give them a greater comparative advantage in inter- national trade. In the long run, such practices do not benefit anyone. Lowering labour standards can encourage the spread of low-wage, low-skill and high-turnover industries and prevent a country from developing more stable high-skilled employment, while at the same time slowing the economic growth of trade partners. Because international labour standards are minimum standards adopted by governments and the social partners, it is in everyone’s interest to see these rules applied across the board, so that those who do not put them into practice do not undermine the efforts of those who do. A means of improving economic performance International labour standards have been sometimes perceived as being costly and therefore hindering economic development. However, a growing body of research has indicated that compliance with international labour standards is often accompanied by improvements in productivity and economic performance. Minimum wage and working-time standards, and respect for equality, can translate into greater satisfaction and improved performance for workers and reduced staff turnover. Investment in vocational training can result in a better trained workforce and higher employment levels. Safety standards can reduce costly accidents and expenditure on health care. Employment protection can encourage workers to take risks and to innovate. Social protection, such as unemployment schemes, and active labour market policies can facilitate labour market flexibility, and make economic liberalization and privatization sustainable and more acceptable to the public. Freedom of association and collective bargaining can lead to better labour–management consultation and cooperation, thereby improving working conditions, reducing the number of costly labour conflicts and enhancing social stability. The beneficial effects of labour standards do not go unnoticed by foreign investors. Studies have shown that in their criteria for choosing countries in which to invest, foreign investors rank workforce quality and political and social stability above low labour costs. At the same time, there is little evidence that countries which do not respect labour standards are more competitive in the global economy. International labour standards not only respond to changes in the world of work for the protection of workers, but also take into account the needs of sustainable enterprises. A safety net in times of economic crisis Even fast-growing economies with high-skilled workers can experience unforeseen economic downturns. The Asian financial crisis of 1997, the 2000 dot-com bubble burst and the 2008 financial and economic crisis showed how decades of economic growth can be undone by dramatic currency devaluations or falling market prices. For instance, during the 1997 Asian crisis, as well as the 2008 crisis, unemployment increased significantly in many of the countries affected. The disastrous effects of these crises on workers were compounded by the fact that in many of these countries social protection systems, notably unemployment and health insurance, active labour market policies and social dialogue were barely developed. The adoption of an approach that balances macroeconomic and employment goals, while at the same time taking social impacts into account, can help to address these challenges. A strategy for reducing poverty Economic development has always depended on the acceptance of rules. Legislation and functioning legal institutions ensure property rights, the enforcement of contracts, respect for procedure and protection from crime – all legal elements of good governance without which no economy can operate. A market governed by a fair set of rules and institutions is more efficient and brings benefit to everyone. The labour market is no different. Fair labour practices set out in international labour standards and applied through a national legal system ensure an efficient and stable labour market for workers and employers alike. In many developing and transition economies, a large part of the work- force is engaged in the informal economy. Moreover, such countries often lack the capacity to provide effective social justice. Yet international labour standards can also be effective tools in these situations. Most ILO standards apply to all workers, not just those working under formal employment arrangements. Some standards, such as those dealing with homeworkers, migrant and rural workers, and indigenous and tribal peoples, deal specifically with certain areas of the informal economy. The reinforcement of freedom of association, the extension of social protection, the improvement of occupational safety and health, the development of vocational training, and other measures required by international labour standards have proved to be effective strategies in reducing poverty and bringing workers into the formal economy. Furthermore, international labour standards call for the creation of institutions and mechanisms which can enforce labour rights. In combination with a set of defined rights and rules, functioning legal institutions can help formalize the economy and create a climate of trust and order which is essential for economic growth and development. (Note 1 ) The sum of international experience and knowledge International labour standards are the result of discussions among governments, employers and workers, in consultation with experts from around the world. They represent the international consensus on how a particular labour problem could be addressed at the global level and reflect knowledge and experience from all corners of the world. Governments, employers’ and workers’ organizations, international institutions, multinational enterprises and non-governmental organizations can benefit from this knowledge by incorporating the standards in their policies, operational objectives and day-to-day action. The legal nature of the standards means that they can be used in legal systems and administrations at the national level, and as part of the corpus of international law which can bring about greater integration of the international community.

#### That’s key to head off a laundry list of interacting catastrophic risks, the combination of which causes extinction and amplifies every other threat.

Tom Cernev & Richard Fenner 20, Australian National University; Centre for Sustainable Development, Cambridge University Engineering Department, "The importance of achieving foundational Sustainable Development Goals in reducing global risk," Futures, Vol. 115, January 2020, Elsevier. Recut Justin

4.1. Cascading failures Fig. 3 demonstrates that cascade failures can be transmitted through the complex inter-relationships that link the Sustainable Development Goals. Randers, Rockstrom, Stoknes, Goluke, Collste, Cornell, Donges et al. (2018) have suggested that where meeting some SDGs impact negatively on others, this may lead to “crisis and conflict accelerators” and “threat multipliers” resulting in conflicts, instability and migrations. Ecosystem stresses are likely to disproportionately affect the security and social cohesion of fragile and poor communities, amplifying latent tensions which lead to political instabilities that spread far beyond their regions. The resulting “bad fate of the poor will end up affecting the whole global system"(Mastrojeni, 2018). Such possibilities are likely to go beyond incremental damage and lead to runaway collapse. The World Economic Forums’ Global Risks Report for 2018 shows the top five global risks in terms of likelihood and impact have changed from being economic and social in 2008 to environmental and technological in 2018, and are closely aligned with many SDGs (World Economic Forum, 2018). The report notes “that we are much less competent when it comes to dealing with complex risks in systems characterised by feedback loops, tipping points and opaque cause-and-effect relationships that can make intervention problematic”. The most likely risks expected to have the greatest impact currently include extreme weather events natural disasters, cyber attacks, data fraud or theft, failure of climate change mitigation and water crises. These are represented in Fig. 3 by the following exogenous variables. “Climate change” drives the need for Climate Action (SDG 13), “Cyber threat” may adversely impact technology implementation and advancement which will disrupt Sustainable Cities and Communities (SDG 11); Decent Work and Economic Growth (SDG 8) and the rate of introduction of Affordable and Clean Energy (SDG 7), with reductions in these goals having direct consequences in also reducing progress in the other goals which they are closely linked to. “Data Fraud or Threat” has the capacity to inhibit innovation and Industrial Performance (SDG 9), reducing competitiveness (and having the potential to erode societal confidence in governance processes). “Water Crises” (linked with climate change) have a direct impact on Human Health and Well Being (SDG 3) as well as reducing access to Clean Water and Sanitation (SDG 6) and reducing agricultural production which increases Hunger (SDG 2). The causal loop diagram also highlights “Conflict” as a variable (driven by multiple environmental-socio-economic factors) which together with regions most impacted by climate degradation will lead to an increase in migrant refugees enhancing the spread of disease and global pandemic risk, thus impacting directly on Human Health and Well Being (SDG 3) 4.2. Existential and catastrophic risk The level and consequences of these risks may be severe. Existential Risks (ER) have a wide scope, with extreme danger, and are “a risk that threatens the premature extinction of humanity or the permanent and drastic destruction of its potential for desirable future development” (Farquhar et al., 2017,) essentially being an event or scenario that is “transgenerational in scope and terminal in intensity” (Baum & Handoh, 2014). With a smaller scope, and lower level of severity, global catastrophic risk is defined as a scenario or event that results in at least 10 million fatalities, or $10 trillion in damages (Bostrom & Ćirković, 2008). Global Catastrophic Risk (GCR) events are those which are global, but they are durable in that humanity is able to recover from them (Bostrom & Ćirković, 2008; Cotton-Barratt, Farquhar, Halstead, Schubert, & Snyder-Beattie, 2016) but which still have a long-term impact (Turchin & Denkenberger, 2018b). Achieving the Sustainable Development Goals can be considered to be a means of reducing the long-term global catastrophic and existential risks for humanity. Conversely if the targets represented across the SDGs remain unachieved there is the potential for these forms of risk to develop. This association combined with the likely emergence of new challenges over the next decades (Cook, Inayatullah, Burgman, Sutherland, & Wintle, 2014) means that it is of great value to identify points within the systems representations of the Sustainable Development Goals that could both lead to global catastrophic risk and existential risk, and conversely that could act as prevention, or leverage points in order to avoid such outcomes. This identification in turn enables sensible policy responses to be constructed (Sutherland & Woodroof, 2009). Whilst existential threats are unlikely, there is extensive peril in global catastrophic risks. Despite being lesser in severity than existential risks, they increase the likelihood of human extinction (Turchin & Denkenberger, 2018a) through chain reactions (Turchin & Denkenberger, 2018a), and inhibiting humanity’s response to other risks (Farquhar et al., 2017). It is necessary to consider risks that may seem small, as when acting together, they can have extensive consequences (Tonn, 2009). Furthermore, the high adaptability potential of humans, and society, means that for humanity to become extinct, it is most likely that there would be a series of events that culminate in extinction as opposed to one large scale event (Tonn & MacGregor, 2009; Tonn, 2009). Whilst the prospect of existential risk, or global catastrophic risk can seem distant, the Stern Review on the Economics of Climate Change estimated the risk of extinction for humanity as 0.1 % annually, which accumulates to provide the risk of extinction over the next century as 9.5 % (Cotton-Barratt et al., 2016). With respect to identifying these risks, it is known that in particular, “positive feedback loops… represent the gravest existential risks” (Kareiva & Carranza, 2018), with pollution also having the potential to pose an existential risk. With respect to reinforcing feedback loops, there is particular concern about the effects of time delay, and the level of uncertainty when feedback loops interact (Kareiva & Carranza, 2018). It is difficult to identify the exact thresholds that are associated with tipping points (Moore, 2018), which leads to global catastrophic risk or existential risk, and thus it is necessary to understand the events that can lead to existential risks (Kareiva & Carranza, 2018). Table 1 identifies possible global catastrophic risks and existential risks as reported in the literature and from Fig. 3 these are aligned to the Sustainable Development Goals they impact on the most. 4.3. Linking risks with progress in the SDGs Generally it is the Outcome/Foundational and Human input SDGs that are most directly related. For example as the movement of refugees increases pandemic risk, poverty levels in low and middle income countries increase reducing the health of the population, and so restricting access to education which further enhances poverty and birth rates rise as family sizes increases generating unsustainable population growth which furthers the migration of refugees (Fig. 5). Fig. 3 shows that leverage points to reduce refugees lies in SDG 16 (Peace Justice and Strong Institutions), reducing malnutrition through alleviating SDG 2 (Zero Hunger) and taking SDG 13 (Climate Action) to avoid the mass movement of people to avoid the impacts of global warming. Global warming itself will drive disruptive changes in both terrestial and aquatic ecosystems affecting SDG 15 (Life on Land) and SDG 14 (Life Below Water) adding to their vulnerability to increases in pollution driven by a growing economy. Loop B (in Fig. 4)shows the constraints associated with SDG 13 (Climate Action) may slow the economic investment in industry and infrastructure reducing the pollution generated, encouraging adoption of SDG 7 (Affordable and Clean Energy) whilst stimulating carbon reduction and measures such as afforestation, which will also improve the foundational environmental goals. Depletion of resources and biodiversity are strongly linked to SDG 12 (Responsible Consumption and Production) through measures such as halving global waste, reducing waste generation through recycling reuse and reduction schemes, and striving for more efficient industrial processes. The more resources that are used, the less responsible is Consumption and Production which may thus reduce biodiversity (Fig. 3) and increase the amounts of wastes accumulating in the environment. The final driver of Global Catastrophic Risk is an agricultural shortfall which will increase global Hunger (SDG 2) and widen the Inequality (SDG 10) between rich and poor nations and individuals. Quality Education (SDG 4) is important as a key leverage point to stimulate the generation and adoption of new technologies to improve energy (SDG 7) and water supplies (6) which can enhance agricultural production. Such linkages are convincingly examined and demonstrated in the recent film “The Boy Who Harnessed the Wind” (2019), based on a factual story of water shortages in Malawi in the mid 2000s. These examples may appear self evident, but it is the connections between the goals and how they adjust together that is important to consider so the consequence of policy actions in one area can be fully understood. Because of the underlying system structures global threats can quickly transmit through the system. Water Crises will limit the water available for agriculture and basic needs which in turn will stimulate a decline in Gender Equality (SDG 5). Technology disruption from cyber attacks will restrict the ability to operate Sustainable Cities and Communities (SDG 11) and potentially expose populations to extreme events by disrupting transport, health services, and the ability to pay for adaptation and mitigation of climate related threats from a weakened economy. Conflict (in all forms) will increase refugees and climate change provides the backdrop against which all these interactions will play out.

### 1AC – Plan

#### Plan text: The United States of America ought to recognize an unconditional right of workers to strike.

#### Courts are normal means and can enforce the right to strike as Customary International Law.

Brudney 21 [James; 2/8/21; Joseph Crowley Chair in Labor and Employment Law, Fordham Law School; “The Right to Strike as Customary International Law,” THE YALE JOURNAL OF INTERNATIONAL LAW, Vol 46, <https://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=1710&context=yjil>] Justin \*\* Brackets in original

In order for the international right to strike to receive protection in a U.S. domestic law setting, this CIL right must be cognizable in federal court. Workers asserting such a right would be seeking direct application of CIL, stemming from legal principles set forth in The Paquete Habana233 and subsequent cases. The Paquete Habana involved U.S. seizure of two Spanish fishing vessels during the Spanish American War. The Court relied on customary international law to hold that the vessels and their cargoes were exempt from capture as prizes of war.234 Justice Gray’s oft-quoted language, recognizing that CIL is part of the law of the United States, is as follows: International law is part of our law and must be ascertained and administered by the courts of justice of appropriate jurisdiction as often as questions of right depending upon it are duly presented for their determination. For this purpose, where there is no treaty and no controlling executive or legislative act or judicial decision, resort must be had to the customs and usages of civilized nations . . . . 235 In a number of decisions beginning in the 1960s, the Court has applied CIL rules when determining the legal status of submerged offshore areas, helping guide its application of federal statutes and treaties implicating the law of the seas. 236 The Court has also invoked CIL in determining when an instrumentality of a sovereign state becomes the “alter ego” of that state, a question not controlled by the relevant foreign sovereign immunity statute.237 Relatedly, the Court in Banco Nacional de Cuba v. Sabbatino238 relied on a judge-made principle of U.S. foreign relations law—the Act of State doctrine—to decline to examine the validity of the taking of property by a foreign sovereign government within its own territory.239 Turning to lower federal courts, the courts of appeals have regularly applied the Vienna Convention on the Law of Treaties “as an articulation of the customary international law of treaty interpretation, even though the United States is not a party to the treaty itself.”240 And at least one district court has recognized FOA and the right to organize as CIL when denying a motion to dismiss.241 Finally, the executive branch also has applied CIL in certain circumstances. Although the U.S. voted against adoption of the 1982 UN Convention on the Law of the Seas, the U.S. government accepts its key provisions regarding the maximum breadth of territorial sea and the extent of exclusive economic zones as CIL.242 In short, U.S. courts and executive branch officials have directly applied CIL and been guided by its teachings in a range of doctrinal settings. 243 As noted earlier, CIL on human rights has been deemed applicable in U.S. courts for suitably defined misconduct occurring in other countries. 244 These doctrinal precedents do not involve direct application of CIL in a domestic law setting akin to the labor and human rights claims being proposed here. That said, lower courts have invoked CIL when applying federal rules of decision in a range of domestic law contexts. Indeed, the use of CIL when applying and construing various federal statutes has increased markedly in recent decades.245 Examples include its use when applying an armed conflict statute to establish limits on detention of a U.S. citizen within the U.S.;246 when construing the same statute to help establish requirements for release and repatriation of a foreign national held on U.S. soil;247 and when limiting the scope of an immigration statute’s authorization of detention.248 In addition, CIL has been applied to help courts apply the choice between indefinite detention and exclusion under a different immigration statute,249 and to assist judicial construction of a statute regulating recovery of sunken warships in U.S. waters. 250 It is not obvious why CIL should be deemed inapplicable when construing federal statutes that implicate appropriately qualified labor/human rights misconduct occurring within our borders.251 Moreover, as previously noted, a number of other countries have accepted the right to strike as a principle of international law when applying their own domestic law despite their conscious decision not to ratify Convention 87.252 Once one accepts that recognized CIL has substantive traction in a domestic law setting, the focus should be on whether this CIL can be situated in relation to certain procedural or jurisdictional limitations that characterize the U.S. judicial context. Accordingly, application of CIL to sustain claims based on FOA and the right to strike requires consideration of how this CIL relates to other aspects of U.S. law. B. CIL as Federal Common Law A threshold question is whether U.S. courts should determine matters of CIL as federal common law or as state law in light of the Erie doctrine.253 The question has been extensively debated by able international law scholars,254 and I will not attempt to add new value in this setting. I am persuaded that CIL should be understood and litigated as federal common law, for reasons presented at length in a range of sources. 255 Indeed, as one international law scholar has recently and thoroughly explained, “[t]he law of nations was the original federal common law.”256 The basic contours of this position were set forth by the Supreme Court in Sabbatino, when it held that the Act of State doctrine is federal law, binding on the states and not within the scope of Erie. 257 In the words of Justice Harlan for an eight-member majority, “an issue concerned with a basic choice regarding the competence and function of the Judiciary and National Executive in ordering our relationships with other members of the international community must be treated exclusively as an aspect of federal law.”258 Subsequently, leading commentators have joined the Court in concluding that Erie was never meant to apply to CIL;259 that federal courts’ incorporation of the CIL of labor and human rights follows post-Erie precedent recognizing and helping to create a federal common law for labor relations and for other uniquely federal interests;260 that CIL may reflect developments in the international arena of labor and human rights in addition to filling gaps with respect to jurisdictional statutes such as the ATS and the Torture Victim Prevention Act (TVPA); 261 and that CIL remains subject to the democratic checks of supervision, endorsement, or revision by the federal political branches.262 Relying on the weight of these arguments in Boyle v. United Technologies Corp., Justice Scalia for the Court recognized that a few areas involving “uniquely federal interests” are committed to federal control, including the development of federal common law, and he cited Court precedent on CIL as one such area.263 C. The Presence or Absence of Controlling Law As indicated in The Paquete Habana excerpt above, an important additional consideration is whether there is a treaty or any “controlling executive or legislative act or judicial decision” that would preclude federal courts from recognizing a right to strike as CIL. Lower court decisions invoking the “controlling law” principle from Paquete Habana have applied a fairly rigorous standard, relying on a comprehensive scheme of statutes and regulations addressing the precise issue,264 or on a treaty ratified by the U.S. directed to the same problem.265 These lower courts also have invoked Supreme Court statements that focus on the central role of legislative expression when concluding that certain controlling congressional acts were taken with a purpose to preclude the application of CIL to a particular situation.266 Under this standard, controlling U.S. domestic law does not preclude federal courts’ authority to recognize a right to strike as CIL; on the contrary, it arguably supports such authority. As an ILO member, the U.S. is a party to the 1944 Declaration of Philadelphia, the 1998 Declaration on Fundamental Principles and Rights at Work, and the 2008 Declaration on Social Justice for a Fair Globalization.267 Each of these core ILO commitments specifies the fundamental importance of FOA. Congress in two separate trade statutes has incorporated FOA as an “internationally recognized worker right.”268 In addition, the U.S. has ratified the ICCPR, which has incorporated the right to strike as part of FOA, and has signed the ICESCR, which expressly recognizes that right within its text. 269 And both the Administration’s 2015 statement at ILO Governing Body proceedings and its most recent trade agreement, drafted and executed by the Trump Administration, have specified that the right to strike is an integral part of FOA.270

#### Current laws are ambiguous and there is Cause of Action.

Brudney 21 [James; 2/8/21; Joseph Crowley Chair in Labor and Employment Law, Fordham Law School; “The Right to Strike as Customary International Law,” THE YALE JOURNAL OF INTERNATIONAL LAW, Vol 46, <https://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=1710&context=yjil>] Justin \*\* Brackets in original

The D.C. Circuit in Reich relied on the canon disfavoring implied repeals, because the later-enacted Procurement Act (on which the Executive Order was based) did not contradict the NLRA itself.313 By contrast, the later-evolved CIL on the right to strike does directly contradict the text and application of the NLRA. As evidenced by the CEACR General Survey, the CFA Compilation, and numerous other transnational and national sources, there is a direct conflict between CIL and the Supreme Court interpretation of the NLRA on permanent replacement, as well as the NLRA provisions declining to apply federal law to strikes by public employees. Regarding the permanent replacement of private strikers, a different canon than the one disfavoring implied repeals becomes important. The Charming Betsy canon provides that when legislation is ambiguous, it should be construed to conform to international law, including the “law of nations” or CIL.314 Federal courts have made clear that they will apply the Charming Betsy principle if conflict exists between CIL and statutes that are ambiguous or inconclusive.315 Thus, a federal appeals court—recognizing a “clear international prohibition” against prolonged and arbitrary detention, evidenced inter alia in the ICCPR— construed an ambiguous statutory immigration provision so as not to authorize the indefinite detention of removable aliens. 316 And a district court—relying on a ratified OECD Convention—construed an ambiguous criminal statute so as to authorize broad prosecution of bribes involving officials of State-owned enterprises. 317 At the same time, lower courts have indicated that the Charming Betsy canon comes into play only when the statute itself is ambiguous. “It is always the case that clear congressional action trumps customary international law and previously enacted treaties.”318 When a statute makes plain Congress’s intent, “Article III courts . . . must enforce the intent of Congressirrespective of whether the statute conforms to customary international law.”319 In this context, the permanent replacement doctrine is best understood as reflecting not clear congressional action but rather an inconclusive statutory text. When the Supreme Court grafted a permanent replacement doctrine onto the NLRA in 1938, it acknowledged that the doctrine was not based on any language in the text itself.320 Statutory amendments from 1947 and 1959 make no reference to an employer’s right to hire permanent replacements for lawful strikers. The only mention of strikers not entitled to reinstatement is language added in 1947 and modified in 1959, 321 discussing voting eligibility for employees engaged in an economic strike who are not entitled to reinstatement. But that reference, in a section titled “Representatives and Elections” that is unrelated to the section dealing with lawfulness of employer practices, is at best ambiguous. 322 Non-entitlement to reinstatement could be for various reasons, and the agency is given broad discretion to determine voter eligibility “consistent with the purposes and provisions of this subchapter.”323 As previously noted, subsequent Supreme Court decisions have invoked the permanent replacement doctrine.324 Yet still other Court decisions are arguably inconsistent with Mackay Radio, 325 and the legal basis for allowing permanent replacements has been harshly criticized for decades.326 In the early 1990s, Congress came close to prohibiting the doctrine, while making no textual changes during its effort. 327 Overall, continued reliance on a controversial Court decision that construed statutory silence, and instances of congressional failures to act, would not appear to qualify as unambiguous statutory action trumping the CIL that has developed during and after the Court actions and congressional inactions, and that is now well-established. As discussed in Section III.C, the Supreme Court in admiralty law has overruled precedents or distinguished statutes when newer developments in CIL justify such action.328 In this setting, the Charming Betsy canon could encourage an updated construction of the NLRA, essentially forcing the Court to rethink its position. Regarding the prohibition on coverage for state employers, this statutory language is unambiguous and therefore the Charming Betsy canon has no application. The conflict here involves the United States allowing the states unlimited rights to control the strike-related activities of their employees. As explained above, the United States has justified this unlimited right of control before the CFA by relying on the dual sovereignty of federalism as a constitutional matter.329 But that is not obviously applicable after Garcia altered the constitutional equation in 1985 with respect to laws of general applicability. Moreover, CIL on the right to strike comes into its own long after the 1938 exclusion ofstatesfrom federalstatutory coverage. Instead, the U.S.should grant injunctive relief prohibiting states from violating CIL regarding the right to strike, at least until Congress has addressed the issue.

#### Unconditional means preventing from adding additional exceptions to international law.

Chow and Schoenbaum 17 [Daniel Chow and Thomas Schoenbaum; 2017; Professor Chow served as a law clerk to the Honorable Constance Baker Motley, chief judge for the Southern District of New York, following graduation from law school, and then became an associate with Debevoise and Plimpton in New York. He came to Ohio State in 1985 and teaches International Law, International Transactions, Jurisprudence, Asian Law, and Property. He is a member of Phi Beta Kappa, Thomas J. Schoenbaum is presently the Harold S. Shefelman Professor of Law at the University of Washington in Seattle. He received his Juris Doctor degree from the University of Michigan and his PhD degree from Gonville and Caius College, University of Cambridge (UK). He is also Research Professor of Law at George Washington University in Washington DC. He is a practicing lawyer, admitted in several U.S. states and before the Bar of the Supreme Court of the United States. He has been a professor at the University of North Carolina at Chapel Hill and was Associate Dean at Tulane University in New Orleans, “International Trade Law: Problems, Cases, and Materials,” Aspen Casebook Study] Justin

1. Belgian Family Allowances helped to establish two basic principles of GATT jurisprudence: MFN applies to internal measures (in this case the 7.5 percent levy), and the same treatment extended to France and others (foregoing of the levy) must be extended unconditionally to all other WTO members. The unconditional extension of MFN must occur even if Norway or Denmark did not have a system of family allowances. While Belgian Family Allowances interprets the unconditional extension of MFN to mean without any conditions, it is also possible to interpret this requirement to prohibit any additional conditions beyond what is required of the original recipient of the benefit or privilege. See Matsushita, Schoenbaum, Mavroidis and Hahn The World Trade Organization: Law, Practice and Policy 167-177 (3d ed. 2015).

#### Reject “strikes bad” offense – the aff increases agreements, while decreasing strikes.

CHRIS WHITE 08, Chris White has a Law/Arts degree from the University of Adelaide in South Australia. He was Industrial Officer for the Australian Workers Union and the Liquor Hospitality and Miscellaneous Workers Union. He was for 17 years an elected official of the United Trades and Labor Council of South Australia, the last period as Secretary. He now lives in Canberra, capital of Australia, researches labour law, does part-time work for unions and sessional tutoring in Politics at the Australian National University. See posts on the right to strike on his blog, http://chriswhiteonline.org June 2009, (“FIREWALLING THE RIGHT TO STRIKE IN AUSTRALIA?,” 10 November, 2008, PDF) Justin

2 ‘Strikes will erupt everywhere’ line This is again just not reality. Strikes do not simply erupt if they become legal. Countries that have a collective bargaining system that has an effective right to strike and a system of preventing and settling disputes often have fewer strikes. Right-wing politicians assert policy to repress strikes, but Romeyn (2008) argues it is not a power balance. Waters (1982) shows there are deeper and more significant economic and workplace issues contributing to strikes. Paradoxically, a key factor in producing strikes is the belief by right-wing politicians that they can be eliminated. History shows that under repressive anti-strike regimes, workers still struggle and take industrial action to defend their interests. The issue for unionists is: are we slaves or are we to be free?

### 1AC – Framing

#### The standard is maximizing expected well-being – to clarify, saving lives. Calc indicts don’t link—my framework evaluates offense—pandemics is bad because as far as we know, it would cause suffering.

#### 1] No intent-foresight distinction for states.

Enoch 07 Enoch, D [The Faculty of Law, The Hebrew Unviersity, Mount Scopus Campus, Jersusalem]. (2007). INTENDING, FORESEEING, AND THE STATE. Legal Theory, 13(02). doi:10.1017/s1352325207070048 https://www.cambridge.org/core/journals/legal-theory/article/intending-foreseeing-and-the-state/76B18896B94D5490ED0512D8E8DC54B2

The general difficulty of the intending-foreseeing distinction here stemmed, you will recall, from the feeling that attempting to pick and choose among the foreseen consequences of one’s actions those one is more and those one is less responsible for looks more like the preparation of a defense than like a genuine attempt to determine what is to be done. Hiding behind the intending-foreseeing distinction seems like an attempt to evade responsibility, and so thinking about the distinction in terms of responsibility serves 39. Anderson & Pildes, supra note 38. I will use this text as my example of an expressive theory here. 40. See id. at 1554, 1564. 41. For a general critique, see Mathew D. Adler, Expressive Theories of Law: A Skeptical Overview, 148 U. PA. L. REV. 1363 (1999–2000). 42. As Adler repeatedly notes, the understanding of expression Anderson & Pildes work with is amazingly broad, so that “To express an attitude through action is to act on the reasons the attitude gives us”; Anderson & Pildes, supra note 38, at 1510. If this is so, it seems that expression drops out of the picture and everything done with it can be done directly in terms of reasons. 43. This may be true of what Anderson and Pildes have in mind when they say that “expressive norms regulate actions by regulating the acceptable justifications for doing them”; id. at 1511. http://journals.cambridge.org Downloaded: 03 Aug 2014 IP address: 134.153.184.170 Intending, Foreseeing, and the State 91 to reduce even further the plausibility of attributing to it intrinsic moral significance. This consideration—however weighty in general—seems to me very weighty when applied to state action and to the decisions of state officials. For perhaps it may be argued that individuals are not required to undertake a global perspective, one that equally takes into account all foreseen consequences of their actions. Perhaps, in other words, individuals are entitled to (roughly) settle for having a good will, and beyond that let chips fall where they may. But this is precisely what stateswomen and statesmen—and certainly states—are not entitled to settle for.44 In making policy decisions, it is precisely the global (or at least statewide, or nationwide, or something of this sort) perspective that must be undertaken. Perhaps, for instance, an individual doctor is entitled to give her patient a scarce drug without thinking about tomorrow’s patients (I say “perhaps” because I am genuinely not sure about this), but surely when a state committee tries to formulate rules for the allocation of scarce medical drugs and treatments, it cannot hide behind the intending-foreseeing distinction, arguing that if it allows45 the doctor to give the drug to today’s patient, the death of tomorrow’s patient is merely foreseen and not intended. When making a policy-decision, this is clearly unacceptable. Or think about it this way (I follow Daryl Levinson here):46 perhaps restrictions on the responsibility of individuals are justified because individuals are autonomous, because much of the value in their lives comes from personal pursuits and relationships that are possible only if their responsibility for what goes on in the (more impersonal) world is restricted. But none of this is true of states and governments. They have no special relationships and pursuits, no personal interests, no autonomous lives to lead in anything like the sense in which these ideas are plausible when applied to individuals persons. So there is no reason to restrict the responsibility of states in anything like the way the responsibility of individuals is arguably restricted.47 States and state officials have much more comprehensive responsibilities than individuals do. Hiding behind the intending-foreseeing distinction thus more clearly constitutes an evasion of responsibility in the case of the former. So the evading-responsibility worry has much more force against the intending-foreseeing distinction when applied to state action than elsewhere.

#### 2] Only consequentialism explains degrees of wrongness—if I break a promise to meet up for lunch, that is not as bad as breaking a promise to take a dying person to the hospital. Only the consequences of breaking the promise explain why the second one is much worse than the first which is the most intuitive.

#### Outweighs- A] Parsimony- metaphysics relies on long chains of questionable claims that make conclusions less likely. B] Hijacks- intuitions are inevitable since even every framework must take some unjustified assumption as a starting point.

#### 3] No act-omission distinction—

#### A] Governments are culpable for omissions cuz their purpose is to protect the constituency – otherwise they would have no obligation to make murder illegal. Actor spec o/w – different agents have different ethical standings that affect their obligations and considerations.

#### B] Logic---intentional inaction is action.

Rachels 01

(James Rachels, Ph.D. in 1967 from the University of North Carolina, Chapel Hill. Taught at the University of Richmond, New York University, the University of Miami, Duke University, and the University of Alabama at Birmingham. “Killing and Letting Die.” http://www.jamesrachels.org/killing.pdf)

So what is the difference between causing and allowing? What real difference is marked by those words? The most obvious ways of attempting to draw the distinction won’t work. For example, suppose we say it is the difference between action and inaction--when we cause an outcome, we do something, but when we merely allow it to happen, we passively stand by and do nothing. This won’t work because, when we allow something to happen, we do perform at least one act: the act of allowing it to happen. The problem is that the distinction between doing something and not doing something is relative to the specification of what is or is not done--if I allow someone to die, I do not save him, but I do let him die. It is tempting to say the difference between action and inaction is the difference between moving one’s body and not moving one’s body; but that does not help. When we allow something to happen, we are typically moving our bodies in all sorts of ways. If I allow you to die by running away, I may be moving my body very rapidly.

#### C] The problem of disagreement – resolving a priori conflicts requires indicting the epistemological basis of one’s judgement with a reliable process for deriving moral truths which is impossible given widespread moral disagreement about non verifiable a priori truth – grounding ethics with verifiable natural facts solve

#### Impact calc –

#### 1] Extinction outweighs: A] Reversibility- it forecloses the alternative because we can’t improve society if we are all dead B] Structural violence- death causes suffering because people can’t get access to resources and basic necessities C] Objectivity- body count is the most objective way to calculate impacts because comparing suffering is unethical D] Uncertainty- if we’re unsure about which interpretation of the world is true, we should preserve the world to keep debating about it

#### The role of the ballot is to evaluate the desirability of the aff policy vs. a comparative policy option:

#### Resolved requires policy action

Louisiana State Legislature (<https://www.legis.la.gov/legis/Glossary.aspx>) Ngong

**Resolution**

**A legislative instrument** that generally is **used for** making declarations, **stating policies**, and making decisions where some other form is not required. A bill includes the constitutionally required enacting clause; a resolution **uses the term "resolved".** Not subject to a time limit for introduction nor to governor's veto. ( Const. Art. III, §17(B) and House Rules 8.11 , 13.1 , 6.8 , and 7.4 and Senate Rules 10.9, 13.5 and 15.1)

#### NSDA defines words

NSDA National Speech and Debate Association, “2021 November/December Topic Analysis”, <https://www.speechanddebate.org/wp-content/uploads/2021-November_December-Topic-Analysis_EB.pdf> mvp

Just Government: In this resolution, the phrase “a just government” can be defined slightly differently depending on the framework that is used. Justice will likely be a common value on this topic in traditional LD circuits. Even if they are not using justice as a value, debaters may find it helpful to utilize their value and criterion to establish what constitutes a just government so that they are able to better examine the obligations that a government has to its people.

Ought: As the heroes at Merriam Webster remind us, ought is used to express duty or obligation. In this resolution, ought is used in a fairly standard way, to indicate that the debaters should evaluate what obligation a just government has to its citizens.

Recognize: A general definition of recognize can be found here. In the context of the arguments that will likely unfold around this topic, “recognize” is an interesting word choice because it has a few different interpretations. When referring to a government action, the word “recognize” can be used to describe any sort of acknowledgement or statement supporting (or condemning) an action or event. If there is no legal connection, “recognizing” a right does not necessarily imply an enforcement mechanism. That said, in many countries, employees who strike in a way that is considered lawful are given certain protections, such as prohibiting employers from terminating employees on strike.

Unconditional: This is a simple word that will likely be the crux of what a lot of debates on this topic revolve around. In the status quo of most countries, strikes are considered to be lawful or not, depending on whether the participants follow the legal conditions for striking. The denotative definition of unconditional can be found here but essentially, this word in the resolution calls into question whether there are conditions, stipulations, or circumstances where governments should not support the right to strike.

Strike: The Encyclopedia Britannica gives us a definition of a strike as a “collective refusal by employees to work under the conditions required by employers.” Strikes take place in a variety 2 of forms across the world and can be implemented for a variety of reasons such as a desire to increase wages, improve working conditions, or form a union.

#### A

<https://www.merriam-webster.com/dictionary/a>

a indefinite article

1—used as a function word before singular nouns when the referent is unspecified

#### To

https://www.collinsdictionary.com/us/dictionary/english/to

toward or into the condition of

#### The

<https://www.merriam-webster.com/dictionary/the>

—used as a function word to indicate that a following noun or noun equivalent is definite or has been previously specified by context or by circumstance