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**Gazing into World Society:  
A System-Based Approach to Global Governance**

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# Gazing into World Society: A System-Based Approach to Global Governance

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## Abstract

The recent global polycrisis, ranging from the United States – China trade war to the Russia-Ukraine war, has ushered in a new zeitgeist of de-globalization within the Western world. An acute tension emerges between de-globalists and globalists. The root of these diverging views on globalization is that each camp makes sense of the world from its own perspective. In particular, traditional Western scholars are besotted with methodical individualism and therefore often mistake a histo-structural shift for a matter of agency, such as policy choices. While this agential framework may provide a rigorous micro analysis on a particular event, they are hardly capable of presenting a big macro picture. This Article seeks to remedy this theoretical deficiency by drawing on Niklas Luhmann's systems theory. The systems theory postulates that world society qua system is comprised of different subsystems, such as politics and economy, which are operationally closed (autopoietic) yet cognitively open (structurally coupled) to each other. It demonstrates how these different subsystems may observe, and construct, different realities, such as globalization and de-globalization, based on each unique operational logic. This Article makes a critical observation that such functional differentiation increases complexities within world society and render it vulnerable to inter-systemic tensions. It also explores various ways in which law may manage these complexities and tensions. This Article concludes that the evolution of world society does not necessarily guarantee a teleological progress and that as complexities increase we must become inured with inevitable uncertainties.

## Gazing into World Society: A System-Based Approach to Global Governance

Sungjoon Cho<sup>^</sup>

*“If you gaze for long into an abyss,  
the abyss gazes also into you.”<sup>1</sup>*

### Introduction

The world is on fire. Its “polycrisis”<sup>2</sup> has emerged with three apocalyptic riders: the United State – China trade war; the COVID-19 pandemic; the Russia-Ukraine war. This train of tectonic developments has led some pundits to declare the demise of globalization or “de-globalization.”<sup>3</sup> De-globalists fear that this polycrisis will destroy the international business ecosystem and drive us to quasi-autarky. Others disagree.<sup>4</sup> They argue that such declaration is premature.<sup>5</sup> After all, the United States – China trade hit a

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<sup>1</sup> FRIEDRICH NIETZSCHE, *BEYOND GOOD AND EVIL: PRELUDE TO A PHILOSOPHY OF THE FUTURE*, 69 (Judith Norman ed. and trans., Rolf-Peter Horstmann ed., Cambridge University Press 2001) (1886).

<sup>2</sup> Adam Tooze, *The West Asian Polycrisis - From Afghanistan to Lebanon*, CHARTBOOK (Dec. 4, 2021), <https://adamtooze.substack.com/p/chartbook-56-the-west-asian-polycrisis>; Adam Tooze, *Three Ways to Read the ‘Deglobalization’ Debate*, FIN. TIMES (Jan. 30, 2023), <https://www.ft.com/content/b3f41263-88d9-4012-aafc-145f0327678f> (“A future world economy might be made up of a patchwork of antagonistic coalitions divided by more or less visible data curtains.”); *Global Risks Report 2023*, WORLD ECON. F. (Jan. 11, 2023), <https://www.weforum.org/reports/global-risks-report-2023/> (“Eroding geopolitical cooperation will have ripple effects across the global risks landscape over the medium term, including contributing to a potential polycrisis of interrelated environmental, geopolitical and socioeconomic risks.”).

<sup>3</sup> Daniel Flatley, *US-China Trade Is Close to a Record, Defying Talk of Decoupling*, BLOOMBERG (Jan. 16, 2023), <https://www.bloomberg.com/news/articles/2023-01-17/us-china-trade-is-close-to-a-record-defying-talk-of-decoupling?embedded-checkout=true>. In this article, de-globalization is distinguished from “localization” by which multinational enterprises attempt to customize their manufacturing and marketing into local terms and conditions. See also Adrian Wooldridge, *Deglobalization Is Not Just for Countries*, BLOOMBERG (July 19, 2023), <https://www.bloomberg.com/opinion/articles/2023-07-20/deglobalization-is-not-just-for-countries?embedded-checkout=true>.

<sup>4</sup> Niall Ferguson, *Take It from K-Pop’s Finest: Globalization Lives!*, BLOOMBERG (Jan. 28, 2023), <https://www.bloomberg.com/opinion/articles/2023-01-29/from-k-pop-to-tiktok-globalization-lives-niall-ferguson>; Richard Baldwin, *The Peak Globalization Myth: Part I*, CEPR (Aug. 31, 2022), <https://cepr.org/voxeu/columns/peak-globalisation-myth-part-1>.

<sup>5</sup> See e.g., *Global Trade Update*, UNITED NATIONS (February 2022), [https://unctad.org/system/files/official-document/ditcinf2022d1\\_en.pdf](https://unctad.org/system/files/official-document/ditcinf2022d1_en.pdf); Henry Huiyao Wang, *Globalization Isn’t Dead, It’s Just Not American Anymore*, BLOOMBERG (May 6, 2022) <https://www.bloomberg.com/opinion/articles/2022-05-07/u-s-china-cold-war-hasn-t-killed-globalization-yet?embedded-checkout=true>.

record high last year<sup>6</sup>; even one year after Russia-Ukraine war, most Western companies have refused to withdraw from Russian business.<sup>7</sup> No matter how inconvenient the truth might be, the surface political reality has been overshadowed by the hard economic reality on the ground. Given such complexity, how should we understand the status quo of world society of our lifetime? Is it integrating or disintegrating?

This Article attempts to answer these questions from a macro, systemic standpoint, in particular through a particular theoretical optic provided by Niklas Luhmann. Luhmann's systems theory<sup>8</sup> offers an innovative way of diagnosing the current affairs transpiring in the global sphere under new theoretical underpinnings. This Article intends to demonstrate how different subsystems, such as (local) politics and (global) economy, observe, and construct, different realities, such as globalization or de-globalization, based on their unique operational logic and mechanism. In doing so, this Article explicates how politics and economy are structurally coupled.

Traditionally, the study of global affairs belongs to the discipline of political science that explores the intersection of politics and economy under the banner of "political economy."<sup>9</sup> Yet, most theories of political economy tend to analytically prioritize *agency*

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<sup>6</sup> Imports and exports between the U.S. and China totalled \$690.6 billion in 2022, breaking the previous high of 669.84 billion in 2018. Monica Miller, *U.S. – China Trade Hits Record High Despite Rising Tensions*, BBC (Feb. 8, 2023), <https://www.bbc.com/news/business-64563855>; Yihan Ma, *Total Value of U.S. Trade in Goods (Import and Export) With China from 2012-2022*, STATISTA (2023), <https://www.statista.com/statistics/277679/total-value-of-us-trade-in-goods-with-china-since-2006/>.

<sup>7</sup> This live document tracks the major firms and corporations which have continued to operate in Russia since the Russian invasion. *Over 1,000 Companies Have Curtailed Operations in Russia – But Some Remain*, YALE SCH. OF MGMT. (<https://som.yale.edu/story/2022/over-1000-companies-have-curtailed-operations-russia-some-remain>) (Oct. 10, 2023); see also Liz Alderman, *Leave Russia? A year later, Many Companies Can't, Or Won't*, NY TIMES (March 2, 2023), <https://www.nytimes.com/2023/03/02/business/russia-companies-exit.html>.

<sup>8</sup> HANS-GEOG MOELLER, *LUHMANN EXPLAINED: FROM SOULS TO SYSTEMS* 32 (2006). Luhmann's systems theory has remained controversial, especially among American scholars. See, e.g., Stephen Diamond, *Autopoiesis in America*, 13 CARDOZO L. REV. 1763, 1763 (1992) ("Skeptical of theory, American intellectual pluralists like to admire autopoiesis for some insights, but not for its universal structure."); David E. Van Zandt, *The Breath of Life in the Law*, 13 CARDOZO L. REV. 1745, 1760 (1992) ("[T]he autopoietic theory of law adds little to our empirical understanding of the operation of the legal system.").

<sup>9</sup> See e.g., Barry R. Weingast & Donald A. Wittman, *Overview Of Political Economy: The Reach Of Political Economy*, in THE OXFORD HANDBOOK OF POLITICAL SCIENCE (Robert Goodin ed., 2011) (defining political economy as the "methodology of economics applied to the analysis of political behavior and institutions"); Jeffrey Friedan, *The Political Economy of Economic Policy*, INT'L MONETARY FUND (June 2020), <https://www.imf.org/en/Publications/fandd/issues/2020/06/political-economy-of-economic-policy-jeff->

over histo-structural factors.<sup>10</sup> Agency centers on particular preferences or policy choices.<sup>11</sup> This “methodological individualism”<sup>12</sup> alone may not offer a complete insight for world society as it paradigmatically gives short shrift to a big, macro picture. Insert the recent debate on the demise or enduring relevancy of the Western liberal democracy and neoliberal economic order as the engine of globalization.<sup>13</sup> It exaggerates the causal agency, or *choice*, of a particular set of ideology or a social actor, be it a state or a certain political figure, such as Joe Biden and Vladimir Putin, over the world-wide phenomenon. This intellectual obsession with agency tends to *over-politicize* the evolution of world society, be it globalization or de-globalization, by neglecting the systemic forces, such as the capitalist structure itself.<sup>14</sup>

Luhmann’s systems theory does not place politics above other subsystems within world society, such as law and economy.<sup>15</sup> There exists no hierarchy between different

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frieden (viewing that “political economy is about how politics affects the economy and the economy affects politics”).

<sup>10</sup> In particular, conventional political economy theories under the disciplinary umbrella of “international relations,” including neorealism, neoliberal institutionalism and rational choice, are based on methodological individualism and thus focus on agency. See SUNGJOON CHO, *THE SOCIAL FOUNDATIONS OF WORLD TRADE: NORMS, CONSTITUTION AND COMMUNITY* 46 (2015) (observing that “most IR scholars are trained to perceive world politics *through* state actors”) (emphasis original). *But see* Andrew Gamble, *The New Political Economy*, 43 *POL. STUD.* 516, 522-23 (1995) (introducing political economy theories prioritizing “structure” over agency).

<sup>11</sup> At the same time, a negative form of agency or counter-agency, such as enmity or victimhood, can also be conceived. See e.g., Chen Chen Zhang, *Contested Disaster Nationalism in the Digital Age: Emotional Registers and Geopolitical Imaginaries in COVID-19 Narratives on Chinese Social Media*, 48 *REV. INT’L STUD.* 219 (2022).

<sup>12</sup> See, e.g., *Methodological Individualism*, *STANFORD ENCYC. PHIL.* (Feb. 3, 2005), <https://plato.stanford.edu/entries/methodological-individualism/> (“It has never escaped anyone’s attention that the discipline that most clearly satisfies the strictures of methodological individualism is microeconomics.”).

<sup>13</sup> See generally, G. John Ikenberry, *The End of Liberal International Order?*, 94 *INT’L AFF.* 7 (2018); MARC F. PLATTNER, *DEMOCRACY BEYOND BORDERS?: CHALLENGES TO LIBERAL DEMOCRACY* (2008); Mustafa Kutlay & Ziya Öniş, *Liberal Democracy on the Edge?: Anxieties in a Shifting Global (Dis)Order*, 48 *ALTERNATIVES: GLOB., LOC., POL.* 20 (2023); Philip G. Cerny, *Globalization and the Erosion of Democracy*, 36 *EUR. J. POL. RSCH.* 1 (1999).

<sup>14</sup> S.A. Hamed Hosseini, *Globalization and Capitalization*, UNIV. OF NEWCASTLE, AUSTRALIA (2010), <https://globalalternatives.wordpress.com/2010/03/27/globalization-and-capitalism/> (Asserting that many scholars consider “globalization” nothing more than a new brand of capitalism); Christian Fuchs, *Globalization and Self Organization in the Knowledge-Based Society*, 1 *COMMC’N CAPITALISM & CRITIQUE OPEN ACCESS J. FOR GLOB. SUSTAINABLE INFO. SOC’Y* 105, 105 (Jan. 2003), (“Globalization processes in modern society are based on structural antagonisms that result in uneven developments in the technosphere, the ecosphere, the economy, polity, and culture.”).

<sup>15</sup> Mathias Albert, *Luhmann and Systems Theory*, in *OXFORD RESEARCH ENCYCLOPEDIAS OF POLITICS* 3 (Dec. 23, 2019), <https://oxfordre.com/politics/display/10.1093/acrefore/9780190228637.001.0001/acrefore-9780190228637-e-7?rskey=ZATF8H&result=1> [hereinafter Albert, *Theory*].

functional systems.<sup>16</sup> Liberal capitalism, a la Luhmann, is no more functionally superior to capitalist authoritarianism. In a characteristic “a-humanistic,”<sup>17</sup> move, Luhmann excludes human beings from the understanding of social systems as only communication links to communication in his theory.<sup>18</sup> Likewise, the function of the political system is not defined in a normative sense: it is nothing more than the facility of establishing collectively binding decisions.<sup>19</sup> In sum, Luhmann’s systems theory offer an impartial, albeit less glamorous, analytical lens into globalization, and more recently de-globalization, regardless of any emotional attachment to it.<sup>20</sup>

Luhmann’s systems theory begins with a basic supposition that world society comprises multiple interdependent subsystems,<sup>21</sup> such as law, politics and economics. Each subsystem is a system of “function” since it “create[s] order out of chaos within that system.”<sup>22</sup> In other words, systems are “functionally differentiated” in the sense that other systems cannot take over the function of a particular system.<sup>23</sup> For example, engaging with a financial transaction (payment/default) intrinsically has nothing to do with winning an election (with power/without power).

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<sup>16</sup> *Id.* at 6.

<sup>17</sup> Admittedly, this “a-humanism” embedded in Luhmann’s systems theory has distinguished itself from other social theories and invited controversies. Mathias Albert, *Observing World Politics: Luhmann’s Systems Theory of Society and International Relations*, 28 MILLENNIUM: J. INT’L STUD. 239, 241 (1999) [hereinafter Albert, *Observing*]. The “English School” also envisions an “international society,” yet unlike Luhmann, from a normative perspective. See HEDLEY BULL, *THE ANARCHICAL SOCIETY* (1977).

<sup>18</sup> Albert, *Theory*, *supra* note 15, at 3.

<sup>19</sup> *Id.*, at 8.

<sup>20</sup> Another systems theory invented by Immanuel Wallerstein also casts a-humanistic light on global affairs. “World-systems theory” views that a world system is made up of “core” and “periphery” states in accordance with global division of labor based on their political-economic power. Unlike Luhmann’s theory, the world-systems theory does not presuppose functional differentiation between subsystems, such as politics and economy. Instead, two units of global division of labor, core and periphery, connote a holistic systemic manifestation of political-economic power. CHRISTOPHER CHASE-DUNN, *GLOBAL FORMATION: STRUCTURES OF THE WORLD ECONOMY* (1989); IMMANUEL WALLERSTEIN, *THE MODERN WORLD SYSTEM* (1974).

<sup>21</sup> In this Article, the meaning of “system” corresponds to the traditional “systems theory” along the tradition of Talcott Parsons and Niklas Luhmann. It does not necessarily countenance other usages under different contexts, such as Jürgen Habermas’ particularistic use of system. See Jürgen Habermas, *The Theory of Communicative Action*, in 2 *SYSTEM AND LIFEWORLD: A CRITIQUE OF FUNCTIONALIST REASON* (Thomas McCarthy trans., Beacon Press 1987); Mathieu Deflem, *Introduction: Law in Habermas’ Theory of Communicative Action*, in *HABERMAS, MODERNITY AND LAW* 1–20 (Mathieu Deflem ed., 1996).

<sup>22</sup> MICHAEL KING & CHRIS THORNHILL, *NIKLAS LUHMANN’S THEORY OF POLITICS AND LAW* 9 (2003).

<sup>23</sup> *Id.*, at 11.

One system perceives another system as its “environment.” Each system is “closed” in the sense that it distinguishes its existence and operation from its environment. Unlike the conventional concept of society as an association among individual human beings, Luhmann views a social system as a web of operations comprised of “communications.”<sup>24</sup> Communications, not individual people, enable society to function and reproduce itself as a system.<sup>25</sup> This operational closure, which is called “autopoieticity,”<sup>26</sup> is essential for a system’s survival. Due to operational closure, each system cannot see *through* the other: each system can observe the other only as an environment.”<sup>27</sup> Yet, each system *can* observe the other system in the sense that the former is still “cognitively open” to and therefore structurally coupled with, the latter.<sup>28</sup> Importantly, this structural coupling does not “fuse” the two systems, nor does it make a discourse in one system simply incorporated into the other.<sup>29</sup> While there is no direct input-output relation between a system and its environment (another system), the former can still operate its own communications *about* the environment<sup>30</sup> via observation.<sup>31</sup>

Due to structural coupling, one system resonates with another system. Yet, in the face of unforeseen perturbations from the environment, a system may lose its sense of direction. This “contradiction” is a warning sign, as in an immune system, which protects the system from its demise.<sup>32</sup> The observing system may perceive such contradiction as “irritation” as the contradiction is viewed as anomalies or disappointments in relation to normal expectations from the system’s history.<sup>33</sup>

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<sup>24</sup> Hugh Baxter, *Niklas Luhmann's Theory of Autopoietic Legal Systems*, 9 Ann. Rev. L. Soc. Sci. 167, 169 (2013) [hereinafter Baxter, *Luhmann*].

<sup>25</sup> *Id.*

<sup>26</sup> See Richard Nobles & David Schiff, *Introduction* to NIKLAS LUHMANN, LAW AS A SOCIAL SYSTEM 8 (Klaus Ziegert trans., Fatima Kastner et al. eds., 2004).

<sup>27</sup> KING & THORNHILL, *supra* note 22, at 7.

<sup>28</sup> Hugh Baxter, *Autopoiesis and the 'Relative Autonomy' of Law*, 19 CARDOZO L. REV. 1987, 1994 (1998) [hereinafter Baxter, *Autopoiesis*].

<sup>29</sup> *Id.* at 1997.

<sup>30</sup> KING & THORNHILL, *supra* note 22, at 8.

<sup>31</sup> Niklas Luhmann, *The World Society as a Social System*, 8 INT'L J. OF GEN. SYS. 131, 131 (1982).

<sup>32</sup> NIKLAS LUHMANN, THEORY OF SOCIETY, VOL. 1, 278 (Rhodes Barrett trans., 2012); NIKLAS LUHMANN, SOCIAL SYSTEMS ch. 9 (John Bednarz Jr. trans., STANFORD UNIV. PRESS (1995)).

<sup>33</sup> NIKLAS LUHMANN, LAW AS A SOCIAL SYSTEM 383 (Klaus Ziegert trans., Fatima Kastner et al. eds., 2004); Niklas Luhmann, *Operational Closure and Structural Coupling: The Differentiation of the Legal System*, 13 CARDOZO L. REV. 1419, 1432 (1992); Baxter, *Luhmann*, *supra* note 24, at 171.



For example, economic sanctions force companies to incur unexpected extra costs and complicate their sourcing decisions. From the standpoint of the market, those sanctions are perturbations from its environment, which is the political system. To the market, these perturbations function as contradictions that could not be digested based on its own (economic) logic. Similarly, while decoupling may make a perfect political sense, it seldom appeals to businesspeople. On the one hand, the United States currently lacks both the factories and skilled labor to replace Chinese products necessary to support defense contractors, let alone basic infrastructure.<sup>34</sup> On the other hand, decoupling also hurts American companies. Jensen Huang, the chief executive of Nvidia, a high-end semiconductor company, trenchantly observes that “if the American tech industry requires one-third less capacity [due to the loss of the Chinese market], no one is going to need American fabs, we will be swimming in fabs.”<sup>35</sup>

To facilitate the application of the systems theory to the current developments, this Article marshals a distinct set of heuristic concepts, Fortress and Pangea, which symbolize the political system and the economic system, respectively. Fortress is endemic to local politics under anarchy: after all, there is no genuine world politics in the absence of a *super*-state, such as a World Government. The “state,” such as the United States, is still the most significant form that the political system manifests itself.<sup>36</sup> In contrast, Pangea, the supercontinent that integrated all the lands in earth in early geologic age, is emblematic of global capitalism that is fundamentally de-territorialized.<sup>37</sup> Both Pangea and Fortress may co-exist even within the same country. While Capitol Hill is the operative center of Fortress as it concocts de-globalizing policies, Silicon Valley is constantly absorbing capital and talents from all over the world and diffusing new technologies to all over the world. In this sense, Silicon Valley stands for Pangea. Likewise, there are many special economic “zones” within developing countries where typical

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<sup>34</sup> See David P. Goldman, *US at Risk of China Tech War Retaliation*, ASIA TIMES (Sep. 16, 2023), <https://asiatimes.com/2023/09/us-at-grave-risk-of-china-tech-war-retaliation/>.

<sup>35</sup> Madhumita Murgia et al., *Chip Wars with China Risk 'Enormous Damage' to US Tech, Says Nvidia Chief*, FIN. TIMES (May 23, 2023) <https://www.ft.com/content/ffbb39a8-2eb5-4239-a70e-2e73b9d15f3e>.

<sup>36</sup> Albert, *Theory*, *supra* note 15, at 8.

<sup>37</sup> John Gerard Ruggie, *Territoriality and Beyond: Problematizing Modernity in International Relations*, 47 INT'L ORG. 139, 172 (1993) (“nonterritorial . . . , decentered yet integrated space-of-flows, operating in real time”).

territorial rules on taxation and regulations are loosened or exempted to attract foreign investment.<sup>38</sup> Within these zones, the gravitational force of Pangea can be said to defy that of the Fortress.

Pangea and Fortress bestow different meanings onto various events leading to a social phenomenon. They are “coded” differently as each system recognizes and transmits these events according to its own functional criteria. Pangea’s essential self-reference is *scarcity*, while that of Fortress is *power*.<sup>39</sup> Scarcity can be communicated only through money and cannot be directly transmuted into Fortress; in turn, Fortress cannot process issues of scarcity by simply applying power. In other words, politicians do not think the same way in which businesspeople do. While businesspeople understand the logic of de-territorialization, politicians largely maintain the nineteenth century worldview based on territoriality.

Admittedly, the tension between global economy and local politics may be an old story, dating back to the titular First Globalization before the outbreak of the First World War. Nonetheless, the seemingly paradoxical developments of our lifetime, i.e., ever-converging force of global capitalism *and* ever-diverging force of geopolitics, warrant a peculiar conceptual apparatus that can fully capture the unparalleled scale, velocity and intensity of their ever-fluctuating dynamics. Note that Pangea represents not just another phase of globalization in history: it symbolizes *hyper*-globalization harnessed by the unprecedented level of technological innovations. The sheer complexity of the world we are living in dwarfs the previous versions of globalization and therefore calls for a new conceptual tool to analyze and comprehend this unprecedented phenomenon.

This Article argues that the systems theory can generate valuable knowledge by understanding current global affairs from a novel theoretical perspective. The systems theory, this Article contends, serves as a catalyst for intellectual due diligence required in

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<sup>38</sup> See Quinn Slobodian, *What Really Controls Our Global Economy*, NY TIMES (March 12, 2023), <https://www.nytimes.com/2023/03/12/opinion/economic-zones-global-economy.html>.

<sup>39</sup> KING & THORNHILL, *supra* note 22, at 100-103

the current unique moment of history. In this regard, this Article generates three main insights, which may translate into policy implications for future global governance.

First, policymakers must understand the systemic complexity of the contemporary world society we live in. The *form* of functional differentiation between the political system and the economic system have irreversibly transformed. The simplistic analogy of Cold War no longer works with the advent of the Pangea.<sup>40</sup> During the Cold War, the geopolitical logic deterred the rise of the Pangea with the dichotomous world trading system comprised of the General Agreement on Tariffs and Trade (GATT) and the Council for Mutual Economic Assistance (CMEA or COMECON).<sup>41</sup> With the “rise of the Rest,”<sup>42</sup> however, global interdependency has deepened in an unprecedented manner. A heightened level of functional differentiation between politics and economy renders old foreign policy tools, such as economic sanctions, suspect. The most recent global experiences, such as the Western sanctions against Russia and the U.S.’ decoupling strategy against China, corroborate the declining power of “weaponization” strategies.<sup>43</sup> Moreover, such strategies tend to invite a new geopolitical dynamic, especially among non-Western nations. The recent expansion of the BRICS<sup>44</sup> is characteristic of emerging nations’ desire to hedge future uncertainties precipitated by what those nations might perceive as the “constant hegemonic threat.”<sup>45</sup>

Second, policymakers must reformulate their old concept of social integration. The farther functional differentiation develops, the harder any form of integration can be

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<sup>40</sup> See e.g., Bilahari Kausikan, *U.S. v. China: Don't Call It a Cold War*, YOUTUBE (July 25, 2023), [https://www.youtube.com/watch?v=vBLGXLhZxhU\\_](https://www.youtube.com/watch?v=vBLGXLhZxhU_)

<sup>41</sup> Gerhard Mally, *Regionalism in Western and Eastern Europe*, WORLD AFFAIRS 38, 38 (1974) (discussing the dichotomy between the world’s two major geopolitical regions: the east, and the European community in the west).

<sup>42</sup> See e.g., FAREED ZAKARIA, *POST-AMERICAN WORLD AND THE RISE OF THE REST* (2009).

<sup>43</sup> See notes 364, 378 and discussion *infra* Part IV C.

<sup>44</sup> Carien du Plessis, et al., *BRICS Welcomes New Members in Push to Reshuffle World Order*, REUTERS (Aug. 24, 2023), <https://www.reuters.com/world/brics-poised-invite-new-members-join-bloc-sources-2023-08-24/> (discussing the BRICS bloc of developing nations’ admission of Saudi Arabia, Iran, Ethiopia, Egypt, Argentina and the United Arab Emirates).

<sup>45</sup> Alex Lo, *Why So Many Nations Suddenly Want to Become Part of BRICS*, S. CHINA MORNING POST (Apr. 28, 2023), <https://www.scmp.com/comment/opinion/article/3232465/why-so-many-nations-suddenly-want-become-part-brics>.

attained.<sup>46</sup> The very nature of integration transforms with ever-increasing complexities in world society. Nations might better recalibrate their expectation of conformity or convergence and must learn to live with plurality and tolerance, focusing on the systemic *link*, rather than the systemic unity. Moreover, while self-reproduction of world society leads to its “evolution,” such evolution does not necessarily mean progress.<sup>47</sup> As world society may increase its adaptive capacity by managing certain structural changes, in doing so it may also multiply “maladaptation.”<sup>48</sup> The oracle from the systems theory envisions a rather messy future, perhaps messier than most media pundits dare to proclaim based on their journalistic instincts.

Finally, while the systems theory does not countenance, in and of itself, a normative agenda, it may still allude to certain organic conditions for better governance. Each subsystem may *re-observe* an enhanced level of structural flexibility that can accommodate a new type of functional differentiation between itself and the environment.<sup>49</sup> Such re-observation creates logical space for different types of “theoretical reflexion,”<sup>50</sup> which, in turn, can afford different *co-evolutionary* pathways between politics and economy. For example, in the wake of the Wall Street financial crisis in 2007-8, the Western Fortress realized that the political aptitude of G7 was not adequate enough to weather the crisis. Its re-entry into its own political system enabled a new systemic response around G20, which eventually saved world economy from a systemic meltdown.<sup>51</sup>

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<sup>46</sup> Luhmann, *Closure*, *supra* note 33, at 1434-35.

<sup>47</sup> See discussion *infra* p. 60.

<sup>48</sup> Luhmann, *Closure*, *supra* note 33, at 1440.

<sup>49</sup> Niklas Luhmann, *Globalization or World Society: How to Conceive of Modern Society?*, 7 INT’L REV. SOC. 67, 75 (1997) [hereinafter, Luhmann, *Globalization*].

<sup>50</sup> Luhmann, *World Society*, *supra* note 31, at 136.

<sup>51</sup> *Beating the Crisis: the Role of the OECD and G20*, ORG. ECON. COOP. & DEV. <https://www.oecd.org/corporate/beatingthecrisistheroleoftheoecdandg20.htm> (explaining how, in 2008, the G20 called on several key international organizations to help it respond to the global economic crisis. Since then, the organizations have worked together to propose solutions to a variety of the world’s most challenging issues, including rising food and energy prices and consumer financial protection); *see also A Systemic Resilience Approach to Dealing With Covid-19 and Future Shocks*, ORG. ECON. COOP. & DEV. (Apr. 28, 2020), <https://www.oecd.org/coronavirus/policy-responses/a-systemic-resilience-approach-to-dealing-with-covid-19-and-future-shocks-36a5bdfb/> (“Multilateral action, as called for by G20 and G7 Leaders, will make governments’ initiatives far more effective than if countries continue to act alone.”).

Importantly, the third subsystem, law, can catalyze such co-evolution between politics and economy. The legal system plays a crucial mediative role as it gets structurally coupled with *both* politics and economy.<sup>52</sup> As politics and economy are re-coded into law, a triangular systemic relationship emerges. This systemic triangularism may function as a conduit for managing resonance in the form of *interdiscourse* between the Pangea and the Fortress.<sup>53</sup> Law can serve as a systemic medium for coordination as it oversees “other-reference”<sup>54</sup> between law and economy (how law relates to economy), on the one hand, and law and politics (how law relates to politics), on the other.<sup>55</sup>

Against this background, this Article unfolds in the following sequence. Part I serves as an overview of Luhmann’s systems theory. A system maintains its operational autonomy by producing, and reproducing, itself through a set of coded communication within itself. At the same time, a system is still related to its environment, which is another system. World society is simply the total meaning complex comprised of all the horizons of communication by all societies.<sup>56</sup> Part II applies the systems theory to the current global affairs. To operationalize the theory in terms of globalization and de-globalization, it offers two heuristic devices, Fortress and Pangea. The Fortress symbolizes a territorialized governance enclave of anarchic politics, while the Pangea represents a de-territorialized mega eco-system of global capitalism. Based on those conceptual devices drawn from the systems theory, Part III discusses the complex evolution of world society. It first highlights the inter-systemic propensity to mutual conflict between the Fortress and the Pangea, which sheds critical light on the recent chaotic dynamics of geopolitics and geoeconomy.

Part IV then harnesses the prognostic potential of the systems theory. It envisions the future of world society as a function of two systemic forces, centrifugal and centripetal,

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<sup>52</sup> Baxter, *Autopoiesis*, *supra* note 28, at 2084.

<sup>53</sup> Cf. Harlan Grant Cohen, *Nations and Markets*, 23 J. INT’L ECON. L. 793, 812 (2020) (proposing a pluralist approach in reconciling trade and security focusing on “information sharing,” rather than “authoritative normative decisions”).

<sup>54</sup> MOELLER, *supra* note 8, at 36.

<sup>55</sup> Cf. Odette Lienau, *Law in Hiding: Market Principles in the Global Legal Order*, 68 HASTINGS L. J. 541, 602 (viewing that “international norms define the boundaries of choice and thereby affect how societies, policymakers, and market participants discern the meaning of various policy stances”).

<sup>56</sup> Luhmann, *World Society*, *supra* note 31, at 132.

which are released by the Fortress and the Pangea, respectively. It offers two rudimentary future scenarios for global governance: first, a noisy balance between the Fortress and the Pangea; second, a transition to more disruptive hyper-politicization (dedifferentiation). Part V transcends the inherently analytic realm of the systems theory and countenance a normative agenda. It seeks certain acceptable conditions under which politics and economy can resonate without serious irritations against each other. It explores various ways in which *law* may manage system-laden complexities and tensions. This Article concludes that the evolution of world society does not necessarily guarantee a teleological progress and that as complexities increase, we must become inured with inevitable uncertainties.

## I. Niklas Luhmann's Systems Theory

### A. *Autopoieticity, Function and Communication*

Luhmann's systems theory begins with the critical postulation that a social system is functionally closed in the sense that it distinguishes its existence and operation from its environment. Since the environment "does not speak about itself," a system observes its environment only in a self-referential manner.<sup>57</sup> This operational closure, which is called "autopoieticity,"<sup>58</sup> is essential for a system's survival or self-sustaining, i.e., order and stability. It is this functionality that "give[s] meaning to events which otherwise would be meaningless for [the system]."<sup>59</sup> Yet, operational closure does not mean inertia. A system can still "select, condense, confirm, change, or forget" its structures, although all these operations transpire *within* the system.<sup>60</sup>

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<sup>57</sup> Daniel Lee, *Society of Society: A Grand Finale of Niklas Luhmann*, 18 SOC. THEO. 320, 329 (2000).

<sup>58</sup> See Nobles & Schiff, *supra* note 26.

<sup>59</sup> KING & THORNHILL, *supra* note 22, at 9.

<sup>60</sup> Luhmann, *Closure*, *supra* note 33, at 1440.

Luhmann also supposes that society comprises interdependent multiple subsystems,<sup>61</sup> such as law, politics and economics. Each (sub-) system is a function system in the sense that “create[s] order out of chaos within that system.”<sup>62</sup> Systems are “functionally differentiated” in the sense that other systems cannot take over the function of a particular system.<sup>63</sup> Law balances normative (counterfactual) expectations in response to actions that challenge such expectations<sup>64</sup>; economy regulates scarcity via property and payment and removes anxiety from the future wants; politics offers the means for collectively binding decisions to sustain society.<sup>65</sup> For example, engaging with a financial transaction (payment/default) has nothing to do with winning an election (with power/without power).

It is “communication” within a system that undergirds its functional differentiation. Communication can be defined as the “basic unit of observation for the assessment of the operations of social systems.”<sup>66</sup> It is always “about something and not everything”; the political system communicates about power; the economic system about money; the legal system about legality.<sup>67</sup> Each (sub-) system is organized by countless sets of communications whose main function is to provide positive expectation and complexity reduction.<sup>68</sup> Communications transmute information into meaning (*Sinn*) and constitute acceptable horizons for further communications.<sup>69</sup> Thus, each system “restricts the number of themes in which it perceives as relevant to [the system].”<sup>70</sup> Yet

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<sup>61</sup> In this Article, the meaning of “system” corresponds to the traditional “systems theory” along the tradition of Talcott Parsons and Niklas Luhmann. It does not necessarily countenance other usages under different contexts, such as Jürgen Habermas’ particularistic use of system. See Jürgen Habermas, *The Theory of Communicative Action*, in 2 SYSTEM AND LIFEWORLD: A CRITIQUE OF FUNCTIONALIST REASON (Thomas McCarthy trans., Beacon Press 1987); Mathieu Deflem, *Introduction: Law in Habermas’ Theory of Communicative Action*, in HABERMAS, MODERNITY AND LAW 1–20 (Mathieu Deflem ed., 1996).

<sup>62</sup> KING & THORNHILL, *supra* note 22, at 9.

<sup>63</sup> *Id.*, at 11.

<sup>64</sup> NIKLAS LUHMANN, A SOCIOLOGICAL THEORY OF LAW, 22-49 (1985).

<sup>65</sup> KING & THORNHILL, *supra* note 22, at 11.

<sup>66</sup> Clemens Mattheis, *The System Theory of Niklas Luhmann and the Constitutionalization of the World Society*, 2 GOETTINGEN J. INT’L L. 625, 628 (2012).

<sup>67</sup> Lee, *supra* note 57, at 324.

<sup>68</sup> NIKLAS LUHMANN, TRUST AND POWER (T. Burns & G. Poggi eds., H. Davis, J. Raffan & K. Rooney trans., Wiley 1979); Luhmann, *Closure*, *supra* note 33, at 1432 (1992) (“Seen as an operation, it [communication] cannot leave the society as the system that integrates all communications, for no system can operate outside of its own boundaries, and communication cannot be noncommunication.”)

<sup>69</sup> KING & THORNHILL, *supra* note 22, at 11.

<sup>70</sup> *Id.*, at 72.

these organizations of meaning are specific to each system as each system retains its own “communicative medium and rationality.”<sup>71</sup> A system, such as law, is destabilized when it allows other communicative media, such as power/violence, to intervene.<sup>72</sup> According to Luhmann, society is made up of communications, not of individual human actors.<sup>73</sup> Individual human actors, as separate units, are “socially meaningless”: society exists not *inside* human actors, but *between* them.<sup>74</sup>

A “code” or coding plays an indispensable role in a self-producing (autopoietic) system. A code is simply a binary contradistinction between a positive and negative value, such as government/opposition (politics), profit/loss (economy) and legal/illegal (law).<sup>75</sup> A code is implemented by a “symbolically generalized medi[um] of communication,” such as power, money and legality.<sup>76</sup> It is the code that coordinates all communications within a system by “condition[ing] the likelihood of an otherwise improbable acceptance of communication.”<sup>77</sup> In doing so, a system can institute its boundaries against its environment.<sup>78</sup> For example, in an economic system, communication is to simply apply system-specific binary codes, such as profit or loss. What each individual economic player, such as a buyer or a seller, subjectively believes is not an essential part of such communication. Communication simply happens as an operational *event*.<sup>79</sup> In any self-

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<sup>71</sup> Angelo Golia Jr. & Gunther Teubner, *Societal Constitutionalism: Background, Theory, Debates*, 15 ICL J. 357, 362 (March 14, 2021).

<sup>72</sup> *Id.*

<sup>73</sup> Lee, *supra* note 57, at 320-22.

<sup>74</sup> *Id.*, at 322. Luhmann theorizes that individual people are “systems of consciousness.” According to Luhmann, a person may think but cannot communicate: only communication or society itself can communicate. “Communication (...) occurs when Alter intentionally *transmits* information through a *medium* to Ego who *understands* it as anticipated.” *Id.* at 325; NIKLAS LUHMANN, *DIE GESELLSCHAFT DER GESELLSCHAFT*, 105, 190 (1997).

<sup>75</sup> Niklas Luhmann, *The Coding of the Legal System, in STATE, LAW, AND ECONOMY AS AUTOPOIETIC SYSTEMS* 145, 152 (Gunther Teubner & Alejandro Febbrajo eds., 1992).

<sup>76</sup> Albert, *Theory, supra* note 15, at 4; Baxter, *Luhmann, supra* note 24, at 170.

<sup>77</sup> *Id.*, at 7.

<sup>78</sup> Baxter, *Autopoiesis, supra* note 28, at 2006.

<sup>79</sup> *Id.* at 7, 22. “Mr. Justice X decided Y’ is a communication that has been possible since the evolution of the courts. But ‘Mr. Justice X decided Y because he is a fascist, or because he has an infantile personality’ is not a communication that the legal system can generate as an account of a decision.” Nobles & Schiff, *supra* note 26, at 83. Here, a neurobiological analogy may be useful in demonstrating this structural operation. Suppose a neuro-communication in the form of a synaptic transmission. It functions in a similar communicative pattern with that specified by Luhmann’s systems theory: a presynaptic neuron emits (announces) certain neurotransmitters (information) and then a postsynaptic neuron accepts (understands) such neurotransmitters via receptors. See *generally* CELLULAR AND MOLECULAR BASIS OF SYNAPTIC TRANSMISSION (Herbert Zimmermann ed., 1988).



producing system, coding requires a “memory function,” which can be represented by the system’s culture. It is this memory function that “presents the present as an outcome of the past.”<sup>80</sup> When a system self-produces by “re-impregnating recurring events,” it requires coding, as an “oscillator function,” to enable itself to “cross the boundaries of all distinctions they use, such as being/not being, (...), good/bad, true/false etc.”<sup>81</sup>

A “program” allocates a value of a particular code. It is “a way of combining closure (the code) with openness (conditions that are predicates for allocating code values).”<sup>82</sup> In other words, a program combines self-reference and other-reference.<sup>83</sup> For example, a statute or a court decision is a legal program in the sense that satisfying certain conditions or a failure thereof will determine legality or illegality of a particular event.<sup>84</sup> Thus, while a code of a system is constant, its program is variable.<sup>85</sup>

Finally, a system’s functionality has nothing to do with the quality of its performance evaluated by any other external criteria.<sup>86</sup> From a systemic perspective, communication does not necessarily denote reflective dialogue or other verbal or non-verbal interactions among individuals. Rather, it is methodical information processing among individual operational units within a given system. For example, the functionality of a legal system does not rest on the litigation cost, while that of a political system not on the integrity of politicians.<sup>87</sup>

In sum, Luhmann’s theory is a *systems* theory and therefore does not subscribe to methodological individualism or an “anthropocentric” perspective based on agreements and disagreements among social actors. It identifies systemic development in which systems themselves, not human actors, interact with each other.<sup>88</sup> It explores systemic,

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<sup>80</sup> Luhmann, *Globalization*, *supra* note 49, at 71.

<sup>81</sup> *Id.*

<sup>82</sup> Baxter, *Luhmann*, *supra* note 24, at 171.

<sup>83</sup> LUHMANN, LAW AS A SOCIAL SYSTEM, *supra* note 33, at 196.

<sup>84</sup> Baxter, *Luhmann*, *supra* note 24, 171.

<sup>85</sup> LUHMANN, LAW AS A SOCIAL SYSTEM, *supra* note 33, at 217.

<sup>86</sup> KING & THORNHILL, *supra* note 22, at 9.

<sup>87</sup> *Id.* at 10.

<sup>88</sup> *Id.* at 215.

not human, rationality.<sup>89</sup> Luhmann does not countenance the “integrating force of (...) human reason and rationality,” such as collective consciousness (Emile Durkheim), intersubjectivity (Max Weber) and class consciousness (Karl Marx).<sup>90</sup> Thus, the systems theory might sound scandalous to idealists who attribute modern democracies to human reasons and social consensus.<sup>91</sup>

Luhmann’s development of the systems theory was motivated mainly by his critical observation of the old European view of society. According to Luhmann, from the time of Aristotle to the eighteenth century, the European understanding of society had largely been “political.”<sup>92</sup> Society, in essence, meant political society (*societas civilis*). However, our modern society, Luhmann argues, is too differentiated and complex to adhere to this old view.<sup>93</sup> Increased social complexity and differentiation leads inevitably to “evolution,”<sup>94</sup> a “process of variation, selection, and restabilization.”<sup>95</sup> Luhmann observes that “sociocultural evolution began with segmentary systems.”<sup>96</sup> The old dominance of politics over other important aspects of society, such as law and economy, is no longer sustainable. Society eventually evolves into a more “functional” one,<sup>97</sup> although Luhmann does not necessarily view evolution itself as teleological or progressive.<sup>98</sup>

### *B. Structural Coupling*

Due to operational closure, each system cannot see *through* the other: each system can observe the other only as an “environment.”<sup>99</sup> Yet, the premise that each system *can* observe the other system means that the former is still “cognitively open” to the latter.<sup>100</sup> Importantly, this structural coupling does not “fuse” the two systems, nor does it make a

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<sup>89</sup> *Id.* at 221.

<sup>90</sup> Lee, *supra* note 57, at 322.

<sup>91</sup> KING & THORNHILL, *supra* note 22, at 220.

<sup>92</sup> Luhmann, *World Society*, *supra* note 31, at 131.

<sup>93</sup> *Id.* at 131.

<sup>94</sup> Lee, *supra* note 57, at 326.

<sup>95</sup> Sean Ward, *Book Review*, 73 GER. Q. 235, 235 (2000).

<sup>96</sup> Luhmann, *World Society*, *supra* note 31, at 132.

<sup>97</sup> Luhmann, *Globalization*, *supra* note 49, at 76.

<sup>98</sup> LUHMANN, *THEORY OF SOCIETY*, *supra* note 32, at 260.

<sup>99</sup> KING & THORNHILL *supra* note 22, at 7.

<sup>100</sup> Baxter, *Autopoiesis*, *supra* note 28, at 1994.

discourse in one system simply incorporated into the other.<sup>101</sup> While there is no direct input-output relation between a system and its environment (another system), the former can still operate communications *about* the environment<sup>102</sup> via of observation.<sup>103</sup> While the operations of the environment are just “noise” to an observing system in the first place, the latter can still process that noise into information within itself.<sup>104</sup>

For example, the political system cannot get access to the economic system as if the latter *really exists*.<sup>105</sup> Yet, politics can still perceive economy by applying the former’s “self-produced criteria of validity” to its own operations regarding the latter issues.<sup>106</sup> Likewise, the market remains linked to the state based on the former’s own internal needs and through its own internal procedures. While political events may be relevant to the operation within the market, “whether they are relevant, how they are made relevant, and the consequences of their relevance for the [market], is determined within the communication of the [market].”<sup>107</sup> This way, each system maintains its operational closure while it still “resonate” with another system.<sup>108</sup> This is a paradoxical situation in the sense that each system “has to distinguish itself from an environment which is not part of itself, while at the same time observing that this environment is nothing other than a product of its own operations.”<sup>109</sup>

Two separate observing systems, as if “epistemic subjects,”<sup>110</sup> can be said to hold the relationship of *Self v. Other* between each other. Each retains a system of self-reference in that it creates its own meaning based on its own logic. Politics can understand economy only through politics’ own selectivity or “reconstruction,”<sup>111</sup> i.e., “from meaning

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<sup>101</sup> *Id.* at 1997.

<sup>102</sup> KING & THORNHILL, *supra* note 22, at 8.

<sup>103</sup> Luhmann, *World Society*, *supra* note 31, at 131.

<sup>104</sup> Baxter, *Autopoiesis*, *supra* note 28, at 2006.

<sup>105</sup> KING & THORNHILL, *supra* note 22, at 20.

<sup>106</sup> *Id.*

<sup>107</sup> Baxter, *Autopoiesis*, *supra* note 28, at 2080.

<sup>108</sup> NIKLAS LUHMANN, *ECOLOGICAL COMMUNICATION* 29 (John Bednarz, Jr. trans., Univ. of Chicago Press 1989).

<sup>109</sup> KING & THORNHILL, *supra* note 22, at 20.

<sup>110</sup> Baxter, *Autopoiesis*, *supra* note 28, at 2072.

<sup>111</sup> KING & THORNHILL, *supra* note 22, at 30.

that is available exclusively to itself.”<sup>112</sup> In other words, the market operates based on the logic of profit, while the politics based on the logic of power or war. Each system remains a black box to the other since each system is operationally closed to the other: the logic of operation is endogenously given.<sup>113</sup>

Importantly, however, a *meaning*-constituting system must interject this paradox, which is referential circularity or “tautology,”<sup>114</sup> by including certain external referential points.<sup>115</sup> For example, from the standpoint of the economic system, the U.S. export ban on the advanced semiconductors to China alters their cost structure and influences their economic decision: economic communication “observes” the political system. At the same time, from the standpoint of the political system, Intel and Qualcomm's commercial considerations shape the details of political communication, including the possibility of granting exemptions to those companies. Likewise, the political system must also take into account legal constraints, such as due process, in executing those political resolution; here the political system “observes” both the economic and legal system.

Occasionally, structural coupling may manifest in a turbulent manner. In the face of unforeseen perturbations from the environment, a system may lose its sense of direction. This “contradiction” is an warning sign, as if an immune system, which protects the market from its demise.<sup>116</sup> The observing system may perceive such contradiction as “irritation” as the contradiction is viewed as anomalies or disappointments in relation to normal expectations from the system’s history.<sup>117</sup>

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<sup>112</sup> Michael King & Anton Schütz, *The Ambitious Modesty of Niklas Luhmann*, 21 J. L. & SOC. 261, 272 (1994). Many scholars, such as Karl Polanyi (“double movement”) and John Ruggie (“embedded liberalism”), also highlighted the existence of interrelationships between two different systems, similar to structural coupling. Similarly, the basic position of legal realists highlight the close intersection between law and politics. However, their insights, albeit astute, gave short shrift to an analytical and systematic description of such interrelationships, i.e., how they actually *work*.

<sup>113</sup> LUHMANN, SOCIAL SYSTEMS, *supra* note 32, ch. 3.

<sup>114</sup> Baxter, *Luhmann*, *supra* note 24, at 169.

<sup>115</sup> Luhmann, *Closure*, *supra* note 33, at 1436-37. *See also* DIRK BAEKGER, PROBLEMS OF FORM 15-26 (Dirk Baecker, ed., Michael Irmscher & Leah Edwards, trans. 1999).

<sup>116</sup> LUHMANN, THEORY OF SOCIETY, *supra* note 32; LUHMANN, SOCIAL SYSTEMS, *supra* note 32, ch. 9.

<sup>117</sup> LUHMANN, LAW AS A SOCIAL SYSTEM, *supra* note 33, at 383; Luhmann, *Closure*, *supra* note 33, at 1432; Baxter, *Luhmann*, *supra* note, at 24, 171.

For example, economic sanctions, such as the U.S. sanctions against Russian oil and gas, have dealt a serious blow to GVCs and disrupted the global market. Those sanctions have forced companies to incur unexpected extra costs and complicated their sourcing decisions. From the standpoint of the market, those sanctions are perturbations from its environment (politics). To the market, these perturbations function as contradictions that could not be fully processed based on its own (economic) logic. Those contradictions within the market system develop certain symptoms in a systemic attempt to survive, akin to immune reactions in a human body, such as inflammation. In the economic system, such contradictions manifest through economic malaise, such as stagflation or stock market collapse.

Thus, while a financial transaction (economy) has nothing to do with losing an election (politics) in the first place, a bank run and massive loan defaults irritate the political communication, which *may* lead eventually to losing an election by the ruling party. Note that this political outcome remains rather contingent, depending on the political system's own "history, structures, and communicative possibilities."<sup>118</sup> It is not that any irritation would lead to a systemic change in a causally deterministic sense.

A dynamic outcome of structural coupling is "evolution."<sup>119</sup> To be more precise, systems "co-evolve" as each system codes another system *qua* environment in a contingent manner, rendering each system's internal operation transient and fragile. As discussed above, to each observing system, another system can be understood only by the observing system's reconstruction informed by its own criteria of selectivity. This mutual or *double* contingency is characteristic of co-evolution of systems.<sup>120</sup> Co-evolution of systems through mutual constitution contributes to systemic stability by limiting each system's "range of possible meanings."<sup>121</sup> While one system does not regulate, in a causal

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<sup>118</sup> Baxter, *Autopoiesis*, *supra* note 28, at 2038.

<sup>119</sup> Lee, *supra* note 57, at 325.

<sup>120</sup> KING & THORNHILL, *supra* note 22, at 30.

<sup>121</sup> *Id.*

manner, another system,<sup>122</sup> the former does influence the latter as if gravity effects walking.<sup>123</sup>

For example, contract (economy) and regulation (law) co-evolve in the sense that the influence of regulation is mediated by the system of conjoined meanings contingently developed by contract, *and* simultaneously vice versa.<sup>124</sup> Likewise, whether to reshore, i.e., whether to move manufacturing bases from a foreign country to the home country, is originally an economic decision. Yet politics may influence such an economic decision in a way which shape the terms and conditions of that economic decision.

Nonetheless, the essentially self-referential manner of communications still tends to make all communications a “risk” in that an observing system’s reconstruction of another system’s communication may fail to capture what is meaningful to its environment.<sup>125</sup> Thus, co-evolution occasionally leads to certain “structural drifts.”<sup>126</sup> For example, in case of reshoring, decoupling or economic sanctions, the political system and the economic system might code this issue differently, thereby generating social conflicts and instability.<sup>127</sup> The politics of economic sanctions might be “forced to extend its own operations well beyond its actual range and to regulate practical and moral problems which it is not equipped to address.”<sup>128</sup>

Here, the political system “*universalizes* politics by defining an increasing part of society and problems originating in other function systems as political problems—meaning problems that politics (or the state) might not be able to solve, but that are presented as problems that can be solved.”<sup>129</sup> This “*dedifferentiation*” tends to

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<sup>122</sup> Baxter, *Luhmann*, *supra* note 24, at 170.

<sup>123</sup> KING & THORNHILL, *supra* note 22, at 33. “Walking presupposes the gravitational forces of the earth within very narrow limits, but gravitation does not contribute any steps to the movement of bodies.” Luhmann, *Closure*, *supra* note 33, at 1432.

<sup>124</sup> See e.g., Ana Lourenço, *Autopoietic Systems Theory: The Co-Evolution of Law and the Economy*, (Ctr. For Bus. Rsch., Univ. of Cambridge, Working Paper No. 409, June 2010), <https://www.jbs.cam.ac.uk/wp-content/uploads/2023/05/cbrwp409.pdf>.

<sup>125</sup> KING & THORNHILL, *supra* note 22, at 31.

<sup>126</sup> Baxter, *Luhmann*, *supra* note 24, at 172.

<sup>127</sup> KING & THORNHILL, *supra* note 22, at 71.

<sup>128</sup> *Id.* at 98.

<sup>129</sup> Albert, *Theory*, *supra* note 15, at 9.

undermine the resiliency of the political system *and* the economic system, thereby threatening those “fragile fabrics of difference and interdependence from which societal pluralism actually evolves.”<sup>130</sup> According to Luhmann, this dedifferentiation is the greatest threat to modern society. Dedifferentiation means the demise of social pluralism as “society begins to center itself on *one* system” and lacks “co-existing centers of authority for truth, validity and legitimacy.”<sup>131</sup>

### C. *World Society and Globalization*

According to Luhmann, it is inevitable that society is seen as *world* society since “every communication could in principle be related to every other communication.”<sup>132</sup> “All societies communicate within the horizon of everything about which they can communicate.”<sup>133</sup> The world is simply the total sum of all the meanings for those societies.<sup>134</sup> In other words, world society is the “occurrence of world in the communication.”<sup>135</sup> World society does not focus on particular societies. We may explain the different levels of modernization of any two countries by different operational qualifications and cultural traditions.<sup>136</sup>

However, this explanation cannot provide us with a holistic picture on the evolution of world society as a social *system*. As Mathias Albert views, “world society only forms a system because it is constituted through a system-environment relation.”<sup>137</sup> World society includes all communication within itself: its environment, i.e., non-social systems (physic and psychic systems), does not communicate.<sup>138</sup> Importantly, modern

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<sup>130</sup> KING & THORNHILL, *supra* note 22, at 98.

<sup>131</sup> *Id.*, at 225.

<sup>132</sup> Albert, *Theory*, *supra* note 15, at 6. See also Luhmann, *World Society*, *supra* note 31, at 132. Regarding an earlier similar approach by sociologists, see Wilbert E. Moore, *Global Sociology: The World as a Singular System*, 71 AM. J. SOC. 475, 475-82 (1966).

<sup>133</sup> Luhmann, *World Society*, *supra* note 31, at 132.

<sup>134</sup> *Id.*

<sup>135</sup> NIKLAS LUHMANN, DIE GESELLSCHAFT DER GESELLSCHAFT 150 (2004), trans. and cited by Clemens Mattheis, *The Systems Theory of Niklas Luhmann and the Constitutionalization of World Society*, GOETTINGEN J. OF INT'L L. 4 625, 637 (2012).

<sup>136</sup> Luhmann, *Globalization*, *supra* note 49, at 76.

<sup>137</sup> Albert, *Observing*, *supra* note 17, at 254.

<sup>138</sup> *Id.*

conditions represented by globalization dramatically augment the scale of such communicative phenomenon.<sup>139</sup> Therefore, contemporary modern society is a world society in a *double* sense: for a structural reason, on the one hand, and for a phenomenological (non-social) reason, on the other.<sup>140</sup> As these two reasons converge, the global communicative system constitutes one world having all possibilities.<sup>141</sup>

*Qua* system, world society is also comprised of multiple subsystems, such as the political and the economic subsystem, and each subsystem features its functional operation through internal communication. Yet Luhmann does make an important distinction between the political subsystem and other subsystems in terms of “boundaries.” Indeed, such a distinction is emblematic of modern society with globalization. Luhmann views that:

Basing itself on this form of functional differentiation, modern society has become a completely new type of system, building up an unprecedented degree of complexity. The boundaries of its subsystems can no longer be integrated by common territorial frontiers. Only the political subsystem continues to use such frontiers because segmentation into “states” appears to be the best way to optimize its own function. But other subsystems like science or economy spread over the globe. It therefore has become impossible to limit the society as a whole by territorial boundaries. (...) Neither the different ways of reproducing capital nor the degrees of development in different countries give convincing grounds for distinguishing different societies.<sup>142</sup>

Luhmann views that functional differentiation, due to the systemic nature of operational closure, will instantaneously produce more dependencies and independences between and among subsystems.<sup>143</sup> On the one hand, a subsystem will become more

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<sup>139</sup> Luhmann, *World Society*, *supra* note 31, at 133.

<sup>140</sup> *Id.*

<sup>141</sup> *Id.* Luhmann admits that his emphasis on “differentiation” between a system and its environment tends to sidestep the traditional topics of “identity,” “value” or “integration” of a society. Luhmann argues that “morphogenetic processes use differences, not goals, values or identities, to build up emergent structures.

<sup>142</sup> *Id.* at 132.

<sup>143</sup> Luhmann, *Globalization*, *supra* note 49, at 75.



independent as its communication becomes more selective with the increase of structural coupling and the ensuing complexity<sup>144</sup>; on the other hand, a subsystem will become more dependent on other subsystems because world society can sustain only when all the function systems operate at an appropriate level.<sup>145</sup>

#### D. *Theoretical Distinctions*

Luhmann's systems theory has one quite simple, and at the same time fairly ambitious, goal: what is a pure *concept* of society? Luhmann is interested in formulating "a convincing meta-concept that would encompass all possible dominant forms of differentiation, i.e., from segmentation to center/periphery differentiation to hierarchy and, finally, to functional differentiation."<sup>146</sup> Luhmann begins his theoretical quest by censuring certain epistemological assumptions adopted by the traditional ("Old European") sociologists, such as the one that "society is comprised of concrete individuals; society is integrated because of consensus shared by individuals about their values and interests."<sup>147</sup> Since Luhmann's systems theory is more interested in ontology of society, rather than epistemology, it is more of a framework than a testable model. Thus, structural autonomy (autopoiesis), the essence of his systems theory, is often criticized as "theoretically empty."<sup>148</sup>

Luhmann himself acknowledges that his theory does not subscribe to "complete self-causation in empirical isolation,"<sup>149</sup> nor can it "be formulated on the level of (causal) relationships of dependence and independence."<sup>150</sup> In a rather nuanced fashion, Luhmann's theory on structural autonomy goes in tandem with that of structural coupling; it provides a piercing, and rich, analysis on the inter-systemic dynamics,<sup>151</sup> such as the

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<sup>144</sup> Lee, *supra* note 57, at 325.

<sup>145</sup> Luhmann, *Globalization*, *supra* note 49, at 75.

<sup>146</sup> *Id.* at 70.

<sup>147</sup> NIKLAS LUHMANN, DIE GESELLSCHAFT DER GESELLSCHAFT 24-5 (1997) trans. and quoted Daniel Lee, *The Society of Society: The Grand Finale of Niklas Luhmann*, 18 PENNSYLVANIA STATE UNIV. 320, 321 (2001) [hereinafter, Lee, *Luhmann*].

<sup>148</sup> Baxter, *Autopoiesis*, *supra* note 28, at 2064.

<sup>149</sup> Luhmann, *Closure*, *supra* note 33, at 1420.

<sup>150</sup> Niklas Luhmann, *Law as a Social System*, 83 NW. U. L. REV. 136, 139 (1989).

<sup>151</sup> Baxter, *Autopoiesis*, *supra* note 28, at 2065-66.

subtle relationships between geopolitics and global capitalism. True, his theory relatively lacks the investigation of actual microscopic actions and interactions between and among social actors, as a *general* theory. Yet, it is still capable of producing a new type of knowledge from a macroscopic standpoint.<sup>152</sup> In this sense, it might better be labeled as a “language” than a theory,<sup>153</sup> a language by which to make sense of the society we live in.

Luhmann’s systems theory also distinguishes itself from other kinds of systems theory, dating back to Talco Parson’s “societal community,” in that Luhmann does not postulate a moral or normative agenda of social integration based on shared values.<sup>154</sup> His grand theory about society distances himself from many possible realizations of society, such as human happiness, liberty, equality and solidarity, as well as inevitable ideological and normative assumptions behind them.<sup>155</sup> Luhmann is therefore opposed, theoretically, to the plural terms of society (societies). According to Luhmann, “using *names* [of society] prevents explanations” and leads to a “political talk.”<sup>156</sup>

## II. Symbolizing Politics and Economy: Fortress and Pangea

### A. *Fortress: A Governance Enclave of Anarchic Politics*

A Fortress is a symbolic expression of territorial, either domestic or regional, politics. At a domestic level, it may manifest as an independent political regime. On a regional level, it may denote a security alliance (such as NATO) or a trading bloc (such as EU). As a conceptual device, it does not necessarily mean a castle-like structure completely insulated from the rest of the world. Its “extensions and frontiers” remain blurred.<sup>157</sup> Even the vague, all-encompassing alignments, such as the West or the Global South, may exhibit, to varying degrees, some traits of a Fortress. To some extent, they can

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<sup>152</sup> *Id.* at 2073.

<sup>153</sup> Marleen Brans & Stefan Rossbach, *The Autopoiesis of Administrative Systems: Niklas Luhmann on Public Administration and Public Policy*, 75 PUB. ADMIN. 3, 417, 419 (1997).

<sup>154</sup> Albert, *Observing*, *supra* note 17, at 253.

<sup>155</sup> Luhmann, *Globalization*, *supra* note 49, at 70.

<sup>156</sup> *Id.* at 70 (emphasis added).

<sup>157</sup> Luhmann, *World Society*, *supra* note 31, at 132.

still be characterized by a self-contained political dynamic among a certain group of nations vis-à-vis non-members. After all, “all politics is local.”<sup>158</sup>

The existence of those diverse organizations demonstrates that the political system can manifest itself through many different alternatives or contingent choices.<sup>159</sup> Essentially, however, the world remains anarchical: there is no genuine political globalization or any semblance of a World Government as globalization refers predominantly to an economic phenomenon.<sup>160</sup> The global political system is not operationally closed as there are no specific programs, such as global election or global administration.<sup>161</sup> Therefore, world politics is fundamentally local (*geo-*) politics. It is always the *domestic* politics that shape the logic of the Fortress.

For example, some American liberals have self-declared the demise of neoliberalism and brought a new slogan of “geopolitics.”<sup>162</sup> Under the banner of “productivism,” Dani Rodrik signifies a new bipartisan economic consensus in America which prioritizes localism over globalism.<sup>163</sup> This is the American version of state capitalism. They demonize big companies as an exploitive machine that suppress wages at the expense of decent labor and environmental standards. They also believe that “autocratic” states, such as China, are an accomplice to this neoliberal crime. Their remedy is to compartmentalize the world market by encircling politically, or culturally, like-mined economies. They want to convert global value chains into regionalized production and trade networks through a trade version of forward guidance, such as

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<sup>158</sup> Coined by Former Speaker of the House Tip O’Neill, the phrase is often interpreted to explain that “grand, global and philosophical issues create passion and headlines, but often matter less to the lives of ordinary Americans than decisions made at the state and municipal levels.” *‘All Politics is Local’ Still Resonates (Editorial)*, MASS LIVE (Aug. 17, 2018), [https://www.masslive.com/opinion/2018/08/all\\_politics\\_is\\_local\\_still\\_re.html](https://www.masslive.com/opinion/2018/08/all_politics_is_local_still_re.html).

<sup>159</sup> Wil Martens, *The Distinctions within Organizations: Luhmann from a Cultural Perspective*, 13 *ORG.* 83, 104 (2006).

<sup>160</sup> Of course, some scholars lament the degrading social effects of globalization. *See generally*, ZYGMUNT BAUMAN, *GLOBALIZATION: THE HUMAN CONSEQUENCES*, (1998) (arguing that globalization is creating a more homogenous world and deepening the divide between the haves and the have-nots).

<sup>161</sup> Mattheis, *The System Theory*, *supra* note 66, at 640-41.

<sup>162</sup> *See e.g.*, Rana Foroohar, *It’s Not Just the Economy, Stupid*, *FIN. TIMES* (Feb. 21, 2022), <https://www.ft.com/content/f6d53cd7-e384-457e-8b6d-fc7a815dda1c>.

<sup>163</sup> Dani Rodrik, *The New Productivism Paradigm?*, *PROJECT SYNDICATE* (July 5, 2022), <https://www.project-syndicate.org/commentary/new-productivism-economic-policy-paradigm-by-dani-rodrik-2022-07>.

“friend-shoring” or “allies-shoring.”<sup>164</sup> Jake Sullivan, the U.S. National Security Adviser, recently stated that “creating a secure and sustainable economy in the face of the economic and geopolitical realities will require all of our *allies* and partners to do more.”<sup>165</sup>

The bloc mentality endemic to the Fortress is liable to entail conflicts. A garden variety of this in-group v. out-group tensions,<sup>166</sup> in the name of nationalism, ethno-centrism, colonialism, or even xenophobia, have contributed to wars, ranging from the Napoleonic War to the Cold War. Even trade wars are characteristic of economic nativism as they mainly impose punitive tariffs against other trading territories. Similarly, economic sanctions or export controls are mostly “unilateral” in the sense that domestic politics within a territory formulates those decisions. In October, 2022, the U.S. semiconductor export controls against China were executed without any meaningful prior consultation with other countries.<sup>167</sup>

Moreover, the logic of the Fortress tends to neglect non-political, such as economic, factors. The U.S. semiconductor export control took effect only five days after the announcement and prone to “unintended consequences,”<sup>168</sup> such as collateral damages

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<sup>164</sup> In April 2022, U.S. Secretary of the Treasury Janet Yellen said the objective of the US “should be to achieve free but secure trade” by “favouring the ‘friend-shoring’ of supply chains to a large number of trusted countries.” *The ‘Friend-Shoring’ of Supply Chains*, 28 INT’L INST. FOR STRATEGIC STUD. (Dec. 22), <https://www.iiss.org/en/publications/strategic-comments/2022/the-friend-shoring-of-supply-chains/#:~:text=In%20April%202022%2C%20just%20before,of%20supply%20chains%20to%20a>.

<sup>165</sup> Jake Sullivan, National Security Advisor, Remarks on Renewing American Economic Leadership at the Brookings Institution (Apr. 27, 2023), <https://www.whitehouse.gov/briefing-room/speeches-remarks/2023/04/27/remarks-by-national-security-advisor-jake-sullivan-on-renewing-american-economic-leadership-at-the-brookings-institution/> (emphasis added). Regarding a criticism against Jake Sullivan’s remarks, see Gary Clyde Hufbauer, *Washington’s Turn to Neo-Mercantilism*, E, ASIA F, (June 4, 2023), <https://www.eastasiaforum.org/2023/06/04/washingtons-turn-to-neo-mercantilism/> (attacking Jake Sullivan’s industrial policy as “neo-mercantilist”).

<sup>166</sup> Moshe Hirsch, *Regulators’ Mindsets, In-group Favoritism, and the National Treatment Obligation in World Trade Organization Law*, 23 GERMAN L. J. 298, 304-09 (Apr. 2022); MOSHE HIRSCH, INVITATION TO THE SOCIOLOGY OF INTERNATIONAL LAW 100-01, 115, 175, 185 (2016).

<sup>167</sup> Justin Feng, *Weathering the Storm: Chinese Chipmakers Respond to U.S. Export Controls*, CHINA - U.S. FOCUS (Apr. 19, 2023), <https://www.chinausfocus.com/peace-security/weathering-the-storm-chinese-chipmakers-respond-to-us-export-controls> (noting that, “Washington is unlikely to engage in WTO consultations and views its export control actions as a national security issue beyond the jurisdiction of a multilateral body.”).

<sup>168</sup> *No Chips for You!: America’s New Export Controls on Semiconductors and Their Implications for Global Trade*, WITA (Nov. 4, 2022), <https://www.wita.org/events/export-controls-on-semiconductors/>.

to downstream industries beyond the semiconductor sector.<sup>169</sup> Likewise, flamboyant images of the Russian-Ukraine war appears to have blinded another reality on the ground: Russia and Ukraine together provide approximately thirty percent of the world's exports of wheat, twenty percent of corn, thirty percent of barley and eighty percent of sunflower oil and sunflower seed meal; Ukraine alone supplies around fifty percent of neon to the world, which is used to etch microchips; that Russia is one of the largest exporters of nickel and palladium, both of which are critical in manufacturing cars, let alone the world's third-largest oil producer and second-largest producer of gas.<sup>170</sup>

Some may argue that globalization has weakened the functional autonomy of the Fortress, as states are deprived of their “monopoly on productive, financial and knowledge structures.”<sup>171</sup> On the other hand, however, as globalization confronts more, not less, regulatory problems, ranging from a pandemic to climate change, the Fortress tends to become more *dirigiste*.<sup>172</sup> Especially, some commodities, such as oil and critical minerals, are deeply entrenched, literally and figuratively, in the territory and thus subject to intensive politics in the form of export controls. Even certain high-tech products, such as semiconductors, also exhibit high territorial relevancy due to their strategic values. The recent U.S. CHIPS Act aims to bring semiconductor manufacturing back to the United States. U.S. politicians are now condemning outsourcing and glorifying an autarky characterized by patriotic mottos such as “Buy American” or “Made in America.

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<sup>169</sup> Thomas Hale, *China Escalates Tech Battle with Review of US Chipmaker Micron*, FIN. TIMES (Apr. 1, 2023), <https://www.ft.com/content/79ddb4bb-cbfc-4e4f-bca8-ef52ea0157c1>; *In Its Tech War with America, China Brings Out the Big Guns*, THE ECONOMIST (July 4, 2023), <https://www.economist.com/business/2023/07/04/in-its-tech-war-with-america-china-brings-out-the-big-guns> (reporting that China's recent export ban of germanium and gallium, two key metals used in manufacturing high-end semiconductors, to the United States might rattle the global chip supply chains).

<sup>170</sup> *Russia's War is Creating Corporate Winners and Losers*, THE ECONOMIST (March 19, 2022), <https://www.economist.com/business/russias-war-is-creating-corporate-winners-and-losers/21808223>.

<sup>171</sup> Golia & Teubner, *supra* note 71, at 10; see also SUSAN STRANGE, STATES AND MARKETS (2d ed. 1994).

<sup>172</sup> *How to Run a Business in a Dangerous and Disorderly World*, THE ECONOMIST (July 27, 2023), [https://www.economist.com/leaders/2023/07/27/how-to-run-a-business-in-a-dangerous-and-disorderly-world?utm\\_medium=cpc.adword.pd&utm\\_source=google&ppccampaignID=17210591673&ppcadID=&utm\\_campaign=a.22brand\\_pmax&utm\\_content=conversion.direct-response.anonymous&gclid=EAIaIQobChMI6qzbdmP1gQMVASCtBh0wxxwAxEAAYASAAEgI3GvD\\_BwE&gclsrc=aw.ds](https://www.economist.com/leaders/2023/07/27/how-to-run-a-business-in-a-dangerous-and-disorderly-world?utm_medium=cpc.adword.pd&utm_source=google&ppccampaignID=17210591673&ppcadID=&utm_campaign=a.22brand_pmax&utm_content=conversion.direct-response.anonymous&gclid=EAIaIQobChMI6qzbdmP1gQMVASCtBh0wxxwAxEAAYASAAEgI3GvD_BwE&gclsrc=aw.ds).

Eventually, the parochial nature of politics tends to turn foreign affairs to a matter of Hobbesian statecraft. As often documented in the IR literature, various realist policies, such as allying, balancing, bandwagoning and hedging, can be interpreted as manifestations of the Fortress. For example, the traditional grouping of “Asia-Pacific” used to represent a relatively coherent nexus between security and economic interests that befits the logic of Pangea. In contrast, the geopolitical neology of “Indo-Pacific” exhibits its symbolic semblance to Fortress in that those two interests remain disconnected from each other.<sup>173</sup> Relatedly, G7 members have coordinated among themselves to maintain a \$60 per barrel price cap on seaborne Russian oil.<sup>174</sup> In addition, G7 members have recently adopted a unified approach to China’s alleged economic coercion.<sup>175</sup> In tandem, one might evoke the notion of a non-Western Fortress among Russia, Iran and China in the wake of the Russia-Ukraine war.<sup>176</sup>

### *B. Pangea: A Mega-Ecosystem of Global Capitalism*

In a twist of irony, it was the arch-critic, not an advocate, of capitalism who had first identified the de-territorialized nature of the Pangea. In *Das Kapital*, Karl Marx alleged, in a prescient manner, that:

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<sup>173</sup> See Marie Kwon, *The Emergence of the Indo-Pacific: Geopolitical Turn or Continuity?*, E-INT’L RELS. (Apr. 11, 2023), <https://www.e-ir.info/2023/04/11/the-emergence-of-the-indo-pacific-geopolitical-turn-or-continuity/>; see also Sanchari Ghosh, *With the Rise of the ‘Indo-Pacific,’ Has the ‘Asia-Pacific’ Faded Away?*, E-INT’L RELS. (May 3, 2023), <https://www.e-ir.info/2023/05/03/opinion-with-the-rise-of-the-indo-pacific-has-the-asia-pacific-faded-away/>.

<sup>174</sup> Andrea Shalal, *G7 Coalition to Keep Russian Oil Price Cap at \$60 Per Barrel*, REUTERS (Apr. 17, 2023), [https://www.reuters.com/markets/commodities/g7-coalition-keep-russian-oil-price-cap-60-per-barrel-source-2023-04-](https://www.reuters.com/markets/commodities/g7-coalition-keep-russian-oil-price-cap-60-per-barrel-source-2023-04-17/#:~:text=WASHINGTON%2C%20April%2017%20(Reuters),cap%20to%20restrict%20Moscow's%20revenues.)

[17/#:~:text=WASHINGTON%2C%20April%2017%20\(Reuters\),cap%20to%20restrict%20Moscow's%20revenues.](https://www.reuters.com/markets/commodities/g7-coalition-keep-russian-oil-price-cap-60-per-barrel-source-2023-04-17/#:~:text=WASHINGTON%2C%20April%2017%20(Reuters),cap%20to%20restrict%20Moscow's%20revenues.)

<sup>175</sup> Demetri Sevastopulo et al., *G7 Prepares Unified Response to Chinese ‘Economic Coercion,’* FIN. TIMES (May 20, 2023), <https://www.ft.com/content/cc19f9f6-b3b1-4f19-b112-8dda8da1c0d9>.

<sup>176</sup> Andrew England & Najmeh Bozorgmehr, *Iran’s Finance Minister Highlights Surge in Investment from Russia*, FIN. TIMES (March 23, 2023), <https://www.ft.com/content/c43f7f85-87c3-49f6-85cb-446d1de2bfc6>; James Kynge, *China Is Tightening Its Embrace with Russia as It Builds Bulwarks against the West*, FIN. TIMES (March 25, 2023), <https://www.ft.com/content/bbaa4006-318e-4dbe-b7d4-3c21aa5e8887>.

Hand in hand with the concentration of capital, (...) the process to entangle all nations in the network of the world market and, consequently, the *international* character of capitalist regime develops.<sup>177</sup>

While some historical legacies, ranging from the ancient Silk Road to colonialism, might offer glimpses of the Pangea, it was only after the fall of the Berlin Wall and the opening of China that the genuine global capitalist system emerged. With the unprecedented advancement of technological innovations, the level of differentiation and complexity that global market has exhibited has simply been equally unprecedented. According to the systems theory, the Pangea is a contemporary “program” in terms of the operation of the economic system. During a historically singular period from the mid-Eighties to the early twenty first century, the economic system resonated with the political system with an unprecedented level of perturbations to and fro each other. The two systems co-evolved in a rather symbiotic manner as a uni-polar geopolitics (Pax Americana) had been wedded to the global value chains revolution. Historically low systemic transaction costs, both political and economic, created the hyper-globalization, synonymous with the Pangea.

In the Pangea, in sharp contrast with the Fortress, territoriality is easily arbitrated and synchronized as seen in the phenomenon of “glocalization.”<sup>178</sup> Consider that two Chinese online fashion retailers are waging a litigation war against each other over antitrust and trademark infringement issues in the United States.<sup>179</sup> In the contemporary global economic ecology represented by global value chains, localization transpires in *terms of*, not against, globalization. In this sense, allegations of economic de-globalization or “slowbalization”<sup>180</sup> might be seen as optical illusions. The systems theory may help us

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<sup>177</sup> Marx/Engels Werke (1839-44), vol. 23, at 790 (quoted by Tomonaga Tairako, *Marx on Capitalist Globalization*, 35 HITOTSUBASHI J. SOC. STUD. 11, 11 (2003)).

<sup>178</sup> See e.g., MIKE FEATHERSTONE ET AL., *GLOBAL MODERNITIES* (1995).

<sup>179</sup> Shen Lu, *China-Founded Rivals Shein and Temu Ramp Up War for American Shoppers*, WALL ST. J. (July 30, 2023), <https://www.wsj.com/articles/china-founded-rivals-ramp-up-war-for-american-shoppers-77c55650>.

<sup>180</sup> *The Deglobalization Myth(s)*, VANGUARD RSCH. (Sep. 27, 2021), [https://corporate.vanguard.com/content/dam/corp/research/pdf/Megatrends-The-deglobalization-myths-ISG052021%20\(1\).pdf](https://corporate.vanguard.com/content/dam/corp/research/pdf/Megatrends-The-deglobalization-myths-ISG052021%20(1).pdf) (predicting that many countries will remain largely unaffected by the alleged “slowbalization” trend, and that multinationals’ earnings growth and corporate profit margins will likely

disabuse ourselves of those optical illusions that are oblivious to underlying, often invisible, structural flows.

Many observers, and advocates, of de-globalization fail to fully appreciate the newly emerging fact that the recent hyper-globalization has been driven mostly by the growth of “intangible” flows, such as services, knowledge, data, intellectual property rights and talent, rather than by the increase of tangible flows, such as trade in goods.<sup>181</sup> Technological innovation has dethroned labor from the main cost input. While “equipment miniaturization” has enabled local, customized manufacturing and thus created multiple, overlapping supply chains, vertical integration of supply chains has reduced the need for cross-border trade in intermediate goods.<sup>182</sup> All of these phenomena have been occurring against the background of heightening geopolitical tensions around the world. This is characteristic of functional differentiation and the increasing complexity between the Pangea and the Fortress.

At the same time, however, the de-territoriality of Pangea is a double-edged sword. On one hand, the economic hyper-interdependency between and among economies explain why global stocks rose as the Chinese government loosened its domestic COVID-19 restrictions.<sup>183</sup> The sheer size of Chinese domestic consumption has led stronger Chinese growth to raise global growth prospects, “inducing an increase in global risk sentiment and an expansion in global asset prices and global credit.”<sup>184</sup> On the other hand,

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not be affected at all); Jeanna Smialek & Ana Swanson, *The Death of Globalization? You Won't Find it in New Orleans*, NY TIMES (Jan. 20, 2023), <https://www.nytimes.com/2023/01/20/business/economy/globalization-new-orleans.html?register=email&auth=register-email> (“De-globalization is more of a slogan than something that is actually happening,” says Edward Gresser, director of trade and global markets at the Progressive Policy Institute and former head of economic research for the Office of the United States Trade Representative).

<sup>181</sup> See Jeongmin Seong et al., *Global Flows: The Ties That Bind in an Interconnected World*, Discussion Paper, MCKINSEY GLOB. INST. (Nov. 15, 2022).

<sup>182</sup> Jeffrey Kleintop, *Deglobalization is Political, Not Economic*, ADVISOR PERSPECTIVES (Apr. 12, 2022) <https://www.advisorperspectives.com/commentaries/2022/04/12/deglobalization-is-political-not-economic>.

<sup>183</sup> Naomi Rovnick & Nicholas Megaw, *Global Stocks Rise as Beijing Eases Covid Restrictions*, FIN. TIMES (June 6, 2022), <https://www.ft.com/content/67fe20fc-b951-46ed-b655-9cf8d5988aa6>.

<sup>184</sup> William L. Barcelona et al., *What Happens in China Does Not Stay in China*, 1360 INT'L FIN. DISCUSSION PAPERS (IFDP), WA: BD OF GOVERNORS OF THE FED. RSRV. SYS. (Nov. 2022).



however, the same economic hyper-interdependency also means that there is no escaping from damages or disruptions in any locality.

In Pangea, disruption anywhere is a potential threat to prosperity everywhere. Those local damages or disruptions could be natural (pandemic) or man-made (wars, both trade wars or military conflicts). As in the cases of goods and money, viruses, drugs, and recessions know no borders.<sup>185</sup> The recent deflationary policy by the United States has sparked the highly contagious interest rates hike in other economies, risking financial meltdowns in vulnerable economies, such as developing countries.<sup>186</sup> In the same vein, while Pangea is highly integrated, it is still subject to *border* controls, such as tariffs and other customs regulations among one another, which represents the segmentary nature of Fortress. There is no World Customs Union.

Nonetheless, systemic resiliency is a default in Pangea. It always holds the potential to maintain its homeostasis, which translates into its characteristic resiliency to occasional disruptions of both natural and human causes.<sup>187</sup> Pangea is proven to have survived the recent disruptions, including the United States – China trade war, the COVID-19 pandemic, and the Russia-Ukraine war. Consider that even in the age of decoupling and trade wars, American businesses still invest in China<sup>188</sup> and vice versa.<sup>189</sup> Chinese companies may desire to leave China to seek alternative supply chains to avoid

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<sup>185</sup> As for the virus that defies the territoriality, the recent COVID-19 pandemic is *res ipsa loquitur*. As for the drug trafficking beyond borders, see Sam Dagher & Samy Adghirni, 'Poor Man's Cocaine' Costing \$3 a Pill Threatens to Proliferate, BLOOMBERG (Aug. 18, 2023), <https://www.bloomberg.com/news/articles/2023-08-17/-3-narcotic-pill-sold-in-the-gulf-worries-european-officials#xj4y7vzkg>. As for the recession, see e.g., Peter S. Goodman, *China's Stalling Economy Puts the World on Notice*, NY TIMES (Aug. 11, 2023), <https://www.nytimes.com/2023/08/11/business/china-economy-trade-deflation.html>.

<sup>186</sup> Yuka Hayashi & Andrew Duehren, *Inflation Tests a Global Economy That Has Weathered COVID-19, Ukraine War*, WALL ST. J. (Apr. 16, 2023), <https://www.wsj.com/articles/inflation-tests-a-global-economy-that-has-weathered-covid-19-ukraine-war-b090e22c>.

<sup>187</sup> See Janet Suleski, *Should Supply Chain Planning Shift from Resiliency to Antifragility?*, SUPPLY CHAIN MGMT. REV. (Nov. 29, 2022), [https://www.scmr.com/article/should\\_supply\\_chain\\_planning\\_shift\\_from\\_resiliency\\_into\\_antifragility](https://www.scmr.com/article/should_supply_chain_planning_shift_from_resiliency_into_antifragility).

<sup>188</sup> In August of 2023, "U.S. Commerce Secretary Gina Raimondo urged American businesses to keep investing in China." Michelle Toh, *Warm Words but Little 'Real Action' as US Commerce Secretary Ends China Visit*, CNN BUS. (Aug. 30, 2023) <https://www.cnn.com/2023/08/30/business/us-commerce-secretary-china-visit-uninvestable-intl-hnk/index.html>.

<sup>189</sup> Marrian Zhou, *China Inc. Keen on Setting Up Shop in the US Despite Tensions*, FIN. TIMES (Apr. 4, 2023), <https://www.ft.com/content/c15a8a59-eb48-421b-84a6-f4c138aeddb5>.

geopolitics.<sup>190</sup> An ever-increasing volume of Chinese capital has been invested in Southeast Asia, and many Chinese companies now desire to “redomicile” themselves as international, Singapore-based entities.<sup>191</sup>

Allianz, an insurance company, has eloquently demonstrated the status quo of the Pangea as follows:

China is a critical supplier for 276 types of goods for the US, and 141 types of goods for the EU. Conversely, the US is a critical supplier to China for just 22 types of goods, and the EU for 188 types of goods. This means that, in an extreme scenario where US-China and US-EU-China trade relations are completely cut off, the US and Europe have more to lose: The loss of critical supplies would cost 1.3% of GDP for the US and 0.5% of GDP for the EU, but 0.3% of GDP for China. Note that as recently as 2018, the US' critical dependence on China was around half of what it is today (0.7% of GDP vs. 1.3%).<sup>192</sup>

[Figure \_\_: The Resiliency of Global Value Chains]<sup>193</sup>

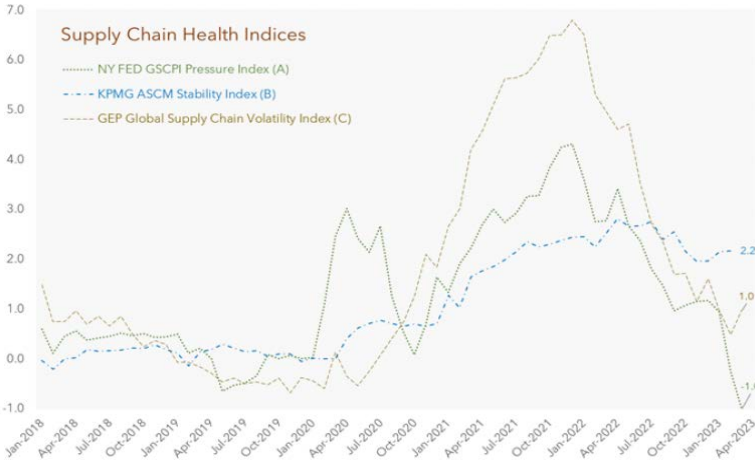
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<sup>190</sup> Primrose Riordan, *Chinese Companies Move Some Production Abroad to Escape Geopolitics*, FIN. TIMES (Apr. 17, 2023), <https://www.ft.com/content/daf7392e-1850-4bdb-bb74-b310e87f0727>.

<sup>191</sup> Leo Lewis, *Singapore Is Well-Positioned to Play Both Sides of Decoupling*, FIN. TIMES (Nov. 24, 2022), <https://www.ft.com/content/269b1a53-dd66-4446-8da8-f54d39403bfc>.

<sup>192</sup> Françoise Huang & Polina Bulavko, *Globalization 2.0: Can the US and the EU Really “Friendshore” Away from China?*, ALLIANZ RSCH. (Oct. 5, 2022), [https://www.allianz-trade.com/content/dam/onemarketing/aztrade/allianz-trade\\_com/en\\_gl/erd/publications/pdf/2022\\_10\\_05\\_Globalization.pdf](https://www.allianz-trade.com/content/dam/onemarketing/aztrade/allianz-trade_com/en_gl/erd/publications/pdf/2022_10_05_Globalization.pdf).

<sup>193</sup> Ashok Viswanathan & Sudesh Kesarkar, *Global Supply Chain Health: Decoding the Value of Supply Chain Indices*, SUPPLY CHAIN MGMT. REV. (Apr. 25, 2023), [https://www.scmr.com/article/global\\_supply\\_chain\\_health\\_decoding\\_the\\_value\\_of\\_supply\\_chain\\_indices](https://www.scmr.com/article/global_supply_chain_health_decoding_the_value_of_supply_chain_indices).



The above three different metrics, which feature similar patterns, represent an overall health of global value chains. Zero denotes GVCs operating smoothly under optimal conditions. Any deviations from zero refer to some type of disruptions in the global market. According to these metrics, GVCs demonstrated disruptions of varying degrees in three periods: 2018-20 (the United States – China trade war); 2020-21 (the COVID-19 pandemic); 2022-23 (the Russia-Ukraine war). Eventually, however, they currently demonstrate a clear pathway toward a normal status.

### III. The Complex Evolution of World Society

#### A. *The Inter-Systemic Propensity of Mutual Conflict*

Niklas Luhmann’s systems theory, particularly his thesis of structural coupling, tends to divine a systemic conflict. Both the market and the state hold their own paradigmatic assumptions based on which each understands the world around it. Thus, the economic reality may not be the same as the political reality.<sup>194</sup> Domestic politics can be said to be an environment to the economic system, symbolized by the market. Although the market is not disconnected from its environment, the former maintains its own

<sup>194</sup> Cf. MOELLER, *supra* note 8, at 24.

homeostasis as it differentiates internal needs from external problems.<sup>195</sup> The relationship between operationally closed systems creates the problem of “double contingency.”<sup>196</sup> In determining its own perspectives, each system must take into account perspectives of the other.

Yet, due to operational closure, a subsystem can only normalize its own contingencies or paradoxes, while “externalizing them into each other.”<sup>197</sup> Double contingency inevitably creates a status of indeterminacy, which explains why world society remains enigmatic to some extent. Sometimes, Fortress and Pangea manage to resonate with each other as they maintain a mutually sustainable distance between them. Other times, however, Fortress may perturb Pangea as the former severely undermines with self-referential process of economic operation. At the same time, Pangea may also irritate Fortress as the former evokes, and provokes, domestic politics, especially a reactionary one, such as nationalism.

From a historical perspective, the recent West-led de-globalizing campaigns appear to be more structural than anecdotal. The industrial revolution and the subsequent colonialization led to the “Great Divergence” in the nineteenth century<sup>198</sup>: the New World (West) diverged from the Old World (China and India) both militarily and economically. The colonialist Fortress resonated with the proto-Pangea organized by an earlier form of imperialistic capitalism, which Friedrich Engels and Karl Marx famously portrayed.<sup>199</sup> Colonialism had entailed the failure of Western Fortress, i.e., the Great War in the early twentieth century.<sup>200</sup> The succeeding disaster of the Versailles system had led

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<sup>195</sup> Cf. Niklas Luhmann, *Operational Closure and Structural Coupling: The Differentiation of the Legal System*, 13 CARDOZO L. REV. 1419, 1420 (1992).

<sup>196</sup> LUHMANN, SOCIAL SYSTEMS, *supra* note 32, ch. 3.

<sup>197</sup> Golia & Teubner, *supra* note 71, at 16.

<sup>198</sup> KENNETH POMERANZ, THE GREAT DIVERGENCE: CHINA, EUROPE, AND THE MAKING OF THE MODERN WORLD ECONOMY (2021)

<sup>199</sup> MARX ENGELS: ON COLONIALISM (University Press of the Pacific 2001).

<sup>200</sup> See Pankaj Mishra, *How Colonial Violence Came Home: The Ugly Truth of the First World War*, THE GUARDIAN (Nov. 18, 2021), <https://www.theguardian.com/news/2017/nov/10/how-colonial-violence-came-home-the-ugly-truth-of-the-first-world-war> (narrating the story of the decades of imperialism which precipitated the first world war).

to totalitarianism and another failure of Western politics, i.e., the Second World War.<sup>201</sup> In those times, Pangea was non-existent under the ruins of two great world wars. It was only during the Seventies and Eighties that the budding signs of Pangea emerged with the early phenomenon of globalization.<sup>202</sup> Hyper-globalization since the early Nineties, in tandem with the fall of the Berlin Wall, witnessed the advent of a full-blown Pangea under the watch of a unipolar Fortress led by the United States and its Western allies.<sup>203</sup>

In hindsight, the short-lived Pax Americana appears to have been an aberration, rather than a sustainable normalcy. True, the dazzling economic growth in some corners of the world, especially in East Asia economies, such as Japan, South Korea, Singapore and later China, ushered in the era of Great Convergence. However, the September 11 terrorist attacks in 2001 and the Wall Street financial crisis in 2007-8 irreversibly altered the programs of the Western politics. First, the new logic of the Western Fortress, “securitization,” has since saddled Pangea with perturbations.<sup>204</sup> Second, a representative aspect of Pangea, which is the rise of the Rest as an inevitable outcome of Great Convergence, has begun to irritate the Western Fortress that suffers from its own domestic malaises.<sup>205</sup> Against this historical background, disruptive and divisive forms of domestic politics and geopolitics, ranging from the Brexit, to the election of Donald Trump, to the trade wars and the Russia-Ukraine war, have continued to emerge in series.

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<sup>201</sup> *Dictatorship and Totalitarianism In World War II*, BREWMINATE (Oct. 9, 2018), <https://brewminate.com/dictatorship-and-totalitarianism-in-world-war-ii/> (describing the “harsh totalitarian measures” taken in the years immediately prior to the outbreak of World War II).

<sup>202</sup> James M. Boughton, *Globalization and the Silent Revolution of the 1980s*, 39 INT’L MONETARY FUND, FIN. & DEV. (March 2002), <https://www.imf.org/external/pubs/ft/fandd/2002/03/bought.htm> (describing how the “silent revolution” of the 1980s paved the way for the emergence of globalization in the 1990s).

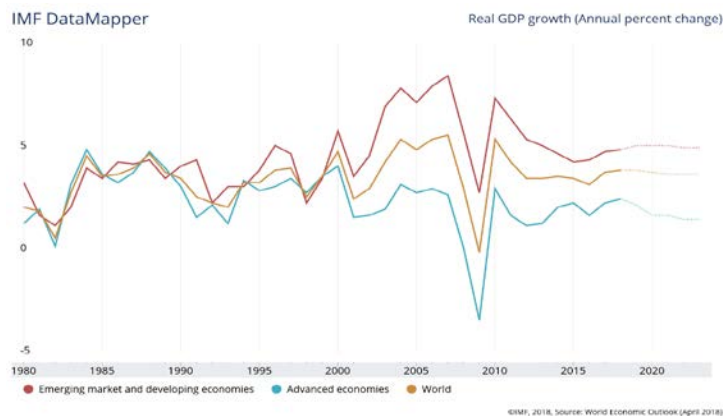
<sup>203</sup> After World War II ended, western governments enjoyed a time of peace and prosperity, but were simultaneously becoming increasingly concerned that competition with China was “unfair.” The “hyperglobalization” of the 1990s was associated with great economic achievement, and standards of living increased across the globe. See Nataliia Shulga, *Growing Threats to Global Trade*, INT’L MONETARY FUND (June 2023), <https://www.imf.org/en/Publications/fandd/issues/2023/06/growing-threats-to-global-trade-goldberg-reed>.

<sup>204</sup> Jimena Puga, *Post-Cold War Securitization in the European Union*, Univ. de Navarra (Sep. 24, 2021), <https://www.unav.edu/web/global-affairs/seguridad-de-la-ue> (describing how, in post-Cold War Europe, “the process of globalization was beginning and therefore each country was starting to look after its own interests and objectives.”).

<sup>205</sup> Branko Milanovich, *The Great Convergence: Equality and its Discontents*, FOREIGN AFFAIRS (June 14, 2023), <https://www.foreignaffairs.com/world/great-convergence-equality-branko-milanovic>; ANDREY KOROTAYEV ET AL., GREAT DIVERGENCE AND GREAT CONVERGENCE: A GLOBAL PERSPECTIVE 85-106 (2015).

Consequently, reactionary politics within the Western Fortress, such as the rediscovery of the West in the wake of the Ukraine crisis,<sup>206</sup> has further complicated geopolitics across the globe.

[Figure \_\_ : Trends of Real Economic Growth (1980-2020)]<sup>207</sup>



From a systemic standpoint, an economic sanction is a form of operation within the Fortress processed according to its own (political) logic. However, the Pangea's own observation of the Fortress is that the latter exaggerates its own logic, such as both the possibility and the merits of "self-sufficiency."<sup>208</sup> The sanction generates an enormous perturbation to the Pangea since the market cannot process the sanction according to its own (economic) logic. The economic system registers those perturbations from politics through economic pains such as inefficient allocation of resources or bankruptcies.<sup>209</sup> Businesses, especially multinational ones, suffer from a due diligence nightmare as they scramble to figure out whether their complicated involvement in a global supply chain ever touches upon the sanction booby-traps.<sup>210</sup> Thus, the sanction raises new contingency

<sup>206</sup> David Miliband, *The World Beyond Ukraine, The Survival of the West and the Demands of the Rest*, FOREIGN AFFAIRS (April 18, 2023), <https://www.foreignaffairs.com/ukraine/world-beyond-ukraine-russia-west>.

<sup>207</sup> *World Economic Outlook: 2018*, INT'L MONETARY FUND (2018), <https://www.imf.org/en/publications/weo?page=3>.

<sup>208</sup> See Martin Wolf, *The Big Mistakes of the Anti-Globalizers*, FIN. TIMES (June 21, 2022), <https://www.ft.com/content/falf3a82-99c5-4fb2-8bff-a7e8d3f65849>.

<sup>209</sup> KING & THORNHILL, *supra* note 22, at 100-03.

<sup>210</sup> Alex J. Brackett, et al., *Impacts of Sanctions and Export Controls on Supply Chains*, GLOB. INVESTIGATIONS REV. (Sep. 29, 2023), <https://globalinvestigationsreview.com/guide/the-guide->

in the market. Sacrificing the market logic of efficiency in the name of the political cause, such as national security, jeopardizes the structural stability of the market.<sup>211</sup> In sum, as long as we breathe together in the Pangea's ecosystem, our material fates are bonded beyond the Fortress.

This type of “regulatory politics,” as seen in many other de-globalizing policies, such as decoupling, trade wars, and economic sanctions, is nothing but the outcome of the dedifferentiation. Such dedifferentiation is due mostly to the Fortress' illiteracy of the Pangea's systemic complexity. A retired Singaporean diplomat sternly warned against some governments' lack of deep understanding of global supply chains. Bilahari Kausikan aptly observes that:

The very metaphor of a 'chain' understates the complexity, because a chain is an essentially simple linear structure. A more appropriate metaphor is the root system of a tree leading to its trunk, leading to branches, twigs, and leaves. The global system comprises a thick forest of trees intertwined with each other across continents.<sup>212</sup>

Ironically, however, this dedifferentiation by the Fortress tends to jeopardize its own effectiveness and legitimacy because the Fortress, by its systemic nature, cannot process the perturbation, such as the increased transaction cost, incurred by the Pangea.<sup>213</sup> It invites insurmountable resistance from global businesses, which will eventually reshape the future of the Fortress. First of all, regulatory politics seldom

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sanctions/fourth-edition/article/impacts-of-sanctions-and-export-controls-supply-chains (“Sanctions and counter-sanctions are already proving disruptive to global supply chains, as companies facing import and export restrictions on one side of relevant borders or another are forced to find alternative sources of supply, to divert shipments to alternative markets or to otherwise revise or unwind sourcing and supply strategies.”).

<sup>211</sup> Cf. Nobles & Schiff, *supra* note 26, at 8.

<sup>212</sup> Steven R. Okun, *IPEF Recognizes Supply Chains Aren't Linear*, ASIA TIMES (June 14, 2023), <https://asiatimes.com/2023/06/ipef-recognizes-that-supply-chains-arent-linear/>.

<sup>213</sup> June Yoon, *The Cost of America's Ban on Chinese Chips*, FIN. TIMES (Nov. 24, 2022), <https://www.ft.com/content/d3935b9a-a203-435d-b1a9-a22bcc9d79e7> (viewing that “American policymakers are unlikely to have fully appreciated the corollary of splitting the world semiconductor supply chain in two: far higher costs for western manufacturers and their customers”).

works,<sup>214</sup> even though Fortress self-judges the success of regulatory politics through its own justificatory mechanism.<sup>215</sup> The inflation is one of many systemic pushbacks from the Pangea to the perturbation it received from its environment, the Fortress.<sup>216</sup> Since oil is priced not regionally but globally, the Western nations' ban on Russia's oil eventually precipitates global cost inflation and therefore taxing all businesses in the world, including the Western businesses.<sup>217</sup> Now, politics are overburdened with the task of mitigating such massive inflation. Even the now popular politics of clean energy subsidies, as seen in the recent Inflation Reduction Act (IRA), may be overcome by the new future politics of federal debt ceilings.<sup>218</sup>

Individual enterprises also defy the regulatory politics. Entegris, the top U.S. semiconductor materials and tech supplier, decided to build its largest factory and the most important R&D center in Taiwan, rather than in the United States.<sup>219</sup> Tesla was also forced to move its factory from the United States to China as a result of the Trumpian trade war as China's retaliatory tariffs were prohibitively costly for Tesla to export from the United States to China.<sup>220</sup> Likewise, BASF's chief executive Martin Brudermüller has

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<sup>214</sup> "The absence of a trade agenda with real market access provisions in the Indo-Pacific is absolutely glaring." Jennifer Doherty, *Biden's Trade Agenda Furthers Trade As Diplomatic Tool*, LAW360 (March 10, 2023) (quoting congressmen Richard Neal and Mike Gallagher). The main U.S. business groups, including the U.S. Chamber of Commerce, the National Association of Manufacturers, and Business Roundtable, criticized the IPEP deal as "not only failing to deliver meaningful strategic and commercial outcomes but also endangering U.S. trade and economic interests in the Indo-Pacific region and beyond." Ana Swanson, *Biden Administration Announces Indo-Pacific Deal, Clashing With Industry Groups*, NY TIMES (May 27, 2023), <https://www.nytimes.com/2023/05/27/business/economy/biden-indo-pacific-trade-deal.html>.

<sup>215</sup> KING & THORNHILL, *supra* note 22, at 100.

<sup>216</sup> Zsolt Darvas & Catarina Martins, *The Impact of the Ukraine Crisis on International Trade* 29 (Bruegel Working Paper No. 20/2022), <https://www.bruegel.org/working-paper/impact-ukraine-crisis-international-trade>; *The Crisis in Ukraine: Implications of the War for Global Trade and Development*, WORLD TRADE ORG. (2022), [https://www.wto.org/english/res\\_e/publications\\_e/crisis\\_ukraine\\_e.htm](https://www.wto.org/english/res_e/publications_e/crisis_ukraine_e.htm).

<sup>217</sup> Julianne Pepitone, *Why Are US Gas Prices Soaring When America Barely Uses Russian Oil?*, CNN BUS. (March 12, 2022), <https://www.cnn.com/2022/03/12/energy/us-gas-prices-russia-oil/index.html>.

<sup>218</sup> Bill Emmott, *Return of the 'Big State' Will Be Short-Lived*, ASIA TIMES (Aug. 15, 2023), <https://asiatimes.com/2023/08/return-of-the-big-state-will-be-short-lived/>.

<sup>219</sup> Scott Foster, *U.S. Chips Firm Snubs Biden with Big New Taiwan Investment*, ASIA TIMES (Dec. 15, 2021), <https://asiatimes.com/2021/12/us-chips-firm-snubs-biden-with-big-new-taiwan-investment/>.

<sup>220</sup> Chad P. Bown, *Industrial Policy for Electric Vehicle Supply Chains and the US-EU Fight over the Inflation Reduction Act* (Peterson Inst. Int'l Econ., Working Papers Nos. 23-1, May 2023), <https://www.piie.com/publications/working-papers/industrial-policy-electric-vehicle-supply-chains-and-us-eu-fight-over>.



recently made a trenchant observation that “it’s urgently necessary to stop this China bashing and look at ourselves a bit more self-critically.”<sup>221</sup>

Regulatory politics, and their side effect of dedifferentiation, is not limited to the Western nations. The recent economic coercion by China, in the form of boycotts and other administrative obstruction to foreign business, prompted by non-economic reasons, has engendered many unintended self-inflicting wounds to the Chinese economy.<sup>222</sup> Retails stores, such as marts and department stores from the Lotte Group, one of the largest Korean conglomerates, used to boast its countless branches across China. However, the Korean government’s 2016 decision to deploy the Terminal High Altitude Area Defense (THAAD) system, a United States-made anti-ballistic missile, infuriated China, despite Korea’s clarification that it was in response to North Korea’s intensifying missile threat.<sup>223</sup> The Chinese government retaliated against the Lotte Group through regulatory suspensions on the grounds that it was the Lotte Group that sold the land for the THAAD system.<sup>224</sup> The sale of the Lotte Group nosedived instantly and it had lost \$876 million by the time of its complete exit from China in 2018.<sup>225</sup> This incident not only tainted China’s reputation in the Korean public, but also alerted the Korean government and businesses into rethinking the “asymmetric interdependence” between the two economies and led them to seek alternative partners, such as Southeast Asian nations.<sup>226</sup>

The Chinese government has recently made a desperate effort to recover from the post-COVID economic torpor by “optimizing the business environment.”<sup>227</sup> Still, however, these titular market-friendly policies are strongly entrenched in the CCP’s political logic.

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<sup>221</sup> Guy Chazan & Yuan Yang, *Germany Struggles with Its Dependency on China*, FIN. TIMES (Nov. 1, 2022), <https://www.ft.com/content/be082c77-1f9c-409f-86e8-eeb2bd9d1418>.

<sup>222</sup> *China’s Raids on Foreign Firms Hurt Its Own Interests*, FIN. TIMES (May 10, 2023), <https://www.ft.com/content/f956ab7c-7980-44e4-b2b4-5f101398e2b3>.

<sup>223</sup> Dominic Simonelli et al., *South Korea Pushes Back against Chinese Economic Coercion*, E. ASIA F. (May 5, 2023), <https://www.eastasiaforum.org/2023/05/05/south-korea-pushes-back-against-chinese-economic-coercion/>.

<sup>224</sup> *Id.*

<sup>225</sup> *Id.*

<sup>226</sup> *Id.*

<sup>227</sup> Neil Thomas, *China’s Top Policy Group Encourages Economic Opening, but on Political Terms*, ASIA SOC’Y POL’Y INST. (July 19, 2023), <https://asiasociety.org/policy-institute/chinas-top-policy-group-encourages-economic-opening-political-terms>.

The CCP emphasizes that it must “take the maintenance of industrial security as the top priority [and] strengthen the top-level design of strategic spheres.”<sup>228</sup> The CCP appears to prioritize political benefits, such as the party’s capability to control economic activity, over the market sentiments. However, if the CCP’s strong interventionism exacerbates uncertainties in the market, it may encounter political backlashes by losing the legitimacy of the party.

Table 1 summarizes an inter-systemic tension between Pangea and Fortress by highlighting their distinctions.

[Table 1: An Inter-Systemic Clash?: Pangea v. Fortress]

	<b>Pangea</b>	<b>Fortress</b>
<b>Phenomenon</b>	GVCs	Trade Wars; Econ. Sanctions
<b>Logic (I)</b>	Profit	Power
<b>Logic (II)</b>	Positive Sum	Zero-Sum
<b>Logic (III)</b>	Certainty	Contingency
<b>Vector</b>	Centripetal	Centrifugal
<b>Scope</b>	De-Territorial	Territorial
<b>System Erosion</b>	Fragmentation	Loss of Control

### *B. Complexity as a Systemic Evolution*

#### 1. De-Globalization: A Logic of the Fortress

According to Luhmann, as a modern society becomes more differentiated, it lacks “supermedium capable of lending a uniform meaning to all communications.”<sup>229</sup> For

<sup>228</sup> *Id.*

<sup>229</sup> Lee, *Luhmann, supra* note 147, at 326-7.

example, any particular set of ethical standards may not remedy the morally weak spots of society.<sup>230</sup> The operational logic of globalization was once regarded as such a supermedium of world society. Recently, however, the de-globalization movement has deprived globalization of the latter's supermedium status.

De-globalization is in sync of a perfect political logic. It is the territoriality, symbolized by a Fortress, that claims power and control. Politicians may believe that globalization can be disposed by certain policies, such as reshuffling a bunch of transactions. Yet, territorial mindset brings a false consciousness of control. Global value chains are neither a bureaucratic scheme nor a mere web of contracts that can be perfunctorily undone. Rather, analogous to a force of nature, they are a manifestation of the global capitalist system comprised of multiple economies, which the Pangea embodies. Thus, the logic of a Fortress cannot but remain incoherent among multiple political units. What self-sufficiency means to the United States is different from what it may mean to smaller countries.<sup>231</sup>

By the same token, when the United States has continued to rally its allies to join a broad sanction campaign against Russia, its allies, in particular those in Europe, remain divisive in implementing such sanctions.<sup>232</sup> The more severe Western sanctions against Russia become, the more likely those sanctions become unsustainable because they will wreak havoc on Western, and global, economies by generating massive self-inflicted wounds and collateral damages.<sup>233</sup> Likewise, a trade war is basically a civil war from the

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<sup>230</sup> *Id.*

<sup>231</sup> *Id.*

<sup>232</sup> Ian Talley, *U.S. Presses Allies to Tighten Up Sanctions Enforcement on Russia*, WALL ST. J. (Nov. 21, 2022), <https://www.wsj.com/articles/u-s-presses-allies-to-tighten-up-sanctions-enforcement-on-russia-11668878641>; Nick Wadhams, *US Wavers Over Next Russian Sanctions as Fears of Divide Grow*, BLOOMBERG (June 1, 2022), <https://www.bloomberg.com/news/articles/2022-06-01/us-wavers-over-next-russia-sanctions-as-fears-of-divide-grow>.

<sup>233</sup> See Henry J. Farrell & Abraham L. Newman, *The U.S. Is the Only Sanctions Superpower. It Must Use That Power Wisely*, NY TIMES (March 16, 2022), <https://www.nytimes.com/2022/03/16/opinion/us-russia-sanctions-power-economy.html>; Tyler Cowen, *Don't Make It Hard for Americans to Invest in China*, BLOOMBERG (Apr. 30, 2023), <https://www.bloomberg.com/opinion/articles/2023-04-30/don-t-make-it-too-hard-for-americans-to-invest-in-china>.

standpoint of Pangea. There are no winners: we all lose. We simply hurt ourselves, just as an autoimmune disease hurts our bodies.<sup>234</sup>

In sum, a Fortress is structurally fragile and unstable due to its systemic limit, i.e., locality. Moreover, the Pangea tends to resist a Fortress' attempt to undermine the former's survival. As a result, the vectors of the original sanction politics are destined to shift, both globally and regionally. It is this inevitable, system-laden shift that generates ever-increasing complexities.

## 2. The New Age of Geopolitics and Geoeconomy

The postwar de-colonization brought sovereignty to nearly every state on earth, at least in an official sense. However, this legal notion of sovereignty must not be mistaken for its "empirical" meaning.<sup>235</sup> Due to the critical asymmetry among states in their political-military and economic power, the quasi-stratification exists between and among states. The existence of veto power in the UN Security Council as well as the unequal voting rights in the Bretton Woods institutions (IMF and World Bank) contradict the original notion of sovereign equality.

However, as world society evolves, i.e., globalizes, such quasi-stratification between the center (West) and the periphery (Rest), tends to decrease: world society becomes more "functional."<sup>236</sup> The economic system (Pangea) works based on its own communication, while the political system (Fortress) has its own operation. In other words, the Fortress cannot directly impose its own sphere of influence onto the Pangea. The Fortress cannot replace the Pangea. World society becomes "polycontextual": the same event may produce different meanings as it is observed by functionally different

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<sup>234</sup> Cf. Jacques Derrida, *Autoimmunity: Real and Symbolic Suicides: A Dialogue with Jacques Derrida*, in BORRADORI, GIOVANNA PHILOSOPHY IN A TIME OF TERROR: DIALOGUES WITH JÜRGEN HABERMAS AND JACQUES DERRIDA (Pascale-Anne Brault & Michael Naas trans. 2004) (analogizing a society's movements to destroy itself as "autoimmunity" or "symbolic suicides").

<sup>235</sup> See generally Robert Keohane, *International Institutions: Two Approaches*, 3 (2 INT'L STUD. Q. (1988).

<sup>236</sup> Lee, *supra* note 57, at 328.

societal systems.<sup>237</sup> Consequently, *entropy* (uncertainty) increases within the world society.

The Russia-Ukraine war has been a revelation of this evolutionary shift from quasi-stratification to functional differentiation. Here, unlike during the Cold War, quasi-stratification between and among states hardly emerges. Tellingly, the Western position on Russia's invasion of Ukraine failed to receive a consensus from the world. According to Alexander Stubb, a former prime minister of Finland, "there is a general misconception in the west that the world is united in its support for Ukraine."<sup>238</sup> While the West attributed the war to Vladimir Putin's revisionist antics, other nations pointed to the U.S. campaign of containing Russia through NATO expansion.<sup>239</sup> At the recent G20 Summit, India and China explicitly refused to condemn Russia.<sup>240</sup> Both India and China have benefited from cheap Russian oil and gas ever since the Western economic sanctions against Russia started. Eventually, G20 failed to issue a joint statement due to diverging political positions among members on the Ukraine situation.<sup>241</sup>

Moreover, the West's reflexive support for Ukraine forced the Rest to recall the latter's past sufferings from the Western colonialism and imperialism. Although the Rest sympathizes with the sufferings of Ukrainians, the Rest's "anger and frustration" often originates from the fact that the West's such an unanimous, or blinded, subscription to its own narratives.<sup>242</sup> To Indians and Africans, the West's dark legacies of colonialism and

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<sup>237</sup> Lee, *Luhmann*, *supra* note 147, at 328.

<sup>238</sup> Alexander Stubb, *The West Must Learn from Its Mistakes If It Wants to Shape the New World Order*, FIN. TIMES (May 11, 2023), <https://www.ft.com/content/a1714294-aec7-4314-8987-0e37a535fe69>.

<sup>239</sup> *China Has Honed Its Justifications for Taking Russia's Side*, THE ECONOMIST (March 26, 2022), [https://www.economist.com/china/2022/03/26/china-has-honed-its-justifications-for-taking-russias-side?utm\\_medium=cpc.adword.pd&utm\\_source=google&ppccampaignID=17210591673&ppcadID=&utm\\_campaign=a.22brand\\_pmax&utm\\_content=conversion.direct-response.anonymous&gclid=EAIaIQobChMI27Dws\\_D1gQMVGvzICh2jqwr6EAAYASAAEgLZZPD\\_BwE&gclsrc=aw.ds](https://www.economist.com/china/2022/03/26/china-has-honed-its-justifications-for-taking-russias-side?utm_medium=cpc.adword.pd&utm_source=google&ppccampaignID=17210591673&ppcadID=&utm_campaign=a.22brand_pmax&utm_content=conversion.direct-response.anonymous&gclid=EAIaIQobChMI27Dws_D1gQMVGvzICh2jqwr6EAAYASAAEgLZZPD_BwE&gclsrc=aw.ds).

<sup>240</sup> Eyder Peralta & Joanna Kakissis, *At the G20 Summit, Countries Couldn't Reach an Agreement about Ukraine*, NAT'L PUB. RADIO, (Feb. 26, 2023), <https://www.npr.org/2023/02/26/1159585260/at-the-g-20-summit-countries-couldnt-reach-an-agreement-about-ukraine>.

<sup>241</sup> Nana Shibata & Koya Jibiki, *Ukraine War Casts Long Shadow over G-20's Economic Cooperation*, NIKKEI ASIA (July 24, 2022), <https://asia.nikkei.com/Politics/International-relations/Ukraine-war-casts-long-shadow-over-G-20-s-economic-cooperation>.

<sup>242</sup> Samer Al-Atrush et al., *Social Media Campaigns Tap Distrust of NATO and West*, FIN. TIMES (Apr. 4, 2022) (quoting Marc Owen Jones), <https://www.ft.com/content/f84e8392-150f-470e-8b8c-16bbac49af95>.

military interventionism seems to have shaped such anger and frustration. The Rest lambasted that “wars are only evil when Westerners are the victims.”<sup>243</sup> Some even raised the criticism of a “racist double standard.”<sup>244</sup>

The geopolitical faultline over sanctions against Russia could not be more prominent than the recent controversy of Russia’s membership to G20.<sup>245</sup> In 2022, Western members of G20, including the United States, European nation and Australia, called for expelling Russia from G20 to punish Russia for its invasion of Ukraine. However, China objected to this proposal, emphasizing that G20 must remain as an “economic” forum. The host country, Indonesia, also remained neutral and issued a formal invitation to Russia. Indonesia’s conspicuously measured reaction to Russia’s invasion of Ukraine warrants a careful study. In 2023, the host country, India, also refused to discuss the Ukraine war at the annual G20 summit, prioritizing economic issues, such as growth and development.<sup>246</sup>

Both Saudi Arabia and the United Arab Emirates refused the U.S. government’s desperate call for the increase of oil production.<sup>247</sup> Israel, one of the United States’ staunchest allies, recently refused to sell Pegasus, a powerful spyware tool, to Ukraine for the fear of Russian reaction.<sup>248</sup> That spyware could have hacked Russian mobile phone

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<sup>243</sup> Chandran Nair, *Wars are Only Evil When Westerners are the Victims*, NIKKEI ASIA (March 18, 2022), <https://asia.nikkei.com/Opinion/Wars-are-only-evil-when-Westerners-are-the-victims>.

<sup>244</sup> Ahmed Twaij, *How Coverage of the Ukraine-Russia Conflict Highlights a Racist Double Standard*, NBC NEWS (March 3, 2022), <https://www.nbcnews.com/think/opinion/ukraine-russia-conflict-highlights-racist-double-standard-ncna1290822>.

<sup>245</sup> See Nicholas Gordon, *President Biden Wants to Kick Russia Out of the G20. Here’s Why That’s Unlikely to Happen*, FORTUNE (March 25, 2022), <https://fortune.com/2022/03/25/russia-g20-summit-putin-biden-indonesia-bali-china-ukraine/>; Gillian Tett, *Fallout from Ukraine Threatens the G20’s Future*, FIN. TIMES (Apr. 7, 2022), <https://www.ft.com/content/b4b335a1-f999-46ad-bbe1-1e5576152a2b>.

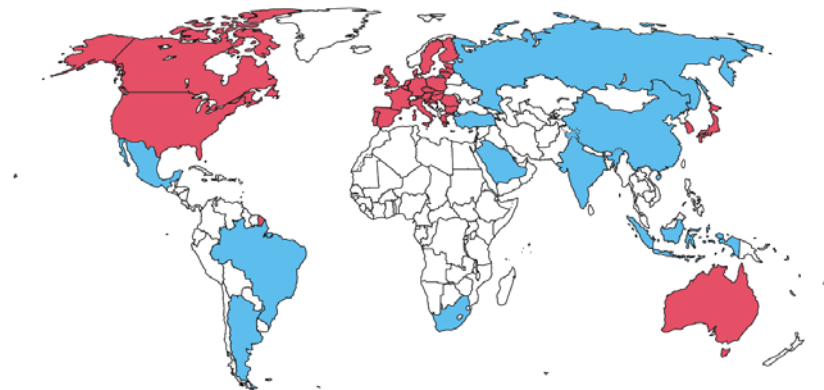
<sup>246</sup> Suhasini Haidar, *Ukraine War Not a Priority of G-20 Presidency, Says India*, THE HINDU (July 13, 2023), <https://www.thehindu.com/news/national/ukraine-war-is-not-our-priority-indian-g-20-sherpa-amitabh-kant/article67076674.ece>.

<sup>247</sup> Edward Luce, *The West Is Rash to Assume the World Is on Its Side over Ukraine*, FIN. TIMES (March 24, 2022), <https://www.ft.com/content/d7baedc7-c3b2-4fa4-b8fc-6a634bea7f4d>.

<sup>248</sup> Ronen Bergman & Mark Mazzetti, *Israel, Fearing Russian Reaction, Blocked Spyware for Ukraine and Estonia*, NY TIMES (March 23, 2022), <https://www.nytimes.com/2022/03/23/us/politics/pegasus-israel-ukraine-russia.html>.

numbers.<sup>249</sup> Instead, Israel is now seeking the role of an impartial mediator, distancing itself from the U.S. position.<sup>250</sup>

[Figure \_\_: G20 Nations (**Red**) That Sanctioned Russia<sup>251</sup>]



Source: Bloomberg  
Note: Mapped data for G-20 members, including the 27 nations of the EU.

Such a stark division between the West and the Rest, or between the Global North and the Global South, is self-propagating. The West has now subscribed to a new faultline of democracy versus autocracy. This “value” system has even attempted to reconfigure the contours of Pangea on the premise that “you don’t want to be dependent on countries that don’t share your values”<sup>252</sup> These cacophonies between the Western Fortress and the Rest have ever-intensified provincial echo chambers, symbolized by a media war between CNN (the United States) v. Global Times (China). The West has consistently attempted to expand its Fortress to the Asia-Pacific region, which irritated China.<sup>253</sup> In parallel, the Rest, which is non-Western Fortress, has recently been attempting to enlarge its own

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<sup>249</sup> *Id.*

<sup>250</sup> Luce, *supra* note 247.

<sup>251</sup> Alan Crawford et al., *The US-Led Drive to Isolate Russia and China Is Falling Short*, BLOOMBERG (Aug. 4, 2022), <https://www.bloomberg.com/news/articles/2022-08-05/the-us-led-drive-to-isolate-russia-and-china-is-falling-short>.

<sup>252</sup> Derek Brower, *Canada Warns US against Waging ‘Carbon Subsidy War,’* FIN. TIMES (Apr. 3, 2023) (quoting Jonathan Wilkinson, a senior member of Justin Trudeau’s government), <https://www.ft.com/content/4b102da2-5f3e-4046-8d12-ab9e3ca89332>.

<sup>253</sup> “The Indo-Pacific strategy is as dangerous as the Nato strategy of eastward expansion in Europe. (...) If allowed to go unchecked, it would bring unimaginable consequences and ultimately push the Asia-Pacific [region] over the edge of an abyss.” Edward White & Tom Mitchell, *Specter of ‘Indo-Pacific Nato’ Accelerates China’s Decoupling from the West*, FIN. TIMES (March 26, 2022) (quoting China’s Vice-Foreign Minister Le Yucheng), <https://www.ft.com/content/98529d12-6cd6-40dc-a242-3ca907f20a73>.

force field. BRICS members have recently invited six new members: Argentina, Saudi Arabia, Iran, Egypt, Ethiopia and the United Arab Emirates.<sup>254</sup> According to the systems theory, the BRICS' growing salience and its juxtaposition with G7 characterizes a shift from a stratified form of differentiation within geopolitics to a more diffuse ("functional") one.<sup>255</sup>

Admittedly, most BRICS nations are not necessarily *anti-Western* nor their internal stances are always coherent.<sup>256</sup> Nonetheless, the rise of BRICS still manifests, in a symbolic manner, a new world order departing from the Western dominated past. Nations from the Rest have recently begun to amplify their own political narratives. The Chinese Communist Party recently warned against "historical nihilism," highlighting alleged epic flaws in the dissolution of the Soviet Union and lionizing the old Communist doctrines, including the system of centrally planned economy.<sup>257</sup> Russia also lost no time in exploiting the Rest's anger and frustration and propagandized that the war "has exposed the racism against non-Europeans."<sup>258</sup> Likewise, Brazil, one of the prominent Middle Powers in the Rest, has declared its intention to "raise the level of the strategic partnership between [Brazil and China], expand trade flows and, together with China, *balance* world geopolitics."<sup>259</sup>

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<sup>254</sup> See Steven Erlanger et al., *Iran, Saudi Arabia and Egypt Join Emerging Nations Group*, NY TIMES (Aug. 24, 2023), <https://www.nytimes.com/2023/08/24/world/europe/brics-expansion-xi-lula.html>; Simone Preissler Iglesias et al., *Putin, Xi and BRICS Allies See Chance to Shake Up World Order*, BLOOMBERG (Aug. 20, 2023), <https://www.bloomberg.com/news/articles/2023-08-21/brics-summit-2023-the-emerging-market-power-bloc-that-wants-to-get-even-bigger#xj4y7vzkg>; Bryce Baschuk, *How Global Trade Changes with Saudi, Indonesia in BRICS*, BLOOMBERG (Aug. 23, 2023), <https://www.bloomberg.com/news/newsletters/2023-08-23/supply-chain-latest-how-global-trade-changes-with-saudi-indonesia-in-brics>.

<sup>255</sup> See NIKLAS LUHMANN, *THE DIFFERENTIATION OF SOCIETY* 234 (Stephen Holmes & Charles Larmore trans., 1982).

<sup>256</sup> See Alexandra Wexler, *BRICS Nations at Odds over Adding to Their Members*, WALL ST. J. (Aug. 21, 2023), <https://www.wsj.com/world/brics-nations-at-odds-over-adding-to-their-number-63d2dd06>.

<sup>257</sup> *Don't Underestimate Xi Jinping's Bond with Vladimir Putin*, THE ECONOMIST (Apr. 9, 2022), <https://www.economist.com/china/2022/04/09/dont-underestimate-xi-jinpings-bond-with-vladimir-putin>.

<sup>258</sup> *Id.*

<sup>259</sup> Bryan Harris & Joe Leahy, *Lula Vows Partnership with China to 'Balance World Geopolitics'*, FIN. TIMES (Apr. 15, 2023) (quoting Brazilian President Luiz Inácio Lula da Silva) (emphasis added), <https://www.ft.com/content/766ed3aa-3f51-4035-8573-43254c9756d5>.



Importantly, the Divided World phenomenon substantiates the theme of Great Divergence molded, gradually yet persistently, by globalization since the end of the Second World War. The relative decline of the Western economy and the relative rise of the non-Western economy, measured by the size of each economy in world economy as well as the annual rate of economic growth, will determine the eventual effect of Western sanctions. The unprecedented Western energy sanctions *en masse* against Russia has ironically entailed the increase of Russian energy exports to non-Western countries, such as India and China, with steep discounts, contributing to the stabilization of the ruble against the dollar.<sup>260</sup>

Here, the West confronts the so-called sanction dilemma: the harder the West tightens the sanction valve, the farther it may distance the Rest from itself. The new Russian “Foreign Policy Concept” has confirmed Russia’s pivot to the East.<sup>261</sup> Russian businesses have now added a new intermodal service that connects Russia’s Far Eastern neighbors, such as China, South Korea and Japan.<sup>262</sup> FESCO, the largest logistics company in Russia, recorded a nearly forty percent increase in sea trade in 2022 from the previous year.<sup>263</sup> If left unchecked, the world economy could encounter an epic peril of economic balkanization, a bad omen reminiscent of the interwar economic disaster.

The rise of Middle Powers, such as Germany, France, Japan, South Korea, India, and Indonesia, is symptomatic of the increasing complexity of world society.<sup>264</sup> The *multi*-polar form of functional differentiation is less stratified than a bi-polar form during

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<sup>260</sup> Alan Crawford & Julian Lee, *Russia Sidesteps Sanctions to Supply Energy to Willing World*, BLOOMBERG (Apr. 7, 2022), <https://news.bloomberglaw.com/international-trade/russia-sidesteps-sanctions-to-supply-energy-to-willing-world-1>.

<sup>261</sup> Oleg Yanovsky, *Russia Looks East to Trade*, E. ASIA F. (May 9, 2023), <https://www.easiaforum.org/2023/05/09/russia-looks-east-to-trade/>.

<sup>262</sup> Bryce Baschuk, *Russia Lashes Out at WTO for ‘Illegal’ Trade Curbs: Supply Lines*, BLOOMBERG L. (March 8, 2023), <https://news.bloomberglaw.com/international-trade/russia-lashes-out-at-wto-for-illegal-trade-curbs-supply-lines>.

<sup>263</sup> *Id.*

<sup>264</sup> See Detlef Nolte, *How to Compare Regional Powers: Analytical Concepts and Research Topics*, 36 REV. INT’L STUD. 881 (2010); Alexander M. Hynd & Thomas Wilkins, *Indo-Pacific Middle Powers: Rethinking Roles and Preferences*, 43 PACNET (PAC. FORUM) (June 9, 2023), <https://pacforum.org/publication/pacnet-43-indo-pacific-middle-powers-rethinking-roles-and-preferences>; Alberto Cunha, *Europe’s Hegemon? The Nature of German Power During Europe’s Crisis Decade*, E-INT’L RELS. (Aug. 23, 2021), <https://www.e-ir.info/2021/08/23/europes-hegemon-the-nature-of-german-power-during-europes-crisis-decade/>.

the Cold War and a uni-polar form that lasted for two decades following the end of the Cold War.<sup>265</sup> In this multi-polar world order, the Middle Powers can exercise certain agency in contributing to a new geopolitical dynamic.<sup>266</sup> In what might be dubbed “New Non-Alignment” movement, the Middle Powers have refused to take side and instead pursue “active multi-engagement”<sup>267</sup> and “a strategic equilibrium where countries are not forced to choose but can make their own sovereign choices.”<sup>268</sup>

Recently, Saudi Arabia has distanced itself from the United States and gotten closer to China.<sup>269</sup> This move is overshadowed by the fact that a majority of oil and gas produced in the Gulf area has been shipped to East Asia, surpassing the Gulf nations’ energy export to the West.<sup>270</sup> Another Middle Power, the ASEAN, is now asked to play a constructive role in brokering the United States and China for their better cooperative relationship.<sup>271</sup>

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<sup>265</sup> See e.g., William W. Burke-White, *Power Shifts in International Law: Structural Realignment and Substantive Plurality*, 56 HARV. INT’L L. J. 1 (2015); Chang-fa Lo, *Values to Be Added to the “Eastphalia Order” by the Emerging China*, 17 IND. J. GLOB. LEGAL STUD. 13 (2010); Kenneth Anderson, *United Nations Collective Security and the United States Security Guarantee in an Age of Rising Multipolarity: The Security Council as the Talking Shop of the Nations*, 10 CHI. J. INT’L L. 55, 61 (2009).

<sup>266</sup> Bilahari Kausikan, *Russia’s Invasion of Ukraine a Year After: Impact on the Korean Peninsula and its Vicinity*, EAST ASIAN INSTITUTE (Apr. 9, 2023), <https://research.nus.edu.sg/eai/2020/11/25/eai-distinguished-public-lecture-on-zoom-9/>. See also Alec Russell, *The À La Carte World: Our New Geopolitical Order*, FIN. TIMES (Aug. 20, 2023), <https://www.ft.com/content/7997f72d-f772-4b70-9613-9823f233d18a> (observing that nations move from a “*prix fixe* menu of alliances” to the “*à la carte* world” where diplomatic relations become more fluid than before).

<sup>267</sup> Walter Sim, *De-Risking, Taken Too Far, Will Lead to Fragmented and Decoupled World Economy: Lawrence Wong*, STRAITS TIMES (May 25, 2023) (quoting Singaporean Deputy Prime Minister Lawrence Wong), <https://www.straitstimes.com/asia/east-asia/de-risking-taken-too-far-will-lead-to-fragmented-and-decoupled-world-economy-lawrence-wong>.

<sup>268</sup> Evelyn Goh, *Southeast Asia Schools Australia on Its Search for Strategic Equilibrium*, E.ASIA F. (Apr. 27, 2023) (quoting Australian Foreign Minister Penny Wong), <https://www.eastasiaforum.org/2023/04/27/southeast-asia-schools-australia-on-its-search-for-strategic-equilibrium/>.

<sup>269</sup> “As graduates of U.S. universities and voracious consumers of U.S. pop culture and consumer technology, most educated Saudis feel close to the United States—close enough to feel bullied by what we see as unfair attacks by U.S. media and policymakers against us, our country, our leaders, and our culture. The alternative, for many, is to learn Mandarin and imagine future careers promoting Chinese industry and trade.” Mohammed Alyahya, *Why Saudis Don’t Want to Pivot to China*, FOREIGN POL’Y (Dec. 16, 2022), <https://foreignpolicy.com/2022/12/16/saudi-arabia-china-xi-bin-salman-biden-opec-geopolitics-security-middle-east/>.

<sup>270</sup> Kristian Coates Ulrichsen, *As Longterm Partnership with US Fades, Saudi Arabia Seeks to Diversify Its Diplomacy – and Recent Deals with China, Iran and Russia Fit This Strategy*, THE CONVERSATION (March 27, 2023), <https://theconversation.com/as-longterm-partnership-with-us-fades-saudi-arabia-seeks-to-diversify-its-diplomacy-and-recent-deals-with-china-iran-and-russia-fit-this-strategy-202211>.

<sup>271</sup> Michael Vatikiotis, *Southeast Asia Must Try to Bring U.S. and China Together*, NIKKEI ASIA (Apr. 23, 2023), <https://asia.nikkei.com/Opinion/Southeast-Asia-must-try-to-bring-U.S.-and-China-together>.

The logic of the Pangea has largely frustrated the Fortress' geopolitical agenda. The U.S.' recent efforts to decouple its economy from China have entailed the opposite effect: the more the United States imports from other East Asia-Pacific (EAP) countries, the more China's exports of intermediate goods to the EAP countries rises.<sup>272</sup> [Figure \_] Likewise, the rapid increase in U.S. exports to Mexico, the U.S.' major friend-shoring destination, has dovetailed with the equally-fast increase in Mexico's imports from China.<sup>273</sup> [Figure \_]

Many U.S. allies harbor resentment for the U.S.' oblivion regarding this economic reality. Shigesaburo Okumara, a Japanese journalist, eloquently demonstrates the frustration of the Japanese business and government elites in a meeting over the U.S. decoupling policies. Okumara observes that:

Many of the participants seemed sick and tired of the decoupling with China imposed by the US under the name of "democracy versus autocracy" dualism. Some of them worried about the arbitrary and unpredictable nature of trade sanctions and their implementation by the US. (...) Multiple members stressed that Chinese participation was indispensable if the commission is to deal effectively with global issues.<sup>274</sup>

[Figure \_ : The Ironic Effect of the U.S. Decoupling from China (I)<sup>275</sup>]

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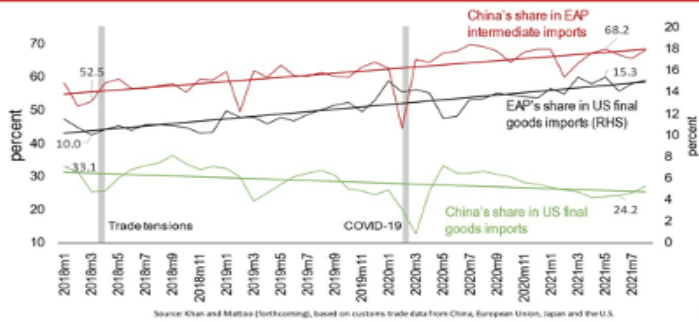
<sup>272</sup> Diego Fassnacht, *Decoupling Not on Europe's Agenda, Li Visits Shows*, ASIA TIMES (June 29, 2023), <https://asiatimes.com/2023/06/decoupling-not-on-europes-agenda-li-visit-shows/>.

<sup>273</sup> David P. Goldman, *U.S. Reliance on China's Capital Goods Rules Out Decoupling*, ASIA TIMES (June 18, 2023), <https://asiatimes.com/2023/06/us-reliance-on-chinas-capital-goods-rules-out-decoupling/>.

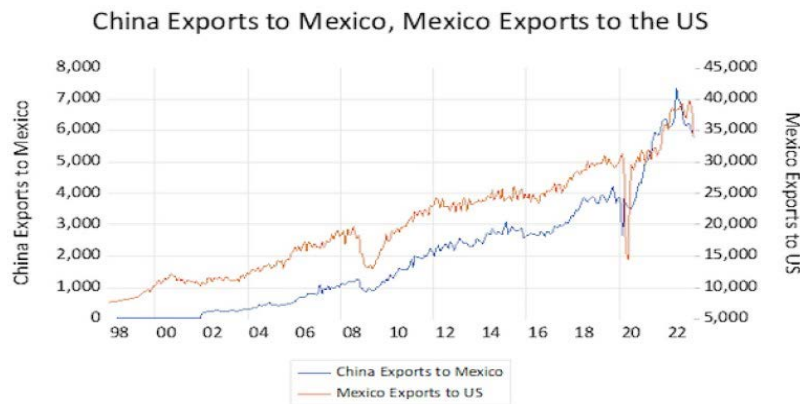
<sup>274</sup> David P. Goldman, *US Tech War Shows Signs of Crumbling*, ASIA TIMES (Nov. 27, 2022), <https://asiatimes.com/2022/11/us-tech-war-shows-signs-of-crumbling/>.

<sup>275</sup> Diego Fassnacht, *Decoupling not on Europe's Agenda, Li Visit Shows*, ASIA TIMES (June 29, 2023), <https://asiatimes.com/2023/06/decoupling-not-on-europes-agenda-li-visit-shows/>.

**“Dependence aversion” is shifting value chains:  
But to displace China, countries embrace China**



[Figure \_\_ : The Ironic Effect of the U.S. Decoupling from China (II)<sup>276</sup>]



This ironic effects of decoupling is not specific to the United States – China trade relations. Indeed, it is a ubiquitous phenomenon endemic to the very nature of Pangea. Recently, the Modi administration has poured the 24 billion subsidy into India’s manufacturing sector in his signature “Made-in-India” campaign.<sup>277</sup> While this policy was originally designed to outcompete China, it dramatically led to the increase of the imports of Chinese raw materials and components into India.<sup>278</sup> The farther India tries to distance from China, the closer the former tends to become to the latter.

<sup>276</sup> Goldman, *supra* note 273.

<sup>277</sup> Brenden Murray, *Made-in-India Push Proves Hard to Split From China*, BLOOMBERG L. (June 8, 2023), <https://news.bloomberglaw.com/international-trade/made-in-india-push-proves-hard-to-split-from-china-supply-lines>.

<sup>278</sup> *Id.*

In the long-run, growing discord and complexity in world society will be exacerbated by the demographic change across the globe. More diverse, multi-ethnic populations are likely to incur more complicated cultural and political perspectives in the global village.<sup>279</sup> Under these circumstances, it appears unfathomable to envision a simple, binary pattern of interstate relations. There is no longer linear side-taking in terms of us versus them. Interstate relations have increasingly been formed along the functional line, demonstrating a division of labor in relations.

For example, despite their traditional political and military allegiance with the United States, many Middle Eastern nations, ranging from Saudi Arabia to Israel, have recently deepened economic cooperation with China in areas such as technology and infrastructure building.<sup>280</sup> In particular, Saudi Arabia has recently been investing heavily in China, signing thirty cooperation deals with a total value of US\$10 billion in areas including renewable energy, real estate, supply chains, tourism, and medical services.<sup>281</sup> Nonetheless, when it comes to sophisticated financial arrangements such as a Nasdaq listing, both countries tend to rely on the U.S. investment.<sup>282</sup>

### 3. The Divided West?

One might witness the system-laden complexities and uncertainties even *within* the West. There has recently emerged a crack in the political bond among Western nations. The Trumpian presidency exposed Europe's vulnerabilities to the U.S. antics and the dire need to address them.<sup>283</sup> The subsequent Biden administration also shocked Europe with

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<sup>279</sup> See Anna Sauerbrey, *Germany Is Learning a Hard Lesson*, NY TIMES (July 5, 2023), <https://www.nytimes.com/2023/07/05/opinion/germany-africa-west.html>.

<sup>280</sup> David P. Goldman, *China's Influence in the Middle East and the Strategic Considerations Underlying it*, JERUSALEM STRATEGIC TRIB. (Aug. 2023), <https://jstribune.com/goldman-chinas-influence-in-the-middle-east/>.

<sup>281</sup> Kandy Wong & He Huifeng, *Is China's Greater Bay Area 'the Future of Asia'? Top Saudi Diplomat Says Investors Can Bet on It*, S. CHINA MORNING POST (July 18, 2023), <https://www.scmp.com/economy/china-economy/article/3228081/chinas-greater-bay-area-future-asia-top-saudi-diplomat-says-investors-can-bet-it>.

<sup>282</sup> *Id.*

<sup>283</sup> Jim Brunsten et al., *EU Sets Out Plans to Curb Reliance on Dollar in Post-Trump Area*, FIN. TIMES (Jan. 16, 2021), <https://www.ft.com/content/20f39e33-e360-479e-82e2-5441d24f0e0b>; Edward Luce, *Donald Trump Is on Track to Splinter the West*, FIN. TIMES (July 12, 2019), <https://www.ft.com/content/f58b0e62-a370-11e9-a282-2df48f366f7d>.

its unilateral decision to withdraw from Afghanistan without prior consultations with the European nations concerned.<sup>284</sup> While the United States openly criticized the EU's investment deal with China,<sup>285</sup> the U.S. industrial policy has increasingly been inward-looking and protectionist, even to its European allies.<sup>286</sup> Now, most Europeans think that “the US political system is broken, and that Europe cannot just rely on the US to defend it.”<sup>287</sup> More recent developments, such as the Russia-Ukraine war and the U.S. decoupling moves from China, have vivified this “Divided West” syndrome.

Markedly, the U.S. politicians are largely oblivious to the nature of economic pains that Europe as a whole has been, and will continue to, suffer from such an unprecedented scale of “shock and awe” of sanctions against Russia.<sup>288</sup> One European commentator observes that:

I went to Warsaw city hall and the mayor's press secretary told me that energy costs to heat municipal buildings were up 600 percent before the Russian invasion. (...) And people haven't actually had time to process what this really means for Europe in terms of city budgets and how are you going to take all of these refugees in for years. (...) But there's a profound transformation that's going to happen in Europe once people really start digesting what this means for Europe.<sup>289</sup>

German Chancellor Olaf Scholz has warned that “[banning Russian energy imports] from one day to the next would mean plunging our country and the whole of Europe into

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<sup>284</sup> Daniel Williams, *Broken US Leadership a Specter Haunting Europe*, ASIA TIMES (Sep. 1, 2021), <https://asiatimes.com/2021/09/broken-us-leadership-a-specter-haunting-europe/>.

<sup>285</sup> Demetri Sevastopulo et al., *Biden Team Voices Concern over EU-China Investment Deal*, FIN. TIMES (Dec. 23, 2020), <https://www.ft.com/content/2f0212ab-7e69-4de0-8870-89dd0d414306>.

<sup>286</sup> William Horobin & Arne Delfs, *France Accuses US of Pursuing China-Style Industrial Policy*, BLOOMBERG (Nov. 22, 2022), <https://www.bloomberg.com/news/articles/2022-11-22/france-accuses-us-of-pursuing-china-style-industrial-policy>.

<sup>287</sup> Ivan Krastev & Mark Leonard, *The Crisis of American Power: How Europeans See Biden's America*, EUR. COUNCIL ON FOREIGN RELS. (Jan. 19, 2021), <https://ecfr.eu/publication/the-crisis-of-american-power-how-europeans-see-bidens-america/>.

<sup>288</sup> *The Shock and Awe of Sanctions against Russia*, FIN. TIMES (March 1, 2022), <https://www.ft.com/content/22bc52b4-4029-43ac-8313-288721ac3b52>.

<sup>289</sup> Lulu Garcia-Navarro et al., *Four Opinion Writers on Ukraine: 'If This War Drags On, We Are in a Completely New World*, NY TIMES (March 24, 2022) (quoting Farah Stockman), <https://www.nytimes.com/2022/03/24/opinion/ukraine-refugees-russia-war.html>.

a recession.”<sup>290</sup> Andrew Bailey, the Governor of Bank of England, has warned that Britons are facing a “historic shock” to their incomes due to surging energy prices precipitated by Russia’s invasion of Ukraine.<sup>291</sup> Moreover, the collective memory of the traumatic war is more intense among European nations than the United States, which had never been invaded and destroyed by foreign forces.<sup>292</sup> The mix of the sanctions fatigue and Russia’s threat of nuclear wars<sup>293</sup> tends to distance Europe from the United States in the latter’s effort to consolidate its expansive Fortress.

While the traditional post-Cold War export control focused on regulating weapons and military equipment, the new U.S. “plurilateral”<sup>294</sup> export control paradigm covers “specific end users and the types of items important to a country’s strategic economic and military objectives.”<sup>295</sup> Prohibitions under the new sanctions regime “can subject someone to liability under the EAR [Export Administration Regulations] even if they are not directly involved in the export of an item subject to the EAR to Russia or Belarus.”<sup>296</sup> Naturally, the effectiveness of the new sanction rules depends heavily on the coordination in enforcement among the United States and its partner countries.<sup>297</sup> However, the EU’s export controls to China are “based on the granular targeting of products drawn from a multilateral list of restricted technologies,” unlike the broad-spectrum approach adopted

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<sup>290</sup> Martin Arnold & Joe Miller, *Scholz Warns of EU Recession If Russian Energy Ban Imposed*, FIN. TIMES (March 4, 2022) (quoting German Chancellor Olaf Scholz), <https://www.ft.com/content/c95634ad-e01a-4af5-b7e8-4616618b7431>.

<sup>291</sup> Valentina Romei & George Parker, *Britons Face ‘Historic Shock’ to Their Incomes, Bank of England Governor Warns*, FIN. TIMES (March 28, 2022), <https://www.ft.com/content/1b303855-cc54-4e4b-83f6-d0f3e764b6cf>.

<sup>292</sup> Pierre-Olivier Gourinchas, *Shifting Geopolitical Tectonic Plates*, INT’L MONETARY FUND, FIN. & DEV. (June 2022) (observing that “the outbreak of large-scale warfare on European soil, with its associated human tragedies, brings back memories of the continent’s darkest times”).

<sup>293</sup> Gabriel Honrada, *China, Russia Blasts Superweapon Warnings at US*, ASIA TIMES (Apr. 23, 2022), <https://asiatimes.com/2022/04/china-russia-blast-superweapon-warnings-at-us/>.

<sup>294</sup> A “plurilateral” control is “one agreed to by an ad hoc group of countries using their domestic authorities to impose coordinated unilateral controls outside the scope of the items controlled by one of the four multilateral regimes.” Kevin J. Wolf et al., *U.S. Government Imposes Expansive, Novel and Plurilateral Export Controls Against Russia and Belarus*, AKIN GUMP (March 8, 2022), <https://www.akingump.com/en/insights/alerts/us-government-imposes-expansive-novel-and-plurilateral-export-controls-against-russia-and-belarus>.

<sup>295</sup> *Id.* (emphasis added).

<sup>296</sup> *Id.*

<sup>297</sup> *Id.*

by the United States.<sup>298</sup> This is why the United States has found it extremely difficult to maintain a harmonized stance on its export ban on advanced chips against China with its European peers.

Japan has recently demonstrated its hesitation in joining the U.S.' tough semiconductor decoupling from China.<sup>299</sup> Out of the fear of losing the Chinese market, Japan attempted to narrow down the scope of its chip export controls to the extent directly related to its national defense, such as export bans on advanced chips used for precision missile guidance systems. Also, Japan emphasized that even such controls must be limited to what is necessary to avoid economic collateral damages.

While some Anglo-Saxon China hawks advocate the idea of “NATO for Trade” against China,<sup>300</sup> France and Germany “do not see eye to eye with the US as to whether to regard China as a partner, competitor, adversary or outright security threat.”<sup>301</sup> The Australia-UK-US (AUKUS) pact, a new Anglo-Saxon security alliance against China, caused the termination of a record contract for an order for twelve French submarines. Many in Europe interpreted this incidence as “a crisis of confidence across the Atlantic” and the U.S. decision to depart from a long-standing strategic partnership with Europe.<sup>302</sup> Ironically, however, Australia, with the advent of a new administration, has recently made a U-turn from a hostile stance against China maintained by the previous administration and begun to ease trade tensions with China.<sup>303</sup>

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<sup>298</sup> Alan Beattie, *Biden Goes It Alone in His Trade Assault on China*, FIN. TIMES (Oct. 19, 2022), (<https://www.ft.com/content/a24a84be-3428-42f7-8124-cecfac434f9e>)

<sup>299</sup> *Japan Balks at Tough US Chip Sanctions on China, Nikkei Says*, GLOBAL POLARITY MONITOR (Feb. 16, 2023).

<sup>300</sup> Finbarr Bermingham & Cissy Zhou, *British, US China Hawks Call for “NATO for Trade” against Beijing*, S. CHINA MORNING Post (June 28, 2021), (<https://www.scmp.com/news/china/diplomacy/article/3138948/british-us-china-hawks-call-nato-trade-against-beijing>).

<sup>301</sup> MK Bhadrakumar, *G7 Meet Underscores Fault Lines on China*, ASIA TIMES (June 15, 2021), (<https://asiatimes.com/2021/06/g7-meet-underscores-fault-lines-on-china/>).

<sup>302</sup> Marie Jourdain, *What AUKUS Means to European Security*, PAC. FORUM (Nov. 3, 2021).

<sup>303</sup> Nic Fildes, *China to Review Australian Barley Tariffs as Trade Tensions Ease*, FIN. TIMES (Apr. 11, 2023), (<https://www.ft.com/content/ab707af2-494f-4032-a257-61723316c8c3>).



True, the EU has recently designated China as the former's "strategic rival." Nonetheless, such geopolitical tension has not undermined economic cooperation between the two economic giants. Major European economies have still maintained rather close economic relationships with China. While China is the fourth largest export market for Germany, the German goods export to China fell by 4 percent early in 2023 (from January to April) in comparison to the previous year as China slowed its import from G7 nations.<sup>304</sup> German Chancellor Olaf Scholz's visit to China in November 2022 was motivated by Germany's eagerness to maintain economic cooperation with China, its largest trading partner, amid a number of policy challenges, such as inflation, the Russia-Ukraine war, and the U.S.' green subsidies, to name a few.<sup>305</sup> In the electric vehicle (EV) sector, German auto companies, such as Mercedes-Benz, Volkswagen and BMW, "have integrated Chinese suppliers into their global supply chains, sought out China's tech companies for software partnerships and begun developing new models for export to the global market from the country."<sup>306</sup>

In his symbolic state visit to China in April 2023, French President Emmanuel Macron witnessed an agreement between Airbus and the Tianjin Free Trade Zone Investment Company. This bold pact will enable Airbus to manufacture seventy five aircrafts per month in 2026 throughout its global production network involving China.<sup>307</sup> The recent trade war between the United States and China has pushed the latter to replace Boeing with Airbus as its main purchases of aircrafts.<sup>308</sup> In this regard, Macron made a controversial remark that "Europe should not turn into a "vassal" and must avoid being

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<sup>304</sup> Bryce Baschuk, *German Exports Suffer as Demand from China Slows*, BLOOMBERG (June 7, 2023), <https://www.bloomberg.com/news/newsletters/2023-06-07/supply-chain-latest-german-exports-suffer-as-china-demand-slows>.

<sup>305</sup> Alain Tao, *Olaf Scholz's China Gamble*, THE DIPLOMAT (Dec. 21, 2022), <https://thediplomat.com/2022/12/olaf-scholzs-china-gamble/>.

<sup>306</sup> Peggy Hollinger, *China-Basing Will Get Europe Nowhere*, FIN. TIMES (Nov. 3, 2022), <https://www.ft.com/content/097b24ba-a967-45d9-a476-6aff268bc7b5>.

<sup>307</sup> *Airbus and China Aviation Industry Sign Next Phase in Partnership*, AIRBUS (Apr. 6, 2023), <https://www.airbus.com/en/newsroom/press-releases/2023-04-airbus-and-china-aviation-industry-sign-next-phase-in-partnership>.

<sup>308</sup> Liz Alderman, *Airbus to Double Production in China as It Moves Ahead With New Orders*, NY TIMES (Apr. 6, 2023), <https://www.nytimes.com/2023/04/06/business/airbus-china-double-production.html>; Anurag Kotoky & Julie Johnsson, *Boeing Rues US-China Trade War as Airbus Wins \$37 Billion Deal*, BLOOMBERG (July 3, 2022), <https://www.bloomberg.com/news/articles/2022-07-04/boeing-rues-us-china-trade-war-as-airbus-wins-37-billion-deal>.

drawn into any conflict between the US and China over Taiwan.”<sup>309</sup> The subsequent Europe-wide survey proved Macron’s political instinct to be clairvoyant. The survey concludes that “Europeans want to remain neutral in a potential US-China conflict and are reluctant to de-risk from China – even if they recognise the dangers of its economic presence in Europe.”<sup>310</sup>

#### IV. *Quo Vadis World Society?: Two Scenarios*

##### A. *Gazing into World Society*

The inherent contingency of communication within a given system makes it hard for anyone to predict the future. On the one hand, even the Fortress cannot fully defy the Pangea. The level of differentiation and the level of complexity in a global market has been unprecedented. Abandoning the Pangea, for whatever reasons, would mean that companies such as Apple and Ford forsake their profits, and that states such as Europe and South Korea reject economic growth.

On the other hand, however, the ever-growing complexity in world society tends to increase the “irritability” between the subsystems. As one Western journalist aptly observes, “if there is a war with China, the impact on the world car market will be the least of our problems.”<sup>311</sup> The catastrophe of world society, then, is not of suppression but of “neglect[ing]” inclusiveness.<sup>312</sup> When the society cannot control itself but only evolves, any particular moral claims have nowhere to be heard.<sup>313</sup> Instead, the society is liable to

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<sup>309</sup> Jennifer Rankin, *Macron Sparks Anger by Saying Europe Should Not Become a ‘Vassa’ in U.S.-China Clash*, THE GUARDIAN (Apr. 10, 2023), <https://www.theguardian.com/world/2023/apr/10/emmanuel-macron-sparks-anger-europe-vassal-us-china-clash>.

<sup>310</sup> Jana Puglierin & Pawel Zerka, *Keeping America Close, Russia Down, and China Far Away: How Europeans Navigate a Competitive World*, EUR. COUNCIL OF FOREIGN RELS. (June 7, 2023), <https://ecfr.eu/publication/keeping-us-china-far-away-how-europeans-navigate-a-competitive-world/>.

<sup>311</sup> Gideon Rachman, *De-Risking Trade with China Is a Risky Business*, FIN. TIMES (May 29, 2023) (quoting an anonymous Western security official), <https://www.ft.com/content/1caf3dd9-1097-4de2-9b57-80b70e465154>.

<sup>312</sup> Luhmann, *Globalization*, *supra* note 49, at 74.

<sup>313</sup> *Id.*

exclude its certain aspects from itself; for example, creating peripheries or excluding certain regions or certain groups of people.

At the very elemental level, the systems theory might envision the future as a function of two systemic forces, centripetal and centrifugal, harnessed by the logic of each system. The centrifugal force unleashed by Fortress is spasmodic yet strong in the sense that it can generate destructive power relatively quickly, as seen in trade wars and economic sanctions. In contrast, the centripetal force radiated by Pangea is pervasive yet rather weak in the sense that it takes time to build its momentum and only works in a diffuse manner.<sup>314</sup> Against this background, the systems theory might offer two rudimentary scenarios under certain conditions: a noisy balance with partial perturbations, which is the current status quo, or a transition to more disruptive dedifferentiation, which may lead to a systemic meltdown.

### *B. Status Quo: Resonance with Partial Irritation*

#### 1. Trade Wars and Decoupling from China

In the face of perturbations from the Fortress, the Pangea has struggled not to lose its operational autonomy. Despite the fierce government campaign for decoupling from China, there has been no meaningful empirical evidence that it is happening.<sup>315</sup>

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<sup>314</sup> One may witness this systemic interplay between the centripetal and centrifugal force even at a domestic, or regional, level. For example, in the United States, the states of New York and California are more prone to global economic integration than most southern states. In the European Union, the northern member states are more prone to trade than their southern peers. In China, the southern region around Shanghai has traditionally been more open to international business than the northern part around Beijing. James Peacock, *The South in a Global World*, VIRGINIA QUARTERLY REV. (Autumn 2002), <https://www.vqronline.org/essay/south-global-world> (asserting that “the South is moving from an oppositional identity within a national framework to an integrative identity within a global framework,” explaining the historical reasons why southern states have been comparatively slow to integration, and comparing and contrasting northern and southern attitudes toward global integration); Matthias Matthijs & Silvia Merler, *Mind the Gap: Southern Exit, Northern Voice and Changing Loyalties since the Euro Crisis*, 58 J. OF CINEMA & MEDIA STUD. 96, 97 (2020), <https://sais.jhu.edu/sites/default/files/Mind-the-GAP.pdf> (describing how the gap between the “lagging southern periphery” and “more prosperous northern core” of European nations resulted in a northern European migration in the early 2010s); Sidney Leng, *China’s North-South economic divide is growing, away from the glare of the US trade war*, S. CHINA MORNING POST (June 22, 2019), (“China’s economic centre of gravity is shifting to the southern part of the country.”).

<sup>315</sup> Caroline Freund, et al., *US-China decoupling: Rhetoric and Reality*, CTR. FOR ECON. POL’Y & RSCH. (Aug. 31, 2023), <https://cepr.org/voxeu/columns/us-china-decoupling-rhetoric-and-reality> (proposing that,

Companies lobby the government to mitigate the impacts of punitive tariffs imposed on Chinese exports. The Trumpian trade war has left a long and winding trail of “exclusion” procedures in which affected businesses request the U.S. government to exempt punitive tariffs on Chinese exports under certain conditions. Occasionally, companies also attempt to circumvent sanctions through technical adjustments. A number of U.S. importers have attempted to reclassify their imports to avoid punitive tariffs.<sup>316</sup> Moreover, businesses often defy the government’s pressure to geo-politicize the market. True, the Biden administration has largely inherited the Trumpian trade war with China and been keen to decouple from the Chinese economy. Yet major big businesses, such as Goldman Sachs, JP Morgan Chase, Ford, Hollywood movie producers, and Silicon Valley start-ups, just cannot ignore the rising middle class in China.<sup>317</sup>

The U.S. government’s effort in cajoling big multinational firms, such as Apple, into decoupling from China remains futile as such firms continue to invest in China.<sup>318</sup> Intel was reported to have warned the Commerce Department about its plan to open a chip manufacturing factory in Chengdu, China to expand its production capacity.<sup>319</sup> The maritime industry has increased its investment in new ships despite the recent campaign of reshoring.<sup>320</sup> Morris Chang, founder of Taiwan Semiconductor Manufacturing Company (TSMC), the world’s largest chipmaker, downplayed the U.S. government’s

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while some aspects of U.S. - Chinese decoupling are real, there is no consistent evidence of reshoring or diversification of imports, and supply chains between the two countries – especially for strategic products – remain intertwined).

<sup>316</sup> Andrew Mayeda & Mark Niquette, *In Times of Trade War, Companies Get Creative to Avoid Tariffs*, BLOOMBERG (Aug. 10, 2018), <https://www.bloomberg.com/news/articles/2018-08-10/in-times-of-trade-war-companies-get-creative-to-avoid-tariffs> (reporting that one common tactic which has made a comeback in recent years, referred to as “tariff engineering,” involves companies tweaking their design process to “reclassify a product under a lower-duty tariff category”); *see also* Clément Bürge and Sharon Shi, *To Beat the Trade War, Companies Get Creative Breaking the Rules*, WALL ST. J. (Dec. 27, 2018), <https://www.wsj.com/articles/to-beat-the-trade-war-companies-get-creative-breaking-the-rules-11545908402>.

<sup>317</sup> David J. Lynch, *Wall Street’s March into China Increasingly at Odds with Biden’s Tough Stance*, WASHINGTON POST (March 23, 2021), <https://www.washingtonpost.com/business/2021/03/23/goldman-sachs-china-biden/>.

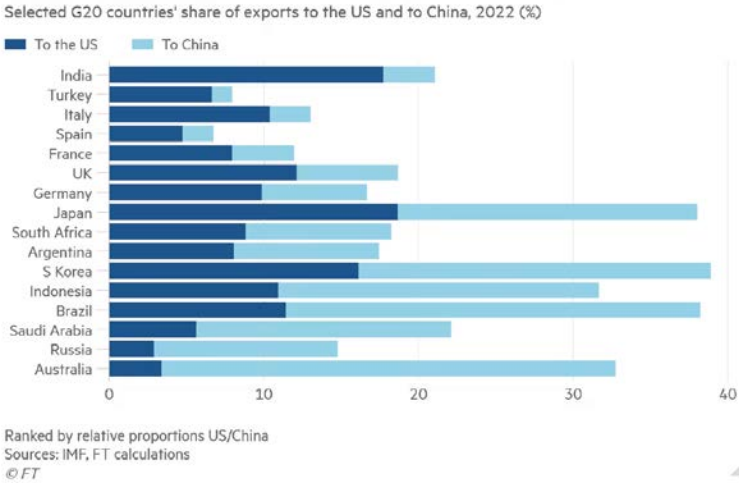
<sup>318</sup> Scott Foster, *Apple’s Still Not Backing Down to China Hawks in US*, ASIA TIMES (June 21, 2022), <https://asiatimes.com/2022/06/apples-still-not-backing-down-to-china-hawks-in-us/>.

<sup>319</sup> Ana Swanson, *Congress Is Giving Billions to the Chip Industry. Strings Are Attached*, NY TIMES (Aug. 3, 2022), <https://www.nytimes.com/2022/08/03/business/economy/chip-industry-congress.html>.

<sup>320</sup> Alan Beattie, *The New Recessionary Threat to Global Trade, Trade Secrets*, FIN. TIMES (June 27, 2022), <https://www.ft.com/content/baebb435-d304-4ff9-97a2-230b34327a6c>.

effort to reshore semiconductor manufacturing as “very expensive exercise in futility.”<sup>321</sup> Ola Källenius, the chief executive of automaker Mercedes-Benz, have recently described decoupling from China as an “illusion” and added that “the major players in the global economy — Europe, the USA and China — are so closely intertwined that disengaging from China makes no sense.”<sup>322</sup> After all, when it comes to the United States – China decoupling, “the rhetoric (...) continues to outpace the reality.”<sup>323</sup>

[Figure \_\_: The Significance of Trading with China]<sup>324</sup>



[Figure \_\_ : The Recent Trends of World Investment in China]<sup>325</sup>

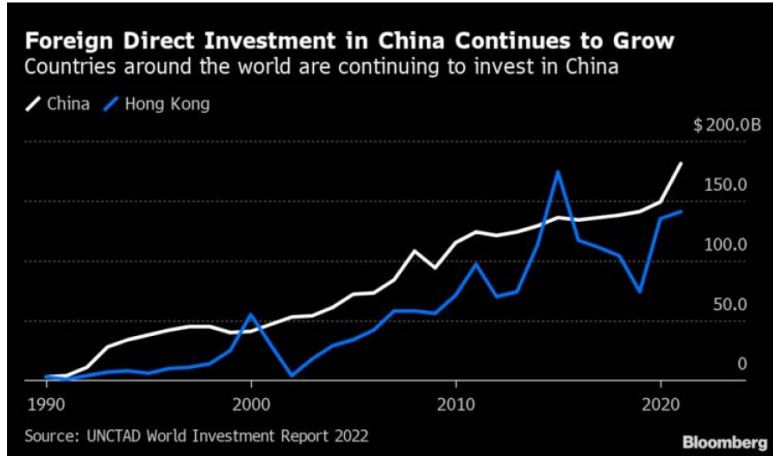
<sup>321</sup> Amanda Chu, *Critics Warn US Inflation Reduction Act Could Keep Prices High*, FIN. TIMES (Apr. 23, 2023), <https://www.ft.com/content/3f8cdb59-587b-4809-80a9-1f950d0f5bce>.

<sup>322</sup> Laura Pitel, *Mercedes-Benz Chief Says Cutting China Ties Would Be ‘Unthinkable,’* FIN. TIMES (May 1, 2023), <https://www.ft.com/content/ddf0b2fc-635f-425e-8735-36abf6fdc796>.

<sup>323</sup> Flatley, *supra* note 3.

<sup>324</sup> Martin Wolf, *US – China Relations Have Entered a Frightening New Era*, FIN. TIMES (Apr. 26, 2023), <https://www.ft.com/content/00d033a8-2a8d-4858-8eae-bf5e5966d1c4>.

<sup>325</sup> Flatley, *supra* note 3.



Markedly, the U.S. decoupling policies have been implemented in a “selective,” not in a thorough and comprehensive manner.<sup>326</sup> The U.S. government has begun to admit that the original gung-ho strategy of decoupling was a mistake. The general tenor of the U.S. policy of decoupling from China has dramatically been de-escalated in recent times. In April 2022, the U.S. Secretary of Treasury Janet Yellen emphasized that “we need to deepen our ties with those partners [who share the same norms and values with us] and to work together to make sure that we can supply our needs of critical materials,” while singling out “some of the practices that China has that negatively impact our national security, human rights concerns.”<sup>327</sup> In contrast, however, a year later Yellen highlighted that decoupling from China would be “disastrous” to both countries as well as to the whole world.”<sup>328</sup> Her visit to China in July 2023 reinforced such a conciliatory tone. She emphasized that the United States was not pursuing a “winner take all” fight with China and underplayed the U.S.’ blocking of China’s access to sensitive technology as “narrowly

<sup>326</sup> Daniel Flatley, *Apple at Heart of US – China Selective Decoupling, Gallagher Says*, BLOOMBERG (Apr. 10, 2023), <https://www.bloomberg.com/news/articles/2023-04-08/apple-at-heart-of-us-china-selective-decoupling-gallagher-says> (citing Representative Mike Gallagher who was skeptical of “a total break from China in the near future” and instead forecast “selective decoupling” from China on certain strategic materials).

<sup>327</sup> *Transcript: US Treasury Secretary Janet Yellen on the Next Steps for Russia Sanctions and ‘Friend-Shoring’ Supply Chains*, ATL. COUNCIL (Apr. 13, 2022), <https://www.atlanticcouncil.org/news/transcripts/transcript-us-treasury-secretary-janet-yellen-on-the-next-steps-for-russia-sanctions-and-friend-shoring-supply-chains/>.

<sup>328</sup> *Remarks by Secretary of the Treasury Janet L. Yellen on the U.S. - China Economic Relationship at Johns Hopkins School of Advanced International Studies*, U.S. DEP’T OF TREASURY (Apr. 20, 2023), <https://home.treasury.gov/news/press-releases/jy1425>.

targeted.”<sup>329</sup> All in all, the U.S. government now appears to have adopted a “postmodern” type foreign policy: the United States and China will remain too close to yet too far from each other.<sup>330</sup>

In parallel, the Western Fortress has recently toned down its aggressive rhetoric on China from decoupling to “de-risking,”<sup>331</sup> as seen in the G7’s more nuanced approach to China. It rejected the popular notion of “decoupling,” reflecting concerns from Europe and Japan about negative economic repercussions from decoupling from China.<sup>332</sup> Granted, most European governments remain extremely sensitive to, and cautious regarding, China’s direct intervention in the business decision-making process. Yet, the EU’s recent move to scrutinize outbound investments has only received lukewarm responses from member countries.<sup>333</sup> While most European countries desire to “rebalance” their economic relationship with China for the fear of the vulnerabilities from excessive reliance, they still desire to engage with China.<sup>334</sup>

China’s retaliation against the U.S. export ban on advanced chips has also been carefully crafted and limited in a way which would not jeopardize China’s own need for foreign chips.<sup>335</sup> While China has recently banned the products from Micron, an American chip maker, its memory chips can be easily replaced by Samsung or Hyundai. China still refuses to ban the more advanced and hard-to-replace chips from Qualcomm

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<sup>329</sup> Brian Spegele, *Yellen Says Doesn't Seek "Winner Take All" Fight with China*, WALL ST. J. (July 7, 2023), <https://www.wsj.com/articles/yellen-says-u-s-doesnt-seek-winner-take-all-fight-with-china-72ab3c95>.

<sup>330</sup> *The Fault Lines in America's China Policy*, THE ECONOMIST (May 16, 2023), <https://www.economist.com/united-states/2023/05/16/the-fault-lines-in-americas-china-policy> (quoting Jake Sullivan, the National Security Adviser, who stated that “the way that we are going to build an international economic architecture is not going to be with Parthenon-style clear pillars as we did after the end of the second world war, but something that feels a little bit more like Frank Gehry.”).

<sup>331</sup> Gideon Rachman, *De-Risking Trade with China Is a Risky Business*, FIN. TIMES (May 29, 2023), <https://www.ft.com/content/1caf3dd9-1097-4de2-9b57-80b70e465154>.

<sup>332</sup> Yukkiko Toyoda & David Dolan, *Analysis: G7's nuanced pledge to 'de-risk' from China reflected concerns from Europe and Japan*, REUTERS (May 22, 2023), <https://www.reuters.com/world/g7-pledge-de-risk-china-reflects-concerns-europe-japan-2023-05-22/>.

<sup>333</sup> Sam Fleming & Andy Bounds, *Brussels Urges EU Member States to Toughen Measures against China*, FIN. TIMES (June 20, 2023), <https://www.ft.com/content/39244495-bc34-461b-a0c8-9896832d50cd>.

<sup>334</sup> See Michael Nienaber & Arne Delfs, *Scholz Dismisses Fears of Trade with China over EVs Probe*, BLOOMBERG L. (Sep. 28, 2023), <https://news.bloomberglaw.com/international-trade/scholz-dismisses-fears-of-trade-war-with-china-over-evs-probe>.

<sup>335</sup> Eleanor Olcott & Richard Waters, *Beijing Chooses Targets Carefully as It Goes on Offensive in US Chip Wars*, FIN. TIMES (Apr. 10, 2023), <https://www.ft.com/content/7f3f3636-9639-4d45-8366-c12a982513c6>.

or Intel, other American chip makers, which are necessary to manufacture Chinese smartphones.<sup>336</sup> Even when China enforces economic embargoes against Taiwan, commodities subject to those embargoes are carefully selected to avoid any serious economic consequences. While China may ban Taiwanese pineapples, it never bans semiconductors from Taiwan.<sup>337</sup>

## 2. Economic Sanctions against Russia

The Western economic sanctions against Russia have demonstrated a mixed picture. Russian oil shipments have been simply diverted from Europe to new destinations, including China and India. More importantly, those sanctions are prone to evasion through the so-called “grey trade.”<sup>338</sup> Oil tankers are often “renamed and repainted” several times and “transit via busy terminals where their crude is blended with others, making it harder to detect.”<sup>339</sup> Even if Germany imports crude from Kazakhstan to avoid the former’s dependency on Russia, the Kazakh crude may actually be of the Siberian origin since it is still shipped through Russia’s pipeline system.<sup>340</sup> Another spectacular anecdote that may demonstrate an inescapable reach of the Pangea can be located in a recent somewhat counterintuitive behaviors of major oil producers in the Middle East, such as Saudi Arabia and the United Arab Emirates (UAE). Resisting U.S. objections, these Gulf states have purchased the Russian oil at heavily discounted prices and used them for their internal consumption, while exporting their own oil at market rates and raking in enormous profits.<sup>341</sup>

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<sup>336</sup> *Xi’s Micron Ban Shows His Limited Options to Hit Back at US*, BLOOMBERG (May 23, 2023), <https://www.bloomberg.com/news/articles/2023-05-23/xi-s-micron-ban-shows-china-s-limited-options-to-hit-back-at-us>.

<sup>337</sup> Min-Hua Chiang, *China Can’t Afford to Ban Taiwan’s Semiconductors*, E. ASIA F. (Dec. 3, 2022), <https://www.eastasiaforum.org/2022/12/03/china-cant-afford-to-ban-taiwans-semiconductors/>.

<sup>338</sup> *Ships in the Night*, THE ECONOMIST (Feb. 4, 2023), at 60-62.

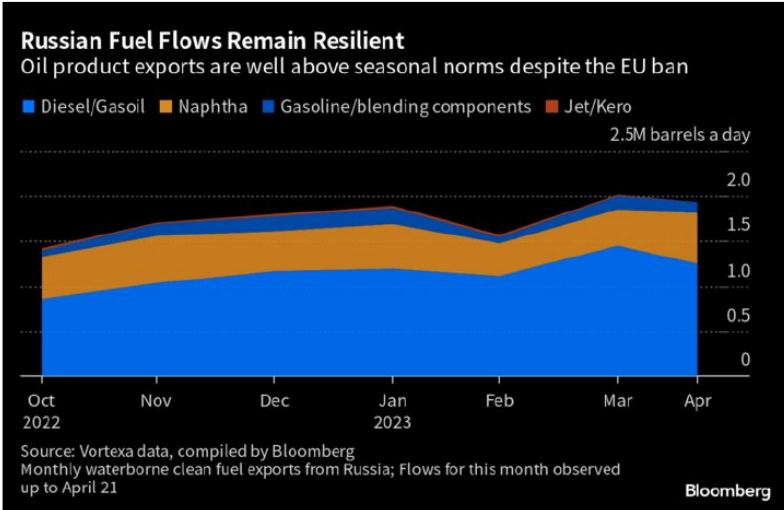
<sup>339</sup> *Id.*

<sup>340</sup> Julian Lee, *Russia Will Keep a Grip on Germany’s Oil*, BLOOMBERG L. (Feb. 22, 2023), <https://news.bloomberglaw.com/energy/russia-will-keep-a-grip-on-germanys-oil-elements-by-julian-lee>.

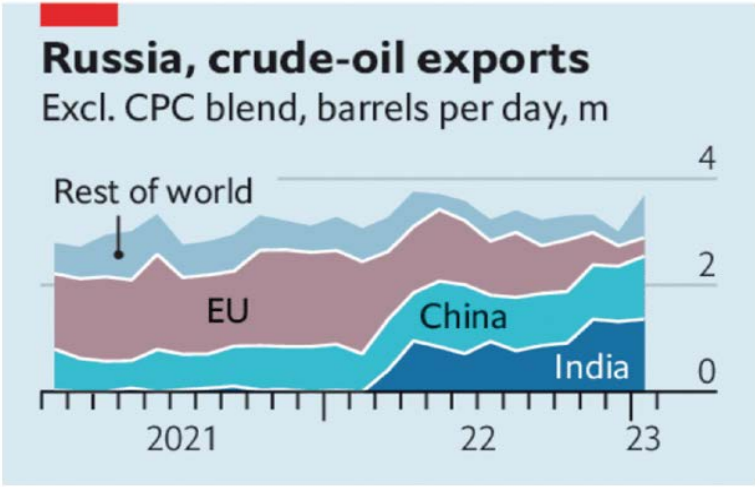
<sup>341</sup> Benoit Faucon & Summer Said, *Saudi Arabia, U.A.E. Scoop Up Russian Oil Products at Steep Discounts*, WALL ST. J. (Apr. 17, 2023), <https://www.wsj.com/articles/saudi-arabia-u-a-e-scoop-up-russian-oil-products-at-steep-discounts-d327a2ee>.



[Figure \_\_: The Limits of the Oil Sanctions against Russia]<sup>342</sup>



[Figure \_\_: A Dramatic Shift in the Russian Oil Destination]<sup>343</sup>



The Economist

<sup>342</sup> Jack Wittels & Prejula Prem, *Russia's Fuel Shipments Show Little Sign of Sanctions Strain*, BLOOMBERG (Apr. 26, 2023), <https://www.bloomberg.com/news/articles/2023-04-26/russia-s-fuel-shipments-show-little-sign-of-sanctions-strain>.

<sup>343</sup> *Why the West's Oil Sanctions on Russia Are Proving to Be Underwhelming*, THE ECONOMIST (Feb. 1, 2023), <https://www.economist.com/leaders/2023/02/01/why-the-wests-oil-sanctions-on-russia-are-proving-to-be-underwhelming>.

Beyond oil, the Pangea has also preserved its core function, i.e., sustaining global commerce.<sup>344</sup> Some of the best companies in the world, including PepsiCo, have not withdrawn from Russia completely.<sup>345</sup> According to a study, only 8.5% of all the firms from the EU and G7 nations had abandoned at least one of their Russian subsidiaries as of December 2022.<sup>346</sup> Also, before the Russia-Ukraine war, Ethiopia imported a half of its wheat from Ukraine and Russia. When the war disrupted Ethiopia's traditional wheat import route, the global trading system enabled Ethiopia to replace its old imports with those from alternative sources, such as Argentina and the United States.<sup>347</sup>

### 3. Evaluation

Since the Fortress operates along the territorial line, its control is likely to be compromised in the de-territorialized Pangea. True, Pangea currently suffers various perturbations from Fortress due to a number of de-globalizing policies. Nonetheless, Fortress is not winning over Pangea, at least for now. Pangea's resiliency may be found in the consistent increase of world trade volume despite the ever-proliferating narratives of de-globalization.

[Figure \_\_: World Trade Volume v. Narratives of De-Globalization<sup>348</sup>]

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<sup>344</sup> *Building Resilience in Supply Chains*, WORLD ECON. F. (2013),

[http://www3.weforum.org/docs/WEF\\_RRN\\_MO\\_BuildingResilienceSupplyChains\\_Report\\_2013.pdf](http://www3.weforum.org/docs/WEF_RRN_MO_BuildingResilienceSupplyChains_Report_2013.pdf)

<sup>345</sup> Anne-Marie Slaughter, *Expanding NATO Will Deepen Europe's East-West Fissure*, FIN. TIMES (May 6, 2022), <https://www.ft.com/content/783e287d-1a8d-4c5a-ad82-6b4ba0c14c16>.

<sup>346</sup> Simon J. Evenett & Niccolò Pisani, *Less Than Nine Percent of Western Firms Have Divested from Russia* (Dec. 20, 2022).

<sup>347</sup> Micah Danney, *Ukraine War Hurt Global Trade Less Than WTO Predicted*, LAW360 (Feb. 23, 2023), <https://www.law360.com/articles/1579343/ukraine-war-hurt-global-trade-less-than-wto-predicted>

<sup>348</sup> Jeffrey Kleintop, *Deglobalization Is Political, Not Economic*, CHARLES SCHWAB (Apr. 11, 2022), <https://www.schwabassetmanagement.com/content/deglobalization-is-political-not-economic>.



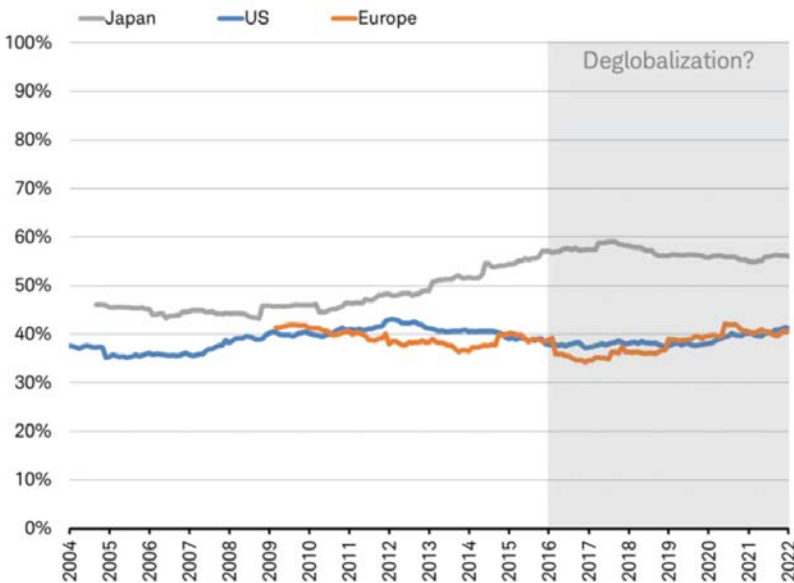
Source: Charles Schwab, CPB Netherlands Bureau for Economic Policy Analysis, Bloomberg data and news search of major publications as of 4/8/2022.

Likewise, politically driven de-globalization campaigns have not dented international sales of multinational enterprises in major economies. The international share of their sales has remained steady at around 40% for the U.S. and European companies and around 55% for Japanese companies.<sup>349</sup>

[Figure \_: International Sales Portion of Multinational Enterprises<sup>350</sup>]

<sup>349</sup> *Id.*

<sup>350</sup> *Id.*



Source: Charles Schwab, FactSet data as of 4/8/2022.

Share of domestic sales for S&P 500 and MSCI Japan Index and share of European region sales for MSCI Europe Index per FactSet GeoRev data.

If the status quo continues, we may anticipate the continuance of the past trend of globalization or even “re-globalization.”<sup>351</sup> In that scenario, the current punitive tariffs or economic sanctions will eventually discontinue as soon as Fortress finds plausible justifications suitable to its policy shift. Indeed, there is a broad consensus among experts that sanctions are seldom effective.<sup>352</sup> Some even argue that sanctions are counterproductive due to their “rally’round the flag effect,” which has further consolidated the power of the target state.<sup>353</sup> Moreover, the Western Fortress has never

<sup>351</sup> Marianne Schneider-Petsinger, *Global Trade in 2023: What’s Driving Reglobalization?*, WASHINGTON INT’L TRADE ASS’N (Jan. 30, 2023), <https://www.wita.org/atp-research/global-trade-in-2023/#:~:text=Globalization%20is%20far%20from%20finished,sensitive%20and%20strategically%20important%20sectors> (“Reglobalization” . . . best describes the current pattern of economic integration and fracturing across different economies and sectors.”); James Forsyth & Andrew Prahl, *Why Global Leaders Should Advocate for a Re-Globalized World*, WORLD. ECON. F. (May 20, 2023), <https://www.weforum.org/agenda/2023/05/young-global-leaders-reglobalization/> (describing re-globalization’s benefits and naming prominent international figures who have endorsed the push for it).

<sup>352</sup> DAVID A. BALDWIN, *ECONOMIC STATECRAFT* (1985); Robert A. Pape, *Why Economic Sanctions Do Not Work*, 22(2) INT’L SEC., 90-136 (1997).

<sup>353</sup> Adriel Kasonta, *How the West Miscalculated Its Ability to Punish Russia*, ASIA TIMES (June 6, 2022), <https://asiatimes.com/2022/06/how-the-west-miscalculated-its-ability-to-punish-russia/>.

experienced the recent truly expansive scale of sanctions, which left their policymakers clueless on the eventual consequences.<sup>354</sup>

### *C. Newer Trends: Sleepwalking into Dedifferentiation*

#### 1. The Refortification of the Fortress

Most recently, however, a worrisome trend of dedifferentiation has intensified amid a new trend of securitization. Against the background of the political and economic tensions between the United States and China as well as the Russia-Ukraine war, “nearly every issue is a security issue.”<sup>355</sup> In what they label “multipurpose trade policy,” Anthea Roberts and Nicholas Lamp document the colonization of a trade policy by political needs, ranging from labor to national security.<sup>356</sup> This new trend of securitization is emblematic of the fortification of the Fortress. The “peace interest” in favor of economic connections with China has disappeared among the U.S. policy elites.<sup>357</sup> Despite the recent softening tone on decoupling from China, the U.S. government still refuses to end the trade war with China.<sup>358</sup>

The U.S. government attempts to terra-form the Pangea in accordance with the U.S. values and interests, as seen in the “worker-centered trade policy.”<sup>359</sup> The Biden administration has recently made a bold statement of rejigging supply chains of strategic

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<sup>354</sup> Nicholas Mulder, *The Toll of Economic War: How Sanctions on Russia Will Upend the Global Order*, FOREIGN AFFS. (March 22, 2022), <https://www.foreignaffairs.com/articles/united-states/2022-03-22/toll-economic-war>.

<sup>355</sup> Jeremy Shapiro, *Transatlantic Trade Disputes Are Moving to a New US-Controlled Rhythm*, FIN. TIMES (March 10, 2023), <https://www.ft.com/content/1a961a58-d6ec-46c4-bec1-e171eb0d8ef1>.

<sup>356</sup> See e.g., ANTHEA ROBERTS & NICHOLAS LAMP, SIX FACES OF GLOBALIZATION: WHO WINS, WHO LOSES, AND WHY IT MATTERS (2021).

<sup>357</sup> Adam Tooze, *Washington Isn't Listening to Business on China Any More*, FIN. TIMES (May 6, 2023), <https://www.ft.com/content/5e38eec5-8caa-41d1-b4fd-b0ac5e8ca58a>.

<sup>358</sup> Colby Smith, *US Officials Play Down Hopes of End to Restrictions on China Trade*, FIN. TIMES (July 16, 2023), <https://www.ft.com/content/7810bca5-5dfd-4a97-b4b1-30302b111cd3>.

<sup>359</sup> 2023 Trade Enforcement Priorities Report, U.S. TRADE REPRESENTATIVE (2023), <https://ustr.gov/sites/default/files/2023%20Trade%20Enforcement%20Priorities%20Report.pdf> (highlighting that the agency “will prioritize enforcement efforts with respect to key U.S. values, such as promoting labor rights and environmental protection, as well as strategic priorities of the United States, including those . . . [related to] America’s Supply Chains,” because such efforts are central to “the President’s worker-centered trade policy.”)

products such as advanced semiconductors.<sup>360</sup> It has even requested \$115 million to create a new Pentagon unit (“Office of Strategic Capital”) to attract Silicon Valley startups in developing new weaponry.<sup>361</sup> Likewise, the U.S. House of Representatives’ Select Committee on the Chinese Communist Party has recently initiated congressional probes on the two major retirement funds, Blackrock and MSCI.<sup>362</sup> The Select Committee was suspicious of those financial companies’ role for facilitating American investments to certain Chinese companies, such as ZTE, which the U.S. government blacklisted and red-flagged for security or human rights violations.

Ironically, the structural force of the Fortress may increase by capitalizing on the very nature of Pangea. For example, the titular “weaponized interdependence”<sup>363</sup> strategy has offered a *modus operandi* of all kinds of economic sanctions. In response to the U.S.’ weaponization of dollar, some East Asian economies, such as Japan and Malaysia, are calling for an Asian version of the IMF (“Asian Monetary Fund”). They fear that the United States-led economic sanctions might freeze their dollar-denominated financial assets.<sup>364</sup>

China has reciprocated the U.S. strategy of securitization. China’s recent strategy of “comprehensive national security,” dubbed “securitization of everything,” has brought a new paradigm of governance that subsumes economic and social affairs under the logic of politics.<sup>365</sup> The Chinese government dramatically increased its scrutiny of the U.S.

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<sup>360</sup> Jack Sullivan, Nat’l Sec. Advisor, Remarks on Renewing American Leadership at the Brookings Institute (Apr. 27, 2023) (transcript available at [whitehouse.gov](https://www.whitehouse.gov)).

<sup>361</sup> Sharon Weinberger et al., *Pentagon Woos Silicon Valley to Join Ranks of Arm Makers*, WALL ST. J. (March 26, 2023), <https://www.wsj.com/articles/pentagon-woos-silicon-valley-to-join-ranks-of-arms-makers-38b1d4c0>.

<sup>362</sup> Kate O’Keeffe & Corrie Driebusch, *BlackRock, MSCI Face Congressional Probes for Facilitating China Investments*, WALL ST. J. (Aug. 1, 2023), <https://www.wsj.com/articles/blackrock-msci-face-congressional-probes-for-facilitating-china-investments-2147ce2c>.

<sup>363</sup> See generally Henry Farrell & Abraham L. Newman, *Weaponized Interdependence: How Global Economic Networks Shape State Coercion*, 44 INT’L SEC. 42 (2019).

<sup>364</sup> See Andrew Sheng, *Weaponization of the Dollar Makes an Asian IMF Look More Attractive*, E. ASIAN F. (Apr. 23, 2023), <https://www.eastasiaforum.org/2023/04/23/weaponisation-of-the-dollar-makes-an-asian-imf-look-more-attractive/>.

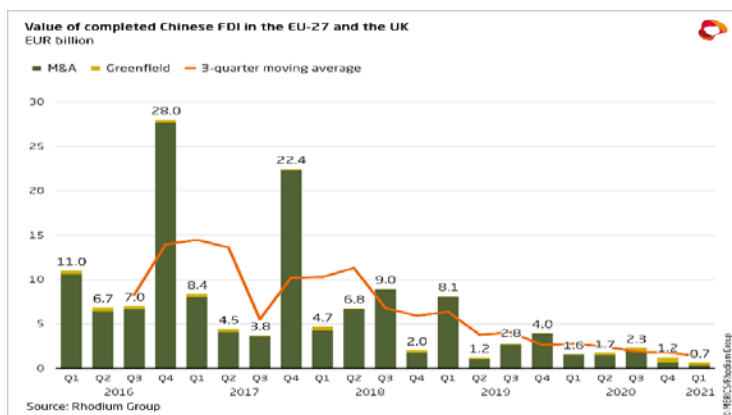
<sup>365</sup> Katja Drinhausen & Helena Legarda, *Comprehensive National Security Unleashed: How Xi’s Approach Shapes China’s Policies at Home and Abroad*, MERCATOR INST. FOR CHINA STUD. (MERICCS) CHINA MONITOR (Sep. 15, 2022), [https://www.merics.org/sites/default/files/2023-02/Merics%20China%20Monitor%2075%20National%20Security\\_final.pdf](https://www.merics.org/sites/default/files/2023-02/Merics%20China%20Monitor%2075%20National%20Security_final.pdf). See also Lingling Wei, Xi

companies in China as it introduced a new counter-espionage law.<sup>366</sup> Obviously, this “security-first” approach has produced the over-intervention in the commercial decision-making process by private businesses and precipitated great frictions abroad.<sup>367</sup>

## 2. A Drift to a Systemic Meltdown?

The aforementioned refortification of the Fortress has left certain alarming signs on the ground. For example, a mix of the ever-intensifying regulatory review of Chinese investments in Europe and worsening public attitudes towards China have contributed to the record decrease of China’s outbound investment in major European destinations (Figure \_).<sup>368</sup>

[Figure \_: Decreasing Outbound Investment from China to Europe (2000-20)]<sup>369</sup>



Jinping Chokes Off Crucial Engine of China’s Economy, WALL ST. J. (July 13, 2023), <https://www.wsj.com/articles/xi-china-economy-capital-investment-3439d31a>.

<sup>366</sup> Demetri Sevastopulo, *US Chamber of Commerce Warns of Rising Risk of Doing Business in China*, FIN. TIMES (Apr. 28, 2023), <https://www.ft.com/content/Oae1825b-1515-4293-8b93-5f86766b1c2f>.

<sup>367</sup> *Id.*

<sup>368</sup> Agatha Kratz et al., *Chinese FDI in Europe: 2020 Update*, MERICS (June 2021), <https://merics.org/sites/default/files/2021-06/MERICSRhodium%20GroupCOFDIUpdate2021.pdf>.

<sup>369</sup> *Id.*

In a parallel development, the volume of inbound investment into China decreased to its lowest level in twenty-five years in 2022, reflecting geopolitical tensions between the United States and China (Figure \_\_).<sup>370</sup>

[Figure \_\_ : Inbound Investment to China (1998-2022)]<sup>371</sup>



"The plunge in the FDI measure is alarming," said Michelle Lam, greater China economist at Societe

These ominous indications lend credence to an emerging narrative of “axis.”<sup>372</sup> Indeed, many observers warn against the possibility of the Pangea falling apart along geopolitical lines.<sup>373</sup> Adam Posen argues that:

While it may feel consistent with values to have Washington encourage friendshoring, the result is supply chains that are designed to pursue neither efficiency nor resilience; instead, they are designed to for geopolitical and security relationships. This has other, unintended consequences: Supply chains become

<sup>370</sup> John Liu & Fran Wang, *China's Foreign Investment Gauge Declines to 25-Year Low (1)*, BLOOMBERG L. (Aug. 8, 2023), <https://news.bloomberglaw.com/banking-law/china-foreign-investment-gauge-at-25-year-low-amid-high-tensions>.

<sup>371</sup> *Id.*

<sup>372</sup> Ngoji Okonjo-Iweala, *Strengthening the WTO and the Global Trading System, Remarks before National Foreign Trade Council* (Apr. 27, 2022), [https://www.wto.org/english/news\\_e/spno\\_e/spno25\\_e.htm](https://www.wto.org/english/news_e/spno_e/spno25_e.htm).

<sup>373</sup> Martin Arnold, *Christine Lagarde Says US-China Rift to Push Inflation Higher*, FIN. TIMES (Apr. 18, 2023) (quoting Christine Lagarde, the European Central Bank president), <https://www.ft.com/content/c8a06555-d18d-4416-b729-177e392b9a23>.



more rather than less fragile, as they lack redundancy and are subject to changing political relationships.<sup>374</sup>

Likewise, the International Monetary Fund (IMF) has recently alluded to the possibility of a breakdown of the Pangea. It cautions that:

[F]ragmentation could be costly for the global economy. A scenario in which the world divides into two separate trading blocs could lead to a 5 percent drop in global GDP, World Trade Organization (WTO) research shows. The IMF, meanwhile, reckons global losses from trade fragmentation could range from 0.2 to 7 percent of GDP. The costs may be higher when accounting for technological decoupling. Emerging market economies and low-income countries would be most at risk due to the loss of knowledge transfer.<sup>375</sup>

### 3. Evaluation

While the “expansive potential” of Fortress is usually direct and centralized, the force of Pangea remains rather diffused and decentralized as it “spread[s] without a single subject acting as the ultimate holder” in the age of globalization.<sup>376</sup> While the Pangea might be able to manage the fallout from dedifferentiation in the short term, it might not hold up in the long-term. The eventual outcome of dedifferentiation will depend on the relative strength between a centripetal force of Pangea and a centrifugal force of Fortress. Importantly, decoupling is a self-fulfilling prophesy. As the Biden administration inherited such policy from the Trump administration, the United States seems to have achieved the original goal of its trade war with China: the bilateral trade in goods and

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<sup>374</sup> Adam Posen, *America's Zero-Sum Economics Doesn't Add Up*, FOREIGN POL'Y (March 24, 2023), <https://foreignpolicy.com/2023/03/24/economy-trade-united-states-china-industry-manufacturing-supply-chains-biden/>.

<sup>375</sup> Kristalina Georgieva & Ngozi Okonjo-Iweala, *World Trade Can Still Drive World Prosperity*, FIN. & DEV., INT'L MONETARY FUND (June 2023), <https://www.imf.org/en/Publications/fandd/issues/2023/06/world-trade-can-still-drive-prosperity-georgieva-okonjo-iweala>.

<sup>376</sup> Golia & Teubner, *supra* note 71, at 24.

services between the two countries has continued to dwindle during the past several years.<sup>377</sup>

Worse, the unprecedented geopolitical tensions between the United States and China risk driving the two most important economies in the world to sleepwalk into epic economic balkanization. The hyper-sophisticated global supply chains on electric vehicles are on the cusp of collapsing due to the accumulated impacts of the United States-initiated trade wars and China's retaliatory weaponization of minerals and rare earths essential to the manufacture of electric vehicles.<sup>378</sup> Indeed, the recent formation of the mega-regional blocs, such as the United States – led Indo-Pacific Economic Framework (IPEF) and the China-present Regional Comprehensive Economic Partnership (RCEP),<sup>379</sup> has signaled a broader geoeconomic fragmentation than ever before.<sup>380</sup> The long-term effect of such economic balkanization will be dire, as Adam Posen forewarns:

Savings would pool in economic blocs that don't move and therefore generate lower and more volatile returns. Financing and suppliers would be less diversified, there would be fewer different ideas and business practices, and less competition, which directly affects productivity. As economic nationalism becomes state policy, so will further restrictions on migration, foreign direct investment, and the flow of information and technology.<sup>381</sup>

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<sup>377</sup> Chad P. Bown & Yilin Wang, *Five Years into the Trade War, China Continues Its Slow Decoupling from US Exports*, PETERSON INST.OF INT'L ECON. (March 16, 2023), <https://www.piie.com/blogs/realtime-economics/five-years-trade-war-china-continues-its-slow-decoupling-us-exports>.

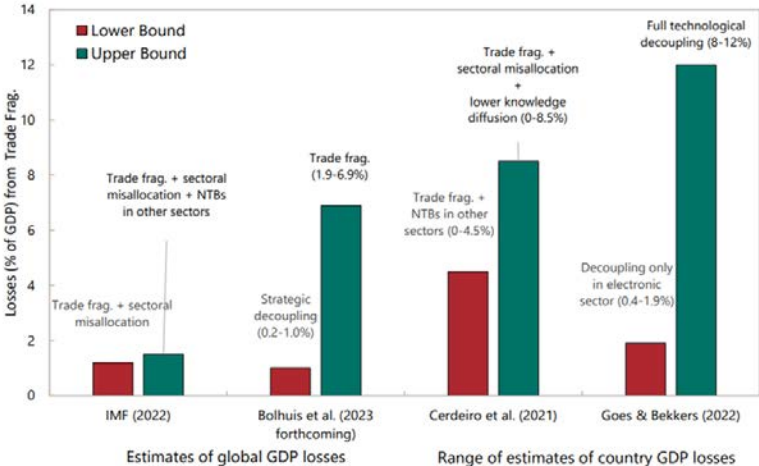
<sup>378</sup> See Joe Deaux, *China Grip on Critical Minerals Draws Warnings at IEA Gathering*, BLOOMBERG (Sep. 29, 2023), <https://www.bloomberg.com/news/articles/2023-09-28/china-s-grip-on-critical-minerals-draws-warnings-at-iea-gathering>.

<sup>379</sup> Mia Nulimaimaiti, *China Urged to Leverage Southeast Asia-Led Trade Pact amid Diversification Trends*, S. CHINA MORNING POST (March 30, 2023), <https://www.scmp.com/economy/china-economy/article/3215248/china-urged-leverage-southeast-asia-led-trade-pact-amid-diversification-trends>.

<sup>380</sup> See *World Trade Report 2023: Re-Globalization for a Secure, Inclusive and Sustainable Future*, WORLD TRADE ORG. (2023).

<sup>381</sup> Adam Posen, *A Subsidy War between the US and the EU Costs More Than It Is Worth*, HANDELSBLATT (July 19, 2023).

[Figure \_] How Fortresses May Damage the Pangea in the Long-Term<sup>382</sup>



Luhmann counsels against this menacing scenario. Obviously, Luhmann does not play the role of the “lay-priest[] of modernity.”<sup>383</sup> Against the contemporary background, however, Luhmann does cast a warning. Luhmann alerts, in a rather stern manner, that:

Looking ahead to our future, we cannot see any other *form* of differentiation. Regression to earlier forms, say stratification or segmentary (tribal) differentiation, may be possible, but is probable only after some large scale catastrophe.<sup>384</sup>

To the extent that tensions are endemic to the system itself, it is impossible to completely prevent them from happening. If the current developments continue, the Pangea may be forced to defer to the Fortress. Under such an extreme scenario, the Pangea would simply suspend its own operation and be replaced by the political operation. If so, the economic system would lose the operational closure that distinguishes itself from its environment, i.e., the political system. The Pangea would then be absorbed into the Fortress.

<sup>382</sup> Anabel González, *Trade Thoughts, From Geneva: The World Needs a Strong WTO. Now, More Than Ever*, WORLD TRADE ORG. (Feb. 22, 2023), [https://www.wto.org/english/blogs\\_e/ddg\\_anabel\\_gonzalez\\_e/blog\\_ag\\_17feb23\\_e.htm](https://www.wto.org/english/blogs_e/ddg_anabel_gonzalez_e/blog_ag_17feb23_e.htm).

<sup>383</sup> Luhmann, *Globalization*, *supra* note 49, at 77.

<sup>384</sup> *Id.* at 76.

For example, in the heat of the Russia-Ukraine war, Anders Fogh Rasmussen, former NATO Secretary-General, proposed the establishment of an economic version of the NATO's Article 5 mutual defense.<sup>385</sup> This economic NATO, comprised of Western allies and other democracies, is supposed to counter commercial intimidation by authoritarian states such as Russia and China. This plan includes the imposition of retaliatory measures, such as economic sanctions and the concentration of global supply chains among democracies.<sup>386</sup> In a nutshell, “geostrategic” interests trump “economic” interests.<sup>387</sup>

In sum, if Fortress prevails, Pangea's resiliency will dramatically dwindle and eventually become unsustainable. In that scenario, a massive scale of dedifferentiation will occur, which leads Fortress to encroach upon Pangea as the former seems to continue an extensive “war of attrition.”<sup>388</sup> If such warfare, both economic and military, continues for a substantial period time, for instance for an additional several years, it may emanate a catastrophic chaos on a global scale. An untrammelled force of Fortress is likely to drive world society to the kind of economic balkanization from the interwar period of the past, auguring a bad omen to the future of human civilization.

## **V. Toward the Systemic Sustainability: A New Agenda for Global Governance**

### *A. Re-Observation: Toward a New System Rationality*

As discussed above, Luhmann's systems theory does not subscribe to the traditional model of norm-driven teleological integration. Nonetheless, the systems theory might still allude to certain conditions for coordination between or among

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<sup>385</sup> James Politi, *Former Nato Chief Calls for Economic Version of Article 5 Defence Pledge*, FIN. TIMES (June 10, 2022), <https://www.ft.com/content/1831d0f6-8ce0-47e2-9730-e73c0afe6e73>.

<sup>386</sup> *Id.*

<sup>387</sup> *Id.* See also Fu Mengzi, *China's Role in a Period of New Turbulence and Transformation*, 33 CIR 74 (May/June 2023), <http://www.cicir.ac.cn/UpFiles/file/20230630/6382374787123410896573428.pdf> (observing that “political (...) factors are having an increased impact on economic relations”).

<sup>388</sup> Josh Mitchell, *Economic War of Attrition Takes Toll on Russia, West*, WALL ST. J. (July 17, 2022), <https://www.wsj.com/articles/economic-war-of-attrition-takes-toll-on-russia-west-11658050201>.

subsystems.<sup>389</sup> In particular, such coordination could be mediated by the meta-code of inclusion-exclusion of world society in a way which can “penetrate [subsystems’] operative closure of their observations.”<sup>390</sup> This is to augment “adaptive capacity” of the whole system<sup>391</sup> by sensitizing a subsystem to “observe a necessity of adaptation” through a feedback (re-entry) loop into itself.<sup>392</sup>

Each subsystem observes itself in a self-referential manner with the instrument of “theories.” For example, the political system might adopt Marxism, neoliberalism or neorealism; the economic system might subscribe to market fundamentalism or state interventionism; or the legal system might adopt naturalism or positivism.<sup>393</sup> This self-observation inevitably faces the conundrum of asymmetry between “subjective cognition and objective reality.”<sup>394</sup> A system “cannot match its internal observations with its reality.”<sup>395</sup> As each subsystem adheres to its own criteria of “scientific validity,” it fails to acknowledge the inevitable nature of “self-reference and circular reasoning.”<sup>396</sup> This is the fate of any self-producing (autopoietic) systems that “operate at the level of a re-entry of their form into their form.”<sup>397</sup>

The only way to escape from this structural dilemma is for each subsystem to re-observe an enhanced level of structural flexibility that can operate new types of functional differentiation between itself and the environment.<sup>398</sup> This is a type of “second-order observation,” which means that an observing system re-observes, and therefore re-articulates, its own observation.<sup>399</sup> In this regard, enhanced system rationality may be defined as yet another re-entry into the system itself.<sup>400</sup>

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<sup>389</sup> Albert, *Observing*, *supra* note 17, at 257.

<sup>390</sup> *Id.* at 257-58.

<sup>391</sup> Luhmann, *World Society*, *supra* note 31, at 135.

<sup>392</sup> Albert, *Observing*, *supra* note 17, at 257.

<sup>393</sup> Luhmann, *World Society*, *supra* note 31, at 136.

<sup>394</sup> *Id.*

<sup>395</sup> Luhmann, *Globalization*, *supra* note 49, 71.

<sup>396</sup> Luhmann, *World Society*, *supra* note 31, at 136.

<sup>397</sup> Luhmann, *Globalization*, *supra* note 49, at 71.

<sup>398</sup> *Id.* at 75.

<sup>399</sup> Hans-Georg Moeller, *On Second-Order Observation and Genuine Pretending: Coming to Terms with Society*, 143 THESIS ELEVEN 28, 28-43 (2017).

<sup>400</sup> Niklas Luhmann, *Observing Re-Entries*, 16 GRAD. FAC. PHIL. J. 485-98 (1993) [hereinafter Luhmann, *Re-Entries*].

This new “theoretical reflexion”<sup>401</sup> within a subsystem can then create logical space to afford different *co*-evolutionary pathways between and among different subsystems.<sup>402</sup> Yet, the problem is that this re-entry, which is a type of *self*-observing (an observing system observing itself), generates a paradox. While an eye can see things outside, that eye cannot see itself. Observation is possible through self-exclusion, i.e., excluding the very observer.<sup>403</sup> One way to escape this paradox is for an observing system, after the re-entry, to generate a “normative” re-distinction between two versions of itself: the observer and the observed.<sup>404</sup>

This nuanced, unforeseen normative agenda in the nature of re-observation tends to create conditions under which world society can arrest structural vulnerabilities. Succumbing the Pangea to the needs of the Fortress might destroy global economy. Yet the Pangea might not uncompromisingly adhere to its own logic and ignore the political needs. Simply dismissing politics risks undermining the legitimacy of the Pangea itself. Managing the systemic tensions begins with revisiting the properties of structural coupling, in particular the notion of “resonance.”<sup>405</sup>

While both the Pangea and the Fortress maintain their own systematic autonomy, they can still mutually constitute each other: the market creates its own reality by relating it to the political situation, and vice versa.<sup>406</sup> The concept of resonance heralds a new non-hierarchical global order through an “interdiscourse” between the Pangea and the Fortress. An interdiscourse does not mean a direct dialogue per se between the two subsystems. Instead, it is an inter-systemic mechanism that facilitates each system making sense of itself by making sense of another system.<sup>407</sup> One can conceive a typology

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<sup>401</sup> Luhmann, *World Society*, *supra* note 31, at 136.

<sup>402</sup> Indeed, Luhmann believes that this is the main contribution of a sociological theory: it “contributes to the self-description of the society” and that it is “communicated *within* society to convey a description *if* society, including the describing of the description.” Luhmann, *Globalization*, *supra* note 49, at 77 (emphasis original).

<sup>403</sup> Luhmann, *Re-Entries*, *supra* note 401, at 485.

<sup>404</sup> *Id.* at 486.

<sup>405</sup> *Cf.* LUHMANN, ECOLOGICAL COMMUNICATION, *supra* note 108, at 29.

<sup>406</sup> MOELLER, *supra* note 8, at 66.

<sup>407</sup> *Id.* at 37.

of interdiscourse based on its means (soft or hard) and the magnitude of its consequences (weak or strong).

[Table 2: Interdiscourse Toolkits]

	<b>Soft</b>	<b>Hard</b>
<b>Weak</b>	Diplomacy	Int'l Adjudication
<b>Strong</b>	Int'l Aid	Treaty-Making

Diplomacy is by its nature a modest avenue that leads to modest and incremental systemic changes, if any. While international adjudication can be a powerful avenue in reconciling between politics and economy, anarchy renders its enforcement weaker than domestic litigation. International aid, such as financial and technical assistance, is capable of providing direct and significant impacts on regulatory politics, as seen in the case of climate change. However, it depends solely on charity from donors and this cannot be forced. Treaty-making, as seen in the environmental conventions, creates a legally binding force and harmonizes politics and economy. Ironically, its hard and strong nature undermines its own utility. A treaty is hard to obtain and under-enforced due in no small part to its ambiguous texts.

The possibility, and the necessity, of these interdiscourse toolkits may warrant a certain type of supranational institutionalization, be it an international organization or even a world government. Alexander Wendt, based on a self-organization theory, envisions an inevitable emergence of a “world state.”<sup>408</sup> In his ostensibly teleological orientation, Wendt argues that system dynamics among nations will “spontaneously” channel the emergence of world society and subsequently a world state.<sup>409</sup> Yet this is basically a *long-term* vision, which offers a fundamentally different program in world politics from the contemporary anarchical situation emblematic of territoriality and the Fortress. In contrast, Jürgen Habermas, from a liberal tradition, advances a more

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<sup>408</sup> See Alexander Wendt, *Why a World State Is Inevitable*, 9 EUR. J. INT'L RELATIONS 491 (2003).

<sup>409</sup> *Id.* at 492-93.

plausible scenario. Facing the current “postnational constellation,” Habermas envisages a gradual shift from the “horizontal networks of a global society” to the “supra and transnational organizations of a cosmopolitan order.”<sup>410</sup>

Interestingly, these two positions, while differing from each other both in the sequence and modality of the evolution of world society, tend to warrant the role of “law” as a critical medium for supranational interdiscourse.

*B. “Second-Coding”: Law as a Language of Interdiscourse*

According to Luhmann, politics may disseminate its power to economy through re-coding by law. For example, politics operated through constitutional norms enhances its performance in the form of legitimacy. This “second-coding” (*Zweitcodierung*) into law enables the political system to garner long-term consensus and compliance.<sup>411</sup> In a modern complex society, prerogatives from naked power politics will only encounter unmanageable resistance from other systems, such as law and economy. Ironically, to remain effective politics needs to accept certain checks and restrictions to itself imposed by different regions of society, such as law, and therefore avoid inevitable resistance from other systems.<sup>412</sup> The most “powerful” systems tend to “allow for the greatest number of possibilities and options in their internal functions” and “effectively cede power to the other systems or subsystems from which they differentiate themselves.”<sup>413</sup> The same logic applies to re-coding of the economy system into the legal system. Global businesses gain stability and predictability by re-coding their communications into law and thus embedding themselves into a legal system. For example, the existence of the WTO norms facilitate secured transactions within global value chains. In sum, a *dual* second-coding, politics-law *and* economy-law, constitutes world society.

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<sup>410</sup> JÜRGEN HABERMAS, *THE DIVIDED WEST* 115, 133 (Ciaran Cronin ed. & trans. 2006).

<sup>411</sup> KING & THORNHILL, *supra* note 22, at 108.

<sup>412</sup> *Id.* at 109.

<sup>413</sup> *Id.* at 107.



As a by-product of structural coupling, the second-coding into law is instrumental to a constitutive function through “double reflexivity” between law and another subsystem. As a result of irritation from its environment (politics or economy), law may develop its own reflexivity as it “thinks,” or communicates within itself, by applying a broader binary code (constitutional/unconstitutional) to itself.<sup>414</sup> This new legal reflexivity, as a cognitive radar, requires a subsystem (politics or economy) to develop its own reflexivity, as a cognitive sensor, through its specific medium (power or money).<sup>415</sup> In the end, each subsystem can witness legitimacy or compliance pull from law and reformulate its own base for legitimacy in accordance with its own internal rationality.<sup>416</sup>

As politics and economy are re-coded into law, a triangular systemic relationship emerges. This systemic triangularism may function as a conduit for managing resonance in the form of interdiscourse between the Pangea and the Fortress.<sup>417</sup> Law can serve as a systemic medium for coordination as it oversees “other-reference”<sup>418</sup> between law and economy (how law relates to economy) as well as between law and politics (how law relates to politics).<sup>419</sup> Critically, one must not overestimate the role of systemic coordination by second-coding into law. After all, a heightened interdependence among subsystems translates into a higher degree of uncertainty in the future.

Here, coordination simply means “strengthen[ing] our ability to observe what is going on.”<sup>420</sup> As law itself is structurally coupled with its subsystem, its actual level of manifestation is subject to the confines of the Fortress. For example, a treaty is effective only to the extent that a domestic legal system is willing to make it relevant within its territory. Nonetheless, the more diffuse form of differentiation in the contemporary world

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<sup>414</sup> GUNTHER TEUBNER, *CONSTITUTIONAL FRAGMENTS: SOCIETAL CONSTITUTIONALISM AND GLOBALIZATION* 102-10 (2012).

<sup>415</sup> *Id.*

<sup>416</sup> Golia & Teubner, *supra* note 71, at 24.

<sup>417</sup> *Cf.* Cohen, *supra* note 53, at 812 (proposing a pluralist approach in reconciling trade and security focusing on “information sharing,” rather than “authoritative normative decisions”).

<sup>418</sup> MOELLER, *supra* note 8, at 36.

<sup>419</sup> *Cf.* Odette Lienau, *Law in Hiding: Market Principles in the Global Legal Order*, 68 *HASTINGS L. J.* 541, 602 (viewing that “international norms define the boundaries of choice and thereby affect how societies, policymakers, and market participants discern the meaning of various policy stances”).

<sup>420</sup> Luhmann, *World Society*, *supra* note 31, at 135.

society tends to facilitate law's coordinative role. Insert an emerging form of a Fortress, the Middle Powers. They differ from the Western Fortress that often defies the Pangea. Rather, as a hub *for* the Pangea, they have increasingly emphasized the “rule-based, multilateral frameworks” in refusing to side with either the United States or China.<sup>421</sup>

### C. A Case Study: Global Commerce Clause

Within the context of world trade, a particular domain of law, which may be dubbed “Global Commerce Clause” (GCC), can be said to provide a basis of law's cognitive openness to its environment (economy and politics) and therefore facilitates other-reference to the environment.<sup>422</sup> GCC can offer a new way of understanding the nature of world society, i.e., the inevitable irritability between Pangea and Fortress. It is a product of a world society's re-entry into itself. It is an attempt for world society to re-regulate itself through a doctrinal creation.<sup>423</sup>

Such a “reflexive” attempt is provoked by communicative impulses that its environment generates.<sup>424</sup> In its operation, GCC eventually reconciles the *law* of economy (free trade) and the *law* of politics (state regulation). Sometimes GCC may compromise the value of free trade; other times, it may compromise the value of state regulation. Ironically, the balancing mechanism of GCC tends to undermine law's own functional autonomy by increasing contingency: “the law is contingent deviation from the law.”<sup>425</sup> However, this ostensible paradox is necessary for GCC to meet “universal contingency” of all operations<sup>426</sup> in the face of “growing inclusion of cognitive expectations” due to its complex environment.<sup>427</sup>

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<sup>421</sup> Nile Bowie, *Lee Shins Light on a US – China Middle Path*, ASIA TIMES (Apr. 7, 2022), <https://asiatimes.com/2022/04/lee-shines-light-on-a-us-china-middle-path/>.

<sup>422</sup> Luhmann, *Coding*, *supra* note 75, at 175; LUHMANN, *ECOLOGICAL COMMUNICATION*, *supra* note 108, at 40, 45.

<sup>423</sup> GUNTHER TEUBNER, *LAW AS AN AUTOPOIETIC SYSTEM* 65 (Zenon Bankowski ed., Anne Bankowska & Ruth Adler, trans., 1993) [hereinafter, TEUBNER, *AUTOPOIETIC SYSTEM*]; Gunther Teubner, *Substantive and Reflexive Elements in Modern Law*, 17 L. & Soc. Rev. 239 (1983) [hereinafter, Teubner, *Elements*].

<sup>424</sup> TEUBNER, *AUTOPOIETIC SYSTEM*, *supra* note 424, at 65; Teubner, *Elements*, *supra* note 424.

<sup>425</sup> Luhmann, *Re-Entries*, *supra* note 401, at 487.

<sup>426</sup> *Id.*

<sup>427</sup> Golia & Teubner, *supra* note 71, at 7; TEUBNER, *AUTOPOIETIC SYSTEM*, *supra* note 424, at 1-12.

As a “constitutive” mechanism, GCC is a product of a second-coding into law. It responds to irritations from both Pangea and Fortress, and at the same time enables the two sub-systems to re-observe themselves within the mega-system of world society. GCC re-formalizes the medium of a given subsystem, be it money or power, by legal means, i.e., by injecting the “inner normativity” into each subsystem itself.<sup>428</sup> Markedly, GCC is not a grand, cosmopolitan constitution tantamount to a world government.<sup>429</sup> Rather, it is oriented to a negative integrative function by mitigating a systemic tension between the subsystems by mediating the “continuous interaction (...) between systems’ rationalities.”<sup>430</sup>

This negative integrative function is critical for the survival of world society. It disciplines the inherently expansive dynamics of a given subsystem.<sup>431</sup> Its “limiting” function “makes it possible for different social systems to coexist, preventing them from endangering their own integrity and that of society.”<sup>432</sup> Therefore, GCC can be seen as a legitimizing mechanism of world society. Note that inter-systemic mutuality endemic to structural coupling is not of a parasitic but of a symbiotic nature: any subsystem needs the “symbolic-communicative resources” drawn from other functional systems.<sup>433</sup> Either politics or economy “needs the other mediums of functionally differentiated society in order to formalise and stabilise itself.”<sup>434</sup>

The law of the World Trade Organization (WTO) is a case in point. The WTO is instrumental to global economy’s coupling with domestic politics. It offers both politics and economy an opportunity of other-reference, which may result in reconciliation between the two sub-systems. Within its legal structure, the WTO retains a balancing

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<sup>428</sup> Golia & Teubner, *supra* note 71, at 12.

<sup>429</sup> *Id.*

<sup>430</sup> Gunther Teubner, *Societal Constitutionalism: Nine Variations on a Theme by David Sciulli*, CAMBRIDGE UNIV. PRESS 313, 313-40 (Paul Blokker & Chris Thornhill eds., 2017).

<sup>431</sup> Golia & Teubner, *supra* note 71, at 13, 18.

<sup>432</sup> *Id.* at 13.

<sup>433</sup> Golia & Teubner, *supra* note 71, at 26.

<sup>434</sup> *Id.*

mechanism, such as exceptions, under which it can facilitate the resonance between politics and economy.

Suppose that Gazprom believes that it may freely export its natural gas to the United States because both the United States and Russia are WTO members. If the United States bans the import of the Gazprom gas in order to simply protect domestic gas companies, such a ban may be deemed illegal under the WTO norms: the ban would violate GATT Article III (National Treatment), among other provisions.

However, the United States may ban the Russian gas not because the former wants to protect its domestic industry but because it wants to deter Russia from invading Ukraine under the national security exception (GATT Article XXI). In this example, two different systemic values, free trade (economy) and national security (politics), are inter-linked. In a provisional sense, a tension exists between these two values because any blind faith in free trade could undermine protection of national security, and vice versa. This tension is prone to a real conflict. Each system resists that conflict for the sake of its own survival as it desires to reverse the proclivity toward entropy and establish order.<sup>435</sup>

Recently, the American Fortress has severely undermined such a reconciliation mechanism under the WTO. De-globalizing policies, including trade wars and other decoupling policies, represent the demise of politics' second-coding into law. By gutting the WTO court (Appellate Body), the powerful American Fortress has refused to differentiate itself from the Pangea. The Fortress' dedifferentiation from the Pangea forces the former to subsume the systemic logic of the latter. While the WTO law does not allow sheer politics to dictate terms of resonance, the American Fortress chose to stay away from the gravitational force of the WTO law.

Nonetheless, the American Fortress cannot fully undo second-coding by the WTO law. Despite the U.S.' seditious actions against the WTO, the former cannot be completely

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<sup>435</sup> Luhmann, *Closure*, *supra* note 33, at 1419.

immune from the latter's systemic, or constitutional, force.<sup>436</sup> The United States continues to be forced to defend its own measures challenged by other members under the WTO's dispute resolution mechanism, such as a panel process. For example, in a recent trade dispute between Ukraine and Russia, a WTO panel refused to let politics hold a final say on what constitutes the national security. In this dispute, while Russia, like the United States, argued that it could self-judge what would constitute the national security situation, the panel claimed its judicial competence on this critical issue.<sup>437</sup>

Any Fortress will eventually risk losing its systematic sustainability as it persistently refuses to cede power to the global norms and thus sabotages systemic options for its internal function. Concededly, a WTO panel, even if it holds that a WTO member violates the GCC, cannot effectively *enforce* its decision in the absence of the Appellate Body. Nonetheless, as long as the renegade member deviates from GCC, which is tantamount to its refusal to being second-coded into the WTO law, its political power continues to invite resistance from the Pangea and therefore remain restricted. The Pangea's perturbations to the Fortress manifest in the form of macroeconomic malaises, such as cost inflation, unemployment and recession. Over time, these massive material sufferings will alter the original logic of the Fortress and therefore destabilizes its systemic survival.

Finally, a caution is in order. GCC does not necessarily function as a "supermedium" that can assign a homogeneous meaning to all communications.<sup>438</sup> GCC represents "no uniform shared meaning, no merging of horizons between the minds involved, but rather a series of separate but intersecting consciousness and communication processes."<sup>439</sup> It is a type of meta-code that mediates all other codes, such as those of law, economy and politics. Once included in the world society, a particular set of communication can be screened by a particular code of each subsystem.<sup>440</sup> Note that Luhmann's systems theory

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<sup>436</sup> See Sungjoon Cho, *A Global Constitutional Crisis*, 49 F. STATE UNIV. L. REV. 577 (2021).

<sup>437</sup> Panel Report, *Russia—Measures Concerning Traffic in Transit*, WTO Doc. WT/DS512/R (adopted Apr. 5, 2019).

<sup>438</sup> Lee, *Luhmann*, *supra* note 147, at 326-7).

<sup>439</sup> TEUBNER, *CONSTITUTIONAL FRAGMENTS*, *supra* note 415, at 63.

<sup>440</sup> Mattheis, *System Theory*, *supra* note 66, at 638.

is oriented to the articulation and re-formulation of *problems*, not the proposal of their solutions.<sup>441</sup> In other words, GCC does not countenance a concept of world society as “a frame for improvements”; rather, it simply offers the possibility of a new program that can “define the problems that regions may have to solve by political or other means.”<sup>442</sup>

### **Conclusion: Triangulating Global Governance**

The systems theory advanced by Niklas Luhmann offers an insightful way to comprehend an ever-complicated landscape of international political economy characterized by de-globalization. A cardinal thesis of the systems theory, “differentiation,” illustrates the evolutionary trajectory of distinct systems, such as economy and politics, in modern society.<sup>443</sup> Functional differentiation describes each system’s ostensible paradoxical property of autonomy and contingency vis-à-vis another system *qua* environment.

Modern society can only function if Pangea can consistently differentiate itself from Fortress via Pangea’s own binary codes (profit v. non-profit); and, in parallel, if Fortress can differentiate itself from Pangea via Fortress’ own binary codes (power v. non-power).<sup>444</sup> Only then can each system “sustain a sufficiently high level of internal complexity to reflect the complexity of the environment from which [it] differentiate[s] [itself].”<sup>445</sup> After all, Pangea seldom subsumes to Fortress, even though the former accepts the latter’s “own autonomous sense-orientations.”<sup>446</sup>

The co-evolution of the Pangea and the Fortress tends to intensify complexity of functional differentiation of each subsystem. The global market will involve more participants beyond territories and thus become more de-centralized. The domestic politics will become more compound with new challenges, which may be technological,

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<sup>441</sup> Luhmann, *Globalization*, *supra* note 49, at 77.

<sup>442</sup> *Id.*; Golia & Teubner, *supra* note 71, at 18.

<sup>443</sup> KING & THORNHILL, *supra* note 22, at 96.

<sup>444</sup> *Id.*

<sup>445</sup> *Id.*

<sup>446</sup> *Id.* at 97.

demographic, ethnic, distributional, and even civilizational. The inherent contingent nature of communication within a given subsystem would not support the proposition that the eventual outcome of such co-evolution would always be progressive, or even teleological.

Yet, it appears increasingly plausible that once the system is broken, the costs, and pains, of systemic readjustment to homeostasis will be greater with ever-increasing complexity. Under this hyper-complexity, the Fortress will continue deploying political rhetoric and actions, while the Pangea will always find ways to circumvent, if not to directly defy, such rhetoric and actions.<sup>447</sup>

Luhmann's systems theory warrants a modest, rather than ambitious, version of new global governance. According to Luhmann, as modern society becomes more differentiated, and thus more complex, we may not afford the level of integration we used to experience. Social "planning" adds complexity to the society itself, which is a self-regulating system. It will bring many unexpected costs, which may exceed the expected utility of the planning.<sup>448</sup> Instead, world society may turn the improbable to the probable only through evolution, which requires "deviations from normal reproduction."<sup>449</sup> Admittedly, while evolution cannot be planned, a self-reproducing system may "absorb" planning and thus accelerate its evolution.<sup>450</sup> Still, however, co-evolution among multiple subsystems tends to reinforce unpredictability.<sup>451</sup>

At this juncture, Luhmann's poignant observation borders on an oracle:

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<sup>447</sup> See e.g., Kate O'Keeffe, *U.S. Approves Nearly All Tech Exports to China, Data Shows*, WALL ST. J. (Apr. 16, 2022), <https://www.wsj.com/articles/u-s-approves-nearly-all-tech-exports-to-china-data-shows-11660596886> (observing that the U.S. Commerce Department has approved nearly all requests of the U.S. tech companies to export high tech products to China, despite its original export control regime); Tom Wilson, *Western Sanctions Have Had 'Limited Impact' on Russian Oil Output, Says IEA*, FIN. TIMES (Aug. 11, 2022), <https://www.ft.com/content/b75d0b8e-fcd8-4722-9180-39a01279d3b4> (reporting that sanction-prone Russian crude oil has been rerouted to India, China and Turkey).

<sup>448</sup> Luhmann, *World Society*, *supra* note 31, at 134.

<sup>449</sup> *Id.* at 133.

<sup>450</sup> *Id.* at 134.

<sup>451</sup> *Id.*

The world society has reached a higher level of complexity with higher structural contingencies, more unexpected and unpredictable changes (some people call this 'chaos') and, above all, more interlinked dependencies and interdependencies. This means that causal constructions, (calculations, plannings) are no longer possible from a central and therefore 'objective' point of view. They differ, depending upon observing systems, that attribute effects to causes and causes to effects, and this destroys the ontological and the logical assumptions of central guidance. We have to live with a polycentric, polycontextural society.<sup>452</sup>

The future, as an empirical possibility, will depend eventually on certain conditions under which each subsystem self-produces. While the systems theory does not directly countenance a normative thesis, certain implications extrapolated from the theory's elucidation tends to shed critical light on those conditions. In other words, the systems theory may be able to allude to certain acceptable conditions under which politics and economy can resonate without serious irritations against each other.

By the same token, the systems theory may insinuate red flags to world society that could potentially entail systemic meltdowns. In light of global governance, it is "agency" that foster or avoid those conditions. For example, the Middle Powers, as symbolized by the BRICS or G20 minus G7, have increasingly distanced themselves from the direct gravitational force of the Western Fortress. In doing so, the Middle Powers can help orient geopolitics toward a multi-polar world order, which can harness the generative force of Pangea. More importantly, however, it will be the West's own global businesses that tame the destructive maneuvers of Fortress and preserve the integrity of Pangea.

Finally, the ideal form of global governance extrapolated from the systems theory licenses second-coding into law. Law's re-coding of the Pangea and the Fortress and the consequent systemic triangular communication within world society could create

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<sup>452</sup> Luhmann, *Globalization*, *supra* note 49, at 75.



“cosmopolitan condition (weltbürgerlichen Zustand).”<sup>453</sup> Only by satisfying such conditions, world society may evolve in a way which departs from a Hobbesian culture and reach a Lockean or Kantian community. Here, world trade law, under the rhetorical label of GCC, may fulfill a civilizing function of international commerce<sup>454</sup> by resonating with politics in a way which lowers a discount rate for the future, on the one hand, and resonating with economy in a way which lowers transaction costs, on the other. Under such circumstances, re-observations by those subsystems are likely to entail a systemic evolution that mimics a self-fulfilling prophesy, which is “peace without victory.”<sup>455</sup>

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<sup>453</sup> JÜRGEN HABERMAS, *THE DIVIDED WEST* 115 (Ciaran Cronin ed. & trans. 2006). *See also* David Palmetier, *A Note on the Ethics of Free Trade*, 4 *WORLD TRADE REV.* 449, 458 (2005) (observing that “[Immanuel] Kant was one of the first to observe that when goods do not cross borders, armies do”).

<sup>454</sup> *See* Sungjoon Cho, *A New Agenda for Peace: International Trade Law as a Practical Discourse*, in *TRADE AS THE GUARANTOR OF PEACE, LIBERTY AND SECURITY?: CRITICAL, HISTORICAL AND EMPIRICAL PERSPECTIVES* 63 (Padideh Ala'i et al eds. 2006). *See also* David Palmetier, *A Note on the Ethics of Free Trade*, 4 *WORLD TRADE REV.* 449, 458 (2005) (observing that “[Immanuel] Kant was one of the first to observe that when goods do not cross borders, armies do”).

<sup>455</sup> Duncan Kelly, *Against the World – A Panoramic History of Anti-Globalization*, *FIN. TIMES* (March 29, 2023), <https://www.ft.com/content/d13242a6-503d-432f-96ed-d4d9ce712a15>.