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## **Mitigating AI's Harmful Effects in Developing Economies through Contracting**

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# Mitigating AI's Harmful Effects in Developing Economies through Contracting

By: A.B. Steinberg\*

The global economic community must establish a new organization that helps to create contracting parameters to ensure that AI does not crash economies, namely those in the developing world that are most at risk.

Artificial Intelligence (AI) will revolutionize the global economy. While many debate the ramifications for developed economies, such as the United States, these effects will likely be increased productivity and the loss of jobs across the workforce.<sup>1</sup> This comment argues that these effects will be even more profound in developing nations due to both AI in their direct economies and the downstream effects of automation. The possible effects could be devastating with ensuing social strife or other resulting possibilities such as war.<sup>2</sup> Therefore, remedies to soften the blow of AI must be considered not just for developed economies but for the developing world as well. Two possible solutions to this issue are contracting between individual corporations and a nation or an international agreement. This comment will argue that combining contracting between individual corporations conducting business within developing nations with international guarantees would be the best check on AI exploitation due to their specificity and enforcement mechanisms. Proposed agreements and the recently adopted EU Agreement on AI will be analyzed in the context of international business law, and then, possible terms of individual contracting between corporations and governments will be discussed.

Due to the concern about an unfair market, there should be an international commission that sets up contracts for large, medium, and small-sized entities within the global economy. The commission would likely be the size of the WHO or some other international regulatory body.<sup>3</sup> This body will have to be large and will create the necessary enforcement mechanisms that will allow companies to quickly access and create contracts while mitigating the most harmful aspects of the AI revolution. Of course, there would be large international conferences to form this body and to ensure that contracts are written up in standard form by experts around the world. This would be a challenge on a monumental scale, yet the stakes are too high not to take global action. AI can shape the future of humanity or destroy it; therefore, it will take monumental international collaboration to keep AI technology under control as it pertains to economics.

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<sup>1</sup> See Deborah Kong, *The techno-optimists and doomsdayers inside Silicon Valley's most dangerous AI debate*, CNBC, last updated Dec. 18, 2023, <https://www.cnbc.com/2023/12/17/techno-optimists-doomsdayers-and-silicon-valleys-riskiest-ai-debate-.html> [<https://perma.cc/JM2A-5KQS>]; THE WHITE HOUSE, THE IMPACT OF ARTIFICIAL INTELLIGENCE ON THE FUTURE OF WORKFORCES IN THE EUROPEAN UNION AND THE UNITED STATES OF AMERICA, Dec. 5, 2022, <https://www.whitehouse.gov/wp-content/uploads/2022/12/TTC-EC-CEA-AI-Report-12052022-1.pdf> [<https://perma.cc/LAV5-XLTA>].

<sup>2</sup> See Kong, *The techno-optimists and doomsdayers inside Silicon Valley's most dangerous AI debate*, CNBC; Michael T. Klare, *The Future of AI Is War*, THE NATION, July 17, 2023, <https://www.thenation.com/article/world/artificial-intelligence-us-military/> [<https://perma.cc/2RWC-PWKW>].

<sup>3</sup> See WHO, *Where we work: WHO organizational structure*, <https://www.who.int/about/structure> (last visited Jan. 5, 2024) [<https://perma.cc/UU6R-LN4A>].

## I. Introduction

The world is not prepared for the economic future of artificial intelligence.<sup>4</sup> It will revolutionize society from top-to-bottom.<sup>5</sup> People will learn differently, play differently, and work differently. Many say it rivals climate change as the biggest risk facing humanity.<sup>6</sup> The stakes are not overblown; within decades, the world will likely be unrecognizable due to technological advances and the coming great replacement of workers by computers.<sup>7</sup>

The shakeup caused by artificial intelligence will likely cause millions to lose their jobs (even in individual economies such as the United States).<sup>8</sup> This development will mainly be in supply chain work, such as manufacturing and trucking.<sup>9</sup> Furthermore, there is a strong chance that more technical positions will be largely replaced with only human overseers to ensure the work is performed satisfactorily.<sup>10</sup> These jobs will likely include certain types of doctors or lawyers.<sup>11</sup> As a result, the economy will transform into something unrecognizable to the present.

Due to these innovations, large segments of the population will likely become unemployed or unemployable through no fault of their own. Simply put, automated intelligence will create a situation where technology is more accurate than a human at performing a task while constantly learning new ways to innovate its own system.<sup>12</sup> Many people will likely have useless skills considering these developments, and they likely cannot be retrained due to the cost of doing so, or there will be simply no jobs for them to get retrained for.<sup>13</sup> This situation would need a new paradigm for both the world and the United States.

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<sup>4</sup> See Gideon Litchfield and Lauren Goode, *The World isn't Ready for the Next Decade of AI*, WIRED, Aug. 16, 2023, <https://www.wired.com/story/have-a-nice-future-podcast-18/#:~:text=Mustafa%20Suleyman%2C%20cofounder%20of%20DeepMind,structure%20of%20the%20nation%2Dstate> [https://perma.cc/K5GD-ST2Y].

<sup>5</sup> See *id.*

<sup>6</sup> See Dan Milmo, *AI risk must be treated as seriously as climate crisis, says Google DeepMind chief*, THE GUARDIAN, Oct. 24, 2023, <https://www.theguardian.com/technology/2023/oct/24/ai-risk-climate-crisis-google-deepmind-chief-demis-hassabis-regulation> [https://perma.cc/E88S-9SRQ].

<sup>7</sup> See Litchfield et al., *The World isn't Ready for the Next Decade of AI*, WIRED.

<sup>8</sup> See Jack Kelly, *Goldman Sachs Predicts 300 Million Jobs Will Be Lost Or Degraded By Artificial Intelligence*, FORBES, Mar. 31, 2023, <https://www.forbes.com/sites/jackkelly/2023/03/31/goldman-sachs-predicts-300-million-jobs-will-be-lost-or-degraded-by-artificial-intelligence/?sh=641f8757782b> [https://perma.cc/V7NK-8XEX].

<sup>9</sup> See *id.*

<sup>10</sup> See *id.*

<sup>11</sup> See Aaron Mok, *AI could mean free doctors and lawyers for everybody in 10 years, OpenAI investor Vinod Khosla believes*, BUSINESS INSIDER, Dec. 3, 2023, <https://www.businessinsider.com/ai-could-mean-free-doctors-lawyers-openai-vinod-khosla-prediction-2023-12#:~:text=In%202016%2C%20Khosla%20wrote%20in,more%20time%20for%20other%20pursuits> [https://perma.cc/T932-LGBZ].

<sup>12</sup> See Anuj Mudaliar, *DeepMind Launches Its First-Ever Self-Improving AI Model*, SPICEWORKS, June 26, 2023, <https://www.spiceworks.com/tech/artificial-intelligence/news/deepmind-launches-its-first-ever-self-improving-ai-model/> [https://perma.cc/67QX-UHD3].

<sup>13</sup> See Daron Acemoglu & Simon Johnson, *Choosing AI's Impact on the Future of Work*, STAN. SOC. INNOVATION REV. ONLINE F., Oct. 25, 2023, <https://ssir.org/articles/entry/ai-impact-on-jobs-and-work#:~:text=Rapid%20advances%20in%20AI%20threaten%20to%20eliminate%20many%20jobs%2C%20and,tasks%20are%20likely%20to%20disappear> [https://perma.cc/8LHL-TJNW].

These changes will shake society to its core. Many people could be considered “obsolete.” Therefore, significant societal dysfunction is a serious possibility. Within a decade or two, it is possible that millions will be out of work.<sup>14</sup> In this timeframe, society will have to redefine what work and productivity look like while providing for those left behind by the AI revolution.<sup>15</sup> For example, traditional work such as home-making could regain status as a recognized profession. Regardless, mass social unrest or upheaval could result from a redefinition of what it means to be an American (and arguably human).<sup>16</sup>

Work has guided the human experience throughout the centuries – even many surnames originate from professions (such as Smith, Miller, or Baker).<sup>17</sup> Instead, people must find new tasks to fill their days. Likely, there will be immersive technology through the metaverse, government social work programs, and universal basic income (UBI) to help soften the blow.<sup>18</sup> These programs would likely be critical to maintaining stability within a society undergoing extraordinary changes. Without them, there could be chaos.

Unlike the United States, many developing nations will not have the same resources to soften the landing of the AI revolution. Even with all the societal issues that could result from the transformation of society, developed nations can protect their populace from the most harmful effects and provide them with their necessities.<sup>19</sup> The global south, by-in-large does not have that luxury due to wealth disparity.<sup>20</sup> Their economies are most susceptible to the cyclical variances of the world’s economy because they rely on developed nations for aid and capital.<sup>21</sup> Therefore, they could likely be the most affected by advancements in AI technology in the United States and other developed economies.

The more profound and concerning effect, even in the face of that consequence, is the redefinition manufacturing in this new economy through AI. AI will streamline the entire design and

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<sup>14</sup> See Chris Vallance, *AI could replace equivalent of 300 million jobs – report*, BBC NEWS, Mar. 28, 2023, <https://www.bbc.com/news/technology-65102150> [<https://perma.cc/GE3A-G2M6>].

<sup>15</sup> See Ryan Roslansky, *REDEFINING WORK*, LINKEDIN BLOG, Aug. 15, 2023, <https://www.linkedin.com/pulse/redefining-work-ryan-roslansky/> [<https://perma.cc/TUQ3-9N9P>].

<sup>16</sup> See Bloomberg, *AI backlash may bring social unrest to UK*, Infosys partner says, THE ECON. TIMES, Last updated Oct. 25, 2023, <https://economictimes.indiatimes.com/tech/technology/ai-backlash-may-bring-social-unrest-to-uk-infosys-boss-says/articleshow/104685818.cms?from=mdr> [<https://perma.cc/6TPN-5MYF>].

<sup>17</sup> See Paige McGlaflin and Joseph Abrams, *Elon Musk says AI will remove need for jobs and create ‘universal high income.’ But workers don’t want to wait for robots to get financial relief*, FORTUNE MAG. NEWSLETTER, November 6, 2023 7:16 AM CST, <https://fortune.com/2023/11/06/elon-musk-ai-artificial-intelligence-universal-income-jobs/> [<https://perma.cc/9GWU-GR5B>].

<sup>18</sup> See Colin Horgan, *Will Universal Basic Income Save Us from AI?*, THE WALRUS, May 8, 2023, <https://thewalrus.ca/will-universal-basic-income-save-us-from-ai/> [<https://perma.cc/M7Z8-Z8H4>]; *The Metaverse in 2040*, PEW RSCH. CENTER, June 30, 2022, <https://www.pewresearch.org/internet/2022/06/30/the-metaverse-in-2040/> [<https://perma.cc/2HET-3DUX>].

<sup>19</sup> See Jim Wilson, *Legislation looks to protect workers from being managed by AI, bots*, HUM. RESOURCES DIR., Jul. 24, 2023, <https://www.hcamag.com/us/specialization/employment-law/legislation-looks-to-protect-workers-from-being-managed-by-ai-bots/453724> [<https://perma.cc/KA5R-ASHL>].

<sup>20</sup> See Jason Hickel, *Global Health Inequality*, CETRI: GLOB. S. NEWSWIRE, Feb. 5, 2016, <https://www.cetri.be/Global-Wealth-Inequality?lang=f> [<https://perma.cc/PRE7-TQU3r>].

<sup>21</sup> See Carina Schmitt ed., *From Colonialism to International Aid*, GLOB. DYNAMICS OF SOC. POL’Y, [https://library.oapen.org/bitstream/handle/20.500.12657/39983/2020\\_Book\\_FromColonialismToInternational.pdf?sequence=1&isAllowed=y](https://library.oapen.org/bitstream/handle/20.500.12657/39983/2020_Book_FromColonialismToInternational.pdf?sequence=1&isAllowed=y) [<https://perma.cc/4GYD-M8ET>].

manufacturing process for many products.<sup>22</sup> Consequently, AI will replace people who were once thought to be intricate in launching, selling, and moving products along a supply chain.<sup>23</sup> Outsourcing labor will have a decreased role in the global economy simply because there will be less labor done by humans at all. Consequently, the same sorts of dysfunction (such as mass unemployment) will occur in developing nations as a downstream effect of the AI efforts of developed nations. Therefore, there will be the same questions of identity, risks of mass employment, and social unrest but in an environment that is arguably more unstable due to lower living standards and (in many cases in the global south) the lack of democratic government that is willing to serve the people first.

## II. AI's Effect on the Modern Supply Chain

The modern supply chain is an intricate web of globalization where many entities combine to bring consumers their products.<sup>24</sup> Not only are the distances mind-boggling, but the contracting involved with it as well.<sup>25</sup> There are manufacturers, distributors, and third parties that must be dealt with, mainly in an international context. Subsequently, many costs are incurred due to the distances, the parties, and the large number of employees involved.<sup>26</sup> Even agreements between nations must be managed.<sup>27</sup> Companies, therefore, look to cut costs and increase efficiency to bring their product to market cheaper and faster as a basic economic principle. In the past, cost-cutting measures included moving factories overseas to avoid unionization or regulation.<sup>28</sup> Nowadays, the answer to true cost-cutting lies in AI.<sup>29</sup>

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<sup>22</sup> See MICKAEL BROSSARD ET AL., HOW GENERATIVE DESIGN COULD RESHAPE THE FUTURE OF PRODUCT DEVELOPMENT, MCKINSEY & CO. REPORT, <https://www.mckinsey.com/~/media/McKinsey/Business%20Functions/Operations/Our%20Insights/How%20generative%20design%20could%20reshape%20the%20future%20of%20product%20development/How-generative-design-could-reshape-the-future-of-product-development.pdf> [https://perma.cc/6XGF-3F6K].

<sup>23</sup> See Knut Alicke et al., *Succeeding in the AI supply-chain revolution*, MCKINSEY & CO., Apr. 30, 2021, <https://www.mckinsey.com/industries/metals-and-mining/our-insights/succeeding-in-the-ai-supply-chain-revolution> [https://perma.cc/CY2E-8928].

<sup>24</sup> See generally Willy C. Shih, *Global Supply Chains in a Post-Pandemic World*, HARV. BUS. REVIEW MAG., Sept.—Oct. 2020, <https://hbr.org/2020/09/global-supply-chains-in-a-post-pandemic-world> [https://perma.cc/G3L6-TMM9].

<sup>25</sup> See generally Lydia O'Neal, *Supply-Chain Contracts Get Revamped After Covid-19 Disruptions*, WALL STREET J., Sept. 21, 2021, <https://www.wsj.com/articles/supplier-contracts-get-revamped-after-covid-19-disruptions-11632342257> [https://perma.cc/PC8W-6HG5].

<sup>26</sup> See generally Thomas Kristensen, *Five ways to cut supply chain costs while boosting customer satisfaction*, PWC, <https://www.pwc.com/us/en/services/trust-solutions/private-company-services/library/supply-chain-costs.html> [https://perma.cc/PU4A-YHMY].

<sup>27</sup> See e.g. Canada-United States-Mexico Agreement (CUSMA) (formerly the North American Free Trade Agreement (NAFTA)), CA-MX-U.S., Nov. 30, 2018, <https://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/nafta-alena/fta-ale/index.aspx?lang=eng> [https://perma.cc/S6SP-7JT6].

<sup>28</sup> See generally Jia Jen Low, *Could automation make outsourcing history?*, T\_HQ, Feb. 13, 2020, <https://techhq.com/2020/02/could-automation-make-outsourcing-history/> [https://perma.cc/3BZ3-MDY9].

<sup>29</sup> See Julie Coleman, *Cramer says AI will be profitable for executives looking for 'cost savings*, CNBC, Sep. 13, 2023, <https://www.cnbc.com/2023/09/13/cramer-ai-will-be-profitable-for-executives-seeking-cost-savings-.html> [https://perma.cc/H7R6-TSZN].

Currently, corporations around the world are making massive investments in AI technology for their supply chains.<sup>30</sup> This technology will create a situation where computers self-automate a substantial amount of the creation, handling, and shipping of goods.<sup>31</sup> Furthermore, analogous to self-driving cars that use AI, there will be machines able to manufacture and produce products independently.<sup>32</sup> Currently, there are challenges with machines that learn different processes; nonetheless, technological advancements will solve this issue.<sup>33</sup> As a result, a completely robotic assembly line is quite possible. For example, through AI, products will be able to conduct self-inventories and automatically send reports of problems to other data systems.<sup>34</sup> As Ms. Karen Butner writes:

Sales and operations planning is the ultimate collaborative decision-making process. Companies can apply AI technologies to sales and operations planning and other massive supply chain data pools to manage demand volatility, supply constraints, production scheduling and dynamic distribution. AI can augment human interaction by allocating resources, assigning people and scheduling processes.

Machine learning capabilities apply algorithms to massive operational data feeds to discover insights to track and predict supply chain disruptions, providing new levels of visibility into day-to-day operations. These capabilities can also recommend alternative actions for unplanned events and transportation disruptions. Weather data integrated with operational data can predict potential problems and alert transportation and logistics service personnel with recommended actions.<sup>35</sup>

AI will redefine how manufacturers develop, procure, and manufacture their products.<sup>36</sup>

The real magic in AI, though, is how it is self-correcting and self-innovating.<sup>37</sup> These systems will not have to rely on human operators for performance updates or improvements. Instead, these

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<sup>30</sup> See Karen Butner, *AI is reshaping the supply chain*, IBM, June 1, 2017, <https://www.ibm.com/thought-leadership/institute-business-value/en-us/report/cognitivesupplychain> [<https://perma.cc/2JAP-36M5>].

<sup>31</sup> See Sumit Dutta and Glenn Steinberg (contrib. Ayoub Abielmona), *How supply chains benefit from using generative AI*, ERNST AND YOUNG, Jul. 27, 2023, [https://www.ey.com/en\\_us/coo/how-generative-ai-in-supply-chain-can-drive-value](https://www.ey.com/en_us/coo/how-generative-ai-in-supply-chain-can-drive-value) [<https://perma.cc/3JVV-8P5E>].

<sup>32</sup> See Nick Bogaert, *AI-Generated Product Design: Tools and Examples*, BOARD OF INNOVATION (BLOG), <https://www.boardofinnovation.com/blog/ai-generated-product-design-tools-and-examples/#:~:text=Stable%20Diffusion%20is%20an%20AI,create%20unique%20and%20innovative%20products> [<https://perma.cc/6W5Y-VUTB>].

<sup>33</sup> See Rachel Gordon, *An automated way to assemble thousands of objects*, MIT NEWS, Dec. 7, 2022, <https://news.mit.edu/2022/automated-way-assemble-thousands-objects-1207> [<https://perma.cc/S26A-QQGV>]; Will Knight, *Ford's Ever-Smarter Robots Are Speeding Up the Assembly Line*, WIRED, Apr. 28, 2021 8:00 AM, <https://www.wired.com/story/fords-smarter-robots-speeding-assembly-line/> [<https://perma.cc/E36F-62B7>].

<sup>34</sup> See Julia Dunlea, *Revolutionizing Inventory Management: The Power of AI*, AKKIO, Nov. 24, 2023, <https://www.akkio.com/post/ai-for-inventory-management> [<https://perma.cc/SB3B-2HPH>].

<sup>35</sup> Karen Butner, *AI is reshaping the supply chain*, IBM.

<sup>36</sup> See *id.*

<sup>37</sup> See Philip Hutchinson, *Reinventing Innovation Management: The Impact of Self-Innovating Artificial Intelligence*, 68 IEEE TRANSACTIONS ON ENG'G MGMT. 628, Apr. 2021, <https://ieeexplore.ieee.org/document/9036086> [<https://perma.cc/PR8J-5NAU>].

programs will learn on the job, much as people do, except likely faster.<sup>38</sup> In fact, this is one of the driving reasons companies invest in AI.<sup>39</sup> A corporation will have “an employee” who does not vacation, does not take breaks, can in-take precise data, and then act on that information at speeds a human being cannot possibly do. Consequently, people will be laid off, and as this technology becomes ubiquitous, they will not have new jobs to go to. There will be a permanent class of people without the requisite skills to succeed in the modern economy because they will lack the skills to succeed. They will not be able to outperform the AI productivity.

### III. Contracting

The freedom to contract could be what saves the global economy from a complete AI takeover. In a sense, this is the ultimate contractarian view of international commerce. In this way, the free market could do its best work as unfettered as possible despite the need for regulation. In this scenario, individual corporations (not governments) would be responsible for keeping world commerce recognizable in its current form. Keeping commerce in its current form would be difficult, but it also gives the global economy its greatest chance at stability by mitigating the worst effects of the AI revolution. Some rationales could include goodwill with consumers, consideration of growing business opportunities in developing nations themselves, and actual ethical considerations.

Goodwill with consumers means that in a world of increasing automation and artificial intelligence, a company could increase its social stature by using people instead of robots. Considering the exploitation that occurs in the developing world regarding labor markets, this may sound odd.<sup>40</sup> Of course, this idea would have to be marketed in a way that does not appear silly or insensitive. Nonetheless, the world will likely be so transformed by automation if left unchecked that people could appreciate the fact that companies are using people to create their goods. This goodwill also feeds into business considerations.

Companies may rein in AI to not destroy their growing consumer bases. These entities should be just as worried about societal collapse in any nation they conduct business inside. As developing nations grow their economies in the current era, the consumer base naturally expands.<sup>41</sup> Furthermore, this growing customer base also becomes wealthier and can spend more on goods as it grows.<sup>42</sup> The downstream effects of AI would possibly destroy consumer bases. As a result, there would be much less money to be made, and the expanding economies come crashing down. Ethical considerations for certain businesses could exist as well. On some level, one would like to think that businesses themselves want the stability of society for the greater good of humanity

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<sup>38</sup> See *id.*

<sup>39</sup> See *id.*

<sup>40</sup> See Thea Lee, *A Deep Dive into the Labor Exploitation Behind Everyday Products*, U.S. DEP’T OF LABOR BLOG, Sept. 28, 2022, <https://blog.dol.gov/2022/09/28/a-deep-dive-into-the-labor-exploitation-behind-everyday-products> [<https://perma.cc/4KYM-55JC>].

<sup>41</sup> See Wolfgang Fengler et al., *How the world consumer class will grow from 4 billion to 5 billion people by 2031*, BROOKINGS INST., July 25, 2023, <https://www.brookings.edu/articles/how-the-world-consumer-class-will-grow-from-4-billion-to-5-billion-people-by-2031/> [<https://perma.cc/YYV6-9YMX>].

<sup>42</sup> See Douglas A. Irwin, *Globalization enabled nearly all countries to grow richer in recent decades*, PIIE, June 16, 2022, <https://www.piie.com/blogs/realtime-economic-issues-watch/globalization-enabled-nearly-all-countries-grow-richer-recent> [<https://perma.cc/TV44-AV4G>].

if their actions could possibly cause societal collapse in a nation where they conduct business. These rationales create situations where individual companies may contract with developing nations regarding AI.

Large companies which create foreign goods could come to individual agreements with the nations where they produce products. These agreements would include certain clauses such as not using AI to automate certain processes in the manufacturing and supply chain for example. In such a scenario, greater subsidies could be given, or even a more developed economy such as the United States could help soften the increased costs by subsidizing the arrangement. Overall, the difficulty of such measures would likely be enormous due to the economic burden a nation such as the United States would already be shouldering in transitioning itself to an AI economy. As a result, the driving motivations of goodwill with consumers, the consideration of growing business opportunities in developing nations themselves, and ethical considerations would make it much more likely for a corporation to rein in AI than do so because of government economic assistance.

Contracting and restricting AI systems is difficult because these developments will be unprecedented. Contracts restricting the use of technology would typically baffle the imagination. Despite this science fiction-like scenario, the world must be prepared to restrict AI technology in the same vein. There will be a need for some type of international governance; the issue is how much. Contracts and international guarantees will act as regulations with enforcement mechanisms baked into the agreements.

#### A. WHY NOT THE GOVERNMENT?

The world economy cannot rely on government intervention to protect the global economy from AI developments due to the difficulty of setting up an arrangement to begin with. For example, trade agreements are messy and could take years to negotiate – NAFTA took two years to become effective between nations with strong (and friendly) relations.<sup>43</sup> Furthermore, renegotiations in 2017-2018 were not easy:

Anyone who's worked on a long, complex project knows that it's hard to take artificial timetables seriously, especially when parties have incentives to drag things out. The governments of Canada and Mexico, for instance, might have wanted to push NAFTA talks down the road in the hope that the Trump administration would accept the status quo.

Some also speculated that the White House threw roadblocks at the talks because of the concern that Congress, pro-business leaders, and voters would be angered by whatever outcome was reached. "A long negotiation in which [Trump] can continue to claim he is fighting for a better deal is by far the best bet," argued Edward Alden in Politico, "I'm in no rush," Trump said...<sup>44</sup>

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<sup>43</sup> See *Timeline: The long bumpy road from NAFTA to USMCA*, REUTERS, July 1, 2020, <https://www.reuters.com/article/idUSKBN2424F8/> [<https://perma.cc/63CM-DEQP>].

<sup>44</sup> See Pon Staff, *Renegotiation Lessons from the NAFTA Talks*, PROGRAM ON NEGOT. BLOG (HLS), Dec. 8, 2022, <https://www.pon.harvard.edu/daily/dealmaking-daily/redoing-the-deal-lessons-from-the-nafta-renegotiations-nb/> [<https://perma.cc/7FZU-NYC5>].



Governments change often, especially in democracies. This predicament leads to the inevitable fact that frequently competing interests are represented in succeeding administrations. Thus, yesteryear's agreements no longer serve the present political reality for one side or another. Therefore, reaching longstanding agreements could be impossible without political pressure. The Iran Nuclear Deal that President Trump scrapped acts as a good example.<sup>45</sup>

Large international agreements could be nearly impossible in a situation where relations are not as friendly. This is evidenced by the fact that even if negotiations are done under friendly, cooperative circumstances, there are many moving pieces in such a scenario. Countries like Japan, which are facing a major demographic challenge in a decreasing, aging population, stand to benefit the most from an AI revolution.<sup>46</sup> In this sense, despite the larger good for the world, countries likely will not want to sign agreements that will limit their abilities to play to their strengths in an ever-changing environment. Doing so could be potentially disastrous to a political leader, party, or regime in the domestic arena. Additionally, enforcement mechanisms would be complicated. A level of automation, along with the disparate economic effects, could be challenging to quantify.

For enforcement principles, the amount AI could be held responsible for a downturn could be difficult to understand when put into the context of the global economy. Such a scenario becomes even more difficult in the event of an economic meltdown. Of course, if the downturn is more gradual, recognition and possible enforcement could be easier. Nonetheless, an agreement cannot rely on that possibility, and along with the difficulties of measuring AI overuse criteria, international enforcement of any kind of agreement between many nations would be almost impossible.

## B. LEAGUE OF NATIONS ANALOGY

An interesting analogy may be drawn from the last century for the danger AI poses to the world when important nations either do not join or enforce an accord. After the First World War, the victorious nations set up the League of Nations.<sup>47</sup> The League of Nations – the brainchild of President Woodrow Wilson – acted as a precursor to the United Nations.<sup>48</sup> The League's main goal was to foster world peace and dialogue to ensure that another world war never occurred again.<sup>49</sup> Unfortunately, the United States never joined the League of Nations, and the organization suffered a legitimacy issue because one of the world's most powerful nations proved to be isolationist as the United States decided to take a backseat to international affairs.<sup>50</sup> The lack of

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<sup>45</sup> See e.g., FACT SHEET, Pres. Donald Trump, *President Donald J. Trump is Ending United States Participation in an Unacceptable Iran Deal*, National Archives (White House), May 8, 2018, <https://trumpwhitehouse.archives.gov/briefings-statements/president-donald-j-trump-ending-united-states-participation-unacceptable-iran-deal/> [https://perma.cc/6N5L-W45N].

<sup>46</sup> See Todd Schneider et al., *Land of the Rising Robots*, IMF, June 2018, <https://www.imf.org/en/Publications/fandd/issues/2018/06/japan-labor-force-artificial-intelligence-and-robots-schneider> [https://perma.cc/2FHH-TXMP].

<sup>47</sup> See THE LEAGUE OF NATIONS, ENCYC. BRITANNICA (last upd. Nov. 28, 2023), <https://www.britannica.com/topic/League-of-Nations#ref337580> [https://perma.cc/6HXM-353A].

<sup>48</sup> See *id.*

<sup>49</sup> See *id.*

<sup>50</sup> See *id.*

enforcement power and legitimacy that resulted from the United States failure to join the organization proved to be fatal, as Nazi Germany violated the Treaty of Versailles and re-armed, leading to the Second World War.<sup>51</sup> The same could happen with any international organization set up to regulate AI.

If a powerful nation, such as the United States or China, refused to join an international organization or to sign an accord that limited the interference of AI in the economic sphere, the results would have the potential to be disastrous. Not only would the organization lack legitimacy because it would lack some of the world's biggest economies, but it would also lack a key enforcement mechanism. The United States is the world's superpower and holds the key to enforcement (mainly in monetary sanctions) through its control of the world financial markets.<sup>52</sup> Without locking key offenders out of banks or certain transaction opportunities, any regulatory action would lack actual bite. On the other hand, China not joining an organization that regulates AI or not actually enforcing its manufacturing rules could also be problematic. As China is one of the largest manufacturers of goods and the second most powerful economy in the world,<sup>53</sup> an international organization that regulates the control of AI in economic or social contexts must rely on China and the United States for it to be effective. Otherwise, a situation could arise akin to the issues of legitimacy and enforcement the League of Nations faced in the aftermath of the First World War.

Most troubling is that there is an argument to be made that an international organization would be ineffective despite the world's best efforts. China, for example, is the world's biggest thief of trade secrets or Western proprietary information.<sup>54</sup> The United States would likely not be willing to be the primary world enforcer of AI measures when administrations or segments of the government are more worried about domestic issues, given the political movement to withdraw more from world affairs.<sup>55</sup> Obviously, these two issues would come to a head if the United States and China disagreed over the usage or purpose of AI. Of course, this situation could happen without an international organization available, and it would exist for these types of conflicts. Nonetheless, a global enforcement mechanism would likely be ineffective as the system would have to rely on one or the other of these nations.

For these reasons, private contracting is preferable to international organizations enforcing accords. Private parties are likelier to have tailored terms and conditions to fit the situation. Furthermore, enforcement can be specified in terms already agreed to by parties, so they

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<sup>51</sup> See THE LEAGUE OF NATIONS (POLITICAL HISTORY), ENCYC. BRITANNICA.

<sup>52</sup> See Michael Pettis, *Changing the Top Global Currency Means Changing the Patterns of Global Trade*, CARNEGIE ENDOWMENT FOR INT'L PEACE (CHINA FIN. MKTS. BLOG), <https://carnegieendowment.org/chinafinancialmarkets/86878> [<https://perma.cc/3AAB-2RVM>].

<sup>53</sup> See Darrell M. West and Darrell M. West, *Global manufacturing scorecard: How the US compares to 18 other nations*, BROOKINGS INST., July 10, 2018, <https://www.brookings.edu/articles/global-manufacturing-scorecard-how-the-us-compares-to-18-other-nations/> [<https://perma.cc/HHQ6-5A3B>]; WBG, GDP TABLE (2022), <https://datacatalog.worldbank.org/search/dataset/0038130/GDP-ranking> [<https://perma.cc/9UXM-KQRR>].

<sup>54</sup> See Scott Pelley et al., *Global intelligence leaders warn against China's technology theft*, CBS NEWS, Oct. 22, 2023, <https://www.cbsnews.com/news/chinas-technology-theft-major-threat-fbi-head-warns-60-minutes/> [<https://perma.cc/QGH5-YE66>].

<sup>55</sup> See Jill Colvin, *Trump allies aim to capture his philosophy in policy book*, AP NEWS, Dec. 8, 2022, <https://apnews.com/article/donald-trump-united-states-government-and-politics-5c6ba68dbd9b2ee86bc77faad6936cf6> [<https://perma.cc/8NYV-WSHF>]

understand the specific risks of non-performance of contractual obligations. Additionally, it would be quicker to get a resolution through enforcement or settlement through private parties with specific clauses or agreements about mediation instead of an international organization enforcing terms. This advantage also reduces cost, as companies can redirect their resources to more productive areas rather than litigation. The issue of trade secrets or intellectual property becomes much less of an issue as well. Nothing will change from the current behavior regarding international business understanding in the future. Government agreements would likely have a high amount of regulation and disclosure, leading to distrust between corporations and governments. This regulation would drive businesses away from nations that take AI regulation more seriously while rewarding bad actors. The only element being changed is the nature or limitations of the technology between private parties where compliance can be better enforced. For these reasons, private contracting is preferable to large international agreements that would be difficult to enforce.

#### IV. Due Process Concerns with Contracting Parameters

A major concern about set contracts is due process concerns. Typically, contracts are meant to provide freedom to parties. In the case of AI, nonetheless, freedom would be taken away. This conundrum creates an issue with economic freedom, of course. Advanced parties should typically be able to set their own limitation. These proposed contracts would act more like regulatory guidelines that a government and nation would agree to with terms set out by an international body. In this way, there is little risk in corporations refusing to do business in certain nations if the agreement is truly international.

Once Congress approves the regulatory framework, court challenges would likely be prevalent in these AI contracts because of the hybrid relationship between the contract and regulation. Despite *Lochner* effectively being overruled, it is quite possible that more stringent government regulation could lead to corporate activists trying to resuscitate the fundamental right to contract.<sup>56</sup> This reasoning could be held in earlier defunct interpretations of the Constitution.<sup>57</sup> Either way, corporate entities will likely attempt to fight regulation in actual contracts with traditional notions of fairness and how the market traditionally works. It is difficult to predict the success of such efforts if they ever came to pass, given the impossibility of predicting the future. Nonetheless, the current Court could find such arguments appealing through a *Citizens United* rationale.<sup>58</sup> If “corporations are people,” they should be subjected to regulation, but perhaps actual contractual terms could be too much.<sup>59</sup> A rebuttal for the government would be that AI is a pressing matter, and such regulation is necessary to save jobs. Since the regulation is also economic in nature, the

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<sup>56</sup> See James B. Stewart, Did the Supreme Court Open the Door to Reviving One of Its Worst Decisions?, N.Y. TIMES, July 2, 2022, <https://www.nytimes.com/2022/07/02/business/scotus-lochner-v-new-york.html> [https://perma.cc/8JT4-USWR].

<sup>57</sup> See *id.*

<sup>58</sup> See BRIAN DUGNAN, CITIZENS UNITED V. FEDERAL ELECTION COMMISSION, ENCYC. BRITANNICA (last updated Dec. 23, 2023), <https://www.britannica.com/event/Citizens-United-v-Federal-Election-Commission> [https://perma.cc/JJ5B-QG9B].

<sup>59</sup> See Nina Totenberg, *When Did Companies Become People? Excavating The Legal Evolution*, NPR, July 28, 2014, <https://www.npr.org/2014/07/28/335288388/when-did-companies-become-people-excavating-the-legal-evolution> [https://perma.cc/CW92-GWJS].

Court would likely grant rational basis review, which would mean the regulation be upheld.<sup>60</sup> Nevertheless, any litigation and adoption of such a regulatory framework by Congress would likely be contentious.

In the United States, this sort of contracting could be seen as the government overstepping its role from market supervisor to supervisor and participant. Since the government would have this dual role, corruption creates a double-tiered market where the government essentially undercuts some corporations while overpaying others. Furthermore, the likely intensity of AI regulation could create a situation where some market participants or industries are subject to stricter scrutiny than others. As a result, it is quite possible that the system could be rife for abuse.

In the international context, there is more room for regulation. For example, many of the issues with the Tokyo Accords or Kyoto Protocols economic or freedom concerns simply are not a factor due to lesser economic freedom given to corporations overseas.<sup>61</sup> There would not be as much protest about stringent regulations or protecting worker's rights, given the strong history of social democracy in Europe.<sup>62</sup> Nonetheless, the fact that countries may pull out of agreements once they no longer suit them remains a significant concern.<sup>63</sup> This assertion is backed by the fact that European labor laws are friendly to workers, and there are much higher tax rates and regulations on general economic activity.<sup>64</sup>

The developing world relies on the United States and the EU to adopt and keep regulations within their borders due to the more significant economic impact these nations have on the global economy.<sup>65</sup> Without these governments' enforcement mechanisms (along with those of an international body), any sort of meaningful regulation to regulate AI within developing nations would be simple lip service instead of the significant protections they need. This is true for a whole host of other international contexts or organizations.<sup>66</sup> For example, the Hague lacks significant power to enforce its own laws.<sup>67</sup> Certain countries, such as the United States, fight the

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<sup>60</sup> See generally Jarrett Dieterle, *Differing Levels of Scrutiny for Economic Regulations: "Anything Goes" Rational Basis v. Rational Basis "With Bite"*, THE FED. SOCIETY, Apr. 27, 2017, <https://fedsoc.org/commentary/fedsoc-blog/differing-levels-of-scrutiny-for-economic-regulations-anything-goes-rational-basis-v-rational-basis-with-bite> [https://perma.cc/7Z77-BPWJ].

<sup>61</sup> See generally Amanda M. Rosen, *The Wrong Solution at the Right Time: The Failure of the Kyoto Protocol on Climate Change*, 43 POL. & POL'Y 36–7 (Feb. 2015), <https://onlinelibrary.wiley.com/doi/pdf/10.1111/polp.12105> [https://perma.cc/RF4C-B5Y8].

<sup>62</sup> See generally Clifford Fisher et al., *European Union labor law- a comparison between the labor laws of the United States and the European Union*, 7 THE BUS. AND MGMT. REVIEW 43 (June 2016), [https://cberuk.com/cdn/conference\\_proceedings/conference\\_18127.pdf](https://cberuk.com/cdn/conference_proceedings/conference_18127.pdf) [https://perma.cc/S63X-CTHT].

<sup>63</sup> See e.g. Nahal Toosi et al., *Trump's Iran deal zombie*, POLITICO, May 8, 2023 4:00 PM EST, <https://www.politico.com/newsletters/national-security-daily/2023/05/08/trumps-iran-deal-zombie-00095756> [https://perma.cc/8JTQ-K7AM].

<sup>64</sup> See generally Fisher et al., *European Union labor law- a comparison between the labor laws of the United States and the European Union*, 7 THE BUS. AND MGMT. REVIEW 43.

<sup>65</sup> See Economy & Trade, Off. of the U.S. Trade Representative, <https://ustr.gov/issue-areas/economy-trade> [https://perma.cc/R8NV-QHJD].

<sup>66</sup> See generally Steven J. Hoffman et al., *International treaties have mostly failed to produce their intended effects*, 119 PNAS 1 (May, 17, 2022), <https://www.pnas.org/doi/epdf/10.1073/pnas.2122854119> [https://perma.cc/T6BU-TL8E].

<sup>67</sup> See Steel Rometius, *ICC's jurisdiction and enforcement power-taking Bashir case as an example*, 6 FORENSIC RSCH. & CRIMINOLOGY INT'L J. 27 (Jan. 18, 2018),

prosecution of their citizens in international courts out of fear of international scandal or a lack of latitude in military decision-making.<sup>68</sup> Subsequently, the ICC is arguably an organization that only provides ideals for human rights and not actual punishments.<sup>69</sup>

## V. Immigration

AI will likely decrease the need for immigration of both skilled and unskilled labor in the long term. Consequently, this development could be a net positive for developing nations because there will no longer be as much brain drain regarding their skilled workforce.<sup>70</sup> Nonetheless, getting to that point may cause an even greater brain drain as there will be an “arms race” to get the best AI technology the quickest. President Biden’s executive order on the development of AI and the attempts to ease immigration for top researchers are key examples of that assertion.<sup>71</sup> As noted:

Experts in AI and emerging technologies will benefit from a modernized pathway described to be more inclusive of startup founders, as the order directs the Department of Homeland Security to assess current rules and regulations to simplify the process for noncitizens, including “experts in AI and other critical and emerging technologies and their spouses, dependents, and children,” to adjust status to that of a lawful permanent resident.<sup>72</sup>

Once this technology develops, this migration will slow. As a result, the domestic economies of affected nations could grow faster. Retention of talent would likely no longer be an issue for these nations. In this sense, AI could work to improve the prospects of the developing world.

On the other hand, with the disappearance of many types of work, there will no longer be a release valve for overpopulation or other social pressure. Human migration resulting from overpopulation, climate events, or general economic downturns (unrelated to AI) could cause any number of scenarios where instability ensues.<sup>73</sup> Consequently, the net effects of the decrease in

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<https://medcraveonline.com/FRCIJ/FRCIJ-06-00179.pdf> [https://perma.cc/9JL5-7R9S].

<sup>68</sup> See Alice Sperti, *How the U.S. Derailed an Effort to Prosecute its Crimes in Afghanistan*, THE INTERCEPT, Oct. 5, 2021 10:21 AM, <https://theintercept.com/2021/10/05/afghanistan-icc-war-crimes/> [https://perma.cc/RR8Z-BEDV].

<sup>69</sup> See generally Adam White, *A Force to be Reckoned with? – The International Criminal Court and the Problem of Enforcement* (Oct. 2019) (law dissertation, University of Otago, Dunedin, N.Z.), [https://www.otago.ac.nz/\\_data/assets/pdf\\_file/0020/331454/a-force-to-be-reckoned-with-the-international-criminal-court-and-the-problem-of-enforcement-734259.pdf](https://www.otago.ac.nz/_data/assets/pdf_file/0020/331454/a-force-to-be-reckoned-with-the-international-criminal-court-and-the-problem-of-enforcement-734259.pdf) [https://perma.cc/7J78-JNV8].

<sup>70</sup> See generally Frederic Docquier et al., *Brain drain in developing countries*, 21 THE WBG ECON. REVIEW 193 (May 27, 2013), <http://documents.worldbank.org/curated/en/943531468147538428/Brain-drain-in-developing-countries> [https://perma.cc/RR8C-BB6T].

<sup>71</sup> See Stuart Anderson, *Biden Executive Order on AI Could Help Immigrant Professionals*, FORBES, Nov. 7, 2023, 08:41 AM EST, <https://www.forbes.com/sites/stuartanderson/2023/11/07/biden-executive-order-on-ai-could-help-immigrant-professionals/?sh=1e48ed9a41f4> [https://perma.cc/KHL8-UXBT].

<sup>72</sup> Sarah J. Hawk, *New AI Executive Order Promotes Immigration Of Highly Skilled Workers*, BARNES & THORNBURG LLP, Nov. 9, 2023, <https://btlaw.com/en/insights/alerts/2023/new-ai-executive-order-promotes-immigration-of-highly-skilled-workers> [https://perma.cc/5J4C-B6D4].

<sup>73</sup> See e.g. Julie Watson, *Climate change is already fueling global migration. The world isn’t ready to meet people’s changing needs, experts say*, PBS, Jul. 28, 2022 2:14 PM EST, <https://www.pbs.org/newshour/world/climate-change-is-already-fueling-global-migration-the-world-isnt-ready-to-meet-peoples-needs-experts-say> [https://perma.cc/YYU5-T4LQ].

immigration to developed nations from the global south remain unclear. In fact, it appears reliant on international agreements and contracting between corporations and nations.

## VI. Set Contracts

Future contracting parameters require set contracts that can be amended easily yet have the rigidity to make clear what is and is not allowed concerning the use of AI. These set contracts would be created by an international body and then amended with key terms filled. An analogous situation would be legal documents and a real estate agent. A body (such as the Texas Real Estate Commission) creates forms that real estate agents fill in with key terms.<sup>74</sup> Nonetheless, real estate agents are not allowed to amend these documents as it would be an unauthorized practice of law.<sup>75</sup> Unlike real estate agents, companies dealing with AI will need more flexibility than only filling in key terms or figures. The principle remains the same, though, that many of the essential terms must be set. The exact amendable terms versus those fixed are impossible to predict due to the makeup of the parties and public policy objectives.

Here are some examples of contract clauses about technology that follow:

### TECHNOLOGY CONTRACTING SECTION

The Nike Corporation (“Nike”) and the Indian State of Bengal (“Bengal”) agree to terms on the usage of Artificial Intelligence (“AI”) at factories or other production facilities within the state. The agreement stipulates that the usage of ChatGPT, Bard, NovelAI, private Nike Corporate AI, and any other type of AI that assists in the production or creation of products is regulated under this agreement.<sup>76</sup>

The production of shoes at \_\_\_\_\_ within the State of Bengal shall be regulated by this agreement. Bengal stipulates that no more than \_\_% of AI technology is used within the manufacturing process. Overall, no more than \_\_% of the overall production value can be derived from artificial means regarding the shoes.<sup>77</sup>

This agreement is to last ten years from its effective date.

Please note: the enforcement of fines would not be within the technology restriction segment of the contract and would be promulgated in a later section.

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<sup>74</sup> See TREC Real Estate Sale Amendment 39-9, TREC (2022), <https://www.trec.texas.gov/sites/default/files/pdf-forms/39-9%20draft%2011.2022.pdf> [https://perma.cc/5SAP-GF7S].

<sup>75</sup> See TEX. ADM. CODE RULE §537.11(b.) (2023).

[https://texreg.sos.state.tx.us/public/readtac\\$ext.TacPage?sl=R&app=9&p\\_dir=&p\\_rloc=&p\\_tloc=&p\\_ploc=&pg=1&p\\_tac=&ti=22&pt=23&ch=537&rl=11](https://texreg.sos.state.tx.us/public/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=22&pt=23&ch=537&rl=11) [https://perma.cc/RPJ8-LCNP].

<sup>76</sup> See Giulia Carbonaro, *OpenAI's ChatGPT chatbot tops the list but these are the 9 other most popular AI tools just now*, EURONEWS, Feb. 2, 2022, <https://www.euronews.com/next/2024/02/01/these-are-the-10-most-widely-used-ai-tools-and-the-people-who-using-them-the-most> [https://perma.cc/3A8F-WLN3].

<sup>77</sup> See *Production Value*, INSTITUTO NACIONAL DE ESTADÍSTICA, <https://www.ine.es/DEFIne/en/concepto.htm?c=2207&tf=&op=#:~:text=Definition,resale%20of%20goods%20and%20services> [https://perma.cc/3XM2-GEHV].

The biggest concern about these contracts would be how they shift with technology. Technology will be moving at a fast pace, just as it is now. The biggest difference is that much of the innovation will not be done by people but rather by machines. Consequently, much of what is being contracted must be ambiguous or wide-ranging to be effective, yet not so specific as to be overly constrictive. An interesting conundrum then presents itself: how are people best able to manage contract terms when computers do the innovating, producing, and are the brains behind the operation? In time, the answer lies in computers regulating computers, but for now, people must try their best.

## VII. Why Contracting is Better

International agreements to limit AI will be like those that restrict the usage of certain weapons or those designed to curb global warming. The EU became the first global organization to create an agreement on the future uses of AI.<sup>78</sup> Undoubtedly, other international organizations, such as the UN or NAFTA, will follow suit. What these agreements will look like are basically like the EU's agreement as explained in Time Magazine:

Now, the U.S., U.K., China and global coalitions like the Group of 7 major democracies have jumped in with their own proposals to regulate AI, though they're still catching up to Europe.

Strong and comprehensive rules from the EU "can set a powerful example for many governments considering regulation," said Anu Bradford, a Columbia Law School professor who's an expert on EU law and digital regulation. Other countries "may not copy every provision but will likely emulate many aspects of it."<sup>79</sup>

In other words, these agreements will be vague and full of principles instead of hardnosed facts, enforcement mechanisms, and objective standards. In this sense, international agreements are self-serving for the governments that sign onto them. They are empty gestures that add credible deniability when a technology like AI goes sideways. First, they calm the populace into believing that the government is working for their interests or looking out for future events. Second, when the AI revolution shakes the economy and many lose their jobs, these agreements will allow governments to point the finger at other nations.

Contracting is different because it is more concrete than ordinary regulation and does not allow the same kind of latitude to nations. There would be specific terms with enforcement mechanisms for saving human jobs, ensuring the terms are followed. The biggest issue with contracting is that it is not for the entire economy. Contracts are for entities and take time to be specifically crafted. Therefore, they may take up resources that a nation simply does not have. This consideration also means that nations may have to choose what entities to contract with or not to contract with. A gamble may result in one company failing due to a lack of AI, and another company (not subjected

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<sup>78</sup> Press Release, E.U. Delegation of the E.U. to Australia, World's First AI Law: EU Announces Provisional Agreement on AI Act (Dec. 13, 2023), [https://www.eeas.europa.eu/delegations/australia/world%E2%80%99s-first-ai-law-eu-announces-provisional-agreement-ai-act\\_en?s=163](https://www.eeas.europa.eu/delegations/australia/world%E2%80%99s-first-ai-law-eu-announces-provisional-agreement-ai-act_en?s=163) [<https://perma.cc/3CRY-A3VH>].

<sup>79</sup> The A.P., *Europe reaches a deal on the world's first comprehensive AI rules*, NPR, Dec. 9, 2023 2:09 AM EST, <https://www.npr.org/2023/12/09/1218374512/europe-first-comprehensive-ai-rules> [<https://perma.cc/L98B-R2H5>].

to the same contractual pitfalls regarding AI) succeeding. This situation would also create a double-tiered marketplace in that companies that would be restricted will not compete due to the unfair playing field.

There is a possibility that once AI becomes ubiquitous, new agreements will be formed, or there may be amendments. Changes in technology will be difficult to predict. Nonetheless, strict enforcement mechanisms would be necessary in addition to a body that could objectively analyze data for how AI replaces people's jobs. Consequently, international agreements may not mean much or save people's jobs.

### VIII. Protecting Trade Secrets

Trade secrets may be the biggest issue in regulating and contracting with AI. Trade secrets have always been a huge issue in the modern economy, but AI will generate even more concern.<sup>80</sup> As the technology becomes ubiquitous, AI will become a major source of income and a reason many companies will find success or fail. AI will become some of the most closely guarded information many tech companies have if it is not already that way for many of them.<sup>81</sup> Nevertheless, how this will be managed is like how trade secrets are currently guarded.

There are three elements for a trade secret: "(1) information, (2) economic value from not being generally known by others, and (3) reasonable efforts have been taken to protect the trade secret."<sup>82</sup> The ways to protect these secrets are through security measures such as NDAs or restricting the use of documents.<sup>83</sup> These measures take large measures of security through both technological and legal means.<sup>84</sup> Stealing trade secrets is a federal crime in the United States.<sup>85</sup> Many corporations vigorously protect their trade secrets from corporate espionage. One example is Coca-Cola.<sup>86</sup> Corporate espionage among nations is now a significant problem as well. As stated previously, governments are on high alert against Chinese interference in Western technological innovation.<sup>87</sup>

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<sup>80</sup> See Katherine Linton, *The Importance of Trade Secrets: New Directions in International Trade Policy Making and Empirical Research*, U.S. Int'l Trade Comm'n J. Int'l Com. and Econ. (Sept. 2016), at page 2, [https://www.usitc.gov/publications/332/journals/katherine\\_linton\\_importance\\_of\\_trade\\_secrets\\_0.pdf](https://www.usitc.gov/publications/332/journals/katherine_linton_importance_of_trade_secrets_0.pdf) [<https://perma.cc/VY4K-XD9F>].

<sup>81</sup> See Jordan R. Jaffe et al., *The Rising Importance of Trade Secret Protection for AI Related Intellectual Property*, QUINN EMANUEL URQHART & SULLIVAN, LLP, <https://www.quinnemanuel.com/media/wi2pks2s/the-rising-importance-of-trade-secret-protection-for-ai-related-intellect.pdf> [<https://perma.cc/LMN3-29Z8>].

<sup>82</sup> *Trade Secrets*, Lawrence Goodwin and Stacy Grossman, N.Y.C. BAR LEGAL REFERRAL SERV., July 2016 (updated Dec. 2018), <https://www.nycbar.org/get-legal-help/article/intellectual-property/trade-secrets/#:~:text=In%20general%2C%20a%20trade%20secret,to%20protect%20the%20trade%20secret> [<https://perma.cc/5H2T-Z9P6>].

<sup>83</sup> See *Trade Secrets*, WIPO, <https://www.wipo.int/tradesecrets/en/> [<https://perma.cc/AQ29-E9BP>].

<sup>84</sup> See *Trade secret litigation 101*, THOMPSON REUTERS, Nov. 23, 2022, <https://legal.thomsonreuters.com/blog/trade-secret-litigation-101/> [<https://perma.cc/5JAZ-YUF5>].

<sup>85</sup> See *id.*

<sup>86</sup> See Ivana Kottasova, *Does formula mystery help keep Coke afloat?*, CNN, Feb. 19, 2014, <https://www.cnn.com/2014/02/18/business/coca-cola-secret-formula/index.html> [<https://perma.cc/79BL-QR5N>].

<sup>87</sup> See Pelley et al., *Global intelligence leaders warn against China's technology theft*, CBS NEWS.



Defending AI technology and the use of trademarks could be much tougher than ordinary technology, and contracts must reflect that fact. AI technology changes much faster than ordinary technology because it is self-improving. Consequently, governments may have to regulate the nuts and bolts of this technology to slow it down or decrease its power. This would likely take the form of slowing its learning capabilities or only allowing it to be tasked with certain functions. The best way to handle the protection of trade secrets through contracting would be simply to regulate output. That way, governments will not have to inspect intellectual property, and there will be objective measurements for an acceptable use of AI.

Slowing progress by regulation or by going within the software would be incredibly difficult. Numbers can be fudged or under-reported. Self-policing among corporations will be necessary to an extent. Penalties must be stiff enough that corporations will feel the need to have adequate compliance departments. Unlike securities fraud, there must be severe consequences for the worst offenders.<sup>88</sup> Trade secrets must have a way of fitting into regulation without companies compromising their innovation.

#### A. THE HYBRID SOLUTION

There must be free market contracting mixed with international guarantees. The simplest way to manage this idea is to set up an international organization that both regulates and promulgates acceptable contracts for sophisticated parties. This idea may take years to implement due to the regulatory nature of the work, its power over the economy, and the experts needed to craft valid, workable contracts. Major hurdles exist to its creation due to the power balance of the makeup of the contracting committees and the resources necessary. Nonetheless, it would be the most straightforward way to ensure the economy weathers the enormous changes that will come with the AI revolution.

### IX. Setting up an International Organization

The first real step nations could make in combatting AI's potential for destruction would be establishing an international organization for that very purpose. Such a concept of regulation would not be unprecedented; nonetheless, a global organization to police a specific technology (other than nuclear energy) would be.<sup>89</sup> The UN would likely set up this organization because so many other bodies already run through it, and it is the central vestibule of international diplomacy. This necessity of setting up an organization would bring on significant challenges. It would take a large amount of cooperation among nations of disparate power and willingness to enforce the provisions of whatever is agreed upon. As a result, there could be many hiccups that get in the way of an agreement.

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<sup>88</sup> See Norman S. Posner, *Why the SEC Failed: Regulators Against Regulation*, 3 BROOK. J. OF CORP. FIN. & COM. LAW 289–90, <https://brooklynworks.brooklaw.edu/cgi/viewcontent.cgi?article=1142&context=bjcfcl> [<https://perma.cc/VE4C-PMQ5>].

<sup>89</sup> See generally The Int. Atomic Energy Agency, Off. of Multilateral Nuclear and Security Affs., <https://www.state.gov/iaea/> [<https://perma.cc/9AQ2-T993>].

There would be numerous difficulties in setting up an international organization.<sup>90</sup> For example, the consent required to form an international organization in the first place would be challenging to acquire. Countries will have to recognize the issue AI poses to their economies quickly and by a wide consensus. Furthermore, these countries must then decide if it benefits them to regulate the market on an international level with specific, enforceable controls. All of this can be difficult given that nations have different systems of government, and many have competing interests. Afterward, a timely date would have to be set for international meetings to set up the organization. Given their power, it would likely be done under the auspices of the UN or the World Trade Organization (WTO). Nonetheless, to include developing nations, an AI control agreement would likely be done under the UN due to the already set-up bureaucratic structure and the ease of voting.<sup>91</sup> The voting aspect is vital because this organization requires wide signing and consent by nations. Without UN procedure, an organization would likely take the form of a treaty, making any solution much more complicated to adopt politically. For example, in the United States, the Senate would have to ratify the treaty, and the President would sign it.<sup>92</sup>

Once an agreement is reached through an international body, entire bureaucracies must be created to manage the implementation and enforcement of policy objectives. Consequently, such an endeavor could take years in addition to the time it already took to establish the organization. Unfortunately, the clock would continue to run in the meantime while AI's power and potential expand throughout the world and become ever more ubiquitous in everyday life. This situation means that by the time an organization that regulates AI is created, the organization itself may already be obsolete due to subsequent global economic events. If that occurs, then the entire purpose of the organization that took years to organize is defeated.

## **X. EU Agreement Summary**

The EU Agreement is a window into the future of the global economy. First, it guarantees the free flow of goods generated by AI technologies.<sup>93</sup> Furthermore, the articles contend that separate national standards would hinder commerce and, therefore, any regulations should be under a model

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<sup>90</sup> See *Transition to the United Nations*, UN GENEVA, <https://www.ungeneva.org/en/about/league-of-nations/transition> [<https://perma.cc/XTF4-UWMM>]; WORLD TRADE ORGANIZATION, ENCYC. BRITANNICA (last updated Jan. 27, 2024), <https://www.britannica.com/topic/World-Trade-Organization> [<https://perma.cc/GLY6-VK8Q>].

The League of Nations fell into disrepair due to the lack of cooperation among the member states. Furthermore, the UN replaced the League of Nations only in the aftermath of the Second World War, the most destructive event in human history. The UN system created international accountability through enforcement mechanisms. As time went on, the international community created World Trade Organization (WTO) to facilitate world trade in the same manner. Any new international organization that would take the reins of enforcing AI protocols must be like the WTO but specifically dealing with AI. As a result, this would be uncharted territory for the international community.

<sup>91</sup> See e.g. *Killer Robots: UN Vote Should Spur Action on Treaty*, HUMAN RIGHTS WATCH, January 3, 2024 4:00PM EST, <https://www.hrw.org/news/2024/01/03/killer-robots-un-vote-should-spur-action-treaty> [<https://perma.cc/3XGZ-QQN7>].

<sup>92</sup> See *About Treaties*, U.S. Senate, <https://www.senate.gov/about/powers-procedures/treaties.htm#:~:text=The%20United%20States%20Constitution%20provides,become%20part%20of%20international%20law> [<https://perma.cc/L2TM-JUU8>].

<sup>93</sup> See Artificial Intelligence Act, EU, June 14, 2023, P9\_TA(2023)0236, Agreement 1 [<https://perma.cc/EL2K-A9Z3>].

EU standard.<sup>94</sup> Additionally, the agreement does not allow for the export of AI technology that would be illegal to use inside of the Union.<sup>95</sup> This stance likely shows the want for an international uniform standard and is not irregular due to the high level of regulation within the EU. Nonetheless, seeing how this stance develops as AI technology becomes ever more important will be interesting. Undoubtedly, some nations will favor more AI usage than others due to workforce needs regarding migration patterns and birth rates.

The provisions of the agreement would be much better used by explaining the interplay between remaining workers and AI systems. The provision about AI not impairing the rights of workers shows how this passage is a microcosm of what is wrong with international agreements.<sup>96</sup> These accords about AI are impossible to enforce. Provisions about collective bargaining or contracts will be irrelevant because machines will simply replace many workers. The entire point of AI is greater efficiency and faster results in the marketplace. Therefore, either those drafting the amendment are unaware of the future regarding AI use or are simply paying lip service with binding regulation. As it says in Amendment 9:

Regulation should not affect the exercise of fundamental rights as [recognized] in the Member States and at Union level, including the right or freedom to strike or to take other action covered by the specific industrial relations systems in Member States, in accordance with national law and/or practice. Nor should it affect concertation practices, the right to negotiate, to conclude and enforce collective agreement or to take collective action in accordance with national law and/or practice.<sup>97</sup>

There should also be a guarantee of rights given to workers who are replaced by AI work systems. For example, the right to food, shelter, and a basic income across the EU, and then the Union can pass accompanying legislation to ensure it.

There could be substantive provisions about protecting worker's rights through contract. Instead, simple lip service is given:

This regulation shall not preclude Member States or the Union from maintaining or introducing laws, regulations or administrative provisions which are more [favorable] to workers in terms of protecting their rights in respect of the use of AI systems by employers, or to encourage or allow the application of collective agreements which are more [favorable] to workers.<sup>98</sup>

In other words, companies that make AI technology must have mandatory requirements that they will not use their AI for certain tasks, or they should be prepared to pay higher taxes to ensure the social safety net is enough to protect workers. Otherwise, only governments are left holding the bag for those who will lose their jobs from technological advancement. This requirement would

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<sup>94</sup> See *id.*, at Amendment 2–3.

<sup>95</sup> See *id.*, at Amendment 29.

<sup>96</sup> See *id.*, at Amendment 9.

<sup>97</sup> See *id.*

<sup>98</sup> See *id.*, at Amendment 5c.

also provide fair warning to AI developers who will be able to anticipate the full economic consequences for their actions. Certain precedent for these actions could exist through simple clauses about specific performance within regular contract law itself if written appropriately. Consequently, some segments of contract law dealing with AI replacing workers' jobs may not be as revolutionary as they may appear at first glance. This only makes the requirement for better enforcement mechanisms more necessary through international and domestic means. Otherwise, there may be protection in other jurisdictions from enforcing penalties.

#### A. ENFORCEMENT MECHANISMS

Given the unknowns about AI systems, the agreement is vague on the technology that is being regulated; nonetheless, what should not be in question is the regulatory framework that could be set up.<sup>99</sup> Any agreement made without a regulatory framework is doomed to fail because ideals are admirable to cling to, but a deal is only as strong as its enforcement mechanism. The agreement makes promises to form commissions or regulatory authorities to regulate AI without specifying when or how those bodies should come about.<sup>100</sup> As Amendment 14 states:

In order to introduce a proportionate and effective set of binding rules for AI systems, a clearly defined risk-based approach should be followed. That approach should tailor the type and content of such rules to the intensity and scope of the risks that AI systems can generate. It is therefore necessary to prohibit certain unacceptable artificial intelligence practices, to lay down requirements for high-risk AI systems and obligations for the relevant operators, and to lay down transparency obligations for certain AI systems.<sup>101</sup>

The passage says nothing about mechanisms or proposed mechanisms, merely principles, despite laying out proposed notification systems.<sup>102</sup> Furthermore, the agreement tries to set forth standards that cannot be objectively valued.<sup>103</sup> Nonetheless, the regulations are adequate for spotting the risks associated with AI, especially for those using biometric data or privy to sensitive information.<sup>104</sup>

Most troubling, the overall focus of the regulations seems to be primarily on personal data and not fundamental economic considerations. Even though personal data or contracts are essential to protect, they also will be the easiest to regulate. There can be objective standards about how much data is too much to take or if undemocratic methods are being used to gather information. The regulations state that contracts and resulting disparities between parties with AI will be subject to basic fairness terms.<sup>105</sup> What is much more complicated is figuring out if a technology is taking too many jobs or is too efficient to the point that it is dangerous to economic stability. The regulations, in fact, say as much.<sup>106</sup>

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<sup>99</sup> See e.g., at Amendment 15.

<sup>100</sup> See Artificial Intelligence Act, at Amendment 82.

<sup>101</sup> See *id.*, at Amendment 36.

<sup>102</sup> See *id.*, at Amendment 61.

<sup>103</sup> See *id.*, at Amendment 36.

<sup>104</sup> See *id.*, at Amendment 60.

<sup>105</sup> See Artificial Intelligence Act, at Amendment 95-96.

<sup>106</sup> See *id.*, at Amendment 102.

The means of enforcement could be a multitude of possibilities. The most obvious and likely solution would be fines. Nevertheless, there would likely need to be a double-tiered fine system. For example, an international body would levy a fine, and then the affected country would as well. In this sense, there is a double violation for violating a contract regarding AI and shoring up job loss. The fines would likely be specified in the contract or decided by a certain review board of the international body that creates the contract form. Fines would likely be appealable, and there would likely be a large amount of arbitration that goes into the disagreement. For example, arbitration clauses are already standard in many contracts and become even more important for large companies so they may resolve disputes efficiently.<sup>107</sup>

A more interesting option exists for AI violations: perhaps there could be some means of either taking or slowing down the technology of the offending party. If a company violates its contractual obligations by employing overpowered AI without proper compensation, there could be a way for a regulator to seize that technology or even downgrade it until it meets technical specifications.

Despite its utility, this proposition about seizing or downgrading technology carries many problems that would make it an unlikely enforcement mechanism. For example, there are due process considerations along with trade secret issues. Non-governmental corporations are not going to share their proprietary information with foreign governments or, often, even their own government. The reasons are apparent because such a system would be rife with theft and corruption. Furthermore, the trust needed for a system like that to work theoretically is not one that any competent organization would agree to due to the risks associated with giving up trade secrets. Therefore, any sanctions besides monetary fines or trade restrictions would be unrealistic.

## **XI. How an International Organization would differ**

Contracts must have specific enforcement mechanisms to work. Consequently, enforcement is only as good as the international organization or entity to which the contract is attached. This fact is immutable. There must be key international backing from the contracting international organization and major international players. These institutions must also include major companies if they are to succeed. The reason is that many companies have enormous influence through the number of people they employ and revenue.<sup>108</sup> Nevertheless, giving large companies input into the inner machinations of an economic mechanism could lead to corruption as one entity attempts to overtake the other in vying for information or shaping policy. Cooperation would have to be a delicate balance to ensure that companies help mitigate the issue of AI instead of exacerbating it through meddling with competition.

All these issues mean there must be specific guarantees for worker rights and protections against corruption within the contracting international body. Therefore, labor interests must also be represented within this international contracting body. As a business body, there would be many

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<sup>107</sup> See *Why Arbitration Clauses Are Crucial for High-Volume Businesses*, IRONCLAD, <https://ironcladapp.com/journal/contract-management/arbitration-clauses/> [<https://perma.cc/GA4Z-3A5X>]; Katherine V.W. Stone and Alexander J.S. Colvin, *The arbitration epidemic*, ECONOMIC POLICY INSTITUTE, Dec. 7, 2015, <https://www.epi.org/publication/the-arbitration-epidemic/> [<https://perma.cc/Y7HG-45P3>].

<sup>108</sup> See e.g., Omri Wallach, *The World's Tech Giants, Compared to the Size of Economies*, VISUAL CAPITALIST, July 7, 2021, <https://www.visualcapitalist.com/the-tech-giants-worth-compared-economies-countries/> [<https://perma.cc/WK9W-NSMC>].

influential business figures within the organization. They would have to be checked for bias and held to account if any was found. In this sense, not only must enforcement mechanisms of the contracts work on companies externally but also internally to ensure corruption does not run rampant.

## **XII. Conclusion**

The future of AI is one of great promise. Humanity has the potential to become more powerful and productive than ever. Nonetheless, there could be massive instability. Without the proper guardrails, the world economy could collapse under the pressure of immense change. Millions could be permanently out of work, and productivity will undergo a drastic change in meaning as AI becomes ever more ubiquitous. With the internet and globalization, there is a potential for threats to turn into real danger without a chance to react first. Therefore, the world must act proactively if it wishes to stave off the worst effects of AI.

The effects mainly concern the destabilization of society. In developed economies, there is a large social safety net that will benefit citizens as economies transition in the AI revolution. In the Global South, there is not the same luxury. Countries with large populations and low living standards, such as Bangladesh, could suffer mass unemployment and radical change that could collapse society. Changes in wealthy nations could also lead to a decrease in international aid, thus exacerbating this issue. The resulting instability could lead to war, famine, pandemics, or other unforeseen consequences.

The international community must band together to create an international organization that creates flexibility in global commerce. This organization must have contract committees and outposts in major commercial centers to ensure commerce continues to flow naturally and conflicts can be resolved efficiently. The freedom to contract is integral; nonetheless, there must be a key international power to enforce critical regulations that could limit AI's most harmful effects on these developing economies. This private and public collaboration on a global scale is ambitious. The idea could take years to implement. Nonetheless, it is a worthwhile solution to mitigating harm in an era of extreme change. The AI revolution poses risks but also incredible opportunities.