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CONFLICTING CONNECTIVITIES: LEGAL CONSIDERATIONS FOR NEGOTIATING GEOTECHNOLOGICAL RIVALRY

Abstract

Among the dramatic global shifts of recent years, the sharpening of geopolitical rivalries between major powers – chiefly the United States and China – has particular significance for third countries and their legal systems. This rivalry has a prominent 'geotechnological' dimension, as major powers compete to build power through technological innovation, standardisation and diffusion while also securitising their domestic technology sectors against perceived threats from abroad. In this context, the 'connectivity' initiatives of major powers such as China, the United States and the European Union - which aim to build economic and other links with third countries - compete and even conflict. Under the pressures of trade war and actual war, an emergent global shift may be underway in the consolidation of rival geotechnological blocs. Indications of such a shift include hard legal tools such as trade barriers and the legislation of economic security mechanisms but also the creation of incentives for economic and technological collaboration within informal clubs of like-minded countries. These hard and soft tools amount to building blocks for 'walled garden' connectivity projects that run on incompatible operating systems. These developments create challenges for third countries and especially for the majority of states which rely on transnational investment and technology transfer for the further development of their economies and living standards. Even if not forced to 'choose' between competing blocs, these states face additional political, legal and economic frictions in their dealings with major powers. The challenge is particularly acute for the states of the Western Balkans, which remain outside the EU despite years or decades of 'candidate' status but which face the necessity of alignment with EU laws and policies as conditions of eventual EU membership. To varying degrees, the Western Balkan states have sourced investment and technology transfer from the EU and the United States as well as from China and other non-Western countries. They are therefore on the frontline of conflicting connectivities and vulnerable to a hardening of barriers between major economic powers.

This paper will provide an overview of legal tools of geotechnological rivalry and their application to the general-purpose digital technologies that are

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vital to economic development and the climate transition. It will take stock of the challenges for third countries presented by the deployment of these tools in the context of competing 'connectivity' projects promoted by major economic powers, such as China's Belt and Road initiative. It will focus on the position of Western Balkan states as EU candidate countries that simultaneously pursue economic relations with other major powers. The paper will reflect on what studies of legal pluralism suggest regarding the capacity of third states to preserve space for maintaining relations with the multiple poles of the global economy. It will suggest potential legal strategies for third states to navigate conflicting connectivities in order to pursue their national developmental objectives. The paper will suggest that by negotiating rather than participating in geotechnological rivalry, third states can both preserve their capacity to make autonomous choices and mitigate against the coalescing of rival blocs.

Keywords: legal pluralism; technology; international economic law; connectivity

I. Introduction

2025 began with some clarifying developments in the relations between major global economic powers. The United States, under its newly returned president, Donald Trump, launched a blitz of tariff announcements aimed at other major economies. The declared policy intent of these tariffs ranged from balancing trade deficits to reducing irregular immigration and the cross-border flow of drugs. No distinction was made between the United States' closest traditional allies and less aligned nations. If China – the world's second-largest economy and, according to bipartisan Washington consensus, the United States' primary strategic rival – was on the receiving end, then so too were Canada, Mexico, the European Union, the United Kingdom, Japan and Australia.

The United States began openly wielding economic policy including unilateral tariffs as a tool of coercion against other states, undisguised by appeals to a 'rules-based order', democracy or other values. This posture included – to take seriously the repeated statements of the US president and other senior officials – actions clearly contrary to the Charter of the United Nations, such as the deployment of 'economic force' to annex Canada to the United States.[1]

[1] https://www.youtube.com/watch?v=Dcf2jD6WwL0; The UN Charter states at Article 2.4: 'All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations'. See also the 1970 Declaration on Principles of International Law, which recalled the 'duty of states to refrain . . . from military, political, economic or any other form of coercion aimed against the political independence or territorial integrity of any state'.

The status of Canada aside, much of this was broadly expected, at least since Trump's victory in the November 2024 presidential election. Arguably less expected was a sudden intensification in Sino-US competition over artificial intelligence (AI), which was triggered by the release of an AI large language model (LLM) by a relatively small Chinese company, DeepSeek. The revelation that China could produce LLMs with similar levels of performance to US market leaders – and reportedly for a fraction of the cost – triggered a crash in US technology stocks, wiping almost $1 trillion off the Nasdaq 100.[2]

Importantly, reaction was not limited to the markets. Policy analysts that saw leadership in advanced technologies as a tool of national power[3] warned of a 'Sputnik moment',[4] one which revealed China to be a closer AI competitor than previously assumed. Reaction to DeepSeek has also assumed legal forms. Among various legislative and executive responses,[5] one United States senator introduced a bill 'to prohibit United States persons from advancing artificial intelligence capabilities within the People's Republic of China', titled the 'Decoupling America's Artificial Intelligence Capabilities from China Act'.[6] This bill would criminalise both the import of Chinese AI technologies into the United States and the 'export, reexport, or in-country transfer' of AI technologies to China.[7]

In short, developments in early 2025 revealed a world economy characterised by deepening conflict between major economies, less constrained by international law and with technology as a key object of struggle. The return of President Trump has catalysed these developments but, as will be seen, the turn to economic conflict is not limited to the actions of the United States. While this situation raises challenges for major economies like the United States, EU and China, it presents particular difficulties for smaller third states that are caught in the crossfire.

The formal equality of sovereign states notwithstanding, a few states have the most agency in creating the facts of international life: political, economic and strategic. Their internal developments and external actions and rivalries produce conditions to which other states must react. Perhaps this imbalance of practical sovereignty mattered less, or was less noticeable, during the so-called 'End of History' period. It surely matters now, with international

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[2] https://www.bloomberg.com/news/articles/2025-01-27/nasdaq-futures-slump-as-china-s-deepseek-sparks-us-tech-concern (accessed 14 March 2025).
[3] See, e.g., Office of the Director of National Intelligence, 'Global Trends 2040: A More Contested World', March 2021, https://www.dni.gov/index.php/gt2040-home/gt2040-structural-forces/technology (accessed 14 March 2025).
[4] Among numerous examples, see https://www.fdd.org/analysis/policy_briefs/2025/01/30/ais-sputnik-moment-chinese-ai-model-deepseek-r1-reportedly-surpasses-leading-u-s-ai-models/ (accessed 14 March 2025).
[5] Summarised at https://www.insideglobaltech.com/2025/02/18/u-s-federal-and-state-governments-moving-quickly-to-restrict-use-of-deepseek/ (accessed 14 March 2025).
[6] https://www.hawley.senate.gov/wp-content/uploads/2025/01/Hawley-Decoupling-Americas-Artificial-Intelligence-Capabilities-from-China-Act.pdf (accessed 25 February 2025).
[7] Ibid, s 3.

relations redolent less of the UN Charter's principles of sovereign equality, peaceful dispute settlement and the non-use of force,[8] and more of the Melian dialogue: 'the strong do what they can and the weak suffer what they must'.[9]

Today's intensified rivalry among great powers (including the EU in some economic fields) is bound up in several interconnected global shifts: The weakening of the norms and institutions of open globalisation (now recognisable as transient products of the end of the Cold War and the 'unipolar moment' of US dominance that followed it) that restrained open protectionism and mercantilism (partially explained by the waning appeal of 'copycat Westernization');[10] the relative transfer of economic weight – and therefore of power in many respects – from advanced, 'Western' economies to emerging economies and developing countries, most dramatically but far from only in the case of China;[11] and the still-growing and likely accelerating significance of advanced technologies to economic development, national power and international agency.

These dynamics produce challenges for legal systems: first, for the system of public international law (if 'system' is not too grand a characterisation) and, second, for the domestic legal systems of states that must respond to great power rivalry. This article is concerned with challenges for domestic legal systems.

The remainder of the article is structured as follows. Part two introduces the concept of 'geotechnology' and charts the rise of geotechnological rivalry among major economies, including through 'connectivity' initiatives involving third states. Part three presents the legal tools that major economies deploy offensively and defensively within this competition. Part four identifies both the impacts of geotechnological rivalry on third states and what third states can do to safeguard their interests. Part five continues to explore this theme with a focus on the case of the Western Balkan states. Part six concludes.

II. The rise of geotechnological rivalry

The term 'geopolitics' has become shorthand for at least some of the interconnected global shifts introduced above.[12] In recent years, geopolitics has

[8] United Nations Charter, art. 2.
[9] Thucydides, *The Peloponnesian War*, 5.89.1.
[10] Ivan Krastev and Stephen Holmes, *The Light That Failed* (2019).
[11] The share of global GDP of the ten 'emerging market' economies that are members of the G20 has more than doubled since 2000. International Monetary Fund, *World Economic Outlook – Steady but Slow: Resilience and Divergence*, April 2024, p.87.
[12] There are multiple definitions of geopolitics: Kovac, Igor. "Definitions of Geopolitics." *International Studies*, (2023). https://doi.org/10.1093/acrefore/9780190846626.013.823; Dodds, for one, defines it as 'concerned with questions of influence and power over space and territory', 'us[ing] geographical frames to make sense of world affairs' and 'future-oriented' in that it 'offers insights into the likely behaviour of states because their interests are fundamentally

repeatedly been declared 'back'.[13] In the European Union, for example, a self-declared 'geopolitical Commission' took office in 2019.[14] The term 'geopolitics' has a certain potency but comes from a bygone age:[15] the turn of the twentieth century, the time of Mackinder's theory on the central importance of the Eurasian 'heart-land'[16] and Mahan's on sea power.[17] 'Geopolitics' arguably underplays the centrality of technology in contemporary global competition.

A decade ago, Khanna proposed the concept of 'geotechnology' as emphasising 'the role of technology in shaping global order by examining the rapid diffusion of innovation in leading technology sectors, how diverse actors in the system leverage technology to enhance their own power and influence, and the role of technology in defining global regulations and governance'. According to Khanna, 'geotechnology' prompts the question: 'to what extent does the balance of innovation shape the balance of power?'[18]

Today we can see that national decision-makers both perceive the salience of technology development to national power and are investing resources to shift the balance of innovation in their favour.[19]

The broad suite of technologies referred to as AI offers an instructive example of geotechnological rivalry in action.[20] In 2017, China's State Council released a 'Next Generation Artificial Intelligence Plan'. This plan set the goal of China becoming 'global AI innovation centre' by 2030, laying a key foundation for China to be an 'innovation-driven and economically powerful country'.[21] In the same year, Russia's president stated that whoever becomes the leader in the AI sphere 'will be the ruler of the world'.[22] For its part, the EU

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unchanging'. Dodds, Klaus. 2019. *Geopolitics: A Very Short Introduction* (3rd Edn). https://doi.org/10.1093/actrade/9780198830764.001.0001.

[13] See, randomly, https://www.iwm.at/node/145 (accessed 15 March 2025).

[14] 'Speech by President-elect von der Leyen in the European Parliament Plenary on the occasion of the presentation of her College of Commissioners and their programme', European Commission (2019), https://ec.europa.eu/commission/presscorner/detail/hr/speech_19_6408

[15] Hill, Christopher. 2003. The Changing Politics of Foreign Policy. Palgrave Macmillan, 168-69.

[16] Mackinder, H.J. "The Geographical Pivot of History." *The Geographical Journal 23*, no. 4 (1904): 421-437.

[17] Kraska, James. 2011. *Maritime Power and the Law of the Sea: Expeditionary Operations in World Politics*. Oxford University Press, 71ff.

[18] Khanna, Parag. "Geotechnology and Global Change." *Global Policy 5*, no. 1 (2014): 56. https://doi.org/10.1111/1758-5899.12117.

[19] On international competition over the technologies and value chains central to the clean energy transition, see Sanderson, Henry. 2022. Volt Rush: The Winners and Losers in the Race to Go Green. Oneworld; and IRENA (2023), Geopolitics of the energy transition: Critical materials, International Renewable Energy Agency, Abu Dhabi.

[20] On the relationship between AI and national power, see Lee, Kai-Fu. 2018. AI Superpowers: China, Silicon Valley and the New World Order. 2018, especially pp. 168-70.

[21] 国务院关于印发, 新一代人工智能发展规划的通知, 国发〔2017〕35 号, Art. 3.

[22] https://tass.ru/obschestvo/4524746 (accessed 15 March 2025).

aspires to be 'a global leader in the development of secure, trustworthy and ethical Artificial Intelligence'.[23]

In the United States, Biden administration policy placed emphasis on US leadership for 'responsible AI',[24] including in the national security domain to counter the risk of 'losing ground to strategic competitors'.[25] President Trump's January 2025 executive order (EO) on AI set the objective to 'sustain and enhance America's global AI dominance'.[26] Trump also revoked Biden's prior AI EO, which contained material on diversity, inclusion, human rights, global inequities and international collaboration.

The policy and legal frameworks that major economies deploy to strengthen their position in leading technology sectors are not limited to efforts to build up domestic research, development and deployment. Transnational dimensions are also integral to these frameworks. These include efforts to secure value chains, promote products and services in foreign markets, encourage third states to align with promoted technological standards – and also to counter the efforts of other major economies to achieve their own technology leadership objectives. These transnational dimensions are typically how smaller, less powerful states interact with geotechnological rivalry.

In recent years, major economies have proposed various 'connectivity' initiatives with the goal of developing international economic (and other) relations in ways consistent with national policy. The largest such initiative in terms of participating states and resources deployed is China's 'Belt and Road' initiative (BRI), proposed by President Xi Jinping in 2013. The BRI has been characterised as a means to 'increase China's control over the way value chains are organized and grant it the power to reorganize them on better terms'.[27]

The BRI provoked rival 'connectivity' plans spearheaded by the United States and its allies. These have included: The 'Blue Dot Network', launched in 2019 by the United States, Japan, Australia and promoted as 'an internationally recognised certification for quality infrastructure projects that are environmentally and socially sustainable, resilient, open and transparent, and

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[23] Special meeting of the European Council (1 and 2 October 2020) – Conclusions, Brussels, 2 October 2020 (OR. en) EUCO 13/20, p. 6.

[24] Executive Order 14110 of October 30, 2023, 'Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence', https://www.federalregister.gov/documents/2023/11/01/2023-24283/safe-secure-and-trustworthy-development-and-use-of-artificial-intelligence (accessed 15 March 2025).

[25] National Security Memorandum on Advancing the United States' Leadership in Artificial Intelligence; Harnessing Artificial Intelligence To Fulfill National Security Objectives; and Fostering the Safety, Security, and Trustworthiness of Artificial Intelligence, October 24, 2024, para. (f), https://www.presidency.ucsb.edu/documents/national-security-memorandum-advancing-the-united-states-leadership-artificial (accessed 15 March 2025).

[26] 'Removing Barriers to American Leadership in Artificial Intelligence', White House, 23 January 2025, s 2, https://www.whitehouse.gov/presidential-actions/2025/01/removing-barriers-to-american-leadership-in-artificial-intelligence/ (accessed 15 March 2025).

[27] Maçães, Bruno. 2018. Belt and Road: A Chinese World Order. Hurst & Company, London, 94.

economically efficient'; [28] the 'Build Back Better World' (B3W) plan announced by the G7 in 2021 as a 'values-driven, high-standard, and transparent infrastructure partnership';[29] and the 2022 rebranding of the Blue Dot Network as the G7 Partnership for Global Infrastructure and Investment.[30] The EU also has its own connectivity initiative in the form of the Global Gateway, billed as a 'values-driven' infrastructure initiative that is consistent with 'democratic values', 'rule of law' and other EU principles.[31]

To many third states and especially to developing countries, such connectivity initiatives represent potential sources of external financing, technology transfer and network-building. However, some policymakers have framed the relationship between Chinese and Western initiatives not merely as competitors for adherence or 'market share', but as conflicting models of 'good' and 'bad' connectivity. For example, in 2023 President Biden offered a Manichean characterisation of the 'choice' before third states as one 'between debt-trap diplomacy and high-quality transparent approaches to infrastructure and to development'.[32] Indeed, the imperatives of conflicting connectivity have been prioritised by some surprising actors. The European Court of Auditors – the EU institution tasked with monitoring value for money in EU expenditure – has dismissed '[l]ack of coordination' between EU and Chinese infrastructure programmes, potentially risking connectivity gaps and duplication, as a 'risk' that is not 'relevant due to the political reality and consider[s] the issue of infrastructure coordination to go against the EU's current policy'.[33]

Technology has featured prominently in the debate over conflicting models of connectivity, as seen for example in the controversies regarding telecommunications infrastructure, data and 'smart city' projects as part of China's 'Digital Silk Road'.[34] As competing major economies promote their own technologies in relations with third states, some analysts have warned of the potential breakdown of global technological flows into more or less closed

[28] https://www.bluedot-network.org (accessed 15 March 2025).
[29] https://www.cfr.org/blog/g7s-b3w-infrastructure-plan-cant-compete-china-thats-not-point (accessed 15 March 2025).
[30] These initiatives are summarised and contrasted with the BRI in Simonov, Mykyta. "The Belt and Road Initiative and Partnership for Global Infrastructure and Investment: Comparison and Current Status." Asia and the Global Economy 5, (2025): 100106. https://doi.org/10.1016/j.aglobe.2025.100106.
[31] European Commission/High Representative, Joint Communication, The Global Gateway, Brussels, 1.12.2021, JOIN/2021/30 final.
[32] https://www.bloomberg.com/news/articles/2023-11-03/biden-jabs-at-china-s-debt-trap-diplomacy-at-americas-summit (accessed 15 March 2025).
[33] Vassilis Ntousas and Stephen Minas, 'Conclusion: The EU's Belt and Road challenge: Coherence, consolidation and connectivity' in 2021. The European Union and China's Belt and Road: Impact, Engagement and Competition. Edited by Vassilis Ntousas, and Stephen Minas. Routledge, 239.
[34] The Digital Silk Road may be considered an aspect of the BRI concerned with digital technologies. Stefan Mair and Ferdinand Schaff, 'Between commerce and geopolitics: Is there a German China strategy?' in The European Union and China's Belt and Road: Impact, Engagement and Competition, 178.

and mutually incompatible geotechnological blocs. Stahl for example has warned that 'the world is confronted with the development of two technological ecosystems, one centred on the United States and the other on China', with both states 'attempting to build the largest possible cohesive bloc, a process that may lead to increased technological bifurcation'.[35] Lemley, in diagnosing the 'balkanization' of the Internet along national lines into a 'splinternet', has spoken of a return to the mutually inaccessible 'walled gardens' of the early private Internet.[36]

In short, geotechnological rivalry has emerged as a key feature of the contemporary 'world antagonisms'[37] that complicate the international relations of major powers, with implications for the developmental pathways of third states. As major powers deploy legal tools to bolster their position, third states must either choose sides or identify ways to maintain an independent position.

III. Legal tools of geotechnological rivalry

The starting gun for a slide toward economic 'war of all against all' was fired by the newly inaugurated US President Trump in January 2017. Trump 'overnight' broke with seventy years of bipartisan US trade policy, which had been to 'seek freer trade through agreed trade rules and to uphold those rules through the rule of law in the multilateral trading system'.[38] This approach was replaced by the mantra that 'trade wars are good, and easy to win'.[39] The biggest target of Trump's trade war was China. During the first Trump administration, the United States unilaterally imposed tariffs on $370 billion of Chinese imports, in breach of international trade law.[40]

With the benefit of hindsight, it is hard to view Trump as an outlier or one-off. US economic restrictions targeting China were largely maintained – and extended – by the Biden administration. In fact, the Biden administration strengthened trade restrictions against China in precisely the area of advanced technologies. Measures included a 2022 ban on the export to China of certain advanced semiconductors and other technologies,[41] new and increased tariffs, including a 100% tariff on Chinese electric vehicles,[42] and a 2024 ban on US

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[35] Gerhard Stahl, 'Development of Supply Chains in a Multipolar World' in 2024. A New Global Deal: Reforming World Governance. Edited by Maria João Rodrigues. FEPS, 142.
[36] Lemley, Mark A. "The Splinternet." Duke Law Journal 70, (2021): 1397, 1399-1400.
[37] Kardelj, Edvard. "The Historical Roots of Non-Alignment." *Bulletin of Peace Proposals 7*, no. 1 (1976): 84-89, 86.
[38] Bacchus, James. 2022. *Trade Links: New Rules for a New World*. Cambridge University Press, 102.
[39] https://x.com/realDonaldTrump/status/969525362580484098 (accessed 20 February 2025).
[40] Bacchus, *Trade Links*, 104.
[41] https://www.bis.doc.gov/index.php/documents/about-bis/newsroom/press-releases/3158-2022-10-07-bis-press-release-advanced-computing-and-semiconductor-manufacturing-controls-final/file (accessed 15 March 2025).
[42] https://www.commerce.gov/news/fact-sheets/2024/05/fact-sheet-president-biden-takes-action-protect-american-workers-and (accessed 15 March 2025).

investment in certain 'national security technologies' in China (including semiconductors, quantum and AI).[43] In an apparently unscripted comment, President Biden in 2024 described his administration's actions as 'at least checkmating China'.[44]

Economic tensions also grew between China and the European Union, with both sides using legal tools to strengthen their position. In 2019, the European Commission sought to redefine the EU's relationship with China, branding the latter as simultaneously 'a cooperation partner with whom the EU has closely aligned objectives, a negotiating partner with whom the EU needs to find a balance of interests, an economic competitor in the pursuit of technological leadership, and a systemic rival promoting alternative models of governance'.[45] In the same year, the EU adopted a foreign direct investment (FDI) screening regulation, at least partly in reaction to concerns over Chinese outbound FDI.[46] Further economic security initiatives were announced under the 2023 European Economic Security Strategy. An EU-China Comprehensive Agreement on Investment was agreed in 2020 but placed on hold indefinitely following China's imposition of sanctions on certain Members of the European Parliament. The two sides have also levied tariffs against each other, while EU companies have agreed to abide by US chip export controls on China.[47]

Globally, the International Monetary Fund found that the introduction of new trade barriers almost tripled from 2019 to almost three thousand introduced in 2022.[48] International economic relations were further disrupted by the second Trump administration's levying of tariffs against most of its major trading partners in early 2025,[49] with some affected jurisdictions imposing retaliatory tariffs or other countermeasures on the United States. The US measures were accompanied by a rhetorical assault on some of the United States' closest partners, such as the EU, which Trump declared 'was formed in order to screw the United States'.[50]

In addition to unilateral measures taken by individual states, cooperation structures have been launched that promote alignment with the proponent state's technologies by explicitly excluding the technologies of a rival state. The 'Clean

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[43] https://home.treasury.gov/news/press-releases/jy2687 (accessed 15 March 2025).
[44] https://abcnews.go.com/Politics/abc-news-anchor-george-stephanopoulos-exclusive-interview-biden/story?id=111695695 (accessed 21 February 2025).
[45] European Commission/High Representative, 'EU-China – A strategic outlook', Strasbourg, 12.3.2019, JOIN(2019) 5 final.
[46] McCalman, Phillip, et al. "Inward Foreign Investment Screening Targets China: Interdisciplinary Perspectives." Cambridge International Law Journal 12, no. 1 (2023): 82. https://doi.org/10.4337/cilj.2023.01.06.
[47] https://www.politico.eu/article/eu-us-trade-tech-council-vestager-vow-team-up-against-china-cant-hide-cracks/ (accessed 15 March 2025).
[48] https://www.imf.org/en/Blogs/Articles/2023/08/28/the-high-cost-of-global-economic-fragmentation (accessed 25 February 2025).
[49] Wikipedia is keeping a running tally: https://en.wikipedia.org/wiki/Second_Trump_tariffs (accessed 15 March 2025).
[50] https://www.france24.com/en/europe/20250226-trump-says-eu-formed-to-screw-united-states-tariffs (accessed 27 February 2025).

Network' programme of the first Trump administration exemplified this approach. The programme's objective was to safeguard 'the nation's assets including citizens' privacy and companies' most sensitive information from aggressive intrusions by malign actors, such as the Chinese Communist Party'.[51] Among the programme's 'lines of effort' were to 'ensure that People's Republic of China (PRC) carriers are not connected with U.S. telecommunications networks' or 'provide international telecommunications services to and from the United States'.[52]

In pursuit of these and related objectives, the United States promoted the Clean Network to other states and claimed that 53 countries had 'joined' it by November 2020.[53] Among the adherents were several Balkan parties including Albania, Kosovo[54] and North Macedonia. It was reported that after signing up to the Clean Network, 'in 2021 North Macedonia amended its Law on Electronic Communications (LEC) to exclude Chinese companies, prompting Huawei to cancel a major e-education project in retaliation'.[55]

Finally, geotechnological competition has been pursued by influencing agreements between third parties. An example of this is the 2020 'Washington Agreement' on economic normalization of relations between Serbia and Kosovo, which was facilitated by the United States. The agreement includes a clause providing that '[b]oth parties will prohibit the use of 5G equipment supplied by untrusted vendors in the communications networks' and will remove or otherwise mediate such equipment if already present.[56]

The rise of economic conflict has been accompanied by the weakening of international institutions and processing dedicated to managing disputes on the basis of law. As Bacchus – a founding member of the WTO's highest dispute settlement institution, the Appellate Body – has noted, Trump 'dismantled' the Appellate Body 'by refusing to join with other WTO members in the required consensus to appoint new jurists to replace those whose terms had ended'.[57] The Biden administration maintained this stance and the Appellate Body remains, at the time of writing, without any members and unable to function.[58] In these circumstances, the party that loses in WTO dispute settlement at first instance

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[51] https://2017-2021.state.gov/the-clean-network/ (accessed 24 February 2025).
[52] Ibid.
[53] https://www.state.gov/wp-content/uploads/2020/12/ET_CN_Timeline.pdf (accessed 24 February 2025).
[54] This designation is without prejudice to positions on status and is in line with UNSCR 1244 and the ICJ Opinion on the Kosovo declaration of independence.
[55] Lidarev, Ivan. "China-US Competition in the Balkans: Impact, Regional Responses, and Larger Implications." Medium. November 28, 2023. https://lseideas.medium.com/china-us-competition-in-the-balkans-impact-regional-responses-and-larger-implications-dcab70837933 (accessed 24 February 2025).
[56] https://peacemaker.un.org/sites/default/files/document/files/2024/05/washington-agreement-kosova-serbia.pdf (accessed 24 February 2025).
[57] Bacchus, James. 2022. *Trade Links: New Rules for a New World*. Cambridge University Press, 111.
[58] https://www.wto.org/english/tratop_e/dispu_e/appellate_body_e.htm (accessed 20 February 2025).

can appeal 'into the void', avoiding legal finalisation of the case.[59] In the absence of functioning, law-based dispute settlement, states are left to rely on self-help and to protect themselves as best they can.

IV. What can third states do?

Intensifying geotechnological rivalry poses a set of interrelated challenges for third states that that aim to maintain simultaneous relations with multiple major economies, irrespective of the economic conflict between them. Such challenges include pressure to comply with the trade restrictions levied by one of their major economic partners against another. Relatedly, there is the risk of being locked into the value chain of one partner and losing access to opportunities in other value chains.

These challenges amount to being required to 'choose sides' in global economic conflict – which may bring immediate benefits but tends to rob a third state of its bargaining power. Where states manage to preserve an autonomous stance, the intensifying rivalry among major powers may present opportunities. As Optenhögel has rather bluntly put it, the 'increasing polarisation between China and the USA is opening up a negotiating space for the "nobodies" of the international community'.[60] What is needed to benefit from this competition is not necessarily equidistance, but rather a resistance to complete alignment with one major power or the other.

For third states that are candidates to join the European Union, there are additional challenges. If states maintain their strategic objective of EU membership, there is a need to avoid actions that would jeopardise the possibility of accession, such as divergence from the *acquis communautaire*. Strategically, there is a need to weigh the eventual benefits of EU membership with the pursuit of nearer-term opportunities that, if not actually making the accession horizon more distant, certainly bring it no nearer. On the legal plane, there will often be a need to familiarise non-EU external partners with relevant normative requirements of EU candidate status and therefore to tailor legal relations for consistency with these requirements.[61]

States confronting these challenges can maintain space to manoeuvre by investing in multi-directional diplomacy. This involves building relations with each of the regionally relevant major economic powers, as well as participating in plurilateral and multilateral cooperation structures.

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[59] https://www.wto.org/english/thewto_e/minist_e/mc12_e/briefing_notes_e/bfwtoreform_e.htm (accessed 24 February 2025).

[60] Optenhögel, Uwe. "BRICS to BRICS+: From Development Ambition to Geopolitical Challenge." *Progressive Yearbook*, (FEPS, 2024), 146.

[61] In the context of energy sector financing and investment, see Minas, Stephen. "Chinese Energy Financing in the Western Balkans: From Coal Lender of Last Resort to 'Green Belt and Road'?" OGEL 4 (2023), www.ogel.org

From a legal perspective, the agency of third states lies in their capacity to negotiate a terrain characterised by legal pluralism, which has been defined as 'the presence in a social field of more than one legal order'.[62] Snyder has characterised this terrain as a veritable jungle: 'Soft law bamboo, hard law oak, the executive management thicket, and the roots of big data are intertwined in so many distinct or overlapping social fields that hybridity is the rule and non-hybridity the exception'.[63] From the perspective of an EU candidate country, international economic relations would need to take into account public international law, EU law, domestic law, the laws of economic partners (especially those with extraterritorial impacts) and relevant private and market policies and standards. This legal pluralism suggests certain strategies for EU candidate countries to dealing with major power rivalry. These include:

- Building partnerships through flexible, legally 'soft' arrangements that avoid conflicting commitments;
- Building EU legal requirements into economic relations with other powers; and
- Avoiding, to the extent possible, sacrificing near-term opportunities for the accession horizon.

It is also salient that candidate countries must manage their economic relations against the background of an EU within which multiple Member States at any one time are alleged by the Commission to have infringed some aspect of the *acquis*.[64] This suggests a principle that could be promoted through diplomacy with the EU and other partners: While EU candidate countries must respect EU law, they should have no less freedom of action than current Member States. Candidate countries should be evaluated against the standards of actually-existing EU membership, rather than being held to the unobtainable ideal of a perfectly compliant EU Member State.

V. Facing geotechnological rivalry from the Western Balkans

The EU candidate countries in the Western Balkans exemplify the predicament of third states navigating major power rivalry. Currently, five Western Balkan countries are EU candidates: Albania, Bosnia and Herzegovina,

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[62] Griffiths, J. "What Is Legal Pluralism." Journal of Legal Pluralism and Unofficial Law 18, (1986): 1.

[63] Francis Snyder, 'Bamboo, or governance through soft law: hybridity, legitimacy, and sustainability' in Research Handbook on Soft Law, edited by Mariolina Eliantonio, Emilia Korkea-aho and Ulrika Mörth (Elgar 2023) 20.

[64] For the current list of pending infringement matters, see https://ec.europa.eu/atwork/applying-eu-law/infringements-proceedings/infringement_decisions/?langCode=EN&version=v1&typeOfSearch=byDecision&activeCase=true&page=1&size=10&order=desc&sortColumns=decisionDate (accessed 15 March 2015).

Montenegro, North Macedonia and Serbia.[65] The EU's 'Stabilisation and Association Process' for the Western Balkans began in 2000. North Macedonia has held EU candidate status for twenty years, since 2005. The EU granted Albania, Montenegro and Serbia candidate status between 2010 and 2014, while Bosnia and Herzegovina is a more recent candidate (2022). During this long wait in the EU's antechamber, the Western Balkan states became 'cemented onto the European periphery', placing them in an 'unfavorable structure position within the European economy'.[66]

Foreign direct investment in the Western Balkans has been dominated by EU Member States.[67] There have however been growing economic relations with extra-regional powers, such as China, presenting additional opportunities. For example, Bonomi and Uvalic argue that Chinese infrastructure financing could be an 'important supplement' to the Berlin Process' connectivity agenda, especially as poor infrastructure hinders investment in the Western Balkan region.[68]

Some of the impacts on Western Balkan states of major power geotechnological rivalry have already been introduced in section 3 above. To meet these challenges, the Western Balkan candidate countries have two main advantages. The first is the legal and policy flexibility they have, relative to EU Member States. This enables them to differ from EU rules and foreign policy in ways that facilitate investment and the development of friendly relations with non-EU poles of economic power. The second advantage is relative to other third states which are not EU candidate countries: the prospect of eventual integration into the EU single market, which is attractive to investors.[69] Overall, the position may be summarised, borrowing from Saint Augustine, as: 'Give me EU accession, but not yet.' This is the position that Western Balkan states can capitalise on in negotiating the rapids of rising economic conflict.

One particular area of focus should be adherence to a broader range of multilateral institutions and partnerships with the potential to expand opportunities for financing, technology transfer and networking.[70] One such candidate might be the Asian Insfrastructure Investment Bank (AIIB). Uniquely

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[65] https://commission.europa.eu/strategy-and-policy/policies/eu-enlargement_en (accessed 21 February 2025).

[66] Anastas Vangeli, 'China: A new geo-economic approach to the Balkans' in *The Western Balkans in the World: Linkages and Relations with Non-Western Countries*, edited by Florian Bieber, and Nikolaos Tzifakis, Taylor & Francis Group, 2019, 205.

[67] Matteo Bonomi and Milica Uvalic, 'The economic development of the Western Balkans: The importance of non-EU actors' in *The Western Balkans in the World: Linkages and Relations with Non-Western Countries*, edited by Florian Bieber, and Nikolaos Tzifakis, Taylor & Francis Group, 2019, 49ff.

[68] Bonomi and Milica Uvalic, 'The economic development of the Western Balkans', 55.

[69] Will Bartlett and Tena Prelec, 'UAE: Sultanism meets illiberal democracy' in *The Western Balkans in the World: Linkages and Relations with Non-Western Countries*, edited by Florian Bieber, and Nikolaos Tzifakis, Taylor & Francis Group, 2019, 245ff.

[70] States will of course have to prioritize, as capacity to engage in such frameworks will be subject to resource constraints.

among large multilateral development banks, the AIIB's purpose explicitly includes strengthening connectivity.[71] The AIIB can be characterised as an inclusive connectivity instrument, as participation is not contingent on bloc membership or abstinence from other initiatives. This is illustrated by the fact that its members include a majority of EU Member States, many of them also members of NATO.[72] Moreover, the AIIB can provide financing to recipients outside the Asian region as long as the financing serves the bank's purpose.[73] For example, in 2024 the AIIB approved a $200 million investment in bonds to be issued by a Hungarian bank, in order to finance renewable energy and energy efficiency infrastructure in Croatia, Hungary and Serbia (which is currently the only Western Balkan non-EU Member State to have joined the AIIB).[74]

VI. Conclusion

The current developments discussed in this paper are placing the institutions of international society under considerable strain. The emerging situation is especially fraught with risk for less powerful states, which have benefited from the relative strength of international institutions and high level of compliance with international law that have characterised international relations in recent decades. In a world of rising economic conflict, disregarded norms and weakened institutions, less powerful states must adapt their behaviours in order to protect their interests as best they can.

This paper has sketched the basic contours of a response to these conditions which prioritises the preservation of space for autonomous decision-making. By avoiding the taking of sides in geotechnological rivalry, third states can both avail themselves of the opportunities of negotiating with multiple partners and mitigate the calcification of the international system into conflicting blocs. Legal strategies for pursuing these objectives should take into account the legal pluralism that characterises the international economic relations of third states (and certainly of EU candidate countries such as the Western Balkan states). Further research will be needed to elaborate on the legal options that specific groups of states have in response to these challenges.

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[71] 'The purpose of the Bank shall be to: (i) foster sustainable economic development, create wealth and improve infrastructure connectivity in Asia by investing in infrastructure and other productive sectors…'. Asian Infrastructure Investment Bank Articles of Agreement (2015), Article 1.1.

[72] https://www.aiib.org/en/about-aiib/governance/members-of-bank/index.html (accessed 25 February 2025).

[73] Lichtenstein, Natalie. 2018. *A Comparative Guide to the Asian Infrastructure Investment Bank*. Oxford University Press. https://doi.org/10.1093/law/9780198821960.001.0001, 17.

[74] https://www.aiib.org/en/projects/details/2024/approved/Hungary-OTP-Green-Energy-Capacity-Expansion-Bond-Investment.html (accessed 25 February 2025).