Plurilateralism and the New Geoeconomics of International Law

David Collins*

Abstract: Building upon the acceptance of divergence away from the multilateral geoeconomic order of the Bretton Woods, this article explores the observed and potential role for plurilateral agreements within international economic law. It contemplates some of the theoretical underpinnings of plurilateralism within international economic law, including economic efficiency, fragmentation, and network theory. From there, it examines the key iterations of plurilateralism both within and outside the World Trade Organization. The article offers an assessment of the WTO as a diplomatic forum for the negotiation of new plurilaterals, turning then to a critique of the idea of 'convergent plurilateralism' which postulates that overlapping elements within the megaregionals could represent a new alternative to the old era of multilateralism. The article urges that plurilateralism should not be viewed as an inferior model to multilateralism, but rather as one which is more cognizant of the complex realities of geoeconomics which characterize the modern era.

Keywords: fragmentation – pluralism – megaregionals - network analysis - efficiency

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1. Introduction

The international economic legal 'order' based upon the multilateral supervision of national policies through the post-War Bretton Woods institutions is entering a stage of obsolescence. New forms of governance will be needed to ensure that wealth-maximizing exchanges between nation states, and the multi-national firms resident therein, continues. This special issue of the Journal of World Investment & Trade draws attention to one of the leading new models adopted to cope with this transition: plurilateralism. This article applies a high-level perspective to the role of plurilateralism in the new geoeconomic environment that characterizes the mid-21st century. It argues that, in keeping with the strategy voiced at the 2021 Cornwall meeting of the G7, a trend of plurilateralism (to be distinguished from the preceding dominant modality, multilateralism) is well underway and holds much promise for the future of international economic relations.[1]

* Professor of International Economic Law, City St George's, University of London

[1] See generally G Dimitropoulos, R C Chen and J Chaisse, 'Plurilateralism: A New Form of International Economic Ordering?'in this issue.

The article will defend these assertions first, by adopting a wide definition of plurilateralism: any international agreement with three or more state parties, but fewer than one- hundred, which is open to accession for new entrants.[2] Plurilateralism is therefore not confined to 'plurilateral agreements' within the meaning of World Trade Organization (WTO) law. While manifesting many of the same dynamics as conventional preferential free trade agreements (PTAs), plurilaterals, in their creation of frameworks open to future participants, have a distinct geopolitical significance. In addition to potentially offering greater scope for participation by developing countries than PTAs or Regional Trade Agreements (RTAs)[3], plurilateralism plays a role in constructing and diffusing geopolitical alliances. Tempering this article's broad understanding of plurilaterals is the narrow focus on international economic agreements rather than treaties of a general, geopolitical nature.[4] International economic law covers international trade, including the treaties of the WTO and various regional initiatives; international investment, the law of which is primarily contained in international investment agreements (IIAs), including the investment chapters of trade agreements; monetary relations, normally seen as falling within the sphere of the multilateral International Monetary Fund (IMF); and development finance, the traditional domain of the World Bank. International taxation is also arguably contained within international economic law because taxation of cross-border transactions is intrinsically linked to trade and investment.

Commentators have observed the concept of 'law and geography' within international economic law, highlighting how geopolitical considerations shape legal norms and institutions.[5] Geoeconomics contemplates the use of economic instruments to promote national interests, produce beneficial geopolitical results, and achieve broader foreign policy or geostrategic aims.[6] In further narrowing, this article will not engage with geopolitics directly – it is concerned exclusively with international economic law and the effect of plurilateral agreements in the economic relationships between states in the areas of trade and investment, in particular. Economic and political relations between states are mutually reinforcing – a

[2] This excludes bilateral (two-party treaties) and multilateral (many country treaties). Sector-specificity is not normally viewed as a requirement of plurilateralism, cf the Introduction to this issue.
[3] See M Kolsky Lewis 'Plurilateralism and Regional Trade Agreements' in this issue.
[4] This excludes for example NATO, which is a military alliance and therefore outside the scope of this discussion.
[5] D Cohen, 'Law and Geography in International Economic Law: Geopolitical Considerations and Legal Norms' 15:3 International Economic Law Review (2019) at 345-372
[6] R Blackwill and J Harris, *War by Other Means: Geoeconomics and Statecraft* (Harvard University Press, 2016) at 20.

concept captured by the concept of 'friendshoring' – states and businesses restructuring their supply chains and investment activities away from geopolitical rivals to friendly powers.[7]

The article will begin by outlining the observed shift towards a 'new world order' that by now has become familiar to most observers and is referenced in the introduction to this special issue.[8] This new stage of geoeconomics is characterized by a departure from the classic multilateral arrangements established by the US during the post-War period and wedded to market liberalization, to an era in which smaller groupings of countries have bound themselves to exchange-enhancing obligations, with a view to widening membership over time (in other words, plurilateralism). It will be suggested that these shifts are a manifestation of the evolution of plurilateralism as a strategic response to the challenges and limitations of the multilateral framework. The next section of the article explores some of the theoretical underpinnings of plurilateralism after which some of the leading examples of plurilateralism drawn from international economic law, notably megaregionals, will be examined. The last two sections suggest that the WTO, as the historic focus of governance in international economic law, contributes to the disaggregation of the old geoeconomic order by facilitating plurilateralism. As an alternative, the concept of 'convergent plurilateralism', which posits that megaregional plurilaterals may ultimately link with one another through common ground, is touched upon in the final section before the conclusion.

2. A New Global Economic Order

The international economic principles of the post-World War II era, based primarily on efficiencies derived from free trade and comparative advantage, are undergoing realignment, most notably in the form of the uncoupling of supply chains from China[9]. The precise point at which the multi-polar, globalized world regulated by the Bretton Woods triumvirate of the WTO, the IMF and the World Bank began to break-apart can probably be most closely linked to China's accession to the WTO in 2002. Unprepared for the unleashing of either China's massive productive capacity or its wielding of non-market forms of economic governance, the Washington Consensus of liberalized, global markets has been, albeit gradually, utterly de-stabilized. It is no exaggeration to state that the contemporary rules of international economic

[7] 'What is Friendshoring' The Economist (30 August 2023) (unauthored).
[8] Dimitropoulos, Chen and Chaisse, note 1, above.
[9] This phenomenon has been described as 'Slowbalization'; see, for example, S Aiyar, A Ilyina, 'Charting Globalization's Turn to Slowbalization After Global Financial Crisis' IMF Blog (6 February 2023).

law are no longer fit for purpose. While militaristic conflict has always been with us, recent regional wars, especially those between Russia and Ukraine, have cleaved the world apart. Supply chains have reformed along geopolitical axes, shattering the cherished belief in globalization wherein the entire output of the world was available to be enjoyed by all. There is now a growing sense that the progress in living standards enjoyed by developing countries over the last thirty years can no longer be expected to continue.[10]

Although the US remains the world's largest economy and is still influential, along with the EU, in setting the rules by which economic activity is conducted across the world, it no longer enjoys a privileged position. It is now merely one of many powers, alongside China and India. The world is economically disparate, not only in terms of loci of power and geo-strategic alliances, but also in terms of approaches to economic integration, with open markets and price competition as one among many systems. State capitalism–that is, the dominance of publicly owned agents in economic relations, including State-Owned Enterprises but also Sovereign Wealth Funds, and national development banks–is now on the rise.[11]

Furthermore, there appears to be a growing suspicion of open global markets as an existential threat to the nation-state. The rise of national security-based justifications for trade and investment barriers is a manifestation of this aversion to foreignness. It has been argued that the rise of geoeconomics represents a challenge to the traditional separation between economics and security in international law. He suggests that new legal frameworks are needed to address the increasing use of economic tools for geopolitical purposes.[12] There has been a proliferation of domestic screening legislation for foreign investment on the basis of national security risks,[13] often based on perceived geopolitical risks to critical infrastructure,[14] much as economic sanctions have been enforced in earnest around the world. The fallout from the financial crisis of the early 2010s led the IMF to take a softer stance on capital controls in order to preserve economic sovereignty, something that it had traditionally resisted as antagonistic

[10] S Keynes, 'Don't take closing the gap between rich and poor countries for granted' The Financial Times (5 Jan 2024).
[11] L Borlini and S Silingardi, 'The Foundations of International Economic Order in the Age of State Capitalism' in P Delimatsis, G Dimitropoulos and A Gourgourinis, *State Capitalism and International Investment Law* (Hart, 2023) at 23.
[12] J Heath, 'Geoeconomics and the Law: The Case for a Legal Framework to Address Economic Coercion' 45:2 International Law Journal (2020) at 123-157
[13] For example, the UK's National Security Investment Act 2021 and the EU's Foreign Investment Screening Regulation (Regulation 2019/452).
[14] M Misra, 'Foreign Investment in Critical National Infrastructure' in P Delimatsis, G Dimitropoulos and A Gourgourinis eds. *State Capitalism and International Investment Law* (Hart, 2023).

to economic globalization.[15] In 2022, several G7 countries revoked Russia's MFN status under the WTO in response to the invasion of Ukraine, a challenge to the integrity of one of the WTO's foundational principles.

One response to these shifts in geoeconomics has been for countries to step outside the existing multilateral rule-based system. For example, this is seen in the US effectively withdrawing from the WTO's Appellate Body as well as its assertion of national security as a justification for tariff barriers against commodities such as steel.[16] Less dramatically, China's perennial state support of industry has been an awkward fit with Western economic liberalism for some time. India, for its part, seems to be almost single-handedly frustrating effort at the WTO to achieve a global consensus on agricultural subsidies. On the geopolitical front, Russia has abandoned all pretense that it respects territorial sovereignty and sends supply chains into disarray.

Predictions of how a 'new world order' in geoeconomics might unfold often point to plurilateralism as a plausible alternative to Washington-Consensus multilateralism.[17] As outlined in the introduction to this special issue, a meeting of the G7 in 2021, held at Cornwall in the UK, stressed the importance of plurilateral agreements in the regulation of the global economy.[18] This appeared to be both an observation of fact and a forecast for the future. The built-in assumption, though, is first, that there is (still) such a thing as a global economy and second, that it requires some form of a rules-based system to ensure its proper functioning – the 'invisible hand' of the market alone is insufficient.

First, the death or retreat of globalisation is likely to be exaggerated. Although world trade in goods may have plateaued recently, it has done so at historically high levels, and some moderation was inevitable. Other, arguably more important indices of globalisation —such as trade in services, digital trade, cross-border investment and migration, and cultural exchange— continue to increase.[19] The importance of adapting international economic law to address the challenges posed by digital technologies and the changing nature of global value chains has

[15] B Mercurio, *Capital Controls and International Economic Law* (Cambridge University Press, 2023)
[16] See, for example, G Dimitropoulos, 'The WTO New National Security Challenge' in J Chaisse and C Rodriguez-Chiffelle, *The Elgar Companion to the World Trade Organization* (Elgar, 2023).
[17] See, for example, A Roberts, H Choer Moraes and V Ferguson, 'Toward a Geoeconomic Order in International Trade and Investment' 22:4 Journal of International Economic Law 655 (2019).
[18] G7, 'The Cornwall Consensus: Build Forward Better' (2021) <https://www.mofa.go.jp/files/100200092.pdf>.
[19] S Lincicome, 'Globalization Isn't Going Anywhere' The Cato Institute, (12 September 2023) <https://www.cato.org/publications/globalization-isnt-going-anywhere>.

been particularly emphasized.[20] The second implicit assumption, positing the need for laws to guide markets to maximize exchange efficiency, is likely self-evident. This is the nature and extent of the state's role in the proper functioning of markets, especially at the global level, which is contentious. Clearly, multilateralism as a project of freeing markets from governmental interference faced considerable resistance in the later stages. On the other hand, this may be viewed as an element of a deeper mistrust of institutions beyond the national state.[21] The collapse of the WTO's Appellate Body due to the withdrawal of support from the US is perhaps the starkest example for international economic lawyers.

Respect for the rule of international law itself is another matter. The proliferation of bilateral treaties and the enduring popularity of international arbitration to resolve disputes suggest that countries recognize the value of binding rules as a foundation of functioning markets beyond state borders. Plurilateralism encompasses a mid-point between global, order-creating governance and the two-party relationship between sovereigns.

3. Plurilateralism in Theory

This section will contemplate four concepts which underpin the adoption of plurilateral treaties: pluralism, fragmentation, efficiency and network theory. These concepts may be viewed as frameworks for surfacing benefits or dangers of plurilateralism - yardsticks that can assess plurilateral efforts and measure whether they are positive or negative developments.

3.1 Pluralism

In embarking on an assessment of the potential for plurilateralism to operate as the dominant modality in a new geoeconomic era characterized by multi-polarity and strategic alliances, it is appropriate to consider the concept of *pluralism*, which is embedded in plurilateralism. Pluralism is a way of perceiving international law as an order that coordinates the diversity between different communities.[22] Perhaps the most credible criticism of pluralism is that it

[20] I Paulsen "Digital Technologies, Global Value Chains, and the Future of International Economic Law." 23: 4 Journal of International Economic Law 2020 at 789-815

[21] T Sommerer, H Agné, F Zelli & Bart Bes, *Global Legitimacy Crises: Decline and Revival in Multilateral Governance* (Oxford University Press, 2022).

[22] N Krisch, 'Pluralism' in J D'Aspremont and S Singh eds. *Concepts for International Law: Contributions to Disciplinary Thought* (Elgar, 2019) at 691.

broadens the notion of law beyond formal constructs created by states, potentially conferring legitimacy on norms that may have been produced through less-legitimate processes.[23] Legitimacy is thought to include citizens' input into a system along with processes governed by rule of law and democratic institutions.[24] Such processes could include 'soft law' constructs, such as instruments produced by the OECD[25] or pronouncements from bodies such as the G7, some of which have taken on plurilateral form. Note that these are not treaties but rather agreements, inviting a wide definition of plurilateralism. This offers a pathway to contemplate legal regimes other than those designed to facilitate free-market globalization, such as those based on greater state control. Pluralism in international law is also often viewed as unstable in tolerating conflict, which can lead to a breakdown of order, because there is no law that can claim supremacy.[26] On the other hand, a pluralistic approach to understanding international law can be advantageous in more contested settings that defy uniform prescriptions. Pluralism facilitates expression by competing constituencies with plausible claims of authority. Pluralist orders are consequently seen as open, involving checks and balances between sites of governance. In this way, they more accurately reflect how societies are structured in terms of the locus of authority than unitary conceptions of international law.[27] While the WTO is a member-driven organization in which each nation is notionally equal, it has undoubtedly been dominated by the US and the EU. In this sense, a pluralistic understanding of international law is better adapted to the new multipolar geoeconomic order.

Furthermore, pluralism offers a clearer picture of the role of the state in international governance, defining how domestic law relates to international law, and how state-made public international law relates to other transnational bodies of norms and processes of norm-making. Interactions between WTO members come to mind. Through this process law may no longer appear as a 'system' or a 'plan' with inbuilt order and hierarchy, but instead resembles a dynamic interplay of normative practices with a shifting structure.[28] More pragmatically, pluralist approaches to international law underscore law's connection with the 'messy' societal context of a globalized world.[29] If plurilateralism can be said to be a manifestation of pluralism,

[23] Ibid. at 701.
[24] See e.g. C Wiesner and P Harfst, 'Conceptualizing legitimacy: What to learn from the controversies related to an "essentially contested concept"' 4 Frontiers of Political Science (2022)
[25] Such as the Guidelines on Multinational Enterprises, which have been influential in international investment law.
[26] Krisch, above n 19 at 703.
[27] Ibid. at 704.
[28] Ibid. at 706.
[29] Ibid. at 707.

then it is likely that it is well equipped to respond to the challenges of new geoeconomics. In addition to multi-polarity, a pluralistic approach would be more sensitive to broader societal concerns, such as the environment, culture and security, than the largely economic-oriented Washington Consensus.

3.2 Fragmentation

A second important way of conceptualizing a shift towards plurilateralism in international economic law is through the lens of fragmentation.[30] Since it may often be perceived as failed or malformed multilateralism, plurilateralism is synonymous with fragmentation – the breaking apart of the whole. This is often associated with the failure of the WTO to progress to trade liberalization. This is also seen in the breaking apart of geoeconomic relations between the West and East in conjunction with militaristic aggression. Fragmentation in international law has taken numerous forms, including perhaps most obviously jurisdictional but also in relation to methods of interpretation and in the epistemic communities that engage with international law. In recent decades, fragmentation was a highly influential theoretical lens with which to scrutinize international law, a phenomenon described memorably by one commentator as 'the millennial fragmentation scare'.[31] Anxiety about the fragmentation of international law, and by implication a challenge to its cohesive legitimacy, can be traced to the creation of a range of new international courts and tribunals after the Cold War, such as, for example, the WTO Dispute Settlement System, the International Tribunal for the Law of the Sea and the International Criminal Court.[32] Sectoral judicialization may exacerbate fragmentation. Multiple regimes for contesting different iterations of international law led to 'fragmentation anxiety' among international jurists.[33] This has been likened to the anxiety of postmodernism in general: the realization that the carefully ordered world was actually complicated, cluttered, and subject to challenge.[34] Recognition of the new geoeconomic order, especially the breakdown in trade relationships between historic partners, as well as the rise of industrial policy as opposed to market liberalism, are manifestations of the pathology of the anxiety towards complexity. One would expect that sectoral fragmentation would be exacerbated by

[30] See, for example, 'Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law' International Law Commission Report, A/CN.4/L.702 (18 July 2006).
[31] H G Cohen, 'Fragmentation' in J D'Aspremont and S Singh eds. *Concepts for International Law: Contributions to Disciplinary Thought* (Elgar, 2019) at 315.
[32] ICSID was created at the height of the Cold War in 1966 but was not used with any regularity until the 1990s.
[33] Cohen, above n 27 at 326-327.
[34] Ibid. at 318-320.

plurilateral agreements that are sector-specific,[35] such as the Information Technology Agreement. On the other hand, some sector-specific plurilateral agreements, such the Supply Chain Agreement of the Indo-Pacific Economic Framework for Prosperity (IPEF) form part of a broader agreement more resembling a mega-regional.

Pluralism was one response to fragmentation, that is, formal and informal negotiations between regimes, accommodating or even encouraging competition within and over international law.[36] Pluralism as a solution to fragmentation is reflected, for example, in doctrines such as the margin of appreciation, subsidiarity, and complementarity, all of which are means for managing and coordinating differences in views. Through these techniques and perhaps also through simple acclimatization, international lawyers have come to terms with fragmentation and found ways to manage conflicts between norms, rules, and interpretations. Encouragingly, international actors show an increasing awareness of the conflicts between them; international courts and tribunals now regularly cite one another in an effort to work towards common ground.[37] The realization that international law was not as unified as was once conceived has also been viewed as an opportunity for self-reflection, self-awareness, a way to think about what international law has become and what it might be.[38] One path in this process is plurilateralism, an embodiment of an approach to international law that embraces the reality of fragmentation within a complex world. In international economic law, mutual recognition of standards among parties is a good example of responding to fragmentation, in that it preserves sovereignty in regulatory approaches while fostering economic integration.

3.3 Efficiency

Perhaps the most natural conceptual perspective through which plurilateralism can be assessed is efficiency. Clearly negotiating treaties with hundreds of states is difficult, especially where consensus or near-consensus is needed, as in the case of the WTO. Another example is the failure of the Multilateral Agreement on Investment in the late 1990s.[39] Treaty negotiation has become costlier as traditional economic incompatibilities are magnified by geopolitical

[35] As they are defined in the Introduction to this special issue.
[36] Cohen, above n 27 at 323
[37] AK Bjorklund and S Napper, 'Beyond Fragmentation, in New Directions' in T Weiler and F Baetens eds. *International Economic Law: In Memoriam Thomas Walde* (Martinus Nijhoff, 2010)
[38] Cohen, above n 27 at 327
[39] See also M Hodgson, K Duggal, K Horne and A S. Pirnia, 'The Dawn of a New Era: Advancing ESG Obligations in Arbitration through Plurilateralism' in this special issue.

tensions. Finding common ground becomes problematic as more countries participate, resulting in treaties that capture only the most elemental rules or in which legal concepts are intentionally vaguely articulated, as in the case of the 'constructive ambiguity' of the GATT. While transaction costs may be minimized in treaty negotiations among fewer parties, other inefficiencies result; the 'trade diversion' associated with exchanges involving sub-optimal suppliers from a treaty partner rather than the optimal ones from countries where there is no treaty in place.[40]

Treaty negotiation is a manifestation of a state party's rational self-interest. Normally there will be greater returns when more nations participate in the treaty. In trade and investment this means greater market access for more suppliers and consumers. For plurilaterals, the effectiveness of the treaty will increase by the addition of another party (enhanced market size and competition), provided that the party does not demand modifications which diminish its benefits disproportionately (impose new legal restrictions on all parties). So long as the value of the new party's accession exceeds any reduction in content which it demands, the new party should be accepted.

When parties are heterogeneous, that is, when the optimal treaty content for one party diverges from that of the other(s), perhaps because of the need to protect domestic constituents from competition, countries with greater bargaining power will realize greater gains from the treaty. States with less bargaining power, typically developing states, will be left near or at their withdrawal points. Plurilateralism may negatively affect developing countries because they tend to be excluded from participating in rule design and because they lack the capacity to comply should they seek to join later. There is also a concern, voiced by countries such as India and South Africa, that plurilaterals will undermine the WTO, resulting in a two-tier membership that will undermine multilateral progress. Some hold this view to be unfounded. Rather, plurilateralism should instead be seen as a tool through which developing countries can set the agenda at the WTO, particularly where plurilateral signatories commit to engaging with non-signatories with a view to encouraging their participation.[41]

When parties are heterogeneous (in disagreement with regards to the economic sectors to be liberalized or protected), but are roughly equal in bargaining power, then the margin for

[40] Articulated, for example, in J Bhagwati's *Termites in the Trading System* (Oxford University Press, 2008). The costs of monopoly rents ensuing from preferential trade treaties was alluded to by Adam Smith in *Wealth of Nations* (1776) (Wordsworth Classics, 2012) at 538 (Chapter 6: Of Treaties and Commerce).
[41] See B Hoekman and P Mavroidis, 'Plurilateral Agreements, Multilateralism and Economic Development' in this special issue.

agreement on the treaty's content may be narrow. All parties exerting equal bargaining power will increase the cost of negotiation, with costs rising with each additional party (mitigating against multi-party treaties). The initial range of effort that would be beneficial to prospective parties must be sufficiently large to ensure sufficient bargaining space for parties to reach agreement. On the other hand, when the parties to a multi-party treaty are homogeneous (i.e. when the optimal treaty content is similar among all parties), then bargaining power will be irrelevant, and parties will simply set the treaty content to their private needs. The transaction costs of such treaties will also be minimal, increasing the expected benefit of the treaty.[42] It is a complex dance that depends on multiple variables. Plurilaterals might be said to occupy the golden mean: small enough in terms of participants that negotiation for worthwhile commitments becomes possible and not too costly, large enough that gains from trade are enhanced, and inefficiencies of trade diversion are minimized. Where the addition of a new member becomes too costly – the plurilateral simply will not grow.

In some respects, plurilateralism might be seen as optimal rather than merely a second-best strategy.[43] This is because economic integration agreements aim not only to remove traditional barriers but also to harmonize regulatory policy – recognizing each other's rules as equivalent without mandating a particular approach. Therefore, the optimal group size may be smaller than the WTO's full membership. Of course, the benefits of such harmonization must be balanced against the costs of moving away from discrimination in favour of domestic suppliers. Agreement can be particularly problematic when states at markedly different levels of development are involved.[44] Plurilaterals also enable significant adjustments to each party's bespoke needs via carve-outs and side letters, as in the case of the CPTPP. Although inefficiencies result therefrom, an overall agreement is still achieved.

3.4 Network Analysis

The field of network analysis might be applied to plurilateral legal relationships such as those implemented in response to the modern shifts in geoeconomics. Network analysis seeks to measure and describe a system's basic structure, including how and why it evolved in a

[42] F Parisi and D Pi, 'The Economic Analysis of International Treaty Law' in E Kontorovich and F Parisi eds., *Economic Analysis of International Law* (Elgar, 2016) at 113-114.
[43] See also G Dimitropoulos, 'Digital Plurilateralism in International Economic Law' in this issue (making the same point on plurilaterals in the regulation of digital technologies).
[44] W Alschner, *Investment Arbitration and State-Driven Reform* (Oxford University Press, 2022) at 266

particular manner, and how this may be projected into the future. Factors that may affect the behaviour of a network include how components are arranged, how they are connected and at what distance, the number of a connections a component has, and the location of the component within the network. Flowing from this, network analysis also attempts to attribute meaning to such factual descriptions and to predict future behaviour.[45] Network analysis has been applied to the field of international relations to highlight how a state's power is manifest in its capacity to access networks of other states, to use these networks to broker for increases in its own power and that of the network itself, and to exit these arrangements while minimizing harm. Networks of states, which should be contrasted with other forms of organization such as hierarchies and markets, are therefore significant actors in geoeconomics. They are also inherently dynamic, often making their effects difficult to assess empirically.[46] Since a plurilateral agreement is a network of signatory countries bound by legal commitments, network analysis can be applied to evaluate whether a plurilateral agreement is able to achieve desired outcomes. It can also make predictions regarding the feasibility of its growth or dissolution.[47]

Network analysis of international relations considers the internal effects of networks on the network itself. It further evaluates whether there are external effects on the international community more broadly, meaning those elements which exist outside the network.[48] An organizational question arises as to the point at which a 'community' arises among a network of participants. The conformity of plurilateral arrangements with WTO rules suggests a pre-existing taxonomy conducive to the establishment of communities rooted in commitment to the principle of reducing barriers to trade. This would constitute a core belief or norm which is transmitted through the channels of a network.

Different kinds of networked relationships of treaties have interpretive consequences. This is a reason why the Vienna Convention rules on treaty interpretation are so 'laconic' – the many different forms of treaties present a difficulty with regard to having a code of general application to all treaties, particularly since there are more plurilateral economic treaties than there are multilateral ones.[49] It is worth noting, however, that the concept of 'treaties' under

[45] S Puig, 'Network Analysis and the Sociology of International Law' in M Hirsch and A Lang eds. *Research Handbook on the Sociology of International Law* (Elgar, 2018) at 321.
[46] E M Hafner-Burton, M Kahler and A Montgomery, 'Network Analysis for International Relations' 63 International Organization 559 (2009)
[47] Ibid. at 563
[48] Ibid. at 561
[49] R Gardiner, *Treaty Interpretation* (2nd ed. Oxford University Press, 2015) at 76-77.

the VCLT does not apply to agreements concluded by 'other subjects of international law' such as the EU or states with more controversial status like Taiwan. As such, legal concepts may take on distinct meanings within a given network of plurilateral treaty partners that are inapplicable beyond this context. This is seen, for example, in Annexes outlining operative definitions for that particular network, such as indirect expropriation under the CPTPP.[50]

It is further unclear whether plurilateral treaties can be considered genuine law-creating processes, an important issue when considering the need for binding laws for the proper functioning of global markets. Under a contractualist view, treaties should be seen as sources of obligation for contracting parties, rather than as sources of law.[51] Some treaties, however, go beyond the establishment of reciprocal obligations between parties and regulate to establish patterns of behaviour in order to achieve a common objective (for example, establish rules of general application, which may then have an impact on the formation of customary rules, although formally they are only binding on state parties, e.g. human rights.) These treaties are sometimes referred to as 'normative treaties' (law-making treaties), in contrast to contractual or reciprocal treaties (contract treaties).[52] Once again, it would seem that plurilaterals embody a mid-point in this continuum between bilateral agreements which create obligations only for the parties and multilateral agreements, wherein obligations arguably take on a universal dimension.[53] This is not to suggest that only multilateral agreements are capable of norm-generation. Indeed, network analysis suggests that it is not the number of participants that matters in terms of the degree of transmission, but other factors such as closeness of the nodes (states) within the network and the strength of the ties.[54] For example a treaty that has 130 parties, but only contains hortatory language, could project governance based on soft law. In contrast, a treaty which has but 20 parties containing language that is clearly binding is more likely to lead to the formation of customary international law. Some modern treaties are indicative of 'best practice' or 'world leading' in that they are understood to set a benchmark to which all future trade agreements should aspire, even though they lack a large number of parties. This view is reinforced by the presence in some plurilaterals of Most Favoured Nation clauses which ensure parties that they will reap the benefits of subsequent treaties signed with

[50] Annex 9-B 3 b): 'Non-discriminatory regulatory actions by a Party that are designed and applied to protect legitimate public welfare objectives, such as public health, safety and the environment, do not constitute indirect expropriations, except in rare circumstances.'
[51] J D'Aspremont, *Epistemic Forces in International Law* (Elgar, 2015) at 147.
[52] P Gaeta, J E Vinuales and S Zappala, *Cassse's International Law* (Oxford University Press, 2020) at 183.
[53] As in the debate whether UN General Assembly Resolutions may be considered to create customary international law.
[54] Hafner-Burton et all, above n 42 at 564.

non-parties, and also in 'ratchet' clauses which ensure that there will be, internally, no regression in terms of regulations which have particular social aims.[55]

Network analysis can clarify the positive and negative elements of plurilateralism in geoeconomics by mapping and evaluating the complex web of relationships and interactions among states, organizations, and agreements. It provides a quantitative way to understand how different actors are connected and how they influence each other within the international economic system. In terms of the benefits of plurilateralism, network analysis can highlight the formation of strong cooperative clusters among like-minded nations, which can lead to more effective and cohesive policymaking and economic integration. By identifying central nodes (key players) and their influence, network analysis shows how innovative policies and best practices can diffuse more rapidly across interconnected countries. It reveals the adaptability and resilience of plurilateral agreements, which can quickly evolve to address new economic challenges compared to broader, slower multilateral frameworks. In terms of the drawbacks of plurilateralism in the new geoeconomics, network analysis can expose the marginalization of less connected or smaller states, leading to economic fragmentation and creating a multi-tiered system of privileged and disadvantaged nations. It also highlights how dominant countries or blocs can exert disproportionate influence, potentially leading to imbalanced agreements that favour stronger economies at the expense of weaker ones. Network analysis can furthermore uncover the complexities and overlapping jurisdictions of multiple agreements, which could complicate compliance and enforcement, creating inefficiencies and legal uncertainties.

4. Plurilateralism in Practice

As a strategy within international economic law, plurilateralism is most closely associated with trade and the WTO. The Information Technology Agreement (ITA) and the Agreement on Basic Telecommunications (ABT) are notable examples of sector-specific plurilateral agreements that went ahead during the era of WTO dominance.[56] The Agreement on Government Procurement (AGP or GPA) is another successful plurilateral initiative at the WTO that has gained momentum in recent years. These plurilaterals are less representative of

[55] For example, Art 19.4 on labour in the CPTPP. MFN operates differently depending on whether the agreement is an open or closed plurilateral. See further A Berger, C Brandi, M Elsig, A Hoda and X Tu, 'Improving Key Functions of the World Trade Organization: Fostering Open Plurilaterals, Regime Management & Decision-Making' T20 Policy Brief (20 Nov 2020).

[56] See, for example, G Dimitropoulos, 'Digital Plurilateralism in International Economic Law' in this issue.

a shift away from multilateralism in economic relations as they are a reflection of the increasing complexity of commerce in the modern age where tariffs on manufactured goods are no longer the major form of protectionism.

The plurilateral Multi Party Interim Appeal Arbitration Arrangement (MPIA) is an alternative system for the resolution of disputes in the WTO which arose as a consequence of the dismantling of the WTO's Appellate Body as a consequence of the US's turn away from the multilateral economic order.[57] The MPIA, established around the arbitration provision of Article 25 of the Dispute Settlement Understanding, now enjoys support from 53 WTO Members, including most large economies – other than the US and the UK. Sometimes thought of as a WTO agreement, but distinct from it, the now-abandoned Trade in Services Agreement (TiSA), was a proposed international trade treaty with 23 parties which aimed to liberalize trade in a wide range of services beyond the level achieved under the rather disappointing General Agreement on Trade in Services (GATS). Unfortunately, TiSA never materialized due to disagreements over coverage of public services, including fears of privatization to an extent encapsulating a basic tension that underpins modern geoeconomics in terms of differing understandings of the role of the state in the economy.

The failure of the IMF to deal with capital flight and currency manipulation, not to mention loan conditionality policies that are often harmfully fixated on market-based reforms, has led to other forms of international cooperation in the management of monetary affairs. The EU's single currency is a project in economic integration which incrementally drew in new participants, with others expected to follow. The Chiang Mai Initiative (CMI) is a multi-state currency swap arrangement among the ten members of the Association of Southeast Asian Nations (ASEAN), China, Japan and others. It was put in place after 1997 Asian financial crisis to manage regional short-term liquidity problems and to avoid relying on the IMF. The CMI later pursued multilateralization, bringing in other countries in the 2010s. As a project seeking new participants, it may also be viewed as plurilateral, particularly given its small membership (at least from a global perspective). More recently, the BRICS (Brazil, Russia, India, China, South Africa) consortium of economically powerful developing countries debated the establishment of their own currency with a view to countering the dominance of the US dollar in the global economy. While this remains unlikely in the near future, the plan clearly

[57] See generally W Zhou and V Crochet, 'Fragmenting International Trade Dispute Settlement: A Quest for Plurilateral Appellate Mechanism under the WTO' in this issue.

conceived the new currency as one which would be adopted by other countries (beyond BRICS) in time.[58]

Several plurilateral agreements are in place that are beginning to play important roles in international investment law. Many of the potential costs of plurilateralism, such as fragmentation and increased complexity, already exist in investment law, which lacks the cohesion of trade law, and are consequently not worsened by plurilateral initiatives.[59] Among the most notable investment plurilaterals are the Mauritius Convention on Transparency in Treaty-Based Investor-State Arbitration, which entered into force in 2017 and has 22 signatories. Other initiatives in international investment law could be described as plurilateral, such as the Code of Conduct for Arbitrators in International Investment Dispute Resolution launched by UNCITRAL. Such instruments start with a small group of supporters and are often instigated by international organizations. Unlike trade law's WTO, international investment law lacks a central administrative body. Some investment-oriented plurilaterals have reached multilateral status: the ICSID Convention (162 signatories) or the New York Convention (172 signatories), which together are the foundations of investment arbitration. More substantively, the Energy Charter Treaty (ECT) is a plurilateral trade and investment agreement concluded in 1994, with more than 50 signatories. The ECT is noteworthy as a plurilateral agreement which is shrinking in number of participants. Several signatories have been removed from the ECT in recent years because of the sentiment that the treaty has paid insufficient attention to climate change.[60]

Plurilateral investment agreements in the form of FTAs with investment chapters can create several additional layers of obligations in addition to old bilateral investment treaties (BITs). This is the case with intra-ASEAN BITs and regional ASEAN investment protection rules, such as the RCEP. The EU has used a plurilateral instrument to overhaul the out-dated bilateral treaty networks of EU member states.[61] Indeed, most plurilateral investment agreements complement rather than replace bilaterals. The presence of a pre-existing bilateral can act as a back-up or safety-blanked for states in the event that a plurilateral disintegrates or

[58] D Collins, 'What the New BRICS Currency Could Mean for Canada' Macdonald Laurier Institute (1 August 2023) <https://macdonaldlaurier.ca/what-the-new-brics-currency-could-mean-for-canada-david-collins-for-inside-policy/>.
[59] See generally, T Meyer, 'Plurilateralism and the Future of International Investment Law' in this issue.
[60] D Collins, 'Reforms to the Energy Charter Treaty: Rebalancing International Investment Law or a Step Too Far?' 2023:2 International Trade Law and Regulation 66-68.
[61] The Agreement for the Termination of Bilateral Investment Treaties (BITs) Between 23 EU Member States (the Termination Agreement), L/281, entry into force 29 August 2020.

it becomes desirable to withdraw. Still, the creation of a new plurilateral without repealing the old BITs is unfortunate because the old bilateral treaties tend to contain one-sided (pro-investor) obligations characteristic of the 20th century variety in contrast with the more balanced ones of today.[62]

Plurilateralism has a key role to play in the digital economy and technological advancement.[63] Plurilateral digital agreements include the ITA, concluded under the auspices of the WTO, as well as the WTO's Joint Initiative (JI) on E-Commerce, currently under negotiation among 76 WTO Members. At the time of writing a new text for the JI had been circulated at the 13th Ministerial Conference, potentially leading to a concluded agreement by the summer of 2024. The JI on E-Commerce covers such matters as the customs duties on electronic transactions (the moratorium of which is unlikely to be renewed at the multilateral level past 2026), electronic payments and data localization. Beyond the WTO, the Digital Economy Partnership Agreement (DEPA) is a three-party treaty signed by Singapore, Chile New Zealand and South Korea covering digital trade which is open to accession of new members. It is the first plurilateral agreement exclusively covering digital trade. DEPA covers conventional digital trade matters such as customs duties on electronic transactions, free flow of data and data localization, personal data protection and e-commerce. Focused on flexibility in achieving shared objectives, DEPA also breaks new ground with provisions promoting cooperation in areas such as digital identities, AI and SMEs. DEPA is notable furthermore for its 'modular' structure, enabling parties to accept various elements of the agreement while rejecting others and to 'slot-in' elements of DEPA into other FTAs.[64] The vast importance of the digital economy to future geopolitical strategy suggests that digital plurilaterals like DEPA could become central nodes of alliance-formation in geoeconomic relations.

5. Plurilateralism from Within: the WTO as an Instrument of Geoeconomic Disaggregation

As the negotiation of treaties among more than two countries can become complicated and costly, a forum for negotiation is often useful in facilitating discussions. This is particularly true where there is pre-existing diplomatic infrastructure, for example which involves committees which meet on a regular schedule. The WTO is an environment through which to

[62] Alschner, above n 40 at 264-265.
[63] See further G Dimitropoulos 'Digital Plurilateralism in International Economic Law' in this issue.
[64] See D Collins and J Hyoung Lee, "The Digital Economy Partnership Agreement (DEPA): Accession to the Digital-Only Regime" in D Collins and M Geist eds. *Research Handbook on Digital Trade* (Elgar, 2023)

pursue plurilateral negotiations, even as it has failed to make much progress in important areas such as digital trade and investment. Unlike conventional PTAs, which the WTO accepts but has no role in administering, plurilateral agreements, are more likely to reinforce rather than undermine the WTO's role as the institutional focal point for trade cooperation.[65] Plurilateral agreements may therefore be regarded as complements to multilateral negotiations, with the potential to break new ground, either in the depth or breadth of new obligations.

As explained in the introduction to this special issue, the WTO has both open and closed plurilateral agreement models. The latter refers to those agreements that have been implemented in accordance with the specific processes outlined in Article II.3 of the Marrakesh Agreement, which defines plurilateral trade agreements as part of the WTO under Annex 4. Plurilateral agreements under Article II.3 are binding only on those members that have signed them. The adoption of new agreements in Annex 4 requires a consensus from all WTO members. By contrast, open plurilaterals do not require the participation of all members or their unanimous adoption. Open plurilaterals generally enter into force when a critical mass of members with a share of trade has been signed, usually more than 90 per cent.[66] While operating outside the scope of Article II.3 of the WTO Agreement, open plurilaterals are supported by the WTO's highest decision-making body through Ministerial Conference Declarations.[67]

The WTO can function to instrumentalize plurilateral initiatives, such as those discussed elsewhere in this special issue, using its good-will, gravitas, and procedural machinery. The advantage of using the WTO as a diplomatic channel to build additional obligations on a plurilateral basis illustrates the benefit of 'layering': the multilateral rules form a normative baseline, but states remain free to embark on more ambitious liberalization efforts through plurilateral agreements.[68] The WTO may be viewed as a crucial foundation on which to build plurilateralism. WTO compatibility has been a clear objective of many plurilaterals.[69] Treaties that align with or diverge from WTO principles would face different prospects in this

[65] T Xinquan and S Xiaojing, 'An Analysis of Plurilateral Agreement Model to Revitalize the WTO Negotiation Function' 11:3 Journal of WTO & China (2021) at 14-15.
[66] G Winslett, 'Critical Mass Agreements: The Proven Template for Trade Liberalization in the WTO' 17:3 World Trade Review 405 (2017).
[67] Xinquan and Xiaojing above n 61 at 15.
[68] Alschner above n 40 at 266. Alschner notes that this strategy is less effective in international investment law (non-WTO) where plurilateral IIAs (typically investment chapters in multi-party FTAs) are often more ambitious than the older, shallower and less complete bilaterals which they coexist with.
[69] N McDonagh, 'Is Plurilateralism Making the WTO an Institutional Zombie?' East Asia Forum (17 February 2021) <https://eastasiaforum.org/tag/plurilateralism-world-trade-organisation/>

regard. The GPA is a good example of the former as it is predicated on transparency and non-discriminatory access to public procurement. A future treaty on digital services tax would diverge from WTO principles in that it would erect barriers to trade in services.[70] Plurilaterals with divergent objectives would struggle to be integrated into the WTO because they must satisfy the consensus requirement of Annex 4.

Cognizant of the WTO's limitations, the EU seeks to reform the WTO to create an easier path for open plurilateral agreements to be integrated into the WTO's multilateral architecture.[71] The plurilateral approach favoured by the EU allows WTO rules to be updated more easily to reflect modern developments such as digital trade, even if only part of the membership is on board. Some WTO members, notably India and South Africa, resist this method, asserting that plurilateral arrangements contradict the global spirit of the WTO, perhaps a reiteration of the fragmentation anxiety alluded to above. This aversion is despite the fact that plurilaterals are already part of the structure of WTO agreements, and over 90 per cent (approximately 150) of the WTO's 164 members currently participate in plurilateral negotiations. At the 13th Ministerial Council in March 2024 India, South Africa and Turkey blocked consensus to prevent 117 members from amending the WTO Agreement so that the plurilateral Investment Facilitation Agreement (IFA) could be annexed alongside existing plurilateral agreements. With other plurilateral negotiations potentially coming to fruition in the coming years, such as e-commerce, plastic pollution, and fossil fuel subsidies, IFA has become a flashpoint for the need to reform WTO negotiations. India, South Africa, and Turkey argued that investment facilitation falls outside the remit of trade policy and is a matter of domestic policy. They believed that including such agreements in the WTO framework would restrict their ability to formulate and implement domestic norms and regulations regarding foreign investments. India, in particular, emphasized the need to resolve existing critical issues such as food security and protection for poor farmers before introducing new topics like investment facilitation into the WTO agenda. They argued that the WTO member countries should first find permanent solutions for these pressing issues rather than negotiating new agreements. Both India and South Africa highlighted that there is no mandate for the adoption of the proposed investment facilitation pact. They pointed out that such an attempt would

[70] See e.g. D Collins, 'The Compatibility of Digital Services Taxes with World Trade Organization (WTO) Law' in D Collins and M Geist eds. *Research Handbook on Digital Trade* (Elgar, 2023)
[71] 'WTO Corner: Plastics, Vaccines Trade Data, European Parliament, UK WTO Prescriptions' Borderlex (24 Nov 2021) <https://borderlex.net/2021/11/24/wto-corner-plastics-vaccines-trade-data-european-parliament-uk-wto-prescriptions/>.

violate the fundamental WTO rule of consensus-based decision-making.[72] Paradoxically, just as the WTO offers an excellent diplomatic forum for plurilateral negotiation, its voting structures makes the conclusion of (closed) agreements problematic. Reforms may be needed to pave the way for greater plurilateralism through the WTO, enabling it to function more effectively as an instrument of the inescapable disaggregation in world trade law while facilitating cooperation in trade liberalization among like-minded nations. The above plurilateral movements at the WTO, to the extent that they have and will be successful going forward, appear moreover to be a concession that multilateralism holds little promise for trade liberalization in the new era of fragmented geoeconomics.

6. Convergent Plurilateralism

Convergent plurilateralism is an idea that was posited in 2021 by Crawford Falconer, the Second Permanent Secretary for the UK's Department for Business and Trade. His theory suggests that there will be, or could be, progressive confluence between the world's large plurilateral economic blocs.[73] This is presented as a potentially more reliable route to a rules-based, yet prosperity-inducing geoeconomic system than the fundamental reform of the WTO. In the context of the WTO, plurilateral agreements have been presented as a valuable stepping stone towards broader multilateral cooperation.[74]

The megaregional plurilateral agreements, such as the CPTPP and the RCEP, have gone deeper in terms of regulatory objectives than the WTO, e.g. including matters such as foreign investment and digital. They are multi-sectoral economic integration agreements, covering a wide geographical area with multiple parties open to new signatories. It may be that lessons can be learned from megaregional dealmaking to suggest design ideas for plurilaterals – and vice versa.

Convergent plurilateralism, which has yet to be fully developed as a model for negotiation, contemplates multilateral participation, but via connections or merging between smaller segments on the basis of shared approaches. It is based on the common ground among

[72] P Ungphakorn 'Six talking points from the year's final General Council meeting' (21 December 2023) <https://tradebetablog.wordpress.com/2023/12/21/six-points-years-final-general-council/#more-27262>.
[73] As reported by Borderlex, above n 67, and also oral comments from C Falconer at the UK Trade Remedies Authority Forum (London, 2 November 2023).
[74] M Wagner, 'Plurilateral Agreements in the WTO: A Stepping Stone Towards Broader Multilateral Cooperation' 20:2 Journal of International Economic Law 2017 at 353-380

groupings of plurilaterals, conspicuously apart from the universality and centrality of the WTO. As envisioned, convergent plurilateralism may offer a pathway towards the reshaping of international economic law as a system of separate and distinct yet overlapping legal regimes, rather than as a universally applicable whole. In this sense, it is well suited to an era of strategic alliances. Convergent plurilateralism appears to be predicated on the notion of common regulatory goals (e.g. trade liberalization) and common understandings, (e.g. definition of 'computing facility[75]'). Yet it is not clear that this is sufficient for the relevant plurilaterals to seek to 'merge'. It may be that the parties of one plurilateral, while agreeing in terms of treaty content, do not wish to extend the benefits to other parties. This may be especially the case in an era of geopolitical conflict characterized by numerous alliances.

Falconer acknowledged that there is a risk that his theory of convergent plurilateralism could be divisive. Traditional developed economies, and their networks, might turn away from the new developing or emerging ones and their networks, much as geopolitical allies may be dissuaded from engaging in reciprocal obligations with their foes (for example, US and China). The theory urges that states must not be viewed as warring camps but merely as different. One of the main differences between convergent plurilateralism and traditional multilateralism concerns how state intervention is disciplined. This system will also address modern challenges in ways that older regimes have not. For example, the WTO lacks disciplines on climate change. In that sense, convergent plurilateralism envisages an international economic system that embraces new realities.

When assessing how convergent plurilateralism might play out in terms of merged megaregionals, it is useful to think of world's nations as comprising five groups, capturing both their economic and political characteristics, which are inexorably intertwined: First, the US and its close allies; second, countries that lean towards the US; third, the unaligned; fourth those that lean towards China; and finally China and its close allies.[76] The much-vaunted BRICS countries, once seen as a coalition of like-minded countries with a common approach to international law,[77] are split across four of the five categories. These proposed groupings

[75] USMCA Art 19.1, CPTPP Art 14.1 and RCEP Art 12.1 use exactly the same definition for 'computing facility'.

[76] These categories were proposed by J Evans-Pritchard and M Williams 'The Shape of the Fractured World Economy in 2024' Capital Economics (16 November 2023). <https://www.capitaleconomics.com/publications/global-economics-focus/shape-fractured-world-economy-2024>; see also commentary by M Wolf, 'The US retains the economic advantage in its rivalry with China' The Financial Times (28 November 2023).

[77] See, for example, D Collins, *The BRIC States and Outward Foreign Direct Investment* (Oxford University Press, 2013).

reflect the reality that some countries are aligned economically, not because they share views on how best to regulate trade or investment, but because they are geopolitical allies, for example, Russia and China – the former of which relies heavily on imports from the latter for its economic survival due to sanctions. It may transpire that these groupings construct their own economic treaties and that, according to the theory of convergent plurilateralism, various countries will become parties to more than one such instrument (probably the countries in the two 'leaning' categories).[78]

More optimistically, it could be that the great powers will cooperate in some areas, building more flexible rules designed to preserve an open global economy, as well as prevent armed conflict. Addressing the challenges of global health, climate change and possible the emerging threat / opportunity of AI may be such spheres of cooperation. Some have proposed the creation of a framework of four categories through which states could identify areas cooperation: actions which are prohibited, those in which mutual adjustments by two or more states could benefit all parties, those undertaken by a single state, and those that require multilateral involvement.[79] Plurilateralism would appear to fall within the second category in this construct.

A key premise of convergent plurilateralism is that the megaregional agreements actually have much in common. This reality reflects the dominance of WTO law as the baseline blueprint for many such agreements. For example, the RCEP was designed for compatibility with the WTO. Its e-commerce chapter is seen by some as providing the most likely path forward in negotiations in this area at the WTO.[80] It follows that trading partners will eventually recognize this and may therefore decide to link them. The exercise also appears to contemplate megaregionals more as constitutional arrangements than contractual ones, suggesting that they are bargaining entities or communities in their own right. Overlapping 'coalitions' like the CPTPP or the RCEP, itself the largest free trade agreement in the world by GDP, could therein pave the way to a revitalised global trading arena. While it has only three parties and is therefore hard to characterize as a plurilateral, the economically massive USMCA could also accrete new members, such as Costa Rica or Uruguay, bringing in the US and allied countries in the

[78] Another plausible means of imaging convergent plurilaterals would be the three categories posited in relation to the management of data in the digital economy: the US, focused on market-oriented approaches to the regulation of the internet, including issues of privacy; the EU's rights-based focus; and China's security, censorship-dominated ideology:A Bradford, *Digital Empires* (Oxford University Press, 2023).
[79] D Rodrick and S Walt, 'How to Build a Better Order: Limiting Great Power Rivalry in an Anarchic World' Foreign Affairs (Sep/Oct 22)
[80] McDonagh, above n 65

Americas under one economic rulebook.[81] These three megaregional plurilaterals might plausibly be mapped onto the world's leading geoeconomic actors and their allies, reflecting their respective attitudes toward international economic relations.[82]

Encouragingly, the duplicative elements of megaregionals seem to be greater than those which distinguish them from one another. Shared elements include tariff reductions across a range of goods, commitments to transparency and the reduction of non-tariff barriers in the form of redundant conformity assessment procedures. Promises not to expropriate investments without compensation and general commitments to non-discrimination are also found, to varying degrees, in the CPTPP, RCEP, USMCA and others. As such, a Venn diagram of these agreements would resemble the umbra of a solar eclipse at totality; only a shimmer of difference would be discernible on the edges.

However, the differences, much like the diamond ring effect of a solar eclipse (to extend the astronomical metaphor), would be significant, perhaps fatally. The RCEP is shallower than the CPTPP, covering fewer sectors with fewer commitments to services. It also lacks many of the 'progressive' elements of the CPTPP or USMCA on labour and environmental protection. In contrast, the RCEP's rules of origin are more flexible than those of the CPTPP, which, in turn, are more flexible than those of the USMCA. In the important area of digital trade, the RCEP differs from the CPTPP and USMCA in that it does little to restrain government interference in the digital market through either regulation or censorship, leaving open the possibility for customs duties on electronic transactions.[83] Unlike the CPTPP, the USMCA does not allow its parties to invoke a public policy objective of imposing a data localization requirement as a condition for providing a digital good or service in the territory.[84] In terms of investor protection, the CPTPP differs from the RCEP and the USMCA notably because of the lack of investor-state settlement by the latter two instruments. The list could go on.

[81] L de la Calle, 'Time to Analyze Expansion of USMCA? Costa Rica and Uruguay Would Be Potential Candidates' The Wilson Centre (12 January 2023) <https://www.wilsoncenter.org/article/time-analyze-expansion-usmca-costa-rica-and-uruguay-would-be-potential-candidates>

[82] Under this rough reckoning the USMCA might be said to reflect the US view, RCEP the Chinese, and the CPTPP possibly the Japanese (although the original CPTPP, the TPP, was predominately drafted by the US).

[83] G C Hufbauer and M Hogan, 'Digital Agreements: What's Covered, What's Possible' Peterson Institute for International Economics (October 2021) <https://www.piie.com/publications/policy-briefs/digital-agreements-whats-covered-whats-possible>

[84] See P Leblond, 'Uploading CPTPP and USMCA Provisions to the WTO's Digital Trade Negotiations Poses Challenges for National Data Regulation' in M Burri ed. *Big Data and Global Trade Law* (Cambridge University Press, 2021).

Although there are important differences amongst the major megaregionals, they are for the most part technical; they do not fundamentally represent different worldviews with regards to international economic law as an ordering force in geoeconomics. Indeed, it is noteworthy that all three regimes contain disciplines on trade remedies (subsidies, anti-dumping, and safeguards), each of which in turn essentially reaffirms commitments found in the relevant WTO instruments, despite the alleged difference in perceiving the role of the state in markets between the West and East. The WTO could operate as the focal point of convergence, particularly if new plurilaterals are designed to be WTO-compliant, as the RCEP was. Deeper, WTO plus commitments, for example in relation to services, which the GATS failed to liberalize will probably not be achieved multilaterally.

Under the new geoeconomic paradigm, plurilateralism may therefore be essential only at the periphery of international economic relations, while the core WTO, he umbra of the eclipse or Venn diagram, will continue to cover many of the core principles. The 'modular' structure of the plurilateral DEPA could be instructive in this regard. DEPA is meant to coexist with other international trade agreements while providing portable and variable commitments that can be 'slotted-in' to those other agreements. In that sense, DEPA operates both as a foundation for digitally minded countries to build a critical mass of partners and as a conduit through which a body of largely matching digital trade obligations can be developed, moving incrementally closer towards being fully multilateral.[85]

Another economic agreement that allows plurilaterals which appears to offer some promise through heightened flexibility is the Indo-Pacific Economic Framework for Prosperity (IPEF), launched by the US in 2022 but which has failed to gain traction. The IPEF involves negotiations with 13 other countries in the Asia-Pacific region, including India, Japan, and Australia, comprising 40 per cent of the global GDP. IPEF contemplates four 'pillars': trade, supply chains, clean energy / decarbonization and tax/anti-corruption. [86] Crucially, IPEF is designed to be flexible, meaning that IPEF partners are not required to join all four pillars.[87] This optionality is reminiscent of the DEPA's 'modular' structure, much as it recalls the variable elements of the CPTPP via that instrument's numerous side letters and annexes. It

[85] J Hyoung Lee and D Collins, 'The Digital Economy Partnership Agreement (DEPA): Accession to the Digital-Only Regime' in D Collins and M Geist eds. *Research Handbook on Digital Trade* (Elgar, 2023).
[86] <https://ustr.gov/trade-agreements/agreements-under-negotiation/indo-pacific-economic-framework-prosperity-ipef >
[87] See also J Chaisse and P L Hsieh 'Rethinking Asia-Pacific regionalism and new economic agreements', Asia Pacific Law Review, 31:2, 451-468 (2023).

remains to be seen what the text of the IPEF will contain and the degree of economic integration it achieves, given the highly disparate nature of its parties, both developmentally and politically. The IPEF's Supply Chain Agreement, which is the first plurilateral agreement to arise out of the IPEF aims, ambitiously, to promote coordination among the IPEF partners on building resilient, efficient, productive, sustainable, transparent, diversified, secure, fair, and inclusive supply chains.[88]

One area of optionality that should be explored in any plurilateral is that of trade remedies, which are among the most contentious elements in the rulebook of international economic law. Anti-dumping, countervailing, and safeguard duties have been the source of a tremendous amount of litigation and diplomatic tension between countries, notably the world's three superpowers: the US, the EU, and China. The imposition of remedies for the breach of these rules has led to many harmful tariff barriers.[89] If trade remedies were treated as non-compulsory in a 'modular' style plurilateral, meaning that countries could opt out of their capacity to use them on a reciprocal basis, this would go a long way to achieve harmony under the new geoeconomic realities where different understandings of the role of the state (in the case of subsidies) and bad faith incentives to challenge price differentials (in the case of dumping) would otherwise worsen. Efforts to establish industrial subsidies cease-fires, notably between the US and the EU, are strong evidence of this. Cross border data flows and intellectual property are other spheres where convergent plurilateralism could present a viable path forward.

7. ConclusionThe "new" trend in geopolitics represents a shift from the post-World War II multilateral order, characterized by the Bretton Woods institutions and US dominance, to a multipolar world with competing centres of power. This shift is marked by: the rise of China and other emerging economies; increasing economic nationalism and protectionism; the weaponization of economic tools for geopolitical gains; the fragmentation of global supply chains and the growing importance of digital economy and technological competition. These developments challenge the traditional foundations of international economic law, which was

[88] Indo-Pacific Economic Framework for Prosperity Agreement Relating To Supply Chain Resilience, https://www.commerce.gov/news/press-releases/2024/01/us-department-commerce-announces-upcoming-entry-force-ipef-supply-chain.

[89] S Lester, 'Sometimes the (Trade) Remedy is Worse than the Disease' The Cato Institute (9 October 2017) <https://www.cato.org/commentary/sometimes-trade-remedy-worse-disease>. He notes that some bilateral FTAs have eliminated anti-dumping measures, e.g. Australia-New Zealand.

built on principles of free trade, comparative advantage, and multilateral cooperation. The ensuing challenges for international economic law are therefore the need to adapt to a multipolar world order; to addressing the tensions between economic nationalism and global integration; to regulating the digital economy and emerging technologies; to balance national security concerns with economic openness; and to addressing the environmental and social impacts of economic activities. Whether beneficial or negative, a plurilateral approach to these issues may be assessed through a framework based on effectiveness: does plurilateralism achieve its stated goals more effectively than multilateralism or bilateralism? Inclusivity is another important consideration: does plurilateralism promote participation from a diverse range of countries, including developing nations? Moreover, can it adapt to rapidly changing geopolitical and technological landscapes? It must also be considered whether plurilateralism contributes to or mitigate the fragmentation of international economic law? On power dynamics more generally, does it reinforce or challenge existing power imbalances in the international system? It must be asked whether plurilateralism maintains or enhance the legitimacy of international economic governance? Finally, is it compatible with existing multilateral frameworks?

Plurilateralism can be seen as both a positive and negative response to current geopolitical challenges. On the positive side, it allows for greater flexibility and adaptability. It enables like-minded countries to pursue deeper integration and can serve as a laboratory for new rules and norms. In terms of its negative aspects, plurilateralism may contribute to further fragmentation of international economic law and could reinforce existing power imbalances. In so doing it may undermine the legitimacy of multilateral institutions. Ultimately, the assessment of plurilateralism depends on how it is implemented and its ability to address the challenges posed by the new geoeconomic landscape while maintaining the core principles of international economic cooperation.

Plurilateralism is the second-best option response to changing global economic and political dynamics that has exposed the limitations of the multilateral framework. Plurilaterals can yield efficient outcomes that reflect the varied needs of their constituent states. This does not imply, simplistically, that plurilateralism is a ready solution to complex phenomena in international affairs. Negotiations among states to create legally binding obligations concerning economic activities will always be difficult, especially when set alongside political tensions. Whether plurilateralism evolves via a reformed WTO, overlapping megaregionals,

highly flexible modular treaties, or a combination of all three, the rule of law (as it is variably understood) will remain a cornerstone of new geoeconomic realities in the foreseeable future.