Speech

A CONVERSATION WITH ROBERT HUDEC*

Jose Manuel Alvarez Zárate**

Good afternoon to all my esteemed colleagues, practitioners, academics, and public officials joining us today at the Ninth Biennial Society of International Economic Law (hereinafter "SIEL") conference at National Taiwan University in Taipei.

I want to express my sincere gratitude to the SIEL Executive Council for inviting me to deliver the Robert Hudec Lecture. I was taken aback to receive the invitation at my home near Bogotá, Colombia, and I was deeply moved to be asked to deliver this lecture by such a distinguished group of colleagues, whom I greatly admire and respect. I am honoured to be delivering this speech today for several reasons, not least because of the importance of Professor Robert Hudec's extensive work and legacy in the field of international economic law. But also, because of the important figures who have delivered this lecture before me, including Professor John Jackson, Joseph Weiler, Professor Chang-fa Lo, Donald McRae, Michael Trebilcock, Joel Trachtman, Mary Footer and Padideh Ala'i. It is also an honour to share some ideas on the politics of international law and international economic law with you.

So, delivering this lecture to this vibrant and broad internationalist community is challenging because I will speak about ideas and values regarding law, politics and economics that we all share, albeit with different understandings and interpretations.

Since the first conference in Geneva, in 2008, this community, which is with us here today in beautiful Taipei, Taiwan (or Formosa "Isla Hermosa" in Spanish), multiple conversations have taken place on various issues that

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* This is Robert Hudec's lecture, which was delivered at the 9th SIEL Conference in Taipei on 10 July 2025 by Jose Manuel Alvarez Zárate.

** International Economic Law Professor, Universidad Externado de Colombia. The author can be reached at: jose.alvarez@uexternado.edu.co.

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posed important challenges relating to trade and investment law, as well as to the relationship between these two and their impact on the environment, human rights, security, and physical and economic warfare.

These issues, which are being discussed at this conference, continue to resonate in classrooms, academic corridors and international organisations. In my view, the same issues have not been settled yet in the trade and investment systems, and scholars, practitioners, and public officials are still working on them with the same level of intensity, with the distant hope that the main issues will be solved someday. We do not exactly know when, but our hopes continue to guide us.

Let's begin. My lecture today is about power, and law applied to international economic law and international law. Why these two? Well, because today we are witnessing permanent tension in international relations between these and because power behaves no differently in all areas of international law.

I am sure that these are issues that everyone in this room has reflected on, and that we all have different ideas about, given the many current circumstances. Many of us have written articles and given lectures, and in the classroom, we have all attempted to explain to our students what is happening in the world today.

In the context of our biennial conference, some of Robert Hudec's ideas help us to discuss power and law. We acknowledge that the professor's extensive work continues to educate us on these matters. Thus, for this conference, I will just discuss a few of his ideas from two publications: *Developing Countries in the GATT System* (1987), written shortly after the start of the Uruguay Round of GATT negotiations, and *Thinking About the New Section 301: Beyond Good and Evil* (1990). The world has changed beyond recognition since then. I finished law school around the time these publications were released (1987) and began working full-time at a law firm (1990) on regulatory issues related to trade, international contracts, and investment in Colombia. At that time, these areas were studied and worked on jointly, at least in Latin America. This is just one example of how the world has changed since then.

Now, let us pause briefly to consider the title that serves as the guiding principle for today's conference: "Navigating New Horizons: International Economic Law in a Changing World." This title is particularly apt when considered in conjunction with Robert Hudec's work, "*Thinking About the New Section 301: Beyond Good and Evil* (1990)," presents interesting concepts that demonstrate how nations' actions can result in substantial shifts within the international system. Consequently, as we focus on the imminent future, it is reasonable to anticipate that more substantial transformations in the economic, legal, and political domains will occur. The impending modifications will certainly present significant challenges. Nevertheless,

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they will also present an opportunity to enhance and reintroduce serious discussions about the fairness and impartiality of the international system. We must not lose sight of the fact that, as was established, the International Economic Law, is not a neutral set of rules. It is a politically driven set of rules, ideologically motivated.

For several years now, states, international institutions such as the World Trade Organization (hereinafter "WTO"), the United Nations (hereinafter "UN"), and the International Court of Justice (ICJ), among others, which inspire us to write and work, have been facing headwinds on their paths. In the past, they have overcome these challenges. Despite this, we are currently facing a hurricane on the horizon. The consequences of this hurricane will be devastating for many states, and millions of people will be affected. It threatens our stability and security, and even the survival of part of the international community.

Now, let's give a short review of the inaugural SIEL Conference in 2008. At that time, Professor David Trubek commented on the relevance of Robert Hudec's work and his approach to the communicative, facilitative, and coercive functions of law at the international level and how these concepts could be applied to international economic law and to international law in general. Hudec did not express much enthusiasm on the coercive function but had hopes of the communicative and facilitative ones, as Trubek pointed out.

So, the role that law could or should play in the global economic order and the international order in general is clearly defined. However, nowadays, the repeated failure to comply with the principles and fundamentals contained in the WTO and UN Charter, including commitments on climate change, among others, shows that those functions have stopped working. But, Hudec had a pragmatic view of law and politics.[1] Robert Hudec's pragmatic reflections on the linking of law and politics are useful. But Hudec understood politics as the exercise of diplomacy in negotiations and the resolution of differences in the old General Agreement on Tariffs and Trade (hereinafter "GATT"), not as the use of plain power as we see it today.

So, my understanding is that for Hudec, diplomatic discussions took place through legal institutions that have evolved in sophisticated international organizations such as the WTO and UN. This institutionalization would facilitate diplomatic conversations between the member states of these organizations, under rules that are subject to political interpretations. Thus, this kind of diplomacy, as conceived, has fallen short, and it is failing to resolve today's most pressing global problems, such as preventing war atrocities, war itself, respecting human rights, complying with trade rules, and environmental commitments, among others.

[1] We should consider that the concept of politics is often used to describe a relationship of power between one entity and another.

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It is clear that some states are currently abusing their power, and that diplomacy and law are proving to be ineffective in responding to those countries.

Consequently, we are facing a regression, a setback in international relations, where some states prefer to use hard power, even against the international rules they freely promoted and accepted not long ago. As a result, those states continue to disregard the law, diplomatic efforts, and criticism from most of the international community. We are certain that this sailing boat will take us towards a horizon full of changes, just as the title of our conference suggests.

Thus, as scholars and practitioners, we must keep discussing law and power to understand—and explain—the current dynamics of these two forces in the reconfiguration of the international system today. For this, we can recognize three levels of power in the international arena. In the first level, we find states with high and diverse resources of economic, military, and technological power. These states can actively influence the international system. The second level comprises states with medium power resources and medium capacity to influence the international system and have medium power to resist changes. The third level consists of states with low capacity to influence world politics and to resist the pressures exerted by the two previous levels. In this level we can find most states.

Let's see what happens to the law when different powers collide. It is clear that recent economic clashes between states that share similar power resources, and are at the first level of power, lead to diplomatic negotiation between them and a modification of the international rules that apply to them, perhaps in a balanced way. But in their conversations, the general international rules that bind them are breached.

Meanwhile, the trade confrontation between a state in the first level of power and states in levels two and three has led to the loss of multiple concessions negotiated multilaterally during the Uruguay Round to create the WTO, as well as the bilateral agreements through regional trade agreements. The conversations between these two groups of states do not seem to have ended with balanced concessions. On the contrary there are unilateral concessions for the first-level state power.

One thing that has sparked my attention is that this diplomatic trade dialogue between the states involved in the disputes has continued, but governments, at least in Latin America, have not demanded compliance with the agreed-upon trade rules. This raises various concerns about the functions of law.

So, the international community should be concerned about the dilution of the functions of law, the destabilizing capacity of power actions on international institutions, and the lack of effective mechanisms in the WTO and the UN to control the excesses and abuse of power.

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I also have concerns that even ethical appeals have failed to ensure compliance with international law. And that the legitimacy that international law has achieved so far as in the system to reasonably achieve greater levels of equality and justice is being lost. However, despite its imperfections, international law can still be considered morally valid and work to achieve its compliance. Because International Law has undoubtedly engendered adherence and respect from most of the international community.

Following Hudec, who was not only concerned with pointing out states' failures to comply with international norms, but also proposed analysing the reasons behind these failures, we could venture to suggest some of the reasons: mainly, the inability of Western hegemonic states to maintain economic, technological and military power under the rules designed after World War II.

Also, the violation of international law could be undoubtedly explained by the following factors: changes generated by international competition over strategic natural and technological resources; changes in trade and investment flows; changes resulting from competition to maintain or access markets; and the dynamics of the struggle to achieve, consolidate, or maintain power hegemony.

At this point, we could ask ourselves: Where has the international law that was created with the express purpose of controlling power gone? These days, the law is clearly insufficient and falls short when faced with the necessity to control the unrestrained exercise of power.

But more importantly, we need to find solutions: We must identify the necessary changes to pursue at the global level to ensure that power does not ignore the progress achieved in multilateral agreements.

To begin answering these questions, we could offer a glimpse of the historical background. Pause for a moment to reflect on how states have exercised power over the last 80-100 years within international legal frameworks. Also, consider the role of law in achieving some degree of power restraint, albeit in a limited manner.

The participation of third-level states—basically developing countries—was essential in introducing to the UN and GATT the recognition of the low level of economic and military power of these countries. This helped to limit the excesses of power, albeit without much success in many cases. But the rules of law to limit the power against developing countries are there, so the expectation that the international community as a whole must comply with them is also there. Such as the right to self-determination, as well as political, economic, and military non-interference on any state. I am confident that the current decline in following international law commitments, such as the guarantees of states to protect human rights is temporary.

On the other hand, global history proves that the excessive use of power was once the norm, and that the most abusive actions were justified using a

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variety of legal techniques. Francisco de Vitoria, one of the founding fathers of international law, Juan Gines de Sepúlveda, and others, justified Spaniard atrocities in America through legal means.

So, the abuses of power we are witnessing today are the product of historical continuities. These continuities show us the persistence of patterns of behavior and common characteristics of power abuse since time immemorial. For the purposes of this discussion, let's go back to when the whole world was integrated into international trade, this is, when the great leap towards modern economic globalization happened and when the development of international law began in the 15th century with Francisco de Vitoria.

Allow me to comment some of these continuities. Remember the ambitious Spanish and Portuguese navigators who first ventured across the Atlantic Ocean at the end of the 15th century to reach what they later called America. They set out to open new trade routes to the East, but without really knowing where those horizons would take them, whom they would meet and what they would face. These entrepreneurs were driven by a strong aspiration for finding new markets and products, and a deep-seated ambition.

The Spanish encounter with America led to the Portuguese, Dutch, and English following suit. With them came much of Europe, which consolidated the colonization process of America—often bloody—while new voyages were undertaken. These trips encouraged Spain to reach the territories they called the Philippines at the beginning of the 16th century. They moved to northern Taiwan and established the colony of Formosa—Isla Hermosa, meaning "beautiful island" in Spanish—at the beginning of the 17th century. But the Spanish were expelled from Formosa by the Dutch a few years later.

On the other hand, on their way to India to compete in the spice trade dominated by the Turks and Arabs, the Portuguese and Dutch established ports along the African coast in the 15th century, which they used to reach Asia and control the spice trade with Southeast Asia, China and Japan.

These ports were also used to initiate an infamous era of human trafficking for slavery until the 19th century. Other European powers joined in this trade. The African continent was divided up by these powers at the end of the 19th century, marking a new phase in African colonization.

While the European powers engaged in a fierce competition to expand their commercial empires and dominate African, Asian, and American territories, direct conflicts led to significant wars, including the Seven Years' War (1756-1763), which also involved North American, Indian, and Caribbean colonies.

In the case of the Middle East, from the 15th century onwards, when the European expansion began, the influence of that region on Europe was still felt in various fields: science, philosophy, art and architecture through commercial and cultural exchange. The Muslim conquest and settlement in

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Spain, from 711 to 1492, the latter being the year when Christopher Columbus arrived in America. The Ottomans established themselves in Sicily in the 9th and 11th centuries and advanced from the East for five centuries, from the 14th to the early 20th century, through the Balkans and Bulgaria.

It is crucial to acknowledge that a significant portion of Hungary was occupied for 150 years, until the 17th century. The Ottomans even advanced to the gates of Vienna, until they were decisively defeated at the Battle of Vienna in 1683.

But, despite the ongoing wars, trade and cultural exchange between Europe and the Middle East persisted. Trade treaties known as capitulations ensured this exchange. These treaties granted commercial rights and privileges, including reduced tariffs and extraterritorial rights for their citizens within the Ottoman Empire.

The early capitulations between the 15th and 17th centuries saw the Ottoman Empire, a major power in the Mediterranean, grant capitulations to European nations such as France and Venice. This was a clear recognition of these countries as being friendly powers.

So, the Middle East colonization was rather different and gradual, until it intensified at the end of the 19th century, and consolidated when the Ottoman Empire fell in the First World War and the Middle East was divided between France and England, who were gaining markets, routes and influence in those territories since the 18th century.

This brief account shows the constant dynamics between the widespread use of power and force to open trade routes and markets, and the fragility of the construction of law to guide international relations. However, it is clear that the law was always present in these processes, even if the creation of it and compliance with it was determined by the most dominant power.

We have now arrived at the present time. The late 19th and 20th centuries saw the establishment of a network of international agreements of various types, including economic agreements. It took two world wars for the powers involved in the conflict to realize that stronger global institutions were necessary to promote international cooperation in different areas. Rules were needed to prevent future world wars, foster international cooperation in the political arena, and agree on a minimum set of rules.

These rules prohibited the use and threat of force against the territorial integrity of any state, and promoted respect for human rights and state sovereignty. It was also necessary to establish minimum rules to promote international financial stability and monetary cooperation. These rules were the first steps towards promoting the stability and predictability of international trade.

The creation of the UN, the International Monetary Fund (IMF), and GATT unequivocally demonstrated a commitment to the guiding force of

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international law, and confidence in the full and proper fulfillment of the established international agreements. This was an era of international hope.

Returning to Robert Hudec's ideas regarding the intertwining of law and politics in international relations, history has shown us that, when law and politics are in conflict, law is usually sacrificed by force. This conflict is understood as a battle over the different uses of power. This is a historical fact, and it is still being experienced today. However, we must recognize that the world today is undeniably better than it was 80 years ago, 100 years ago, and definitely better than it was five centuries ago. International law has undoubtedly advanced, driving the global community toward a fairer world. Not perfect, but a better one.

And once again, we must ask ourselves a question: What can we do to discipline the savage forces of power that have been unleashed for so long? What can we do here and right now in our work as practitioners, academics and officials? The answer is simple: we must persistently demand respect for the law and work towards establishing more legitimate international rules to regulate the international conduct of the international community.

I endorse Professor David Trubek's and Patrick Cottrell's words in their paper "Robert Hudec and the Theory of International Economic Law: The Law of Global Space" where they clearly state that Hudec's work on trade is essential for addressing contemporary issues in international economic law. Thus, Hudec's general analysis is still a useful way to deal with current issues of international law and power.

Trubek says that Robert Hudec was a legalist who maintained his faith in rules. However, he was also pragmatic because he recognized that general standards and detailed rules can play an important, but not necessarily a decisive role in a complex normative process. He demonstrated how actors employ rules in various ways and how they may reinforce them with other sources of power and persuasion.

These ideas would seem to show that there is a certain form of controlled, non-abusive power that is necessary and accepted to help enforce international law. However, this view does not seem to be shared by most of the international community, because experience has shown that usually the use of power is not compatible with the correct interpretation and application of the law, in addition to undermining the legitimacy and credibility of the system. Furthermore, we observe that this practice has evolved into situations such as those we see today, which have led to a hegemonic excess in the interpretation of the law.

International law aims for equality, but reality is often one of power dynamics to gain different meanings of equality. As Paul Kahn explains in his paper Hegemony and International Law, power asymmetries shape the global order and influence the application and interpretation of international law.

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Another work from Hudec serves well for this lecture. The approach in the essay "*Thinking About the New Section 301: Beyond Good and Evil (1990)"* where Hudec's criticism is still pragmatic. For him, criticizing the United States for claiming that "international law has been broken" is too simplistic and is not enough to understand how particular states interact, the reasons behind their positions, and the related benefits.

So, in this work of (1990) Hudec's views are clear: instead of simply condemning the United States, he uses the example of Section 301 to argue for the value and legitimacy of disregarding international rule-making bodies like the GATT. He argues that one can view Super 301 as "justified disobedience".

Despite this controversial thesis, what is interesting to point out now, is that by unilaterally imposing trade sanctions, imposing trade barriers or raising tariffs, the United States would be highlighting problematic areas and often force international organizations to make necessary reforms to their own rule-making and adjudicatory bodies. Hudec argued that it is possible, and even likely, that needed reforms would not be made without the forcing function of justified disobedience.

So, Hudec ignores the dead end of collective disapprobation and tries to explain why the United States choses such kinds of decisions; whether U.S. actions can be justified; and why these actions may benefit international trade law in the end.

By accepting the justification for noncompliance with international law for the purpose of reform, it could be interpreted as accepting that hegemonic powers may be able to encourage changes in international institutions and rules when they no longer suit them, rather than promoting changes through the mechanisms provided for that purpose within the institutional framework.

However, the justifications for repeated breaches in trade law show that it is necessary to create an organization other than the WTO, if this organization is not reformed. Also, because the promises of development, growth, and widespread well-being for all that accompanied GATT's negotiations were not fulfilled for most developing countries. We can also see that the WTO's promoters' expectations regarding the maintenance of global economic and trade control, as well as control over information and technology, went out of their control. So, this is an organization that does not serve anyone anymore and should disappear or at least radically change.

In the case of developing countries, following the signing of the WTO in 1994, developing countries proceeded with the dismantling of tariffs and administrative barriers to trade, such as import licensing systems, among others. They also adopted strict knowledge protection regimes without providing compensation for technology transfer and dismantled their industrial policies to comply with Trade-Related Investment Measures (TRIMS).

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After applying all those policies for more than thirty years, achieving higher levels of balanced development appears to be challenging for developing countries under the current trade rules. The likelihood of achieving development is even lower if the new proposals to create an additional framework of exceptions to accommodate the monumental and extraordinary subsidies of developed countries to promote industrial sectors are successful. Consequently, in light of the challenges posed by agricultural subsidies, the obstacles encountered by exports from developing countries and the new wave of industrial subsidies, the rationale for maintaining WTO is declining rapidly. Thus, something should be done soon.

In the words of Hudec's work in 1987, developing countries in the GATT system, when he argued that "the present regime does not work well for the developing countries that are its intended beneficiaries, and should be replaced." Hudec was somehow pessimistic about the relationship with developing countries becoming more productive within GATT. However, his hopelessness offered a shine of hope: "There are those who believe that the GATT [now the WTO] has become so committed to the current policy that the only way to change it would be to start a new organization."

Finally, and to conclude, the brief review of the current global landscape reveals ongoing challenges such as civil unrest, international tensions, and fierce competition for resources and markets. We are currently observing various nuances in the way countries with the capacity to generate change in the global economic and political order are producing it. Many of these states' actions are contingent on the exercise of different means of power, including economic, diplomatic, and military intervention. Furthermore, it is important to acknowledge that the rationales provided for these actions frequently lack credibility and are not aligned with the UN Charter, the WTO, human rights principles and other international commitments.

I think that if Hudec were with us today, he would likely be advocating for a reform of the trade system and contributing to the promotion of change in other international institutions through his work.

Consequently, we should examine how we can contribute to the advancement of the world legal system through our academic and practical work.

I will be happy to hear your comments.

Thank you.

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Moderator (Olabisi D. Akinkugbe):

Thank you very much, Professor Zárate, for the excellent lecture. I will resist the temptation to address it in terms that might appear reductionist, and will proceed directly to the Q&A session. I trust the audience is prepared to engage in discussion with you, so if you have a question, please raise your hand and we will begin.

Question (Leïla Choukroune):

Jose, thank you very much for reminding us of a few things we all know very well, but which are important to bear in mind. As a specialist in investment law working in Latin America, can you give us a few examples of a concrete incarnation of this continuation of neo-colonial international law?

Answer (Jose Manuel Alvarez Zárate):

Thank you, Leïla, for your question. Our legal and international institutions, as I've observed, have clear continuities. In international investment law, we can trace them back to Francisco de Vitoria in the 15th century. He proposed, as a legal doctrine, that the Spanish colonizers had the right of establishment in these new territories. They also had the right to go to war against the people who were living in those newly discovered lands if they were not friendly.

In general, we can still find similarities in these institutions today. The right of establishment is still there. There is a principle in GATT. And of course, there is no right to engage in war with countries that are not friendly. Well, maybe some exceptions right now. Within the investment system, there is a framework to settle disputes with states.

In negotiations—at least in my experience with Colombia—it was mostly about imposing the terms of the treaties. We started the negotiations in 2002, after a decade of seeing a wave of claims against Latin American states, including Argentina, Ecuador, and Venezuela.

When you look at the treaty terms, it was almost impossible to negotiate from the perspective of less developed countries. That is why you see the same models applied: For example, the Swiss model used in Colombia is the same as in Ecuador and Argentina. When you see the case of Colombia, which I know best, we have various models, including a bilateral investment treaty (hereinafter "BIT") model. However, it has proven ineffective because, in practice, we have adopted the models of all the developed countries with which we have negotiated.

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So, I can see those are going to continue, and how power operates when negotiating an investment treaty.

Question (Rodrigo Polanco):

Thank you for your presentation—it was super interesting. I wanted to ask you, following up on what Leïla asked, but the other way around: When countries from the developing world, from the South, negotiate among themselves, do you see anything different? Do you notice any patterns? Do they do things differently when they're not caught up in the North-South dynamic? If they don't, maybe you can explain why they don't do something differently, or highlight what is different, if there is any difference.

Answer (Jose Manuel Alvarez Zárate):

Thank you, Rodrigo. There are many differences. I've seen differences in trade agreements and investment agreements. For example, some countries have umbrella clauses. Our agreement with the United States contains an umbrella clause in the BIT, whereas our agreements with Peru, Chile, and Mexico do not.

Some treaties contain clear and substantive environmental exceptions, while others do not. For instance, with Canada and the United States, we don't have a clear environmental exception. You can also see differences in how environmental and human rights exceptions are drafted. In our BITs with Mexico and Costa Rica, these exceptions are more concrete and detailed.

So yes, there are differences. There's a balance of power at play, and that allows us to write treaties with some variations.

Question (Richa Jain):

Following up on Rodrigo's question, Professor Jose Manuel, how do you explain those differences? Should we see them as a matter of capacity? Or as a matter of familiarity, when different developing economies in the same region try to negotiate something together for regional integration? Or should we see them as stemming from similar conditions—similar developing conditions? What causes the difference between Global South-Global South negotiations, which is so different from Global South-Global North negotiations? From your earlier response, it seems that in the former case, we're looking at more specific and concrete commitments compared to the latter. So what dynamics are coming into play here?

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Answer (Jose Manuel Alvarez Zárate):

Thank you for your question. I think the engagement and conversation between two countries from the Global South is more fluid. I remember a cartoon published in a Peruvian newspaper when Colombia and Peru were negotiating free trade agreements with the United States at the same time. The cartoon showed the U.S. trade negotiator and the Peruvian minister.

In the first frame, the Peruvian said, "I want X," and the American replied, "I want C." In the second frame, the Peruvian again said, "I want X," and the American again said, "I want C." In the third frame, the Peruvian said, "Okay, I want C," and the American said, "So you see how we agree?"

This illustrates what I saw in those negotiations: The hard positions did not move an inch—at least in the case of the United States. Some of my colleagues from the Ministry of Trade do not feel the same, but I understand that they spent four years negotiating without real movement. Anything being moved ended up as footnotes on irrelevant points, and those footnotes were meaningless.

But on the other side, in negotiations among ourselves—such as with Mexico—while Mexico is a tough country to negotiate with, we still found common ground on different issues, and the language of the agreements changed in meaningful ways.

Question (Georgios Dimitropoulos):

Thank you very much, Professor Alvarez-Zárate, for your presentation. My question is: How do you perceive the ongoing reform in investor-to-state dispute settlement (hereinafter "ISDS"), and can that reform take into account the voices of Latin America and the Global South? If not, what would be your solution, or how should the reform proceed? I'm not asking for your personal perspective, but for the perspective you represented.

Answer (Jose Manuel Alvarez Zárate):

The current reform is essentially the one the European Union wants. I attended the United Nations Commission on International Trade Law's (hereinafter "UNCITRAL") meetings in Vienna and New York. The main interests of the European Union have advanced rapidly. Five years is a relatively short period in this context, and they enjoyed Canada's support, albeit with certain divergences.

However, the most important and pressing issues for the Global South were not on the table, this is, they have been disregarded nowadays. My perception is that the negotiations, which may conclude by the end of this year or next

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year, will not include crucial Global South concerns, such as the need for clarity on damages. Damages are a very important issue because any changes in their calculation have a huge impact on the budgets of host states being sued. Damage is also an area where arbitrators have very different and often controversial perspectives.

I don't see in general that is going to be a reform that will be truly balanced for everyone. What I would like to see is a more balanced negotiation where the voice of the Global South is meaningfully reflected. While these voices are present in the room, I have observed that, in the dynamics of negotiations, statements by countries from the Global South are sometimes made during meetings but are absent or poorly reflected from the papers drafted in subsequent sessions.

Moderator (Olabisi D. Akinkugbe):

Thank you very much, Professor Alvarez-Zárate. Before I move to the next question, you touched on something that I think is often overlooked in the "third pillar" of international economic law—the international financial world. Specifically, the nexus between damages awarded in ISDS and the debt profiles of many developing countries. The dynamics of how damages are measured and calculated, and the quantum itself, are often treated as separate issues. But I think this is an important point that deserves its own conversation outside of this session. Marcus, now over to you.

Question (Markus Wagner):

Thanks so much, Jose Manuel, for your talk. I have a question that might challenge you: How can developing countries achieve better negotiating outcomes with more developed or more powerful countries?

On the one hand, the cartoon you mentioned shows that bilateral negotiation is extremely difficult—almost impossible—which is why both Trump 1.0 and Trump 2.0 always preferred bilateral negotiations and sidelined the WTO. On the other hand, as you just said, plurilaterals or multilaterals are also difficult, at least in some forms—for instance, in the forum of the UNCITRAL.

What are the pathways to achieve that in reality, like a better outcome? If bilateral and multilateral routes are off the table, what lies in between? Might it be meaningful concessions from more powerful actors, or stronger coalitions that cannot be fractured? By "fractured," I refer to the post-Brexit example, when some African states sought to negotiate collectively but were quickly undermined as the U.K. offered selective incentives or threats, causing their joint position to disintegrate. Concretely, what steps should be taken?

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Answer (Jose Manuel Alvarez Zárate):

The Global South should be more united, while I know it's difficult and probably won't happen. It's my dream. But when I wake up, it's the nightmare I see with my eyes open.

We should try to stick together, knowing that part of the strategy of others is to split any attempt at unity. You can see this in the case of the Mercado Común del Sur (MERCOSUR)—where Brazil, Argentina, Paraguay, and Uruguay are parties. Since the mid-1990s after the WTO was created, there have been repeated attempts to divide them by taking Uruguay or Paraguay out of the agreement by some countries.

The same situation happened with the Andean Pact—which is composed by Colombia, Ecuador, Peru, Venezuela (which is no longer a member), and Bolivia. That strategy worked: They targeted Colombia and Perú with certain concessions, which eventually fractured the Andean Community.

So, the short answer is: Try to stay together in the negotiation. That unity is the best chance for the Global South to achieve better outcomes in negotiations. Otherwise, we end up where we are right now.

Question (Agata Daszko):

Thank you very much for the lecture. It reminds me of a lecture delivered by Antony Anghie at Edinburgh a few weeks ago, which addressed the idea of property and how the act of taking possession was used to explain everything, particularly by the Western colonial powers that employed the language of law to rationalize and legitimize their actions.

Your remarks about unheard voices and the importance of returning to the perspective of the individual particularly resonated with me. In the United Kingdom, we often tell students from all over the world that they will become future leaders in their own countries or within the European Union. This is the narrative we present to them. Frequently, these individuals do return and assume positions such as trade negotiators or officials in various commissions.

However, they often approach these roles with the mindset and perspectives acquired through their education in the United Kingdom, the Netherlands, or similar contexts. What is your view on this? Do we, as academics—particularly those in former colonial powers that continue to wield significant influence—bear a responsibility to challenge and reshape this narrative? Thank you.

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Answer (Jose Manuel Alvarez Zárate):

Thank you Agata. I follow Antony Anghie's work very closely, and once again, this is a matter of power. One must ask: Who are the professors in these institutions? Over the past thirty years, I have observed certain changes, including greater empathy in many universities in Europe and the United States. The professorship has become more diverse. However, it is very important not to teach only a single perspective.

As you noted, many individuals who return to govern our countries adopt a particular mindset, believing unquestioningly that free-market and deregulation are the formula needed for development. Yet the evidence shows otherwise. The manner in which we have negotiated and the agreements we have accepted have not produced the intended results. This is precisely what I have witnessed in Latin America: Following the implementation of free trade agreements and the establishment of the WTO framework, this outcome became evident.

Less-developed countries cannot compete in the global market with resources they currently export to more advanced economies, or with resources they will never be able to acquire. The gap between less-developed and advanced economies remains immense, making fair competition extremely difficult. To address this, we need a new framework that works to expand the economic pie rather than reduce it, so that everyone can be included. This is the challenge that young scholars should help us to develop.

Question (Alex Yueh-Ping Yang):

I am Alex Yang from National Taiwan University. You mentioned that you once dreamed of the Global South uniting, but when you woke up, it was a nightmare. I am wondering whether there could be an even bigger nightmare. Here is my hypothetical scenario: The Global South can unite, but the Global North can also unite. There could be a chance in which the Global North simply unites, negotiates its own rules without inviting the Global South into membership, and creates those rules to govern its own affairs. However, there would inevitably be spillover effects.

This is probably not entirely hypothetical. In the international banking law, the Basel principles were essentially negotiated by a gentlemen's club. It was not inclusive or fully multilateral. Only certain advanced economies participated in negotiating the Basel rules for banking supervision, yet those rules now apply to the entire world. Although they take the form of soft law, everyone essentially follows them. I am curious about how you would comment on this scenario. Would it be a bigger nightmare, something beneficial, or something you would even consider?

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Answer (Jose Manuel Alvarez Zárate):

Thank you, Alex, I just came to reality. From an academic perspective, we can discuss these matters and try to solve problems that the world has. Yet I have seen poverty growing in the developed world, a kind of poverty I did not witness forty years ago. It is now present everywhere, in both developed and developing countries. I do not know exactly why, but people who are left behind need concrete responses to their needs. Today, the world is not working for the majority of people, and it is not the world I once knew. I understand the dynamics of power. Even when I disagree with the rules, I must operate within them. In my lecture, I sought to emphasize the importance of law, the way it is created, and the transformations it can bring. Lawyers should honour existing commitments while working to change them from within the system.

Question (Peter Van den Bossche)

I will be the last one to diminish the importance of the law. I will also be the last one to say that there is no need to reform the rules that we currently work with. But one thing I do not think should be part of the future is framing issues as Global South versus Global North. The term Global South is a fiction. The Global South is an extremely diverse group, including countries like Brazil, China, and India, which in the WTO are among the most influential actors. Nothing moves forward there without their agreement. The Global North likewise encompasses countries with significant internal differences. In short, we should view the world as far more diverse than the simple North-South divide. This, I believe, should be the starting point for building a new international economic order.

Answer (Jose Manuel Alvarez Zárate):

Thank you, Peter. I agree with your points. There is diversity, but also certain commonalities among people. I am not referring to states, but to people as human beings. We see individuals being left behind everywhere, despite the diversity that surrounds us. In countries such as Brazil and India, there are both large companies and wealthy communities, but also extremely poor communities. We need a new system. I do not yet know what form it should take, but we must consider how to assist those who are being left behind, particularly those who lack access to basic necessities. In South America, it is estimated that at least half of the population does not have secure access to three meals a day.

Question (Peter Van den Bossche):

But you also find people who are left behind in developed countries. Of course, I share your view that we should care for all who are left behind,

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wherever they are. They can be found in every part of the world, perhaps more visibly and in greater numbers in developing countries, but also within developed countries.

Answer (José Manuel Alvarez Zarate):

Right. We should be thinking about that. What kind of system could help? International systems could play a role in lifting those people out of such conditions. That is the point I am trying to make. Thank you, Peter. I believe we are now almost finished.

Question (Gregory Messenger):

Thank you. I agree with many of the points you have made. In the United Kingdom, for the first time since the Second World War, we have a generation of children growing up shorter than the previous generation, despite the country being nominally one of the richest in the world. This division is deeply concerning. The solutions to these problems lie in education, investment in infrastructure, transport, and skills development. None of these is directly related to free trade agreements (FTAs) or the WTO. So, which part of the system should we actually rethink? And which part should we truly be focusing on? My instinct is that trade instruments are not the main focus, because the way to address problems with trade agreements is not only through trade policy, but through education and other measures. Perhaps the area we should examine is finance, as that seems to be where progress often stalls. Thank you.

Question (Leïla Choukroune):

I would like to build on what has just been said. As you pointed out, 40% of the world's population lives below the poverty line, while 1% controls 40% of global resources. This is not simply a Global North versus Global South issue; such disparities are found within both. Given this, what should be the role of international economic law? Should it mainly facilitate capital flows, as it has in the past, contributing to wider divides and ongoing inequalities? Should it simply regulate? Or should it aim to bring about real transformation?

Answer (Jose Manuel Alvarez Zárate):

I see that your two questions are related. What I want to emphasize is that we need to work on many fronts. There are promises that remain unfulfilled. We need to address health, internal regulations in public services, investment, and infrastructure. These issues are not matters of trade alone, but of the system as a whole. We need to think differently if we truly want to transform the world. Otherwise, we will find ourselves in the same position, facing the same problems, without solving them—meeting every two years, and adding

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new problems while those identified at our first conference in 2008 remain unresolved. I ended my lecture by saying that I would rather hear your comments than speak further myself, because they give us a reason to discuss the difficult issues we have yet to solve.

Moderator (Olabisi D. Akinkugbe):

Just before inviting you to join me in thanking our lecturer, I would like to note that the issues you have raised, in my own words, are of considerable significance. Whether we view them through the lens of deepening global inequality, evident in countries as varied as the United States, Canada, and Nigeria, it is clear that the "Global South" is not a fixed location but a set of fluid characteristics that may be found anywhere. These concerns emerge in contexts such as the rise of corporations and their capture of the economy, climate change, the moral foundations of legal education, questions of reform, and the pressing matters of social and economic rights and inequality. Discussing international economic law today, with reference to the work of Robert Hudec, presents far greater complexity than it would have many years ago. Please join me in thanking our lecturer for this engaging talk. As he has noted, he would be pleased to continue these conversations. Thank you.

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