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A New Global Economic Order

New Challenges to International Trade Law

Edited by

Chia-Jui Cheng



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ultimatum. The question going forward is how effective the WTO dispute settlement system can be without members' commitment to refrain from unilateral measures to address trade disputes. Without such a commitment, the dispute settlement system will be years behind trade actions.

The major issue that is likely to remain a major factor in international economic relations is the American tariffs on Chinese goods and the Chinese tariff response. The Phase One Agreement provided an end to the escalation of tariffs between the US and China but did not eliminate the existing tariffs. The Biden administration will not be withdrawing these tariffs without a broad agreement. Unlike the Trump administration, it appears that the Biden administration wants any such agreement to be more multilateral, pulling in the European Union, Japan, the United Kingdom, and other major economies. In this sense, the Biden administration is more multilaterally oriented, seeking to build a broader consensus on how the international trade law should evolve over the next decade. However, in the near term, the Biden administration is determined to maintain these unilateral measures.

IV Conclusion

This is a critical juncture for the future trajectory of the international trading system. The combination of shifts in the international balance of economic power together with the challenges of income inequality in developed economies may put more pressure than the existing international economic order can bear. Whether the WTO will continue to have the influence in international economic relations that it did in the last two decades is unknown. If the norm of multilateralism is not restored, the WTO will not cease to exist but will undoubtedly be a much weaker institution. For the WTO to survive as a strong institution, it will require the efforts of older and emerging economic powers alike. It is far from certain what the ultimate outcome will be, but it is likely to be determined in the next decade.

CHAPTER 7

How to Re-Establish a New Global Economic Legal Order?

*Alain Pellet**

I have been asked to answer a non-answerable question (which precisely is the title of our Conference): "How to re-establish a new global economic legal order?". I certainly do not have the ambition to answer it and I will limit myself to a few general thoughts before outlining possible avenues. I will do this from a strictly legal perspective – the only one that is familiar to me, while being fully aware that, on such a subject, economic, political and even ideological considerations are omnipresent and that they cannot of course be completely ignored.

In so far as the question is how to "re-establish" a "new" economic order, it is necessary to first recall what is, conceptually, a "global economic order", and then to briefly describe what it was before falling in the state of disorder in which we are now. Finally, in view of this diagnostic, as I said, I will not attempt to answer the question but to sketch possible directions for a new global economic order.

I A Global Economic Legal Order – Or Disorder

Let me then start with some general reflexions on the very notion of "global economic legal order" and where we stand now in this respect.

A *The Notion of Global Economic Legal Order*

When I first started to think about the topic assigned to me, my first move was to wonder whether the order of the adjectives used for this title was entirely appropriate: should we speak, in a predominant way, of a legal or economic order? In the West, Marxism is no longer in fashion – and I wonder if the same is not also true in China nowadays. However, I do not deny that I have a

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persisting “Marxian” background – especially because I still think that the law is a superstructure generated by the economic and social infrastructure.

As Marx himself wrote in the preface to his 1859 *Contribution to the Critique of Political Economy* “[i]n the social production of their existence, men inevitably enter into definite relations, which are independent of their will, namely relations of production appropriate to a given stage in the development of their material forces of production. The totality of these relations of production constitutes the economic structure of society, the real foundation, on which arises a legal and political superstructure and to which correspond definite forms of social consciousness”.¹ Same idea, more clearly expressed by Engels, whom I consider (as far as I can judge) to be a better theorist of law and the State than his accomplice: “the economic structure of society always forms the real basis, from which, in the last analysis, the whole superstructure of legal and political institutions as well as of the religious, philosophical, and other ideas of a given historical period is to be explained”.²

From this perspective, it is clear that there is a kind of “primacy” of the economic over the legal component. Rules of law can only effectively regulate economic phenomena corresponding to the balance of power existing at a given time in a given situation. Moreover, on the other hand, there is no absolute determinism: as the French economist Thomas Piketty points out in a recent book, “these power relations are not only material: they are also and above all [I doubt that it is “above all” though...] intellectual and ideological”,³ which explains the relative autonomy of the superstructure (and therefore of the law) from the infrastructure.

All this to say that there is indeed a set of legal rules governing international economic relations, which can be called an “economic legal order”, but that this order is first economic, before being legal.

The legal framework for international economic relations consists of a complex network of norms which in reality belong to several legal orders (or systems – I do not really care about a claimed difference) emanating from distinct spheres, i.e. national law with an international scope, public international law and transnational law – which is not at all or, at least not exclusively, of State origin. It is in this sense that we can consider that the economic legal order

1 K. Marx, *A Contribution to the Critique of Political Economy*, (1859) translated by N. I. Stone, Bibliolife, Charleston, 2009, p. 9.

2 F. Engels, *Anti-Dühring* [1878], Foreign Languages Press, 1976, p. 33.

3 T. Piketty, *Capital et idéologie*, Seuil, Paris, 2019 – my translation. French original : « ces rapports de force ne sont pas seulement matériels: ils sont aussi et surtout intellectuels et idéologiques ».

is “global”. In this respect, “global” does not signify “international” in its original meaning, i.e. inter-State as defined by Jeremy Bentham in the 1780s. More widely, it refers to any phenomenon that has an element of extraneity, i.e. that crosses borders, even if no State is directly involved in it.

It therefore appears that if it is possible to speak of a global economic order, this global order is split into several legal orders. Consequently, any in-depth reform of this so-called global economic legal order must not concern this or that particular rule or principle, or even a specific normative system, but it must necessarily concern the essential elements of all these intertwined legal systems.

B *The Characters of the (Pre-?) Existing Economic Legal Order*

Without having to go back to Antiquity, the current economic legal order – as well as public international law – has its roots in the rise of modern economic capitalism as it has been consolidated in Europe since the late Middle Ages (which corresponds to the Ming dynasty era in China). It has moved from mercantilism, i.e. “economic theory and practice common in Europe from the 16th to the 18th century that promoted governmental regulation of a nation’s economy for the purpose of augmenting state power at the expense of rival national powers”⁴ to free trade.

The era of free trade has been marked by a series of crises that have led to periods of protectionist retrenchment, the most famous example of which is the crisis of the 1930s. Although the comparison is being discussed, one may wonder whether we are not in a crisis comparable to this one in some respects. But there is at least one fundamental difference: while the “great depression” has been of an “economic” nature, the one the world is currently experiencing is, if I may say so, “legal”. By this I mean that the crisis of the 1930s resulted from a chain of negative economic phenomena, starting with an initial stock market crash, while the current crisis is the result of deliberate human decisions – lawful or not but with a legal vocation leading to the violation of pre-existing legal rules.

As is well known – and unanimously accepted I think – until very recently, the international economic order had emerged from the legal reconstruction following the Second World War. As recalled in the Declaration adopted by the Second Meeting of Societies for International Law, held in The Hague on 2 and 3 September 2019, this post-War order it was based on three pillars: the collective security system, the protection of human rights and multilateralism.⁵

4 *Encyclopaedia Britannica*, <https://www.britannica.com/topic/mercantilism>.

5 See <https://rencontremondiale-worldmeeting.org/>.

Initially, this multilateralism was essentially inter-State, including in economic matters. Originally, the post-war economic order was, for its part, also based on three pillars: monetary, financial and trade negotiations. The Bretton Woods Conference (1944) sought to build the first two (through the IMF and IBRD – though the latter did not possess any normative power in its field) and the Havana Conference (1947–1948) focused on the third. This coherent project was only partially implemented. The Havana Convention establishing an International Trade Organisation did not enter into force due to the hostility of the US Senate, and States had to fall back on an agreement originally designed to be provisional: the General Agreement on Tariffs and Trade (GATT) signed on 30 October 1947 which gradually crystallized into an international organization with a light institutional structure.

It was only with the fall of the Berlin Wall that the trade component of the international economic order, outlined in 1947, was consolidated with the establishment of an international organisation with the dual task of deepening such an order (by providing the framework for multilateral trade negotiations) and enforcing its rules (by sanctioning non-compliance with applicable principles): the World Trade Organisation (WTO), created by the Marrakech Agreements in 1994. However, its powers are extremely unbalanced: as much as they are remarkably broad in terms of monitoring compliance with GATT standards (which have been considerably enhanced) through an effective mechanism for settling disputes between its members (DSBs), the Organization's normative powers remain limited and depend on an improbable consensus among all categories of States within it.

As a result of the predominance of capitalist powers and liberal ideology, this multilateral order has gradually become globalized in the sense that large parts of international economic relations have evaded, to a certain extent, state or interstate regulation. The fall of the Wall, just mentioned, as well as China's adoption of the "socialist market economy" and its entry into the WTO have accelerated this trend.

Until very recently, the picture was as follows:

– a network of multilateral treaties set out the principles applicable to international economic relations, mainly in monetary matters⁶ and trade⁷ as well as in various more specific fields (such as civil aviation, food and agriculture, etc.) or at the regional level⁸;

6 See the IMF Articles of Agreement.

7 See the GATT relayed by the Marrakech Agreements.

8 See in particular the OECD.

– a serious gap however existed: financial transactions and, in particular, investments, were not regulated multilaterally since the World Bank had no normative powers; in this area of non-public law, a semi-private law based on a tight network of bilateral treaties and largely arbitral in essence has developed, although important countries, starting with China and Brazil, have shown a reluctance, which has hardly diminished in recent years except inasmuch China is concerned,⁹ with regard to the arbitrability of disputes between States and investors;

– more generally still, the influence of private, transnational, economic powers has led part of the doctrine to develop the hypothesis of a law with a purely private origin, operating independently of State or inter-State mechanisms: the *lex mercatoria*.¹⁰

Although made of bricks and mortar, this world economic order, which favours private interests and free enterprise, made possible the rapid reconstruction of the world economy after the Second World War and ensured the economic superiority of the United States of America and the prosperity of the West for many years.

C Crisis or Collapse of the International Economic Order?

There is no doubt that the global economic order I have just described in broad terms is in a state of crisis. It is actually not the first time that the international economic order faces a crisis but the question arises as to whether it is not collapsing purely and simply.

In the mid-1970s, the oil crisis put an end to the "Glorious Thirties" without, however, leading to the "new international economic order" that the recently decolonized Third World countries were calling for. Despite some adjustments, the "NIEO" was a failure: the contesting countries had relied too much on the power of words and the misleading majority available to them in multilateral forums and had underestimated the real power relations – here again we have the prevalence of the infrastructure on the superstructure. The lesson of this failure must be kept in mind.

9 See below fn. 25–28.

10 B. Goldman, « Frontières du droit et *lex mercatoria* », *Archives de philosophie du droit*, 1964, pp. 177–192 et « *La lex mercatoria* dans les contrats et l'arbitrage internationaux », *JDI*, 1979, pp. 475–499; A. Pellet, « La *lex mercatoria*, 'tiers ordre juridique'? Remarques ingénues d'un internationaliste de droit public », in *Souveraineté étatique et marchés internationaux à la fin du 20^{ème} siècle – Mélanges en l'honneur de Philippe Kahn*, Litec, 2000, pp. 53–74; S. Schill, "*Lex mercatoria*", *Max Planck Encyclopedia of Public International Law*, 2014.

The specificity of the current crisis is that the challenge does not come from the “periphery” (as was the case with the call for a new international economic order) but from the very heart of the system and, in particular, from its most powerful actor, the United States of America. Besides, as underlined above, this is less an economic crisis (although the aftermath of the 2008 financial crisis continues to be felt) than a challenge to the very principles that underpin the current international economic order.

Moreover, even if the current President of the United States bears a particular responsibility for exacerbating tensions, the warning signs of the current crisis, which is due in particular to the combination of the financial fragility revealed by the 2008 crisis and the failures of the WTO, should not be underestimated. Obviously, we are not dealing with a cyclical downturn but a deep structural crisis. The WTO itself has always suffered fundamental debates about its function. Protests were already raging in the final years of the Uruguay Round, at the Seattle Ministerial Conference in 1999.¹¹ Since then, the Geneva Organization has never really found its mark: the failure of the Doha Round marked the end of the hopes that could be placed on its normative competences and the paralysis of the DSB put an end to what could for some time be considered the great strength of the WTO.

As gravely uttered by the WTO’s Appellate Body Chair, “[t]hese are extraordinary times.”¹² In contrast to previous episodes of paralysis during trade rounds negotiations such as the Tokyo and the Uruguay rounds, there is for the first time in the evolution of the world trading system a serious threat not only to the WTO as a negotiating forum but to its role as provider of a quasi-judicial (or simply judicial indeed...) system for the solution to trade disputes. As aptly noted by Rubens Ricupero,

attacks against the foundations of multilateralism in trade are no longer restricted to the failure of negotiations to produce meaningful results but extend to the dispute settlement system, arguably the ‘jewel of the crown’ of the multilateral trade system. Until yesterday, WTO capacity to settle trade disputes used to be singled out as the very characteristic that made

11 M. Fakhri, “Life Without the WTO – Part I: Stop all this Crisis-Talk”, *EJIL Talk*, 24 April 2019, available at <https://www.ejiltalk.org/life-without-the-wto-part-i-stop-all-this-crisis-talk/>.

12 Ujal Singh Bhatia, Statement by Appellate Body Chair, 22 June 2018, available at https://www.wto.org/english/news_e/news18_e/ab_22jum18_e.htm.

it the only multilateral economic organization ‘with teeth’, that is, with the power to sanction violations of rules and agreements.¹³

The trigger – not the real cause (or at least not the exclusive one) – was the offensive of the United States – the WTO’s most influential and powerful member State – against multilateralism and free trade. The tactics of the Trump Administration include unilateral imposition of heavy customs duties, the abuse of “national security clause” and procedural objections to the (re) appointment of the WTO’s Appellate Body members. On 26 July 2019, President Trump escalated his fight with the WTO, giving it 90 days to change China’s “developing country” status.¹⁴ Faced with inertia, the United States took the matters in its own hands and unilaterally revoked China’s status for trade benefits – among others – in February 2020.

Trump’s position (if there is one...) is to be found in the official document “The President’s Trade Policy Agenda”:

For more than 20 years, the United States government has been committed to trade policies that emphasized multilateral and other agreements designed to promote incremental changes in foreign trade policies, as well as deference to international dispute settlement mechanisms. The hope was that such a system could obtain a better treatment for U.S. workers, farmers, ranchers, and businesses. Instead, we find that in too many instances, Americans have been put at an unfair disadvantage in global markets ... it is time for a new trade policy that defends American sovereignty, enforces U.S. trade laws, uses American leverage to open markets abroad, and negotiates new trade agreements that are fairer and more effective both for the United States and for the world trading system, particularly those countries committed to a market-based economy.¹⁵

13 R. Ricupero, “WTO in Crisis: Déjà Vu All Over Again or Terminal Agony?”, in *The WTO Dispute Settlement Mechanism*, Springer, 2019, p. 18. See also: C. Creamer, “Can International Trade Law Recover? From the WTO’s Crown Jewel to Its Crown of Thorns”, *AJIL*, Vol. 113, 2019.

14 Presidential Memorandum on Reforming Developing-Country Status in the World Trade Organization, 26 July 2019, available at <https://www.whitehouse.gov/presidential-actions/memorandum-reforming-developing-country-status-world-trade-organization/>.

15 *The President’s Trade Policy Agenda*, 2017, Conclusion, available at <https://ustr.gov/sites/default/files/files/reports/2017/AnnualReport/Chapter%201%20-%20The%20President%27s%20Trade%20Policy%20Agenda.pdf>.

This being said, we cannot focus exclusively on the WTO, nor indeed on international economic law: it is the entire post-war international legal system which is affected by the attacks on multilateralism. The roots of the crisis – both of international law in general and of the WTO in particular – are deeper today than ever and terribly complex. As Jean-Marc Sauvé, the former Vice-President of the French *Conseil d'État*, said in a remarkable speech to the European Society of International Law:

Our time seems to mark a double rupture: the crisis is no longer punctual or periodic, it has become permanent; it no longer enlightens us on the meaning of an evolution; it has become a source of indecision, disorder and uncertainty as to its causes and effects, its diagnosis and its remedies. Crises are no longer as obvious as before in the post-crisis horizon. This double rupture is undoubtedly due to a profound shaking of our conception of progress and individual and collective identities. Today we are confronted with the vertigo of an endless, unrestrained and limitless crisis.¹⁶

In a recent study, the OECD, without expressly saying it, points to one culprit: nationalism, which has spread across the globe over the past decade.¹⁷ “Certainly,” as explained by a French analyst, “the free trade dogmatism that has long presided over the action of international organizations bears its share of responsibility. Lawless globalization, which seemed to be the Grail of planetary leaders, by its excesses, has thrown the working classes of the rich countries into disarray, favouring populist voting. But the nationalist reaction makes us move from Charybdis to Scylla. The commercial war launched by

16 Closing address by Jean-Marc Sauvé, Vice-President of the French Conseil d'État, at the 22nd Annual Conference of the European Society of International Law (ESIL) held in Riga in Latvia from 8 to 10 September 2016 (<http://english.conseil-etat.fr/Activites/Press-releases/How-international-law-works-in-times-of-crisis>). French original: “notre époque semble marquer une double rupture : la crise n'est plus ponctuelle ou périodique, elle est devenue permanente ; elle ne nous éclaire plus sur le sens d'une évolution ; elle est devenue source d'indécision, de désordres et d'incertitudes quant à ses causes et ses effets à son diagnostic et ses remèdes. Les crises ne s'inscrivent plus avec autant d'évidence qu'auparavant dans l'horizon d'un 'après-crise'. Cette double rupture tient sans doute à un ébranlement profond de notre conception du progrès et des identités individuelles et collective. Nous sommes aujourd'hui confrontés au vertige d'une crise sans fin, sans ordre et sans limite.” (<http://www.conseil-etat.fr/Actualites/Discours-Interventions/Comment-le-droit-international-fonctionne-en-temps-de-crise>).

17 OECD, Interim Economic Outlook, 19 September 2019, available at <http://www.oecd.org/economy/outlook/>.

Donald Trump with China and a few other competitors of the American economy, according to the OECD, raises the price of trade, blocks investors' horizons and spreads uncertainty about economic activity.¹⁸

International law appears to be coming back rapidly to a largely inter-State, Westphalian like, legal order resembling the one described by Vattel in the early 18th century¹⁹ and certainly to a more “inter-sovereigns” order, less multilateral, with greater emphasis on new and “raw” power relations. The United States is weakened (but far from defeated) by its denial of the less unjust order of which it was the main founder in 1945, in the name of a demagogic slogan – the infamous ‘America first’ – and by its attempt to project its own law beyond its borders. Also, I am sorry to say, China is weaving its web by exalting State sovereignty for the greater benefit of its own through the “Belt and Road” initiative. And lesser lords try to take advantage of the new Cold War to make their way between the two giants who more than ever practice a somewhat obscene clientelism ...

It would be completely inconceivable that treaties such as the Marrakech Accords which completed the post-war world economic order in 1994 – that is more than 25 years ago – could be signed today. And while frustration with the tiresome complexity of multilateral negotiations had found an effective alternative in the proliferation of bilateral or regional free trade agreements, this approach is now also undermined, with no second-best rule-based option left. I notably have in mind the misadventures of the Trans-Pacific Partnership Agreement which was eventually replaced by the Comprehensive and Progressive Agreement for Trans-Pacific Partnership which finally entered into force at the end of 2018 without the United States participating. Similarly, the negotiations over the Transatlantic Trade and Investment Partnership between the United States and the European Union have stalled both because Trump has launched a second frontline in his all-out trade war by also initiating a trade conflict with the EU and because of significant opposition among European public opinions. For its part, the Comprehensive Economic and Trade Agreement between the European Union and Canada seems to know a somehow better fate, although it is not without controversies either. Although it was signed in 2016 and ratified by the European Parliament in 2017, it is since then being provisionally applied pending ratification by all EU Member States and, despite the opinion of the European Court of Justice that the dispute

18 L. Joffrin, “Molière et la récession”, *Libération*, 19 Sept 2019, available at .

19 E. de Vattel, *The Law of Nations or, Principles of the Law of Nature, Applied to the Conduct and Affairs of Nations and Sovereigns*, ed. by B. Kapossy and R. Whatmore, Liberty Fund, 2008, 867 P.

resolution mechanism provided for in the treaty complies with EU law,²⁰ it remains controversial with several European States.

The situation is all the more worrying since trade and economic relations have traditionally been a strong – if not the main – driver for developing international relations. But the halt, or recession, is not limited to economic relations – think, for example, of the brutal denunciation by the United States of the 1987 Intermediate-range Nuclear Forces (INF) Treaty with Russia or of their disastrous withdrawal from the JCPOA, or, more generally, of Mr Trump's denunciation mania.

The failure so far to deal with those challenges suggests that the threat to the global economic legal order has deeper roots than the prejudices of the current Trump Administration. Unless an effective and satisfactory solution is found, the danger for the economic order will remain even after the end of the Trump Administration.

II What Can We Do? What Can Law Do?

And this takes me to my last point: what can we do? what can law do?

As I have said earlier, the very serious world economic crisis we are facing is not unprecedented, the best comparison being the 1930s Great Depression in spite of the differences. And the comments made at the time by the British politician Sir Arthur Salter are strikingly topical:

The world is now at one of the great cross-roads of history. The system, usually termed capitalist [...] has developed deep-seated defects which will threaten its existence unless they can be cured. We need to reform, and in large measure to transform, this system. We need so to improve the framework of law, of institutions, of custom and of public direction and control, that the otherwise free activities and competitive enterprises of man, instead of destroying each other, will inure to the general good. ... Now in every aspect of this great task one fundamental issue constantly occurs. Upon what basis are we to plan, at what goal should we aim? Are we to move more and more toward a system of closed units, with political and economic boundaries co-terminous, each aiming at a self-sufficiency

with no more than a minimum of external relations? Or are we to aim again at building up world trade within the framework of a world order?²¹

These are, precisely, the questions that we face today at a time of renewed economic nationalism.

In effect, most threats to international law and the global economic legal order are rooted in the exacerbation of sovereignty; yet, contrary to a widespread belief, sovereignty is in no way an absolute concept and it is not incompatible with law. As the Permanent Court of International Justice put it, one cannot “see in the conclusion of any Treaty by which a State undertakes to perform or refrain from performing a particular act an abandonment of its sovereignty.”²²

However, treaties are paper scraps if they are concluded without a real desire to comply with them and if they do not realistically reflect the underlying power relations. Or, to put it another way, reinventing a new international economic order cannot be done by incantations. As Pascal Lamy, the former Director-General of the WTO, rightly noted that success of an international organization in reaching its objectives ultimately relies on good faith cooperation between member States, not on magic.²³ This applies more broadly to the reconstruction of the world economic order, the root causes of which are structural, calling for solutions that are themselves structural.

I must say that, for the time being, I am not very optimistic. The United States remains the world's leading economic power and there is no reason to believe that it will emerge from its isolationist spiral in the near future. Europe (I mean above all the European Union), which is still the leading trading power, seems condemned to immobility because of the divergent interests of its members, internal tensions in some of its Member States and, of course, Brexit.²⁴ Paradoxically, and I say this without demagoguery, hope may

²¹ Sir Arthur W. Salter, *The Future of Economic Nationalism*, 11 *Foreign Affairs* 1, October 1932, pp. 8–9, quoted by D. Desierto, *Economic Nationalism in a New Age for International Economic Law: Recalling Warnings of Ludwig von Mises and the Austrian School*, *EJIL Talk*, 30 January 2017, available at.

²² PCIJ, Judgment, 17 August 1923, ss *Wimbledon*, Series A, n° 1, p. 25.

²³ WTO, Statement to the media by Pascal Lamy upon taking office on 1 September 2005, available at https://www.wto.org/english/news_e/news05_e/dg_lamy_1sept05_e.htm; see also Opening Ceremony, Ministerial Conference, Sixth Session, Hong Kong, 13 December 2005, available at https://www.wto.org/english/news_e/spl_e/splpl5_e.htm.

²⁴ Surprisingly, the recent COVID-19 crisis seems to have rather strengthened solidarity among EU Members.

be coming from China – paradoxically: because China's massive emergence on the international scene and its economic openness are recent.

Significant shivers are coming from China, in particular through a lesser allergy to international arbitration. The International Centre for Settlement of Investment Disputes (ICSID) now lists five arbitrations involving China as a Defendant since 2011: the first, which dates back to that year, was interrupted in 2013 by agreement of the parties;²⁵ but in the other cases introduced respectively in 2014,²⁶ 2017,²⁷ and 2020²⁸ China has apparently participated normally in the proceedings. In addition, it seems that China introduced (as Claimant therefore), probably in early 2014, a case against Ukraine for breach of a loan-for-grain agreement before the London Court of International Arbitration – I say “it seems” because, as a Chinese commerce attaché at the China-Ukraine strategic partnership forum in May 2017,²⁹ “money loves silence.”³⁰ China has lodged on 2 September 2019 a tariff case against the United States with the WTO.³¹ And, gradually, China is struggling to comply with the transparency rules that Western countries and international financial institutions are trying to impose on it,³² so much so that Ms Lagarde, the former Managing Director of the IMF, said: “The new debt sustainability framework [adopted

25 ICSID, *Ekrun Berhad v. People's Republic of China* (ICSID Case No. ARB/11/15), case registered on 24 May 2011 and discontinued on 16 May 2013 on request of the parties (Malayan investor; China-Malaysia BIT and China-Israel BIT).

26 ICSID, *Ansung Housing Co., Ltd. v. People's Republic of China* (ICSID Case No. ARB/14/25) award rendered on 9 May 2017 (China-Korea BIT).

27 ICSID, *Hela Schwarz GmbH v. People's Republic of China* (ICSID Case No. ARB/17/19), case registered on 21 June 2017 (China-Germany BIT).

28 ICSID, *Macaro Trading Co., Ltd. v. People's Republic of China* (ICSID Case No. ARB/20/22) case registered on 29 June 2020 (China – Japan BIT); *Mr. Goh Chin Soon v. People's Republic of China* (ICSID Case No. ARB/20/34), case registered on 16 September 2020 (Singapore – China BIT).

29 See communiqué on the event on the website of the Economic and Commercial Counsellor's Office of the Embassy of the People's Republic of China in Ukraine, <http://ua.mofcom.gov.cn/article/c/201706/20170602594337.shtml> (in Chinese language).

30 See e.g. Dong Yan, “Ukraine and Chinese Investment: Caution Amid Potential”, *Eurasianet*, 7 September 2017, China sues Ukraine for breach of US\$3b loan-for-grain agreement, *South China Morning Post*, 27 February 2014, <https://www.scmp.com/news/china/article/1435976/china-sues-ukraine-breach-us3b-loan-grain-agreement> or Frédéric Lemaitre, “Il n'est pas exclu qu'à terme, le piège de la dette se referme sur la Chine”, *Le Monde*, 7 May 2019.

31 https://www.wto.org/english/tratop_e/dispu_e/dispu_status_e.htm.

32 See *ibid.* or Marie de Vergès, “La Chine privée de revoir ses prêts aux pays vulnérables”, *Le Monde*, 6 May 2019, https://www.lemonde.fr/economie/article/2019/05/06/la-chine-privée-de-revoir-ses-prêts-aux-pays-vulnérables_5458817_3234.html.

by the Chinese Government³³) that will be utilized to evaluate [Belt and Road Initiative] projects is a significant move in the right direction.”³⁴ This, still in its infancy, integration of the world's second largest economic and probably military power into the international legal game undoubtedly shows that China has understood that the legal isolationism of the United States offers it an opportunity to use multilateralism to its advantage. Notwithstanding the likely cynicism in this calculation, this may be promising in the long term. In any case, in the immediate term, it also shows that, decidedly, the law is a tool that can increase national influence at the international level.

Now, will China's save economic multilateralism? For the time being, things seem rather indecisive to me. Certainly, the “new Silk Roads” seem to be a credible alternative to isolationism that undermines the world economic order. But rather than multilateralism, it is what we could call “a cross-bilateralism” whose network initiated by Beijing revolves around Beijing.

But this could, nevertheless, give reason for hope and suggests that why the situation is serious, it is not necessarily desperate.

I believe deeply in the virtues of political action on the condition that, as very wisely warned by Donald Tusk, the President of the European Council, we keep in mind that “we are not right only because we are right. Our reason must meet people's needs”³⁵, and it is through improvements in national policies that the international law in which we believe will owe its salvation or its descent into hell.

33 See “Debt Sustainability Framework for Participating Countries of the Belt and Road Initiative”, 25 April 2019 (issued by the Ministry of Finance of the PRC), available at <http://m.mof.gov.cn/czwx/201904/P020190425533990982189.pdf>, recognizing in particular that “[d]ebt sustainability needs to be taken into account when mobilizing funds to finance the BRI cooperation for sustainable and inclusive growth.”

34 “BRI 2.0: Stronger Frameworks in the New Phase of Belt and Road”, speech by Christine Lagarde, IMF Managing Director, Belt and Road Forum, Beijing, April 26, 2019, <https://www.imf.org/en/News/Articles/2019/04/25/spo42619-stronger-frameworks-in-the-new-phase-of-belt-and-road>.

35 Adam Michnik, Jaroslaw Kurski and Bartosz T. Wielinski, “Donald Tusk: « Si les démocraties libérales ne peuvent garantir le sentiment de sécurité, elles perdront », *Le Monde*, 10 May 2019, available at . [free translation from the French: “nous n'avons pas raison seulement parce que nous avons raison. Notre raison doit répondre aux besoins des gens”].