

Lone Star:

The Historic Role of the WTO

Keynote
Address

by

James Bacchus
Chairman
Appellate Body
World Trade Organization

to the
Symposium
on
“Globalization and the Judiciary”

at the

University of Texas
School of Law
Austin, Texas

September 5, 2003

Lone Star: The Historic Role of the WTO

The last time I was in Austin, Texas, *I was carried off on a stretcher.*

I was not in Austin then to speak to a symposium on international law. I was in Austin then to march in a parade.

It was the spring of 1961. I was eleven years old. And I was a Cub Scout.

I was a Cub Scout in Pack 510 in Irving, Texas, near Dallas, and I traveled by train from Dallas to Austin one Saturday to march with thousands of other Texas scouts in a statewide parade.

I had not been feeling well on the day before the trip, and my mother had suggested that I might want to stay at home. But I did not seem to be all that sick, I was excited at the prospect of my first train ride, and I was determined to go to Austin and march proudly with my “pack” in the parade.

The bluebonnets were in bloom that spring, and the train ride through the Texas countryside was everything I had hoped it would be. So was the parade in Austin. Flags were flying. Bands were playing. Scouts were marching. The parade route was lined by cheering crowds. To my eleven-year-old eyes, the path of that statewide parade seemed long, and it seemed glorious.

All in all, it was a memorable day. And the day became all the more memorable for me when, midway through the parade, I suddenly felt a sharp pain, like a knife, in my right side. I tried to keep marching. I was determined to keep marching. I managed to keep marching for a few more steps. Then I collapsed in a heap in the street.

The next thing I knew, I was being carried off on a stretcher, and driven back, by ambulance, to the train. I stayed on that stretcher, and I struggled with the pain in my side, all the while the train traveled all the way back to Dallas. Despite all my boyish determination, *I did not finish the parade.*

Back home, I soon learned that the knife in my side was an attack of what a doctor in a Dallas hospital called “appendicitis.” The doctor removed my appendix. I remained in the hospital — with my mother constantly at my bedside — for nearly two weeks. And I missed hearing how the parade turned out at the next “den meeting” of Cub Scout Pack 510.

I was devastated at the time by the fact that I had not finished the parade. I vowed to return to Austin the next year to march again. But, that summer, soon after my twelfth birthday, my father was transferred from Dallas to a small but fast-growing city in Florida called Orlando. So I grew up to become, not a Texan, but a Floridian. I never returned to Austin to finish that parade.

Thus it was that I was later sent from the State of *Florida*, and *not* from the State of *Texas*, to serve in the Congress of the United States of America. Even so, when I arrived for my first congressional term in Washington, and when some of my new Congressional colleagues from Texas discovered that I had spent part of my boyhood in their beloved state, they declared me, unofficially, an “honorary” member of the Texas delegation. I worked closely with many members of the Texas delegation of both parties on trade, space, defense, and other issues all the while I remained in the Congress.

So, perhaps it is proper, even now, for me still to see myself as an “honorary” Texan. And perhaps it is especially appropriate for me to recall and to reassert my boyhood affiliation with Texas and my abiding affection for Texas today in returning, at long last, to the city in Texas where I was, all those many years ago, unable to finish that statewide parade.

For, in recent years, in the eight eventful years in my life since I chose to leave the Congress, I have been busy marching in another parade. This parade is, for me, a parade that has passed, most often, not through Austin, Texas, but through Geneva, Switzerland. This parade is not statewide; it is worldwide. It is a parade that is watched by almost all of the world. Yet, this parade reminds me, all the same, of that statewide parade on that springtime Saturday long ago in Austin. For this parade is also long. This parade seems also — to my now middle-aged eyes — to be glorious. And this parade remains also unfinished.

Marching in this parade are the United States of America and the 145 other countries and other customs territories that are the Members of the World Trade Organization. The Members of the WTO are trying to lower barriers to world trade by negotiating and establishing rules to help facilitate and help increase world trade.

Marching alongside the Members of the WTO are those of us who have been chosen by them to serve them in WTO dispute settlement. The seven of us who serve on the standing Appellate Body of the WTO are trying to assist the Members of the WTO in their global and ongoing efforts to resolve international trade disputes by upholding the rules they have established for world trade.

Marching with us are all those many others throughout the world who seek a world in which all kinds of international disputes can be resolved by establishing and upholding all kinds of international rules through the international rule of law. Many of the others who are marching in this worldwide parade have assembled here in Austin at the University of Texas School of Law for this “Symposium on Globalization and the Judiciary.”

All of us in this long and glorious worldwide parade are marching in different ways. We are marching in many different roles and in many different places. We are each marching to our own tune. We are each marching to our own cadence. *But we are all marching in the same parade.*

We are all marching in the same parade, because we are all marching toward the same finish line. The finish line for all of us is freedom. The parade's end for all of us is the fullest measure of the fullest extent of the fullest enjoyment of human freedom. In marching in this worldwide parade, we are all seeking a world in which all of humanity can be free to benefit from such a flourishing of freedom. And, whatever our tune, or whatever our cadence may be as we march, we are all the same in knowing that such a world will be possible only if we fill the world with free and open societies that uphold fundamental human rights; and we are all the same in knowing also that such a world will be achievable, and will be sustainable, only if we establish and uphold the international rule of law.

Some say the WTO is not marching in this parade. Some critics of "globalization" question whether the WTO is truly doing the work of freedom. Some of these critics even suggest that the WTO is an adversary of freedom. These critics do not understand the WTO. They do not understand "globalization." And, clearly, they do not understand what really connects the WTO, "globalization," and freedom.

By lowering barriers to worldwide trade, the WTO is raising opportunities for worldwide freedom. True freedom is founded on individual freedom. More trade makes more individual choices possible. More choices make more individual freedom possible. The very essence, the very definition, of freedom for an individual human being in a free and open society is having the most possible choices in making the most possible *personal decisions* about how best to live.¹

The work of the WTO increases global trade. Increased global trade contributes to increased global economic growth. Increased growth is vital to the process of overall global development. And freedom is "both...the primary end and...the principal means of development."² The Nobel Prize-winning economist Amartya Sen underscored this important fact about development in the very title of his book entitled Development as Freedom. Sen's book should be required reading for everyone marching in our parade, and for anyone presuming to explain how the WTO, "globalization," and freedom are connected.

To be sure, development requires much more in addition to economic growth. Start with the ambitious "Millennium Development" goals of the United Nations: An end to extreme poverty and hunger. Universal primary education. Gender equity and the empowerment of women. Reduced child mortality. Improved maternal health. Success in the struggle against HIV/AIDS, malaria, tuberculosis, and other major diseases. Environmental sustainability. A true global partnership for development.³ Real progress toward all these goals, as well as many others, must be made to achieve real development that will result in real freedom.

Moreover, and not least, I, for one, would add to this imposing list the indispensability of an independent judiciary that respects the rule of law as an essential element of both development and freedom. A respect for property rights, a respect for

the obligation of contract, a respect for the rule of law in all its manifestations by an impartial and independent judiciary is a prerequisite everywhere to the right kind of “globalization.”

But economic growth is, unquestionably, a key to development, because economic growth can help unlock for individuals a life in which there are *more* possible choices and, thus, *more* possible personal decisions. As Sen has explained, “Development consists of the removal of various types of unfreedoms that leave people with little choice and little opportunity of exercising their reasoned agency. The removal of substantial unfreedoms...is *constitutive* of development.”⁴ The economic growth that results from increased trade can help remove all those “unfreedoms.”

Those without a copy of Sen’s thoughtful book can find his words about the link between development and freedom on page 79 of the WTO’s “World Trade Report 2003,” which is online at wto.org.⁵ Anyone who takes the time to read, with an open mind, this 270-page report on how the WTO, “globalization,” and freedom are connected, will begin to understand that the work of the WTO is critical to the creation of more freedom in more free and open societies in a world that is becoming increasingly “globalized.” The work of the WTO is an important part of the work of freedom, and the WTO, therefore, has an important role to fulfill in our worldwide parade.

Some others say the WTO is a latecomer in this parade. They point out that the worldwide parade toward worldwide freedom under the international rule of law has been progressing for centuries. And they see the WTO as arriving late, at the tail end of the parade, to tag along as an intrusive international afterthought in the continuing progress toward the parade’s end.

But the WTO is not an afterthought. The WTO is the culmination of considerable international forethought and considerable international experience in trying to make international rules that can be upheld through the international rule of law. It is true that the WTO itself is less than a decade old. The WTO, however, is the inheritor of an *acquis* of half a century’s experience under its predecessor, the General Agreement on Tariffs and Trade. Likewise, the GATT was the beneficiary of literally centuries of experience in making and upholding the international rule of law through a long evolution of international commercial agreements.

From the barter of the ancient Greeks, to the transit of luxury goods along the Great Silk Road, to the early reliance on the notion of “most-favored-nation” status by the Hanseatic League, to the negotiation of countless “friendship, commerce, and navigation” treaties by numerous trading nations, to the visionary negotiation of bilateral trade agreements by Cordell Hull, and, finally, to the historic conference at Bretton Woods, the international legal ground was prepared over a long time for what became, initially, the GATT, and, ultimately, the WTO.

Trade has long been a part of the parade. Reinforcing this judgment, Abram Chayes and Antonia Handler Chayes, two of the most respected marchers in the parade

toward freedom under the international rule of law, wrote, “Of all the international regimes, the GATT has the most developed and most active system of formal dispute settlement.”⁶ They wrote this *in 1995* — before the first appeal was ever filed before the new Appellate Body of the new WTO.

Still others insist that the WTO really belongs in some other parade. They acknowledge the connection between trade and freedom. They see the need for trade rules and trade rulings arising from trade agreements. But they do not really see international trade law as an appropriate part of a parade toward international law, and, thus, they do not see the WTO as appropriately belonging to the worldwide parade toward freedom under the international rule of law.

On this, one of many possible examples may suffice. I cite the first volume of the eighth edition of a deservedly classic international legal treatise, Oppenheim’s International Law, published in 1967, when the GATT as a treaty among “Contracting Parties” was very much in force, and when the GATT as a growing institution was already established as an increasingly effective forum for international dispute settlement. According to that treatise at that time, “The details of commercial treaties are, for the most part, purely technical, and are, therefore, outside the scope of a general treatise on International Law.”⁷

This attitude is changing. But only slowly. Some of the newer editions of the standard textbooks and treatises on public international law include some treatment of international trade law. But only briefly. Many of those who are marching in the worldwide parade toward international law are not yet persuaded that the WTO truly belongs.

For our part, in the WTO, we are of the view that, as it is expressed in the WTO’s World Trade Report for 2003, the WTO-based world trading system is “a set of principles and rules, underpinned by binding arrangements for settling trade disputes.”⁸ And, on the Appellate Body of the WTO, we are of the view as well that, as it was expressed in our very first Appellate Body Report, when settling trade disputes, this set of principles and rules is “not to be read in clinical isolation from public international law.”⁹ As we see it, the WTO definitely belongs in the parade.

And still others worry that the WTO will cause the parade to take a wrong turn. They fear that a proliferation of various specialized international tribunals such as those of the WTO dispute settlement system will cause a proliferation in competing interpretations of fundamental principles of international law. It has even been suggested that WTO and other international tribunals may wish to refer points of general international law for interpretation to the International Court of Justice in the Hague.¹⁰

I see no basis for such referrals in the WTO treaty,¹¹ which is the sole source of all authority in WTO dispute settlement. Furthermore, I agree with Judge Rosalyn Higgins of the International Court of Justice that such proposals are not only “cumbersome and unrealistic,” but also are unnecessary.¹² I agree with her that there will

be not be any threat to the basic identity or the basic integrity of international law so long as those of us who are entrusted with making judgments in the various specialized international tribunals show “friendly mutual respect” and “keep ourselves well informed,” and so long as we try to march together with some consistency — to the extent that doing so is consistent with our various specialized obligations.¹³

Thus far, this seems to be precisely what those of us who are marching in the parade are doing. Before he was taken from us, my late friend, the very distinguished professor of international law at Vanderbilt University, Jonathan Charney, gave a series of lectures at The Hague addressing the question: “Is International Law Threatened by Multiple International Tribunals?”¹⁴ His answer was “No.” Like Judge Higgins, Professor Charney acknowledged the potential harm of such proliferation. So do I. But, after a thorough review of the reasoning and the results in the decisions of a whole array of varied international tribunals, he concluded that “the variety of international tribunals functioning today do not appear to pose a threat to the coherence of an international legal system.”¹⁵ That was in 1999. I know of nothing that has happened since that justifies questioning this conclusion. There may be some crossroads ahead, but, thus far, in the worldwide parade, we have not taken a wrong turn.

In sum, I say this to all those who would question the role of the WTO in the worldwide parade toward freedom under the international rule of law: The WTO is in the parade, and the WTO has been in the parade for a long time. The WTO belongs in the parade, and the WTO will not make the parade take a wrong turn. Far from it. For the truth seems to be: *The historic role of the WTO is to help lead the parade.*

In my memories of the unfinished parade of my boyhood in Texas, leading the parade — alongside the “Stars and Stripes” of the American flag — was the famed “Lone Star” flag of the State of Texas. The “Lone Star” flag of Texas has long been a symbol of freedom. Those who have followed that flag have long marched in freedom’s parade.

As we all march together for freedom today, there are many stars that shine in our parade. Among the numerous international tribunals that are doing the work of freedom are the International Court of Justice, the European Court of Justice, the European Court of Human Rights, the court of the European Free Trade Association, the International Tribunal for the Law of the Sea, the new International Criminal Court, and more. A number of these tribunals are represented at this symposium.

The parade toward freedom under the international rule of law has been progressing for centuries. The evidence of the recent progress of the parade is to be found, in part, in the proliferation of international tribunals to fulfill many international needs. More than ever before, the world knows that the world needs both international law and the international rule of law.

Even so, as Professor David Bederman has recently written, “International law remains a primitive legal system.”¹⁶ And no doubt this is how the current status of international law is best described in terms that are familiar to theorists of jurisprudence.

But, in terms that are perhaps more familiar in Austin, international law might best be described as having “gone to Texas.” International law might best be described as being, so to speak, out on the legal frontier.

And, out on the legal frontier, out where the bluebonnets grow, out where the lonesome prairie stretches as far as the eye can see, *out there* is international law. Out there are the wide open spaces of jurisprudence. Out there are the open ranges of lawlessness that are still awaiting the fences of law that, alone, can secure true freedom. And, out there, above the far horizon, shining brightly in the big sky, is *the “lone star” of the WTO.*

No, the WTO is not by any means the *only* star that shines in the firmament of international law. And the WTO is not by any means the only star that *must* shine if we hope to shed light on the darkness of all the wide open spaces that face all those who would free humanity by building the fences of law. But the WTO is, for now, the brightest star. It is, for now, a “lone star” helping to lead our parade.

Ours is a time of “aggressive unilateralism.” Ours is a time of retreat from “multilateralism.” Ours is a time when the hopes of all those who march for freedom depend on a renewed internationalism that relies on international law. And, at this time when we are so much in need of increased support for international law, the WTO is a “lone star.” Because the WTO is, often alone among global tribunals, proving that international law can work, that international law can be real, and that international law can be upheld. The WTO is offering new and needed proof to the world *every day* that multilateral approaches to multilateral challenges can result in multilateral successes.

The “lone star” of the WTO shines so brightly in the sky of international law largely because of the success, thus far, of WTO dispute settlement. The extent of this initial success is such that, in less than a decade, the WTO dispute settlement system has become, in the words of one of the foremost scholars of international law, Professor Andreas Lowenfeld, “the most complete system of international dispute settlement in history.”¹⁷

Certainly the WTO dispute settlement system is the most *prolific* system of international dispute settlement in history. There are about *thirty thousand pages* of rules in the “covered agreements” of the WTO treaty. And, thus far, in less than a decade, the WTO dispute settlement system has produced more than *twenty thousand pages* of rulings on the obligations in those rules in those “covered agreements.” During that time, hundreds upon hundreds of international trade disputes of all kinds have been brought to the WTO by WTO Members for dispute settlement. And, during that time, hundreds upon hundreds of those disputes have been resolved.

Professor Louis Henkin famously observed that “almost all states observe almost all principles of international law and almost all of their obligations almost all of the time.”¹⁸ This is certainly true of international law and international obligations as they relate to the rules of the WTO. Almost all WTO Members endeavor to comply with

almost all WTO rules almost all of the time. Their compliance with the rules furthers the flow of world commerce and, thus, increases the level of world prosperity. Inevitably, though, disputes arise among WTO Members about the precise nature of their obligations under the rules. The Members of the WTO have established the WTO dispute settlement system so that they can resolve those inevitable disputes.

Understandably, the focus of public attention at any given time is usually largely on the most significant and the most seemingly intractable disputes that have not yet been resolved. But, undeniably, the WTO dispute settlement system has proven, thus far, to be both highly effective and highly efficient in achieving the overriding aim of the Members of the WTO in establishing the system. That aim “is to secure a positive solution to a dispute.”¹⁹

The WTO dispute settlement system achieves this aim *in almost every dispute*. Many — perhaps even most — of the international trade disputes that are brought to the attention of the WTO are resolved in a “positive solution” *without* formal consultations. Most of the disputes that result in formal consultations are resolved *without* the formal establishment of a dispute settlement panel.²⁰ Furthermore, *almost all* of the trade disputes that are addressed by a panel, and, if appealed, by the Appellate Body, result in what all of the WTO Members that are parties to those disputes agree is a “positive solution” within a reasonable period of time after the adoption of the dispute settlement reports by the WTO Dispute Settlement Body.

There are many reasons for the shining success of the WTO dispute settlement system in its first few years. The WTO has built on the cumulative success of the GATT. The WTO has also benefited from the continued commitment of the Members of the WTO to the continued success of WTO dispute settlement. Moreover, by achieving a “positive solution” in so many difficult disputes, the WTO has laid the foundation for continued success by reinforcing the belief among WTO Members that more such difficult disputes can be resolved through the WTO in a “globalizing” world economy where effective and efficient international dispute settlement is sorely needed.

But the most important reason for the success of the WTO, the most important reason why the WTO is a “lone star” in the forefront of the worldwide parade toward freedom under law, is the *uniqueness* of the WTO dispute settlement system as a global tribunal. Alone among all the global tribunals in the world, and, indeed, alone among all the global tribunals in the *history* of the world, the WTO dispute settlement system is unique in two significant ways.

First, the WTO has compulsory jurisdiction. All WTO Members have agreed in the WTO treaty to use the WTO dispute settlement system *exclusively* to resolve all their treaty-related disputes with other WTO Members. They are subject to WTO dispute settlement if they do not. And, *second*, the WTO makes rulings that are upheld. The Members of the WTO comply with rulings in WTO dispute settlement because there can be consequences for them if they do not. Under the WTO treaty, a WTO Member that chooses *not* to comply with a WTO ruling can face significant economic consequences

through the loss of the benefits of previous trade concessions by other WTO Members. The potentially high price of these possible consequences encourages compliance with WTO rulings.

The Members of the WTO have enhanced the historic force of this uniqueness by the strength of their common commitment to the international rule of law. So too, through the strength of the same commitment, has the Appellate Body of the WTO. The Appellate Body is not, strictly speaking, part of the global “judiciary” that is confronting “globalization.” We are not “judges” on the Appellate Body. We are not part of a “judicial” system. WTO dispute settlement is, technically, a “quasi-judicial” system. Rulings and recommendations in dispute settlement are subject to adoption by the Members of the WTO by means of the WTO’s unique rule of “reverse consensus.”²¹ Even so, we bow to no one in our shared commitment on the Appellate Body to upholding the international rule of law while serving the Members of the WTO in fulfillment of the terms of the WTO treaty.

In 1995, when the WTO was created, and when the Appellate Body of the WTO was first appointed, Judge Gilbert Guillaume predicted otherwise. He suggested that, although the new Appellate Body resembled a judicial institution, when faced with a decision on trade law, “considerations of law will perhaps not be the only factor it will have to take into account when taking such a decision.”²² Respectfully, I would submit that the record of the Appellate Body thus far simply does not support this prediction.

Nor is there any basis for such an assertion in the instructions that have been given to the Appellate Body by the Members of the WTO in the WTO treaty. The WTO treaty clearly provides that appeals to the Appellate Body “shall be limited to *issues of law* covered in the panel report and legal interpretations developed by the panel.”²³ Under the treaty, “The Appellate Body shall address each of the issues raised,”²⁴ and “may uphold, modify or reverse the *legal findings and conclusions* of the panel.”²⁵

The Members of the WTO have not instructed the Members of the Appellate Body to “take into account” any considerations other than those of law. So we do not. Further, the Members of the WTO have specifically instructed us — not once, but twice — in the WTO Rules of Conduct to be both “independent” and “impartial” in WTO dispute settlement.²⁶ So we are. Eight years on, I believe that even Judge Guillaume would say that the Appellate Body has made the WTO’s star shine all the more brightly because of our continuing commitment on the Appellate Body to the international rule of law.

In particular, the Members of the Appellate Body try to demonstrate our commitment to the rule of law through our commitment to a reliance of reason. We rely on reason as we strive to assist the Members of the WTO in their efforts — as the WTO treaty expresses it — “to preserve the rights and obligations of Members under the covered agreements, and to clarify the existing provisions of those agreements in accordance with customary rules of interpretation of public international law.”²⁷

Some may question a reliance on reason. Some may doubt that reason can help ensure the rule of law. We do not. By relying on the mutual exercise of reason, we have reached a consensus on our legal conclusions in every single one of our — to date — nearly sixty appeals. Largely because of our mutual efforts to reason together, no Member of the Appellate Body has — to date — ever dissented to even one of our ultimate rulings and recommendations. This has added to the credibility of our judgments, and this has also, I believe, added to the historic force of the uniqueness of WTO dispute settlement.

As my friend and colleague Georges Abi-Saab once said to me as we sat together at our round table in Geneva, “If we refute reason, what remains? Only power.” Our worldwide parade is about many things. One of the things it is about is replacing the rule of *power* in the world with the rule of *law*. There can be no lasting freedom while freedom remains at the mercy of the whims of arbitrary power. There is lasting freedom only where reason prevails over power, and where reason is enshrined in the rule of law.

But if, in our worldwide parade, we hope to make law prevail over power, if we hope to make freedom triumph over “unfreedom,” if we hope to continue to move the parade forward, if we hope finally to finish the parade, then *the WTO must not remain a “lone star.”*

One morning recently, I opened the pages of my hometown newspaper, the Orlando Sentinel, and read that the lights are going out in the universe. The number of stars in the sky is diminishing. As the universe is aging, old stars are burning out faster than new stars are being born. This, according to the Sentinel, is the conclusion from the latest studies of starlight by the Royal Astronomical Society of Great Britain.²⁸

There is more. While I was in the Congress, some of my friends in the Texas delegation and I worked together in support of the ongoing joint American and European mission of space exploration called Ulysses, which was launched in 1990. Now, according to that same newspaper story, the Ulysses spacecraft is sending scientific data back to earth indicating that a huge cosmic storm of stardust from the remains of dying stars is heading straight for our solar system.²⁹

Back here on earth, in our worldwide parade, the lights are likewise going out, the stars are diminishing, and a storm is approaching. The “lone star” of the WTO still shines. But it will not shine much longer if other stars do not also shine in our parade. Other stars must also shine, and they must shine ever more brightly if we hope to ward off the storm out on the horizon.

Despite the successes, thus far, of WTO dispute settlement, the front of the storm that is approaching the WTO alone fills the horizon. As the Members of the WTO readily acknowledge in their World Trade Report for 2003, “Despite the remarkable technological achievements of the last two hundred years, we still live in a world of pervasive human poverty and underdevelopment.”³⁰ The landmark agreement by the Members of the WTO that will give developing countries more access to inexpensive

life-saving medicines to fight AIDS and other epidemic diseases, will help calm the storm threatening the WTO.³¹ But there are many other ominous clouds on the horizon of the multilateral trading system.

A successful conclusion of the Doha Development Round is essential to clearing some of those clouds away. Equally essential, not only to the WTO, but to all those in the parade, is a continuing commitment to ensuring that WTO dispute settlement remains continuing proof to a doubting world that multilateral approaches to resolving global disputes can be successful. But continued progress in the trading system will not alone suffice. Our continued progress will depend as well on the progress we also make in clearing away many of the other dark clouds on the other global fronts that threaten to rain on our parade.

To scatter the clouds, to weather the storm, to finish the parade, the nations of the world must do much more, together, on trade, but they must also do much more, together, to establish and uphold the international rule of law in numerous other areas of shared global concern. In particular, they must do much more, together, in those other areas of concern, to strengthen the ability and the authority of the “global judiciary” to meet the many and increasingly complex challenges of “globalization.”

The WTO must not remain a novelty among global tribunals in having an assured jurisdiction. The WTO must not remain a rarity among global tribunals in rendering rulings that are followed routinely with the full force of law. The WTO must not remain the lonely example that it often seems to be of a global tribunal where international law can work, can be real, and can be upheld. The “lone star” of the WTO must not shine alone. It must be merely one star in a constellation of stars that all shine brightly in our parade.

My boyhood memories of Texas include a memory of a postcard picturing a map of the United States — *from the point of view of Texas*. On this map, Texas is larger than all the other states combined. Florida, for example, is only a small speck with a palm tree in a far corner of the map on the postcard of Texas and its “adjacent provinces.” Representing the state capital of Austin, the “lone star” of Texas is in the very center of the postcard.³²

Every “lone star” tends toward such a myopic view. This is true of states such as Texas. This is true of international institutions and, moreover, of international tribunals. This is even sometimes true of the very greatest of countries. The tendency of all of us — even some of us who serve the Members of the WTO — is to think that our own role in the parade is larger than it really is. And down this route truly is the wrong turn for the parade. For down this route is the dangerous temptation to *go it alone*.

In his memoir of his boyhood in Texas, that great poet laureate of the frontier, Larry McMurry, recalls that, out alone on the frontier, out in the wide open spaces, the early settlers of Texas had “the freedom of the skies.”³³ But, in telling the story of his own family’s early experiences in Texas, he goes on to explain how those who settled the

state ultimately realized that, to make their freedom have any lasting meaning, they needed to build fences in embrace of a long, hard “effort to rear something...that wouldn’t blow away....”³⁴

So too with those of us in the parade for freedom under the international rule of law. In a world of solitary nations, international law has long been at “the vanishing point of jurisprudence.”³⁵ In a world of wide open spaces, international law has often seemed to be on the verge of vanishing and blowing away. Today, it still seems that way. But, today, ours is much less a world of solitary nations, and much more a world of “globalization.” Thus, today, we are much more in need of international law and the international rule of law than ever before. And, to keep international law from vanishing and blowing away, we must, like the early settlers of Texas, build the fences among us that will help make it last. To do so, *all* of us must understand that *none* of us can go it alone.

Even the proud “lone star” State of Texas decided ultimately that it could not go it alone. The sheer singularity of Texas remains, but the “lone star” of Texas has long been one among fifty stars. Like Texas, we must all come to see, as countries, as international institutions comprised of countries, and as international tribunals serving those countries by serving those institutions, that none of us can go it alone. In pursuit of freedom, we must all stand together and march together in the worldwide parade.

All of us in the parade who happen to be Americans should, especially, try to remember this. Sometimes I think that some Americans carry around in their heads a mental postcard of America’s supposed place on the map of the world that resembles that old postcard of Texas from my boyhood. On their mental map, America is *most* of the world, and perhaps even *almost all* of the world. But their map is *not* a map of the world as it really is. In reality, four percent of the people in the world are Americans; this means that ninety-six percent are not. We Americans should keep this in mind whenever we are tempted to go it alone.

As we Americans keep marching in the parade, with our proud flag, with its fifty stars, we must come to see that there is really only one way the parade can ever hope to make it to the finish line. And that one way is for Americans to see the world as it really is, and to act together in the world in concert and in cooperation with others of like mind. America cannot be a “lone star” in the world. Our continued freedom as Americans depends, in part, on our success in sharing freedom with others in the world. Our continued independence as Americans depends, in part, on our success in coming to terms with our interdependence with others in the world. Our star, too, must shine with other stars.

I believe that the greatest of all Americans, Abraham Lincoln, was right: At its best, America is “the last, best hope of earth.”³⁶ But our *confidence* as Americans must not become *arrogance*. We Americans do *not* have a monopoly on either wisdom or virtue in the world. And we Americans certainly do *not* have a monopoly on the love of

freedom. If America stands for *anything*, it stands for the abiding belief that *the love of freedom is universal*.

America has a sovereign right to stand alone. America remains a sovereign nation. America must always remain a sovereign nation. America is in no danger of *not* remaining a sovereign nation. But, beyond all the demagoguery, the issue with our sovereignty as a nation is not whether we will *lose* it. The issue with our sovereignty is how we will choose to *use* it. Will we choose to use it in shared efforts with others who seek the same ends of freedom for the world? Or will we choose, myopically, needlessly, recklessly, to go it alone, and to try to stand alone in the world, at great risk and at great sacrifice, when there are still billions of others in the world who are willing to stand with us?

One of the reasons why my Congressional colleagues from Texas made me an “honorary” member of the Texas delegation was because they knew that, like all grade school students in the public schools of Texas of my youth, I had taken two years of Texas history. So they knew that I had been taught what Texans mean when they say, as they sometimes do, that there are “*thirteen days to glory*.” The phrase “thirteen days to glory” refers to the thirteen days of the siege of the Alamo in the fight for freedom in Texas in 1836. But, for every true Texan, the phrase refers also to what it truly means to be willing to make a lone, last stand for freedom.

Thirteen Days to Glory is the title of a book about the fall of the Alamo that my mother gave me to read while I recovered from my stay in the hospital after my unfinished parade long ago.³⁷ I read the book cover to cover. Then I read it again. It was, at the time, the longest book I had ever read. I still have a copy of Thirteen Days to Glory. I marveled then, and I marvel now, that there are those in the world who are willing to risk and to sacrifice their very lives by standing alone for freedom.

On the faded cover of my copy of Thirteen Days to Glory is a dramatic picture of the last moments of the last, thirteenth day of the fateful siege, when the outnumbered defenders of the Alamo fell, one by one. One lone man, obviously meant to be the legendary Davy Crockett, is at the center of the picture, surrounded by assailants, wielding his flintlock rifle, “Old Betsy,” like a club, fighting, to the very last, amid the hail of bullets and bayonets that will make his a lone, last stand.³⁸

No doubt I was not the only boy in the Texas of my boyhood to imagine myself as Davy Crockett, the “King of the Wild Frontier,” fighting on, to the end, in a lone, last stand for freedom beneath the “lone star” flag that flew over the Alamo. When I was not wearing my Cub Scout uniform, I was often wearing a Davy Crockett tee shirt and a “coonskin” cap. I suppose there is something in all of us that makes us long for the chance to prove that we would be willing, in the end, to stand alone, to the last, for freedom.

Sometimes we must stand alone. But, at other times, we must be willing to march much harder so that we can stand, and then march, together. And, at all times, we must

be willing to stand and march together with others in the world who share our love for freedom if we hope to serve the cause of freedom as we should. For those of us who are marching in the parade for freedom, now is one of those times.

We can weather the approaching storm only if we stand together. We can move the parade forward only if we march together. We must make our stand, not by going it alone, but by going together, by marching side by side to ensure the forward progress of our worldwide parade. For, if we do not, *this* stand will be a *last* stand for freedom, and it will be a last stand *without glory*.

Glory is a word much misused. Glory is not only to be found in a brave stand on a battlefield. Glory is also to be found in having the courage and the wisdom and the vision to take other brave stands. Glory is also to be found, for example, in the stand we must make together to further the progress of freedom by establishing and upholding the international rule of law.

In such work, in such quiet but essential work, we can also find glory. For glory is making what matters. Glory is creating what lasts. Glory is building what will not blow away. Glory is doing whatever must be done to grace the gift of life with the blessings of freedom throughout the world. To find such glory, to make freedom that will matter, to make freedom that will last, to make freedom that will not blow away, we need a six-gun at our side, but we also need a law book in our hand.

It will take many more than “thirteen days to glory” for our unfinished parade. The finish line where we will find the glory of lasting human freedom is still far away. We have a long march ahead of us. The parade will be long. The crowds lining the parade route will not always be cheering. The clouds are threatening. The storm is upon us. But our parade can yet be glorious.

On this one day on the way to glory, I can promise only this: Soon I will be leaving the WTO. I will be resuming the practice of law. I will also be assuming a new role in teaching law. Come the new year, I will be looking for new ways to keep marching in the parade. And, come what may, I will keep trying to finish the parade — *until I am carried off on a stretcher*.

#

*James Bacchus is the Chairman of the Appellate Body of the World Trade Organization in Geneva, Switzerland. He is the youngest Member, the longest serving Member, the only North American Member, and the only remaining original Member of the global tribunal, which hears final appeals in international trade disputes involving the 95 percent of world commerce conducted by the 146 countries and other customs territories that are Members of the WTO. Bacchus is a former Special Assistant to the United States Trade Representative in the Executive Office of the President. He is also a former member of the Congress of the United States, from Florida. He served two terms in the U.S. House of Representatives before choosing not to seek re-election in 1994. In 1995, he was appointed by the Members of the WTO to the Appellate Body. Bacchus received a Bachelor of Arts degree from Vanderbilt University, Magna Cum Laude and Phi Beta Kappa, with High Honors in History. He received a Master of Arts degree from Yale University, where he was a Woodrow Wilson Fellow in History. He was graduated with High Honors from the Florida State University College of Law, where he was Editor-in-Chief of the FSU Law Review. He was recently named to the law faculty as a professor of law at Vanderbilt University Law School. These are his personal views, and are not the views of his colleagues on the Appellate Body or the official views of the WTO.

Notes

¹ This, of course, is precisely the view that was voiced by Sir Karl Popper in his classic work, The Open Society and Its Enemies, in 1945. See Karl Popper, The Open Society and Its Enemies, two volumes, (Princeton University Press, 1966) [1945].

² Amartya Sen, Development as Freedom (New York: Random House, 1999), xii.

³ World Trade Organization, World Trade Report (2003), 80, online at wto.org.

⁴ Sen, Development as Freedom, supra.

⁵ World Trade Organization, World Trade Report (2003), supra, at 79.

⁶ Abram Chayes and Antonia Handler Chayes, The New Sovereignty: Compliance with International Regulatory Agreements (Cambridge, Massachusetts: Harvard, 1995), 218.

⁷ H. Lauterpacht, ed., Oppenheim's International Law, 8th edition (London: Longmans, Green and Co., 1967), Vol. I, Peace, 971; this same point, using this same quote, was made by one of the ablest of the scholars on international trade law, Professor Donald M. McRae, in his excellent Hague course in 1996. See Donald M. McRae, "The Contribution of International Trade Law to the Development of International Law," *Recueil des cours*, Volume 260, Hague Academy of International Law (The Hague: Martinus Nijhoff Publishers, 1996), at 112.

⁸ WTO, World Trade Report (2003), at 78.

⁹ Report of the Appellate Body, *United States – Standards for Reformulated and Conventional Gasoline*, WT/DS2/AB/R, adopted May 20, 1996, at page 17.

¹⁰ See Address to the Plenary Session of the General Assembly of the United Nations by Judge Stephen M. Schwebel, President of the International Court of Justice, 26 October 1999, A/54/PV 39; and "The Proliferation of International Judicial Bodies: The Outlook for the International Legal Order," Speech by Judge Gilbert Guillaume, President of the International Court of Justice, to the Sixth Committee of the General Assembly of the United Nations, 27 October 2000, available online at icj-cij.org. See also David J. Bederman, The Spirit of International Law (Athens and London: University of Georgia Press, 2002), 196-198.

¹¹ The "WTO treaty" is the Final Act Embodying the Results of the Uruguay Round of the Multilateral Trade Negotiations, done at Marrakesh, Morocco, on April 15, 1994.

¹² Judge Rosalyn Higgins, "The ICJ, the ECJ, and the Integrity of International Law," *International and Comparative Law Quarterly* 1, 20 (2002).

¹³ Id. at 19, 20.

¹⁴ Jonathan I. Charney, “Is International Law Threatened by Multiple International Tribunals?,” in 271 *Recueil des Cours* 101 (Hague Academy of International Law) [1998].

¹⁵ Jonathan I. Charney, “The Impact on the International Legal System of the Growth of International Courts and Tribunals,” Vol. 31, No. 4, *New York University Journal of International Law and Politics* 697, 700 (Summer 1999).

¹⁶ David J. Bederman, *The Spirit of International Law*, supra, at 26.

¹⁷ Andreas Lowenfeld, *International Economic Law* (Oxford: Oxford University Press, 2002), 150.

¹⁸ Louis Henkin, *How Nations Behave* (New York: Columbia University Press, 1979), 47.

¹⁹ Article 3.7, WTO Understanding on Rules and Procedures Governing the Settlement of Disputes (the “Dispute Settlement Understanding”), which is one of the “covered agreements” of the WTO treaty.

²⁰ To be more precise, the Legal Affairs Division of the WTO Secretariat reports that, thus far, a panel has been established in only about 40 percent of the disputes in which there has been a request for consultations.

²¹ More specifically, the reports containing the rulings and recommendations of WTO panels and the WTO Appellate Body in WTO dispute settlement are subject to adoption by the Members of the WTO when sitting in their capacity as the WTO Dispute Settlement Body. Such reports are adopted and thereby made binding by a so-called “reverse consensus” in which a report will *not* be adopted only if *all* the Members of the Dispute Settlement Body agree by consensus that it should not be. Thus far, this has never happened. Therefore, in effect, dispute settlement reports have, thus far, always proven to be final. This is perhaps the most significant innovation of WTO dispute settlement. Under the WTO’s predecessor, the GATT, a panel report was adopted only if all the “Contracting Parties” of the GATT agreed by consensus that it should be; not surprisingly, under the GATT, parties that lost in dispute settlement often “blocked” a consensus. See Article 17.14, Dispute Settlement Understanding.

²² Judge Gilbert Guillaume, “The Future of International Judicial Institutions,” 44 *International and Comparative Law Quarterly* (1995), 848, 960.

²³ Article 17.6, Dispute Settlement Understanding (emphasis added).

²⁴ Article 17.12, Dispute Settlement Understanding.

²⁵ Article 17.13, Dispute Settlement Understanding (emphasis added).

²⁶ WTO Rules of Conduct, Articles II and III (2).

²⁷ Article 3.2, Dispute Settlement Understanding (emphasis added).

²⁸ Orlando *Sentinel* (August 23, 2003), reporting on the published results of an astronomical study in the monthly notice of the Royal Astronomical Society of Great Britain, dated August 21, 2003, entitled “Dim Future for the Universe as Stellar Lights Go Out.”

²⁹ Orlando *Sentinel*, supra.

³⁰ WTO, *World Trade Report* (2003), at 78.

³¹ Elizabeth Becker, "Poor Nations Can Purchase Cheap Drugs Under Accord," New York Times (August 31, 2003), A-6.

³² This postcard, circa 1959, can be seen online at:
www.txgenes.com/TxPostcards/Texas/TexasMap_Replace1959.jpg.

³³ Larry McMurtry, Walter Benjamin at the Dairy Queen: Reflections at Sixty and Beyond (New York: Simon & Schuster, 1999), 53.

³⁴ *Id.* at 65.

³⁵ Sir Thomas E. Holland, The Elements of Jurisprudence, 13th edition (Oxford: Clarendon Press, 1924), quoted in W. Michael Reisman, Law in Brief Encounters (New Haven and London: Yale University Press, 1999), 15.

³⁶ Abraham Lincoln, Annual Message to the Congress of the United States (December, 1862).

³⁷ Lon Tinkle, Thirteen Days to Glory (New York: McGraw-Hill, 1958).

³⁸ Precisely how and where Davy Crockett fell in the final defense of the Alamo is, of course, much debated. The cover of Thirteen Days to Glory depicts the traditional version that was etched in the memories of my time by the Walt Disney television series. In contrast, the recently published diary of a Mexican army officer who fought at the Alamo suggests that Crockett survived the "last stand," surrendered along with several others, and was executed. Numerous other conflicting stories abound. *See*, among many other accounts, Tinkle, Thirteen Days to Glory, *supra*, at 224-225; Michael Lind, "The Death of David Crockett," The Wilson Quarterly (Winter, 1998); and William C. Davis, Three Roads to the Alamo: The Lives and Fortunes of David Crockett, James Bowie, and William Barret Travis (New York: HarperCollins, 1998), 563, 568, 589n, 737-738n.