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**After TPP is Before TPP: Mexican Politics for Economic
Globalization and the Lost Chance for Reflection**

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AFTER TPP IS BEFORE TPP: MEXICAN POLITICS FOR ECONOMIC GLOBALIZATION AND
THE LOST CHANCE FOR REFLECTION

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Abstract: This paper presents an analytical pathological appraisal of elite thinking and mobilization in Mexico after the Trump administration withdrew from TPP and forced Mexico to engage in NAFTA renegotiations. It examines the strategies developed by political and economic elites in response to the threat of trade war coming from Mexico's most important trade partner. This analysis shows that, although Mexican elites have developed sophisticated heuristics in order to confront the immediate challenge from the government in Washington DC, they are not engaging in what should be a very important debate about Mexico's role in the reconfigurations of global trade and order. This is a missed opportunity for Mexico which could affect its role in the ongoing reconfigurations of global trade and law, and thus its future stature in world politics.

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I. Introduction

President Donald Trump's protectionist rhetoric has stirred up threats of trade war with Mexico (and others). Trump's abandonment of TPP during his first days in office,¹ and his decision to renegotiate NAFTA, which as a candidate he called 'the worst trade deal ever'², have further exacerbated tensions between Mexico and the US. These tensions were caused by Trump's multiple insults to the Mexican people during his candidacy,³ and his sustained threat as President to make Mexico 'pay for the wall'.⁴ However, what has proven to be more profound for Mexican elites than any temporal bilateral crisis linked to a particular administration is the shaking of a whole belief system in free trade and economic interconnectedness as *the* vehicle for national progress and for Mexico's standing in global affairs.

This crisis was triggered by the aforementioned threatening rhetoric of the new US administration, but the issues raised go beyond economic relations with the US, beyond NAFTA and TPP, and even beyond international trade. It is the crisis of faith in a model of prosperity in which Mexican governments since at least the mid-1990s have put their hopes and energies, and which has transformed Mexico's Constitution and laws. The crisis also concerns the role that Mexico should play in global order. Mexico long struggled for becoming a 'North American' country, and suddenly it was turned into a 'Pacific' country in geostrategic terms. It now favors indirect global ordering over organized multilateralism, at least where trade is concerned, and global ordering in trade hardly matters for trade alone. This represents a paradigm shift for a diplomatic tradition that has been firmly rooted in the aspiration of an international community organized through law, that is, in the idea of an international legal order based on strong multilateral, ideally even universal, institutions.⁵ Also, by fully embracing the ruling technique of TPP, Mexican top negotiators went a significant step further in the direction of megaregulation,⁶ which may stand at odds with the ideals of traditional, formal international lawmaking, traditionally promoted by Mexican diplomats.

The transformations of Mexican foreign policy through economic integration were not internalized by Mexico's foreign policy elites. The latter gave up their place to economists and trade experts in the negotiations of the two most important international treaties Mexico signed in over twenty years: NAFTA and TPP. Foreign policy circles did not acknowledge that these treaties, as Paul Krugman mentioned in

¹ The White House, 'Withdrawal of the United States from the Trans-Pacific Partnership Negotiations and Agreement' (Presidential Memorandum for the United States Trade Representative, 3 January 2017) <<https://perma.cc/8ZKE-5R4D>> accessed 1 February 2018; see also Executive Office of the President, Office of the United States Trade Representative (letter of notification of the United States of America withdrawal from the Trans-Pacific Partnership Negotiations and Agreement to the Trans-Pacific Partnership Depository, 30 January 2017) <<https://perma.cc/96SA-W4Q4>> accessed 1 February 2018.

² See, for instance, Maggie Severns, 'Trump Pins NAFTA, "Worst Trade Deal Ever"', *Politico* (26 September 2016) <<https://perma.cc/DS4X-FSDN>> accessed 1 February 2018.

³ Most stridently was his characterization of Mexicans as 'rapists' during the speech announcing his run for the presidency, on 16 June 2015: 'When Mexico sends its people, they're not sending their best. They're not sending you. They're not sending you. They're sending people that have lots of problems, and they're bringing those problems with us. They're bringing drugs. They're bringing crime. They're rapists. And some, I assume, are good people.' See Katie McHugh, 'Fact-Check: Donald Trump Did Not Call All Mexicans "Rapists" and "Criminals"' *Breitbart* (4 October 2016) <<https://perma.cc/YU68-W9FA>> accessed 1 February 2018.

⁴ This escalated in late January 2017, when President Trump signed the executive order which contemplates the building of the wall on the border to Mexico (Donald J. Trump, 'Border Security and Immigration Enforcement Improvement' (Executive Order, 25 January 2017) <<https://perma.cc/GZD8-3RNY>> accessed 1 February 2018) during a working visit of Mexican Foreign and Trade Ministers to Washington, and just a few days before the planned visit of President Peña to the US. See Azam Ahmed, 'Mexican President Cancels Meeting with Trump over Wall' *The New York Times* (New York 26 January 2017) <<https://perma.cc/SYE6-5U7A>> accessed 1 February 2018. For an analysis of this unprecedented bilateral crisis, see Alejandro Rodiles, 'El Frustrado Viaje de Peña a Washington y el Accidentado Bono de Dignidad' *Nexus* (blog contribution, 26 January 2017) <<https://perma.cc/GN69-8M5T>> accessed 1 February 2018.

⁵ Alejandro Rodiles, 'La Fragmentación del Derecho Internacional: ¿Riesgos u Oportunidades para México?' (2009) 9 *Anuario Mexicano de Derecho Internacional* 373, 411–12.

⁶ Kingsbury and others, 'The Trans-Pacific Partnership as Megaregulation?', in Benedict Kingsbury, et al. (eds) *Megaregulation Contested: Global Economic Ordering After TPP* (OUP, Oxford, forthcoming 2018).

1993 in regard to NAFTA, have internal political and geopolitical dimensions that go far beyond commerce.⁷ At least, concerns over internal reorganization and exclusion were not voiced by these elites, nor did they penetrate scholarly and other expert debates on these treaties. It is in this sense, and drawing on Eyal Benvenisti's image of TPP and other megaregionals,⁸ that faith in global trade and economic interconnectedness of Mexican decision makers is also a case of what can be called *foreign-policy captured*.

After the initial deep shock caused by the US's abandonment of TPP and its declared intention to transform NAFTA in order to make it a 'fair' treaty for itself, Mexican economic and diplomatic elites recovered and responded by developing sophisticated heuristics to address the challenge coming from the country's major trade partner. It is unclear how NAFTA renegotiations will turn out, but Mexico's standing in this process has proved to be much stronger than what most could anticipate in early 2017.⁹ However, it is also true that during this process, Mexican elites have been as unreflective as they were during TPP negotiations. Whereas in other Latin American countries, most clearly in Brazil, a grand debate on the role of the South American giant in global re-accommodations is taking place,¹⁰ Mexico is missing the opportunity generated by this crisis. The government—and many others with a voice in trade, the economy, and international affairs—are obsessed with restoring the *status quo ante* Trump. In this regard, the Ministries of Economy and Foreign Relations are doing a good job. But there has been no discussion about the design of Mexico's economic development, despite a persistent wage gap and its alarming poverty rate of an estimated 43.6%.¹¹ Moreover, foreign policy grand strategy is absent from the debates around the reconfigurations of Mexican politics for economic integration—as if these matters were unrelated.

In this paper, I track TPP's trajectory in Mexico, making the case that *after TPP is before TPP*. I claim that this is so because national development and the country's global standing are conceived by the ruling elites through the sole lenses of what TPP represents. From the decision to take part in TPP and the way the negotiations were conducted to the deep impact it has had on Mexico's most important recent legal reforms and the role it plays today in relation to NAFTA renegotiations, this megaregional agreement has unleashed a mantra that permeates and guides Mexican politics on trade and economy, and, although less obvious, on law and global order.

II. From Cabos to Cabos: An unplanned journey into geopolitics and something else

Mexico, one of the negotiating partners of TPP, participates in multiple free trade and investment protection regimes, from NAFTA and the Pacific Alliance with Chile, Colombia, and Peru, to a series of bilateral treaties, including with the European Union (EU). Accordingly, its decision to join TPP seemed

⁷ Paul Krugman, 'The Uncomfortable Truth about NAFTA: It's Foreign Policy, Stupid' (November/December 1993) 72 FA 5, 13.

⁸ Cf Eyal Benvenisti, 'Democracy Captured: The Mega-Regional Agreements and the Future of Global Public Law' (2016) 23 Constellations, 58.

⁹ See, for instance, Franklin Foer, 'Mexico's Revenge: By antagonizing the U.S.'s neighbor to the south, Donald Trump has made the classic bully's error: He has underestimated his victim' *The Atlantic* (May 2017) <<https://perma.cc/HL83-89YV>> accessed 1 February 2018.

¹⁰ See Trubek, Morosini, and Sanchez-Badin, 'Brazil in the Shadow of TPP: beyond the grand debate, pragmatic responses', in Benedict Kingsbury, et al. (eds) *Megaregulation Contested: Global Economic Ordering After TPP* (OUP, Oxford, forthcoming 2018).

¹¹ On Mexico's poverty index and its persistent inequality situation despite recent economic and productivity growth, see Consejo Nacional de Evaluación de la Política de Desarrollo Social (CONEVAL), 'Pobreza en México. Resultados de pobreza en México 2016 a nivel nacional y por entidades federativas' <<https://perma.cc/NYT8-4JVY>> accessed 1 February 2018, and Organisation for Economic Co-operation and Development (OECD), 'OECD Economic Surveys: Mexico' (January 2017) <<https://perma.cc/7P3G-FGFF>> accessed 1 February 2018. For a similar critique, see Alvaro Santos, 'Labor and Capital: The Disequilibrium in Megaregulatory Agreements', in Benedict Kingsbury, et al. (eds) *Megaregulation Contested: Global Economic Ordering After TPP* (OUP, Oxford, forthcoming 2018).

‘only natural’, as stated by the Ministry of the Economy.¹² This reflects the perspective of the political elites who have ruled the country since the 1990s, that is, the Institutional Revolutionary Party (PRI) and the Party of National Action (PAN), and their embrace of free trade and opening up the Mexican economy as catalysts for progress. This became clear with the signing of NAFTA by President Carlos Salinas (PRI), in December 1992, as well as with the joining of the Asia-Pacific Economic Cooperation forum (APEC), in November 1993. However, this ‘natural’ move into TPP was the result of a lengthy and complicated process of economic integration in the Asia-Pacific, and of unexpected geopolitical and geoeconomic reconfigurations.

In 2007, New Zealand invited Mexico to join the Trans-Pacific Strategic Economic Partnership (P4), the free trade agreement between itself, Brunei Darussalam, Chile, and Singapore. P4 had just entered into force in 2006, four years after the idea of negotiating a trans-pacific economic alliance had been launched at the summit of the Asia-Pacific Economic Cooperation forum (APEC), held in Los Cabos, Mexico, by the former Prime Ministers of New Zealand and Singapore as well as by then President of Chile. Mexico declined New Zealand’s invitation, although joining P4 would have been consistent with APEC’s agenda of widening economic liberalization among its members, and in particular with its Bogor Declaration of 1994, subscribed to by President Salinas, which established the goal of creating open trade and investment in the Asia-Pacific no later than 2020. Strong resistance was voiced by Mexico’s agricultural sector, which had long opposed bilateral free trade agreements with Australia and New Zealand.¹³ However, once the US decided to enter into talks with the P4 in order to negotiate the larger TPP, it became clear to the government of President Felipe Calderón (PAN, 2006–2012) that Mexico had practically no choice but to join the negotiations.¹⁴ Mexico, whose economy was tied to the US by NAFTA and geography, could not afford to risk losing its trade relations with the US to other economies in the Asia-Pacific, including its Latin American Pacific partners, Chile and Peru, and the preference erosion and long-term strategic realignments this might have entailed.¹⁵ As stated by the Minister of Economy Ildefonso Guajardo several years later: ‘Staying out of TPP would have been like leaving the goal empty so that Asian countries could have thrashed us in the penetration of the US market’.¹⁶

In November 2011, during the APEC summit of Honolulu, President Calderón formally communicated Mexico’s intention of ‘taking part in the negotiating process of TPP [...] acknowledging that the TPP initiative is designed to meet high standards of trade that can face the challenges of the 21st century’, and committing itself to undertake those actions needed ‘to meet our challenges and reach the objectives of this initiative’.¹⁷ On the occasion of the G20 summit at Cabos, in June 2012, Mexico and Canada were formally invited to becoming negotiating partners of TPP. The invitation for Mexico followed a bilateral meeting between Presidents Calderón and Obama. Former US trade representative, Ambassador Ron Kirk, warmly welcomed this invitation and then announced a 90-day consultation period with the US Congress on ‘US negotiating objectives with respect to Mexico’.¹⁸ It was only after that period, in early October 2012,

¹² Secretaría de Economía, ‘Inicio de Negociaciones Formales del Acuerdo de Asociación Transpacífico (TPP) entre México y los Países del TPP’ (Informe a la Cámara de Senadores del H. Congreso de la Unión, 21 November 2012) <<https://perma.cc/U9SK-WBHD>> accessed 1 February 2018.

¹³ Luz María de la Mora, ‘El Tratado de Asociación Transpacífico: ¿una puerta en Asia-Pacífico?’ (2016) 108 *Revista Mexicana de Política Exterior* 195, 200; and de la Mora, ‘Introducción’ in de la Mora (ed), *Memoria: México en el Acuerdo Estratégico Trans-Pacífico de Asociación Económica* (CIDE, Mexico City 2013) 1, 3.

¹⁴ Most clearly on this, see Francisco de Rosenzweig, former Undersecretary of Economy, ‘El TPP, su Racionalidad y Lugar en la Estrategia Comercial de México’ in de la Mora (ed), *Memoria*, 10.

¹⁵ Secretaría de Economía, ‘Inicio de Negociaciones Formales del Acuerdo de Asociación Transpacífico (TPP) entre México y los Países del TPP’, 11.

¹⁶ Senado de la República, ‘Analizan Alcances del TPP Comisiones del Senado y Secretario De Economía’ (4 November 2015), <<https://perma.cc/FZ2Z-8FF8>> accessed 1 February 2018.

¹⁷ Reproduced in Secretaría de Economía, ‘Inicio de Negociaciones Formales del Acuerdo de Asociación Transpacífico (TPP) entre México y los Países del TPP’, 15.

¹⁸ Office of the United States Trade Representative, ‘US Trade Representative Kirk Welcomes Mexico as a New Trans-Pacific Partnership Negotiating Partner’ (18 June 2012) <<https://perma.cc/K5G9-TJ73>> accessed 1 February 2018.

that Mexico was formally accepted as a ‘TPP negotiating partner’.¹⁹ On the Mexican side, no such consultations took place: the government only informed the Senate about the process of becoming a ‘member of the initiative’.²⁰

Once all the negotiating partners at that time accepted the decision, the Ministry of Economy announced that Mexico had become ‘the tenth member of the TPP’,²¹ a milestone celebrated as a major achievement of Calderón’s economic policy and fully embraced by the incoming administration of Enrique Peña (PRI, 2012–2018). In its *National Development Program 2013–2018* (NDP 2013–18), which defined the principal goals of the new administration, the Peña government not only named TPP as the single most important trade initiative at the global level,²² but also committed to support the ongoing negotiations.²³ Moreover, TPP was included as part of one of the five principal ‘national goals’ of the NDP 2013–18, namely that of making ‘Mexico an actor with global responsibility’.²⁴ The intent behind this slogan was to promote Mexico’s role as an emerging power by guaranteeing a strong presence in world affairs while at the same time continuing its diplomatic tradition of respecting and promoting international law.²⁵ In order to evaluate Mexico’s global presence, indicators were incorporated into the NDP 2013–18 as measurements of the country’s economic, military, and soft presence.²⁶ In this sense, TPP’s entry into force for Mexico could have been translated into a ‘verifiable’ success for Peña’s administration, in terms of its strategic goal of strengthening Mexico’s economic presence and soft power. Whether or not these indicators could accurately measure Mexico’s growth as a ‘responsible global player’—something rather doubtful— their sole existence within the NDP put considerable pressure on governmental officials to pursue the ratification of TPP, as this would have meant, according to the indicators, an ‘improvement’ of Mexico’s global standing.²⁷

The Peña administration’s commitment to support TPP negotiations and its use of the treaty to shape its main policy objectives, reveal a lack of reflection. The successful conclusion of TPP became a political imperative, with very little time for dialogues between government and other actors about the implications of the treaty, and no space at all for a thorough evaluation of its geopolitical implications for the country. Just as the imperative of free trade and economic interconnectedness captured democracy in Mexico,²⁸ it also captured foreign policy. In this sense, the *roundtrip from Cabos to Cabos* in geopolitical reconfigurations appears as an unplanned or even unnoticed consequence of ‘the most important and ambitious trade negotiation in the world’.²⁹

NDP 2013–18 allocated TPP within Mexico’s diversification strategy towards Asia, but without any further comment.³⁰ In its report to the Mexican Senate on the occasion of the beginning of formal negotiations, the Ministry of Economy mentioned, under the rubric of ‘other considerations’, that staying out of TPP would have left Mexico as the only Latin American APEC country outside this megaregional

¹⁹ Secretaría de Economía, ‘Inicio de Negociaciones Formales del Acuerdo de Asociación Transpacífico (TPP) entre México y los Países del TPP’, 16.

²⁰ *Ibid.*

²¹ Secretaría de Economía, ‘Mexico Formally Joins the Agreement of Trans Pacific Association’ (8 November 2012) <<https://perma.cc/QVM7-C6W8>> accessed 1 February 2018.

²² Diario Oficial de la Federación (DOF), ‘Plan Nacional de Desarrollo 2013–2018’ (20 May 2013), 95.

²³ *Ibid.*, 148.

²⁴ *Ibid.*, 147–48.

²⁵ On this notion and its tensions, see Alejandro Rodiles, ‘La Nueva Responsabilidad Global y la Doctrina Estrada’ [Mexico City, 1 September 2013] *Este País* 269, 39.

²⁶ DOF, ‘Plan Nacional de Desarrollo 2013–2018’, 169. The indicators used are *Elcano Global Presence Index* (see Royal Institute Elcano, ‘Elcano Global Presence Index’ <<https://perma.cc/X4RA-N6ZZ>> accessed 1 February 2018), and *KOF Globalization Index* (see Swiss Federal Institute of Technology Zurich, ‘KOF Globalization Index’ <<https://perma.cc/92BS-2Y98>> accessed 1 February 2018).

²⁷ On this pressure as a salient characteristic of indicators, see Kevin E Davis, Benedict Kingsbury and Sally Engle Merry, ‘Introduction: Global Governance by Indicators’ in Kevin E Davis and others (eds), *Governance by Indicators – Global Power through Quantification and Rankings* (OUP, Oxford 2012) 3, 7.

²⁸ Cf. Benvenisti, ‘Democracy Captured: The Mega-Regional Agreements and the Future of Global Public Law’.

²⁹ DOF, ‘Plan Nacional de Desarrollo 2013–2018’, 95.

³⁰ *Ibid.*, 148.

project, considerably diminishing its political leverage.³¹ Briefings of governmental officials (mainly the Economy Minister Ildefonso Guajardo) before Congress did not address the geopolitical dimensions of the treaty at all.³² And the TPP memorandum of the Ministry of Foreign Relations basically restated the broad and vague goals of NDP 2013–18, without any further foreign policy considerations.³³

Eugenio Anguiano, former Mexican Ambassador to Brazil and international relations Professor at CIDE, reported, ‘neither the representatives of the Mexican government nor the leaders of the private sector sat down to carefully analyze the astonishing wide spectrum of themes proposed by the US when they decided to enter into TPP negotiations’.³⁴ Referring to the *Foreign Policy* article by Hillary R. Clinton, *Americas Pacific Century*,³⁵ Anguiano claimed that Mexico’s government never analyzed the geopolitical strategy underlying the US’s participation in TPP, so Mexico’s decision to join TPP was solely motivated by the desire to intensify free trade as well as by an almost automatic impulse to follow the US.³⁶ Indeed, diplomats, the Senate’s foreign relations committee, and the Mexican Council on International Affairs (COMEXI) were all conspicuously silent on this.³⁷

Specialists in international trade and politics, both in academia and in corporations, have largely espoused the narrative of free trade and economic interconnectedness as the vehicle for Mexican progress. The geopolitical implications of TPP rarely figured among their analysis and opinions. It is true that attention has been paid to the broader trade strategies and to the redesign of the rules on global commerce and multilateralism that TPP implies, and in this sense the opportunity for Mexico of being part of this remaking has been stressed.³⁸ The crisis of the EU, protectionist impulses in Brazil, and Asia’s rising importance as a trading partner for Latin American were named as strategic reasons for Mexico to join TPP as well.³⁹ Viewing TPP from the NAFTA perspective, that is, as a chance to modernize the latter through the former without engaging in burdensome treaty amendment procedures, has been voiced too.⁴⁰ And Luis de la Calle, former Undersecretary of International Business Negotiations at the Ministry of Economy and a leading commentator on the economy and international affairs, has rightly pointed to the grand economic integration strategy—described by Kingsbury and others as having both megaregional and megaregulatory dimensions⁴¹—that TPP is about, further underlying the opportunity for Mexico of being part of a major

³¹ Secretaría de Economía, ‘Inicio de Negociaciones Formales del Acuerdo de Asociación Transpacífico (TPP) entre México y los Países del TPP’, 15.

³² Senado de la República, ‘Analizan Alcances del TPP Comisiones del Senado y Secretario De Economía’; Secretaría de Economía, ‘Transcripción de la participación del Secretario de Economía, Ildefonso Guajardo Villarreal, en el marco del inicio de las audiencias públicas sobre el proceso de análisis y discusión del Acuerdo de Asociación’ (7 November 2016) <<https://perma.cc/F47Y-9USX>> accessed 1 February 2018.

³³ Secretaría de Relaciones Exteriores, ‘Memorándum de antecedentes relativo al Tratado de Asociación Transpacífico’ (2016) <<https://perma.cc/84DP-6LQ6>> accessed 1 February 2018, 51–53.

³⁴ Eugenio Anguiano, ‘Perspectiva del Gobierno Mexicano ante el TPP’ in de la Mora (ed), *Memoria*, 25–26. This wide issue coverage is another feature of megaregulation, see Kingsbury and others, ‘Megaregulation Beyond TPP: Criteria for a truly 21st Century Agreement’.

³⁵ Hillary Clinton, ‘America’s Pacific Century’ *Foreign Policy* (11 October 2011) <<https://perma.cc/C37E-5DTW>> accessed 1 February 2018.

³⁶ Anguiano, ‘Perspectiva del Gobierno Mexicano ante el TPP’.

³⁷ Notable exceptions include Anguiano (see ‘Perspectiva del Gobierno Mexicano ante el TPP’, and ‘El Acuerdo Transpacífico: una visión geopolítica’ in Arturo Oropeza García (ed), *El Acuerdo de Asociación Transpacífico (TPP): ¿bisagra o confrontación entre el Atlántico y el Pacífico?* (UNAM, Mexico City 2013), 23); former Mexican Ambassador to China Sergio Ley (see ‘Consideraciones Estratégicas para el Ingreso de México en el TPP’ in de la Mora (ed), *Memoria*, 12); and Leonardo Curzio (see ‘El TPP y la Hegemonía de los Estados Unidos: el síndrome del declive y el dilema chino’ in Oropeza García, *El Acuerdo de Asociación Transpacífico (TPP): ¿bisagra o confrontación entre el Atlántico y el Pacífico?*, 219).

³⁸ See de la Mora, ‘Introduction’ in de la Mora (ed), *Memoria*, 3, 9.

³⁹ Sergio Gómez Lora, ‘Consideraciones Estratégicas para el Ingreso de México en el TPP’ in de la Mora (ed), *Memoria*, 11.

⁴⁰ Andrés Rozental, ‘El TPP como Nuevo Modelo para América del Norte’ in de la Mora (ed), *Memoria*, 18; and Uri Dadush and Beatriz Leycegui, ‘El TPP, los Países del TLCAN y la Integración de las Américas’ (October/December 2016) 16 FAL, 54–65.

⁴¹ Kingsbury and others, ‘The Trans-Pacific Partnership as Megaregulation’ (on file with author)

move which might eventually ‘open the BRICS’.⁴² But all these opinions and analyses of TPP are constrained to the economy, and this from a quite uniform perspective. That TPP was (and is) as much a global ordering project as it was about trade still has not been acknowledged among Mexican economic and foreign policy elites—or it is silenced, which would only mean that Obama’s geopolitical grand strategy is seen by these elites as Mexico’s ‘natural’ path in the 21st century. In any case, crucial questions for Mexico’s place in global order have not been discussed. These include: To what extent did Obama’s pivot to Asia affect North America as a political project? Why should Mexico be interested in containing China?⁴³ What did TPP mean for Mexico as a Latin American country?⁴⁴ I shall return to these questions in the concluding remarks since they are, once again, absent in current debates on TPP’s revival. But next, an assessment of TPP’s impact on Mexico’s recent structural reforms is in place. This will show the impressive regulatory power of TPP, not so much as a formal treaty but rather as an informal initiative.

III. Mexico’s structural reforms and the coalition of the willing ‘TPP’: the power of the web

As mentioned above, once Mexico was accepted as a negotiating partner, the government announced that the country had become ‘the tenth member of TPP’, and that it ‘formally joined the agreement’.⁴⁵ This curious framing, about becoming a member of a treaty not even adopted at that time, could also be heard in the few conferences that took place among specialists in Mexico after the country entered the negotiations.⁴⁶ Reiterated references to Mexico as a ‘member’ or ‘partner’ of TPP seem to reflect something more than just confusing terminology, but rather a growing conviction that Mexico had become part of a global initiative, and in doing so had acquired commitments to meet ‘the high standards on trade that can face the challenges of the 21st century’.⁴⁷

The framing of participation in a treaty-making process as membership in a larger ‘initiative’ reflects an interplay between formality and informality.⁴⁸ Getting a place at the negotiation table was tantamount, in this view, to becoming a member of a coalition of those willing and able to play by the new standards of global trade and administrative regulation—standards that were, at least nominally, still under construction. Actually, the idea of TPP as a ‘coalition of the willing’ also was present within the Obama administration. Writing in 2014, then USTR Michael Froman stated that as the US ‘no longer holds as dominant a position in the global economy as it did at the end of World War II [...] it must build trade coalitions willing to work toward consensus positions’ on stronger rules in relation to the global economy.⁴⁹ There is, of course, nothing unusual about a country seeking to align positions around its own interests in any given multilateral setting. States tend to coalesce in negotiation blocs that can bargain with more leverage than stand-alone countries. However, from the moment it joined talks on TPP, the US not only took the lead but also made it clear to other parties that, as President Obama mentioned, it would be ‘the one writing this century’s rules for the world’s economy’.⁵⁰ It practically turned P4 into an initiative of like-minded states, with an open invitation to those other Pacific Rim nations willing to pursue the high-standards of trade for the 21st century as defined by the coalition’s core.

⁴² Luis de la Calle, ‘El TPP como puerta de México en Asia’ in de la Mora (ed), *Memoria*, 21–22.

⁴³ But see Ley, ‘Consideraciones Estratégicas para el Ingreso de México en el TPP’.

⁴⁴ Addressing this question in an overly optimistic fashion, see Dadush and Leycegui, ‘El TPP, los Países del TLCAN y la Integración de las Américas’.

⁴⁵ Secretaría de Economía, ‘Mexico Formally Joins the Agreement of Trans Pacific Association’.

⁴⁶ Such as the congress on Mexico and TPP that took place at the Centro de Investigación y Docencia Económicas (CIDE), in August 2013, see de la Mora (ed), *Memoria*.

⁴⁷ Secretaría de Economía, ‘Inicio de Negociaciones Formales del Acuerdo de Asociación Transpacífico (TPP) entre México y los Países del TPP’.

⁴⁸ On this interplay as spurred by coalitions of the willing, see Alejandro Rodiles, *Coalitions of the Willing and International Law – The Interplay between Formality and Informality* (CUP forthcoming).

⁴⁹ Michael B. Froman, ‘The Strategic Logic on Trade: New Rules of the Road for the Global Market’ (November/December 2014) 93 FA 6.

⁵⁰ President Barack Obama as quoted by Tanya Somanader, ‘President Obama: “Writing the Rules for the 21st Century Trade”’ (18 February 2015) <<https://perma.cc/74RZ-3FAN>> accessed 1 February 2018.

As opposed to other coalitions of the willing promoted by the US, this initiative's ultimate goal was not to stay in the informal realm, that is, to coexist along formal law and institutions as a 'durable effort'. In this case, the turn to formality was part and parcel of the strategy behind the initiative from its very beginning, as the adoption and eventual entry into force of a treaty make clear. However, this peculiar treaty-making process followed the coalition of the willing approach in that 'negotiations' were not mainly aimed at reaching agreements through deliberations and the mediation of different interests involved, but mostly at building a partnership around agreed interests.⁵¹ This explains the notion of 'negotiating partner': TPP negotiations were not only characterized by secrecy but also by strategic annihilation of opposing blocs that could render its mission (adopting high standards of trade) ineffectual.⁵² For that purposes, those governments that wanted to join the negotiations were only invited if they proved to be willing and able to engage constructively as partners—preempting eventual spoilers from obtruding the results. Calderón's pledge 'to meet our challenges and reach the objectives of this initiative'⁵³ formulated while expressing the wish to participate, and the careful acceptance procedure of Mexico as a partner, also speaks in favor of this logic of in-and-out, inherent to the coalition of the willing approach.⁵⁴

By entering TPP as a coalition partner, Mexico committed itself to carrying out negotiations in a spirit of alignment with the predetermined objectives. Furthermore, it was already engaged in the implementation of many of the understandings agreed to within the initiative. Indeed, to a great extent, Mexico's structural reforms, the principal agenda of Peña's government, largely 'centered on opening markets and allowing other players to compete and invest in Mexico, creating and strengthening regulatory agencies',⁵⁵ are the direct result of the government's participation in TPP negotiations.

The structural reforms were initiated in December 2012 with the *Pact for Mexico (Pacto por México)*, an unprecedented political agreement between the government and the major political parties of the country to carry out constitutional, legal, and regulatory reforms of great ambition.⁵⁶ These reforms involve eleven sectors: energy, labor, economic competition, telecommunications, transparency, tax law, the financial system, the penal system, judicial review, as well as education, and election law. In particular the first four of these sectoral reforms are clearly linked to TPP objectives and concrete provisions,⁵⁷ so much so that in certain cases it is tempting to speak of treaty implementation measures by way of provisional application, even if the treaty was in limbo at the time most of the reforms were enacted.⁵⁸ It is interesting to observe that at times when addressing international audiences, Peña's government has spoken openly about the ties between TPP and these transformations to Mexican constitutional and administrative law. For instance,

⁵¹ On the coalition of the willing approach, in particular within US foreign policy, see Rodiles, *Coalitions of the Willing and International Law – The Interplay Between Formality and Informality*.

⁵² As explained by Benvenisti, this was mainly pursued by resorting to the fragmentation tactic of negotiating in parallel the two megaregionals, TPP and TTIP. On the one hand, US partners in TPP have not sufficient leverage on their own and 'are more divided and hence cannot present a united front vis-à-vis the US'. On the other hand, the EU, which is 'an almost equal power to the US in bilateral negotiations, is undercut by the parallel TPP track [...]' (see Benvenisti, 'Democracy Captured: The Mega-Regional Agreements and the Future of Global Public Law', 58–59).

⁵³ Secretaría de Economía, 'Inicio de Negociaciones Formales del Acuerdo de Asociación Transpacífico (TPP) entre México y los Países del TPP'.

⁵⁴ Rodiles, *Coalitions of the Willing and International Law – The Interplay Between Formality and Informality*.

⁵⁵ Pedro Valenzuela, 'Mexico's Reforms and the Prospects of Growth' (Wilson Center Mexico Institute 2016) <<https://perma.cc/ZG58-HQKQ>> accessed 1 February 2018, 3.

⁵⁶ See Enrique Peña Nieto, Jesús Zambrano Gijalva, María Cristina Díaz Salazar y Gustavo Madero Muñoz, 'Pacto por México' (2012) <<https://perma.cc/2TJS-5B44>> accessed 1 February 2018. For similar dynamics in Japan, see Christina Davis, 'Japan: Interest Group Politics, Foreign Policy Linkages, and TPP', in Benedict Kingsbury, et al. (eds) *Megaregulation Contested: Global Economic Ordering After TPP* (OUP, Oxford, forthcoming 2018).

⁵⁷ In the case of transparency, things are more complex since these reforms are also the result of another US-led initiative created under the Obama administration, namely the *Open Government Partnership* of which Mexico is a founding government (see 'Open Government Partnership' (2011) <<https://perma.cc/3NLJ-2FTX>> accessed 1 February 2018).

⁵⁸ This is not meant in a technical sense, since this instrument of treaty law is also not applicable to the present case because TPP, as opposed to other new generation trade agreements as CETA, does not provide for such an option; see Vienna Convention on the Law of Treaties (VCLT), Art 25.

during an APEC meeting in 2015, Economy Minister Guajardo declared that Mexico had already prepared the ground for TPP.⁵⁹ However, and especially in discussions at the domestic level, the influence of the international negotiations on structural reforms at home has been rather obscure.

Take for instance the labor law reform. Mexico's labor justice system, established in the Constitution of 1917, had the peculiarity of being administered by the *juntas de conciliación y arbitraje* (councils on conciliation and arbitration), which are administrative bodies of tripartite composition with equal numbers of representatives for the employer(s) and employee(s), and a governmental representative. It was designed in strong paternalist terms for the protection of Mexico's traditionally exploited workers, with enough flexibility so that access to justice would not be hampered by economic and other factors, although in practice the *juntas*, especially at the local level, have turned into highly corrupt and inefficient institutions.⁶⁰ In February 2017, an amendment to Article 123 (XX) of Mexico's Constitution entered into force, establishing labor tribunals that are part of the judiciary and which shall observe 'the principles of legality, impartiality, transparency, autonomy and independence'.⁶¹ Furthermore, a new paragraph to Article 123 was added, recognizing the right to collective bargaining.⁶²

It is not difficult to see how these constitutional amendments are tied to TPP's Chapter 19,⁶³ and the obligation laid down therein to observe the International Labour Organization's *1998 Declaration on Fundamental Principles and Rights at Work*.⁶⁴ Regardless of the merits of these changes to Mexican labor law,⁶⁵ the government never explained these in terms of commitments acquired through TPP, beyond a general statement that its aim was to create 'a labor justice system of the 21st century for the Mexican economy of the 21st century'.⁶⁶ Thus, it was rather surprising that only two members of Congress, from the leftist *Morena*, complained about the lack of transparency in regard to the origin and motivation of the reform: 'It's a reform to which the executive has been forced by signing in secrecy the Transpacific Treaty' (Araceli Damián González), and 'the reason for pushing for these changes is to be found in the Transpacific Association Agreement' (Rodrigo Abdala Dartigues).⁶⁷

Another example can be found in energy reform, which, on the one hand, has been praised as the major achievement of Peña's administration, and, on the other, harshly criticized, mostly by leftist parties and organizations, and even characterized as treason. The reason for this intense polemic is that since the late 1930s, when President Lázaro Cárdenas expropriated and nationalized all private oil industries, mostly foreign, by creating PEMEX, the former state-owned monopoly, petroleum has been considered national heritage and pride, and previous governments had not been able to overcome the taboo of reopening the sector to foreign investment beyond piecemeal approaches. Creating new openings for foreign investment is precisely what the energy sector reform is about. PEMEX, as well as the Federal Commission on

⁵⁹ Eduardo Ortega, 'Reformas potenciarán la integración de México al TPP: Guajardo' *El Financiero* (19 November 2015) <<https://perma.cc/G2JF-RKNU>> accessed 1 February 2018.

⁶⁰ Until the reform linked to TPP, Art 123 (XX) of Mexico's Constitution established: 'Differences between labor and capital will be submitted to the decision of a Council on Conciliation and Arbitration, composed of an equal number of representatives from the workers, the employers, and one from the Government' (*Constitución Política de los Estados Unidos Mexicanos* (Porrúa 177th edition, 2016)). Prior to the 2017 reform, Art 123 (XX) had not been amended, something quite remarkable for a Constitution that suffers from 'hyper-reformism' (on this notion, see Francisca Pou Giménez and Andrea Pozas-Loyo, 'The Paradox of Mexican Constitutional Hyper-Reformism: Enabling Peaceful Transition while Blocking Democratic Consolidation', in Richard Albert, Carlos Bernal and Juliano Zaiden Benvindo (eds), *Constitutional Change and Transformation in Latin America* (Hart, forthcoming).

⁶¹ DOF, 'Decreto por el que se declaran reformadas y adicionadas diversas disposiciones de los artículos 107 y 123 de la Constitución Política de los Estados Unidos Mexicanos, en materia de Justicia Laboral' (24 February 2017).

⁶² *Ibid*, art 123 (XXII *Bis*).

⁶³ TPP, art 19.3.a., 19.8.2., and 19.8.3.

⁶⁴ See 37 ILM 1233 (1998); CIT/1998/PR20A.

⁶⁵ For a critical appraisal, see Alvaro Santos, 'Labor and Capital: The Disequilibrium in Megaregulatory Agreements'.

⁶⁶ Presidencia de la República, 'Justicia Laboral en México' (blog 1 May 2016) <<https://perma.cc/9ZNE-FNXS>> accessed 1 February 2018.

⁶⁷ Cámara de Diputados del H. Congreso de la Unión, 'Avalan Reformas para trasladar justicia laboral al Poder Judicial y desaparecer Juntas de Conciliación y Arbitraje' (Boletín No 2477, 4 November 2016) <<https://perma.cc/3W6C-UVE3>> accessed 1 February 2018.

Electricity (CFE), have been transformed from ‘decentralized organs of the state’ into ‘productive state companies’ allowing for a hybrid sector in which the state retains ownership of oil and electricity but opens the market for competition in all stages of the value chain.⁶⁸ Despite the many debates around energy reform, its relation with TPP’s chapter on state-owned enterprises (SOEs) has not been commented on at all, except for once, when Ildefonso Guajardo referred to the connections between them. But he did this in quite remarkable terms:

TPP captures Mexico’s energy reform. That gives me a lot of tranquility because whoever wins in 2018, if the new government wants to do away with the reform, it will have to denounce an international treaty, which comes at far greater political costs.⁶⁹

As Guajardo’s statement demonstrates, Peña’s government had absolute confidence in getting approval from the Senate for TPP, because with the votes of PRI and PAN together, the needed absolute majority was guaranteed. Mexican foreign policy and economic elites had faith in economic interconnectedness: TPP spurred the most important reforms in Mexico for decades without being a treaty in force, and the taken-for-granted ratification of TPP was the only possible next step for national progress according to these elites, in case of reluctant future governments.

There were other interesting developments in the fields of competition and telecommunications law. Between 2013 and 2014, several articles of the Mexican Constitution on these subjects were amended,⁷⁰ and new federal laws entered into force.⁷¹ Accordingly, two autonomous public bodies were created, the Federal Antitrust Commission and the Federal Institute of Telecommunications. Furthermore, two federal administrative tribunals specializing in economic competition, telecommunications, and broadcasting were established.⁷² These new administrative bodies were intended to respond directly to the requirements of TPP Chapters 13 and 16 on the maintenance of independent regulatory bodies and national competition authorities,⁷³ as well as on private rights of action in regard to ‘violations of national competition law, either independently or following a finding of violation by a national competition authority’.⁷⁴

In terms of the regulatory work followed by these autonomous bodies, the direct influence of TPP Chapter 25 on regulatory coherence is quite evident too. In the 2014 federal laws on economic competition and telecommunications, a practically identical ‘public consultation period’ was established, consisting of a notice-and-comment procedure.⁷⁵ As explained by Hoekman and Sabel, the regulator should publish (in the official gazette as well as online as required by TPP Article 25.5.5.) relevant information on the proposed regulation, inviting commentaries from the public affected, which then again ‘obligates the regulator [...] to justify the final decision in light of the comments, and a comprehensive cost-benefit analysis of proposed

⁶⁸ For a summary of Mexico’s energy reform see Adrián Lajous, ‘La Reforma Energética Mexicana’ *Nexos hoy* (blog 6 June 2014) <<https://perma.cc/DBF6-LH92>> accessed 1 February 2018; and Richard HK Vietor and Haviland Sheldahl-Thomason, ‘Mexico’s Energy Reform’, (Harvard Business School Papers 717-027, January 2017) <<https://perma.cc/2VT4-ADVJ>>, accessed 1 February 2018.

⁶⁹ Roberto Morales, ‘El TPP Blindará la Reforma Energética’ *El Economista* (Interview with Minister of Economy Ildefonso Guajardo, Mexico City 28 October 2016) <<https://perma.cc/7LQG-D99D>> accessed 1 February 2018, 4–5.

⁷⁰ DOF, ‘Decreto por el que se reforman y adicionan diversas disposiciones de los artículos 6o., 7o., 27, 28, 73, 78, 94 y 105 de la Constitución Política de los Estados Unidos Mexicanos, en materia de telecomunicaciones’ (11 June 2013).

⁷¹ DOF, ‘Ley Federal de Competencia Económica’ (23 May 2014); DOF, ‘Ley Federal de Telecomunicaciones y Radiodifusión’ (14 July 2014).

⁷² These tribunals were created by an agreement of the Federal Judicial Council, see DOF, ‘Acuerdo General 22/2013 del Pleno del Consejo de la Judicatura Federal’ (9 August 2013).

⁷³ TPP, arts 13.16, and 16.1.3.

⁷⁴ TPP, art 16.3.1.

⁷⁵ See DOF, ‘Ley Federal de Competencia Económica’, art 138, and DOF, ‘Ley Federal de Telecomunicaciones y Radiodifusión’, art 51.

rules'.⁷⁶ As these authors further observed, this process was modeled after 'the Office of Information and Regulatory Affairs (OIRA), the central authority for the review of Executive branch regulation in the US'.⁷⁷

The developments in competition and telecommunications law demonstrate the 'regulatory alignment' effects of TPP, as described by Kingsbury and others.⁷⁸ Mexico's administrative law was shaped after the US model, in order to facilitate the ability of transnational businesses to 'grow and hire'.⁷⁹ Here, the effort toward regulatory alignment was also an expression of a networked global order in which diverse actors come together in dynamic interplays that create transnational law.⁸⁰ Although this concept of global order and transnational law, could, in principle, open the possibility for multiple stakeholders to insert themselves into the regulatory web, those with sufficient resources to make informed comments on the governmental initiatives, and to influence the regulatory outcome through lobbying, 'would be mostly large multi-national firms'.⁸¹

The crucial question in the context of this paper is whether one can presume that the Mexican government agreed to this regulatory method without an adequate understanding of its rationale and implications. Could it be that the Mexican economic and foreign policy elites underestimated the power of megaregulation in TPP? As in the case of megaregionalism and its geopolitical implications, what can be ascertained is that megaregulation made its way into Mexican administrative law without reflection or debate, and ultimately without deliberation. The secrecy of the negotiations and the opaqueness of the government's communication, which centered its whole TPP narrative on the potential trade benefits for Mexico, did not allow for much needed debate. Either there was a lack of understanding, an underestimation, or perhaps even a deliberate attempt at hiding what TPP would signify in terms of regulation and administrative procedure, closing spaces 'around key aspects of the domestic policy space'.⁸² Once again, important questions were completely absent from discussions on the structural reforms: Who could be possible winners and losers from megaregulation in a country with such significant inequalities like Mexico? How would regulators and judges, as well as law schools, still anchored in a rather formalistic legal culture, cope with flexible and multilayered regulatory methods?⁸³ And, from a structural perspective, what could such a strong preference for transnational, networked regulation possibly mean for a country that has premised its diplomatic tradition on the aspiration of building an international community organized through law?

The absence of academic debates and political contestation—not to mention a grand national debate—on these rather fundamental issues of global law and order not only denotes a disassociation between ruling elites and the broader population, including academia and organized civil society, but arguably also a lack of critical analysis rooted in the elites' dogmatic faith in free trade and economic

⁷⁶ Bernard Hoekman and Charles Sabel, 'Innovative Hazard Regulation: Globalization and the Limitations of Treaty Approaches' (manuscript on file with author)

⁷⁷ Ibid (footnotes omitted).

⁷⁸ Kingsbury and others, 'Introduction: Contested Mega-Regulation, TPP, and Asia-Pacific Regulatory Ordering Projects', in Benedict Kingsbury, et al. (eds) *Megaregulation Contested: Global Economic Ordering After TPP* (OUP, Oxford, forthcoming 2018).

⁷⁹ Periphrasis from President Obama's remarks on how the new rules for the global economy are meant to 'help our businesses grow and hire' (see The White House, 'Statement by the President on Senate Passage of Trade Promotion Authority and Trade Adjustment Assistance' (22 May 2015) <<https://perma.cc/2ZDG-622Y>> accessed 1 February 2018).

⁸⁰ As mentioned by Kingsbury and others, the Obama administration strongly favored this network-based world order as described by Anne-Marie Slaughter (see Kingsbury and others, 'Introduction: Contested Mega-Regulation, TPP, and Asia-Pacific Regulatory Ordering Projects', referring to Anne-Marie Slaughter, 'How to Succeed in the Networked World—A Grand Strategy for the Digital Age' (November/December 2016) 95 FA 6.

⁸¹ Kingsbury and others, 'Introduction: Contested Mega-Regulation, TPP, and Asia-Pacific Regulatory Ordering Projects'.

⁸² Benvenisiti, 'Democracy Captured: The Mega-Regional Agreements and the Future of Global Public Law', 58.

⁸³ Comparative administrative law seems to be a crucial field of study for understanding transnational regulatory processes such as those created by TPP. However, to my knowledge, most law school curricula in Mexico do not take this into account. For an introduction to this field, see Francesca Bignami and David Zaring (eds), *Comparative Law and Regulation: Understanding the Global Regulatory Process* (Edward Elgar, Northampton MA 2016).

liberalization as the sole vehicle for national progress. This *Welt-* and *Rechtsanschauung* is nowhere more visible than in the process of NAFTA renegotiations, forced on Mexico and Canada by the Trump administration.

IV. Mexican politics for economic globalization in times of Trump: persistent faith and lost opportunities

The US's abandonment of TPP was carefully followed in Mexico, and taken as a warning sign that there would not be much difference between candidate and President Trump. However, reactions in Mexico were at first moderate. This may be because many important legal reforms linked to TPP were already introduced or well underway there when TPP was declared 'dead', or because the main preoccupation in Mexico with regards to Trump has been how his presidency would affect the bilateral trade relation, the most important one for Mexico in every aspect. That is also why crisis in the bilateral relationship hit, once it became clear that Trump's intention to renegotiate NAFTA was serious. The first responses to this crisis were mainly uncoordinated, such as calls to take trade diversification more seriously this time, to expand the web of Mexico's free trade agreements, and to modernize existing ones like that with the EU, or calls to engage in serial bilateralism, in a way emulating the rhetoric of Stephen Bannon and Peter Navarro. Mexico's former Foreign Minister Jorge Castañeda, a leading and provocative voice in all international matters affecting Mexico, even proposed a confrontational course of countermeasures such as imposing a Mexican border adjustment tax (BAT), as well as of retorsions like stopping Mexico's harsh controls on its southern border that are meant to block Central American migrants on their way into the US. It was also Castañeda who for the first time dared to say the unthinkable: Mexico should not renegotiate NAFTA under any circumstances or conditions but tie these negotiations up with the 'whole enchilada', such as with the protection of its migrant workers and the bilateral security apparatus, and, that Mexico should be ready to leave NAFTA in case US negotiators stuck to the 'America first' logic, which runs counter the *quid pro quo* rationale of any international negotiation. Castañeda's proposal was at first considered far too risky and was accordingly criticized. Mexico's trade politics since Trump's election seemed stuck in the crisis, and overly dependent on the turbulent politics in Washington DC.

However, Mexico's passive and codependent attitude changed. The turning point occurred in early January 2017 during a conference at ITAM, a leading academic institution in Mexico City which has, at least for the past two decades, forged economic elites in the public and private sectors alike. The January conference, entitled 'Economic Perspectives 2017: challenges and opportunities in face of a complicated international environment' gathered together the chief of Mexico's central bank, the Finance Minister, a former President of the council on international affairs (COMEXI), the Secretary General of the OECD, as well as the top negotiators of NAFTA, including President Salina's Trade Secretary Jaime Serra. Notably missing were the serving ministers for the economy and foreign relations—those currently in charge of NAFTA renegotiations. In his wrap-up speech, ITAM's President Arturo Fernández called for a 'strategy of prudence and calculus' in face of the 'the Narcissist of the North', and mentioned that 'instead of suffering a long and fruitless negotiation, it could be preferable to leave NAFTA'.⁸⁴

From that moment on, Mexican negotiators showed quite sophisticated heuristics for confronting the bilateral crisis, changing their *ad hoc* tactics into an integral strategy of risk-management that has so far proved to be efficient.⁸⁵ Within this new negotiating strategy, TPP performs a key role and can be even described as *Mexico's trump card* in NAFTA negotiations. While the media in both countries has concentrated on NAFTA, the Foreign Minister Luis Videgaray and most of all Ildefonso Guajardo have understood and made it clear that the future of NAFTA is intrinsically linked to TPP, even after its formal 'death'. From the

⁸⁴ The speech was reproduced in political magazines and received much media attention; I am using the revised version: Arturo M Fernández, 'A Mal Tiempo, Buena Cara – Frente a un nacionalismo renovado' (April/June 2017) 2 FAL, 4-7

⁸⁵ On how elites are more prone to change negotiating tactics while managing risks (but also how they are more likely to suffer overconfidence), see Emilie M Hafner-Burton, D Alex Hughes, and David G Victor, 'The Cognitive Revolution and the Political Psychology of Elite Decision Making' (2013) 11 Perspectives on Politics 368-386, at 370-373.

possibility of unspectacular technical changes to NAFTA (mostly regarding rules of origin) to its less likely ending, Mexico has already gained from the *TPP mantra*.

Only time will tell how NAFTA will develop. Much will depend on the struggles inside the White House between nationalist-protectionist and more moderate factions. Should the trilateral talks not finalize before July 2018, the results of the upcoming elections for president and congress in Mexico may generate further uncertainty. But it is safe to say that, at least from the Mexican perspective, NAFTA renegotiations are embedded in the same rationale that reigned before the formal ending of TPP. Mexican trade policy is pretty much the same after TPP as it was before TPP. The top negotiators for Mexico, led by Guajardo, clearly understand this megaregional agreement as an initiative that started to shape the new rules of global trade and law before becoming a formal treaty, and they acknowledge that the power of megaregulation lies in the web of multilayered interactions that is so much ingrained in today's global order that not even the most powerful state can easily untie by going back to hegemonic tactics of serial bilateralism and the like. One could say that NAFTA renegotiations and the underlying TPP mantra guiding them so far are representative of *the struggle between the chessboard and the web*, to use Anne-Marie Slaughter's metaphor.⁸⁶ Trying to anticipate the moves of the hegemon and to win on a bilateral setting is not a possibility for Mexico, due to the huge power asymmetries that have always characterized the relationship between these countries. Instead, reliance on the web, which was promoted by the US itself under the Bush and Obama administrations, gives Mexico new leverage precisely because it can now connect to different and changing global constellations. Mexican negotiators have turned resilient in face of the severe stress caused by the 'ad hoc' of the Trump administration, to use Richard Haass's words,⁸⁷ and this resilience is the result of embracing the web of commerce and regulation. The best way to illustrate this is with Mexico's international trade strategy for the worst-case-scenario, that is, in case of US withdrawal from NAFTA.

Beyond reaching out to China⁸⁸ and renewing its approach to the EU,⁸⁹ Mexico was one of the first TPP countries echoing New Zealand on the desirability and viability of entering into a substantially equivalent treaty without the US. Accordingly, Mexico actively engaged in the process that led to TPP11, bringing its proclaimed intentions to diversify trade beyond the US a significant step further.⁹⁰ Moreover, it is using the Pacific Alliance, a TPP daughter agreement that can be described as a *semi-formal platform*,⁹¹ as a

⁸⁶ Slaughter, *The Chessboard and the Web*.

⁸⁷ See Yoni Appelbaum, "Trump's Foreign Policy 'Ad hoc'", *The Atlantic* (27 June 2017) <<https://perma.cc/ZM2M-CMPM>> accessed 1 February 2018.

⁸⁸ Mexico's President Peña has signaled the country's interest in participating in China's *Belt and Road* initiative via the BRICS Plus process, see Ministry of Foreign Affairs of the People's Republic of China, 'Xi Jinping meets with President Enrique Peña Nieto of Mexico' (6 September 2017), <<https://perma.cc/TR8E-AZRR>> accessed 1 February 2018; see also J. Weston Phippen, 'Mexico Plays the "China Card": The Possibility President Trump will pull out of NAFTA has prompted his Mexican counterpart to court China' *The Atlantic* (4 September 2017) <<https://perma.cc/2HKW-JU87>> accessed 1 February 2018.

⁸⁹ See Secretaría de Economía, 'Concluye la Octava Ronda de Negociaciones para la Modernización del TLC entre México y la Unión Europea' (17 January 2018) <<https://perma.cc/5ZPE-B5AG>> accessed 1 February 2018.

⁹⁰ The *Comprehensive and Progressive Agreement for Trans-Pacific Partnership* (CPTPP), better known as TPP11, will be signed on 8 March 2018, in Chile. At the time of writing, the text of TPP has not been released. From the Joint Ministerial Statement of the eleven countries, of 10 November 2017, and the two annexes to it on the outline of the new treaty and the suspended provisions of the original TPP (mostly on intellectual property and investor-state dispute settlement), it seems quite clear that TPP11 incorporates most of the original TPP, including the tariff commitments. It is thus in this sense too that TPP11 represents an important move toward trade diversification of Mexico beyond rhetoric. For information on TPP11, including the Ministerial Statement and the annexes, see New Zealand Foreign Affairs & Trade, 'Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP)' <<https://perma.cc/7CNU-ARU7>> accessed 1 February 2018.

⁹¹ Usually, 'platform' and 'initiative' are terms used for describing informal coalitions or networks. In this case, a regional integration area, formally constituted by treaty, establishes as one of its main objectives to turn into a 'platform for political articulation, economic and trade integration', that projects itself into the world and the Asia Pacific region in particular (see Acuerdo Marco de la Alianza del Pacífico (signed 6 June 2012) ILM, Article 3(1)(c) <<https://perma.cc/4CRJ-JJKL>> accessed 1 February 2018). It also describes itself as an initiative, and its *modus operandi* follows the logic of networks with a division of labour as shown by the several experts groups that advance specific topics over time through studies, identification of best practices, guidance-papers, and recommendations.

means to relaunch TPP's content with several partners beyond the formal members, eg Chile, Colombia, Mexico, and Peru. On 2 June 2017, the Council of Ministers of the Pacific Alliance adopted guidelines for the new category of 'associate state', through which the whole bloc may enter negotiations with other countries in order to reach 'high standard economic-trade agreements that contribute to achieving the objectives established in the Pacific Alliance Framework Agreement'.⁹² This could be even described as 'the new P4', a mimesis of the whole TPP process but without the former leading nation. If Brazil becomes more inclined in favor of economic interconnectedness,⁹³ a possible first associate could be MERCOSUR, as suggested by Argentina's President Macri and supported by Chile and Mexico.⁹⁴ Bringing these two blocs together with a clear direction towards Asia could turn into a new megaregional of great dimensions. All these moves have been used by Mexico as the trump card in NAFTA talks: instead of falling into the chessboard game of bilateralism, the strategy led by Guajardo is to stick closely to megaregionalism and the web. For Mexican elites, the diagnostic is crystal clear: Just as global value chains are not to be stopped, neither are the transnational networks of trade bureaucracies, business people, and *millennials* that have grown up in an interconnected world.

V. Concluding remarks

If one considers that for those women and men that form part of Mexico's economic and foreign policy elite, an entire project of life came under strain with the new nationalist-protectionist politics in the US, it is not difficult to understand that the strategy outlined above could hardly be another one. The fact that significant aspects of President Peña's most important structural reforms were spurred by a megaregional and megaregulatory treaty that had not even entered into force, made alternatives even less likely. Within this logic, it must be said that the heuristics developed in little time by Mexican negotiators vis-à-vis an unpredictable and far more powerful counterpart are worthy of admiration, and the job performed so far by Guajardo and his team in NAFTA renegotiations show a renewed statute of Mexico that puts aside the old fable of the *bear and the porcupine*, created by former US Ambassador to Mexico, Jeffrey Davidow. According to it, the coexistence of both depend on a constant deterrence based on the existential threat exercised by the bear on the porcupine, and the unpleasant acknowledgement of the latter that killing the former would come with unbearable pain.⁹⁵ The strategies revealed so far in NAFTA renegotiations, especially those designed for the worst-case-scenario, come closer to a narrative according to which the porcupine is ready to continue on a path the bear had traced, but which it seems no longer willing to continue, at least not for now.⁹⁶

Ironically, one of the biggest geopolitical challenges posed by TPP to Mexico, that is questioning the already fragile *North American Idea*,⁹⁷ has turned into geopolitical and geoeconomic opportunities. The US once pulled Mexico into the path of megaregionalism, and Mexico followed-suit without reflection on what that meant for its geopolitics and its diplomatic tradition that had always promoted multilateralism and the construction of an international order based on international law.⁹⁸ After TPP and with NAFTA on a

Furthermore, the business sector is integrated into the Pacific Alliance's architecture via the Pacific Alliance Business Council, which meets regularly with the experts groups.

⁹² Alianza del Pacífico, Consejo de Ministros, 'Lineamientos aplicables a los Estados Asociados a la Alianza del Pacífico' (2 June 2017) <<https://perma.cc/R3GT-PYZ3>> accessed 1 February 2018.

⁹³ Trubek, Morosini, and Sanchez-Badin, 'Brazil in the Shadow of TPP: beyond the grand debate, pragmatic responses?'

⁹⁴ See Carlos E. Cué, 'Macri y Bachelet acercan Mercosur y Alianza del Pacífico como respuesta a Trump' *El País* (14 February 2017) <<https://perma.cc/92EK-XYU3>> accessed 1 February 2018.

⁹⁵ See Jeffrey Davidow, *The U.S. and Mexico: The Bear and the Porcupine* (Markus Wiener Publishers, Princeton NJ, 2004), XI-XV.

⁹⁶ One should not make too much out of Trump's recent remarks that he 'would do TPP'. Nonetheless, it shows that the adhocery of his foreign and trade politics may turn things up-side down again at any time; see Jacob Pramuk, 'Davos, World Economic Forum: Read President Trump's full remarks on trade deals to CNBC' *CNBC* (26 January 2018) <<https://perma.cc/8WYJ-B9PZ>> accessed 1 February 2018.

⁹⁷ See Robert A. Pastor, *The North American Idea: A Vision of a Continental Future* (OUP, New York NY, 2011).

⁹⁸ See Alejandro Rodiles, 'Il Ruolo del Messico Nell'Ordine Mondiale (e accanto agli USA)' [2017] *Rivista Italiana di Geopolitica LIMES* 8, 141-147.

brink, Mexican negotiators had to learn that megaregionalism is more about fluid geopolitical reconfigurations driven by geoeconomic opportunities than about geographically determined and ideologically motivated integration. Hence, they are trying to insert the country in as many edges as possible, while doing every effort to rescue the major node at its reach which is NAFTA.

It is important to highlight that the new paths of economic integration are built and re-built through regulatory alignment (TPP11, possibly a future expansion of the Pacific Alliance), and more pragmatic infrastructural projects (*Belt and Road*): in its embracement of the web, Mexico is opening to *megareg* and *infrareg*⁹⁹ at the same time. This may be an inevitable choice for a middle power that seeks to reassure at all costs its role as an emergent economy in a scenario where its major hub of economic interconnectedness is highly at risk; it is certainly a suitable way of becoming resilient in a constantly moving and uncertain global environment, especially once the guidance provided by the US—for good or bad—has turned into insolence and bullying. Mexican politics for economic globalization in these times of turbulence can be celebrated as a model in terms of a strategy of resilience, eg of coping with risk. But unfortunately, this strategy has been turned into an end in itself. This is problematic since bouncing back bears the danger of becoming permanently vulnerable to external contingencies.¹⁰⁰ In the present case, this vulnerability manifests itself in foreclosing, again, fundamental debates on the country's desirable and viable role in the global economy and order more broadly. Perhaps megaregionalism, megaregulation, and now also infraregulation are indeed in Mexico's ultimate best interest, because anything else would isolate the country and hinder its participation in the regulatory processes that rule the world. I do not know. But one cannot ignore or silence the fact that the faith of Mexican economic and foreign policy elites in the inevitability of globalization,¹⁰¹ and their insistence on it as the only possible path towards national progress, is seriously questioned today and for very strong reasons. It would be a mistake to think that this is mainly so because of Trump and the rise of populism elsewhere. Mexican economic elites can no longer escape the fact that the country's relative economic growth in terms of GDP has not been able to curtail an unsustainable inequality, which is closely related to extreme violence and corruption, the three major causes of Mexico's stagnation.¹⁰² Beyond this Mexican puzzle (which is not exclusively Mexican), there are very earthly reasons why the belief system of global elites is in a profound crisis. As Bruno Latour mentioned, climate change and migration are showing that the planet and the territories on which the globalization project was to be carried out, actually do not exist.¹⁰³

Mexican historian Lorenzo Meyer noticed that, 'paradoxically, Trump gives Mexico the great opportunity to regain some sovereignty'.¹⁰⁴ Mexico can exercise its sovereignty through dialogue and debate, bringing back democracy captured by megaregionals.¹⁰⁵ In a recent essay, Jorge Castañeda has called for a reinvigorated multilateralism in line with Mexico's diplomatic tradition, but focused on those issues of the

⁹⁹ On this, see the *Infrastructure as Regulation* (InfraReg) project at NYU's Institute for International Law and Justice <<https://perma.cc/5DQX-KRNB>> accessed 1 February 2018.

¹⁰⁰ On the problem of conceiving and deploying resilience as an end in itself, see Alejandro Rodiles, 'The tensions between local resilience-building and transnational action - US-Mexican cooperation in crime affected communities in northern Mexico, and what this tells about global urban governance' in Helmut P Aust and Anél du Plessis (eds.) *The Globalization of Urban Governance* (Routledge forthcoming).

¹⁰¹ On globalization and global governance as political choices and thus their contingent character, see Andrew Hurrell, 'The End of the Global Rule of Law?' (Thomas Franck Lecture at the KFG International Law: Rise or Decline?, Berlin, 15 December 2016) <<https://perma.cc/X328-CT7R>> accessed 1 February 2018.

¹⁰² The critique on national development solely premised on GDP has been powerfully articulated by the capabilities approach of Nussbaum and Sen; see, for instance Martha C Nussbaum, *Creating Capabilities – The Human Development Approach* (Harvard University Press, Cambridge MA, 2011), and already Amartya Sen, *Development as Freedom* (Anchor Books, New York NY, 1999).

¹⁰³ See Bruno Latour, 'Refugium Europa' in Heinrich Geiselberger (ed.) *Die große Regression – Eine internationale Debatte über die geistige Situation der Zeit* (Suhrkamp, Frankfurt aM 2017) 135-148, at 137.

¹⁰⁴ Lorenzo Meyer, 'Nos cambiaron el mundo' *Reforma* (19 January 2017) <<https://perma.cc/M9J7-3QGV>> accessed 1 February 2018.

¹⁰⁵ Benvenisti, 'Democracy Captured: The Mega-Regional Agreements and the Future of Global Public Law'.

global agenda that help bring the rule of law to Mexico.¹⁰⁶ Interestingly, his foreign policy strategy for facing Trump, which emphasizes the need for the country to engage with Central America and the Caribbean, recalls Mexico's own *infrareg* project that was designed during President Fox's administration (2000-2006) by the late foreign policy thinker, diplomat, and national security adviser, Adolfo Aguilar Zinser, but which never materialized: *Plan Puebla-Panamá*. Known as PPP, it was meant to bring progress to Mexico's poor south and Central America via Mexican-facilitated infrastructure, giving so Mexico the opportunity to assume a leadership role in the sub-region, thereby acquiring better standing vis-à-vis the US. Castañeda's thoughts today are a good starting point for the much-needed geopolitical debate. Unfortunately, and as argued above, foreign policy has also been captured in Mexico by economic elites, and voices that do not speak the language of global value-chains fall into deaf ears. It is almost hard to believe, but the same story on Mexico's involvement in TPP is repeating itself in the case of TPP11, which has been exclusively conceived in the context of NAFTA-renegotiations and not contested for its own content. Even more strikingly, Mexico's first rapprochement to *Belt and Road* denotes the same combination of secrecy and ignorance. Indeed, Peña's participation in the Xiamen summit as an EMDC ('other emerging markets and developing countries'), that is as participant in the BRICS Plus process,¹⁰⁷ which is above all a platform for extending partnerships within *Belt and Road*,¹⁰⁸ went nearly unnoticed in the public, and unchecked by congress. And, as if no lesson learned, this major Chinese initiative is only seen through the lenses of trade and the old hopes attached to it for national progress.

¹⁰⁶ See Jorge G Castañeda, 'Antes y Después de Trump: La Política Exterior Posible' in Héctor A Camín and others (eds.) *¿Y Ahora Qué? México ante el 2018* (Debate, Mexico City 2017), 419-429.

¹⁰⁷ See Ministry of Foreign Affairs of the People's Republic of China, 'Xi Jinping meets with President Enrique Peña Nieto of Mexico', and Phippen, 'Mexico Plays the "China Card": The Possibility President Trump will pull out of NAFTA has prompted his Mexican counterpart to court China'; see also Ministry of Foreign Affairs of the People's Republic of China, 'BRICS Leaders Xiamen Declaration' (Xiamen, China, 4 September 2017) <<https://perma.cc/QBN8-FHL5>> accessed 1 February 2018, para 6.

¹⁰⁸ On BRICS Plus as a coalition-building platform (within the BRICS coalition) for *Belt and Road*, see Rodiles, *Coalitions of the Willing and International Law – The Interplay between Formality and Informality* (forthcoming).