A Dialogue with Stuart Malawer

Professor Dr. Stuart Malawer
INTRODUCTION

Dr. Stuart S. Malawer is Distinguished Service Professor of Law and International Trade at George Mason University. Dr. Malawer graduated from the University of Buffalo in New York majoring in American history and Soviet studies and went to Cornell Law School for his Juris Doctor. Then, he entered the graduate program in International Relations at the University of Pennsylvania (Wharton School). He was awarded both a master’s degree and a doctorate from Penn combining law, business, and foreign policy. Dr. Malawer also earned a Diploma from the research center at the Hague Academy of International Law in The Netherlands and then studied at St. Peter’s College, Oxford.

At the height of the Vietnam War, Dr. Malawer began his teaching career at the University of Pennsylvania (Wharton School). He eventually moved to George Mason University School of Law in Virginia and then to the new Schar School of Policy and Government there. He is now serving for George Mason as a Distinguished Service Professor of Law and International Trade. Professor Malawer was the founder and director of its graduate program in international transactions and commerce and was subsequently named Distinguished Professor of the Year. For more than ten years, he organized and led graduate programs in global trade to Oxford (St. Peter’s College) and Geneva.

Dr. Malawer is a member of the state bars of New York and Virginia. He is a former chairman of the International Practice Section of the Virginia State Bar and the author of more than 100 articles and numerous books on international law, international trade, the WTO, and national security. He was a gubernatorial appointee in Virginia.
to various state boards and committees focused on economic development and international trade. He is particularly interested in the growing relationship of sub-national political units (states and cities) to the global economy. He was a delegate on various gubernatorial trade missions from Virginia to China, India, and Japan. He has travelled widely throughout Asia, including visiting Vietnam, Cambodia, Singapore, Indonesia, and Thailand.

Dr. Malawer met Sandy Kazin on a blind date during her high school days and they have been married for almost 50 years now. His wife has consulted extensively with critical federal agencies. Dr. Malawer has two brothers (an orthopedic surgeon and a lawyer), a son and a daughter who are both lawyers with the federal government (US Dept. of Justice and the US Dept. of Education). His son-in-law is a naval officer and lawyer. A spirit of public service has been cultivated in his family.

QUESTIONS & ANSWERS

1. Dear viewers and readers! Today, we have invited Dr. Stuart Malawer, Distinguished Service Professor of Law & International Trade at George Mason University for the interview. He is a truly inspirational international lawyer in the US and rest of the world. A very warm welcome to the <International Lawyer>, sir! We usually begin our interview with a few personal questions. Would you please tell us about your family, your experiences in the early years and as a teenager?

I was born and grew up in New York. My parents were separated, so I lived in Queens just a few miles from President Trump’s home. But I also spent a lot of time in Manhattan, where my father lived. This was near the United Nations. I went to a public high school in Queens. While in high school, I studied Russian and took numerous courses in government and history. As most New Yorkers did, I thrived in the global mix of peoples and businesses.

I graduated from high school at a young age and then went to the largest state university in New York. I graduated from university in three years and then went to law school. Then, I was 19. I should also mention that my father was a professional boxer and track star in the 1930s. He qualified in track for the Olympics in Munich.
He also founded a manufacturing company with his brother during the depression and became very successful.

2. You began studying law at Cornell Law School. How about your days in Ithaca? What was the most impressive subject in your law school? Could you also tell us about your college (undergraduate) life?

As an undergraduate at the University of Buffalo, I was a history major and my focus was American history and Soviet studies. I was just sixteen years when I started in the undergraduate program. I found the university to be quite outstanding and took a broad range of classes related to international subjects. One of the best professors I had was an émigré from Czechoslovakia who escaped after the communist takeover. Instead of the normal four years, I graduated after three.

I went to Cornell Law School and was the youngest student in my class. Cornell Law School was truly outstanding, and at that time, Cornell was only one of two law schools in the country that had received a huge grant from the Ford Foundation to support international legal studies. That was a principal reason I chose to study there. What made Cornell so special was that the school paid 100% of its attention to teaching. This devotion to teaching remains with me today and inspires me in my teaching practices. I view teaching to be the primary importance in university life, although it is not easy. The students enrich my life and bring the world to me.

3. After graduating from Cornell Law School, you were awarded a doctorate in international relations and a diploma of international law from the University of Pennsylvania and The Hague Academy of International Law, respectively. It is an exceptional course to be a top academic in public international law and diplomacy, but not very general track for American lawyers, most of whom seem to prefer practicing law over research. What brought you to the scholastic world? How about your vision at that time?

I'm not sure it is accurate to say that most American international lawyers prefer to practice. I know a lot of public international lawyers who are in various universities and government positions. Nevertheless, my reason for not joining a law firm was simple. I was always interested in public policy and foreign policy. After considering a Wall Street firm, as most of my Cornell classmates did, I decided that was not how I wanted to spend my life. The choice was either to practice transactional law on Wall Street in New York City or focus on policy and international affairs in Washington,
D.C. I had to make that choice several times during my career, and each time, I chose Washington and international affairs. That’s why I went to Penn immediately after Cornell. Cornell did a great job in international law, but I wanted more in the way of looking at a broad array of related issues, such as foreign policy, international business, and international relations, among others.

4. Public international law is not so popular among the US legal scholars and practitioners. What do you suppose is the main reason for American lawyers not to be interested in public international law? How about the current and future trend?

Again, I’m not so sure it is correct to say that public international law is not popular among legal scholars. Nevertheless, it seems to me that a number of legal scholars look at other areas of the law or sub-areas of public international law (such as international trade law) because many have grown in complexity and other areas have become critically important and interconnected today. The whole range of business and finance areas have become important not only to increasingly global activities of law firms but for governments. Many of these areas include issues of public international law, as well as newer issues, such as cybersecurity, transfer of technology, and data privacy.

5. As an American lawyer, you have a wide range of interests in Asia. In particular, you were a member of the Virginia Governors’ trade missions (Governors Warner and Kaine) to China, India, and Japan and have been working with many other Asian partners. What did you do for these missions?

Most people inside and outside the United States do not realize how important of a role individual states or other sub-national units play in local economic development and in engaging in the global economy. Virginia is one of the leading states that has been very active in promoting international trade as a means of fostering economic development within the state itself. However, many people within Virginia, including government officials, still don’t fully support trade. My role was to assist the various governors of Virginia in arguing for public support and, in particular, in helping engage the public universities in this effort. To that end, I participated in the trade delegations and have served on various state boards promoting international trade and economic development. I am particularly interested in the role of states and cities in connecting with the global economy, despite the fact the US Constitution gives
exclusive authority to the federal government to regulate international commerce.

6. Increasing tensions in international trade were amplified recently with President Trump declaring a trade war against China. How do you evaluate his China trade policy? Could you also tell us about the origin of this current standoff between the US and China from a historical and political perspective? How do you predict the course for US-China relations in the next decade?

President Trump’s trade policy is belligerent and totally counter-productive to US national interests and those of the international system. That’s not good! It rejects the post-war system, and is not sustainable. My sense is that the origins in current US-China trade tensions is in the failure of the United States to develop domestic economic programs to address the harshness of globalization and the last ten years of the Great Recession. I’m optimistic, nonetheless. There is nothing inherent in US-China relations that makes those relations belligerent. Once President Trump leaves the scene, we will return to economic competition that can be managed by international institutions, such as the WTO’s dispute resolution system. We all have an interest in observing the rules of the game and in jointly developing newer ones to address newer economic and technological developments. We all want to provide our citizens a better living.

7. The US-Korea FTA is under negotiations for amendment. Do you think now is a high time for its revision? What is the main stance of the Trump administration for the US-Korea FTA?

I don’t think revision of the bilateral trade agreement between Korea and the US is really the big issue that the Trump administration makes it out to be. Focus on bilateral trade agreements and bilateral trade deficits is an unfortunate part of President Trump’s nihilistic trade narrative. His demand for voluntary export restraints is clearly illegal under the GATT and the Safeguards agreement. His policies are driven by his mistaken views concerning the US electorate and the nature of the inter-connectedness of the global economy. The real focus of the US trade policy should be on promoting a multilateral trading system that is governed by mutually-accepted rules and where disputes are settled peacefully. In the long run, the viability of global trade and international relations is based upon the consent of states. Consent brought about by the threat or use of force in treaty relations is prohibited. Such threats are in violation of Article 52 of the Vienna Convention on the
Law of Treaties. This is a key aspect of the post-1945 international system.

8. President Trump has drastically changed his position towards North Korea and decided to meet Kim Jong Un on June 12 in Singapore, to discuss a complete denuclearization of North Korea. What do you suppose is the core reason for President Trump’s acceptance to the summit quite suddenly? Do you think he has real intentions to barter with Kim Jong Un to dismantle the current nuclear program?

I believe President Trump’s core reason in announcing a meeting with Kim Jong Un probably has very little to do with North Korea. President has no real understanding of international affairs nor anything about North Korea. I believe everything he says or does concerning events outside of the United States has something to do with his distorted perception of events inside of the United States. By that I mean his focus on domestic politics and his own standing with declining numbers of political supporters. He lacks a geostrategic vision and has no coherence or consistency of views. in short, I do not think dismantling North Korea’s nuclear program is his real goal.

9. Early twenty-first century is so turbulent with a fast-changing Asia. Many dramatic and historical events have been and will occur in this region such as the rapid rise of China as a hegemonic power, peace and reunification of the two Koreas, economic welfare of ASEAN, etc. What should be the long-term strategy of the US in light of changing regional politics? How do you envision the two sides—US and Asia—progress toward a peaceful relationship in the twenty-first century?

Again, I’m optimistic. I believe this may be more up to the United States than the Asian countries. I believe mature political leaders in the United States will successfully accommodate the changing landscape throughout Asia. This includes the countries from India to Indonesia and beyond. There is really no reason peaceful relations cannot be promoted and sustained. This is in the national interests of the United States. Terminating treaties and withdrawing from international institutions is not the way to go. The challenge is to manage resurgence in populism and nationalism. Building walls is not the answer, but paving pathways to the global system is critical. Thoughtful leadership, better diplomacy, utilization of multilateral institutions will ultimately allow for managing political differences among countries.
that will benefit people everywhere.

10. Can you give a piece of advice for young lawyers and students interested specifically in public international law, who are beginning their career? What, in your opinion, is the most important value for them to keep in mind?

Viewing public international law as a means of addressing an ever-changing and more complex global landscape will promote the effective management of public and private activities. Most importantly, the scope and complexity of public international law is ever-expanding to newer areas, and international lawyers need to keep abreast of these changes and focus on the areas that drive their passion.

11. Would you say if you have had serious hardships or difficulties, despite your successful course of life? If so, what were they and how did you overcome those difficulties? What was the significance of those challenges in your life?

I don’t want to end this interview on a down note. But since you asked, I will tell you. There is a good ending. I’m a horseback rider and have had my own horse for years. In 1990, I was in a barn tacking up Victoria when the barn’s hayloft collapsed on me. Initially, I was left for dead by the emergency responders. It took me another two years before I could walk without significant pain, of which I still have some. I was told then never to ride again. Well, I didn’t listen, and I’ve been riding ever since. The moral of the story? Just persevere, and never give up!

Interview by Eric Yong Joong Lee
A SELECTED LIST OF RECENT PUBLICATIONS

Books


Global Trade and International Law (Hein & Co., 2012).


WTO Law, Litigation & Policy (Hein & Co., 2007).

Articles


Trump’s Foreign Policy and the Neo Federalism, Richmond Times-Dispatch (June 17, 2017).

On the Importance of International Trade in the Era of Trump, Richmond Times-Dispatch (Nov. 27, 2017).


When U.S. Politics and Global Taxation Collide, Richmond Times-Dispatch (Apr. 17, 2016).


Chinese Economic Cyber Espionage – U.S. Litigation in the WTO and Other Diplomatic Remedies, Georgetown J. of International Affairs 158 (Fall 2015).


The President Needs Fast Track Authority, Richmond Times-Dispatch (Feb. 16, 2014).

U.S.-China Trade Relations and WTO Litigation Since 2001, 26:2 International Law Practicum 122 (Autumn 2013).