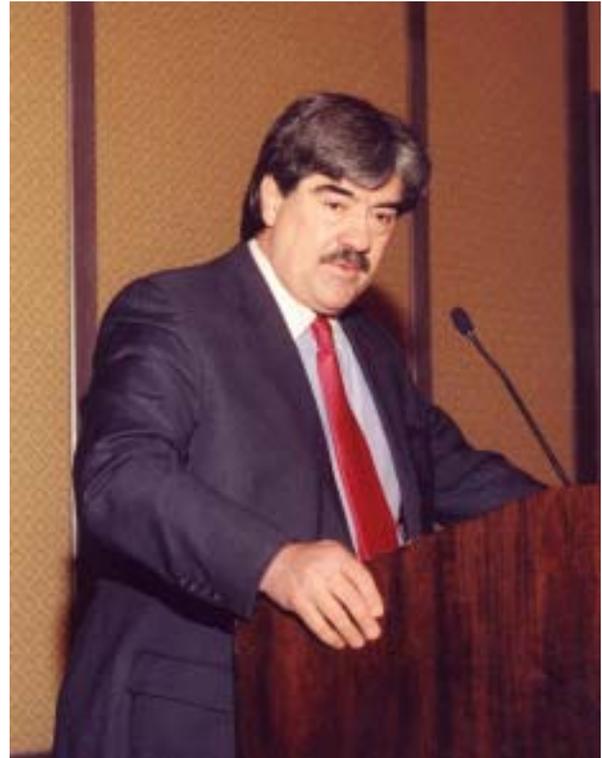


*Ambassador Alberto Székely is a Career Ambassador, since 1986, with the Mexican Foreign Service. He served as Advisor to the Mexican Foreign Minister (1976-1979), was Alternate Representative of Mexico to the OAS in Washington (1979-1980), Legal Advisor to the Mexican Delegation to the Third U.N. Conference on the Law of the Sea (1973-1982), Alternate Representative of Mexico to the U.N. in Geneva (1982-1983), The Legal Adviser to Mexican Foreign Ministry (1983-1991), Representative to the Sixth Committee of the U.N. General Assembly (1983-1990), a Member of the Permanent Court of International Arbitration at The Hague (1986 to date), and Member of the U.N. International Law Commission (1992-1996). The Ambassador has recently been appointed Judge for the International Tribunal for the Law of the Sea. He continues to be a guest/visiting lecturer on International Law at a number of U.S. Law Schools (Arizona State, University of New Mexico, Johns Hopkins) while conducting a private international legal consulting business from Mexico City specializing in International Environmental Law, the Law of the Sea, and Transboundary Resources issues including environmental zoning and land use planning, sustainable coastal development, environmental defense, water law, forestry law, protected areas, and human rights. In 1998, he coordinated the Citizens Workshop for Legislative Proposals (The Rule of Law and Administration of Justice). Ambassador Alberto Székely has an LL.B. from the National Autonomous University of Mexico School of Law (1968); M.A. and M.A.L.D. from the Fletcher School of Law and Diplomacy, Tufts and Harvard Universities (1969-1970); and Ph.D. from the University of London, College of Laws (1975). He has published extensively in English and Spanish in Mexican, American and international journals.*



### **Introduction by Chuck DuMars**

We have certainly had a wonderful lunch, we appreciate it. It's also been a great conference so far and I'm sure it will be this afternoon.

I have been given the honor to introduce our luncheon speaker today, a man who I have known for 20 years, and who was if not the best friend, then close to being the best friend of Al Utton – Alberto Székely. Alberto is a tocoayo of Al, both being called Albert or Alberto. Tocayos are people who not only have the same name, but in some ways, have the same personality. Alberto certainly shares the same zest for life that Al Utton manifested throughout the time that

I knew Al, and he was a very close friend.

When I was told I would get a chance to introduce the luncheon speaker, I turned it down, until I found out that it was Alberto. When he heard I was introducing him, he said, "What are you going to say Chuck?" I said, "Don't worry, I won't tell the truth."

Alberto is an amazing person. He has many degrees: from the National Autonomous University of Mexico School of Law, an LL.B and an M.A.; a M.A.L.D. from the Fletcher School of Law and Diplomacy at Tufts and Harvard universities; and a Ph.D. from the London College of Law. He has

published numerous articles in English and Spanish.

He is the author of what can only be called the leading treatise on the law of the sea. He has co-published numerous articles in the *Natural Resources Journal*, some of which I have also contributed. He is a career ambassador since the mid-1980s with the Mexican Foreign Service. He has written at the Hague. He has been a leader in developing international water policy and transboundary issues. In the past 10 years, I can safely say, he has become one of the most famous individual authors of policy papers that are the constructs for controlling transboundary environmental pollution.

Alberto is a person who has talents that not everyone knows. In addition to being fluent in English and Spanish, he speaks two or three other languages. He is an incredibly good honky-tonk piano player, and I have played duets with him. He plays other instruments as well. He's got a great singing voice, a very deep baritone - drowns you out every time. And he knows all the words to H.M.S. Pinafore's songs. Alberto is an incredible scholar, and also, on a more serious note, has had the opportunity to, because of his tremendous academic credentials, to hide in academia.

Al Utton was very fond of a very famous play called *La Vida Es Sueño*. *La Vida Es Sueño* is the story of Segismundo, a leader of a country who was locked up in a tower for basically his entire life. He was finally able to free himself and he came down

and took a look at the world and he said "La vida sueño, los sueños de sueños son."— meaning that life is but a dream but dreams themselves are dreams and we have to live with those dreams and build on them. Segismundo went back into the tower.

Don Alberto has never gone into the tower. He has been out in the forefront in negotiations at every level for Mexico and for developing countries throughout the world. He represents an "Albert" vision, an advocate not for government so much but for the principal of excellence in the form of what he calls "preventative diplomacy." Preventative diplomacy refers to excellence in knowledge used in advance of a problem that will result in the resolution of that problem. He and Al Utton both articulated those principles, practiced them, and have been instrumental in setting up constructs for transboundary groundwater management regimes, for example, which are being adopted throughout the world.

It is that commitment to excellence in academics, excellence in principles, and the implementation through the institutions that Alberto Székely brings to this group.

I do not have a clue as to what he is going to speak about. He could speak on many topics, everything from Mexican music to classical music to Hungarian food to the most fascinating topics, what it means to plan for, predict, and dream for problem solving resolutions and implementation.

It is my great pleasure to introduce Alberto Székely.

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## ALBERT E. UTTON MEMORIAL WATER LECTURE 2003

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Good afternoon. I do not know how I can appear here after such an introduction. I told you that Chuck DuMars wouldn't tell the truth, and he didn't, he exaggerated on every account. But a most generous introduction. Chuck, thank you very, very much.

I have always been very proud of my association with New Mexico. There have been for the last 25

years so many things in my life that are associated with this state that I don't need to tell you how happy and honored I am that I have been invited to this forum to talk to you. In the last two years or so I have been making similar presentations in this state. I only recently went to Taos to talk to the Rotarians and I gave a presentation there that was not a very positive one

because what was happening then on the water issues between our two countries did not lend itself to give happy accounts. Knowing that I was going to come here, I said to myself, I have to do better. I have to try to create something a little more positive than the last time I was in Taos. Believe me, I am going to exert myself to that end.

This is a lecture in the memory of Al Utton, and I think that to be consistent with that, I should rely mostly on his words. Al Utton did have time to leave us a legacy, a testament, a vision that is very pertinent to bring forth today at his memorial lecture. I remember that in Taos I named my presentation “Chronicle of Man’s Disaster.” I will try to get away from that as much as possible but it’s not easy. Twenty-five years ago, back in the 1970s, Al and I had the idea of creating the transboundary resources center. At that time, Al started turning on some warning lights about the future in this area of the world. He started telling us what we should be thinking about and what kind of measures we should be taking. Perhaps he was thinking already about his grandson who is here today with us, little Daniel Albert. He was not thinking so much of our generation, but of the generations to come. I am sure that he wanted, with all the questions he started posing at that time, a brighter future to be available to future generations.

There was a very important piece of research that was published in 1982 that Al and others undertook during the 1970s called “Anticipating Transboundary Resource Needs and Issues in the U.S./Mexico Border Region.” In that article, Al asked a few questions that I am going to take the liberty of reproducing now. He was talking obviously about the situation with water resources in this part of the world and particularly as they pertain to the border between our two countries, the U.S. and Mexico. We were beginning to experience some difficulty at that time. We had gone for almost a hundred years with a happy situation of great bilateral cooperation between the two countries. We had adopted several treaties, we had created an international mechanism that was a part of history, the International Boundary and Water Commission, and we had built dams all along the two main basins on the border, which is the Colorado River Basin and the Rio Grande/Rio Bravo Basin. However, the honeymoon was almost at an end. Al asked the following questions in the 1982 article. He asked, “How do we get from here to the year 2000? How do we cope with the fact that every drop of water in the major drainage basins is already appropriated, yet the

population is projected to double by the year 2000?” I am quoting his words. He asked, “What is the institutional situation for managing water resources in the U.S./Mexico border area? How well have the institutions performed in the past? Given projections for dramatic population increases in the future, what problems should be anticipated? How should we handle them?” And finally, “What anticipatory actions should be taken?” It was precisely on the idea of taking anticipatory action that he created the transboundary resources center that now is named for him – precisely around the concept of preventing problems. Al put those questions at the end of what he called a century of achievement. The International Boundary and Water Commission was created in 1889. So it was almost a complete century of experience that he was recapitulating on. Al asked those questions because he already saw that there were some ingredients that were beginning to change and he could see that we could not count on continuing on such a bonanza.

Ever since that time, Al’s words, his questions, were the object of great analysis and they instigated the preparation of publications of great pieces of research, mostly published in the *Natural Resources Journal* here in New Mexico. Almost 20 years passed before he gave us his final words. Before he passed away, he published an article in 1999 called “Coping with Drought on an International River Under Stress: The Case of the Rio Grande/Rio Bravo.” Twenty years later he was not talking about the century of achievement, he was then talking, in his words, of “The Century of the Pinching Shoe.” Those of you who know that article remember those words. He said concerning the periods of drought that we had already been undergoing throughout the 1990s, “The shoe will contract, crinkle, and crack and the foot within will be subjected to sharp discomfort and perhaps traumatic dislocation.” Those are the words Al used to describe the beginning of a new century.

Al dared to look into a crystal ball as to what may result from the pressures of population and economic growth. He then left us this series of questions and warnings that I am going to relay to you because it describes how wise he was, what a visionary he was in his predictions. I took those words as a testament as to the way I should conduct my work in the years ahead. He said, “...there will be much greater conservation of existing supplies because water supplies will have to be stretched by much more careful usage. Competition between users will greatly increase. Water will increasingly be switched from

agriculture to municipal and industrial uses because many more jobs can be produced by industry with an acre-foot of water than can be produced by agriculture.” Then he said, “...limits on growth will confront the region; concepts of and the means for sustainable economic development will become imperative; international and interstate apportionments, hard earned in the twentieth century, will be increasingly challenged in the twenty-first century.” He had seen that scenario from the beginning of the drought that started in the 1990s and I do not think that anybody could have put it better, because the way things have been happening since have only confirmed his vision.

Al inspired us at the end of the 1970s, and after twenty years of additional work, with the words that he left us with at the end of the 1990s, he was still inspiring us for the future. I had the opportunity during the past 2½ years, ending in June, to be in charge of water negotiations with the United States. These were very difficult negotiations because reserves have dwindled to such small amounts that we have now encountered the problem of not being in the position, at least on the part of Mexico, to make the kind of compliance with the water treaties that we did historically. That has irritated the relationship tremendously. It has brought to the bilateral agenda an element of discomfort, the “pinching shoe.” The two countries have unfortunately not known how to deal with it; they have been bogged down in fighting about immediate water deliveries and have not been willing to look to the future.

The drought problem that started in 1992 resulted in, at least on the Mexican side of the Rio Grande/Rio Bravo Basin, a decrease of water availability by about 80 percent. That meant we did not have enough water to comply with our obligations under the treaty. But it was not enough to wake us up to the fact that we had to change the way that we use water. We continued with abusive practices. Had we stopped those abusive practices, we would have saved some water and been able to comply with our obligations under the treaty.

The same is happening in the two basins. The shadow of drought has appeared already in the Colorado Basin and the question is, how are we going to deal with it? It is the same question asked by Al Utton at the end of the 1970s and again at the end of the 1990s. We unfortunately do not know yet how to respond to those questions. For 2½ years, I participated in bilateral negotiations, and inspired by some of the words that Al Utton left us, I made

proposals, in the name of Mexico, that were reluctantly accepted in principle by the two governments.

The first proposal that was made and is waiting to be carried out, was something Al Utton reiterated in almost every article he wrote on the subject: the need to define when we are in an “extraordinary drought” situation so that we can say that the normal system of water delivery should be changed. Anybody who knows the literature produced by Al Utton will agree with me that he had sort of an obsession with the technical question of, or the need of, defining extraordinary drought. When a conflict eventually developed as a result of the drought, the one thing that triggered the conflict was that each of the two countries had its own version as to whether we were in an extraordinary drought situation or not.

Finally through these negotiations, at the beginning of this year, there was a proposal put on the bilateral table that we should finally do as Al Utton had advised so many times: sit down and negotiate an exquisite definition of extraordinary drought. I can only report that an agreement has been reached in which a body of experts will sit down and create that definition. Now the question is whether they are really going to sit down and do it. But at least we have advanced that far. There is a little bright light in the future.

Another proposal was made and at the time, we were thinking very much of the words of Al Utton when he said, “...concepts of, and the means for sustainable economic development will become imperative.” We proposed at the negotiation table that these two countries start negotiations for a bilateral plan for the sustainable management of the two basins. That is a tremendous challenge for the two governments because preparing a plan for the sustainable water resources of the two regions, of the two basins, on both sides of the borders, means putting to question a lot of things. It means that we need to start thinking about what Al mentioned regarding limits on growth. We are doing this at a time when nobody wants to talk about limits to growth – at a time when there is wild competition to create wealth to exploit natural resources in order to participate in the market. Therefore the idea of starting to look at limiting growth does not come at the most propitious moment.

However, a proposal was made to prepare such a plan. It will require a review how we implement NAFTA on both sides of the border. NAFTA is based on the idea that we should industrialize the Gulf of Mexico as that will bring about not only the creation of trade exchanges and investment opportunities

between the two countries, but it will also reduce the need for migration from Mexico to the United States.

We are working with a treaty that has as its foundation, a call for much greater growth in the region where water availability has been dwindling constantly to very alarming levels. We will have to question that foundation and, as you can imagine, the federal governments are not prone to get engaged in such questions. We must look at how industry is planning to develop on both sides of the border. We must look at the urban development of all the counties and all the municipios along the border. We have seven Mexican states along the border and four U.S. states. We have 39 municipios on the Mexican side, 25 counties on the U.S. side, and 14 pairs of twin cities. We must look at how we are planning future development, urban development as well as industrial development, because so far we have been developing without any consideration to water availability. Now, as Al said, it will be imperative.

In all this, we have a very big challenge because the attitudes of several of the actors in this story are not, as I said, very prone to engage in these activities. First of all, the institutional bilateral mechanism that we were so very proud of – the International Boundary and Water Commission (IBWC) – has been undergoing a terrible, traumatic period. We just witnessed the coming and going of the Commissioner on the U.S. side that resulted in putting the U.S. Section of the IBWC in a severe crisis to say the least. The Mexican Section is frozen in total stagnation and there is absolutely no will on the part of either of the two governments to do anything about it. So the IBWC is one of the actors we should not rely on. The IBWC will not change things. Many of those of us who are working on these issues keep harping on the idea that we should change the IBWC. I do not think that any change in the IBWC is coming and I do not think that even changing the IBWC a little is going to make a difference.

The IBWC is one actor, the institutional mechanism. Other actors include the two federal governments. However, they are too preoccupied with other things. First of all, their bilateral agenda was lost to 9/11. The Mexican Government has been making great efforts to revise some of the bilateral issues that Presidents Bush and Fox had agreed to undertake when they both came to power but 9/11 has killed that agenda and we have not been able to set it up again.

In the Mexican Government vision, migration to the United States and everything that that entails is Issue Number One; not the future of the border area, not the situation with water resources. The migration issue has its merits but I do not think that the water issue of the future of this area should be put in any place other than first place, perhaps along with the migration issue, but certainly at the top of the list. The two federal governments have not shown any interest in moving in that direction on these issues. We have been told ever since the end of the 1970s that aside from occasional droughts like the one that has been afflicting us for the past three years, we will be hit by something much worse than that, and that is the impact of global warming on these two basins. We have been told that as a result of global warming the Colorado River will lose 40 percent of its flow and the Rio Bravo will lose 76 percent of its flow by the middle of this century. We do not want to wake up. The U.S. resists the idea that they should enter into any international engagements or obligations to address the problem of global warming. Mexico resists the idea of engaging in its own obligations hiding under the umbrella of it being supposedly a developing country that can not afford to do anything about these environmental issues.

We have been told that things are going to get a lot worse, yet we do not wake up. We certainly can not rely on the federal governments to wake up and do something about it. I have counted out the IBWC. Who else should we look to?

We must look to the states. The words that Al Utton was giving us since the 1970s and all the warnings since point in only one direction given the dramatic reduction in water availability. We are going to start having conflicts and possibly even wars between the upper riparians and the lower riparians. We have to realize who those actors are. Who are the upper riparians and who are those lower riparians? In the international context, we are both upper riparians because we have water in the Conchos system that we gave to the United States under the 1944 treaty. But Mexico is lower riparian in the Colorado system while the United States is upper riparian in the Colorado but lower riparian in the Rio Bravo. That is only in the international context. So many of you know that there are upper riparians and lower riparians between states on the American side of the border – New Mexico, Texas, what else should I say? Worse than that, and we do not want to admit it, there are upper riparians in each of the states. Half the users of Rio Grande water

in the state of New Mexico is upper riparian and the other half is lower riparian, all inside your own state.

Who is likely to really worry about these conflicts? The governments of the two countries have not shown any interest, and as usual, they will get there late. I think we should start looking at the states and particularly the role of the states' governors. There is an increasing role for governors in both our countries. In my own country, governors are beginning to show up as a major political force simply because they have been liberated by central control from the presidency. Thanks to the transition that Mexico has been able to make to democracy, suddenly the states of the union are sovereign states not under the control of the president as we were for the last 70 years under the previous regime. Suddenly we are hearing the voices of the governors.

On the Mexican side, we have already constituted the national governors conference. We now have a new kind of actor that was not foreseen in any part of our legislation; an actor with great political force simply because they have regained their sovereignty. They are becoming major actors on most of the top national issues. Governors in Mexico have bonded together on many issues and they meet and talk about these issues. We need a very specific effort on the part of the 11 governors. We also need an effort on the part of the seven governors of the Mexican states bordering the United States along with the four U.S. governors. The governors are going to suffer the consequences of the conflicts between upper riparians and lower riparians not only in the state vs. state conflicts and in the international conflicts, but they also are going to suffer at home when confronting conflicts between their upper riparians and lower riparians. As it so happens, anything that takes place in any part of the basin will send shockwaves to the rest of the basin.

I think it is in the interest of the governors to take a role in this issue. I do not see any other alternative. I repeat: we must discount the IBWC and I do not see the federal governments wanting to take any responsibility on this issue.

I should have finished this talk a long time ago, I think. I have a lot more to say so, if you have a couple more hours, I will go ahead. I do not want to be negative in this presentation, particularly when we are talking in memory of Al Utton, who was always so positive and such an optimist, as you all know. So where do I see hope? Where do I see the possibility of answering these questions that were posed in the positive? I am afraid that if we do not have the states moving and

becoming active on this, I do not know who else will provide us with the answers.

If this Memorial Lecture should be good for something, I hope that it is as the first call on the governors of the 11 states to start acting to ensure a better future for Daniel Utton and for the other kids like him – for those of future generations. That way I will not have to come with gloomy chronicles of man's disasters – maybe we can avert those disasters. I hope this appeal to the states and their governors to move ahead on water resources issues is heard and is repeated by others. I invite you to repeat this appeal.

Thank you very much for listening to me.