CONFERENCE ON INTERNATIONAL INVESTMENT ARBITRATION

SUPREME COURT OF SINGAPORE
20 JANUARY 2010

WELCOME REMARKS BY CHIEF JUSTICE CHAN SEK KEONG

Excellencies, Ladies and Gentleman:

1 On behalf of the Centre for International Law ("the Centre"), I welcome all of you to what we hope will be a stimulating conference on international investment arbitration. I would like to thank, in particular, the chairpersons and panel speakers, especially those from abroad, for coming all the way to Singapore to share their expertise and experiences in this area of legal practice with the participants. We really appreciate your contributions to this important Conference.

2 The Centre is the brainchild of three public institutions, namely, the Attorney-General's Chambers, the Ministry of Foreign Affairs, and the NUS Law School. There was a felt need for such a centre as a consequence of, amongst other things, Singapore's involvement in a number of international law disputes. Our experience in those disputes convinced us that Singapore could play a useful role in capacity-building in international law among Asian countries, especially in areas affecting Asia's interests. It is hoped that the Centre will provide the catalyst to realise these goals. But it will be a long journey.

3 One of the areas that the Centre will focus on will be international dispute resolution – including international investment arbitration. Hence, the Centre has organised its first major conference on the subject of international investment arbitration. I am extremely pleased that so many of you – the leading lights in this area of legal practice – have joined us in taking this first step in a journey of a thousand miles.

4 I note from the Conference programme that the speakers and participants will discuss four emerging but critical issues in international investment arbitration and will suggest ways to tackle them. They are:

(a) whether tribunals are setting new limits on access to international jurisdiction;

(b) how tribunals should deal with evidence of corruption in the making of an investment or the securing of government permits;

(c) the role of precedents in investment arbitration; and

(d) the effect of the provisions in international investment agreements on State responsibility.

5 Given the star-quality of the speakers on these topics, I have no doubt that they will generate a deep and exciting discussion and exchange of views with the participants. I understand that the Conference proceedings will be transcribed, and that the rapporteurs, whose participation is also greatly appreciated, will eventually work with the chairpersons and speakers to have their papers and the discussions

published for the benefit of all stakeholders in this area of dispute resolution. I look forward to reading them.

6 As you are all aware, foreign investment has been one of the engines of Singapore's dynamic economic growth, and today, international trade and services are the life-blood of Singapore's economy. Shortly after gaining independence, Singapore became a party to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States ("the ICSID Convention"). Singapore has entered into many Bilateral Investment Treaties and Investment Guarantee Agreements with countries such as China, Canada, France, Germany and the United Kingdom. In addition, Singapore has a Comprehensive Economic Cooperation Agreement ("CECA") with India that was concluded and signed on 29 June 2005, a landmark agreement as it was India's first-ever CECA, and Free Trade Agreements with countries such as the United States, China, Australia, New Zealand, Japan and many other countries.

7 A United Nations Conference on Trade and Development ("UNCTAD") report entitled "Investor-State Dispute Settlement and Impact on Investment Rulemaking" published in 2008 observed that growing numbers of investor-State disputes involving international investment agreements have been brought before arbitration tribunals in recent years. In some disputes, arbitration tribunals have construed provisions in international investment agreements in a manner that was not reflective of the intentions of the respective State-signatories. One response by various Governments has been better drafting. For example, the definition of "investment" has been made more precise in a number of recent agreements, and provisions dealing with "standards of protection", such as

the “fair and equitable treatment standard”, and the concept of indirect expropriation, have been redrafted and clarified.

8 The UNCTAD report also suggested that two important lessons have emerged from the last decade. First, the increase in investor-State disputes has highlighted the problems created by international investment agreements with imprecise provisions, which result in the delegation of the task of interpreting the meaning of disputed provisions to arbitration tribunals. Second, when negotiating an agreement, a country should pay attention not only to the wording of the agreement, but should also have regard to the future interaction between the agreement and the arbitration convention(s) referred to in the agreement.

9 Apart from the increase in the number of cases, international investment arbitration has also, I am told, attracted attention for two other reasons. First, two arbitration awards issued by the International Centre for Settlement of Investment Disputes (“ICSID”) have proven to be greatly controversial and have generated much discussion, *viz*, the Santa Elena case and the Metalclad Corporation case.[1] Second, although the trend was for companies in the developed world to sue developing countries, there has now been a change. Business entities from developing countries are now also filing cases against developed countries. In a lecture delivered last year in Singapore, Mr Rodman Bundy described the new trend as follows:[2]

> In the earlier days of investment arbitration, States with well-developed, independent judiciaries and which displayed a respect for the rule of law may have felt that there was little risk in them becoming respondents in investment arbitrations. But

> that view may be optimistic and outdated, particularly in times of economic crisis. Industrialized countries such as Canada, Germany, New Zealand, Iceland and the United States have all recently found themselves as respondents in ICSID cases.

10 As many of you are aware, this Conference is held in conjunction with the inaugural Singapore International Arbitration Forum, which will also see the launch and grand opening of the Maxwell Chambers international dispute resolution facility. Singapore aims to position itself as a hub for international arbitration. She has gained a measure of recognition as a leading centre for arbitration of commercial disputes originating from all over the world. Lord Hoffman paid us a compliment in 2007, when he made the following remarks in a judgment he delivered in the House of Lords:[3]

> If the Member States of the European Community are unable to offer a seat of arbitration capable of making orders restraining parties from acting in breach of the arbitration agreement, there is no shortage of other states which will. For example, New York, Bermuda and Singapore are also leading centres of arbitration and each of them exercises the jurisdiction which is challenged in this appeal.

11 Singapore has some particular advantages. To begin with, we have a pro-arbitration judiciary that provides effective and efficient judicial services to all. Hence, the enforcement of international arbitration awards, whether pursuant to the ICSID Convention or the New York Convention, should be a matter of course. We are also an international financial and business centre. In addition, we continue to work towards being a hub to

all manner of services, including those relating to finance, wealth management, distribution and logistics, air and maritime, communications, medical treatment, etc. If Singapore were to succeed in hubbing all the services and activities which she aspires to, she will be the mother of all hubs.

12 It is customary for the host welcome speaker to conclude his remarks by referring, for the benefit of foreign speakers and participants – those who have come here for the first time – to the diversity and richness of the history and culture, etc, of the host country. I do not think that this is necessary in your case, and I will, perhaps, just say that Singapore is a lot more than what you see. It is situated in what was called, more than a thousand of years ago, the "Golden Chersonese". Singapore has no gold mines, but there is optimism that in the next few decades Singapore will again be centred in the world where the next golden age will be, as we try to achieve gold standards in all our endeavours. With the support of friends like you, I hope that the Centre will attain that standard eventually.

13 I wish you all a successful Conference, and, for our foreign guests and friends, a pleasant stay in Singapore. Thank you.

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1 See, respectively, *Compañia del Desarrollo de Santa Elena SA v Republic of Costa Rica* (2000) 39 ILM 317 and *Metalclad Corporation v United Mexican States* (2001) 40 ILM 36.

2 Rodman Bundy, "Bilateral Investment Treaties: Do States Have a Say in How Their Treaties Are Interpreted", AGC International Law Speakers Series (Singapore, 29 October 2009) at para 50.

3 *The Front Comor* [2007] 1 Lloyd's Rep 391 at 395.