

**9<sup>th</sup> Asian Law Institute Conference**

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**Lecture on**

**“Law and Justice: An Asian Perspective”**

**by**

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**Talking Points**

1. Thank ASLI for inviting me to share some thoughts with you.
2. Thank Professor Andrew Harding for introducing me.
3. I would like to discuss the following questions with you:
  - (a) Is the Rule of Law an Asian concept?  
If the answer is yes, should we work collectively in ASLI, to weaken the Rule of Man and strengthen the Rule of Law in Asia?
  - (b) Is there a cultural or historical explanation for the reluctance of the countries of Northeast Asia, namely, China, Japan and South Korea, to refer their international legal disputes to adjudication by ICJ and ITLOS?
  - (c) Can we reconcile the Asian and Western legal traditions by incorporating conciliation and mediation into our dispute settlement process?

4. Question 1: Is the Rule of Law an Asian concept?

- (a) I juxtapose the Rule of Law against the Rule of Man. The Rule of Law means that no one is above the law. It means that everyone is subject to the law. It also means that a person's life, liberty and property are protected by the law and cannot be taken away, except in accordance with the due process of law.
- (b) I want to make the argument that the Rule of Law is not just a Western concept. I want to argue that the Rule of Law has deep roots in the Asian civilization. What is the evidence for my argument? I offer you the case of Judge Bao aka Bao Gong aka Bao Zheng. He is arguably the most famous judge in Chinese history and mythology. Judge Bao was born in 999 in present day Hefei and died in 1062. After passing the imperial examinations, he declined to accept an official appointment for ten years in order to look after his aging parents. After discharging his filial duties to his parents, he served in a variety of positions both at the provincial level and at the imperial capital of Kaifeng. He served during the reign of the fourth Song Emperor, Renzong (1022-1063). Judge Bao acquired a reputation as an astute judge and an incorruptible official. What has endeared him to the Chinese is that he was fearless in criticising and punishing the wrong-doers, including high-ranking officials, powerful eunuchs and the relatives of the Emperor's favourite concubine. To Judge Bao, no one was above the law. This is, of course, one of the elements of the Rule of Law. One thousand years after his death, Judge Bao is still revered in the Chinese-speaking world, in plays, stories, songs, television shows and in temples dedicated to him.

5. I hope I have convinced you that the Rule of Law is not an alien concept to Asia.

Let me now refer you to the Rule of Law Index published annually by the World Bank. The Index scores countries from 0 (worst) to 100 (best). I will arbitrarily take 50 as the pass mark. Of the

countries and territories in Asia, only the following have a score of over 50:

- Australia 95.3
- Bhutan 58.8
- Brunei 73.5
- Hong Kong 91.0
- India 54.5
- Japan 88.2
- South Korea 81.0
- Macau 70.1
- Malaysia 65.4
- New Zealand 98.1
- Singapore 93.4
- Sri Lanka 52.6
- Taiwan 81.5

6. I think we should work together to strengthen the Rule of Law in all our countries. This task includes improving the integrity, competence and efficiency of our police officers, prosecutors, judges, etc. I am very sad to say that, today, in many parts of Asia, the ordinary citizens are not only not protected by the Rule of Law, they are often oppressed by corrupt police officers, prosecutors and judges. There may be laws, but there is no justice in such places.

7. Question 2: Why are China, Japan and South Korea reluctant to refer their international legal disputes to adjudication by ICJ and ITLOS?

(a) I wrote a short article for Vol 1, No. 1, of the Asian Journal of International Law. It is entitled, "International Law and the Peaceful Resolution of Disputes: Asian Perspectives, Contributions and Challenges".

(b) In my article, I expressed disappointment at the fact that only five Asian countries, namely, Cambodia, India, Japan,

Pakistan and the Philippines, have accepted the compulsory jurisdiction of the ICJ.

(c) I also expressed my puzzlement over the fact that the three countries of Northeast Asia have behaved differently from the countries of Southeast Asia and South Asia in the following respect. Of the ten ASEAN countries, five have brought cases to the ICJ and three have brought two cases to ITLOS. The countries of South Asia have also referred disputes to both the ICJ and ITLOS. ITLOS recently rendered its judgement in a case between Bangladesh and Myanmar concerning their maritime boundaries. Although China and Japan have judges on the bench of ICJ, and they, as well as South Korea, have judges on the bench of ITLOS, none of them has ever brought a case to ICJ or ITLOS. There is currently a case involving Japan in the ICJ, concerning whaling. The case was, however, brought unilaterally by Australia.

(d) My question to our Chinese, Japanese and Korean colleagues is this: Is there a historical or cultural explanation for the reluctance of their respective countries to refer their international legal disputes to adjudication, in accordance with international law?

8. Question 3: Can we reconcile the Asian and Western legal traditions by incorporating the Asian preference for conciliation and mediation into the judicial process?

(a) Asians have a preference for conciliation and mediation as the modalities of dispute settlement. They are less confrontational than the adversarial judicial process. They also result in a compromise or win-win outcome as compared to a winner-takes-all outcome, which is the normal result of a judicial judgement. Asians are sensitive about face and therefore fear the possibility of losing a court case.

- (b) I want to commend an innovation by the Singapore High Court for your consideration. We have established the Singapore Mediation Centre (SMC), which is located in the same building as the Supreme Court. The SMC offers its services to litigants before their cases come up for hearing in the courts. The judges encourage the litigants to try to settle their cases by mediation. This saves the litigants both money and face. It saves the court time. The SMC trains many lawyers and lay persons in the skills of mediation. The SMC has also taken the lead in forming an Asian association of mediation centres. I have acted in one case as the mediator, but was not successful and the case went to trial.
  
- (c) I hope more countries and jurisdictions in Asia will consider emulating the happy experience of Singapore in marrying the Asian preference for mediation with the Western preference for judicial settlement.

9. Thank you.

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