International and ASEAN Law in the ASEAN 10 National Jurisdictions: The Reception of International Law in the Legal System of Singapore

The Effect of Treaties in Singapore's Domestic Law

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As a small country with a total population of 5.3 million and land area of 715.8 sq km, Singapore recognises the importance of international legal rules which are equitable and determinable, and the sanctity of agreements voluntarily entered into by governments[1] to ensure its security and prosperity. To this end, Singapore has been active and influential in the international fora and in the making of international law. In the ASEAN context, Singapore was one of the founding members of ASEAN, along with Indonesia, Philippines, Malaysia and Thailand, when ASEAN was established on 8 August 1967 in Bangkok by the ASEAN Declaration.[2] In January 1992, Singapore hosted the 4th ASEAN Summit which agreed to launch the ASEAN Free Trade Area. Singapore was also an active participant in the work that led to the conclusion of the ASEAN Charter. In November 2007, Singapore hosted the 13th ASEAN Summit. This Summit was significant as it saw the ASEAN leaders signing the ASEAN Charter, which ushered ASEAN into a new chapter as a rule-based organisation built on principled regional norms. Singapore was the first country to ratify the ASEAN Charter on 7 January 2008.[3]

This paper maps out the constitutional landscape of Singapore, and examines how treaties are implemented in Singapore's domestic law.

In Singapore, the treaty-making power is vested in the Executive. This is a reflection of the Westminster parliamentary government system that Singapore inherited and on which our own constitutional framework is based. However, treaties entered into by the Executive do not give rise to individual rights and obligations in the domestic context unless it is made part of the domestic law. This is described in international law as "dualism".

Dualism in Singapore is premised on the constitutional doctrine of the separation of powers. Treaty-making power is vested in the Executive, and Article 38 of the Constitution vests law-making power in the Legislature. The Executive does not have law-making power. Giving unincorporated treaties direct effect will allow the Executive to change domestic law. The requirement to incorporate

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1 Professor S. Jayakumar, Hansard, 25 Jan 2003.

2 Declaration Constituting an Agreement Establishing the Association of South East Asian Nations (ASEAN) 1331 UNTS 236

3 http://www.mfa.gov.sg/content/mfa/aboutmfa/history_and_achievements.printable.html?status=1

treaty obligations by separate legislation prevents the Executive from making laws without the authority of the Legislature.

Efficient and effective implementation of treaty obligations in domestic law is attributable to three factors:

(1) A "whole of government" approach to treaty negotiations

In Singapore, the treaties are negotiated by the various ministries and statutory boards responsible for the particular department or subject. There are an increasing number of treaties with complex issues which overlap across different policy areas. To address these issues systematically and holistically, the public agencies adopt the so-called "whole-of-government" approach under which the agencies cooperate and collaborate. Before commencing negotiations, the ministry leading the negotiations will consult the relevant policy agencies. Alternatively, an inter-ministry committee may be convened, on the directions of the Cabinet. For example, the Inter-Ministry Committee on Convention on Eliminating All Forms of Discrimination Against Women (CEDAW) oversees the implementation of CEDAW. Another example is the Inter-Agency Taskforce on Trafficking in Persons which coordinates anti-trafficking initiatives between government agencies in Singapore. Negotiations of free trade agreements involve coordinating several policy agencies. Negotiation for each chapter in the free trade agreement is led by the policy agencies responsible for that subject matter, and they will then come under the supervision of the Chief Negotiator, typically a senior negotiator from the Ministry of Trade and Industry.

In addition, the Government organises its work to ensure that policy initiatives comply with the rule of law. In Singapore, the policy agencies routinely seek the advice of Attorney-General on the legality of their actions under international and domestic law before implementing policies. Officers from the Attorney-General's Chambers are often involved in negotiations and are able to advise agencies of the need for implementing legislation in the course of negotiations.

(2) Deliberate in incorporating treaties into domestic law

There are various methods of incorporating treaties into domestic law in Singapore. Policy agencies, on advice of the Attorney-General, decide on whether legislation implementing the treaty is required and the appropriate method for implementing the treaty, based on policy objectives and the nature and terms of the treaty.

International treaties can be incorporated by means of a formula giving direct effect to the text of the Convention. An example is the Sale of Goods (United Nations Convention) Act which implements the United Nation Convention on Contracts for the International Sale of Goods. This approach is used if policy agencies find that there are benefits to be reaped from the

harmonisation of laws. This is often the case in international treaties on trade and private law conventions.

Policy agencies can also implement treaty obligations by incorporating its substance into a new piece of legislation or existing statute law. One of the benefits of the indirect approach is that language and construction in the treaty can be translated in drafting to achieve a sense of coherence between the law implementing the treaty and existing laws.

Finally, subsidiary legislation is used to implement international treaties as a matter of pragmatism. This is suitable for detailed technical agreements, such as the international agreements relating to air navigation; where large volumes of implementing legislation are expected, such as the Avoidance of Double Taxation Agreements; and where speed of implementation is important.

(3) Section 9A of the Interpretation Act permits reference to international instruments referred to in the written law

Under s 9A(1) of the Interpretation Act, an interpretation of a provision of a written law that promotes the purpose or object underlying the written law is preferred to an interpretation that does not. Neither ambiguity nor inconsistency of a statutory provision is necessary before such a purposive approach is adopted. Section 9A(3)(*e*) of the Interpretation Act expressly provides that treaties and international agreements may be referred to in determining the purpose of the statutory provision. The Singapore Court of Appeal in *Yusen Air & Sea Service (S) Pte Ltd v Changi International Airport Services Pte Ltd* [1999] 3 SLR(R) 95 which considered the Warsaw Convention of 1929 in interpreting the Carriage by Air Act, held that *travaux préparatoires* should be taken into account in the interpretation of an international convention.