

**CONFERENCE ORGANISED BY THE CENTRE FOR INTERNATIONAL LAW**

**INTERNATIONAL LAW YEAR IN REVIEW**

Senior Minister of State (Finance and Law) Indranee Rajah

*Opening Address*

*8 February 2018*

**SALUTATIONS**

Professor S Jayakumar,  
Ambassador Tommy Koh,  
The Right Honourable Beverley McLachlin, former Chief Justice of the Supreme Court of Canada,  
Judicial Commissioner Pang Kang Chau, President of the International Law Association, Singapore Branch  
Professor Lucy Reed, Director, Centre for International Law  
Distinguished guests, ladies and gentlemen

**I. Introduction**

1. Thank you, Lucy for the introduction.
2. I am delighted to join you today at the NUS Centre for International Law's inaugural "International Law Year in Review" conference.
3. For those who have attended yesterday's conference on the "Role of the Agent in International Law Disputes", you would had a fruitful discussion and I am confident that today's conference will be equally illuminating.
4. I am mindful that I stand before a community of Singapore and international legal practitioners, educators, and thinkers. This gives me a wonderful opportunity to explain why developing international law expertise is important for Singapore. Now, more than ever, we need Singapore lawyers to step up to help shape international law. I will cover four areas:
  - a. First, our fundamental need for a rules-based international order
  - b. Second, the expansion of international law into domestic economic and social life
  - c. Third, why Singapore must be actively involved in shaping international law, and

d. Finally, I will review very briefly our efforts to do so.

## II. Our Fundamentals: National Security and Survival

5. First, let me recount our fundamentals. A core tenet is that a rules-based international order, built on the United Nations (UN) Charter, is crucial for global peace and security. Holding all States accountable by the same rules promotes fairness and predictability over arbitrariness. This promotes peace. Both small and big States conduct themselves within the UN-based international legal framework, because of the human need and desire for peaceful co-existence, and the reality of our global inter-dependence.
6. Singapore has in very direct ways experienced the importance of international law to our security and our survival.
  - a. When Singapore first gained independence, it was the Water Agreements with Malaysia that gave us legal assurance of a continued supply of water. Malaysia's adherence to the Water Agreements as guaranteed in the Separation Agreement was at the time fundamental to our existence.
  - b. In 1994, Singapore ratified the UN Convention on the Law of the Sea. Singapore is an island state dependent on maritime trade and access to international waterways. A comprehensive and equitable legal framework for the seas was crucial for us.
  - c. In 2004, Malaysia and Singapore brought our dispute concerning sovereignty over Pedra Branca, Middle Rocks, and South Ledge to the International Court of Justice. By invoking international law and the jurisdiction of the ICJ, we were able to secure Singapore's sovereign rights in a peaceful manner. The ICJ rendered its decision in 2008. Malaysia believes the outcome for Predra Branca should have been otherwise and has recently filed applications seeking to revisit this decision but this shows they continue to act in a manner consistent with international law.
7. Let us take a step back to appreciate how none of this is a natural state of affairs. We are tiny, yet able to hold our own as a sovereign equal against far larger countries. We have been able to smoothly and peacefully resolve disputes over sovereignty - an issue that in different circumstances could be highly destabilising. We are able to demand that other States abide by their international agreements This is only possible because of the principle of sovereign equality of all States and the fact that it has legal force.<sup>1</sup>

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<sup>1</sup> See Article 2(1) of the United Nations Charter.

### III. The Expansion of International Law into Economic and Social Life

8. What I have described so far is how international law governs the conduct of States in relation to other States. But, for a fairly long time now, international law has expanded far beyond this role, deeply permeating the fabric of our economic and social life.
9. One dimension of this expansion is international law governing State conduct *within* its own borders. By shaping the domestic conduct of States, international law naturally has an impact on society as well. For example -
  - a. International trade law regulates what States do in relation to the goods and services flowing in and out of their jurisdiction. This includes the tariffs States may impose, and the ability of States to impose regulatory barriers to trade. These rules have affected national development, livelihoods, domestic innovation, and the ability of people to access affordable medicines, among other aspects of society.
  - b. International investment law constrains the ability of States to exercise powers that impact foreign investors. These constraints have implicated domestic regulations with a social impact, such as measures to ensure access to public utilities,<sup>2</sup> and compensation for environmental harm.<sup>3</sup>
  - c. Just as international investment law regulates the relationship between a State and a private actor, so does international human rights law. When signing on to international human rights treaties, States demonstrate their willingness to account to the international community for how they protect and improve the lives and well-being of their people.
  - d. International agreements relating to transnational crime regulate a State's exercise of domestic criminal jurisdiction. Under these agreements, States agree on the definitions of conduct that would constitute the relevant crimes. In the context of terrorism, States recognise that certain acts are so grave and abhorrent that they are obliged to prosecute or extradite perpetrators of such acts.<sup>4</sup>

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<sup>2</sup> E.g. *Compañía de Aguas del Aconquija S.A. and Vivendi Universal v. Argentine Republic* (ICSID Case no. ARB/97/3); *Aguas Provinciales de Santa Fe, S.A., Suez, Sociedad General de Aguas de Barcelona, S.A. and Interagua Servicios Integrales de Agua, S.A. v. Argentine Republic* (Case no. ARB/03/17).

<sup>3</sup> *Chevron Corp. v Republic of Ecuador*, PCA Case No. 2009-23.

<sup>4</sup> See eg. Article 8 of the International Convention for the Suppression of Terrorist Bombings.

10. A second, and newer, dimension of international law's expansion, is in governing private relationships. Transnational commercial and personal relationships are increasing exponentially. This has compelled States to do two things.
11. First, States are engaging in closer international civil cooperation. States are formulating international agreements on the domestic legal procedures they will apply to facilitate cross-border relationships.
  - a. For example, the 1980 Hague Convention on the Civil Aspects of International Child Abduction helps parents whose children are taken from them to another country, in breach of their custody rights. If that country is a party to this Convention, like Singapore is, that country must give the parent the right to apply to them for assistance in securing the child's return.
  - b. The cross-border enforcement of court judgments and arbitral awards is another example. Cross-border legal disputes are rising. States are therefore entering into international agreements to help secure the enforcement of their court judgments or arbitral awards in other countries.
    - i. One well-known example of course is the New York Convention on the Recognition and Enforcement of Arbitral Awards and Singapore has been a party to this Convention since 1986,
    - ii. More recently, in 2015, the Hague Convention on Choice of Court Agreements entered into force, which provides for States to enforce judgments by courts chosen by the parties. Singapore was among the first to ratify this Convention, which is a significant step forward for promoting legal certainty in cross-border disputes.
    - iii. And soon we may have a Convention on the Enforcement of International Commercial Mediated Settlement Agreements.
12. Second, States are seeking greater harmonisation of their substantive civil and commercial laws.
  - a. People and businesses in cross-border relationships must often navigate different legal systems. The legal complexity of this task is often daunting. The fragmentation of applicable legal standards across borders can create obstacles and confusion in business and personal lives.
  - b. States are therefore harmonising their laws, using international agreements. Such international harmonisation agreements have played important roles in fields such as the international sale of goods and intellectual property. They are emerging in new fields such as cross-border data protection.

- c. These agreements are implemented domestically by States Parties, and have a daily impact on the private relationships they govern.
13. The Government, therefore, has had to adapt. Today, virtually all ministries deal with international conventions and have to consider international norms and standards in domestic policy making.
14. It will also become more common in private legal practice for our lawyers to turn to international law to pursue a client's interests. Lawyers and legal academics in private law will find themselves increasingly confronted with issues of international law and practice.

#### IV. **Shaping International Law**

15. The requirements of legal practice are one reason for developing international law expertise. But there is a more fundamental reason: Singapore should not simply be a recipient of international law. We must also be active in helping to shape it.
16. International law, like domestic law, embodies values and policy choices that are continually contested and negotiated. For a brief illustration, we can look to the interpretation of international investment treaties by international investment tribunals. Some investment arbitrators are said to have brought with them a private law lens, and adopted interpretations that prioritise contractual sanctity. Others have argued that the issues in dispute concern public law issues, and advocated for the adoption of a public law approach instead.<sup>5</sup> So here, we see the schism between public and private law values.
17. The vitality and dynamism of international law-making is sustained by our evolving global landscape. For example:
  - a. The growth of cyberspace has challenged the traditional principles and rules of territorial sovereignty, and required the development of legal norms for State conduct in cyberspace.<sup>6</sup>

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<sup>5</sup> Louis T. Wells, *Backlash to Investment Arbitration: Three Causes*, THE BACKLASH AGAINST INVESTMENT ARBITRATION. PERCEPTIONS AND REALITY, Waibel et. al. eds., (Kluwer Law International: The Netherlands), 2010, 342.

<sup>6</sup> See e.g. *Tallinn Manual 2.0 on the International Law Applicable to Cyber Operations* (Cambridge University Press: Cambridge), 2017.

- b. The problem of transnational cybercrime, which can occur across borders with a mere click of a button, has compelled the development by States of a coordinated response.<sup>7</sup>
  - c. The rise of huge transnational corporations has impacted countries and societies around the world. This has spurred significant scholarship and advocacy on how international law should deal with transnational corporations and their activities. Some countries are negotiating an agreement on this issue within the framework of international human rights law.<sup>8</sup>
18. The impact of international law on Singapore's domestic economic and social life will continue to grow. Singapore must ensure that not only our national interests, but also our values, traditions and perspectives are brought to the table.
19. Our participation in international law-making should also serve the broader purpose of ensuring the continued legitimacy of international law. The international rule of law depends on this. The crisis of legitimacy faced by the international investment regime shows what can happen when the power to develop international jurisprudence is given to a handful of experts who all hail from largely the same tradition, with the same legal sensibilities.<sup>9</sup>

## V. International Law in Singapore

20. Let me move now to International Law in Singapore.
21. Despite a fledgling international law bar, Singapore has from our early years helmed negotiations to formulate global legal frameworks.
- a. Professor Jayakumar, former Justice of Appeal Chao Hick Tin, and Ambassador Tommy Koh represented Singapore in negotiations on the 1982 UN Convention on the Law of the Sea.
  - b. Former Justice Warren Khoo chaired the drafting committee for the 1980 UNCITRAL Convention on the International Sale of Goods, at the session when it was adopted.
22. Singapore's leadership in international law-making continues today.

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<sup>7</sup> See e.g. the Council of Europe's Convention on Cybercrime.

<sup>8</sup> UN Open-Ended Inter-Governmental Working Group on Transnational Corporations and Other Business Enterprises.

<sup>9</sup> See Lecture by Chief Justice Sundaresh Menon, *The impact of public international law in the commercial sphere and its significance to Asia*, (19 April 2013, organised jointly by the International Council of Jurists and the University of Mumbai) at [52] and [53].

- a. We contributed to the development of the Paris Agreement on Climate Change.
  - b. We participate actively in multilateral negotiations at the UN Commission on International Trade Law, or UNCITRAL, and the Hague Conference of Private International Law, or HCCH. For example, MinLaw is currently negotiating a multilateral convention on the recognition and enforcement of foreign judgments in civil and commercial matters. If successful, this convention would facilitate access to justice across borders for businesses and individuals.
  - c. We are involved in the ongoing negotiations on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction, or BBNJ for short.
  - d. We have been on bureaux of the various UN Committees. At the current UNGA session, our Ambassador Burhan Gafoor is chair of the UN Sixth Committee, which deals with legal issues and I am glad to hear that he will be sharing that experience with us today.
  - e. We are also deeply involved in the development of standards at a number of the UN's specialised agencies. These include the International Civil Aviation Organisation, International Maritime Organisation, and the World Intellectual Property Organisation.
23. But the effort to shape international law is not limited only to Government. It is a project that must also engage private practitioners and legal academics.
- a. International law-making does not only take place at the negotiation table. It takes place in the courtroom, as norms are contested and defined through legal arguments and advocacy. In the recent applications brought by Malaysia against Singapore before the ICJ, Singapore's legal team includes not only our established legal luminaries, it also includes our next generation of young legal talent.
  - b. Legal scholarship also has influence. It is given influence through Article 38(1)(d) of the Statute of the International Court of Justice, which regards "the teachings of the most highly qualified publicists of the various nations," as a subsidiary means for determining the rules of international law. It also exerts influence over the epistemic communities in which decision-makers in international law operate. Perhaps one day Singapore will produce our own Grotius, Brownlie or Oppenheim.

24. As part of our efforts to cultivate international legal expertise, the Government has established and continues to support the Centre for International Law at NUS. The Centre has played an important role in promoting international law thought leadership and capacity building.

## **VI. Conclusion**

25. So in conclusion, let me say that I look forward to seeing the next generation of movers and shakers in international law. I am sure that many of them are here today and I hope that you will all participate in this effort in bringing international law forward.
26. Thank you very much, and I wish you all a good conference.