INVESTOR-STATE DISPUTES AND THE SINGAPORE COURTS

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INTRODUCTION

With the growth of international commercial disputes involving state parties, domestic courts increasingly have to deal with international law issues, especially, in the context of investor-state arbitration and international commercial arbitration involving a state party. The focus of this paper is to examine the development of international law in Singapore courts, in investor-state disputes, including a discussion of the recent, landmark decisions in *Maldives Airports Co Ltd and another* v. *GMR Male International Airport Pte Ltd*[1] ("**Maldives Airports**"), *Sanum Investments Ltd* v. *Government of the Lao People's Democratic Republic*[2] ("***Sanum* v. *Laos***") and *Kingdom of Lesotho* v. *Swissbourgh Diamond Mines (Pty) Ltd and others*[3] ("**Lesotho**"). The cases are discussed in the context of the various concepts of international law which arose for consideration, and the contribution of the Singapore courts in recent times to the development of international law jurisprudence.

MALDIVES AIRPORTS

In Maldives Airports, the Singapore courts had an opportunity to engage with the concepts of international law, like state immunity and the act of state doctrine. The case pertained to the grant of an injunction restraining the Republic of Maldives ("**Maldives**") and the state-owned Maldives Airports Company Limited, from interfering with the investor (GMR Male International Airport Pte Ltd.) performing its obligations under a concession agreement ("**Concession Agreement**"). The injunction had been granted by the High Court, and Maldives appealed. One of the preliminary issues before the Court of Appeal, which is the apex court in Singapore, was whether it had jurisdiction to grant an injunction against a foreign government. The Court of Appeal addressed the concepts of sovereign immunity and the act of state doctrine, and came to a conclusion that neither applied in this case, as Maldives had consented to the waiver of sovereign immunity, *vide* a clause in the Concession Agreement, and the parties had entered into a private, commercial contract. In other words, Maldives did not exercise a sovereign power while entering into the Concession Agreement. Thus, the act of state doctrine was inapplicable.[4]

The Court of Appeal next considered whether it had the power under Section 12(A) of the International Arbitration Act (Cap 143A, 2002 Rev Ed) ("**the IAA**") to grant an injunction and held that the power under the aforementioned provision is wide enough to grant any injunction which is "necessary for the purpose of preserving the assets." However, it was held that the term "assets" under Section 12A(4) only includes those contractual rights which "would lend themselves to being preserved" or "which, if lost, would not adequately be remediable by an award of damages."[5]

Though the Court of Appeal asserted its power to grant an injunction against a foreign state under Section 12A of the IAA, the court ultimately held that the balance of convenience lay in not granting the injunction against Maldives. The key factors which influenced the court in coming to this conclusion were that (i) damages would be an adequate remedy if the injunction was not granted and (ii) practical problems associated with the enforcement of the injunction, if granted.[6] In this regard, the court elaborated on the possibility of numerous

[1] [2013] SGCA 16.
[2] [2016] SGCA 57.
[3] [2017] SGHC 195.
[4] Maldives Airports at [29-31].
[5] Maldives Airports at [43].
[6] Maldives Airports at [66-71].

follow up applications raising issues of compliance or non-compliance of the injunction, and the practical difficulty of the degree of supervision required in a foreign land to ensure compliance with the injunction, if granted[7].

SANUM V. *LAOS*

The issue in *Sanum* v. *Laos* was whether the arbitral tribunal ("**Tribunal**") had jurisdiction to decide on the expropriation claims brought by Sanum Investments Limited, a Macanese investor ("**Sanum**") against the Government of Laos ("**Laos**") under the Bilateral Investment Treaty entered into between the People's Democratic Republic of China ("**PRC**") and Laos ("**PRC – Laos BIT**"). The arbitration was seated in Singapore. The Tribunal's positive ruling on jurisdiction was challenged by Laos under Section 10(3)(a) of the IAA. The High Court ruled in favour of Laos, setting aside the jurisdictional ruling of the Tribunal. The Court of Appeal reversed the judgment of the High Court. The two principal questions before the court were: (a) whether the PRC – Laos BIT was applicable to Macau; and (b) whether the subject-matter of the dispute fell within the dispute resolution clause of the PRC – Laos BIT.[8]

In *Sanum* v. *Laos*, the Singapore court addressed a number of international law concepts, including the interpretation of treaties, rules of evidence in international law and the critical date doctrine. Dealing with the justiciability of the jurisdictional issue, the court observed that the Singapore courts are not only competent, but also obliged to interpret and apply treaties, as the parties had designated Singapore as the seat of arbitration.[9] The court laid down that it would undertake a *de novo* review of the Tribunal's award on jurisdiction, and added that in reviewing the Tribunal's ruling on jurisdiction, "there is no basis for deference to be awarded to the Tribunal's findings."[10] The *de novo* review standard for deciding the jurisdictional question has been a consistent view taken by the Singapore courts.[11]

The issue of jurisdiction in this case was not only limited to interpreting the scope and application of the PRC – Laos BIT, but also involved a fundamental question of whether the PRC – Laos BIT extended to the territory in question. The enquiry into the applicability of the PRC – Laos BIT to a particular territory, necessitated the application of principles of treaty interpretation and other customary international law rules. Of particular importance is the emphasis by the court on Article 31 of the Vienna Convention on the Law of Treaties[12] ("**VCLT**"), which encapsulates the principles relating to interpretation of treaties in international law.

In deciding whether the PRC – Laos BIT applied to Macau, the court examined the rule on state succession under Art 29 of the VCLT[13] and Art 15 of the Vienna Convention on

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[7] Maldives Airports at [71].
[8] *Sanum* v. *Laos* at [1].
[9] *Sanum* v. *Laos* at [38].
[10] *Sanum* v. *Laos* at [41].
[11] *PT First Media TBK* v. *Astro Nusantara International BV and others and another appeal* [2014] 1 SLR 372, *PT Tugu Pratama Indonesia* v. *Magma Nusantara Ltd.* [2003] 4 SLR (R) 257, *AQZ* v. *ARA*, [2015] 2 SLR 972.
[12] Article 31, VCLT - General rule of interpretation
1. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.
2. The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes:
(a) any agreement relating to the treaty which was made between all the parties in connection with the conclusion of the treaty; (b) any instrument which was made by one or more parties in connection with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty.
3. There shall be taken into account, together with the context:
(a) any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions; (b) any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation; (c) any relevant rules of international law applicable in the relations between the parties.
4. A special meaning shall be given to a term if it is established that the parties so intended.
[13] Article 29 - Territorial scope of treaties

Succession of States in respect of Treaties[14]. The court further noted that the aforementioned provisions represent the 'moving treaty frontier' rule ("**MTF Rule**") in customary international law.[15] The Court of Appeal relied on the opinions of experts in international law while assessing the relevance and effect of the MTF Rule and observed that the MTF Rule being a presumptive one, would automatically apply to Macau, upon restoration of Chinese sovereignty.[16] The court next went on to examine the exceptions to the MTF Rule[17] and held that none of the exceptions to the MTF Rule applied in this case as the extension of the PRC – Laos BIT to Macau: (i) could not be said to be incompatible with the object and purpose of the BIT (ii) would not radically change the conditions of its operation and (iii) there was nothing in the text, objects or purpose of the PRC – Laos BIT that pointed to an intention that the BIT was *not* intended to apply to Macau.[18]

A significant issue which arose for consideration regarding the relevance of evidence was the "critical date doctrine[19]", in public international law. The Court of Appeal affirmed that the critical date was "the date on which the dispute was crystallised (14 August, 2012), when the arbitration proceedings were initiated."[20] Laos sought to admit new evidence before the High Court in the form of two Notes Verbales ("**NVs**") and two further NVs before the Court of Appeal. The apex Court noted that while the broad principles of *Ladd* v. *Marshall*[21] and *Lassiter*[22] would be helpful in determining the admissibility of new evidence, when the dispute engages questions of public international law, the court must consider the evidence, within the framework of applicable principles of international law, like the critical date doctrine.[23] The Court of Appeal held that the burden of proof was on Laos to prove its assertion that it had otherwise established that the MTF Rule was displaced by the evidence arising before the critical date[24] as the new evidence could be adduced only to confirm the pre-existing position. However, the Court of Appeal found that the pre-critical date evidence did not establish that the MTF Rule had been displaced, and hence the NVs were ultimately not relevant to the issues before it.[25]

Unless a different intention appears from the treaty or is otherwise established, a treaty is binding upon each party in respect of its entire territory.

[14] When part of the territory of a State, or when any territory for the international relations of which a State is responsible, not being part of the territory of that State, becomes part of the territory of another State:
(a) treaties of the predecessor State cease to be in force in respect of the territory to which the succession of States relates from the date of the succession of States; and
(b) treaties of the successor State are in force in respect of the territory to which the succession of States relates from the date of the succession of States, unless it appears from the treaty or is otherwise established that the application of the treaty to that territory would be incompatible with the object and purpose of the treaty or would radically change the conditions for its operation.

[15] *Sanum* v. *Laos* at [47].

[16] *Sanum* v. *Laos* at [49].

[17] The exceptions are as follows: "(a) It appears from the PRC-Laos BIT, or is otherwise established, that the application of the PRC-Laos BIT would be incompatible with the object and purpose of the BIT (Art 15(b) of the VCST) (b) It appears from the PRC-Laos BIT, or is otherwise established, that the application of the BIT to Macau would radically change the conditions of its operation (Art 15(b) of the VCST) (c) An intention appears from the PRC-Laos BIT, or is otherwise established, that the BIT does not apply in respect of the entire territory of the PRC (Art 29 of the VCLT)", *Sanum* v. *Laos* at [50].

[18] *Sanum* v. *Laos* at [50-55].

[19] "In all cases, there is a point in time in the factual chronology of the dispute beyond which the conduct of the parties and other events can no longer affect the decision of the case. This time is called the critical date", (Robert Pietrowski, "Evidence in International Arbitration", Arbitration International, 2006, Volume 22, Issue 3, pp 373-410, at p 399), *Sanum* v. *Laos* at [65].

[20] *Sanum* v. *Laos* at [67].

[21] [1954] 1 WLR 1489 – "(1) The evidence could not have been admitted with reasonable diligence for use in the lower court (2) the evidence would probably have an important influence on the result of the case (3) the evidence must be apparently credible", *Sanum* v. *Laos* at [27].

[22] *Lassiter Ann Masters* v. *To Keng Lam* [2004] 2 SLR(R) 392.

[23] *Sanum* v. *Laos* at [103].

[24] *Sanum* v. *Laos* at [112].

[25] *Id.*

The next aspect of the jurisdictional question was whether the Tribunal had subject-matter jurisdiction over Sanum's claims? The analysis of this issue involved the interpretation of Article 8 of the PRC – Laos BIT[26] and fork-in-the-road provisions. While Laos argued for a narrow interpretation of the phrase "dispute involving the amount of compensation" in Article 8(3) as covering only the dispute with reference to the *amount* of compensation, Sanum argued for a broad interpretation that any dispute, which *includes* a dispute over the amount of compensation may be submitted to arbitration.

Article 8(2) of the PRC – Laos BIT gave an option to the investor for submission of the dispute to a competent court of the contracting state accepting the investment, while, Article 8(3) provided for a dispute *involving the amount of compensation for expropriation* to be submitted to an adhoc arbitral tribunal, and further provided that Article 8(3) would be inapplicable if the investor had resorted to the procedure in Article 8(2). As noted by the court, a fork-in-the road provision requires a party to make an election, and once the election is made, the other remedy would not be available. As contended by Sanum and as accepted by the apex Court, a narrow interpretation of Article 8(3) would have meant that, an investor would first have to approach a court to determine whether an impermissible expropriation has occurred. Once the investor approached the court under Article 8(2), the remedy of arbitration in Article 8(3) would no longer be available, thus rendering Article 8(3) otiose. The Court of Appeal agreed with the Tribunal that a narrow interpretation would be against the principle of *effet utile* (effective interpretation).[27] The court noted that a similar conclusion was reached in the ICSID decision in *Tza Yap Shum* v. *Republic of Peru*[28] while interpreting a similarly worded BIT between PRC and Peru. The court distinguished the cases cited by Laos, favouring a narrow interpretation[29] *inter alia*, on the language and structure of the Bilateral Investment Treaties ("**BITs**") in question, and that they did not involve similar fork-in-the-road provisions. The court concluded in favour of a broad interpretation to Article 8(3). Singapore courts have consistently ruled in favour of broad, effective interpretation of arbitration clauses. This re-emphasizes the pro-arbitration stance of the judiciary in Singapore.

LESOTHO

Lesotho was the first case, in which the High Court of Singapore had to consider an award rendered in an investor-state arbitration, on its merits. As noted by Justice Kannan Ramesh in the High Court, the case engaged *"intriguing questions of arbitral and international investment law which have yet to be considered by a Singapore court."*[30] The High Court set aside the award in its entirety, and the appeal is now pending before the Court of Appeal.

In Lesotho, the investors had initially commenced proceedings in the tribunal ("**the SADC Tribunal**") established by the Treaty of the Southern African Development Community ("**the SADC Treaty**"), for the alleged unlawful expropriation of their investments (mining leases) by

[26]Article 8 - 1. Any dispute between an investor of one Contracting State and the other Contracting State in connection with an investment in the territory of the other Contracting State shall, as far as possible, be settled amicably through negotiation between the parties to the dispute.
2. If the dispute cannot be settled through negotiation within six months, either party to the dispute shall be entitled to submit the dispute to the competent court of the Contracting State accepting the investment.
3. If a dispute involving the amount of compensation for expropriation cannot be settled through negotiation within six months as specified in paragraph 1 of this Article, it may be submitted at the request of either party to an ad hoc arbitral tribunal. The provisions of this paragraph shall not apply if the investor concerned has resorted to the procedure specified in the paragraph 2 of this Article.
[27] *Sanum* v. *Laos* at [128].
[28] ICSID Case No ARB/07/06, Decision on Jurisdiction and Competence, 19 June 2009.
[29] *Plama Consortium Limited* v. *Republic of Bulgaria* (ICSID Case No ARB/03/24, Decision on Jurisdiction, 8 February 2005), *Austrian Airlines* v. *Slovakia* (UNCITRAL Final Award, 9 October, 2009), *ST-AD GmbH* v. *The Republic of Bulgaria* (PCA Case No 2011-06, Award on Jurisdiction, 18 July 2013), *Vladimir Berschader and Moise Berschader* v. *The Russian Federation* (SCC Case No 080/2004, Award, 21 April 2006) and *RoInvest Co UK Ltd* v. *The Russian Federation* (SCC Case No V079/2005, Award on Jurisdiction, 1 October 2007).
[30] Lesotho at [1].

the Kingdom of Lesotho ("**Kingdom**"). However, the SADC Tribunal was dissolved by a resolution of the SADC summit before it had an opportunity to determine the investors' claims. The investors brought international arbitration proceedings before an ad hoc tribunal constituted under the auspices of the Permanent Court of Arbitration ("**the PCA Tribunal**"), pursuant to the arbitration agreement[31] in Annex 1 of the Protocol on Finance and Investment, on the basis that the Kingdom, by contributing to the shutting down of the SADC Tribunal without providing alternative means by which the investors' expropriation claim might be heard, breached its obligations under the SADC Treaty. Singapore was the seat of the PCA arbitration. The PCA Tribunal rendered an award in favour of the investors ("**PCA Award**") and granted relief by directing the parties to constitute a *new* tribunal to hear the investors' expropriation claim.[32]

The Kingdom sought for setting aside of the entire PCA Award pursuant to Section10(3) of the IAA or, in the alternative, under Section 3(1) of the IAA read with Section 34(2)(a)(iii) of the UNCITRAL Model Law ("**Model Law**"), on the ground that the PCA Award exceeded the terms or scope of submission to arbitration.[33] One of the preliminary questions which had to be decided was whether the High Court had the power to set aside the award under Section 10(3) IAA, when the award dealt with both the jurisdictional question *and* the merits of the dispute.[34] Relying on *AQZ* v. *ARA*[35], the High Court ruled that the PCA Award was clearly neither preliminary nor limited to a ruling on its jurisdiction.[36] Thus, the High Court declined to exercise jurisdiction under s 10(3), IAA, but determined the jurisdictional challenge under Article 34(2)(a)(iii) of the Model Law. Citing *Sanum* v. *Laos*, the High Court reiterated that it would apply a *de novo* standard of review in assessing the Kingdom's jurisdictional objections and while the tribunal's findings may be persuasive, the High Court was not bound to accept its findings.[37] Like in *Sanum* v. *Laos*, the High Court relied on the general rule of treaty interpretation found in Article 31, VCLT, which it termed as "a holistic one, embracing the three aspects of ordinary meaning, context, and object and purpose."[38]

Characterization of the dispute was one of the key determinant factors while analysing the issue of jurisdiction. Relying on the *Fisheries Jurisdiction* case[39] of the International Court of Justice (followed by the Permanent Court of Arbitration[40]), the High Court ruled that it would undertake an independent, objective determination of characterization of the dispute.[41] The

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[31] Article 28 - Settlement of Investment Disputes
1. Disputes between an investor and a State Party concerning an obligation of the latter in relation to an admitted investment of the former, which have not been amicably settled, and after exhausting local remedies shall, after a period of six (6) months from written notification of a claim, be submitted to international arbitration if either party to the dispute so wishes.
2. Where the dispute is referred to international arbitration, the investor and the State Party concerned in the dispute may agree to refer the dispute either to:
(a) The SADC Tribunal;
(b) The International Centre for the Settlement of Investment Disputes (having regard to the provisions, where applicable, of the ICSID Convention and the Additional Facility for the Administration of Conciliation, Arbitration and Fact-Finding Proceedings); or
(c) An international arbitrator or ad hoc arbitral tribunal to be appointed by a special agreement or established under the Arbitration Rules of the United Nations Commission on International Trade Law.
3. If after a period of three (3) months from written notification of the claim there is no agreement to one of the above alternative procedures, the parties to the dispute shall be bound to submit the dispute to arbitration under the Arbitration Rules of the United Nations Commission on International Trade Law as then in force. The parties to the dispute may agree in writing to modify these Rules.
[32] Lesotho at [3].
[33] Lesotho at [53].
[34] Lesotho at [57].
[35] [2015] 2 SLR 972.
[36] Lesotho at [70].
[37] Lesotho at [87].
[38] Lesotho at [95].
[39] *Spain* v *Canada* (Jurisdiction) [1998] ICJ 432 at 30-31.
[40] *Mauritius* v *United Kingdom*, PCA Case No 2011-03, Award, 18 March 2015.
[41] Lesotho at [119].

High Court further observed that while the aforementioned precedents were not binding on the Singapore courts, they were persuasive.[42]

Jurisdiction *Ratione temporis*

In the PCA arbitration, the investor-claimant had characterised the dispute as the Kingdom's participation in the shuttering of the SADC Tribunal (shuttering dispute) and emphasized that the arbitration did not concern the expropriation of the mining leases (the expropriation dispute).[43] The High Court agreed with this characterization of the dispute, and undertook a detailed interpretation of Article 28(4) of Annex 1. The High Court held that the shuttering dispute was within the jurisdiction *ratione temporis* as the shuttering dispute arose after the entry into force of Annex 1.[44] The High Court also noted that the awards of other investor treaty tribunals, in interpreting similar provisions were instructive.[45]

Jurisdiction *Ratione materiae*

Analysis of jurisdiction *ratione materiae* concerned the interpretation of the phrase "an admitted investment" under Article 28(1) of Annex 1. As the High Court had characterized it as the shuttering dispute, the issue involved was whether the right to refer the dispute to the SADC Tribunal, constituted an "investment" under Annex 1 and whether the same had been "admitted" within the meaning of the treaty. The PCA Tribunal had decided that the mining leases created a bundle of rights, including primary rights to performance and secondary rights to remedies. Referring to some of the literal terms adopted in the definition of "investment" in Annex 1 ("purchase, acquisition or establishment of productive and portfolio investment assets"), the High Court found that the definition of "investment" was restrictive, as it considered that the words "productive" and "portfolio" emphasized the economic value of the investment.[46] The High Court further observed that the definitions of "investment" in the cases relied on by the investors, were not in precisely the same terms as the definition in Annex 1.

The High Court distinguished the dispute in *Lesotho*, from *Mondev* v. *USA*[47] and *Chevron* v. *Ecuador*[48], in which "the law suits themselves (rather than the right to sue) were the investment"[49] and further noted that whether the right constitutes an "investment" under the treaty in question, depends on the construction of the treaty under international law.[50] In *Mondev* v. *USA*, Article 1139 of the NAFTA defined "investment" as "interests arising" from the core investment and not in terms of "productive and portfolio investment assets."[51] The High Court further noted that in *ATA* v. *Jordan*[52], "investment" in the Jordan-Turkey BIT was worded broadly to include "every kind of asset"[53] and in *Chevron* v. *Ecuador*, the definition of investment encompassed "every kind of investment."[54] The High Court opined that the definition of "investment" in Annex 1 was more limited compared to those cases, and

[42] *Id.*
[43] Lesotho at [105].
[44] Lesotho at [119].
[45] The High Court referred to the awards in *Lucchetti* v *Peru* (ICSID Case No ARB/03/04, Award, 7 February 2005), *Mondev* v *USA* (ICSID Case No ARB(AF)/99/2, Award, 11 October 2002), *Chevron* v *Ecuador* (PCA Case No 2007-02, Interim Award, 1 December 2008), *ATA* v *Jordan* (ICSID Case No ARB/08/2, Award, 18 May 2010) and *Jan de Nul* and *Egypt* (ICSID Case No ARB/04/13, Decision on Jurisdiction, 16 June 2006), Lesotho at [120 -176].
[46] Lesotho at [195].
[47] *Mondev International Ltd* v *United States of America*, ICSID Case No ARB(AF)/99/2, Award, 11 October 2002.
[48] *Chevron Corporation (USA) and Texaco Petroleum Company (USA)* v *The Republic of Ecuador*, PCA Case No 2007-02, Interim Award, 1 December 2008.
[49] Lesotho at [182].
[50] Lesotho at [199].
[51] Lesotho at [210].
[52] *ATA Construction, Industrial and Trading Company* v *The Hashemite Kingdom of Jordan*, ICSID Case No ARB/08/2, Award, 18 May 2010.
[53] Lesotho at [212].
[54] Lesotho at [213].

concluded that the right to sue was not an "investment."[55] The High Court disagreed with the PCA Tribunal in its "bundle of rights" analysis that the *investment* (a secondary right to submit disputes to the SADC Tribunal) was *admitted* as a part of the investors' broader investment (the mining leases).[56] According to the High Court, a secondary right can be admitted only if it is admitted specifically in accordance with the host state's laws and regulations.[57] In this regard, the High Court held that while the mining leases were admitted, the right to submit disputes to the SADC Tribunal, did not form any part of the bundle of rights comprising the mining leases.[58]

The High Court also engaged with the principles relating to the exhaustion of local remedies, under international law, and proceeded on the basis that Article 28(1) transposed the customary international law doctrine of exhaustion of local remedies in the field of diplomatic protection into Annex 1.[59] The High Court concluded that the investors had not exhausted local remedies, with reference to the shuttering dispute.[60]

CONCLUSION

Maldives Airports, *Sanum* v. *Laos* and Lesotho have paved the way for the Singapore courts to engage with complex concepts in international law in the context of investor-state disputes. While the first among the cases, Maldives Airports, pertained to the power of the Singapore court to grant an injunction against a foreign government, pending resolution of the dispute in arbitration, the other two cases – *Sanum* v. *Laos* and Lesotho dealt with a review of the jurisdiction of the arbitral tribunal.

One of the key conclusions laid down in *Sanum* v. *Laos* and Lesotho, is that the Singapore courts would apply a *de novo* standard while reviewing an award rendered in an international arbitration. Furthermore, both the cases saw the involvement of academic scholars in international law (either as experts or *amici curiae*), whose opinions were taken into consideration by the courts. The Court of Appeals decision in *Sanum* v. *Laos* is also noteworthy for its treatment of new evidence in the context of the critical date doctrine, as well as the broad interpretation of the 'fork-in-the-road' treaty provisions. In the upcoming appeal in Lesotho, the Court of Appeal has a further opportunity to clarify international law in a "denial of justice" dispute. The growing engagement of the Singapore courts in international law is timely, given the popularity of Singapore as a seat for investor-state disputes and for international arbitration in general.

[55] Lesotho at [193].
[56] Lesotho at [237].
[57] *Id.*
[58] Lesotho at [252].
[59] Lesotho at [294].
[60] Lesotho at [306].