

2018



International Law Year in Review

Message from the Director

Dear Friends of International Law

We have the University of Sydney to thank for inspiring our very own International Law Year in Review Conference. As they say, imitation is the sincerest form of flattery. This inaugural International Law Year in Review Conference, organised by the Centre for International Law, gives insights into the latest developments in international law, particularly developments that affect Singapore and the region.

Over the years, a proliferation of international law activities and meetings—including the establishment of a Singapore Chapter of the International Law Association (ILA), a Public International Law Conference by the Singapore Law Society, and a public international law–focussed Congress Week by the Singapore International Arbitration Chambers, to name a few—is testimony to the growing interest in the study and practice of international law in Singapore. We believe that the Centre for International Law at the National University of Singapore plays a unique role, with the support of the ILA Singapore, of being a convenor of international law activities in Singapore. Along the way, we hope to nurture a cohesive community of international lawyers in Singapore.

Our Guest-of-Honour Ms Indranee Rajah SC, Senior Minister of State for Law and Finance, issued the clarion call for Singapore not simply to be a recipient of international law, but to play an active part in shaping it. Ms Rajah also highlighted that this project of shaping international law does not fall under the ambit of the government alone, but that it must engage private practitioners and legal academics. The Centre for International Law is proud to be able to play a role in Singapore’s endeavour, being positioned as an intellectual thought leader for the teaching and research of international law.

I invite you to enjoy this newsletter that we have put together to capture best parts of the conference. I look forward to seeing you at our future events.

Professor Lucy Reed
Director

NUS Centre for International Law



Guest-of-Honour Ms Indranee Rajah SC, Senior Minister of State for Law and Finance, with Centre Director Professor Lucy Reed, Professor S Jayakumar, Ambassador-at-Large Professor Tommy Koh, and speakers.

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CENTRE FOR INTERNATIONAL LAW
National University of Singapore

Conference Highlights

Ambassador Burhan Gafoor, Singapore’s Permanent Representative to the United Nations, presents a view from inside the United Nations in New York.



Ambassador Kwok Fook Seng, Singapore’s former Chief Negotiator for the Paris Accord, looks at the future of the climate agreement.



Canada’s former Chief Justice Beverley McLachlin, Justice Quentin Loh and Mr Alvin Yeo SC speak on the courts and international and foreign law.



Acclaimed playwright Mr Haresh Sharma from The Necessary Stage discusses his plays with Ambassador-at-Large Professor Tommy Koh during literary lunch.



Session 1: International Law Disputes

Speakers:

Ms Alison Macdonald QC, Matrix Chambers

Dr Kate Parlett, 20 Essex Street

Ms Loretta Malintoppi, 39 Essex Chambers

Moderator:

Mr VK Rajah SC, former Attorney-General of Singapore

The panel discussed a number of recent international law disputes, such as the *Ghana/Côte d'Ivoire* judgment in the field of maritime delimitation, the *Croatia/Slovenia* maritime boundary dispute in the Adriatic Sea, the *India/Pakistan* spy case, the *Ukraine/Russia* rights case and the *Chagos Archipelago* advisory opinion.

For the *Ghana/Côte d'Ivoire* case, it was established that past conduct—the granting of oil and gas concessions—was not a relevant consideration in delimiting maritime boundaries. Therefore, no adjustment to the existing maritime boundary was granted by the Special Chamber of ITLOS. Provisional measures could be applied by the claimant or respondent state. Côte d'Ivoire applied for provisional measures shortly after Ghana had filed the claim. In this case, the provisional measures had significant economic impact on the Ghana economy and to the operators.

The *Croatia/Slovenia* maritime boundary dispute in the Adriatic Sea was notable for leaks involving Slovenia's nominated arbitrator, who had allegedly conspired with

“[A] new challenge for the ICJ is the pivotal role. . . [that] the UN continues to play in the development of international law, in the crystallisation of disputes and in [an] attempt to both settle disputes and to clarify the law more generally.

Ms Alison Macdonald QC”

Slovenia's team to influence the judgment, resulting in Croatia's withdrawal from the proceedings. Despite Croatia's withdrawal, the Tribunal held that it had jurisdiction to issue an award and eventually adjusted the equidistance line in Slovenia's favour. Croatia has refused to accept the award because of its withdrawal, and Slovenia intends to commence proceedings to compel Croatia to recognise the award.

The use of provisional measures was analysed in the *India/Pakistan* case, where provisional measures were granted by the International Court of Justice to prevent Pakistan from executing an alleged Indian spy. Similarly, in the *Ukraine/Russia* case, Ukraine was granted limited provisional measures to protect the rights of the minority Tartar ethnic group but was not granted other requests related to the bigger issue of Russia's use of unreasonable force against it.

Session 2: Climate Change and the Paris Accord: What's Next?

Speaker:

Ambassador Kwok Fook Seng, Singapore's High Commissioner to Australia and former Chief Negotiator for the Paris Accord

Moderator:

Mr Prakash Pillai, Clyde & Co Clasis Singapore

This session focussed on the nature and mechanism of the Paris Agreement. The Paris Agreement has a softer approach, in that it does not focus on the imposition of obligations, unlike the Copenhagen Accord. This approach gives greater degrees of powers to the sovereign parties to the Agreement, moving away from the type of international law that cites jurisprudence and precedence as a way to compel action.

Paris Agreement follows the Kyoto Protocol in dropping the bifurcation between developed and developing nations, because even within developing states, there were wide disparities in emission patterns. In addition, both developed and developing nations finance climate change actions.



The panel discussed the Paris Agreement, which is envisioned to be a game changer in managing climate change, and Singapore's implementation of the Agreement.

Another key feature of the Paris Agreement is its global stocktaking that takes place every five years, the first of which will take place in 2023. The review takes into account the progress of states collectively, instead of an individual assessment. This feature allows for bottom-up action and empowers regulators to respond to realities on the ground with greater flexibility.

Session 3: Treaty and Legislative Developments

Speakers:

Ms Daphne Hong, Attorney-General's Chambers, Singapore

Assistant Professor Mahdev Mohan, Singapore Management University

Moderator:

Professor S Jayakumar, International Advisory Panel of the NUS Centre for International Law

Professor S Jayakumar emphasised the role of treaties in shaping Singapore. Treaty law is important to Singapore, because foreign governments are bound to honour treaty law, thus protecting Singapore's interests.

The panel discussed Singapore's international legal responses to a number of key geopolitical trends. Singapore remains a major trading and aviation hub in a world increasingly skeptical of trade, investment, and freedom of movement, thanks to its extensive network of 21 free trade agreements (FTAs) and more than 40 investment treaties. There has been a shift from bilateral FTAs to regional trade agreements, and an expansion of FTA standards beyond trade liberalisation to include



Professor S Jayakumar (centre) with Ms Daphne Hong (left) and Assistant Professor Mahdev Mohan (right)

“For Singapore, treaty developments and its importance were evident from day one when Singapore as an independent country came into existence. Singapore's status as an independent sovereign country was derived from the separation agreement between Malaysia and Singapore.”

Professor S Jayakumar

labour, environment and other standards. This greater complexity requires closer cooperation between the Attorney-General's Chambers and government agencies for a better understanding of the domestic implications of Singapore's international obligations.

The panel also discussed how international conventions affect Singapore's global standing and how Singapore enacts legislation with an eye to the international plane. For example, Singapore's position as a dispute resolution forum is strengthened by the Hague Convention on Choice of Court Agreements, which allows mutual recognition and enforcement of judgments in contracting states. This development opens the possibility for a regional court mechanism. The Civil Law (Amendment) Bill and Mediation Bill also facilitate Singapore's growth as a dispute resolution hub. Singapore has been in keeping with treaty developments concerning human rights with a policy review, in order to fulfil its obligations in the Convention of the Rights of the Child. In addition, a parliamentary petition relating to the Convention on the Elimination of All Forms of Discrimination Against Women was filed in September 2017.

Session 4: The Courts and International and Foreign Law

Speakers:

The Right Honourable Justice Beverley McLachlin (Retired), Supreme Court of Canada

Justice Quentin Loh, Supreme Court of Singapore

Mr Alvin Yeo SC, WongPartnership

Moderator:

Mr J Christopher Thomas QC, NUS Centre for International Law



Justice Beverley McLachlin spoke on the attitude of Canadian courts towards international law.

The panel reviewed the composition of the judiciary of the Singapore International Commercial Court (SICC), and the international perspectives offered by judges from North America, Europe and Asia. The SICC secretariat determines the suitability of a judge to each case, and the SICC has its own discovery and evidentiary procedures to give flexibility to multinational parties. The admission of foreign lawyers to SICC proceedings allows the judges to cross-examine counsel on legal interpretations, rather than only having recourse to expert statements on applicable laws.

The panel discussed the attitude of Canadian courts towards international law. The Canadian Supreme Court looks to international sources to determine the scope of guarantees under the Canadian Charter and to establish the principles of fundamental justice in interpreting the

Canadian Constitution. The Canadian courts defer to NAFTA arbitral tribunal decisions, even if the former may not always seem to characterise it that way.

The panel also discussed the role of the Singapore courts in interpreting investment arbitration awards. The Singapore courts have dealt with a wide range of issues of international law, such as the case of *Maldives Airports Co Ltd & Anor v GMR Male International Airport Pte Ltd*, which relates to the invocation of state immunity vis-à-vis injunctive relief sought by an investor against the Government of Maldives and the airport operator. Another notable case is *Sanum Investments Ltd v Government of the Lao People's Democratic Republic*, in which the Court of Appeal adopted a *de novo* review in deciding on jurisdictional issues in arbitral awards and reviewed the question without being bound by the reasoning of the arbitral tribunal.

“[In the case of *Suresh v Canada*], the Supreme Court explicitly stated that in seeking the meaning of the Canadian Constitution, the courts may be informed by international law, although courts will look to international law as evidence of these principles [of fundamental justice] and not as controlling in itself.”

Justice Beverley McLachlin

Session 5: A View from Inside the United Nations in New York

Speaker:

Ambassador Burhan Gafoor, Singapore's Permanent Representative to the United Nations

Moderator:

Professor Simon Chesterman, NUS Faculty of Law

The panel reflected on the growing importance of the United Nations in its role in developing and codifying international law, rules and norms. This importance is underscored by the increase in the number of treaties deposited with the UN Secretary-General, from around 80 treaties in the 1970s to over 500 treaties today.

The panel highlighted the role of the UN General Assembly (UNGA). The UNGA seeks advisory opinions from the International Court of Justice and has referred various questions to it, including the use of nuclear weapons, the wall by Israel in Jerusalem, the unilateral declaration of independence by Kosovo, and most recently, the decision to refer the legal consequences on the Chagos Archipelago from Mauritius.

Of equal importance are the other committees within the UN, such as the 1st Committee, 3rd Committee and 6th Committee. The 1st Committee, which considers issues of disarmament, adopted in 2015 a resolution on nuclear



The 65th session of the United Nations General Assembly.
Source: Obama Whitehouse Archives.

weapons that led to the adoption of the 2017 Treaty Prohibiting Nuclear Weapons. The 3rd Committee, which considers social and human rights issues, presents itself as a platform to debate, contest and oppose the imposition of norms and laws on issues where there is no clear international consensus, such as the reproductive rights of women, and sexual orientation and gender. The 6th Committee, which works by consensus, has a primary role of drafting and considering legal documents, including draft articles prepared by the International Law Commission, such as the 1998 Rome Statue and the 1961 Vienna Convention on Diplomatic Relations.

Session 6: Key Issues to Watch

Speakers:

Professor Antony Anghie, NUS Centre for International Law

Ms Danielle Yeow, Attorney-General's Chambers, Singapore

Moderator:

Dr Romesh Weeramantry, Clifford Chance LLP

The session focussed on two broad issues of international law: security, including cyber security, and globalisation.

There is a growing possibility that a limited and tactical strike on North Korea as a pre-emptive self-defense may occur. Certain states may argue that customary international law has changed, because of changes in circumstances. This raises the fundamental question of who



The panel addressed two key issues to watch in international law: security and globalisation.

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With the Comprehensive and Progressive Agreement for Trans-Pacific Partnership, it seems like the Trans-Pacific Partnership is making a comeback from the dead . . . like the phoenix rising from the ashes.

Ms Danielle Yeow

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makes customary international law, and drives the need to further analyse the foundational concepts underpinning customary international law.

Although international law generally applies, insofar as states are prohibited from allowing their territory to be used for internationally unlawful acts, there is no international legal framework governing cybercrime specifically. The creation of such a framework has moved at a glacial pace, because of different levels of cyber-infrastructure development globally.

The Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTTP) is a reduced form of the Trans-Pacific Partnership (TPP), as several provisions of the original deal have been suspended. The reduced nature of the treaty relative to TPP was also due to the lack of access to the largest market, the United States. The core drivers of the CPTTP include Japan, Australia and Singapore. The panel noted that a reversal of globalisation is taking place—the West is now turning its back against globalisation, and it is now Asia that is embracing globalisation.

Concluding Remarks

Speakers:

Professor S Jayakumar, International Advisory Panel of the NUS Centre for International Law

Ms Daphne Hong, Attorney-General's Chambers, Singapore

Professor Lucy Reed, NUS Centre for International Law

Professor Jayakumar, Ms Hong and Professor Reed shared their perspectives on the practice of international law in Singapore. Professor Jayakumar said that the older generation must be succeeded by the younger generation. He reflected on the challenges of practising international law in the early days and that Professor Tommy Koh and he were thrown in at the deep end without the support of an existing International Affairs Division (IAD).



Professor Lucy Reed is optimistic that Singapore will one day have its own James Crawford and the likes.

Ms Hong reflected on how the IAD has grown over the years, from 17 lawyers in 2007 to 40 lawyers today. The nature of the IAD's work has also grown from mere advisory and treaty negotiations to dispute resolution and representing Singapore in multilateral forums. Today, the IAD maintains a presence in New York, Geneva and The Hague.

Professor Reed said that many Singaporeans are practising abroad in diverse areas of international law and pursuing an education in the field. She shared the view of Guest-of-Honour SMS Ms Indranee Rajah that Singapore will one day have its own James Crawford and the likes. The panel concluded with the hope that Singaporean lawyers would one day be presented as candidates at the International Law Commission and the International Court of Justice.

“Why hasn't more happened for Singapore lawyers? A lot more has happened than Singapore has given itself credit for in the international law front. The International Affairs Division and lawyers in Ministry of Law are second to none in terms of experience and sophistication with international law.”

Professor Lucy Reed

Literary Lunch

Singaporean playwright and Cultural Medallion recipient **Mr Haresh Sharma**, *The Necessary Stage*, in discussion with **Ambassador-at-Large Professor Tommy Koh**, Governing Board of the NUS Centre for International Law

Mr Sharma first engaged with plays with his friend Alvin Tan at the National University of Singapore. As an individual who enjoyed writing poetry and short stories, Mr Sharma wrote his first play in 1988, which made him realise that this was his calling.

Mr Sharma considers *Off Centre* his most successful play. The play, which revolves around characters living with mental illness, was originally commissioned by the Ministry of Health in 1993 but was not well received by the Ministry. However, it became Singapore's first play to be adapted as a literature text for the Singapore-Cambridge O level and N level examinations. This allows the play to be read by a new generation of students.



Professor Koh noted that Mr Sharma creates plays that address contemporary moral, social and legal issues in Singapore.

“I wouldn't feel I write to change society. We can't change society . . . because that would mean changing people . . . changing society means changing policy and laws. When we have laws that are open and universally accepted, that are . . . on the right side of history, then I think our society can progress in a better way.”

Mr Haresh Sharma

Professor Koh noted that Mr Sharma creates plays that address contemporary moral, social and legal issues in Singapore, such as *Gemuk Girls*, which looks at the issue of detention without trial under the Internal Security Act, and *Mardi Gras*, which relates to Section 377A of the penal code criminalising sex between mutually consenting adult men. Written in 2013, *Mardi Gras* is about a group of gay men and women who banded together to organise Singapore's first gay parade. Mr Sharma recalled the challenges in obtaining the arts entertainment licence for that play. Professor Koh shared his view that although Singapore is a conservative society, it has moved towards greater acceptance of diversity.

Mr Sharma does not consider himself as an advocate, but instead a playwright who intuitively veers towards issues of marginalisation, injustice and people without a voice. He left the audience with his belief that open and universally accepted laws, not archaic laws, lead to a progressive society.

Mr Sharma's next play, *Underclass*, delved into urgent issues pertaining to poverty, inequality and human dignity in Singapore. The play ran from 16 May to 3 June 2018.

Upcoming Events in 2019

Early 2019

Singapore International Arbitration Academy International Law Year in Review



About the Centre for International Law

The Centre for International Law (CIL) was established as a university-level research institute at the National University of Singapore in 2009, in response to the growing need for international law thought leadership and capacity building in the Asia-Pacific region.

The CIL Director is Professor Lucy Reed. The Chairmen of the Governing Board and International Advisory Panel are Professor Tommy Koh and Professor S Jayakumar respectively.

CIL works closely with its partner organisations in Singapore: the NUS Law Faculty, Attorney-General's Chambers, Singapore, the Ministry of Foreign Affairs of Singapore, Ministry of Law of Singapore, and the Singapore Maritime Institute.

CIL also collaborates with the Rhodes Academy of Oceans Law and Policy; Center for Oceans Law and Policy, University of Virginia; and Australian National Centre for Ocean Resources and Security (ANCORS), University of Wollongong.

Mission and Vision

The mission of CIL is to enable Singapore and the Asia-Pacific region to play a more significant role in the promotion and development of international law. CIL's vision is to become a regional intellectual hub and thought leader for research on and teaching of international law.

Research and Training Areas

CIL's main focus areas of research and training are ocean law and policy, ASEAN law and policy, investment law and policy, international law and practice, which includes teaching and researching international law in Asia.



CIL's publications and two book series: the NUS Centre for International Law published by Edward Elgar Publishing, and the ASEAN Integration Through Law published by Cambridge University Press.

Publication Series

NUS Centre for International Law

This book series provides critical analysis on issues of international law relevant to the region from a legal, political and policy perspective, including ocean law and policy, ASEAN law and policy, trade and investment law and policy, and international dispute resolution.

ASEAN Integration Through Law

Published by the Cambridge University Press, this book series evaluates ASEAN's community-building process and issues at the forefront of ASEAN law and policy. The series covers six themes: the general architecture and aspirations of ASEAN, the governance and management of ASEAN, the legal regimes in ASEAN, the ASEAN Economic Community, ASEAN and the world, and the substantive laws of ASEAN.

