

WELCOME ADDRESS AT EMERGENCE CONFERENCE 2018

Singapore, 25 July 2018

The Honourable the Chief Justice Sundaresh Menon

Supreme Court of Singapore

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Distinguished delegates

Ladies and Gentlemen

1. It is my great honour and privilege this morning to welcome you to the Supreme Court of Singapore to participate in the largest-ever Emergence Conference. I congratulate the organisers, the UNCITRAL Regional Centre for Asia and the Pacific and the Asian Business Law Institute (or ABLI for short) for putting together such an exciting and well-considered conference programme.

2. You join us at what is an exciting time for Asia, and for Southeast Asia in particular. Last year, East Asia and the Pacific grew

6.6%, more than double the 3.1% growth rate of the global economy. ASEAN is already the 6th largest economy in the world, with a combined GDP of USD 2.56 trillion, and it is expected to grow at a rate of 5.2% from 2018 to 2022.¹ By 2025, intra-ASEAN trade is projected to exceed USD 375 billion. China's Belt and Road Initiative, which is expected to cover one-third of global GDP, will further catalyse growth and economic cooperation in Asia,² and Singapore is a vital conduit for BRI funds. This year, it was reported that 33% of all outward BRI investments and 85% of inbound BRI investments made their way from and into China through Singapore.³

3. Against this background, it comes as little surprise that the spotlight is now firmly on Asian legal systems. Thus far, much of what has been said relates to the importance of trade policy and public law. This is no surprise, because it has often been said that Asia's success owes much to an open, rules-based international order which has fostered economic cooperation and spurred international trade.⁴ However, increasing attention is now being paid to the importance of private law and this is entirely appropriate because even if tariffs were lowered and market access guaranteed, economic actors would still have to contend with the obstacles raised by local laws when they cross borders to market their goods. This is a particular problem in Asia, which is home to a considerable diversity of legal systems and

traditions. The fragmented legal and regulatory landscape that now exists introduces uncertainty and adds to the cost of doing business, chilling the appetite for growth and expansion.⁵

4. It is for this reason that the legal community has made a concerted effort to engage in a week-long reflection in Singapore on the latest legal developments and to chart a course for the future. For the past two days, insolvency practitioners from around the world have gathered at the Marina Bay Expo and Convention Centre to discuss the importance of interdisciplinarity in dealing with issues of cross-border insolvency.⁶ At the same time – and incidentally, at the very same location – the International Association for Privacy Professionals held their annual Asia Privacy Forum where there was a robust discussion of recent developments in cross-border data transfers and global data breaches. Rounding off the week will be the ASEAN Law Association’s triennial Conference, which begins tomorrow. The ALA Conference, for which ABLI is the sole knowledge partner, has been organised around the theme of “The Power of One – Unlocking Opportunities in ASEAN through Law”. The vision of the organisers, which I am sure all of you will agree with, is that the presence of a clear, coherent, and sensible set of laws that apply more or less uniformly across borders will be a critical driver of economic growth and prosperity in ASEAN.⁷

5. I see today's conference as being a critical part of the week's events. Whereas the Insolvency and ALA Conferences are more directed and so confined either in subject matter or geographic scope, the Emergence Conference is not. Instead, it trains its sights on both global and regional developments relating to the harmonisation and convergence of international trade and commercial law. Therefore, I was absolutely delighted to learn that the UNCITRAL Regional Centre for Asia and the Pacific and ABLI were working to put this conference together.

6. Both UNCITRAL and ABLI share a common vision of the importance of legal convergence. UNCITRAL has been charged with the mandate "to promote the progressive harmonization and unification of international trade law". Since its inception in 1966, it has sought to do so through the preparation and promotion of the use and adoption of legislation and non-legislative instruments in key areas of commercial law. Most of these texts are drafted by special rapporteurs appointed by its working groups before they are finalised at the Commission's annual plenary sessions.⁸

7. UNCITRAL's work is methodical, thorough, and inclusive, as special care is taken to ensure that its members are drawn from diverse geographic regions as well as the principal economic and

legal systems of the world.⁹ It is for this reason that the texts which UNCITRAL has published over the decades have always been regarded not only as the products of the very best international scholarship, but also as documents which are broadly representative of the prevailing global consensus. Collectively, they form the bedrock of modern commercial enterprise. It would be unthinkable, for instance, to imagine international commercial arbitration without the UNCITRAL Model Law on International Commercial Arbitration or international trade without the United Nations Convention on Contracts for the International Sale of Goods. Indeed, the influence of UNCITRAL is such that even States which do not adopt its recommendations in full, look to its texts for guidance when reforming their national laws.¹⁰

8. By comparison, ABLI was set up in 2016, 50 years after UNCITRAL, as a permanent research institution dedicated to stimulating “the drive towards thoughtful legal convergence in the region.”¹¹ While it is headquartered in Singapore, ABLI is a neutral body that reports to a multi-national board of governors and holds a truly pan-Asian outlook. Despite its relative youth, it already has three projects which are at various stages of completion. The most advanced is the project on the recognition and enforcement of foreign judgments in Asia. At the start of this year, ABLI published a

compendium of reports written by legal scholars and practitioners that serves as a concise primer on the laws that govern the registration and enforcement of foreign judgments in 15 Asian jurisdictions.¹² Work on the second phase of the project, which is the production of a statement of common principles, is well underway. A workshop will be held in October to discuss the draft statement, and it is hoped that the document will be finalised by the end of the year.

9. The second project focuses on data privacy and cross-border data movement. As with the project on foreign judgments, a compendium of jurisdictional reports was prepared, and published. In February this year, ABLI organised a highly successful forum on data privacy, which was attended by 90 of the foremost experts and high-level government officials in the region. Work on the second phase of the project, which is the preparation of a common framework of reference for the regulation of cross-border data transfers in Asia, has begun and it is hoped that this will be completed by next year.

10. The third project is on corporate restructuring and it is being undertaken together with the International Insolvency Institute. In October last year, ABLI and the III appointed an Advisory Committee comprising 21 judges, professors and practitioners, all of whom are highly regarded experts in insolvency and restructuring to guide and

supervise the Project. The bulk of the work will be undertaken by a working committee which was constituted in April 2018, and they held their first meeting two months ago. The eventual goal is to publish a set of Asian Principles of Business Restructuring that will articulate an appropriate approach towards corporate restructuring in Asia and thereby advance convergence in Asian restructuring laws.

11. In addition to these three projects, ABLI will soon begin a new, fourth, project on the interpretation and enforcement of key terms in construction and engineering projects. This is particularly timely, given that it is estimated that US\$26 trillion will be spent on infrastructure projects in Asia over the next 15 years.¹³

12. From this brief survey, it is plain that UNCITRAL and ABLI have a common vision, and complementary strengths. From its inception, UNCITRAL's key asset has been its strong intergovernmental membership and its deep and extensive academic connections. ABLI, on the other hand, is an organisation with a pronounced practice orientation and a clear focus on Asia. In the course of its projects, it has engaged not only governments but also members of the business and legal communities. Given the clear opportunities for synergy, it was eminently sensible that they should co-host this event, and I very

much hope that this will be the first of many such collaborations to come.

13. I am given to understand that the organisers of the conference have received more than 54 high quality submissions from researchers, scholars, and practitioners from around the globe, even though only a small fraction could be selected for this conference. The topics which will be covered today run the gamut from the cutting edge – such as those related to the law governing the “internet of things” and “smart contracts” – to those relating to persistent problems in international commerce such as the resolution of investor state disputes. I have no doubt that you will find the contributions to be both thoughtful and thought-provoking. I thank all the authors for their contributions and commend them on their excellent scholarship. A special word of thanks must go to the members of the law faculties at the National University of Singapore and the Singapore Management University, who have reviewed the draft abstracts and papers as well as to the chairpersons and speakers of the five sessions, all of whom have very generously taken time from their busy schedules to be present at this event to make it a success.

14. In closing, I leave you with this thought. There is sometimes a tendency, when speaking of economic growth, to see it as an end in

itself. But of course it is not, in the same way that the creation and enforcement of new laws are not ends in themselves. Instead, they find their point only in terms of suffering alleviated and lives bettered. In 1990, 966 million people in East-Asia and the Pacific lived in extreme poverty; in 2013, that number dropped to 71 million.¹⁴ China alone has lifted some 730 million people out of poverty in the same period, largely due to the rapid pace of economic growth that has taken place there.¹⁵ In 2007, Harvard economist Dani Rodrik wrote that while economic growth alone is not a panacea for the ills of this world, “historically, nothing has worked better ... in enabling societies to improve the life chances of their members, including those at the very bottom.”¹⁶ When viewed in this light, removing barriers to trade through legal convergence is not merely an economic necessity, but a humanitarian imperative. This wisdom was acknowledged more than 50 years ago in the recitals to Resolution No 2205, which established UNCITRAL, where the General Assembly proclaimed “its belief that the interest of all peoples, and particularly those of developing countries, **demand** the betterment of conditions favouring the extensive development of international trade” [emphasis added].¹⁷

15. Those of us who are fortunate enough to work in the law have an opportunity to make a real difference to the societies in which we live. We do so directly, through our daily participation in the

administration of justice; and also indirectly, when we participate in international dialogues such as the present. I have no doubt that the ideas which are exchanged today will contribute to the development of a consistent body of international commercial law that will form part of the foundation for a future of mutual prosperity.

16. Thank you all very much for being here today. I wish this conference every success.

- ¹ Organisation for Economic Cooperation and Development Centre, *Economic Outlook for Southeast Asia, China and India 2018* at p 17, available at < https://www.oecd.org/dev/SAEO2018_Preliminary_version.pdf> (accessed 25 June 2018).
- ² Heng Swee Keat, Opening Address at Singapore International Arbitration Centre Congress 2018 (17 May 2018), available at < <https://www.mof.gov.sg/Newsroom/Speeches/siac17may2018>> (accessed: 25 June 2018).
- ³ Warren Fernandez, “Singapore can play key role in China-led Belt and Road Initiative: Chan Chun Sing” (Straits Times, 24 January 2018).
- ⁴ Lee Hsien Loong, Opening Plenary at Boao Forum for Asia (10 April 2018), < <http://www.pmo.gov.sg/newsroom/pm-lee-hsien-loong-boao-forum-asia-opening-plenary> > (accessed: 24 June 2018).
- ⁵ Sundaresh Menon, “Doing Business Across Asia: Legal Convergence in An Asian Century” (Opening address delivered at the launch of the Asian Business Law Institute on 21 January 2016), <<https://www.supremecourt.gov.sg/news/speeches/chief-justice-sundaresh-menon--doing-business-across-asia--legal-convergence-in-an-asian-century>> (accessed on 17 January 2018) (“ABLI Launch Speech”) at para 7.
- ⁶ www.singaporeinsolvencyconference2018.com/index.html
- ⁷ <https://aseanlawconference.com/info/programme/>
- ⁸ United Nations Commission on International Trade Law, *A Guide to UNCITRAL: Basic facts about the United Nations Commission on International Trade Law* at pp 1–8, available at < <http://www.uncitral.org/pdf/english/texts/general/12-57491-Guide-to-UNCITRAL-e.pdf> > (accessed: 25 June 2018).
- ⁹ *Ibid* at p 2.
- ¹⁰ For instance, even the United Kingdom, which was initially sceptical of the Model Law on International Commercial Arbitration, ended up adopting many of its articles when it passed the 1996 Arbitration Act: see Richard Garnett, “International Arbitration Law: Progress Towards Harmonisation” 3(2) *Melbourne Journal of International Law* (2002) p. 400 at 408.
- ¹¹ See Sundaresh Menon, “Doing Business Across Asia: Legal Convergence in An Asian Century” (Opening address delivered at the launch of the Asian Business Law Institute on 21 January 2016), <<https://www.supremecourt.gov.sg/news/speeches/chief-justice-sundaresh-menon--doing-business-across-asia--legal-convergence-in-an-asian-century>> (accessed on 17 January 2018) (“ABLI Launch Speech”) at para 4.
- ¹² *Recognition and Enforcement of Foreign Judgments in Asia* (Adeline Choong, ed) (Asian Business Law Institute, 2018).
- ¹³ Janice Heng, “A key role in developing, financing projects in Asia”, *The Straits Times* (3 March 2018), < <https://www.straitstimes.com/business/economy/a-key-role-in-developing-financing-projects-in-asia>> (last accessed: 24 June 2018).
- ¹⁴ World Bank, *Atlas of Sustainable Development Goals 2017: From World Development Indicators. World Bank Atlas*; at pp 1–3, available at <<https://openknowledge.worldbank.org/handle/10986/26306>> (accessed: 25 June 2018).
- ¹⁵ Organisation for Economic Cooperation and Development, *Growth: Building Jobs and Prosperity in Developing Countries* at p 4, available at <<https://www.oecd.org/derec/unitedkingdom/40700982.pdf> > (accessed: 24 June 2018).
- ¹⁶ Dani Rodrik, *One Economics, Many Recipes: Globalization, Institutions, and Economic Growth* (Princeton University Press, 2007) at p 2.
- ¹⁷ GA Res 2205, UN GAOR, 21st Sess, UN Doc A/RES/2205 (XXI) (17 December 1966).