

Address by Associate Professor Tan Cheng Han, Dean, Faculty of Law, National University of Singapore, at the Inauguration of the Asian Law Institute (ASLI)

City Hall Chambers

Singapore

21 March 2003

The Honourable the Chief Justice of Singapore Yong Pung How;

Your Excellencies, Ambassadors and High Commissioners;

The Honourable Judge of Appeal Chao Hick Tin;

Judges of the Supreme Court;

Professor Shih Choon Fong, President and Vice-Chancellor of the National University of Singapore;

Professor Tommy Koh, Chairman of the NUS Faculty of Law's Steering Committee and members of the Steering Committee;

1st Solicitor-General Chan Seng Onn;

Deputy President and Provost of NUS, Professor Chong Chi Tat;

President He Qinhua of the East China University of Politics and Law, my fellow Deans and representatives from the Founder Members of the Asian Law Institute;

Distinguished Guests and colleagues;

Ladies and Gentlemen,

Much has rightly been said of globalization and its impact on contemporary society. While globalization is not new and arguably began in the mid-19th century, what we are witnessing today is the beginning of a wave of globalization that is likely to be deeper than previous waves of globalization. The globalization that is taking place today, together with the other forces that are sweeping the world, e.g. technological change and advances in science, are forcing us to confront change on a sweeping scale. Some of these changes are positive and have the potential to make life better for humanity and hopefully, for all other living creatures that humankind shares this world with. Others are painful. Certain skills have become less important leading to employment difficulties for those concerned. Traditional cultures and lifestyles are threatened. The list of positives and negatives can be a long one both ways from the perspective of different groups of persons.

Given the reality of globalization and other forces that are at work, and given that they will transform contemporary society, how will this affect the legal profession? Is the legal profession somehow immune from such forces? The answer must surely be an unequivocal “No”. All of us no doubt appreciate that law is not an autonomous discipline. With the learning that has been built up over many centuries, there is a tendency to forget sometimes that the law is essentially a reflection of the culture, politics, sociology and economics of a particular group of peoples. The law is therefore never immune from the forces at work in societies.

To take a specific example, it is evident today that cross-border elements in commercial transactions have become more important with the rapid increase in international investment. In addition, due to the principle of comparative advantage, many businesses are also global concerns with manufacturing operations located in one jurisdiction, IT facilities and support in another, and the main headquarters and other regional headquarters located in still others. The law has an important role to play in this more globalized system, as the law is one of the instruments that can play a facilitative role. The law provides a framework within which the global system operates. At the same time, the law must adapt to globalization and other forces that operate on society. Some of this adaptation will come about through multilateral arrangements such as the WTO, regional arrangements such as NAFTA and the EU, and bilateral arrangements such as Free Trade Agreements between countries, all of which will add to the legal framework regulating international trade and investment. From the perspective of the legal practitioner, this is likely to mean that an international trade in legal services will become even more prominent in the years ahead. The legal profession must adjust to these new realities. So must law schools. As a professor of law from a US law school once said: “One thing that globalization does, or should do, is to cause us to rethink and re-analyze our assumptions.”

Challenges facing law schools

What then are some of the challenges that law schools will face in such a setting? There are many but this evening I will only highlight 3 briefly.

The first is that there will be greater competition among law schools. In the past, law schools would generally compete domestically with other law schools from the same area. With globalization, a large middle class, and greater ease of travel and communication, law schools now have to compete in the global arena. An English professor has gone so far as to suggest that the relatively few elite institutions will by virtue of their status be the ones to succeed in generating demand for their courses and for their student ‘products’; in attracting private resources in the marketplace; and in transcending the tensions posed by globalization and local concerns. In a world where the brightest students can study almost anywhere, what can law schools do to continue to attract the best talent? In a world where employers can hire the best global talent, what can law schools do to ensure that their graduates are sought after?

Secondly, how can essentially domestic law schools provide an education that will not only equip its students with the foundation to practice law in that area or

economy, but will also have the necessary flexibility and mindset to operate in a world of cross-border legal transactions? One possibility advocated by eminent academics such as Professor Peter Birks, the Regius Professor of Civil Law in the University of Oxford, and Professor Basil Markesinis, who is currently Professor of Common and Civil Law at University College London, and who was previously Professor of Comparative Law at Oxford University, is to inject elements of comparative law into the law curriculum. By this suggestion it is not intended that we should attempt to train our students in the law of other jurisdictions. Most of us are surely not qualified to do this and lack the resources to make such an endeavour a practical one. Instead, what is advocated is that students should be sensitized to different approaches that may arise in other jurisdictions or systems of law so as to both enhance an understanding of the strengths and weaknesses of their own legal system, as well as providing a sufficiently flexible mindset that can operate effectively in diverse jurisdictions.

Thirdly, with increased challenges and opportunities, law schools will face difficult financial issues. Resources will be scarce and this will be exacerbated by the increased mobility of top talent as well as the growing demands that will be placed on law schools by students, alumni, and the wider community.

How law schools can respond and the role of ASLI

How can law schools respond to these challenges?

There is no universal solution to such a broad question. Much depends on the particular circumstances of each law school. Certainly those law schools that are already perceived as belonging to a group of elite law schools, and those that have large existing endowments, are the ones best placed to meet such challenges.

Having said this, I venture to suggest that law schools can benefit much from increased cooperation with other peer law schools. Perhaps paradoxically, greater global competition may compel groups of law schools to cooperate more closely. Such cooperation has many advantages. It allows law schools to tap into a wider pool of academics for collaboration in research and teaching. Secondly, through such collaboration, it will allow law schools to add comparative insights into existing courses. Thirdly, a strong network of law schools that can work well together in good faith on a variety of projects will strengthen all the participating law schools thereby allowing each law school to continue to be a strong global competitor in legal education.

It is this vision of the challenges posed by globalization and other contemporary forces, together with the advantages of closer cooperation amongst leading law schools that has given rise to the intention of all the law schools gathered here this evening to come together to establish the Asian Law Institute or ASLI for short. The establishment of ASLI is also timely for another reason. One cannot help but be struck by the number of Asian law centres or institutes in North America, Europe and Australia. Rather remarkably though, very few equivalent institutions appear to exist in Asia itself. The establishment of ASLI is a powerful commitment by the law schools gathered in this historic room that the time has come for Asian legal

scholars to learn from each other through collaboration in research and teaching. Asia is home to a diverse number of different legal traditions, all of which must adapt to rapid changes in society. How the laws and legal systems of each economy respond to these changes contains valuable insights that deserve greater study. In this sense, the acronym ASLI, which means indigenous in the Malay language, is extremely appropriate.

At the same time, there is a great practical advantage in such collaboration. As the number of cross-border transactions multiply, difficult legal issues that cut across national boundaries will arise. Free trade areas comprising countries in Asia have also been mooted and this will also raise difficult legal and other issues. ASLI hopes in some way to facilitate greater economic openness through the building of greater understanding amongst Asian legal scholars of the different legal approaches and traditions in Asia, as well as to institute research projects and conferences through which such issues can be addressed. At the same time, ASLI will also be a forum for non-Asian legal scholars to collaborate with Asian scholars. Already, even before this formal establishment of ASLI, interest in the Institute has been generated with inquiries from non-Asian scholars on how they may collaborate with ASLI.

Let me at this stage introduce the representatives from all the ASLI founder members that are up on stage. First, we have Professor He Qinhua who is President of the East China University of Politics and Law, whose areas of interest are legal history and corporate law. Those of you familiar with Shanghai will be interested to know that ECUPL is sited on the campus of the former St John's University and that ECUPL was established from a merger of the departments of law, politics and sociology of St John's and various other Chinese universities, including Fudan and Nanjing. Next to President He is Professor Li Ming, Vice-Dean of the Faculty of Law of Peking University, whose interests include Internet law and international law; next is Dean Abdul Bari Azed from the University of Indonesia, whose interests include constitutional law and legal aid; next is Dean Nik Ahmad Kamal Nik Mahmood from the International Islamic University of Malaysia, whose research interests include employment law and industrial relations; next is Dean Shin-Ichi Ago from Kyushu University, whose interests include international economic law and international law; and finally but certainly not least is Dean Raul Pangalangan from the University of the Philippines, whose interests include public international law, constitutional law, and legal theory. It has been my very great privilege and honour to have met all of them and we have had a very productive and inspiring meeting earlier today. I should also say that although the University of Chulalongkorn and the National Taiwan University have signed the MOU, the Deans of these 2 law schools are unable to be with us this evening. 2 other law schools, the law schools of Hong Kong University and Delhi University, are also considering joining ASLI and I acknowledge the presence of Professor Wilson Chow of the Hong Kong University who is here as an observer.

At our meeting we have agreed that each founder member will send an academic staff each year to spend up to three months at the NUS law school. This gathering of law academics each year from different areas in Asia, all of whom should broadly have similar teaching and research interests, will facilitate exchanges of ideas, collaborative research, as well as teaching. The time they spend together will provide the springboard for an academic conference to be held in the following year. It was

also agreed at the meeting that the first conference topic would be “The Role of Law in a Developing Asia”, to be held in Singapore in 2004, and that the academics who will gather in Singapore from August 2003 will be legal experts in this area. We have also agreed that the Chairman of ASLI’s Board of Governors will be Professor Tithiphan Chuerboonchai, Dean of the Faculty of Law, Chulalongkorn University, and the Deputy Chairpersons will be President He Qinhua of the East China University of Politics and Law and me. The Director and Deputy-Director of ASLI, who are answerable to the Board, are Associate Professors Gary Bell and Alan Tan respectively.

At this juncture, I shall like to thank a number of people without which ASLI would not have been possible. First, I shall like to thank the Chief Justice, the Attorney-General, the Supreme Court Judges and the Solicitors-General, particularly the Chief Justice, for the wonderful support they have shown the Faculty. Although very busy individuals, they have always made time for the Faculty and provided me with extremely good advice when I have sought it.

Secondly, I would like to thank the President of NUS, Professor Shih Choon Fong, and Provost Chong Chi Tat, for creating the setting within which the NUS law school has managed to flourish. The NUS law school has gone from strength to strength under their careful stewardship. Thanks must also go to NUS for providing the seed money to establish ASLI.

Thirdly, I would like to thank Professor Tommy Koh and the members of the NUS law school’s steering committee for their support and advice.

Fourthly, I would like to express my deepest appreciation and admiration for the representatives of the founder members of ASLI. It is their vision and their strength of personality that has given birth to ASLI. With them on the ASLI Board of Governors, I am extremely confident that ASLI will thrive and will very shortly be one of the leading law institutes in the world and this can only be to the benefit of all founder members.

Finally, I would like to thank all our distinguished guests for sharing this special occasion with us. The support you have given us through your presence here this evening means a great deal more to us than you can imagine.

Thank you.