

SINGAPORE AND INTERNATIONAL LAW

THIS section comprises two sub-sections. The first is intended for articles, notes and comments on issues relating to both private and public international law. This sub-section is not featured in this issue. The second comprises materials and information which illustrate Singapore's approach and attitude on questions of international law. The materials in the second sub-section are presented under the following headings:

- I. Policy Statements
- II. Legislation*
- III. Judicial Decisions*
- IV. Treaties (other than ASEAN Instruments)*
- V. Association of South-East Asia Nations (ASEAN) Treaties, Declarations and other Instruments
- VI. Singapore in the United Nations and other International Organisations and Conferences.*

The materials are compiled from various sources, including Singapore Government Press Releases. It should be stressed that any text reproduced herein is not to be regarded as officially supplied to the Malaya Law Review. As far as possible, speeches and statements of policy are reproduced in full, but they may be edited to omit opening statements and other unrelated details.

B. MATERIALS ON SINGAPORE AND INTERNATIONAL LAW

I. POLICY STATEMENTS

- (a) *ATTACK ON THE MALDIVES: Singapore Government Press Statement, 15 Nov. 1988 (Singapore Government Press Release No. 15/NOV, 09-1/88/11/05)*

The Singapore Government strongly deplores the savage attack by mercenary forces on the Maldives. The attempt to topple the legitimate government of the Maldives was a reprehensible act which should be condemned.

The Singapore Government shares the relief of the Government and people of the Maldives that the mercenary attack has been successfully repelled. It also extends its deepest sympathy to the bereaved families of the innocent victims of the attack.

*There are no materials under these headings in the issue.

- (b) *IMPORTANCE OF SEA LANES TO SINGAPORE: Speech of Mr. Goh Chok Tong, First Deputy Prime Minister at the launching of the missile corvette RSS Valour on 10 Dec. 1988 (Singapore Government Press Release No. 39/DEC, 05-1/88/12/10)*

Singapore sits astride the major sea lanes in the world. These sea lanes are of vital concern to our prosperity and security.

The sea lanes in the South China Sea, the Straits of Malacca and the Straits of Singapore form the most vital maritime highways linking the Indian and Pacific Oceans. Everyday some 200 ships sail through the Malacca and Singapore Straits.

Our favourable geographical location at the cross-roads of the East and West has been a fundamental reason for our economic success. We have capitalised on it, turned our port into the busiest in the world, and built ourselves a home and nation. But this geographical advantage can also be our disadvantage. Cut off our access to these sea lanes and we will immediately be 'land-locked'.

We have to trade to live. Ninety per cent our trade, excluding the overland trade across the Causeway, is carried by ships. It is not just a question of trade for economic prosperity. Many of our daily necessities have to be imported, for example, rice, fruits and petrol. The sea lanes are important conduits through which these essential goods flow.

Having free access to the sea lanes is thus essential to our very survival. The sea lanes are like the arteries through which the life-blood of our nation flows.

Threats to our Sea Lanes

We cannot assume that we will always have free access to these sea lanes. Piracy, navigational hazards, domestic instability in the coastal states and intra-regional conflicts can all threaten free access to them. Many of you no doubt recall the recent Iran-Iraq War in which the conflict between the two coastal states spilled into the Straits of Hormuz. When both parties resorted to indiscriminate attacks on unarmed ships in the Straits, merchant shipping was affected and the economies of the other oil-producing Gulf countries suffered. In the event of an intra-regional conflict in Southeast Asia, a similar scenario could well develop. If it does, it will have grave consequences for the economic well-being and survival of Singapore.

The security of the sea lanes also depends on the existence of appropriate and adequate safety measures. These include the establishment of an effective traffic separation scheme and traffic information system, good navigational work, timely search and rescue capabilities and maritime surveillance.

Keeping The Sea Lines of Communication (SLOC) Open

Our navy has an important role to play in maintaining access to our sea lines of communication as well as deterring and dealing with threats to their closure. This is why we need to build up our navy. With the acquisition of the new class Missile Corvettes the ability of the RSN to undertake this crucial mission will be greatly enhanced. These ships are equipped with the Harpoon anti-ship missile. They have other escort capabilities. They will further boost the overall capability of our navy.

The buildup of the RSN will not just contribute to Singapore's security. It will also allow us to take part in regional efforts to maintain the security of our sea lines of communication. In a region where the sea-lanes pass through the waters of many countries, the task of ensuring the security of these sea lanes should be a cooperative effort. All countries in the region as well as the international trading community have a shared interest in keeping open these vital waterways. Regional prosperity and growth will not be possible unless there is free access for all to these sea lanes.

This cooperation can take many forms. Countries can act independently in loose coordination with other countries or within a more structured framework. For example, co-operation exists in the implementation of traffic separation schemes, joint search and rescue efforts, and joint naval exercises. We should explore other areas of co-operation.

- (c) *DEATH OF EMPEROR HIROHITO OF JAPAN: Statement by Ministry of Foreign Affairs spokesman (Singapore Government Press Release No. 08/JAN. 09-9/89/01/07)*

The Prime Minister sent the following condolence message on 7 January 1989 to Emperor Akihito:

“His Majesty Emperor Akihito
Emperor of Japan
Tokyo

Your Majesty

I learned with deep sadness of His Majesty Emperor Hirohito's death today.

Over the last three decades, I have had the honour of being received in audience by His Majesty on several occasions. I was impressed by his dignity, his humility, and his dedication to his country and his people.

His Majesty's long reign of over 60 years spanned an era which first saw Japan destroyed from a large militaristic empire to a shrunken country devastated and ruined by war, and then transformed by recovery into the most dynamic economy in the world, a nation with a constitution that provides for no military forces except for self-defence.

His Majesty's passing is a great loss to the people of Japan. Your Majesty has a great tradition to uphold. I am sure Your Majesty and Royal Family will continue to be for the Japanese people, the symbolic exemplar of a Japanese family, closely-knit and dedicated to the service of the nation.

Please accept, Your Majesty, my deepest condolences.

LEE KUAN YEW
Prime Minister
Republic of Singapore"

- (d) *DEATH OF EMPEROR HIROHITO OF JAPAN: Condolence message sent by President Wee Kim Wee dated 7 Jan. 1989 (Singapore Government Press Release No. 09/JAN, 09-9/89/01/07)*

His Majesty Emperor Akihito
Emperor of Japan
Tokyo

Your Majesty

I have learned, with deep regret, of the demise of His Majesty Emperor Hirohito.

His Majesty's reign of sixty-one years has left lasting legacies for Japan. During this period Japan met historical changes, emerging as a major economic world power.

Austere in personage and dedicated to the pursuit of knowledge, especially in the field of marine biology to which he made a significant contribution, His Majesty's life is an exemplar commanding universal respect.

Please accept, Your Majesty, my deepest condolences.

WEE KIM WEE
President
Republic of Singapore

- (e) *MINISTRY OF FOREIGN AFFAIRS ADDENDUM TO THE PRESIDENT'S ADDRESS TO PARLIAMENT ON 9 JAN. 1989 (Singapore Government Press Release No. 14/JAN, 09-1/89/01/11)*

Major political and economic changes are taking place on the international scene. Communist countries are going through a period of self-examination and change. East-West relations have never been more re-

laxed. There will be continuity in our foreign policy while we adjust to these changes.

We will continue to pay close attention to developments in neighbouring countries, and will work to strengthen institutional and personal links with our ASEAN partners, especially Malaysia and Indonesia.

Relations with ASEAN countries will continue to take high priority. We will work with them to implement the Programme of Action adopted at Manila Summit in 1987. We will build upon and strengthen the existing ties of friendship and cooperation within ASEAN.

The thaw in East-West relations has improved prospects for settling regional problems and conflicts. We shall continue our diplomatic efforts to resolve the Cambodian problem. A just solution will lead to better political and economic relations between Singapore and Vietnam, Laos and Cambodia.

In the Asia-Pacific region, Singapore will find more common interests with Japan and the Newly Industrialising Economies (NIEs). We are ready to take part in a dialogue between the OECD and NIEs to achieve free trade.

The Western powers will continue to have a major presence in South-east Asia. We shall maintain close relations with them, just as we should be friendly with any country which respects our independence and sovereignty, and our right to live and prosper in peace.

At the same time, the United States is anxious to share some of its global burdens and responsibilities. The question is how much of this defence and exonomic responsibility will devolve from the United States to Western Europe and Japan. Any adjustments, especially in the Asia-Pacific region, must be carried out smoothly to ensure world peace and security.

The huge Asian countries of China, India and the Soviet Union are becoming more important in Southeast Asia. We shall build on our existing relationship with them. Economic relations with China and India are already expanding. If conditions in the Asia-Pacific region are sound and stable, more areas of common interest with the Soviet Union can develop.

Singapore will also build up ties with countries in South Asia, the Middle East, Latin America, Africa and the South Pacific.

WONG KAN SENG
Minister for Foreign Affairs

- (f) *INVESTMENT BY SINGAPORE COMPANIES IN VIETNAM: Joint Press Statement by the Ministry of Foreign Affairs and the Ministry of Home Affairs on 4 April 1989 (Singapore Government Press Release No. 07/APR, 09/0/89/04/04)*

The Singapore Government has learnt that a few Singapore companies are investing in projects in Vietnam. The projects involved are few and small. However, in view of Vietnam's continuing occupation of Cambodia, the Government wishes to make its stand on this issue clear.

Singapore companies should not invest in Vietnam until Vietnam has withdrawn its forces from Cambodia. While companies may conduct negotiations, they cannot commit any investments until the withdrawal has been completed. Those who have already done so should take steps to withdraw as soon as possible. Businessmen who do not comply with this restriction will have their passports impounded.

On 4 April 1989, the Ministry of Home Affairs met businessmen with interests in Vietnam to inform them of this policy.

V. ASSOCIATION OF SOUTH-EAST ASIA NATIONS (ASEAN) TREATIES, DECLARATIONS AND OTHER INSTRUMENTS

- (a) *SUSTAINING ASEAN CO-OPERATION: CHALLENGES FOR THE 1990s: Speech by Mr. Wong Kan Seng, Minister for Foreign Affairs and Community Development at the Asian Defence Journal Conference on "Towards Greater ASEAN Military and Security Cooperation — Issues and Prospects" on 23 March 1989 (Singapore Government Press Release No. 50/MAR, 04-1/89/03/23)*

1. It is an honour and pleasure for me to be invited to deliver the opening address to this Conference. I note that the theme of your conference is "Towards Greater ASEAN Military and Security Cooperation — Issues and Prospects". I do not want to prejudge the outcome of your discussions. But I think it unlikely that there will be greater ASEAN military and security cooperation, at least not in the foreseeable future. ASEAN is not a military or security organisation. However, military cooperation between individual members of ASEAN takes place outside the ASEAN framework. This pattern is likely to continue for some time to come.

2. I am not saying that the subject of this Conference is unimportant. Indeed, in view of the stresses that ASEAN may face in the near future, it is vital that every means of sustaining ASEAN cooperation be fully explored and realistically assessed. What I would like to do this morning is to share with you some broader observations that may be helpful in setting the context for your discussions. If I raise more questions than provide answers, I can only plead that this is in the very nature of the challenges ahead.

Changes in the Security Environment

3. Since the first summit between President Reagan and General-Secretary Gorbachev in December 1985 in Geneva till the signing of the INF Treaty between the two superpowers, the political and strategic landscape has been reshaped. The process of reapproachment started by them also caused other major powers to reorder their relationships with each other. The resultant loosening of tension allowed them to devote more attention to internal developments. There has been no let up by the Soviet Union under Gorbachev in its pursuit of perestroika and glasnost. It has also accepted reality in Afghanistan and is scaling down reliance on military force and emphasizing diplomacy and economic interactions. Despite current set-backs, China under Deng Xiaoping is continuing its reforms. It also believes that war and aggression are futile. The Summit in May between the Sino-Soviet leaders will complete the process of their normalisation. It will mark the beginning of a new chapter in their relationship. New centres of economic and political power are also emerging. Japan is searching for a political role, commensurate with its economic strength. It is finding a way to play a greater role without stirring memories of its neighbours which suffered in its hands during the last World War. The US too has to adjust its domestic policies to deal with its twin deficits. At the same time, it is adapting its regional presence to a new international environment in which it is no longer preeminent.

4. These developments are changing the texture of international relations. There is greater calm in international politics. But new issues and stresses are bound to emerge as clear cut international divisions based on ideology are being blurred, alliance systems loosened and more complex pattern of crisscrossing interests and overlapping relationships has evolved. It is premature to conclude that the competition for power and influence between the great powers is over. Indeed, I doubt that it ever will. There will be competition in new forms. At the same time, new issues are being placed on the security agenda, impelling a multi-dimensional response. Military forces and cooperation against external military threats will have to be supplemented with measures to ensure economic security and internal security. This poses new problems of international leadership and management and a more complex, fluid and ambiguous matrix of threat perceptions and national security calculations.

The Nature of ASEAN Cooperation

5. Most importantly, ASEAN's *raison d'être* could be questioned. ASEAN's contribution in shaping the regional security order for the last twenty years is not in doubt. But the most important emerging influences on the evolving regional security environment - the policies of the USSR, the US, China and Japan - are not within ASEAN's ability to control or influence. The continued relevance of organisation, post Cambodia, cannot be taken for granted. To realistically assess the prospects, it is important to understand the reasons for ASEAN's success for the last twenty years.

6. ASEAN is in Southeast Asia. This is obvious. But it is not an inconsequential observation. In the post-war period, the twin defining realities of Southeast Asia have been conflict and diversity. Southeast Asia remains a culturally, ethnically, religiously and economically heterogeneous region populated by developing and imperfectly integrated states, struggling to survive in a volatile environment. The harsh but inescapable realities of diversity and potential for conflict form the most basic yardstick of ASEAN's success for the last twenty years. In the post-war period, every member of ASEAN has, at some time, been in dispute with every other member. Yet, today, even if ASEAN cooperation has not totally erased old patterns of competition and conflict, it has at least significantly muted them and made them less relevant to day-to-day interactions. This is no mean achievement.

7. The recognition that diversity and conflict are basic Southeast Asian realities is not a limitation to ASEAN's potential for promoting regional cooperation in any field but the necessary condition for the realisation of that potential. It prescribes ASEAN's characteristic modes of operation and serves as a reminder that the reality is complex. Cooperation is a dynamic, intricate and constantly evolving process, rather than a static outcome. It is the product of consensus and the muting of differences. Whatever the differences of style or policy, all ASEAN countries have put the well-being of their peoples above all else. For this to be achieved, all know that regional peace and stability are essential. Since conflict and diversity are the norm, and stability never to be taken for granted, the overriding imperative was, whatever the differences, always to develop shared interests and leave conflicts on the backburner to be resolved in the future. This was not a denial of unpleasant realities. It was a realistic and responsible method of ensuring that cooperation will not be held hostage to issues that may need more time to be resolved.

8. That ASEAN worked was due to the simple fact that every member recognised that it was in its own national self-interest to make it work, and that there is a limit to the selfish pursuit of national interest. In ASEAN, the relationship between the interests of the sovereign state and those of the regional organisation that has evolved is described as "national resilience enhancing regional resilience and regional resilience enhancing national resilience". This is not just diplomatic double talk. It is a manner of expressing the basic insight of ASEAN's founding fathers that cooperation in the ASEAN framework was a means of enhancing and not supplanting individual national sovereignties by creating an environment that would enable each member to realise its greatest national potential and that this would in turn provide a more secure regional environment for all.

9. Viewed in this perspective, ASEAN was as much a method of calculating and defining national interests as it is a supranational organisation. The health of ASEAN cooperation is therefore not to be measured merely by the pace by which specific cooperation projects in specific fields were agreed and implemented. For each individual ASEAN country, the "ASEAN factor" was a necessary element in its calculus of national interest for twenty years. The weight of this factor may have varied from issue to issue, but it was never entirely absent and was a positive force for regional progress, moderating nationalism for the common good.

10. After twenty years, ASEAN is an established regional organisation. But it is open to question whether in the more ambiguous and fluid situation that is evolving, national interests will necessarily continue to be calculated in the same way. Conflict and diversity remain Southeast Asia realities. But the perception of conflict and diversity is evolving, ironically, at least partially as a result of ASEAN's success in muting disagreement, and solving regional problems. Clear cut divisions are being blurred as a more complex matrix of conflict and cooperation emerges in Southeast Asia. There is more room for honest disagreement on priorities and threat perceptions. There is more scope to look for alternative means for advancing national interests because the calculation of those interests may not be as clear cut. This is all the more so because every member of ASEAN is undergoing political change, not merely of individual leaders but of entire political generations. The successor generations have no memories of past conflicts. They could take the stability and peace of the last twenty years for granted. This could lead to a new security calculus. I would like to outline some of the issues that are likely to affect that security calculus.

Sino-Soviet Normalisation and the Cambodian Issue.

11. The imminent Sino-Soviet Summit is a watershed event. It will signal the emergence of genuine multi-polarity which will redraw lines of conflict and cooperation. Now that China and the Soviet Union have decided to settle their differences, it is no longer in doubt that there will be a settlement in Cambodia. It is only a matter of time and what form this settlement will take and what are the terms. The kind of settlement that emerges will have a profound influence on basic questions on sovereignty and security for all the ASEAN countries. The issue is who will determine the future regional order and whether the decision will take into account the interests of all countries concerned. The outcome is unpredictable and neither can we take the answer for granted. The nature of the settlement will determine whether there will be peace or whether Cambodia will continue to be a source of instability, threatening the security of its neighbours.

12. It is no secret that there are from time to time different views between the various ASEAN countries on Cambodia. What is more often overlooked is ASEAN's good record of holding together despite the differences. The question is what will happen after the Cambodia problem is resolved. Over the last decade, Cambodia was the central political issue that bound ASEAN together. It provided a stark dividing line that clearly defined and distinguished the common interests that ASEAN shared from those of other regional actors. Once the Cambodian problem is behind us, ASEAN will have to have new rallying points or risk drifting apart to the detriment of regional cooperation and bilateral relationships. ASEAN could face new stresses. Vietnam said that it would like to join ASEAN. This could change the character of the organisation and jeopardise further ASEAN cooperation. There should be consensus among ASEAN on this issue.

The US Role

13. The new American Administration is adapting its policy in response to the global changes and new political developments in the region, taking into account its inability to carry the burden all by itself. But I believe the US will remain a major actor in Southeast Asia because it is a Pacific nation. About 15% of the US lives in states on littoral of Pacific Ocean [California, Washington, Oregon, Hawaii], and approximately 37% of total US trade is with the Asia-Pacific region, more than with the EEC. With such important interests at stake, the US must continue to make its presence felt — diplomatically, economically and militarily. The question is not whether there will be a US presence but what form that presence will take.

14. The future of the US bases at Subic Bay and Clark airfield is an issue that must be decided by the US and the Philippines on the basis of their calculations of their own national interest. Both sides have legitimate and deeply felt concerns. The US may find it necessary to redistribute its facilities more widely throughout the Pacific, East Asia and Southeast Asia. Singapore is already providing logistic support in some areas. The US Navy regularly calls at Singapore for bunkering and repairs. All countries in the region must carefully assess whether a continued US presence is in their interests and, if so, what more they can do to facilitate that presence. For more than two decades, the US was a vital stabilising influence that contributed to the prosperity of the region. I believe a US presence in some form will continue to be necessary to allow the region to develop economically.

The Soviet Union

15. A related question is the future of the Soviet presence in Cam Ranh Bay and Danang. Gorbachev has said that the Soviet Union would give up its facilities in Cam Ranh Bay if the US agreed to relinquish its bases in the Philippines. Whatever one may think about the offer and its motivations, it cannot be ignored. But it is important to recognise that there is no direct equivalence between the US and Soviet facilities in Southeast Asia. Soviet facilities in Cam Ranh Bay and US bases in the Philippines differ in terms of their relative strategic significance to each superpower.

16. As a maritime power, the US is more dependent on overseas bases for its ability to project its presence than the Soviet Union, which is an Eurasian continental state. Southeast Asia is already within the range of Soviet strategic airforces based in the USSR. The BACKFIRE, for instance, has a range of 11,000 km, while the CONDOR has demonstrated an unrefuelled airlift capability of more than 20,000 km. Moreover, the Soviet proposal mentions only Cam Ranh Bay but is silent on other Soviet facilities in Vietnam such as Danang, Bien Hoa and Tan Son Nhut as well as naval installations at Cac Bac, Con Son and Kompang Som in Cambodia. On the other hand, the removal of US bases from the Philippines could, in the long term, engender a reordering of US security priorities. With the bases removed and US capabilities stretched, there is every pos-

sibility that US forces would be concentrated on the protection of East Asian sea links.

17. In case, China is geographically a regional power. Is security to be found in the exclusion of great powers or in a balance of great powers? The move towards multipolarity and the decline of ideology in international relations marks a recognition by the major powers that they are no longer in a zero-sum game and that it is neither in their interest nor feasible for them to attempt to exclude each other from any region. ASEAN's future may well be in forging further links with major powers to supplement existing dialogues.

Economic Cooperation

18. In the new security environment, economic cooperation among the ASEAN states has important security implications. Continued access to the markets of the developed countries is important to maintain the health of all the ASEAN economies and hence their internal stability and security. The record of ASEAN's joint economic diplomacy is a good one. The same however cannot be said for ASEAN economic cooperation as a whole. Progress has been slow. Yet, given emerging trends in the world economy and growing stresses to the international trading system, continued market access to the developed countries may well also depend on ASEAN's ability to pull together in this field as well.

The Future of ASEAN Cooperation

Ladies and Gentlemen,

19. It is not my intention to depress or demoralise you at the beginning of this Conference. I have no answers to most of the questions I have raised but I am not necessarily pessimistic about ASEAN's future. I do not rule out the possibility of arriving at common positions on the issues I have mentioned. Non-governmental conferences such as this one play a valuable role in clarifying issues and seeking out common ground because participants have more leeway to explore all possibilities. I do not believe any ASEAN country will lightly abandon an organisation that all have found useful. Habits of cooperation have become more ingrained than twenty years ago. This positive attitude should also be passed on to the younger generation. The task ahead is to ensure that ASEAN continues to be relevant to individual calculations of national interests. The very effort to do so could serve as a new rallying point.

20. ASEAN is a live organisation and is therefore still growing and evolving. Paradoxically, if the future is uncertain, that may in itself be a sign of ASEAN's viability over the long term. Given the uncertainties, it would be disastrous for ASEAN to lock itself into any specific path of development. We should not assume that the future must simply be more of the past. ASEAN's positive record of cooperation on Cambodia should not blind us to other models of political cooperation after the Cambodian

issue is resolved. We may have to look to new methods and forms of cooperation in order to preserve what has been achieved over the last two decades.

21. Given the more fluid, ambiguous and complex environment of interlocking interests and overlapping relationships that is emerging in South-east Asia, it may no longer be realistic to expect all six ASEAN countries to always define their national interests in a common over-arching manner on any specific issue. Rather, the way ahead may be for ASEAN to accept a looser configuration based on shifting coalitions between several ASEAN countries on specific issues within the overall ASEAN framework. Such a flexible approach would in fact help preserve ASEAN cohesion because it would not impose constraints to the national interests of any particular country. All would still see it in their interests to remain within the ASEAN framework since they would enjoy the benefits of that framework without being conscribed by it. It would also help position ASEAN to interact with all the major actors in the context of a fluid, shifting and multipolar regional and international environment.

22. There are precedents. In the economic field, the concept of "six minus one" cooperation is already being implemented. The current record of ASEAN security and military cooperation is also premised on a flexible approach. As I have said earlier/ASEAN is not a security organisation and it is unlikely that it will become one. Military cooperation takes place outside the ASEAN framework but is not conscribed by that framework. This has not prevented individual ASEAN countries from cooperating bilaterally and for two of the ASEAN countries to participate in the broader framework of the Five Power Defence Arrangements (FPDA). The record here is a positive one. ASEAN bilateral military and security cooperation is expanding and there is scope for further development. The FPDA is a valuable contribution to regional security, committing three extra-regional powers to an interest in the region without binding the parties involved to a formal alliance. Given the uncertainties, it will continue to be relevant into the 1990s. It may also be possible to explore more broadly-based means of contributing to the common defence, whether through the FPDA or some other modality.