

SINGAPORE AND INTERNATIONAL LAW

The objective of this section of the Review is to reproduce materials and information which illustrate Singapore's attitude to, and approaches on, questions of international law and international organisations. As far as possible, primary materials are reproduced but where unavailable, and the topics are important, secondary materials including relevant extracts from newspaper reports are reproduced. The materials are presented under the following headings:

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

The materials are selective. As the materials are compiled from the Law Library and other sources, it should be stressed that any text contained herein is not to be regarded as officially supplied to the Review.

II. LEGISLATION

(a) *Merchant Shipping (Oil Pollution) Act, 1981 (No. 15 of 1981)*

The main purpose of this Act is to give effect in Singapore to the International Convention on Civil Liability for Oil Pollution Damage 1969 [U.K.T.S. 106 (1975); Cmnd. 6183; 9 Int'l Legal Materials 45 (1970)] and to the 1976 Protocol [16 Int'l Legal Materials 617 (1977)].

The 1969 Civil Liability Convention makes the owner of a ship liable for any pollution damage caused by oil which has escaped or been discharged from a ship carrying oil. The damage recoverable includes preventive measures taken to prevent or minimise the oil pollution damage.

The Act repeals the Civil Liability (Oil Pollution) Act, 1973 (No. 43 of 1973).

* There is no material under these headings in this issue.

(b) *Prevention of Pollution of the Sea Act, 1971 (No. 3 of 1971)*

This Act makes consequential amendments to the Prevention of Pollution of the Sea Act, 1971. The amendments are a result of the repeal of the Civil Liability (Oil Pollution) Act, 1973, by the Merchant Shipping (Oil Pollution) Act, 1981.

IV. TREATIES (OTHER THAN ASEAN INSTRUMENTS)

(a) *SHIPPING: Agreement on Maritime Transport Between The Government of the Republic of Singapore and The Government of the Republic of Korea, done in Seoul on 26th May 1981; Government Gazette Treaties Supplement [1981] No. T2, 24 July 1981.*

The Government of the Republic of Singapore and the Government of the Republic of Korea (hereinafter referred to as the “Contracting Parties”), desirous of strengthening the friendly relations between the two countries and of promoting cooperation in the field of maritime transport, have agreed as follows:—

ARTICLE 1

Each Contracting Party, bearing in mind the principles of the United Nations’ Convention on a Code of Conduct for Liner Conferences done at Geneva on April 6th 1974, shall abstain from discriminatory measures to the vessels of the other Contracting Party in respect of the maritime transport services between the two countries and shall accord to the vessels of the other Contracting Party the treatments no less favourable than those accorded to the vessels of third countries in respect of the maritime services between either country and third countries.

ARTICLE 2

For the purpose of this Agreement, the reference to vessels of a Contracting Party shall mean vessels operated by shipping companies of either Contracting Party flying the national flag of that Contracting Party and carrying the certificate of registry duly issued by its competent authorities in compliance with its national laws and regulations.

ARTICLE 3

Each Contracting Party shall grant to vessels of the other Contracting Party national or most-favoured-nation treatment at its ports open to foreign commerce and navigation. This applies also to vessels operated by shipping companies of the other Contracting Party flying the flag of a third country.

This Article applies to customs formalities, the levying of charges and port dues, freedom of access to and the use of the ports as well as to all facilities afforded to shipping and commercial operations in respect of vessels, their crews, passengers and cargoes. In particular, this refers to the allocation of berths at piers, loading and unloading facilities and port services.

ARTICLE 4

The Contracting Parties will encourage the transfer of technology in the field of shipping and the development of commercial shipping cooperation including joint operation in private maritime sectors based on mutual benefit.

Each Contracting Party will at the request of the other Contracting Party conduct surveys on the ships of the other Contracting Party for the purpose of issuing certificates in accordance with the provisions of relevant international safety conventions.

ARTICLE 5

The provisions of the present Agreement shall not apply to cabotage. When vessels of one Contracting Party sail from one port of the other Contracting Party to another for discharging inward cargo and/or disembarking passengers from abroad or loading outward cargo and/or embarking passengers for foreign countries, it shall not be regarded as cabotage.

ARTICLE 6

The Contracting Parties shall mutually recognize the nationalities of vessels on the basis of the certificate of registry duly issued by the competent authorities of either Contracting Party in compliance with its relevant laws and regulations.

The Contracting Parties shall mutually recognize the tonnage certificate and other documents of ships duly issued by the competent authorities of either Contracting Party or those recognized by one Contracting Party and met with no objection from the other Contracting Party without remeasuring the vessels concerned. All port charges and expenses shall be collected on the basis of these documents.

ARTICLE 7

The proceeds accruing from shipping services rendered by one Contracting Party to the other Contracting Party may in accordance with its national laws and regulations in force in the latter, be used for making payments in the territory of that Party or be transferred from that State.

ARTICLE 8

Should vessels of either Contracting Party be involved in maritime casualties in the territorial waters or ports of the other Contracting Party, the latter shall give all possible assistance to the vessels, crew members, cargoes and passengers, and notify the appropriate authorities of the Contracting Party concerned as soon as possible.

ARTICLE 9

The vessels and crew members of one Contracting Party shall observe the relevant laws and regulations of the other Contracting Party during their stay in the latter's territory including territorial sea, internal waters and ports.

ARTICLE 10

With a view to assuring full implementation of the present Agreement and facilitating maritime transport between the two countries, the Contracting Parties shall establish a Joint Consultative Committee which will be composed of the representatives of the two countries.

The Joint Consultative Committee shall meet once a year unless otherwise mutually agreed, alternately in Seoul and Singapore.

The Joint Consultative Committee shall:

- (a) study the ways of enhancing cooperation in private maritime sectors; and
- (b) discuss other matters relating to the improvement of maritime transport relations.

ARTICLE 11

The Contracting Parties shall adopt, within the limits of their national laws and port regulations, all appropriate measures to facilitate and expedite maritime traffic, to prevent unnecessary delay to vessels, and to expedite and simplify as much as possible the performance of customs and other formalities required at ports.

ARTICLE 12

The present Agreement shall come into force on the date of signature thereof.

If either Contracting Party wishes to terminate the present Agreement it shall notify the other Contracting Party in writing six months in advance, and the present Agreement shall be terminated six months after the date of receipt of such notification by the other Contracting Party.

Done at Seoul on 26th May in the year 1981 in duplicate in the English language.

- (b) *TAXATION: Press Statement, 16 November 1981, on the review of the 1968 Agreement on Avoidance of Double Taxation Between Singapore and Sweden (Singapore Government Press Release 08-0/81/11/16, Ministry of Finance)*

Discussions were held between Singapore and Swedish delegations in the past week to review the Agreement for the Avoidance of Double Taxation between the two countries signed in Singapore on 17 June 1968. The Singapore delegation was headed by Mr. Hsu Tse-Kwang, Commissioner of Inland Revenue and the Swedish delegation by Mr. Kurt Malmgren, Under-Secretary for Legal Affairs, Ministry of the Budget.

A number of issues were discussed, including the extension of tax matching credit under paragraphs 5 and 6 of Article XIX of the Agreement for another five years.

Under paragraph 5 of Article XIX of the Agreement, Sweden will allow tax matching credits on interest and dividends derived from sources within Singapore. Under paragraph 6, 50 per cent of royalties earned by a resident of Sweden from sources within Singapore will be exempted from Swedish tax.

Agreement to extend the operation of these paragraphs for another five years to 31st December 1985 was reached. The extension was effected through an exchange of notes between the heads of the two delegations.

It was also agreed in principle that the scope of tax matching credit would be extended to include the tax incentives offered by Singapore to promote the development of its financial centre and to attract high technology investments. However, final agreement on these provisions was deferred until after negotiations on the amendment to the Agreements for the Avoidance of Double Taxation with Norway and Denmark have been completed. Negotiations with the Norwegian delegation to review the Agreement between Singapore and Norway will begin on 17 November 1981.

- (c) *TRADE: Press Statement, 9 October 1981, on a Trade Agreement Between the Government of the Republic of Singapore and the Government of the Republic of Iraq; Opening Statement of Dr. Tony Tan, Minister for Trade and Industry, on the Occasion of the Signing of the Agreement in Baghdad (Singapore Government Press Release 17-1/81/10/09)*

It is a great privilege and pleasure for me to be in Baghdad on this occasion. I am also honoured to be able to represent my Government at the signing of the Trade Agreement between Singapore and Iraq.

I must congratulate Your Excellency and my predecessor, Mr. Goh Chok Tong, the then Minister for Trade and Industry for realising this memorable event. It was during Mr. Goh's visit to Baghdad in October 1979 when Your Excellency suggested that Iraq and Singapore should sign a commercial agreement to foster close economic and trade ties between our two countries. The signing of the trade agreement will contribute towards the further strengthening of the already close cooperation and understanding existing between our countries and peoples.

The trade agreement provides for the establishment of a Governmental Joint Committee. This Committee when formed could be a useful forum for the examination in depth of areas of economic activities where our two countries can work together for our mutual benefit.

VI. SINGAPORE IN THE UNITED NATIONS AND OTHER INTERNATIONAL ORGANISATIONS AND CONFERENCES

- (a) *SITUATION IN KAMPUCHEA: Speech by Foreign Minister Mr. S. Dhanabalan at the International Conference on Kampuchea in New York on 13 July 1981 (Singapore Government Press Release 09-1/81/07/13)*

Mr. President

I would like to congratulate you on your unanimous election as President of this Conference. As this Conference has been convened to rescue a small country that has suffered so much from the ravages of war and conflict in the last decade, it is very appropriate that the President of our Conference should come from another small country that has also witnessed such war and conflict only 40 years ago. Austria's success in preserving its independence and neutrality, and its even greater success in bringing peace and prosperity to its people, should give us hope here that the people of Kampuchea will someday find peace and prosperity. Mr. President, I am confident that, with your experience and wisdom to guide us, this Conference will eventually arrive at what the sponsors of UNGA Resolution 35/6 have sought to achieve—the withdrawal of foreign forces from Kampuchea and the restoration to the people of Kampuchea of the right to choose a government of their own choice without coercion or intimidation from any quarter.

I would also like at the outset to commend the Secretary-General whose efforts in the last few months have led to the convening of this International Conference. He even sent his personal representative to have consultations with Vietnam on UN Resolution 35/6, in an attempt to persuade Vietnam to attend this International Conference. Unfortunately, these efforts failed. We should nevertheless commend the Secretary-General for his commitment to the implementation of UN Resolution 35/6.

Mr. President, even before this Conference opened today, we were told that this Conference will be an exercise in futility because of the absence of Vietnam and the Soviet Union. As the Vietnamese military occupation of Kampuchea is made possible only because of the massive assistance by the Soviet Union, we were told that any conference held without the participation of these two countries will not lead to any solution of the Kampuchean problem.

If we had failed to convene this Conference which was supported by 97 countries who approved UN Resolution 35/6, merely because the two countries, who are the perpetrators of the conflict in Kampuchea, refuse to attend, then we would have rewarded the guilty. Even though the perpetrators of this conflict have refused to attend, we can at this Conference discuss and put forward the elements of a solution that will show clearly that what we are interested in is to return peace to Kampuchea and that we are not interested in prolonging the conflict in Kampuchea in order to bleed Vietnam. The price that Vietnam is paying for its aggression and pursuit of hegemony over Indochina is one that it fully deserves. But it is not our intention to bring Vietnam to its knees. We only want to bring it to its senses. We want to

prepare a way for Vietnam to escape from the course of conflict and confrontation that it is entrenching itself in. The continuation of such conflict and confrontation carried out on the basis of borrowed strength cannot but result in a Vietnam subservient to its patron.

We are not here to put Vietnam on trial. We have made this clear to Vietnam. The main purpose of this Conference is to find a solution to the Kampuchean problem. And contrary to Vietnam's claims, there is a Kampuchean problem. There are 200,000 Vietnamese troops occupying Kampuchea and maintaining a puppet government. Their entry into Kampuchea and continued presence in that country is a serious violation of one of the principal pillars of the UN Charter that and I quote, "All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state. . . ."

The Vietnamese claim that they were invited by the Kampuchean people under the provisions of a treaty of friendship. Anyone who is even cursorily familiar with the order of events in Kampuchea will know that this is not true. The treaty was signed after the occupation of Kampuchea by Vietnam and was signed by the regime installed and maintained by Vietnamese troops. No amount of repetition by the Vietnamese of a lie can reverse the actual order of events.

The Vietnamese claim that their invasion and occupation have saved the Kampuchean people from the barbarous Pol Pot Regime. Mr. President, no one here, I can safely say, condones or excuses the acts of the Pol Pot Regime. We know that from time to time there will be regimes in countries which the majority of mankind will find reprehensible and expropriatory. But to suggest that this is justification for a more powerful neighbouring state to intervene, occupy and instal a new regime is to introduce the law of the jungle in the relations between nations.

To accept such a principle will in the last analysis mean that might is right and will open the door to a powerful militarised state to impose puppet regimes on its neighbours as has happened in Kampuchea and in Afghanistan. In an imperfect world, we have to uphold principles that will give stability and protection to small nations. It is for this reason that the UN holds the principle of non-intervention as so important. It is for this reason that we cannot accept the Vietnamese occupation of Kampuchea. It is for this reason that we will insist on their withdrawal from Kampuchea and will support and encourage every movement resisting and fighting the Vietnamese occupation in Kampuchea.

In January 1979, when Vietnam invaded Kampuchea, it confidently proclaimed that the world would soon accept the new reality in Kampuchea. Today, two and a half years after the Vietnamese occupation of Kampuchea, the world continues to declare its rejection of the Vietnamese actions in Kampuchea. There is a growing war of resistance from Kampuchean nationalists. Vietnam is isolated in

the international community. Its economy is in shambles. Its independence is compromised. I do not believe that the Vietnamese bargained for these consequences when they occupied Kampuchea.

I am confident that the day will come when the Vietnamese will decide that their troops will have to leave Kampuchea. When that day comes, the international community must be able to provide a comprehensive solution that will take into consideration the interests of the Kampuchean people and the interests of other neighbouring states of the region, including Vietnam. This, I believe, is the main task of this international conference—to suggest such a solution that could pave the way for the creation of a peaceful, independent non-aligned and neutral Kampuchea.

We in Southeast Asia would like to see an independent, prosperous Vietnam that is not a victim of superpower conflict. If Vietnam wants the regional community to welcome it as a peaceful neighbour, it must demonstrate that it can live in peace with its neighbours. Vietnam's agreement to withdraw its troops from Kampuchea will demonstrate this. We in turn are prepared to see to it that a solution does take into account Vietnam's legitimate concern that Kampuchea should not be used to threaten its security.

The solution that this international conference proposes should also ensure that there will be an end to the sufferings of the Kampuchean people. We must prepare the ground for the emergence of an independent, neutral and non-aligned Kampuchea. The solution we suggest must remove the elements that may cause Kampuchea to be embroiled again in the conflict between outside powers, be they regional or global powers. This can be achieved firstly, by the withdrawal of Vietnamese forces from Kampuchea. Secondly, this Conference must propose solutions that will enable the Kampuchean people to choose their government free from armed coercion or intimidation. We in ASEAN are not engaged in the Kampuchean question in order to see the Khmer Rouge return to power by force. We will not suggest a solution that will enable the Khmer Rouge or any other group to come into power by using their arms to coerce or intimidate the Kampucheans into supporting them. If the various armed Khmer factions are allowed to coerce the population in their choice of their leaders and the system of government, it would only be a prescription for a vicious civil war that would certainly increase the sufferings of the Kampuchean people. To avoid this, the solution should require a clear commitment from all Khmer factions that they will accept the results of a free election regardless of who wins such an election. All Khmer factions must also clearly commit themselves that after Vietnam withdraws its forces, they will disarm or take such action as is necessary to ensure that elections can be prepared and held without threat of coercion or intimidation.

Mr. President, the task before us is not easy. I am confident, however, that if this Conference announces its determination to pursue a solution, to carry out further studies and to maintain contacts with all the interested parties, we shall have taken one more step to finding a solution to this vexing problem.

- (b) *ON THE UNITED NATIONS: Speech by Foreign Minister Mr. S. Dhanabalan at the 36th Session of the United Nations General Assembly on 21 September 1981 (Singapore Government Press Release 09-1/81/09/22)*

This General Assembly is the 36th since the UN was founded. This organisation was born out of the revulsion against the horrors of World War II. It was with high hopes that the first 51 members met in San Francisco to inaugurate this body. For the first time there is a single international system, symbolised by the UN. We have been able for 36 years to avoid a world war, but world peace has evaded us. The cost of a resort to force against each other and the fear of a nuclear holocaust has kept the superpowers from being locked in a direct war. The recourse to war by them seems less likely. Among the industrialised countries the perceived margin of safety seems to have increased as their fears of attack by one another has receded. Yet the fact remains that local wars and proxy wars have been raging everywhere since the end of World War II. What we are really going through are times of troubled peace.

Students of the subject tell us that, since the end of World War II, there have been over 100 wars and military actions between nations. Millions have died in these conflicts and in fact more have died in conflicts since 1945 than in World War II. Many more have been maimed and made homeless. Millions have been dispossessed and have been living as refugees, becoming endemic problems to host countries. Those who are victims of these conflicts and others who are cynics may well ask whether the UN has been of any use at all. To those of us who think otherwise, the more pertinent question perhaps is what would have been the experience of the world without the UN.

There are many among us who feel that the UN, to be an effective security organisation, must be able to intervene in conflicts on the side of the victim against the aggressor. We wish that the UN could be a supranational body with the capacity to impose peace. This assumes that the great powers who are members of the UN will act in unity and out of a common perception when faced with matters of war and peace. This in fact was the underlying assumption behind the founding of this organisation—that the cooperation of the great powers would enable collective action. Our experience is that this has not materialised. Collective action has not been possible, except in a few rare instances.

From a number of great powers at the founding of the UN, we now have two superpowers. Every conflict involving any two or more nations is seen either as an opportunity to advance the interest of one superpower or as a danger to the interest of the other superpower. The UN, where the superpowers are supposed to cooperate in collective action to ensure peace, has instead become a cockpit of rivalry between them. They use the UN to further their interest in whatever way possible.

Thus the UN has not been able to act directly to bring about peace in armed conflict except in rare instances. Are we therefore wasting our time here? Is this just a charade on stage with no bearing

on real events? I do not believe that most of us will be here if we thought so.

Most of us here are small nations. 97 of us here have a population of less than 10 million and 90 of us have a gross national product of less than US\$10 billion. Unfortunately, many of the conflicts in the world involve us — the small nations.

For us the UN offers the most effective forum to highlight our problems of peace, to bring pressure to bear on militant nations and to work towards a solution in a conflict. It is in the UN and through its numerous organs that our diplomats and officials deal directly with one another. Through this process we have become more sensitive to each others' concerns. As it has been said by others, our agenda now goes beyond just questions of security and territory. We are concerned with problems of energy, environment, population, resources and even our seas. We, the small nations, need the UN all the more to protect our interests. It is to our advantage to use and develop the UN machinery. We have to search for new and more effective ways to mobilise and express the view of those who are exercised by a problem. It is for this reason that small nations have, from time to time, resorted to this organisation to resolve their problems — be it in the Middle East, Africa, Afghanistan or Cambodia. For instance, on the Cambodian problem, the overwhelming majority of the UN members have felt sufficiently strongly about the problem to call for an International Conference on Kampuchea. The attendance at the Conference confirmed the continuing concern of the international community with this problem. The Conference's declaration and resolution provide a reasonable framework for a solution to the problem.

I believe that the UN has played and can play a role in matters of war and peace. The decisions in the UN and the moral pressure of the collective stand of the majority of the members here can help ensure that an aggressor nation not only pays a high price but that it is denied the fruits of its conquest. When the protagonists in a conflict and the superpowers or other outside powers indirectly involved in the conflict find that the price of their action is high, they can be led to see that it is in their interest to bring the conflict to an end. Through the UN a face-saving way out of the problem can be provided by way of the peace process. These are vital roles that the UN can play.

With the "one state one vote" norm, the UN has facilitated us, the small countries, to link our strength and exert the moral pressure that UN members can collectively bring to bear on a recalcitrant member state which pursues an expansionist policy.

Nations, like men, are interdependent. They are members of a community. They deserve a place in the community of nations which will bring cooperation, respect and even approbation. Through the UN we can deny a nation a place, if they transgress the principles of the UN Charter to which they subscribe. The UN may be unable to take collective armed action, but, by the decisions and principled positions that we take here, the UN can impress on intending aggressors that use of military force in resolving disagreements or expressing disapproval of others is unacceptable.

The resolutions passed by the UN in such matters may appear to be words. But they can influence real events. Apart from denying a recalcitrant member an honourable place among nations, the opinion of the UN embodied in these resolutions creates the moral ambience for others to resist the actions of the aggressor nation. In such cases, it gives those who take up arms against the violator the right to do so. It also provides justification for others among the world community to help the victims resist the aggressor with aid of one kind or another. The opinion of the UN fortifies and encourages both those who directly resist and those who help the resistance.

Moral support and assistance to those who sustain the resistance against an aggressor does help. For it not only gives strength to the victim but also provides sustained international pressure on the aggressor. Over time, the aggressor will have to find a face-saving way out of the situation.

We, who gather here annually in the General Assembly, can therefore play an important role in the peace process by our pronouncements on issues, provided they are credible and based on the fundamental principles of the UN Charter. If we trade support for issues without regard for principle or allow the interests of big powers to determine our position, we will lose all credibility.

On two of the questions which have engaged the General Assembly for the last two years—Cambodia and Afghanistan—nearly two thirds of the members have been unequivocal in their stand. The Soviet Union and Vietnam are only deluding themselves if they think that two thirds of the UN members are acting at the behest of other powers. In both cases, the majority of the UN members have taken the position they have because they have been able to see clearly that there has been armed invasion and occupation of small nations by other larger nations, with either direct or indirect participation of a permanent member of the Security Council. Justifications have been offered that the foreign forces were invited by the victims, but these have been shown to be spurious.

It is not surprising therefore that those who find themselves in the dock in the UN today, on these two issues, dismiss the resolutions of the UN against them as irrelevant and of no consequence. Yet the records will show that Vietnam and its allies tried to win the approval of this Assembly for their military occupation of Cambodia. Having failed, they now dismiss the resolution as of no consequence. The Soviet Union too has dismissed a role for the UN in the Afghanistan and Cambodian problems and has urged the search for a solution outside the UN—a strange position indeed for a founder member of the UN and a permanent member of the Security Council. It is perhaps forgivable when a new member of this organisation expresses his belief that UN resolutions can be ignored. But it gives reason for concern when a permanent member of the Security Council like the Soviet Union, urges members of this body to ignore its pronouncements and recommendations as enshrined in various resolutions. It becomes a matter of even greater concern when a large country and leader of the non-aligned movement is publicly on record as saying that “These overwhelming majorities mean nothing. We have had so many overwhelming majorities.... These votes don’t mean anything.”

For the past two years, the majority of us have not been taken in by such gratuitous advice nor by the various arguments of Vietnam, the Soviet Union and their allies. On the other hand we have passed resolutions which have in fact condemned Vietnam for her actions which are in breach of UN Charter principles. As a result, Vietnam stands isolated today, its independence compromised and its economy in shambles. Similarly in Afghanistan, the invasion and occupation of a small non-aligned nation by a superpower — the Soviet Union — stands condemned in this Assembly.

The debates and resolutions in this Assembly have over the past two years demonstrated to patriotic Cambodians and Afghans that they are not alone: that they have not been forgotten by the world community. The UN has by its pronouncements given the moral basis and encouragement for others to help these patriots.

We therefore in this Assembly must continue to focus attention on these and similar problems, such as the South African occupation of Namibia and the South African incursion into Angola,... through special conferences, like the International Conference on Kampuchea.

Member states should not therefore hesitate to mobilise themselves to condemn any violation of UN Charter principles. At the same time a way out of the problem must be offered. It is the least we as a body can do to encourage those who courageously resist aggression and strive to preserve their national independence and uphold the principles of the UN Charter.