Emergence and Development of Singapore as a Seat in International Maritime Arbitration

Keynote Address by the Honourable the Chief Justice Sundaresh Menon
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Mr Goh Joon Seng, Chairman of the Singapore Chamber of Maritime Arbitration

My fellow Judges

Mr Soren Larsen, Deputy Secretary General of BIMCO

Ladies & Gentlemen

I. INTRODUCTION

1. It is my honour and privilege this morning to deliver this keynote address. Let me begin by extending my heartiest congratulations to the Singapore Chamber of Maritime Arbitration (“SCMA”) for putting together an excellent programme with a great cast of speakers for this conference. This conference is taking place at an exciting time for the maritime arbitration fraternity in Singapore. In November last year, the Baltic and International Maritime Council (“BIMCO”) announced that it would recognise Singapore as an official seat of arbitration to represent the Asian region.\(^1\) Singapore now stands, as you have just heard, alongside London and New York as one of three designated arbitration seats for disputes arising under BIMCO contracts.

2 In a sense, it could be said that this marks Singapore’s arrival onto the international maritime arbitration scene, as a young yet mature seat. This is a development of great importance to the Singapore arbitration community and it would be appropriate for us to pause and take stock of how we got to this position and to think about the course that we should now chart for the future.

II. THE RISE FROM HUMBLE BEGINNINGS: THE GROWTH OF THE MARITIME INDUSTRY & MARITIME JURISPRUDENCE IN SINGAPORE

3 Since Sir Stamford Raffles founded Singapore in 1819, its naturally advantageous geographical position at the crossroads of the East and the West has been key to its growth and development. From very humble beginnings as a modest village, Singapore’s economic growth has been inextricably linked to the growth and development of our maritime industry, without the support of which our economy would not and could not have done as well as it has, particularly since independence.

4 The concerted effort of all stakeholders has been instrumental in creating the ecosystem of maritime and port services that has undergirded our drive to become the international maritime centre that we are today. As a result of these efforts, we have been able to maintain our global lead in three distinct areas: first, in terms of annual vessel arrival tonnage, we recorded a total of 2.25 billion gross tons in 2012; second, we were the top bunkering port in 2012 with the total volume of bunkers sold at 42.7 million tonnes; and third, we earned the “Best Seaport in Asia” Award for the

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3 Ibid. at p 13.
24th time in 2012. These results and accolades have only been possible because of the resolute push by our industry players to provide the best maritime services in the region, if not the world.

5 The overall infrastructure that we have established for the maritime industry has been complemented by the robust development of our maritime jurisprudence. This has seen the generation of our own case law in a number of areas and I wish to highlight three today.

A. Admiralty Jurisdiction of the High Court

6 The first concerns the High Court’s admiralty jurisdiction. Admiralty jurisdiction is a particularly thorny issue around the world. In The “Permina 108”, a decision which must be very familiar to this audience, the Court of Appeal had to decide on the true construction of s 4(4) of the High Court (Admiralty Jurisdiction) Act (“HCAJA”). The defendant had chartered The Ibnu from the plaintiff but the charter hire went unpaid to the tune of some US$7m, at which point the plaintiff filed an in rem writ and executed a warrant of arrest against The Permina 108. It was not disputed that the defendant beneficially owned The Permina 108 at the time of the writ. The only issue was whether s 4(4) of the HCAJA allowed writs to be issued in rem against “sister ships”.

7 Then Chief Justice Wee Chong Jin, in delivering the judgment, held that the plaintiff had rightly invoked the High Court’s admiralty jurisdiction. In doing so, the

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4 Supra note 2 at p 15.
6 (Cap 123, 2001 Rev Ed).
Court of Appeal distinguished the House of Lords’ decision in *The Eschersheim*. Lord Diplock had observed in *The Eschersheim* that to be liable for arrest, a ship must not only be the property of the defendant but must also be identifiable as the ship in connection with which the claim made in the action arose. Chief Justice Wee noted that Lord Diplock’s observation did not form part of the essential decision in that case and so declined to follow it. Chief Justice Wee also observed that the House of Lords’ judgment was influenced by the International Convention Relating to the Arrest of Seagoing Ships signed in Brussels in 1952 (“the Brussels Convention”) which Singapore was not a party to. With this decision, the Court of Appeal signalled that Singapore would chart its own course on the important issue of jurisdiction.

8 It is interesting to note that after *The Permina 108* was decided, the House of Lords departed from its own decision in *The Eschersheim* in favour of the approach taken in *The Permina 108* and the Courts of Hong Kong and New Zealand have since also embraced a similar approach.

9 Thirty four years after *The Permina 108* was decided, the Singapore High Court was faced with another opportunity to clarify the scope of the “sister ship” arrest rule. In *The “Catur Samudra”*, Steven Chong JC (as he then was) had to decide whether a ship owned by a guarantor could be considered a “sister ship” for the purposes of the HCAJA. The plaintiff was the registered owner of a vessel named *The Mahakam* and had entered into a sale and lease back agreement with one of the defendant’s wholly owned subsidiaries. It was a condition precedent of the

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8 See, for example, *The Span Terza* [1982] 1 Lloyd’s Rep 225.  
agreement that the defendant would guarantee the subsidiary’s performance and payment obligations. When the subsidiary defaulted, the plaintiff filed an in rem action in Singapore and arrested *The Catur Samudra*, a vessel owned by the defendant.

10 In considering that the High Court’s admiralty jurisdiction could not be invoked, Steven Chong JC reasoned that the guarantee did not relate to the use or hire of the sister ship; its sole purpose was to provide financial protection to the plaintiff against the risk of default.\(^{12}\) The Court had two options before it: it could have followed the New Zealand decision in *The “Fua Kavenga”*\(^{13}\) and the Canadian decision in *National Bank Leasing v Merlac Marine Inc*\(^{14}\) or it could, once again, have charted a different course for Singapore. In choosing the latter, the Court reiterated its willingness to make what it felt was the right decision even if this entailed departing from what might have been done in other Commonwealth jurisdictions.

**B. Enforcement of Maritime Arbitration Awards**

11 The second area concerns the enforcement of maritime arbitration awards. In *Alexander G Tsavliris & Sons Maritime Co v Keppel Corp Ltd*\(^{15}\), the Court of Appeal was faced with the question of whether the Court’s admiralty jurisdiction could be invoked to enforce arbitration awards. The appellant was the salvor of *The Atlas Pride*. As the salvage remuneration was not paid, the appellant commenced arbitration proceedings in London against the owner and obtained an arbitral award. Subsequently, the appellant sought to enforce that award in Singapore by

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\(^{12}\) *Ibid*, at [35].  
\(^{13}\) *Supra* note 10.  
\(^{14}\) (1992) 52 Federal Trial Reports 15.  
commencing an *in rem* action. The respondent, Keppel, intervened on the ground that it had a possessory lien over the vessel which ranked below that of the appellant's interest, but above those of the other claimants.

12 The coram in that case comprised the late M Karthigesu JA, LP Thean JA and Goh Joon Seng J, now the Chairman of the SCMA. Karthigesu JA delivered the judgment of the Court holding that the action to enforce the award, including the costs of the *in rem* action, had been properly brought within the admiralty jurisdiction of the Court. This was a demonstration of support for the enforcement of maritime arbitration awards, without regard to whether the arbitration had taken place within or outside Singapore.

C. The Law on Arrests of Vessels

13 The third area concerns the law on arrests of vessels. It is important first to note that in addition to developments in the case law, the legislative framework in Singapore as well as our judicial infrastructure has facilitated and supported maritime arbitration in two key ways.

14 First, section 7 of the International Arbitration Act (“IAA”) provides that when ordering a stay of proceedings in favour of arbitration, the Court may order that an arrested vessel be retained as security for satisfaction of any award made on the arbitration or that the stay be conditional on the provision of equivalent security. This provision enables the victor in arbitration proceedings to look to the arrested vessel as security.
Second, being felicitously situated along an important shipping route between East and West, Singapore is a natural location in some respects for ship arrests. Recognising the significance of this, the Supreme Court Registry provides round-the-clock service to persons who wish to arrest a vessel. Our registrars are able to, and often do, arrest vessels outside office hours. But importantly, and conversely, when security is provided, our staff are equally available on call outside normal hours to release arrested vessels. The timely processing and hearing of applications for the arrest or release of vessels enable plaintiffs to obtain their security in a quick and efficient manner, while also protecting shipowners from undue delay.

Returning to the case law on the arrest of vessels, the Court of Appeal in The “Vasiliy Golovnin”\(^\text{16}\) clarified the law on the standard of disclosure required when making an arrest. In delivering the judgment of the Court, V K Rajah JA explained a point of critical importance, namely the threshold of disclosure to be met in \textit{ex parte} hearings for the arrests of vessels. He held that unless the document was brought home to the eyes and ears of the Judge, it was not to be regarded as properly disclosed. He went on to observe that “mere disclosure of material facts without more or devoid of the proper context was in itself plainly insufficient to constitute full and frank disclosure”.\(^\text{17}\) This clarification was crucial in highlighting that the Court will not relegate its role merely to rubber-stamping whatever the plaintiff wants.

\(^\text{17}\) \textit{Ibid}, at [91].
III. THE EMERGENCE OF SINGAPORE AS A SEAT FOR MARITIME ARBITRATION

17 Against this backdrop, and having regard also to the growing importance of Asia in transnational trade and commerce, the adoption of Singapore as the third seat of arbitration in all BIMCO standard forms seems logical. With members in more than 120 countries, BIMCO is the largest international shipping association representing shipowners controlling around 65% of the world’s tonnage. It is undoubtedly one of the most influential and globally significant players in the maritime industry.

18 What makes BIMCO such a strategic partner for Singapore is the fact that around 70% of the world’s contracts for maritime trade use BIMCO standard forms as their basis. Taking into account New York, London and the open option for BIMCO contract users, at least in statistical terms, Singapore now has a one in four chance of being named as the seat in respect of potential disputes arising out of 70% of the world’s maritime contracts. This holds enormous promise for Singapore’s drive to establish itself as a maritime arbitration hub and one can reasonably expect the volume of maritime arbitration work to grow in Singapore in the coming years.

19 What then are some of the factors which would make Singapore attractive as a seat? There are three key areas in which we might have some form of comparative advantage over the other more traditional seats.

20 First, and as I have already mentioned, we enjoy a strategic location at the cross-roads of the East and the West. More importantly, our physical, social and
cultural proximity to key markets of growing importance such as China, India and Indonesia puts us in very good stead to attract more maritime arbitration work to Singapore. The parties, the witnesses, the arbitrators and the lawyers from these markets would have to travel much shorter distance to conduct arbitrations here as compared to other venues outside Asia.

21 Second, we have the legal infrastructure to facilitate and support maritime arbitration. The Singapore Chamber of Maritime Arbitration (“SCMA”) boasts a panel of accomplished arbitrators to select from. We also have a growing corps of maritime arbitration counsel to support the conduct of arbitration here. And of course, in common with other major seats, awards from arbitrations in Singapore can be easily enforced around the world in accordance with the New York Convention.

22 Our laws are also arbitration-friendly. I have already touched on some of the areas in which our maritime jurisprudence has developed in support of arbitration but in addition, our statutes also cater to issues which might arise in maritime arbitration. For instance, even if arbitration clauses in bills of lading might not technically satisfy the requirement of writing under the Model Law, section 2A(8) of the IAA specifically caters for this by providing that “a reference in a bill of lading to a charterparty […] shall constitute an arbitration agreement in writing if the reference is such as to make that clause part of the bill of lading.”¹⁸

23 Third and most importantly, we have a thriving ecosystem of maritime and port services supplemented by our position as an international maritime centre. The

necessity for such an ecosystem to support the maritime arbitration scene cannot be overstated. Mr Bruce Harris was undoubtedly correct when he observed in 2008 that “in order to support a thriving maritime arbitration practice any city or centre needs also to have a very substantial amount of day-to-day shipping business going on and, above all, the cadre of individuals necessary to sustain that activity from which arbitrators may be drawn”.¹⁹ I could not agree more. Maritime arbitration cannot and does not exist in a vacuum. The growth of Singapore as a maritime arbitration hub depends on the sustained growth and vitality of our maritime industry and ecosystem.

IV. WHITHER THE COURSE TO CHART?

24 The confluence of all these factors marks the beginning of an important new phase for the maritime arbitration community in Singapore. To take advantage of this opportunity, it will be important to remain sensitive to developments within the wider international arbitration community.

25 I have spoken at length about some of the challenges facing arbitration at last year’s ICCA Congress, and subsequently at a number of debates and most recently at the CIArb International Arbitration Conference in Penang two weeks ago. I will refrain from repeating what I have already said, save to point to three areas that could impact the maritime arbitration fraternity if these are not checked in time. First, the formalisation of arbitration has led to the erosion of a number of the original...

¹⁹ B Harris, Maritime Arbitration in the U.S. and the U.K., Past, Present and Future: The View from London, William Tetley Maritime Law Lecture 2008 delivered at the Tulane Maritime Law Center (4 March 2008)
benefits of arbitration as a chosen method of dispute resolution. Second, the consequent rise in the cost of arbitration threatens to reduce its attractiveness to the business community. And third, the lack of ethical guidance to practitioners from culturally and legally diverse backgrounds has the potential to threaten fairness and integrity in international arbitration.

An awareness of these developments and a willingness to respond to them will stand the maritime arbitration fraternity in good stead. Given its specialist nature, the maritime arbitration fraternity is well placed to do so. Historically, maritime arbitration grew out of informal and collegiate roots marked by close links to the maritime industry. I suggest that the maritime arbitration community should continue to play to its strengths and to listen to and cater for the needs of its users. This is its best hope for meeting the demands of the industry it serves and on which its success will ultimately depend.

V. CONCLUSION

I am delighted by BIMCO’s selection of Singapore as a third seat. I believe this is a step in the right direction for both BIMCO and for Singapore. For Singapore, it is a vote of confidence that we must not squander. We have come a long way from humble beginnings to emerge as a globally recognised seat of arbitration and BIMCO’s selection of Singapore as a third designated seat is a timely recognition of this.


But this only marks the beginning of a long and exciting journey in our partnership with BIMCO. If we are to succeed, it will be crucial that parties who come to Singapore to resolve their maritime disputes through arbitration have a smooth, relatively pain-free and cost-efficient arbitration here. I am confident that the support that SCMA gives to the industry will pave the way for high standards of arbitration services to be delivered without all of the structural rigidity that is increasingly evident in international institutional arbitration.

Thank you very much and I wish each and every one of you a very successful conference.