

XVI International Congress of Maritime Arbitrators 2007

Keynote Address

by The Chief Justice of Singapore

Mr Manfred Arnold, Chairman of the ICMA Steering Committee,
Ladies and Gentlemen,

1 We are now coming into the golden age of maritime trade. I say this with some confidence on the facts that are in the public domain. More than 90% of global trade is now carried by sea. Over the last four decades, total seaborne trade estimates (measured by tonnes carried, multiplied by the distance traveled) have more than quadrupled, from less than 6 thousand billion tonne-miles in 1965 to more than 29 billion tonne-miles in 2005.¹

2 In terms of the merchant fleets world-wide, their tonnage expanded to 960 million deadweight tones (dwt) at the beginning of 2006 which represented a remarkable increase of 7.2% over the previous year. It also was the largest expansion since 1989 when merchant fleets started to recover from the slump of the 1980s. Newbuilding deliveries increased to 70.5 million dwt while tonnage broken up and lost was a modest 6.3 million dwt. This netted a gain of 64.2 million dwt.²

3 Against this backdrop, the most dynamic of the trading nations have been here in Asia. In 2005, Asia's share of world tonnage of seaborne loaded goods was 38.8%.³ Asia is also home to three of the

¹ UNCTAD–Review of Maritime Transport 2006.

² Ibid.

³ Ibid.

world's busiest container ports measured by cargo tonnage. These are of course Singapore, Hong Kong and Shanghai.⁴

4 Newbuilds are also now coming out mainly from Asia, spurred by a surge in demand in the shipbuilding and offshore rig markets. In terms of shipbuilding capacity, South Korea has firmly established itself as the world's leading shipbuilding nation. China is also beginning to make its mark in the industry. In terms of the offshore rig market, the combination of 90+% utilization rates and the forced retirement of rigs built 30 years ago have spawned a resurgence of newbuilds not seen since the late 1970s. There are 40 new semi-submersibles or drillships under construction slated to come on to the market by 2010, and 60 new jack-ups to be delivered over the next 3 years. I have been told that this is the sixth rig-construction cycle experienced by the offshore oil and gas industry since its inception in 1949.⁵

5 What this surge in newbuilds means is that in the next 20 to 50 years' maritime trade between Asia and Europe and the US and intra-Asian trade, led by China, India and Japan, or within the projected East Asian Common Market, should also herald a golden age for maritime arbitration and maritime arbitrators and lawyers. However, for bygone historical and other reasons, Asian countries have yet to unite their shipping communities within an Asian shipping body or association with goals and functions similar to those of the Baltic Exchange and BIMCO (the Baltic and International Maritime Council) the largest private shipping organization in the world with over 2720 members. Both the Baltic Exchange and BIMCO are fine examples of what the Asian shipping community could and should do - uniting to seek common goals, and pooling resources and efforts to provide the best environment for the healthy development of sea transportation in Asia. This is becoming even more desirable now with a growing Asian fleet and anticipated increases in cargo movements. In this regard, it should be noted that recently the Baltic Exchange has opened an office in Singapore. This is the first time in its 260-year

⁴ The Straits Times, 11 January 2007.

⁵ ODS-Petrodata estimates.

history that it has opened an office outside London making Singapore its Asia Pacific base⁶.

6 In Asia, the Japan Shipping Exchange has taken the initiative some years ago for Japanese Shipowners. Its Documentary Committee had then drafted various standard contract forms for use by its members. These included Bills of Lading comprising Combined Transport and Reefer Bills of Lading, Voyage and Time Charterparties, Memorandum of Agreement (for sale of ships), Towage as well as Salvage Agreements. These are however, in the main, used only by Japanese operators. Perhaps, it may be timely for Asian shipping companies to re-assess the need to have Asian shipping forms crafted to suit the peculiarities of shipping practice in Asian ports for users. In this regard, the Singapore Maritime Foundation has the opportunity to take a leading role in this worthwhile project. I am sure that the SIAC, the Singapore Chamber of Maritime Arbitration and the Maritime Law Association of Singapore will be more than pleased to give their assistance.

7 Maritime trade has been a lifeline of Singapore. It was founded by Sir Stamford Raffles who planted the English flag at a place not very far from here on 2 February 1819 to set up a factory and a trading station in order to break the Dutch domination of the maritime route to and from China and the Indonesian Spice Islands through the Straits of Malacca and Singapore. Because it was a free port, it immediately attracted thousands of traders from China, India and the region. Five years later, by 1824, the British wanted and obtained sovereignty over Singapore in perpetuity. The rest, as they say, is history. Today, maritime trade and industry contributes a significant proportion of Singapore's GDP and more than 120,000 jobs in this sector of the economy. For this reason, the continuing expansion of our maritime services sector is essential to the economic health of Singapore, and the development of Singapore as a maritime services hub for the region.

⁶ The Business Times, 13 December 2006.

8 That is the economic side of the equation. How about the legal side of the equation in Asia and Singapore? I understand that in terms of arbitral bodies, Japan has the Tokyo Maritime Arbitration Association and China has the China Maritime Arbitration Commission. As the arbitrators and lawyers who are here this morning would be more familiar with the operational state of these two bodies, I will not venture any observations on the subject. However, I do wish to make an observation that touches on the holding of ICMA XVI in Singapore today. Many of you might be aware that in the area of international rankings of one activity or other of the market economies of the world, Singapore has been trailing Hong Kong for many years in such areas as the world's freest economy, the world's easiest financial centre to raise capital, the world's best city to live in, the world's busiest port, etc. When ICMA XI was held in Hong Kong in 1994, I believe it was then the world's busiest port in terms of total shipping tonnage. In the last two years, that honour has gone to Singapore, including the title of the world's busiest container port as well. I suppose the Maritime Port Authority and the Singapore Chamber of Maritime Association can say with some pride that ICMA was prescient in choosing Singapore to be the venue of this year's Congress. On this criterion, I expect that in the near future, ICMA should hold its Congress in Shanghai as it is expected to overtake both Singapore and Hong Kong as the busiest port in the world. To adapt the title of an article on the history of ICMA by Michael Gelder, entitled, *Maritime arbitrators get the congress they deserve*, I would add that they should get the venue they deserve.

9 Let me now say a few words about the state of international arbitration in Singapore generally, including maritime arbitration. When Lawrence Boo asked me to deliver the opening speech at this Congress, I asked him what the theme of the conference was and the subject of the papers to be presented. He replied that the papers might be technical for me. I replied that might be so, but that I still have to say something sensible and relevant. He replied that whatever I might want to say, I should not go overboard in extolling the virtues of Singapore and try to sell it as the best venue in the world to conduct international maritime arbitrations. The reason is that it might put off seasoned arbitrators and lawyers like you.

10 In any case, I am fully conscious of the importance of international arbitrators and the commanding heights the eminent and respected arbitrators occupy in this private sphere of dispute resolution. Perhaps that is why in Singapore and in other countries as well, retired superior court judges, instead of actually retiring, want to become arbitrators. The privileges that international arbitration enjoys in terms of autonomy and general immunity from judicial interference vest in arbitrators a jurisdiction and a set of powers that even domestic courts do not have. The UNCITRAL Model Law on International Arbitration or similar laws, which such trading countries have adopted as part of their domestic law, has severely restricted the grounds on which arbitral awards can be corrected or set aside. Such grounds do not include errors of fact and errors of law. Furthermore, as I was reminded by counsel in a recent case in the Court of Appeal, the seat of arbitration stipulated in the arbitration agreement did not mean that the venue of the related arbitration would be the same. It could be anywhere in the world, depending on the decision of the parties in consultation with the arbitrators. What has happened of course is that in market economies, national governments have been obliged by market forces to provide an autonomous regime of alternative dispute resolution to cater to the needs of traders and businessmen for private and confidential resolution of their disputes. For these reasons, Singapore, as a market economy, needs international arbitrators more than international arbitrators need Singapore. It is therefore indeed an honour as well as a privilege for Singapore to be hosting ICMA XVI today.

11 Nevertheless, since ICMA may not hold another Congress here for many years to come, I think it would be remiss of me not to mention some of the things that the Government has done to provide a conducive and friendly environment for the conduct of international arbitrations in Singapore. It has put in place, through legislation and public works in the last decade, a legal framework and a communications and information technology infrastructure that are able to cater to all the needs of arbitrators and the disputants and their legal advisers. We can claim to have all the essential facilities needed for such activities. Singapore awards registrable for enforcement in all signatory countries to the New York Convention

that have gazetted Singapore as a Convention State. Singapore is a common law country and has been since it was founded in 1824. For this reason, our commercial law is basically English law and therefore is as developed as that of England. Case-law precedents ensure that there is a very large degree of uniformity in the commercial laws of the developed Commonwealth countries. In maritime and admiralty law, it is commonly acknowledged among Commonwealth shipping lawyers that Singapore courts have over the years made a significant contribution to the corpus of English commercial and maritime law.

12 In November 2004, the Singapore Maritime Foundation established the Singapore Chamber of Maritime Arbitration to promote international maritime arbitration in Singapore. After three years, it is, of course, still an infant, and it will take a long time, if ever, to catch up with the established maritime arbitral bodies in Europe and in the United States. It is a novice in an arena dominated by experienced and well-connected heavyweights. Nevertheless the reasons for the launch of the SCMA remain valid. And there is no reason why it should not grow as, in the words of the Minister of State for Finance and Transport made at its launch, and I quote:

“Currently, we are already well-placed to serve as Asia’s leading centre for maritime law and dispute resolution. With 4,000 maritime and maritime-related establishments in Singapore, there is a ready pool of clientele for the maritime legal services sector to tap on. Given our business-friendly environment, excellent infrastructure and connectivity, this number is expected to grow even more over time, as more maritime companies use Singapore as a launch pad to reach out to their suppliers and customers in the region.”

The Minister went on to describe the three-pronged approach to develop our maritime legal services sector. First, develop our maritime legal expertise. Second, implement appropriate regulatory policies to encourage the growth of maritime legal services. Finally, actively encourage the international shipping community to have their disputes arbitrated in Singapore.

13 What do we have in terms of professional resources to assist international arbitration? From an external perspective, any global law firm is free to set up an international arbitration practice in Singapore and bring in as many arbitration lawyers as it wishes. Internally, we

have a large corps of highly qualified competent and reasonably priced, some say under-priced, commercial lawyers to assist international counsel. We have a legally-friendly and, just as important, a tax-friendly environment. Since 2003, foreign arbitrators hearing cases in Singapore are fully exempted from withholding tax. I believe we are probably the only jurisdiction (apart from those fully-tax free regimes) that has accorded such special treatment to foreign arbitrators. And for lawyers, both local and foreign, representing parties in arbitration in Singapore, the Government has recently announced that there will be a 50% tax exemption granted for law firms' incremental income derived from international arbitration activities⁷.

14 I now wish to say a few words on the relationship between the Singapore judiciary and international arbitrations conducted in Singapore. From time to time, we hear applications by parties to disqualify arbitrators, usually on the ground of perceived bias, or to set aside arbitral awards. Our general approach is a "hands-off" approach in support of international arbitration as required of us by Parliament in enacting the International Arbitration Act (incorporating the UNCITRAL Model Law). We will be slow to interfere with the arbitral process even in areas and circumstances where Parliament has given the courts power to do so. As Singapore is also a signatory to the 1958 New York Convention, it is also our duty to honour arbitration agreements and refer parties to arbitration wherever the situs may be and to enforce awards made in Convention States. We have a special provision in the International Arbitration Act that caters to the arrest of ships and the stay of proceedings in order that maritime disputes be arbitrated as agreed by the parties. I have been informed that there have been instances of arbitrators,⁸ and even arbitral institutions,⁹ being served with court papers and injunctive orders to restrain them from proceeding to or in their arbitrations.

⁷ Budget 2007 Highlights :

http://www.singaporebudget.gov.sg/budget_2007/key_initiatives/benefits_for_business.html

⁸ There is an SIAC case in which the 3-member tribunal was ordered by a court in Bangladesh not to proceed until the case before the Bangladeshi court is completed.

⁹ SIAC has recently (January 2007) been served with an *ex parte* injunction order issued by an Indian court prohibiting it from administering an arbitration on the ground that the matter is before that Indian court. The order also required SIAC to 'show cause' why the injunction ought not to be continued.

Some such orders have emanated from some courts in Asia. In my view, courts of Convention States should keep faith with state obligations recognising the parties' rights to arbitration. I can assure you that the Singapore courts have faithfully adhered to this principle. From 2004 to 2005, the Singapore High Court has granted orders to enforce 10 foreign awards¹⁰ in Singapore. Insofar as I am aware, no foreign arbitral award has been refused recognition in Singapore under the New York Convention. Courts in China too have been known to have consistently recognised and enforced foreign awards,¹¹ albeit that the time taken for such steps may vary in different courts in the provinces. I recently read in the Singapore Arbitrator that a Zhejiang Intermediate People's Court granted an order for the recognition of an SIAC award.¹² Korea too, has demonstrated its commitment to the obligations under the New York Convention. There are, of course, occasional hiccups. Last year, the Court of Appeal in Malaysia had in one case refused to enforce a Singapore award under the New York Convention because Malaysia had inadvertently omitted to gazette Singapore as a Convention State. I am confident that Malaysia will rectify this omission in due course.

15 I believe that international arbitration can only thrive in an atmosphere of trust, respect and cooperation among the national courts, arbitral institutions and arbitral tribunals. You who are gathered here, especially the arbitrators, have an indispensable role in maintaining the confidence of the business community and the legal and other relevant professions as a fair and acceptable form of dispute resolution, equal or even exceeding in standing to judicial resolution. Disputants have entrusted on you the responsibility to resolve their disputes in accordance with the law and the evidence, in the assurance that you will bring your expertise to bear on these matters objectively and impartially. As I have alluded to earlier, arbitrators are answerable to no one, not even to their appointors, for how they decide on the facts and the law, only to their own

¹⁰ Source: Registry, Supreme Court of Singapore (2005).

¹¹ According to Mr Zhang Puqi, President, Execution Court, Supreme Court PRC, between 1998-2001, Chinese courts enforced 1474 foreign-related awards (including 36 from Taiwan): see <http://www.cietac.org.cn/hezuozp.htm>. In Beijing, the Beijing People's High Court reported that it enforced 3 awards in 2003 and 2 awards in 2004 [per Mr Tian Yuxi, Dir-Gen, Execution Division, Beijing People's High Court].

¹² Singapore Arbitrator, January 2007.

conscience to keep the trust reposed in them. It is a heavy responsibility, but also a well rewarded burden that must be discharged in good faith, with impartiality and utmost integrity, and equally important, diligently and efficiently. The future of international arbitration will always be in the hands of good people like you.

16 Finally, I would like to say to all our guests who have not been here before that Singapore is truly a unique place where the inheritors of the four great civilizations of the world, the Chinese, the Indian, the Islamic-Malay and the Western, have made it their home, living and working in peace and harmony, crowded within the confines of a small place in the sun. You might wish to venture beyond your hotels and see and experience for yourselves what Singapore is like.

17 On that note, may I wish you all a successful and fruitful Congress. Thank you.