

INTERNATIONAL LAWYER

A Dialogue with Judicial Wisdom



Professor Shunmugam Jayakumar

INTRODUCTION

The Journal of East Asia and International Law honorably invites Professor S. Jayakumar at the National University of Singapore for the interview of <International Lawyer: A Dialogue with Judicial Wisdom> of this volume.

Professor Jayakumar was born on August 12, 1939 in Singapore. As one of the most highly renowned international lawyers of our time, Professor Jayakumar was educated at Raffles Institution and the National University of Singapore Faculty of Law. Then, he continued to study international law at Yale Law School under the supervision of legendary professor Myres S. McDougal and got his LL.M. degree there. After coming back home, Professor Jayakumar taught international law at the National University of Singapore and served as Dean of the Law Faculty.

Later, he began working for the government as the Permanent Representative of the Singaporean mission to the United Nations. In 1980, Professor Jayakumar entered politics where he held many ministerial portfolios in the cabinet including Foreign Affairs, Home Affairs, Law and Labor. He became Deputy Prime Minister in 2004, Coordinating Minister for National Security in 2005, and Senior Minister in 2009. He finally came back to academia in 2011.

Professor Jayakumar is a prolific writer publishing many books and articles with various topics of international law and constitutional law. In particular, the latest work, DIPLOMACY: A SINGAPORE EXPERIENCE (2011) has been attracting great readership from all over the world. He is married Dr. Lalitha Rajahram. They have two sons and a daughter.

The following is the edited transcript of the interview with Professor Jayakumar held in Singapore on February 14, 2012. A video part of the interview may be viewed at the website of the YIJUN Institute of International Law: <http://www.yiil.org>

QUESTIONS & ANSWERS

1. Hello, sir! This is Eric Lee from Journal of East Asia & International Law. Thank you very much for giving me the privilege of interviewing you. I would like to begin this interview with a light but important question regarding your personal story. You were born in 1939 in a Tamil Indian family. Would you please talk about your

childhood and parents' education? What brought you to study international law?

My childhood was not very eventful. It was the period during and after World War II. The times were hard. My father was born in India and was not highly educated. He came to Singapore to earn a livelihood where he met my mother and got married. They finally decided to stay in Singapore abandoning his plan to eventually return to India. I was the fifth of seven children. This is the story typical for many 3rd generation Singaporeans. Most of our fathers or grandfathers had come from India or China. Through their sheer grit and determination, they made it and were able to raise a family and provide better education for their children than they had had. Like many others of my generation I really owe it to my parents. My mother was not educated, either. Most of my siblings were educated up to secondary schools or university level.

As for my studying international law, I did my legal studies at the National University of Singapore and the subjects I was interested in were constitutional law and public international law. There was not much potential in practice of these fields of law in Singapore. Upon graduation there was a Round Table of International Law held at Singapore I was asked to be a rapporteur. It was then that I met Professor Myres S. McDougal from Yale Law School who inspired me. He persuaded me to apply for Yale Law School. That is when I began to take a serious and deeper interest in international law.

2. You said that the first meeting with PM Lee Kuan Yew had a huge impact on your understanding of the interplay between national interest, international agreements and international law. Would you explain more about your thoughts on this matter?

When I was in politics, I was appointed as a Minister of State for the Law and Home Affairs (called ministry of the interior in other countries) who had to tackle the many issues on law and order. I worked closely with the Prime Minister Lee Kuan Yew. It was very impressive because he was not only a visionary leader of Singapore, but also an excellent lawyer, having been a brilliant law student at Cambridge. He was a very pragmatic lawyer. There were huge challenges in ensuring that Singapore would survive and thrive after separating from Malaysia. We were a tiny island, with no natural resources, one of the world's most densely populated countries with many different races, languages and religions. We had a history of communist and racial riots. How could we survive, thrive and be a successful independent country after being separated from Malaysia? This was a great challenge. So, PM Lee Kuan Yew had to

shape laws and policies that would work. As you know policies need legal underlying framework. He was a leader and at the same time had a legal background. He had his own philosophy on the function of law in shaping the growth of the society. Every aspect of growth of Singapore saw interplay between policy and law. His approach to law was neither abstract, nor theoretical. He wanted Singapore to succeed and grow against all odds and law had to play a role in social, economic, and political objectives. In working with him, I could see the pragmatism that he had. Take what you said to me about how clean Singapore is. That did not come just by chance. People needed to be educated to keep the streets litter free, but at the same time there must be strict laws to deter people from despoiling the environment. Human nature being what it is he believed and I also believe that the natural order of things is disorder. So we have very strict laws on, for example, punishing people who scrawl graffiti on public property. This is just one example.

Let's take another problem, that of fighting corruption. We need strict laws and strict enforcement of such laws. Whether you are a high-level official or a minister the law has to be enforced and seen to be enforced. But as you know, corruption is very hard to prove in a court of law. How does the prosecution prove that the money you have in your bank account is not legitimately derived? PM Lee Kuan Yew's approach was to reverse the presumption. In other words, if you have assets and wealth, which cannot be explained by your known sources of income, then the presumption is that it is ill gotten, and you have the onus of proving you got the money legitimately.

3. I would like to ask you somewhat a delicate question on the identity of Singapore. Some people would regard Singapore as an outpost of the United Kingdom in Asia. Do you agree with it? Or, what is the national identity of Singapore?

The population of Singapore comprises 75 percent Chinese, 15 percent Malays, and 8 percent Indian. We are very cosmopolitan because we have been open to immigration. Even tens of thousands of Koreans live in Singapore.

As for the identity of Singapore, I would not say that we have 'arrived.' We are a society which strives to be a nation. In the beginning, we never intended or expected to be a nation. We were a state within Malaysia, but because of differences we separated from Malaysia. We believe independent Singapore has a future. However, I believe that to be truly a nation it will take a long time. We have three different groups of people from different countries. How do you get these three groups to think of themselves as Singaporeans? It takes several generations. They must feel that this is their home; our destiny is neither with China, nor with India. I am of Indian origin, but I don't regard

me as an Indian from India. I think and feel myself as a Singaporean. If others also feel that way, then we will succeed in having a national identity.

So as to answer the question about the national identity of Singapore, we have to be a modest, and say that this is still work in progress. Remember that Singapore was founded by the British from 1890. And the modern history of independent Singapore starts from 1965. Forty five years are very short in the history of nations and so it is important for our people especially the younger generation not to take our progress for granted. I am well aware that in history there are many small countries which have flourished but then gone into oblivion.

4. Singapore has been developing very fast in both the social and economic arenas; she is admired as a “miracle of the equator” or “myth of Asia.” However, we cannot deny that there is criticism against the one-party system, power succession, high rate of usage of the death penalty and tight political control over civil society. What is the definition of democracy and human rights from the viewpoint of Singapore?

Every society has to work out the system of governance as well as the approach to law and order best suited for its society and circumstances. Yes, we do have tough punishments, like the death penalty particularly on drug offences and murder and we enforce them. Sometimes we are criticized, but is the criticism valid? That depends on your philosophy on capital punishment. I recognize that there are many views on capital punishment, but I think it does work. Let's not forget that we are located at the heart of golden triangle for drug trafficking. Because of shipping and air communications, we are an easy gateway for trafficking. So we take a tough no nonsense approach. If we did not, not only Singapore would be flooded with drugs, but it also would affect many other countries.

I do not believe there is a one-size-that-fits-all approach. Each country has to decide on its own philosophy of law and punishment. It comes back to the broader question as to what is one's philosophy on the balance of rights of the individual and those of the society at large. Generally speaking, I think the West leans much more on the rights of the individual at the expense of the overall societal interest. However, for most Asian societies, we tend to place higher priority on the overall societal and community interest. That is not to say there are no individual rights. But on the balance, we tilt more towards the interest of the community as a whole.

5. In connection with the above question, I would like to talk with you more about the meaning of so-called ‘Asian Values.’ In 1994, there was a debate between PM

Lee Kuan Yew and former President of Korea, Kim Dae Jung regarding the application of Western democracy to Asia. In a conversation with <Foreign Affairs>, PM Lee Kuan Yew suggested that the Western concept of democracy and human rights would not work in Asia. In the responding article, "Is Culture Destiny?: The Myth of Asia's Anti-Democratic Values" which was also published at <Foreign Affairs>, former President Kim Dae Jung strongly maintained that Asia's destiny would be to improve the Western concept of democracy. What do you think of Kim Dae Jung's recognition of democracy? Does PM Lee Kuan Yew's position still have relevance in Asia?

I cannot recall exactly the precise quotes by Prime Minister Lee Kuan Yew or President Kim Dae Jung, but I'd like to get away from generalization that Western democracy will not work or will work in Asia. Rather, I would like to focus on what would be the ideal ingredients to go into good governance. At the end of the day, you need to have good governance, based on free and fair elections coupled together with rule of law. Good governance must be operated on the basis that there will be limitation to power, that authority must derive legitimately from the mandate of the people, and that there must be checks and balances on the exercise of government power. To ensure this and to have a neutral arbiter when there are challenges, there needs to be judiciary, which is independent. These basic aspects have to exist whether in Asian countries or Western countries. Asian societies by the nature of being Asian societies cannot claim that certain universal norms should not be applied. Subject to that, societies must evolve in accordance with their own circumstances, but they should not invoke national circumstances as an excuse for non-observance of essential norms and values.

6. Let's change our discussion into more global affairs. Following the 2011 dollar index, the value of the US dollar has been declining to below 70% of that of 1973. In recent years, the US hegemonic power is getting less dominant in East Asia, while China is becoming more influential. How do you expect the competition between these two powers in East Asia to evolve? And what is Singapore's strategy to deal with this changing environment?

I don't see a dire or gloomy scenario. Yes, there will be a competition between the United States and China in some areas. Some of this competition may lead to certain tensions, but I think both nations can and will manage this because it is not either's interest to have a conflict. Both sides know each others' sensitive or core interests. So, I think they will manage it whether in the economic sphere or other areas.

Recently, there is ongoing controversy over the South China Sea between China, Vietnam, the Philippines, etc. The U.S. has also expressed concern and interest because of it has vital interests in sea lanes of communication.

Singapore is not a claimant state, but as one of the world's busiest ports, we also have an interest on freedom of navigation. Such matters of security in the Asia Pacific region, it is the best to have as many external players to be engaged in dialogue and discussions rather than to have one or two dominant players. I don't think external players (non claimant States) should get involved in the specific resolution of individual claims and counter claims. That should be left to the disputing parties. However, non claimant States whether a big power like the United States or tiny 'red dot' like Singapore, do have legitimate interests over the way to which the South China Sea disputes can lead. This in turn can have a direct bearing on the unimpeded and smooth passage of ships through important sea lanes. Non claimant States are entitled to request that the claimant States will observe the rules of international law on freedom of navigation.

In terms of geo-political realities, the ASEAN (Association of South East Asian Countries) cannot pretend that we are a power bloc. But the ASEAN is useful as a facilitator for other countries to be engaged in the region. Taking the Asian Regional Forum ("ARF"), for example, I believe that other countries are comfortable with the ASEAN being in the driver's seat of the Asian Regional Forum.

7. Korea is the only place on the globe where the Cold War is still in place. Reunifying Korea is the most important task for peace and prosperity of both the Korean people and its neighbor countries. Following your experiences as a scholar as well as politician, what should Koreans do first to achieve reunification?

I hesitate to answer this question because I am not familiar with the thinking of the current Korean younger generation. With passage of time, is reunification seriously believed in by the younger generation? Do they regard it as an achievable goal in the near future or as an ideal, something to dream about? From the German experience, reunification has many ramifications in politics, economics and so on. You told me that the younger generation does indeed believe in reunification. Then, when relations between both sides are propitious first and foremost there needs to be courageous leadership on both sides to make the bold decisions. But no leader will be able to do that unless he believes that he has support of the people.

Singapore's experience on harmonization between races and religions would not be helpful as our two countries and people have had different histories and generational

experiences. The German experience would offer better lessons for you on the issue of Korean reunification.

Regarding the situation on Korean peninsula, I don't think this is one of the divisive issues for the United States-China relations. It is neither China nor the United States' interest to have North Korea ignore the international community's concerns on nuclear proliferation. So, I think they have shared interest in what goes on in Korean peninsula.

8. Your career has been a true model of success for an international lawyer. For the past forty years, you were in the center of national governance. I wonder if you had any frustrations over the course of your career? If so, how did you overcome that?

It is not so much frustrations, as having concerns or worries over the country's long term future. Small countries have greater challenges than bigger countries which are endowed with greater natural resources. Fortunately in Singapore, the government works as a team and I worked under three Prime Ministers. Every one of these Prime Ministers had very good grasp of the challenges that Singapore faces.

My worry for the future is whether the younger generation will have the same understanding of the fragility and vulnerability of Singapore. We face many challenges. Let me cite one challenge as an example; our population at present has a low birthrate. Total birthrate is less than the replacement level. Married couples are not replacing themselves. If so, our demography will change. A solution is to give as many incentives for the couples, which is very difficult to work because of various reasons. So, we have to step up immigration of skilled and talented people.

If we do not have immigration of desired numbers, and the birthrate continues to be low, then looking into the future, we are set for slower growth and our competitiveness will be adversely affected. But when we do have sizeable immigration, our citizens complain about the economic, social or cultural downsides of having a large number of foreigners in our midst. These are some of the dilemmas government has to resolve.

Looking at the world beyond Singapore in the 21st century, I expect new kinds of problems would emerge which can cause tensions in a few decades down the line. Climate change is one such issue. I expect conflicts and tensions would arise from the effect of climate change in about 20 to 30 years of time. Effects of climate change show people will try to cross borders in larger numbers to escape the severe effects of climate change.

9. Would you please give a piece of advice to young international lawyers in Asia preparing for the 21st century?

I would like to see international lawyers in Asia have a higher profile, and to have their presence felt in major international judicial bodies and arbitral tribunals. For the past, the lawyers who dominated internationally were from the United States or Europe. Just look at the list of lawyers appearing in major international law cases, for example, before the ICJ or the ITLOS. They are mostly Anglo Saxon lawyers. They are very good but we also have many bright international lawyers in Asia. We need greater recognition and I hope there will be more forums or conferences where Asian international lawyers will interact with each other and establish recognition.

Interview by Eric Yong Joong Lee

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