SINGAPORE

Dispute Resolution in Inter-State & Investor-State Cases: The Asian Experience*

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1. Introduction

This seminar was held on September 29, 2015 by the Singapore branch of the International Law Association (hereinafter ILA Singapore) and the Singapore Management University's ("SMU") Centre for Cross-Border Commercial Law in Asia.

Panellists

Professor Hi-Taek Shin (Seoul National University)
Dr Romesh Weeramantry (Clifford Chance, Hong Kong)
Mr Minn Naing Oo (Allen & Gledhill, Myanmar)
Professor Chester Brown (University of Sydney)

Moderators

Assistant Professor Mahdev Mohan (Founding Member, ILA Singapore; SMU)
Ms Gitta Satryani (Herbert Smith Freehills, Singapore)

* This report is a fully summarized version of ILA-Singapore branch news, *available at* http://www.ila-hq.org/en/news/index.cfm/nid/1826CD10-68D0-4B9B-937576F667BD74F7 (last visited on Nov. 16, 2015).

** Deputy Public Prosecutor and State Counsel, Attorney-General's Chambers, Singapore. J.D. (SMU). The views expressed here are those of the participants and do not represent the views of the author or the Attorney-General's Chambers. The author is grateful for the guidance and assistance of Ms Jaya Anil Kumar, Research Assistant, SMU. A longer report on this event that can be found on the website of the International Law Association (HQ).

2. Investor-State mediation and conciliation

The panellists were invited to comment on the relative unpopularity of the International Centre for Settlement of Investment Disputes ("ICSID") conciliation process. Prof. Brown observed that investors usually invoke ICSID's dispute resolution mechanisms the relationship has broken down. Thus, arbitration was often more attractive than conciliation, which could end without agreement.

Mr. Weeramantry added that conciliation is at least preferable to mediation, because endorsing a solution proposed by a neutral expert could be less politically risky than a State- or investor-originated proposal.

Ms. Lucy Reed (Founding Member, ILA Singapore; Freshfields Bruckhaus Deringer) commented from the audience that the high formality of ICSID conciliations creates unfavourable conditions for conciliation. Ms Reed then asked the panellists for their thoughts on why governments which are bold enough to decide matters as politically risky as the waging of war should be so reluctant to settle legal disputes.

Prof. Shin and Ms. Satryani stated that officials often fear that agreeing to a settlement may expose them to prosecution under domestic law. Prof. Brown observed that similar concerns had affected not just Argentina's willingness to settle, but also her conduct in arbitrations. Mr. Weeramantry expressed hope that such attitudes could change in time, observing that in his time at the Iran-United States Claims Tribunal ("IUSCT"), he had seen Iran's lawyers become more co-operative and less obstructionist.

3. Grievance mechanisms as an alternative means of resolving or preventing disputes

The panellists were invited to discuss the role of non-litigious grievance mechanisms. Mr Minn noted that the grievance mechanism incorporated into Myanmar's recent draft Investment Law made the proposal more palatable. With this less adversarial option in place, the Myanmar government might eventually be persuaded to also accept investor-State arbitration ("ISA").

Prof. Locknie Hsu (Founding Member, ILA Singapore, SMU), speaking from the floor, asked about the effectiveness of the Office of the Foreign Investment