

**International Bar Association Maritime and Transport Law Committee
Mid-Year Conference 2022**

Keynote address

7 June 2022

The Honourable Justice Pang Khang Chau

Supreme Court of Singapore

Justice Chao Hick Tin

Mr Peter Bartlett, Chair of the IBA Legal Practice Division

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Transport Law Committee

Distinguished delegates

Introduction¹

1 Good morning. And to the delegates from overseas, welcome to Singapore!

2 It is my great pleasure to be able to join you this morning. For those of you who were at the welcome dinner hosted by the Singapore Host Committee last night, I hope you have all enjoyed the company, the food and the music as much as I had. In fact, I am extremely glad that I was able to join the dinner last night as, meeting you for the second time in two days, it makes me feel as though I am here this morning among friends and not strangers.

3 Let me begin by congratulating the IBA Maritime and Transport Law Committee on the occasion of its 50th anniversary. Indeed, the Committee has come a long way since the days it was known simply as ‘Committee A’.

4 One of the attractions of maritime law is its distinctively international quality. Few platforms embody this international reach as successfully as the IBA Maritime and Transport Law Committee. I took some time to explore the IBA website while preparing this address. I was impressed with the diversity of the Committee’s membership as evidenced by the articles on its Publications page.² Virtually every other article covers developments from a different jurisdiction, with entries from the United Kingdom, Singapore, China, Brazil, India and many other countries.

5 I also note that the Committee’s members have also been active in shaping maritime law in other ways. Chief among these is the flagship Mid-Year Conference. The Conferences never fail to deliver on timely and significant issues, such as marine insurance and arbitration in 2017, and maritime insolvency and sulfur emission limits in 2019. As we slowly emerge from the Covid-19 pandemic and enter into a post-Covid world, this year’s programme is packed with topics of great urgency and importance.

6 Over the past two years, the shipping community has been buffeted by a perfect storm of Covid-19, the climate crisis, the Suez blockage and the Ukrainian conflict, among other concerns. Without a doubt, these will animate many conversations over the next two days.

7 Yet, both between and amidst these crises, business continues unabated. Ships are arrested. Collisions occur. Trade is financed. Demurrage is incurred. Legal procedures and principles continue to be tested and refined by the disputes

that we are all used to. These familiar, ‘bread and butter’ issues might not be headline-grabbing, but their proper resolution is just as critical to international trade and shipping.

8 This morning, I will try to speak to some of these issues through the lens of our tiny island state – Singapore.

9 As some of you would have heard from the Minister’s speech at last night’s dinner, Singapore has been and continues to be one of the world’s busiest maritime hubs. Last year, she retained her position as the top shipping hub for the eighth consecutive year, according to the Xinhua-Baltic Index.³ Her ship registry lists over 4,200 Singapore-registered vessels, earning her a place among the top five largest registries worldwide.⁴

10 These outcomes are not due to the efforts of any single actor, but is the product of an entire ecosystem. One indispensable component of this ecosystem is the Singapore legal community, including the Singapore judiciary, of which I am a part. I would like to speak about some of the Singapore judiciary’s contributions, beginning with contributions to maritime law jurisprudence followed by procedural initiatives. As it is not possible to cover all significant developments in a meaningful way within a short speech, I will focus on just a few examples.

The ‘Sevilla Knutsen’

11 I begin with the case of *The ‘Sevilla Knutsen’*, decided in January this year. This case squarely illustrates the point I made earlier about the internationalist outlook of maritime law. In this case, the Singapore High Court was tasked with applying the law of the Federated States of Micronesia to assess compensation for damage caused to coral reefs by an oceangoing vessel

running aground on the reefs. This case came to be heard in Singapore only because the vessel which caused the damage to the coral reefs, the *Sevilla Knutsen*, was arrested in Singapore.

12 The court found that about 1,000 square metres of the coral reef was damaged, and awarded damages in the amount of US\$785 per square metre of damage.

13 One interesting feature of this case is that, in coming to its decision, the court was invited to consider damage in the form of diminution to the ‘cultural value’ of the reef, a concept which is probably alien to many Singapore lawyers or lawyers brought up in highly capitalistic societies. But in order to faithfully apply Micronesian law, the court accepted the relevance of cultural value, and delved deeply and seriously into it. For example, the Micronesian Constitution expressly protects the Micronesian people’s traditions.⁵ Further, it requires Micronesian judicial decisions to be consistent with ‘Micronesian customs and traditions, and the social and geographical configuration of Micronesia’.⁶ These cultural rights have featured in previous grounding incidents. As a vivid illustration, the grounding of the *Oceanus* in 1994 had damaged a ceremonial fishing reef managed by an island chief.⁷ As a ceremonial reef, it was closely tied to the locals’ spiritual beliefs, and the allision was seen as a direct attack on the spirits inhabiting the reef. Further, as island chiefs are responsible for providing for their local residents, the chief’s inability to provide food through the reef risked a ‘loss of face’.⁸

14 In the case of *The ‘Sevilla Knutsen’*, arguments were raised on the value of group fishing around the reef as a source of cohesion, and the reef’s role as an environmental classroom for children.⁹ While these arguments were ultimately dismissed for evidential reasons, what’s significant is that the court

gave ample and thorough consideration to Micronesian case precedents that examined these tricky issues of cultural loss.¹⁰

15 This case demonstrates the readiness and ability of the Singapore courts to grapple with these complex issues of foreign law, and to do so in a manner which is sensitive to the relevant cultural and environmental context.

The 'Luna'

16 The next case I wish to speak about is *The 'Luna'*,¹¹ which was decided by the Singapore Court of Appeal last year. In this case, the court held that a document bearing the title 'bill of lading', and containing the usual terms expected to be found in a bill of lading, and which was issued by the master of a bunker barge to a bunker supplier, was not actually a bill of lading.

17 The claimant in this case is a physical bunker supplier who sold bunker fuel to OW Bunker. The bunker fuel were loaded at various times onto various bunker barges nominated by the buyer. At the loading terminal, the claimant generated various documents for the masters of the bunker barges to sign, one of which was the bill of lading I referred to. Significantly, the sale contract between the claimant and the buyer provided for payment on 30-day credit terms, and did not call for the use of bills of lading. In particular, the sale contract did not require the claimant to obtain a bill of lading from the bunker barge and present the bill of lading to the buyer for payment. Instead, the claimant held on to the bills of lading and endorsed them to the buyer only after the claimant had been paid by the buyer at the end of the 30-day credit period.

18 In the meantime, the bunker barges went on to deliver the bunker fuel to various ocean going vessels within the Singapore port limit at the buyer's instructions. These bunker barges would have discharged all or most of the

bunker fuel they took from the claimant within a few days, and would then return well within the 30-day credit period to the claimant's terminal to load more bunker fuel at the buyer's instructions. In this way, the claimant was well aware that each shipment of bunker fuel it loaded onto any of these bunker barges would have been transferred to ocean going vessels and would no longer be in existence well before the expiry of the corresponding 30-day credit period.

19 When OW Bunker became insolvent and defaulted on payment, the claimant presented the bills of lading in relation to the unpaid shipments to the owners of the affected bunker barges, demanding delivery of bunker fuel. Naturally, the owners of the barges could not comply with the claimant's demand for delivery as the bunker fuel in question were no longer in the bunker barges' possession, having been delivered to various ocean going vessels long ago. The claimants then brought misdelivery claims against each of the bunker barges.

20 In dismissing the claimant's misdelivery claim, the court found that the parties never intended the bills of lading to have contractual effect as contracts of carriage or as documents of title.¹²

21 In reaching this conclusion, the court paid careful attention to the commercial arrangements between the parties, as well as the commercial and practical realities of the bunkering industry in Singapore. This is notwithstanding that the master of the bunker barges had signed and issued to the claimant documents entitled bills of lading and containing most of the usual terms found in bills of lading. In other words, the court did not hesitate to look beyond the form of the documents executed by the carrier and gave effect to the true substance of the commercial relationship between parties, after carefully undertaking a fact-sensitive and context-sensitive inquiry.

22 Significantly, this case also clarified the law on the distinction between questions of contract formation and questions of contractual interpretation. Because the court regarded the question concerning the legal effect of these purported bills of lading as a question of contract formation rather than contractual interpretation, it was able to take into account a wider range of evidence, including evidence on subsequent practice of on-selling the bunker fuel to ocean going vessels within a short time, as well as evidence of the underlying sale contract between the claimant and the buyer, which would not have been available to the carriers on whose behalf the purported bills of lading were issued.¹³

The 'Echo Star' ex 'Gas Infinity'

23 I turn now from substantive law to procedural law, and consider a case which explored the nature of an admiralty *in rem* writ.

24 This is the case of *The 'Echo Star' ex 'Gas Infinity'*.¹⁴ Usually, when a vessel is arrested pursuant to an admiralty *in rem* writ, and the shipowner enters appearance in the action, the action will continue both as an *in rem* action against the vessel and as an *in personam* action against the shipowner. The *EchoStar* was involved in a collision, and then sold to new owners before an *in rem* writ was issued against the vessel in respect of the collision. After the vessel was arrested, the new owner entered appearance as the defendant and put up security for the vessel's release. A couple of months later, the shipowner at the time of collision (whom I shall call the 'old owner') also entered appearance as defendant. The new owner then sought to withdraw its appearance as defendant and sought leave to enter appearance as an intervener.

25 In a departure from the conventional understanding that an admiralty *in rem* writ is generally taken to refer to the owner of the vessel at the time the writ

was issued, such that the owner at the time of issuance of the writ would be the proper defendant, the court allowed the new owner's application to withdraw its appearance as defendant and enter appearance as intervener.

26 In coming to this conclusion, the court focused on an important distinction between a damage maritime lien and other types of maritime liens, in that a damage lien is based on fault or negligence. The court therefore considered it intuitively wrong that a subsequent, *bona fide* purchaser who was a stranger to the collision should be expected to risk personal liability by entering an appearance.¹⁵

27 Another reason given by the court was that the damage maritime lien arises at the time of collision. Although, procedurally, the lien only crystallises when an *in rem* action is commenced, the crystallised lien relates back to the time when the cause of action accrues, that is to say, the time of collision.¹⁶

28 In this case, the court was undeterred by the dearth of local and foreign case authorities, and took the analysis back to fundamental principles in order to arrive at an answer which gives proper weight to the purpose of ship arrest as well as fairness towards purchasers of ships encumbered with damage maritime liens.

29 The foregoing three examples tell the story that, despite the Covid-19 pandemic, the court continues to work relentlessly to resolve disputes, grapple with novel issues, and clarify the law for the shipping community along the way.

Procedural initiative

30 The final item I wish to talk about is an amendment to the rules on service of *in rem* writs and warrants of arrest as a result of the Covid-19 outbreak.

31 Many of you probably have fond memories, and perhaps war stories, of boarding vessels to effect service of *in rem* writs and warrants of arrest.¹⁷ This manner of service is long established, and has been accepted as the proper way to ensure notice of arrest to all interested parties.

32 In January 2021, due to the evolving Covid-19 situation, the Maritime and Port Authority of Singapore introduced enhanced screening and contact tracing measures for shore-based personnel boarding vessels.¹⁸ At about the same time, the Maritime Law Association of Singapore also raised concerns about possible exposure to Covid-19 for lawyers and service clerks attending on board ship. In light of these developments, the court undertook urgent consultations, and in less than three weeks, introduced amendments to the Rules of Court.¹⁹

33 These amendments introduced an alternative mode of effecting service – by leaving a copy of the writ or warrant with the ship’s agent.²⁰ Concurrently, safeguards were introduced through the Supreme Court’s Practice Directions, and solicitors of arresting parties are now required to make reasonable efforts to notify interested parties of the arrest, such as the shipowner, master and, if applicable, the demise charterer.²¹

34 These amendments are doctrinally significant because, in one fell swoop, the Singapore courts have dispensed with the need for actual service on the *res* in order to invoke the court’s admiralty *in rem* jurisdiction.²²

35 Having been in place for almost one and a half years, these amendments have received positive feedback from the shipping bar. It has resulted in savings in time and costs, and allowed for arrests to be effected with more immediacy. There was even feedback that the amended procedure is more environmentally friendly, as there is no longer the need for lawyers and service clerks to take a motor launch out to sea to effect an arrest. Many lawyers believe that this new way of doing things should continue even after Covid-19 is no longer with us.

36 However, the ship agents on whom the papers are served in order to effect arrest under these new rules are not too keen for the new rules to continue. Some have expressed concerns about legal liabilities arising from being served with papers and them not transmitting the papers to the master or owners of the ship in a timely manner. They have been asking the court to revoke the amendments and go back to the pre-Covid way of doing things. This is despite the fact that, after almost one and a half years of operation, there has not been a single incident of a shipping agent being laden with any legal liabilities.

37 The debate and consultation is still ongoing, and no final decision has been made about the future of these amendments. In a sense, this debate is a microcosm of the many new measures and innovations made necessary by the pandemic. How much of these should we retain in the post-Covid world? How quickly or readily should we go back to the old ways of doing things?

Conclusion

38 As the shipping community sails with anticipation into a post-Covid world, it is worthwhile to pause and reflect on both what *has changed* and what *has not*. Many challenges on the horizon appear daunting. But some of these can be overcome with sensible, practical adjustments. Others can find their answers through a deeper exploration of fundamental principles so that they can

be applied and developed in a manner which meets evolving commercial needs while being anchored in established doctrine.

39 With that concluding remark, let me wish all of you a fruitful and engaging conference ahead.

¹ I would like to thank Justices' Law Clerk Ong Kye Jing for his research assistance.
² Online at: www.ibanet.org/articles/3095 (accessed on 22 May 2022).
³ Baltic Exchange, 'Singapore tops international maritime centre rankings', 11 July 2021, online at: www.balticexchange.com/en/news-and-events/news/press-releases-/2021/singapore-tops-international-maritime-centre-rankings.html (accessed on 22 May 2022). This is the Xinhua-Baltic International Shipping Centre Development Index.
⁴ Maritime Port Authority of Singapore, *Sustainability/Integrated Report 2020: Transforming Maritime Singapore* at p 17, online at: www.mpa.gov.sg/assets/integrated-reports/2020/index.html (accessed on 22 May 2022).
⁵ Constitution of the Federated States of Micronesia, Article V: Traditional Rights, online at: www.fsmlaw.org/fsm/constitution/article5.htm (accessed on 22 May 2022).
⁶ Constitution of the Federated States of Micronesia, Article XI: Judicial, section 11, online at: www.fsmlaw.org/fsm/constitution/article5.htm (accessed on 22 May 2022).
⁷ This was settled between The People of Satawal and The *M/V Oceanus* on 21 October 1997 without going to trial (as discussed in Sam Edwards, 'Protecting culture and marine ecosystems under the law in Micronesia' (2012) 19(2) International Journal of Cultural Property 197 at 203).
⁸ Sam Edwards, 'Protecting culture and marine ecosystems under the law in Micronesia' (2012) 19(2) International Journal of Cultural Property 197 at 203.
⁹ *The 'Sevilla Knutsen'* [2022] SGHC 20 at [101].
¹⁰ *Ibid* at [103].
¹¹ *The 'Luna' and another appeal* [2021] 2 SLR 1054, [2021] Lloyd's Rep Plus 120.
¹² *Ibid* at [51] and [106].
¹³ *Ibid* at [55].
¹⁴ *The 'Echo Star' ex 'Gas Infinity'* [2020] 5 SLR 1025, [2021] 2 Lloyd's Rep 266.
¹⁵ *Ibid* at [31].
¹⁶ *Ibid* at [37].
¹⁷ Supreme Court of Singapore, *Admiralty Court Guide* (2nd edn) at para 22, issued under cover of Registrar's Circular No 5 of 2019. See O 33 r 10 of the Rules of Court 2021 (formerly O 70 r 10(1) of the Rules of Court 2014) for precise requirements (*ie*, affixing for a short time on a ship's mast or on the outside of any suitable part of the ship's superstructure; and on removal, (for warrants) by leaving a copy affixed in its place, or (for writs) by leaving a copy on a sheltered, conspicuous part of the ship).
¹⁸ Maritime and Port Authority of Singapore (Port) Regulations (S 187/1997, 2000 Rev Ed), regs 61A, 61B and 61C; Maritime and Port Authority of Singapore, Port Marine Circular No 4 of 2021 (14 January 2021), online at:

www.mpa.gov.sg/web/wcm/connect/www/6335c347-f5c2-4c91-b8e0-089a24018151/Annex+-+Port+Marine+Circular+No.+04+of+2021.pdf?MOD=AJPERES

(accessed on 17 May 2022). These include requirements to produce a negative PCR test result prior to boarding; SafeEntry@Sea check-in/check-out at point of embarkment/disembarkment; and further PCR tests around the 5–7th and 11th day after disembarkment.

¹⁹ O 70 r 10A of the Rules of Court 2014.

²⁰ O 70 r 10A(1) of the Rules of Court 2014, now O 33 r 11(1) of the Rules of Court 2021.

²¹ Supreme Court Practice Directions, Amendment No 1 of 2021 (21 January 2021), inserting para 124(5).

²² This requirement was discussed in *The 'Fierbinti'* [1994] 3 SLR(R) 574 at [39].