

# Singapore and Australia – Participants in an International Commercial Dispute Resolution Network

Ros McGovern Lecture  
23 April 2026, Singapore

This lecture celebrates the life and work of Ros McGovern who pioneered the engagement of women in the ranks of Australian diplomats.

In 1977 she became the first woman to be appointed to the Senior Executive Service in what was then the Department of Foreign Affairs in Australia. She was the first woman to be appointed as Australian High Commissioner to Singapore in 1988. She was described in a tribute published by the Australian High Commission following her death in 2023 as:

a pioneer of her time, being a woman in diplomacy during a period dominated by men.<sup>1</sup>

And relevant to this event:

remembered by her contribution to Australia's international relations including her work in strengthening the Australian-Singapore relationship.<sup>2</sup>

Her oral history shows a life of unexpected turns. She was born in Clifton, a country town in Queensland. Her father died when she was two and she and her older sister were raised by her mother who worked as a nurse in Toowoomba. She was educated at a Catholic School by Ursuline nuns. After finishing her secondary education she joined that Order for a short time. According to her oral history, she lasted seven or eight months then, in her own words, 'hightailed it out of there'.<sup>3</sup> Her career in the Commonwealth Public Service began in late 1960 when she joined the Extension Service of the National Library and later the Library of the Department of Defence. She studied parttime for a Bachelor of Arts at the Australian National University, majoring in economics and related topics. She was transferred to the Economic Intelligence Section of the Department of Defence. There she stayed through various promotions until 1971 when she joined the Department of Foreign Affairs. In October 1972 she was sent to Jakarta to manage Australia's Aid Program. In 1983, she was appointed

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<sup>1</sup> Australian High Commission, Singapore Post. <[linkedin.com/posts/australiainsingapore\\_diplomacy-womenindiplomacy-history-activity-7016715929350803456-tdFf](https://www.linkedin.com/posts/australiainsingapore_diplomacy-womenindiplomacy-history-activity-7016715929350803456-tdFf)>.

<sup>2</sup> Ibid.

<sup>3</sup> Transcript of Interview of Margaret Rosaleen McGovern by Daniel Connell, 27 April 2017 in Canberra ACT, 9.

as Australian Ambassador to Sweden, Norway and Finland, a post she held for the next four years. In 1988 she was appointed the Australian High Commissioner to Singapore, a post which she held, with acknowledged distinction, for 2 ½ years until 1990.

Lecture series in honour of individuals who have made significant contributions in Public Service, the academy or the private sector are not uncommon. That is because they serve a good purpose. They help to keep alive the memory of those people and of the history of which they were part. Today, even relatively recent history can quickly be swept from memory in the accelerating flood of events, large and small from around the world, with which we are deluged by media feeds and countless social media platforms. What is recent history to the aging cohort of my generation, is ancient history to younger generations. The celebration of people and things in the not so distant past helps a little to anchor us in the crowded present with a remembrance of enduring values and those who embodied or gave effect to them.

Ros McGovern served the important public purposes of diplomacy. The primary purpose is to represent and advance the interests of the diplomat's home society in other places. More importantly, diplomacy generally provides a mechanism for peaceful engagement between peoples. It can, of course, be hard work because the interests and world views of different peoples and their leaders may be in tension from time to time and that tension must properly be managed. Dispute management and resolution is part of the task of the diplomat.

It was an early challenge for Ros McGovern. As she was on her way to Singapore to take up her post, the Department of Foreign Affairs in Australia called in Singapore's High Commissioner to Australia to complain to him about the imprisonment of members of certain groups in Singapore. This reflected concerns by the Australian Foreign Minister of the day, Bill Hayden. Shortly after her arrival in Singapore, Ros was summoned into the Foreign Ministry of Singapore for a reciprocal dressing down, what she called 'reading me the Riot Act'<sup>4</sup> about interference in the internal affairs of Singapore. As she described the event, the Singapore Ministry official read to her from a piece of paper, she responded, and as she said in her oral history 'then we had a cup of tea and that was it.'<sup>5</sup> This was an example of a diplomatic process of dispute management, albeit the parties remained wedded to their own positions.

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<sup>4</sup> Ibid 56.

<sup>5</sup> Ibid 57.

Less than six months later Ros McGovern accompanied Prime Minister Lee Kuan Yew on his official visit to Australia. During the visit she had what she described as a lot of non-official time with the Prime Minister and his wife and established a connection which she would otherwise not have had. In her own words it paid ‘huge dividends subsequently’.<sup>6</sup> This perhaps exemplifies the significance to diplomacy of social skills and the building of good interpersonal relations in the host country.

It is no mere diplomatic pleasantry to observe that despite the inevitable differences of perspective which may arise from time to time, the interests of Singapore and Australia are, in major respects, compatible. The intersections of our histories go back a long way — 85 years back to the invasion of the Malay Peninsula and colonial Singapore by Japanese troops when 15,000 Australian soldiers were taken prisoner, of whom more than 7,000 died as prisoners of war. That event led to a strategic realignment of Australia away from Britain in the direction of the United States and saw the beginning of the Australia/US Alliance. As current events suggest, no strategic alignment can be taken for granted. That said there is a reassuring stability about the relationship between Singapore and Australia. An anchor point is Australia’s recognition, in 1965, of Singapore as an independent State following the announcement by then Prime Minister Lee Kuan Yew of its separation from the Malaysian Federation.

The Department of Foreign Affairs and Trade website contains a section called ‘Singapore Country Brief’. It describes the many dimensions of the historical relationship that has developed since 1965. We have a Comprehensive Strategic Partnership, entered into in 2015, which provides for collaboration in areas of defence, border security, trade, science and innovation, education, the digital economy, climate and people-to-people links. Version 2 of that Partnership was launched at the 10<sup>th</sup> Annual Leaders’ Meeting held in Australia on 8 October 2025 between Prime Minister Albanese and Prime Minister Wong. It guides the engagement between Australia and Singapore forward to 2035. An important element of our economic relationship is the Singapore-Australia Free Trade Agreement, signed in 2003 and most recently updated in December 2020. Both our countries engage in multilateral relations in the South East Asia region. Both countries share a commitment to regional engagement through participation in the Agreement establishing the ASEAN-Australia-New Zealand Free Trade Area and the Regional Comprehensive Economic Partnership Agreement.

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<sup>6</sup> Ibid.

Diplomacy is concerned, among other things, with the fruitful engagement of compatible national interests. Both Singapore and Australia have a common interest in the Rule of Law within our societies, in our region and beyond. Singapore's long commitment to the Rule of Law is marked by its celebration this year of the Bicentenary of the Second Charter of Justice. That Charter, issued by the British Crown on 27 November 1826, created the Court of Judicature of Penang, Singapore and Malacca. It can be taken as a point of origin for the judicial system of modern Singapore.

In a speech given this year at the National University of Singapore, Mr Murali Pillai SC, Senior Minister of State for Law and Transport, offered a Singaporean perspective on the Second Charter, describing it as:

- a. ... a set of rules that set up the Singapore Courts, which have evolved into the world-class institution that we recognise and take pride in today.<sup>7</sup>

It is appropriate in the year of the Bicentenary in Singapore to say something about the Rule of Law in its application to the resolution of transnational commercial disputes, a field in which Singapore has become a global leader and in which Australian jurists play a significant part.

Singapore's leadership has been evidenced by the establishment of what have become significant international dispute resolution institutions — the Singapore International Commercial Court (SICC) on which a number of Australian Judges, including me, play a role, the Singapore International Arbitration Centre and the Singapore International Mediation Centre. Singapore was also instrumental in the establishment of the Bahrain International Commercial Court. Pursuant to a treaty between Singapore and Bahrain, appeals lie from that Court to an International Committee set up by Singapore, comprising Singaporean Judges, international members of the SICC and members of the Bahrain International Commercial Court. That Committee is capable of being adapted to providing similar appellate services to other international commercial courts (ICCs).

In addition to the dispute resolution process which is the focus of this paper, Singapore, in January 2016, established the Asian Business Law Institute (ABLI) following a conference on 'Doing Business Across Asia: Legal Convergence in an Asian Century'. The mission of the

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<sup>7</sup> Murray Pillai, 'The Point of Law – A Reflection on 200 years of Singapore's Modern Legal System', 37<sup>th</sup> Singapore Law Review Annual Lecture, 9 January 2026, [3].

ABLI is to promote the removal of unnecessary or undesirable differences between Asian legal systems that pose obstacles to free and seamless trade. The Governors comprise judges and former judges from Australia, Singapore, the Peoples' Republic of China, India and academic members from the United States. Projects undertaken by the ABLI have resulted in the publication of a significant number of reports.

Much of this development can be attributed to the entrepreneurial energies of Chief Justice Menon and his judicial colleagues, along with a government open to innovation. As the Chief Justice once remarked:

The good thing about this place is that you can have a good idea and make it work.

International commercial dispute resolution deals with commercial disputes across national borders. It applies domestic commercial law to contracts and dealings across borders which may involve parties from different countries or disputes between private parties and States. It supports the Rule of Law in cross-border trade and commerce. It is supported by a network of commercial courts around the world.

Its significance should be seen in the larger context of a broadening understanding of 'international law'. That term today covers an international legal ecosystem including rules and principles derived from treaties, conventions, customary international law, statements of principle and model laws and the practice of States. It arguably extends to rules and principles which are applied by States as part of their domestic law.<sup>8</sup>

Resolution of transnational commercial disputes involving non-state actors is today carried out in international commercial arbitral tribunals and domestic commercial courts which include ICCs created by the domestic laws of host States. States engage in commercial disputes which may make them parties to such processes. States and investors may be in dispute about alleged breaches of bilateral investment treaties or free trade agreements and be subject to investor/State dispute resolution mechanisms, including investor/State arbitration.

A generic term usefully accommodates the diversity that encompasses international commercial dispute resolution as a species. It is 'transnational law' — a term coined by Philip Jessup in 2006. He defined it as 'all law which regulates actions or events that transcend

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<sup>8</sup> Peace Palace Library Research Guide, which refers to private international law as 'embodied in treaties and conventions, model laws, legal guides, and other instruments that regulate transactions.'

national frontiers'.<sup>9</sup> It covers public and private international law and other rules which cannot be fitted within standard categories. It picks up the considerable body of so called 'soft law' relevant to transnational dealings. That body includes model laws,<sup>10</sup> principles,<sup>11</sup> guidelines and standard form transactional documents. Model laws and principles may be adopted and applied by domestic legal systems. The term 'transnational commercial law' or 'transnational trade law' picks up the considerable part of transnational law that is concerned with international trade and commerce.

International commercial dispute resolution engages with that species of transnational law. It includes domestic commercial law applicable to contracts and transactions generally and also attracts the application of treaties relating to mediation and arbitration and their judicial supervision and enforcement by domestic courts.

Arbitration is a well-accepted means of dispute resolution generally conducted according to agreed institutional rules and supported by domestic legislation around the world. The operation of this globally recognised means of dispute resolution with common form procedures and mechanisms for enforcement of awards and limited scope for judicial review may be said to serve the rule of law. It is an institutional feature of transnational commercial law. The arbitral process, however, has less significance for the development of the content of that law. It does not develop substantive legal principles in a way that can be considered and referred to in courts around the world. Much of international commercial arbitration remains non-transparent unless it is litigated in supervising or enforcement courts where parties seek to challenge an award or to ask a court to enforce it as if it were a judgment of the court.

A partial response to that concern has been the promulgation of UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration known as the Mauritius Convention on Transparency. Those changes brought important transparency to Investor/State arbitrations which can plainly involve significant public interest implications in relation to the State parties.

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<sup>9</sup> Philip C Jessup, 'Transnational Law' in Christian Tietje, Alan Barouder & Karsten Nowrot (eds) *Philip C Jessup's Transnational Law Revisited: On the Occasion of the 50<sup>th</sup> Anniversary of its Publication* (Institute for Economic Law, Transnational Economic Law Research Centre, Faculty of Law, Martin-Luther-University Halle-Wittenberg, 2006) 45.

<sup>10</sup> Eg UNCITRAL Model Law on Cross Border Insolvency.

<sup>11</sup> Eg ALI/UNIDROT Principles of Transnational Civil Procedure (2006) and 'Transnational Insolvency: Global Principles for Cooperation in International Insolvency Cases' (American Law Institute and the International Insolvency Institute, 2012).

Concerns about the extent to which international commercial arbitration was seen as detracting from the public development of transnational commercial law by commercial courts and thus from the Rule of Law led to the creation of the Standing International Forum of Commercial Courts (Standing Forum). This was established in 2017 as an initiative of the former Lord Chief Justice of England and Wales, Lord Thomas. Its rationales, as stated on its website included the proposition that:

1. Users – that is, business and markets – will be better served if best practice is shared between courts and judiciaries working together to keep pace with rapid commercial change.
2. Together courts can make a stronger contribution to the rule of law than they can separately, and through that contribute to stability and prosperity worldwide.<sup>12</sup>

It offers a definition of the rule of law on its website as:

The principle that all people and institutions are subject to and accountable to law that is fairly applied and enforced.

The connection between effectively functioning commercial courts, international and otherwise, and the rule of law has been asserted repeatedly by the Standing Forum. At its Fourth Full Meeting in New South Wales in 2022, the Attorney-General of the Commonwealth of Australia, who opened the gathering, quoted from Chief Judge Janet DiFiore at the second meeting in New York, who said:

When businesses feel confident about litigating in our commercial courts and perceive that the rule of law is working as intended, they not only are more comfortable investing in our economies – but also come to understand the urgency in maintaining strong and independent courts of their own.<sup>13</sup>

Commercial courts which are members of the Standing Forum include domestic common law courts with purely local memberships on their benches. The London Commercial Court is a leading example which attracts litigants from the European Union (EU) and beyond. Another, is the Commercial Division of the New York Supreme Court. Australian examples include the Federal Court and the Supreme Court of New South Wales.

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<sup>12</sup> Standing International Forum of Commercial Courts <<https://sifocc.org/about-us/>> accessed 15 April 2026.

<sup>13</sup> SIFOCC, Report of the fourth full meeting, October 2022, Extracts from the Opening address by Hon Mark Dreyfus KC, Attorney-General of the Commonwealth of Australia, 17. <[sifocc.org/2023/01/13/report-on-the-4th-full-sifocc-meeting-in-sydney/](https://sifocc.org/2023/01/13/report-on-the-4th-full-sifocc-meeting-in-sydney/)>

Commercial courts were set up in France, Germany, the Netherlands and Belgium following Brexit. The Netherlands Commercial Court was established in 2019 and uses the English language in its proceedings. The Paris International Chamber operates under the Paris Court of Appeal and provides for English language hearings. In Germany, new English-speaking Chambers have been created to deal with high-value business disputes.

Reference should be made to the evolution of ICCs in China. The China International Commercial Court (CICC) was established as a branch of the Supreme Peoples' Court in 2018 to facilitate dispute resolution in Belt and Road Initiative countries. There are two branches, one in Shenzhen and the other in the Xi'an, Shaanxi Province. The Judges are all Chinese nationals. Foreign judges cannot be appointed to mainland courts under Chinese law. However, the CICC has established an International Commercial Expert Committee. Members of the Committee may preside over mediations and provide expert opinions on questions of foreign law. It is perhaps worth noting that Hong Kong is the only part of China that, under the Basic Law, can appoint foreign judges to its courts. It would be open to Hong Kong to establish an international commercial court with a multinational membership.

The CICC has been supplemented, since 2020, by 16 local 'international commercial tribunals'. They were created within intermediate level courts in 16 regional centres. They are said to be doing the bulk of the work of what can be called 'China's International Commercial Court network', the CICC itself having accepted just 42 cases in its first eight years.<sup>14</sup>

The first decade of the 21<sup>st</sup> century has seen the emergence of ICCs with multi-national memberships. Such courts, of which the SICC is a leading example, have been described as 'a new species' in the field of judicial commercial dispute settlement. Each is part of the judicial system of the State which has created it. They generally differ from the ordinary courts of their host State because of their composition and because the cases they hear have cross-border elements.<sup>15</sup> They include courts which have been created in the Middle East — the Dubia International Financial Centre Courts (DIFC Courts), established in 2006, the Qatar International Court established in 2010 and the Abu Dhabi Global Market Courts established

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<sup>14</sup> S Finder, 'China's International Commercial Court Network: A Work in Progress' *US Asia Law Institute Perspectives*, 6, No 6, 28 January 2026; <https://usali.org/usali-perspectives-blog/chinas-international-commercial-court-network-a-work-in-progress> accessed 16 April 2026.

<sup>15</sup> G Dimitropoulos and S Brekoulakis, 'International Commercial Courts: The Future of Transnational Adjudication – An Introduction' in S Brekoulakis and G Dimitropoulos (eds) *International Commercial Courts: The Future of Transnational Adjudication* (Cambridge University Press, 2022) 1.

in 2015. Each has been set up in a jurisdiction carved out of the host State. The Astana International Financial Centre Court is located in a special economic zone in Kazakhstan.

The SICC model differs from that of the Middle Eastern courts and the Astana Court in that it does not operate in a carved-out legal zone. It was created in 2015 as a division of the High Court of Singapore, which is part of the Supreme Court. It has a special set of Rules. It has jurisdiction with respect to international commercial disputes and also with respect to international commercial arbitration.

There are nine Singaporean Judges, also Justices of the High Court of Singapore, who are members of the SICC. The President of the Court is Justice Philip Jeyaretnam. There are 16 International Judges, including judges from Australia, the United Kingdom, the United States, Japan, Peoples' Republic of China, India and France. There is an Appellate Bench of the SICC, which is presided over by Chief Justice Menon. There are in all nine Singaporean Judges, including the Chief Justice, who comprise part of the Appellate Bench. There are also eight International Judges. The International Judges on the Appellate Bench may be assigned to sit on the Singapore Court of Appeal when it hears appeals from the SICC. Those International Judges include the former Chief Justice of the Federal Court, James Allsop; former Chief Justice of New South Wales, Thomas Bathurst; former Chief Justice of Canada, Beverley McLaughlin; former President of the Supreme Court of the United Kingdom, Lord Neuberger and the former Deputy President Lord Mance. I am also a member.

Australian Judges on the SICC are not exposed to an unfamiliar legal system. The laws they are called upon to apply, in conjunction with their Singaporean and other colleagues, are local statutes and the common law. The first appeal from the SICC on which I sat as a member of the Court of Appeal, concerned a contested application under the *Companies Act* for a declaration that a minority shareholder had been unfairly oppressed by a majority shareholder. The provisions of the Singaporean company law were closely modelled on those applicable in Australia. It was not unfamiliar territory. The case concerned a global dye manufacturing business. There was a lot of money at stake and it seemed to go on for a long time through successive appeals. They concerned the original finding that there had been oppression, an order compelling the majority shareholder to buy out the minority shareholder, an order forcing the sale of all shares and the division of the proceeds when it was apparent the forced buy-out would not work, the valuation to be attached to the shares, the interest to be paid because of the delay in the forced sale and, ultimately, the legal costs. I recall the intellectual delights of

exploring, in one of our judgments, the mysteries of a discount for lack of marketability of shares the subject of a forced sale.

What can justly be called ‘a cutting edge’ case, was the decision of the Court of Appeal in *Quoine Pte Ltd v B2C2 Ltd*.<sup>16</sup> The case arose out of a glitch in the operating program of an online crypto currency exchange platform. Traders using the platform traded through their own algorithms. Due to the glitch, two users of the platform were subjected to a forced sale of their bitcoin for Ethereum at 250 times the then going market rate. The trades were automatically settled by the platform in overnight trading. The platform operator the following day unilaterally cancelled the trades. The trader that had benefited by the glitch sued the platform operator on the basis it had no contractual right to reverse the trades. The SICC agreed that the platform operator was in breach of its contract with the traders by trying to cancel the trades. One of the issues on appeal was whether the trading contracts, concluded between algorithms when everybody was asleep, could be invalidated by application of common law doctrines of unilateral or common mistake — doctrines dependent upon human states of mind. The Court of Appeal found that the impugned contracts were not entered into as a result of a mistake by one or both of the parties. Nor had the trader who benefited from the transaction deliberately programmed his trading algorithm to achieve such a result. The decision has been cited in a number of other national jurisdictions.

*Quoine* was, so far as I am aware, the first decision of an apex appellate court on the application of contractual and equitable doctrines to contracts effected by algorithmic exchanges. The doctrines themselves were familiar to Singaporean and international common law Judges. The case concerned their application to novel circumstances.

An important part of the SICC’s work concerns the recognition and enforcement of international arbitration awards and challenges to such awards. The UNCITRAL Model Law in relation to international commercial arbitration is embedded in the Singaporean law in the same way as they are applied by the *International Commercial Arbitration Act* in Australia. The law limits the bases upon which the recognition and enforcement of arbitral awards can be refused so that a degree of finality which is a significant purpose of the arbitral process, can be achieved. The grounds upon which an arbitral award may be set aside or recognition and enforcement of an award refused, are much the same around the world. In this arbitral

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<sup>16</sup> [2020] SGCA (I) 2.

jurisdiction, the role of the SICC as part of a network of commercial courts around the world is apparent.

As Chief Justice Menon recently remarked:

[I]nternational commercial courts belong to a *wider network of courts*.<sup>17</sup>

An example of the network character of ICCs appears from *Republic of India v Deutsche Telekom AG*<sup>18</sup> decided in 2023. The Singapore Court of Appeal, on appeal from the SICC, considered India's arguments against enforcement of a foreign arbitral award which had been made against it. India had previously applied unsuccessfully to the 'seat' court in Switzerland to set aside the award. It tried to revisit before the Singapore Court of Appeal a number of the arguments that it had canvassed unsuccessfully before the Swiss court.

The Court of Appeal sat a bench of five, including the Chief Justice of Singapore, two local Judges of the Singapore Court of Appeal and Lord Mance and me as International Judges of the SICC, authorised to sit on the Court of Appeal in appeals from the SICC.

The Court of Appeal held that India, having lost its challenge to the validity of the award in Switzerland, could not have another bite of the same cherry in Singapore. That approach respected the choice of the parties of the Switzerland courts as the supervising courts. Chief Justice Menon, writing for the majority, said:

It further coheres with the notion that courts co-exist as part of an international legal order, within which they should "respect each other's decisions in the fullest sense, and so far as possible avoid duplication, repetition and inconsistency in decision-making".<sup>19</sup>

The legal doctrine applied is that of 'transnational issue estoppel'.

There has been an interesting development since that time. A couple of months ago, a panel of three Judges of the SICC held that transnational issue estoppel prevented the Russian Federation from arguing that the sovereign State immunity prevented enforcement of an arbitral award against it. The Court held that the legal and factual issues raised on the question of

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<sup>17</sup> Chief Justice Menon, 'International Commercial Courts as Catalysts of Legal Convergence', Welcome Remarks, Conference on the Future of International Commercial Courts: Towards Transnational Justice, Bahrain, 6 November 2025, [12] emphasis in original.

<sup>18</sup> [2023] SGCA(I) 10.

<sup>19</sup> Ibid at [99] citing Jonathan Hugh Mance, 'Arbitration – a Law unto itself?', 30th Annual Lecture organised by The School of International Arbitration and Freshfields Bruckhaus Deringer (4 November 2015).

sovereign state immunity had been determined finally and conclusively by two Dutch appellate seat courts. In a separate concurring judgment in that case, Justice Allsop who sat as an International Judge on the SICC panel, raised the question whether Singapore's authority over a State party was to be established simply by reference to the private law doctrine of issue estoppel.

Russia's appeal will be heard by a Bench of five sitting in the Singapore Court of Appeal later this year.

A few weeks ago, the Supreme Court of India invoked the principle of transnational issue estoppel and dismissed objections to the enforcement of a Singaporean award in enforcement proceedings before Indian courts. The Singaporean arbitral award had been upheld by the Singapore High Court. The judgment debtors tried to raise the same grounds of objection to enforcement in the Indian Courts. The Supreme Court of India cited the Singapore Court of Appeal decision in *Deutsche Telekom* and the decision of the SICC in the *Russian Federation Case*. It also quoted from extrajudicial comments on the topic by Chief Justice Menon.

Cooperation between national judicial jurisdictions is also reflected in the legal recognition and enforcement of each other's money judgments. Singaporean law, like Australian law, provides for the recognition of foreign money judgments of States with whom bilateral arrangements have been made and for their enforcement in Singapore. As an aspect of that jurisdiction, domestic courts, including ICCs, may be called upon to assist potential enforcement of foreign judgments by freezing the assets in one jurisdiction, for example in Singapore, of a defendant to proceedings in another jurisdiction whose judgments are recognised in Singapore.

The same applies in Australia. In a case which ended up in the High Court of Australia, the Supreme Court of Western Australia made a freezing order against the assets in Western Australia of a company being sued in Singapore. The freezing order was made on the basis that the Australian courts have jurisdiction under Australian law to recognise and enforce money judgments from Singapore. If a defendant against whom there was an arguable case were to dispose of assets in Australia, it might defeat attempts to enforce an ultimate judgment from Singapore.

To cut a long story short, the High Court held, in October 2015,<sup>20</sup> that the Supreme Court of Western Australia had the power to make such a freezing order pending the determination of the Singapore litigation. The claim in that case was for breach of a Joint Venture Agreement and the amount claimed was in the vicinity of US \$138 million. In the event however, the plaintiff in the Singapore proceedings recovered only \$1,000 in nominal damages.

Another example of this kind of cooperation comes from the DIFC Courts on which a number of Australian judges sit and of which the former Chief Justice of Western Australia is Chief Justice. Two of the Australian Judges on that Court, former Chief Justice of New South Wales, Tom Bathurst, and me, are also members of the SICC. In the last couple of years the DIFC Court of Appeal has held that the DIFC Courts have power to issue freezing orders against defendants to actions in other jurisdictions which might lead to a judgment which can be recognised or given effect to in the DIFC. The Court stated in two Court of Appeal cases that where the laws conferring jurisdiction and powers on the DIFC Courts could be construed in such a way as would support the rule of law in transnational trade and commerce, such a construction should be preferred.<sup>21</sup>

A further decision of the DIFC Court of Appeal in which I participated, dealt with the question whether arbitral tribunals and the domestic courts of a country supervising those tribunals could consider the corrupt conduct of a party to a joint venture in Iraq where that party had bribed an Iraqi regulator to make a decision adverse to the other party. The Court held that the so-called ‘act of foreign state doctrine’ did not prevent findings of corrupt conduct in such circumstances. It stated:

The DIFC Courts serve as part of an international community of commercial courts and in that way contribute to the rule of law in transnational trade and commerce. The public policy which gave rise to their creation will not allow the use of the foreign act of state doctrine to blindfold the courts or DIFC-seated arbitrators in cases where the disputes before them have arisen out of the corrupt conduct of one of the parties.<sup>22</sup>

There is one area of challenging opportunity for cooperation between courts in Singapore and Australia and other commercial courts. That is in the mutual enforcement of regulatory remedies. It does not seem that a civil penalty in Australia against a transnational

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<sup>20</sup> *PT Bayan Resources TBK v BCBC Singapore Pte Ltd & Ors* [2015] HCA 36, (2015) 258 CLR 1.

<sup>21</sup> *Carmon Reestrutura engenharia E Servicos Tecnicos Especiais, (Su) LDA v Cuenda* [2024] DIFC CA 003, [155]; *Trafigura Pte Ltd v Gupta* [2025] DIFC CA 001.

<sup>22</sup> *Korek Telecom Co LLC v Iraq Telecom Ltd* [2024] DIFC CA 016, 16 June 2025.

transgressor of local regulatory law will be enforceable as a civil penalty judgment in Singapore absent an inter-jurisdictional treaty. Nor does there seem to be provision for mutual recognition of other regulatory remedies. These are matters that can only be addressed by agreements between States and laws giving effect to those agreements by conferring the relevant jurisdiction and powers on national courts. One example of such an arrangement would cover the subject matter of regulation of social media. The pervasive reach of social media as a global phenomenon raises increasing public safety concerns in relation to young people and wider public interest concerns in relation to the dissemination of misinformation and disinformation. There are many other areas which might benefit by the creation of mechanisms for closer international judicial cooperation.

That said, there has been a substantial growth of international networks of regulators and public authorities who have a common interest in administrative cooperation and convergence and the harmonisation of domestic commercial laws which may have transnational implications. This is of particular importance in areas such as cross-border insolvency, corporate regulation and competition law and online safety. There are now at least 140 trans-governmental networks of regulators — not created by treaty but by voluntary agreements between the regulators.

This leads into the general question about the contribution of ICCs to the Rule of Law. Perspectives on that question will depend upon what one understands by the Rule of Law. The Standing Forum's definition of the Rule of Law has been quoted earlier:

The principle that all people and institutions are subject to and accountable to law that is fairly applied and enforced.

It reflects what some call a 'thin concept' of the rule of law. It is institutional and procedural. It does not require that the law itself be fair. It also implies equality before the law but does not address the problem of equal justice identified by Anatole France in his famous aphorism:

The law, in its majestic equality, forbids the rich as well as the poor alike, to sleep under bridges, to beg in the streets, and to steal their bread.

While the thin concept of the rule of law may not deliver a great deal in the area of social justice and some substantive human rights, it is an indispensable standard. In today's world it is under threat. I do not need to cite examples. Representative democracies are not immune from the erosion of that fundamental standard.

When speaking about the interaction of ICCs with the concept of the Rule of Law, we speak of their effects not only on the transnational legal order but also the legal system of their own and other states.

It does not require deep research to conclude that ICCs which undertake international commercial dispute resolution are examples to each other. Integrity, openness, independence, legal expertise and efficiency are necessary attributes of ICCs operating in a competitive market for the provision of dispute resolution services. They exemplify those aspects of the rule of law under transnational commercial law. They apply the rule of law understood as the thin concept in their judgments and perhaps to a degree in their own jurisdictions.

There is a caveat. Where they are part of a larger domestic system, there may be an appearance and reality of an institution designed for wealthy litigants and providing a quality of justice not available to society at large. That goes to the question of access to justice generally. A State committed to equitable access to justice will apply the same values to the full range of its local courts and tribunals.

In his Singapore Law Review Annual Lecture delivered on 9 January 2026, Mr Murali Pillai SC,<sup>23</sup> pointed to the importance with which access to justice is treated in Singapore. He recognised the importance of access to justice in preserving social fabric and social harmony. It was vital that people have access to common mutual and trusted platforms to work through disputes when frictions arise. For that reason Singapore has sought to reduce barriers to the courts whether by establishing specialist courts, improving court processes or enhancing legal aid. In all our talk of the Rule of Law in international trade and commerce it is vital to recall that the Rule of Law must begin at home. If it does not, and does not deliver equal justice, then there is a risk that ICCs however prestigious internationally may end up being castles built on foundations of sand.

It is an important feature of the Rule of Law that all courts be and be seen to be truth telling institutions. That is not to say, under the common law system, that they seek out and find the truth. They are constrained by what the parties put to them by way of evidence and submissions. But that said, truth, as determined by judicial process, however compromised by power imbalances and statutory constraints, is essential to the administration of justice

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<sup>23</sup> Pillai, n 7.

according to law. It is the openness, independence and impartiality of the judicial process that will attract and maintain public confidence in the process as a way of getting to the truth.

Whatever their shortcomings, the establishment and maintenance by ICCs of a reputation for finding the truth within the limits of the adversarial process can be an example and reassurance to civil society within that jurisdiction and beyond.

Having experienced for some years the work of two ICCs, the DIFC Courts and the SICC, I am of the view that they enhance the quality of commercial dispute resolution in the jurisdictions which they serve. They bring into the transnational sphere, judicial human resources which, by aspiring to quality, transparency and fairness in dispute resolution, enhance the Rule of Law. In this area, Singapore is taking a leading role and Australian judges, along with their international colleagues, are playing a significant part in that important work.