

**3rd JUDICIAL ROUNDTABLE ON COMMERCIAL LAW:
KEYNOTE LECTURE**

“Justice in a Globalised Age”

Wednesday, 29 September 2021 (6.00pm SGT/10.00am UTC)

The Honourable the Chief Justice Sundaresh Menon*

Supreme Court of Singapore

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Science & Law,

Honourable Judges,

Distinguished Professors,

Ladies and Gentlemen,

I. Introduction

1. Warm greetings to all of you, and welcome to this year’s Legal and
Judicial Roundtable on Commercial Law. Although we had long hoped that we
would have the pleasure of meeting each other in person, doing so virtually does
offer the advantages of greater accessibility, safety, and convenience, and I am
delighted to see so many of you joining us today. Thank you for making the time

* I am deeply grateful to my law clerk, Joshua Foo, my colleagues, Assistant Registrars Kenneth Wang and Reuben Ong, as well as Elton Tan for all their assistance in the research for and preparation of this address.

to be here, and also for accommodating our scheduling which was necessitated by the wide range of time zones of the many locations our participants are joining us from.

2. Before I make my substantive remarks, please let me thank my dear friend and colleague on the bench of the Singapore International Commercial Court, Professor Anselmo Reyes, as well as the respective teams from the Shanghai University of Political Science and Law and the University of Hong Kong, for the tremendous work that has gone into putting this Roundtable together. I would also like to thank the discussion leaders, who have so willingly given of their time to curate the materials and to prepare for the discussion sessions that will take place today and over the next two days. All of them are renowned and respected experts and thinkers in the field of international dispute resolution, and I am delighted that we shall have the privilege of hearing from persons of such eminence.

3. It is my pleasure and privilege to deliver the keynote address today. When Professor Reyes and I started developing the themes for this Roundtable, we were influenced by the evident need to shape a transnational system of justice that could better serve a highly interconnected world which had seen explosive growth in transnational trade and commerce. While this growth had undoubtedly led to important, albeit piecemeal, changes in the supporting justice infrastructure, what was perhaps needed was a thoughtful review of aspects of that infrastructure, in order to come to a better understanding of how the system

as a whole could be improved. While this remains a worthwhile and necessary exercise that will occupy the substance of our discussions over the next few days, the passage of time and the emergence of new challenges and developments have raised doubts as to the continued viability of the fundamental assumption that underlies any discussion of this sort, namely that the connectedness and linkages that bind us in a globalised world are necessary elements for our common good. And so, I want to focus on that anterior point and to speak to you today on “Justice in a Globalised Age”.

4. The term “globalisation” has been used to mean many different things to different people, but most definitions converge on the central idea that it refers to a growing interconnectedness and interdependence across the world in various spheres – whether economic, social, or cultural – and at an inter-nation level as well as between individuals, businesses, and communities.¹ The late Professor David Held, an eminent scholar of globalisation and global governance, perhaps put it best when he suggested that globalisation means that we now live in a world of “overlapping communities of fate”.² Indeed, we are today interconnected to a degree never before seen in human history. As the ongoing pandemic reminds us, the choices we make and the actions we take

¹ Nayef RF Al-Rodhan & Gerard Stoudmann, “Definitions of Globalization: A Comprehensive Overview and a Proposed Definition” (19 June 2006): <<https://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.472.4772&rep=rep1&type=pdf>>.

² David Held, “Democracy and Globalization: MPIfG Working paper, No 97/5” (May 1997) Max Planck Institute for the Study of Societies: <www.mpifg.de/pu/workpap/wp97-5/wp97-5.html>.

within our own nations can have significant consequences for others half a world away.

5. My address today will focus on the relationship between globalisation and the law, and the mutually transformative effect that each has had, and will continue to have, on the other. There are perhaps two uncontroversial observations about this relationship that I can state at the outset and which might help explain why I have chosen to focus on the anterior question in my address today:

a. The first is that the law has been a force that has helped to *sustain* globalisation. In an increasingly interconnected world, the law has served the essential function of bringing structure and order to an ever-expanding scope of relationships and connections that individuals, communities, and nations have with one another. This has certainly been the case in the context of transnational trade and commerce.

b. The second observation, which follows from the first, is that globalisation has correspondingly also *shaped* the law. For if the object of the law is to bring order to societal relationships, and if globalisation has radically and fundamentally altered the nature, pattern, and intensity of those relationships, then the law and its institutions will naturally transform to meet the changing needs of those they serve and be shaped and influenced by the new realities of a globalised world.

6. Taken together, these observations suggest that before we can turn to consider the future of the law, and especially international commercial law, we must first consider the future of globalisation itself. Indeed, this is particularly apposite given the *normative* uncertainty that has come to plague globalisation in recent years. Rising socio-economic inequality, growing distrust of public institutions, and the breakdown of traditional media and informational sources – all of which are trends stemming from or exacerbated by globalisation – together threaten to halt and even reverse the heretofore seemingly inexorable trend towards greater interconnectedness.

7. In the light of all this, what does the future hold for the globalised world?

I approach this question in three parts:

a. In the first part, I set out a brief history of globalisation including its rise and decline since the World Wars. I then examine the role that the law has played in this journey, and suggest that, for better or for worse, globalisation and the law are symbiotically and inextricably linked.

b. In the second part, I endeavour to identify and evaluate the reasons for the decline of globalisation, and the role that the law and legal systems might have played in exacerbating that decline. I then turn to weigh the strengths of globalisation and consider the reasons why it might yet remain our best hope in securing humanity's shared future.

c. Finally, I argue that despite the present headwinds, what we need is not to jettison the idea of globalisation, but rather to take a concerted

effort to develop a more *sustainable* vision of it – one that is grounded in the idea of legitimacy so that we might achieve a degree of consensus about the purposes and limits of globalisation, and the trade-offs that we should be willing to accept in exchange for its benefits.

II. Part 1: Globalisation and the law: a brief history

A. *The twin triumphs of globalisation and law*

8. I begin with a brief history of globalisation and the law. The modern wave of globalisation was born out of the ashes of the Second World War, as the US-sponsored Marshall Plan kickstarted a worldwide economic recovery by rebooting cross-border trade and investment after years of global warfare and nationalism. This process of economic and cultural integration continued apace until the 1990s, at which time it became supercharged as the European single market began to take shape, and then even more so in the succeeding years as China and India became key players in the world economy.

9. It is undeniable that globalisation has played a significant role in advancing global economic prosperity, and this has been marked by a broad trend of economic liberalisation that has facilitated the flow of capital and resources to where they can be most profitably applied, as well as the emergence of new technologies which have fostered global interconnectedness

on an unprecedented scale.³ Since 1990, transnational trade has seen tremendous growth. As a share of global output, it rose from under 40% in 1990 to almost 60% in 2018.⁴ In the same period, global gross domestic product (“GDP”) more than tripled.⁵ Globalisation has also been instrumental in alleviating the plight of the poorest and most economically vulnerable in the global community. Between 1990 and 2010, the number of persons living in poverty as a share of the total population of developing countries *fell by half!* And about a *billion* people were freed of the scourge of poverty in just those two decades.⁶ China alone accounted for three-quarters of that stunning achievement.⁷ Other human development indicators, such as literacy and child mortality rates, have also improved significantly.⁸

³ The Economist, “The global list: Globalisation has faltered” (24 January 2019) The Economist, January 2019: <www.economist.com/briefing/2019/01/24/globalisation-has-faltered> (“Globalisation Has Faltered”).

⁴ See Globalisation Has Faltered: World trade as a share of global GDP in 1990 was 39%, and had by 2018 increased to 58%.

⁵ See the World Bank, “GDP (current US\$)” (updated as of 20 August 2021) World Bank Data: <data.worldbank.org/indicator/ny.gdp.mktp.cd?end=2018&start=1990>: In 1990, global GDP in current US dollars was \$22.762 trillion, whereas this had increased to \$86.344 trillion by 2018, and increase of approximately 3.8 times.

⁶ The Economist, “The world’s next great leap forward: Towards the end of poverty” (1 June 2013) The Economist, June 2013: <www.economist.com/leaders/2013/06/01/towards-the-end-of-poverty>.

⁷ In 1990, more than 750m Chinese lived below the international poverty line, and this was a staggering two-thirds of the national population. By 2012, however, that number had fallen to fewer than 90m and, by 2016, it had further fallen to just over 7m, or 0.5% of China’s population. See Jack Goodman, “Has China lifted 100m people out of poverty?” (28 February 2021) BBC News, February 2021: <www.bbc.com/news/56213271>.

⁸ Mukhisa Kituyic, Secretary-General of UNCTAD, Foreword in the “Developmental and Globalisation: Facts and Figures 2016 Report” at p ii.

10. Whatever one's view on globalisation and its continued viability, it cannot be denied that globalisation has done a tremendous amount of good over the past decades. What is perhaps less known, but no less important, is the indispensable role that the law has played in bringing order to the tangle of invisible threads that increasingly bound and connected the world. There are at least three aspects to this.

11. First, the law has served as the globalised *currency of trust*. The days are long gone when the sphere of one's interactions was largely limited to members of the same, close-knit community. Instead, globalisation has created a new *transnational* marketplace, and this has witnessed a proliferation of commercial relationships with counterparties whom one might not really know, fully understand, or even trust. Thus, while transactions of the past could stand on nothing more than one's word and a firm handshake, dealing in the modern global marketplace calls for a more "arms-length" regulatory framework – or a rules-based system – requiring the law to play a crucial role. We can see this at all levels of the economy. In businesses, legal contracts have supplanted the exchange of memos as the primary means of economic command and control.⁹ Between nations, the international law of obligations has also lent structure and given order to international trade. The UN Convention on Contracts for the

⁹ Martin Shapiro, "The Globalization of Law" (1993) *Indiana Journal of Global Legal Studies*, Vol 1:1, 37–64 at 40.

International Sale of Goods, and the World Trade Organisation's ("WTO") General Agreement on Tariffs and Trade, are but two well-known examples.

12. If legal rights can now be considered the new *currency* of trust, then it follows that our legal frameworks have become the notional "bank" in which we can safeguard and realise those rights. Among the clearest illustrations of this are the methods for transnational commercial dispute resolution that have evolved dramatically in recent decades. Leveraging on the advantages of international enforceability, neutrality, and procedural flexibility, arbitration has emerged as the pre-eminent means of resolving transnational commercial disputes. The New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, widely regarded as one of the most successful international treaties,¹⁰ boasts an impressive 168 States parties and has reshaped the manner in which transnational commercial justice is pursued and enforced. In like manner, instruments like the UNCITRAL Model Law on International Commercial Arbitration and the ICSID Convention for Investor-State Arbitration have gained significant currency and acceptance.¹¹ More recently, we have seen the rise of international commercial courts, which

¹⁰ Arbitration Academy, "Benefits of the New York Convention": <<https://arbitrationacademy.org/wp-content/uploads/2018/07/7.pdf>>.

¹¹ The UNCITRAL Model Law has been adopted in 85 states, and the ICSID has 164 signatory and contracting states: see United Nations, "Status: UNCITRAL Model Law on International Commercial Arbitration (1985) with amendments as adopted in 2006" (updated as of January 2021) United Nations Commission On International Trade Law: <uncitral.un.org/en/texts/arbitration/modellaw/commercial_arbitration/status>; International Centre for Settlement of Investment Disputes, "Database of ICSID Member States" (updated as of June 2021) ICSID: <icsid.worldbank.org/about/member-states/database-of-member-states>.

complement – and, some might say, *compete* with – international arbitration. These developments are but a part of the growing assembly of specialised institutions and procedures that pertain to the resolution of *international* commercial disputes, and this raises interesting and important questions as to whether and to what extent the internationality of such disputes justifies treating them differently than we would domestic commercial disputes. In any case, developments like these underscore how, in these and other ways, the law has played a crucial role in oiling the wheels of transnational commerce which are, in turn, powered by the engine of globalisation.

13. Second, driven by the desire to overcome the risks and costs of regulatory fragmentation and arbitrage, global commercial laws have gradually been converging towards a set of shared principles that provide a measure of legal consistency regardless of locality. This has seen the blending of trade usages, model contracts, and standard clauses into a body of supra-national norms and principles.¹² The success and proliferation of various standard form contracts – such as the Institution of Civil Engineers (“ICE”) Conditions of Contract¹³ – testify to the appetite for the law’s standardising function. This is also reflected in the emergence of institutions such as the UNCITRAL, the European Law Institute, and the Asian Business Law Institute, among others,

¹² Marius Vacarelu, “Globalization, Modernity and Law” (2017) *Academic Journal of Law and Governance*, No 5, 58–65 at 62.

¹³ See Brian Eggleston, *The ICE Conditions of Contract: Seventh Edition* (Blackwell Science Publishing, 2001).

which are all engaged in the bid to minimise unnecessary obstacles to free and seamless trade.¹⁴ And even in judicial contexts, the ability to refer to the decisions of other jurisdictions – enabled by the proliferation of technologically enabled research tools – has also facilitated a gradual convergence in the attitudes and approaches taken by national courts to commercial issues, with clear examples in the field of cross-border insolvency and international commercial arbitration.¹⁵ Taken together, this trend towards the standardisation of commercial practices fostered by the law has provided something approaching a common framework within which any person from any jurisdiction could, with a reasonable degree of stability, engage and participate in the global economy.

14. Third, the law has furnished the underlying infrastructure of rules and rights needed to encourage commercial entrepreneurship and innovation while limiting the potentially ruinous consequences of business failure. This includes legal developments in the recognition of a wider range of property rights from intellectual property to crypto assets, the trend towards a universalist approach in international insolvency and restructuring, the development of antitrust and

¹⁴ See, for example, the work of the Asian Business Law Institute and its reports on regulatory and legal approaches in Asia concerning personal data, corporate restructuring, and the recognition and enforcement of foreign judgments. See <https://abli.asia/Publications>. See also Sundaresh Menon, “Transnational Commercial Law: Challenges and A Call for Meaningful Convergence” [2013] SJLS 231.

¹⁵ See, for instance, the converging jurisprudence concerning the interpretation of the UNCITRAL Model Law on International Commercial Arbitration. See also Charles Molineaux, “Applicable Law in Arbitration: The Coming Convergence of Civil and Anglo-Saxon Law via Unidroit and Lex Mercatoria”, *The Journal of World Investment* (2000) at 127.

competition law principles to guard against monopolistic excesses, and perhaps most foundationally, the principle of separate legal personality that limits the personal liability of businesspersons. In this sense, the law has undoubtedly, in the words of Lord Bingham, played a vital role as the handmaid of commerce.¹⁶

15. Thus, it might be said that the triumphs of globalisation have in some ways also been the triumphs of the Rule of Law. Their intertwined histories showcase a relationship that has proven both profoundly symbiotic and immensely successful. If globalisation may be said to have built a system of superhighways for the more efficient movement and utilisation of money, materials, and labour, then the law has dutifully served as its system of traffic rules, road markers, and crash barriers – organising and regulating its flows, illuminating the cracks, and curbing its more brutish tendencies.

B. Globalisation on the rocks

16. Yet, for all of globalisation's past achievements, a new page seems to have been turned in its history. One might trace the turning of the tide to the time just before the turn of the millennium, when a number of events with regional or global repercussions tore national economies apart.

17. In 1997, Asia suffered a serious financial crisis after an economic bubble inflated by a rapid inflow of short-term funds into Thailand rapidly collapsed. A

¹⁶ Lord Bingham of Cornhill, "The Law as the Handmaid of Commerce" (5 September 2001), speech at the Sixteenth Sultan Azlan Shah Law Lecture 2001.

decade later, a collapse in the US subprime mortgage market swiftly developed into a full-blown international banking crisis and global economic downturn,¹⁷ plunging several nations into serious debt.¹⁸ Out of the search for answers as to how the risks that had pooled in what were then relative backwaters of the global financial system had so rapidly and devastatingly impacted all corners of the world economy,¹⁹ it emerged that at least part of that answer lay in the fact that the very connections that had propelled the world's markets to unprecedented heights of prosperity had also served as conduits for the ensuing financial contagion.

18. Furthermore, as we entered the first decade of the new millennium, a series of threats to our common peace and security also emerged in relatively quick succession which were perceived, whether justifiably or otherwise, as being a result of globalisation and the interconnectedness it necessarily entails.

¹⁷ Academics have warned of signs of a similar impending collapse in late-2020 and early-2021. See Eben Harrell, "Are we on the verge of another financial crisis? An interview with John Macomber, Senior Lecturer at Harvard Business School" (18 December 2020) Harvard Business Review: <hbr.org/2020/12/are-we-on-the-verge-of-another-financial-crisis>.

¹⁸ Robert McCauley, "The 2008 crisis: transpacific or transatlantic?" (16 December 2018) BIS Quarterly Review, December 2018: <www.bis.org/publ/qtrpdf/r_qt1812f.pdf>.

¹⁹ Michael Carson and John Clark, "Asian Financial Crisis" in Federal Reserve History (22 November 2013): <<https://www.federalreservehistory.org/essays/asian-financial-crisis>>, noting that the crisis that had started in Thailand in July 1997 had by 1998 spread across East Asia and led to spillover effects as far away as in Latin America and Eastern Europe. Ian Goldin, "Globalisation has created substantial benefits, but global governance must evolve to meet the challenges posed by new systemic risks" (1 September 2014) London School of Economics Blogs, September 2014: <<https://blogs.lse.ac.uk/europpblog/2014/09/01/globalisation-has-created-substantial-benefits-but-global-governance-must-evolve-to-meet-the-challenges-posed-by-new-systemic-risks>>.

- a. First, in 2001, the US was rocked by major terrorist attacks masterminded by a global terrorist organisation and executed by an international cell of attackers, one of whom had been born in Egypt, radicalised in Hamburg, and trained as a pilot in Florida.²⁰ The attacks sparked a global war on terror, the implications of which continue to reverberate throughout the world. Although often perceived as a preoccupation of the US, this is a war against an enemy that is insidious and invisible; is not uniformed; operates without significant resource; does not regard itself as being bound by any rules of war or engagement; and its sphere of operations is neither confined in geography nor affected by the military or civilian status of its targets. This, in fact, is a war that concerns and involves all of us. Some of the aftershocks of the 9-11 attacks were still being played out a month ago on the tarmac in Kabul.²¹
- b. Second, climate change has come to the fore as one of the gravest existential threats to humanity. In 2009, alarms were raised that the decade about to end had been the warmest since modern record-

²⁰ Lara Keay, Sky News, "9/11 anniversary: Who were the September 11th attackers and what are the links with the new Taliban regime?" (11 September 2021): <news.sky.com/story/9-11-anniversary-who-were-the-september-11th-attackers-and-what-are-the-links-with-the-new-taliban-regime-12402917>.

²¹ Frank Gardner, "War on Terror: Are big military deployments over?" (20 June 2021) BBC News: <www.bbc.com/news/world-asia-57489095>. See also BBC News, "Afghanistan: Taliban carrying out door-to-door manhunt, report says" (updated as of 20 August 2021) BBC News, August 2021: <www.bbc.com/news/world-asia-58271797>.

keeping started in the 1880s.²² Two decades on, the situation has only deteriorated further.²³ In its recent 2021 Report, the Intergovernmental Panel on Climate Change found that the world was warming faster than previously expected, and warned that unless immediate, rapid, and large-scale reductions in emissions are achieved, humanity's ability to limit the warming of our planet will soon slip out of our collective reach.²⁴

c. Third, the ongoing COVID-19 pandemic has highlighted global public health as another pressing issue of worldwide concern. Within months, COVID-19 had spread throughout the world, paralysing economies and healthcare systems and illustrating in the starkest terms possible just how interconnected – and therefore vulnerable – we all are.

19. This succession of existential crises has laid bare the costs of global interconnectedness. Each of these threats has powerfully demonstrated the extent of our interlocking fragility, and strengthened the case of those who view

²² Adam Voiland, "2009: Second warmest year on record; end of warmest decade" 22 January 2009, NASA Global Climate Change: <climate.nasa.gov/news/249/2009-second-warmest-year-on-record-end-of-warmest-decade>.

²³ In its recent 2021 Report, the Intergovernmental Panel on Climate Change found that the world was warming faster than previously expected, and it warned that unless immediate, and large-scale reductions in emissions are achieved, humanity's ability to limit the warming of our planet will soon slip out of our reach: see Intergovernmental Panel on Climate Change, "AR6 Climate Change 2021: The Physical Science Basis" (updated as of 7 August 2021) IPCC Sixth Assessment Report, August 2021: <www.ipcc.ch/report/ar6/wg1/#FullReport>. Despite the potentially devastating scenario we face collectively, the political will and incentive to take action against climate change appears wanting.

²⁴ Intergovernmental Panel on Climate Change, "AR6 Climate Change 2021: The Physical Science Basis" (updated as of 7 August 2021) IPCC Sixth Assessment Report, August 2021: <www.ipcc.ch/report/ar6/wg1/#FullReport>.

global interconnectedness not as a means of advancing collective progress but as a slippery slope towards excessive interdependence, shared vulnerabilities, and a loss of self-determination. This has led to calls for States to “take back control”;²⁵ some going as far as to declare that “globalisation is dead” and that the future of the world ahead lies instead in “deglobalisation”.²⁶

20. Unfortunately, anti-globalisation rhetoric today is no longer the preserve of a vocal minority, but has manifested in ways that are much more concerning.

a. Between 2008 and 2017, in the wake of the global financial crisis, measures of global trade openness indicated a decline for the first time since World War II.²⁷

b. In 2016, the EU, once the poster child of transnational integration, suffered a major setback when the UK voted to leave the EU.

²⁵ Rory Horner, *et al*, *The Conversation*, “How anti-globalisation switched from a left to a right-wing issue – and where it will go next” (26 January 2018): <<https://theconversation.com/how-anti-globalisation-switched-from-a-left-to-a-right-wing-issue-and-where-it-will-go-next-90587>>, noting the rallying call for supporters of Brexit who seek to “Take Back Control” from Brussels. In a speech at the 2017 World Economic Forum at Davos, British Prime Minister Theresa May acknowledged that “talk of greater globalization can make people fearful. For many, it means their jobs being outsourced and wages undercut. It means having to sit back as they watch their communities change around them”.

²⁶ Michael O’Sullivan, *The Levelling: What’s Next After Globalization* (PublicAffairs Publishing, 2019); see also *The Economist*, “Globalisation is dead and we need to invent a new world order” (28 June 2019) *The Economist*: <www.economist.com/open-future/2019/06/28/globalisation-is-dead-and-we-need-to-invent-a-new-world-order>.

²⁷ Shawn Donnan, “Globalisation in retreat: capital flows decline since crisis”, *Financial Times* (22 August 2017): <www.ft.com/content/ade8ada8-83f6-11e7-94e2-c5b903247afd>; Douglas A Irwin, “Globalisation is in retreat for the first time since the Second World War”, Peterson Institute for International Economics (23 April 2020): <www.piie.com/research/piie-charts/globalization-retreat-first-time-second-world-war>.

c. Then in 2017, a change of administration in the White House brought with it a sharp pivot away from multilateralism and global free trade. In the ensuing years, negotiations of the Trans-Pacific Partnership²⁸ were abandoned, appointments to the Appellate Body of the WTO²⁹ were blocked, and the US withdrew from the Paris Climate Accord on the stated basis that the agreement was prejudicial to American jobs.³⁰ The continuing trade tensions between the US and China is yet another example of the shift in attitude towards globalisation that has had implications not only for the US and Chinese markets,³¹ but

²⁸ Mireya Solis, “Trump withdrawing from the Trans-Pacific Partnership” (24 March 2017) Brookings Institute, March 2017: <<https://www.brookings.edu/blog/unpacked/2017/03/24/trump-withdrawing-from-the-trans-pacific-partnership>>.

²⁹ Peter Baker, “Trump Abandons Trans-Pacific Partnership, Obama’s Signature Trade Deal” (23 January 2017) New York Times, January 2017: <www.nytimes.com/2017/01/23/us/politics/tpp-trump-trade-nafta.html>. See also an author’s suggestion that the 2019 WTO crisis possibly presented “*déjà vu*”, *ie*, a pattern that has recurred in WTO over the years, albeit the author’s view is that the actions by the Trump Administration as regards the Appellate Body were arguably more severe: Rubens Ricupero, “Chapter 2 – WTO in crisis: *déjà vu* all over again or terminal agony?” in *The WTO Dispute Settlement Mechanism* (Springer, 2019), 17–23 (“Ricupero, Terminal Agony”).

³⁰ Julia Jacobo, ABC News, “The US is leaving the Paris Agreement: How that will affect the global mission to affect climate change” (2 November 2020): <<https://abcnews.go.com/US/us-leaving-paris-agreement-affect-global-mission-affect/story?id=73861889>>: US President Trump had announced his intention to withdraw from the agreement, saying that it would “undermine [the US] economy, hamstring [US] workers, weaken [US] sovereignty [and] impose unacceptable legal risk”.

³¹ Bloomberg Economics, “Trump’s Tariffs Led to Billions of Losses, Fed Research Shows” (updated as of 23 June 2021) Bloomberg: <www.bloomberg.com/news/articles/2021-06-22/u-s-china-tariffs-distorted-trade-billions-lost-fed-says>.

also for every other national economy.³² It is too early to tell how this will be affected by the recent change of administration in Washington.³³

21. Given all of these, it may consequently be said that we are today, more than ever in the past 50 years, living in a world that is both intensely and intractably interconnected and yet also deeply divided; one that, in many respects, increasingly resembles a scatter of anxious States preoccupied by threats that they know to be common, but yet, somehow choosing to remain resolute in their decision to face these challenges within national or at best regional silos, rather than as part of a dynamic, unified whole.

III. Part 2: Evaluating globalisation: A faith misplaced?

A. *The fall of an ideology*

22. The present situation portends a worrying future for globalisation and the globalised world. But what might account for this turning of the tide? And what

³² Ken Itakura, “Evaluating the Impact of the US-China Trade War” *Asian Economic Policy Review*, Vol 15 Issue 1, 77–93 (30 August 2019): <doi.org/10.1111/aep.12286>; Sebastien Goulard, “The Impact of the US-China Trade War on the European Union” *Global Journal of Emerging Market Economies*, Vol 12 No 1 (2020), 56–68 (2 March 2020): <doi.org/10.1177/0974910119896642>.

³³ See Orange Wang, “US-China relations: American efforts to reshore supply chains blasted as ‘empty talk’ by former minister” (28 June 2021) *South China Morning Post*, June 2021: <www.scmp.com/economy/global-economy/article/3139057/us-china-relations-american-efforts-reshore-supply-chains>. Perhaps as a harbinger of what is to come, one *New York Times* headline from March this year proclaimed that “*In Washington, ‘Free Trade’ Is No Longer Gospel*”. See Ana Swanson, “In Washington, ‘Free Trade’ Is No Longer Gospel” (17 March 2021) *New York Times*, March 2021: <www.nytimes.com/2021/03/17/business/economy/free-trade-biden-tai.html>.

lessons can we glean from trying to find answers to this? I make three principal points.

23. The first is that much of the discontent with globalisation may be attributed to a fundamental failure to achieve consensus on its primary objectives and purposes, and therefore, also on its *limits*. The precursor to contemporary globalisation was the age of colonialism. The colonial powers saw the globe and its resources as theirs for the taking, and the “global interconnectedness” of that age was largely founded on starkly asymmetrical relationships between the colonisers and the colonised,³⁴ with few if any normative limits on the ability of a colonial power to exploit those relationships for economic gain. Over time, these attitudes have given way to a somewhat more inclusive and enlightened approach to globalisation that is more conscious of the need to ensure that all are allowed to *share* in the benefits of the global economic growth.³⁵ But what has not changed is our seemingly single-minded desire to maximally exploit our global resources without restraint – relying on

³⁴ As evidenced by, for example, what has been called the “Scramble for Africa”, which took place in the late 19th century. The colonisers – thirteen European countries and the United States – met in Berlin to agree the rules of African colonisation, and promptly proceeded to divide up the continent amongst themselves: see St John’s College, University of Cambridge, “The Scramble for Africa”: <www.joh.cam.ac.uk/library/library_exhibitions/schoolresources/exploration/scramble_for_africa>.

³⁵ See Jacobus A Du Pisani, “Sustainable development – historical roots of the concept” (2006) 3:2 Environmental Sciences 83 at p 88 (“Pisani”). This latest iteration of globalization has a central concern the widening gap between the developed and developing countries, and there seems acknowledgment that high international economic growth rates could only be maintained if wealth could be distributed more evenly on a global scale.

the trade and legal infrastructure provided by globalisation – in a bid to sustain what in truth are the *unsustainable* levels consumption and affluence that we aspire to, even though we know that those levels will only be attained by very few and at inordinate cost. And today, even in the face of overwhelming evidence that our current practices are unsustainable,³⁶ we continue to resist the idea that there are costs associated with the untrammelled exploitation of our natural resources,³⁷ and that *sustainable* development requires us to take these costs into account even as we continue to pursue economic prosperity.³⁸

24. Second and relatedly, lulled perhaps into a false sense of security by the past successes of globalisation, we have failed to trim the sails of globalisation to better navigate the changing winds of threats to our collective humanity. Our inability to develop a cohesive response to the dangers posed by climate change is a prime example of this. So too is our inability to develop any meaningful or concerted effort to address the problem of global economic inequality. Despite the unprecedented prosperity brought about by globalisation, the World Inequality Report stated that between 1980 and 2016, income

³⁶ See, among others, the United Nations Intergovernmental Panel on Climate Change (IPCC) Special Reports on Global Warming dated 8 October 2018 and 9 August 2021.

³⁷ Pisani at pp 87-88, 90.

³⁸ UN Conference on the Human Environment (Stockholm, 1972): “A point has been reached in history when we must shape our actions throughout the world with a more prudent care for their environmental consequences. Through ignorance or indifference we can do massive and irreversible harm to the earthly environment on which our life and well being depend. Conversely, through fuller knowledge and wiser action, we can achieve for ourselves and our posterity a better life in an environment more in keeping with human needs and hopes... To defend and improve the human environment for present and future generations has become an imperative goal for mankind”, cited in Pisani at p 92.

inequality had increased sharply in nearly *all* world regions, and that even as there was general economic growth across all income groups, the global top 1% earners had captured twice as much of the growth in global income as the poorest 50%. While globalisation may not at its core be a *distributive* concept, these numbers highlight that we have yet to come to terms with the distributive *consequences* of globalisation or to develop a consensus on the distributive *norms* that could and perhaps should have underpinned globalisation as the defining trend of the twentieth century.

25. The third observation I wish to make relates to the role of the law in the decline of globalisation. Just as the law has played a complementary role to the rise of globalisation, I suggest it is also at least partly responsible for its decline. If legal rights are the *currency* of trust in a globalised world, they seem to suffer the very same problems that the fiat currencies now suffer from – that of unequal distribution and a growing sense that they may no longer be fit for purpose.

26. Across the developed and developing worlds, the issue of access to justice has been an enduring problem that manifests itself in various ways – long waiting times for hearings, delayed judgments, and the prohibitive costs of legal services and court fees, among others.³⁹ The issue of *inadequate* access

³⁹ See for example Endang Hadrian, “Optimizing the implementation of mediation to overcome civil case backlog in Indonesia” *South East Asia Journal of Contemporary Business, Economics and Law*, Vol 20 Issue 5 (2019), 151–157: <www.endanghadrian.co.id/images/Journal%20internasional.pdf> (“Hadrian, Backlog in Indonesia”); Sital Kalantry, “Litigation as a Measure of Well-Being: The Threat of India’s Case Backlog” *62 DePaul Law Review* 247 (2013), 247–292:
(*cont’d on next page*)

comes hand in hand with the problem of *unequal* access,⁴⁰ since it tends to be the poorest and most marginalised who lack the resources necessary to surmount these barriers to justice. In its 2016 report on inclusive growth, the OECD stated that the “inability to resolve legal problems diminish access to economic opportunity, reinforces the poverty trap, and undermines human potential and inclusive growth”.⁴¹ To this end, target 16.3 of the UN Sustainable Development Goals expressly commits member States to “promote the rule of law at the national and international levels, and ensure equal access to justice for all”. Yet, on a global scale, there remains a disquieting justice gap despite the economic gains of the past decades. According to one UN estimate, 85% of the populations of 179 developing nations live in areas that are beyond the reach of the law, meaning that over *four billion people* lack effective recourse to justice through the law.⁴² Even in countries as developed as the US, it has been reported that four-fifths of low-income Americans have no effective access to

<osf.io/preprints/lawarxiv/dr92f>; Lizzie Dearden, “Crown court backlog hits record high of 60,000 cases as victims wait years for justice” (24 June 2021) *The Independent*: <www.independent.co.uk/news/uk/home-news/crown-court-backlog-coronavirus-cuts-b1872051.html>; Paul Stinson and Joyce E Cutler, “Texas Court backlog could last five years without more funding” (24 May 2021) *Bloomberg Law*: <news.bloomberglaw.com/us-law-week/Texas-court-backlog-could-last-five-years-without-more-funding> (“Stinson and Cutler, Texas Court backlog”).

⁴⁰ Chief Justice Sundaresh Menon, “Technology and the Changing Face of Justice” (14 November 2019), speech at the Negotiation and Conflict Management Group ADR Conference 2019 delivered in Lagos, Nigeria (“NCMG Speech”) at para 9.

⁴¹ OECD, “Towards Inclusive Growth – Access to Justice: Supporting people-focused justice services” 2016.

⁴² UN Report of the Commission on Legal Empowerment of the Poor, “Making the Law Work for Everyone” vol 1 (2008) at pp 19 and 90: <un.org/ruleoflaw/files/Making_the_Law_Work_for_Everyone.pdf>.

legal help.⁴³ It should be a matter of deep concern that instead of serving as a bulwark against evolving threats and growing inequality in a globalised world, the law and legal systems might in fact have perpetuated and exacerbated the failings of globalisation.⁴⁴

B. The case for hope

27. The common thread underlying these three contributory factors to the decline of globalisation is that they are complex, multi-faceted, and near-intractable problems that cannot easily be resolved or mitigated. But before we conclude that globalisation should therefore be abandoned, I suggest that we must consider another perspective – namely, the strengths of globalisation and the reasons why it might remain our best hope in securing humanity’s shared future.

28. From that perspective, I suggest there is a simple but compelling argument for doubling down on our commitment towards a certain vision of globalisation, and that is that the most urgent, important, and existential issues that plague humanity today *require* multilateral solutions, and our best chances of achieving them lie in an interconnected and open global society with a realistic appreciation of both our inter-dependency and our shared vulnerabilities. As the

⁴³ The New York Times, “Addressing the Justice Gap” (23 August 2011): <nytimes.com/2011/08/24/opinion/addressing-the-justice-gap.html>.

⁴⁴ NCMG Speech at para 9.

saying goes, “global problems require global solutions”.⁴⁵ I earlier identified three such issues – the threat of terrorism, climate change, and the ongoing pandemic. And there are of course others; just last week, in a speech to the UN General Assembly, Singapore’s Foreign Minister stressed the importance of *multilateral* action to tackle a range of global issues including data regulation and the governance of the world’s oceans and ocean resources.⁴⁶ The underlying commonality that all of these problems share is that they cannot be solved by any one State alone; they require collective action and multilateral solutions.

29. Take the fight against climate change, for example. Limiting global warming requires that we keep greenhouse gas emissions to a certain level. Individually, each country lacks both the capacity and the incentive to achieve this; and since no single country *can* do it alone, no country standing alone *will* do it. Issues like these, which implicate the global commons, require that we stand together. Uneven participation, even if involving a relatively small band of abstainers, creates a free-rider problem that undermines the incentives for those onside to stay onside. Take, for instance, the commitments made by the

⁴⁵ United Nations News Centre, “Global problems need global solutions, UN officials tell ministers at development forum” (17 July 2017): <<https://www.un.org/development/desa/en/news/intergovernmental-coordination/high-level-segment.html>>.

⁴⁶ Ministry of Foreign Affairs Singapore, “Minister for Foreign Affairs Dr Vivian Balakrishnan’s National Statement at the General Debate of the 76th Session of the United Nations General Assembly in New York, 25 September 2021” (26 September 2021): <www.mfa.gov.sg/Newsroom/Press-Statements-Transcripts-and-Photos/2021/09/j20210926-76th-UNGA-national-statement>.

signatories to the Kyoto Protocol and the Paris Agreement to reduce greenhouse gas emissions, for which the fruits of participation – the slowing of global warming – accrue to the benefit of *all*, even the abstainers who share none of the costs of participation.⁴⁷

30. The COVID-19 pandemic is another contemporary example of the need for multilateralism. It cannot be denied that hyperconnectivity, whether in terms of economic relations or physical travel, had contributed to the speed and reach of the pandemic's impact. Within half a year of COVID-19 being declared a global pandemic, every economy had plunged into recession.⁴⁸ As it now stands, COVID-19 is estimated to have spread to at least 220 countries and territories, sickened well over 200 million people, and killed nearly 5 million.⁴⁹

31. Across the world, the initial response of almost every State was to shut its borders and turn inward. By May 2020, every country in the world had imposed travel and entry restrictions. In Singapore, we took the unprecedented step of closing our land border with Malaysia, one of the busiest land crossings in the world that used to see over 300,000 people and 145,000 vehicles crossing

⁴⁷ See Elinor Ostrom, *Governing the Commons* (Cambridge University Press, 1990) (online republication in October 2015) (“Ostrom, *Governing the Commons*”).

⁴⁸ George Yip, Forbes, “Does COVID-19 Mean The End For Globalization?” (8 January 2021): <<https://www.forbes.com/sites/imperialinsights/2021/01/08/does-covid-19-mean-the-end-for-globalization?sh=4d538881671e>>.

⁴⁹ Statista, “Number of coronavirus cases worldwide as of September 17, 2021 by country”: <<https://www.statista.com/statistics/1043366/novel-coronavirus-2019ncov-cases-worldwide-by-country>>.

each day.⁵⁰ By April 2020, more than half of humanity – or just under 4 billion people – had their travel restricted and had been asked or ordered to stay at home to prevent the spread of the virus.⁵¹ Globally, air travel came to a standstill and plummeted to levels not seen since the 1970s.⁵² Fears over the scarcity of medical resources also prompted some countries to introduce legislation to ban the export of face masks and other medical supplies.⁵³

32. The pandemic has shown us that in the face of an existential threat, the State's priority is to offer protection and support to its own people, and it is to the State, rather than the global community, that people tend to turn in times of crisis. This is not a new idea, and in some senses, we can see its contribution to the Westphalian construct of nationhood and sovereignty.

33. But imagine an ideal world. In the face of a serious global pandemic, the optimal course of action to stop its spread at minimal collective cost might have been a simultaneous, globally coordinated lockdown across the world. Such a lockdown would likely have been more effective than the patchwork of national

⁵⁰ ChannelNewsAsia, "Clearing the Causeway": <<https://infographics.channelnewsasia.com/interactive/causewayjam/index.html>>.

⁵¹ Alasdair Sanford, Euro News "Coronavirus: Half of humanity now on lockdown as 90 countries call for confinement" (3 April 2020): <<https://www.euronews.com/2020/04/02/coronavirus-in-europe-spain-s-death-toll-hits-10-000-after-record-950-new-deaths-in-24-hou>>.

⁵² Washington Post, "The virus that shut down the world": <www.washingtonpost.com/graphics/2020/world/coronavirus-pandemic-globalization>.

⁵³ Richard Fontaine, Foreign Policy, "Globalization Will Look Very Different After the Coronavirus Pandemic" (17 April 2020): <<https://foreignpolicy.com/2020/04/17/globalization-trade-war-after-coronavirus-pandemic>> ("Foreign Policy, "Globalization Will Look Very Different").

lockdowns that we saw, because like a forest fire that cannot be put out without a coordinated plan, there will be flareups, re-infections, and cross-infections if our responses are silo-ed and indifferent to the plight and situation of others.

34. Of course, this is an *ideal* world scenario, and we do not live in a utopia. But thankfully, the concepts of collective action and shared consequence are not unknown even in our *reality*. The COVAX initiative is one example. It aims to bring countries, businesses, and civil society together with the goal of providing equitable access to COVID-19 vaccines.⁵⁴ The initiative has seen considerable success – the US recently announced that it would donate 500 million doses, while the UK announced a donation of a further 100 million doses.⁵⁵ The EU has pledged €500 million, and Chinese manufacturers have agreed to provide up to 550 million vaccines.⁵⁶

35. Whether this is borne out of altruism or enlightened self-interest, responses to the pandemic like COVAX illustrate that when faced with a global problem, we know, in our rational minds, that a global response is optimal and indeed necessary. Our nativist instincts may lead us to turn inward when threatened, but we eventually seek multilateralism and tap on our global

⁵⁴ Seth Berkley, Gavi Vaccine Alliance, “COVAX explained” (3 September 2020): <<https://www.gavi.org/vaccineswork/covax-explained>>.

⁵⁵ BBC, “COVAX: How many Covid vaccines have the US and the other G7 countries pledged” (11 June 2021): <<https://www.bbc.com/news/world-55795297>>.

⁵⁶ Emma Farge, Reuters, “Chinese drugmakers agree to supply more than half a billion vaccines to COVAX” (12 July 2021): <<https://www.reuters.com/world/gavi-signs-covid-19-vaccine-supply-deals-with-sinovac-sinopharm-covax-2021-07-12>>.

infrastructure and relationships because that is the *only* way to truly resolve the threats that confront us. And this is so, I suggest, not only for the pandemic but for most of the major challenges that plague humanity.

36. I make a final point on why we should remain hopeful for the future of globalisation – and it is that we are perhaps already past the point where globalisation *can* be reversed or disavowed. The reality is that we live in a world today that will not easily be untied. Through our shared history, the evolution of technology, and the need to collectively confront global issues and threats, we are *already* inextricably interconnected and integrated. In the words of the great 18th century philosopher Immanuel Kant, we are all “*unavoidably side by side*”.⁵⁷ On this view, a “de-globalised world” is simply unimaginable. And if we did renounce multilateral cooperation and desert its institutions today, what would be the alternative? All *that* would accomplish is to abandon the governance and regulation of this vast, interconnected economy of people, goods, and services to nothing more than the whims of fate! By stepping away from engagement and integration, we would not, in fact, be taking back power for ourselves; rather we would be *giving up control* over our futures – futures that are and will remain inextricably tied to one other.

⁵⁷ See David Held and Paul Hirst, “Globalisation: the argument of our time” (22 January 2002) Open Democracy: <https://www.opendemocracy.net/en/article_637jsp/>.

IV. Part 3: Keeping a light on for globalisation

37. As I come to the last part of my address, which looks at the future of globalisation, I want to take stock of where our discussion thus far has brought us. I have sought to establish two propositions:

a. First, that globalisation has serious conceptual and distributive issues almost all of which will not be easy to correct, and some of which are in fact contributed to by the failings of the law and legal systems.

b. And second, that globalisation nonetheless remains the best if not the only solution to meet the major challenges that confront the world, and that it offers the best hope for securing humanity's shared future.

38. There is admittedly some tension between the two propositions, but I have argued that the unescapable reality is that we must live in and with a globalised world. If we accept that we are better off together than apart, then we have no choice but to confront and overcome the failings of globalisation, to revisit its assumptions, and to remodel it in a manner that will better serve the demands of the times.⁵⁸ This will not be an easy task, but if we are to begin somewhere, then there are three aspects we should consider: (a) **first**, to place

⁵⁸ Martin Wolf, "Globalisation and Interdependence", speech to the UN General Assembly (October 2004): www.un.org/esa/documents/un.oct.2004.globalisation.and.interdependence.pdf: "What we must do is build upon what has been achieved, not, as so many critics wish, throw it all away. In the era after 11 September 2001, that co-operative task has certainly become far more difficult. For people to sustain openness to one another is far harder at a time of fear than at a time of confidence. But the task has also become more urgent. A collapse of economic integration would be a calamity."

globalisation on a more sustainable footing; (b) **second**, to build a more robust and constructive space for discourse about globalisation; and (c) **third**, to ground globalisation, like the law, in a notion of legitimacy. In all of these, the law can and should have an important role to play.

A. *A more sustainable footing*

39. First, we must place globalisation on a more sustainable footing. What do I mean by “sustainable”? There are several dimensions to this, and I have already touched on some of them. One such dimension is the idea that there are normative limits on the extent to which globalisation should permit and facilitate the exploitation of our natural and human resources. The heady optimism and unbridled expectations of unlimited economic growth sparked by the post-war economic boom of the 1950s must, especially with our current understanding of the sciences and the world we inhabit, give way to a realisation that there are limits to our resources and that exceeding those limits carries serious human and environmental consequences for us and for our future generations.⁵⁹ This is not new, and steps have already begun to be taken to introduce the concept of sustainability into the global economic agenda. I earlier mentioned the UN’s Sustainable Development Goals (or “SDGs”). Adopted in 2015 and intended to be achieved by the year 2030, the SDGs are a collection of 17 interlinked global goals designed to serve as a “blueprint to achieve a

⁵⁹ Pisani at pp 87-88, 90.

better and more sustainable future for all”.⁶⁰ We have also started to see, since a little over a decade ago, the inclusion of sustainability clauses in free trade agreements.⁶¹

40. Similar observations may also be made regarding distributive inequality arising from the uneven impact of, and opportunities from, globalisation. Ed Miliband, a UK politician once remarked: “They used to say a rising tide lifts all the boats. Now the rising tide just seems to lift the yachts.”⁶² One may or may not agree with the politics, but it is undeniable that there is now an emerging sense that a more sustainable approach to globalisation is needed, and that ensuring the social sustainability of globalisation requires that inequality be kept in check.⁶³ As Larry Summers, a former US Treasury Secretary and Chief Economist of the World Bank puts it, “there is little hope for maintaining integration and cooperation if [globalisation] continues to be seen as leading to local disintegration while benefiting only a mobile, global elite”.⁶⁴ Indeed, I would

⁶⁰ See UN Department of Economic and Social Affairs, Sustainable Development Unit: <sdgs.un.org>.

⁶¹ See, for an overview, Bronckers and Gruni, “Retooling the Sustainability Standards in EU Free Trade Agreements”, *Journal of International Economic Law*, Vol 24, Issue 1, March 2021 (“*Bronckers and Gruni*”).

⁶² Patrick Wintour, “Ed Miliband stakes the house on huge new-build programme and tax cut” (24 September 2013) *The Guardian*, September 2013: <<https://www.theguardian.com/politics/2013/sep/23/labour-ed-miliband-housebuilding-pledge>>.

⁶³ Emma Aisbett, “Why are the Critics So Convinced that Globalization is Bad for the Poor?” in Ann Harrison, ed, *Globalization and Poverty* (University of Chicago Press, 2007) at p 41.

⁶⁴ Lawrence H Summers, “Global Trade Should be Remade from the Bottom Up” (18 April 2016) *Social Europe*: <socialeurope.eu/global-trade-remade-bottom>.

submit that inequality that is sustained and extreme is the *very antithesis* of sustainability. While there remains debate on the adequacy of the initiatives taken to address these sustainability dimensions,⁶⁵ the point remains that these are promising developments reflecting a growing recognition and awareness that economic growth is not the unitary policy objective, and that there needs to be a weighing of costs and policies to arrive at a balance we are prepared to live with.

B. A robust, truth-based space for discussion

41. The second idea I propose is that we should encourage and facilitate a more robust global discourse about the purposes and limits of globalisation, and the trade-offs that we are willing to accept in exchange for its benefits. This might seem obvious and uncontroversial today, but the truth is that discussions about globalisation have not always been as critical or robust as they should have been. In its heyday, few dared to question the wisdom of globalisation. An American journalist, George Packer, recalled that at the turn of the millennium, the prevailing attitude was that “[r]ejecting globalisation was like rejecting the sunrise. Only the shortsighted, the stupid, the coddled, and the unprepared would turn against it.”⁶⁶ We now know that such attitudes have not aged well; but the fact that propositions like these were seemingly unassailable just two

⁶⁵ See for instance, *Bronckers and Gruni* on the adequacy of the EU-championed sustainability standards in FTAs.

⁶⁶ George Packer, “Hillary Clinton and the Populist Revolt”, *The New Yorker* (31 October 2016): <www.newyorker.com/magazine/2016/10/31/hillary-clinton-and-the-populist-revolt>.

decades ago speaks to the importance of breaking free of echo chambers and building a safe and truth-based space for the discussion of the issues that matter. Equally, as a global community of communities, we must recognise that the path of globalisation will not be singular. As with our own communities, we must come together to discuss, debate, and build consensus on our choices and the trade-offs that we are willing to accept.

42. The construction of a healthy and constructive space for discourse on globalisation will not be easy. The first challenge is the politicisation of the issues. The second is what has been referred to as “truth decay”;⁶⁷ which is the worrying erosion of truth in the modern society as traditional, trusted sources of information – ranging from government authorities to the mainstream media – are increasingly being supplanted by a jungle of unverified facts and opinions, enabled by the rise of social and alternative media which have afforded just about anyone a platform to reach a global audience and project any message. The worry is that this will, in time, lead to the emergence of “alternative facts”, echo chambers, the blurring of the line between opinion and fact, and, ultimately, the decline of the role of facts and reason in public discourse. This will not be conducive to *any* rational, constructive, fact-based debate, including one about globalisation.

⁶⁷ Jennifer Kavanagh and Michael D Rich, RAND, “Countering Truth Decay”: www.rand.org/research/projects/truth-decay/about-truth-decay.html.

43. As we continue to grapple with this problem, I suggest that the law will assume an increasingly significant role in regulating the veracity and flow of information in this emergent post-truth era. In Singapore, the Government introduced legislation in 2019, titled the Protection from Online Falsehoods and Manipulation Act, that empowers a Minister to issue a take-down or correction order against falsehoods published on the internet, provided that the statutory requirements are satisfied and subject to appeals to the court and other processes. The law was recently used in response to online circulation of an allegation that there was a new Singapore-variant of COVID-19 that had spread from Singapore to a foreign State.⁶⁸ Other jurisdictions may choose to adopt different responses, but ultimately, because information and fake news do not respect geographical borders or national identity, this is yet another example of a global problem that calls for a multilateral response.

C. *Building legitimacy*

44. I come finally to the idea of legitimacy, which should, I suggest, be the basis upon which we ground all aspects of globalisation. The concept of “legitimacy” will not be unfamiliar to an audience of judges and lawyers. Here, I use the term to refer to the willingness of people to respect the institutions, principles, and practices associated with globalisation, and the decisions and outcomes that are derived by those actors and from those norms, even if

⁶⁸ Michael Yong, “POFMA directive issued to Facebook, Twitter, SPH Magazines over ‘Singapore variant’ of COVID-19 falsehood”, ChannelNewsAsia (20 May 2021).

individually, they may not agree with any particular instantiation of the globalist philosophy.⁶⁹

45. In my view, the future of globalisation will depend almost entirely on its ability to build and regain legitimacy in the eyes of the global polity. There are a few reasons for this. First, a true sense of legitimacy is the best long-term response to the present climate of growing anti-globalisation sentiment. Second, the issues that globalisation gives rise to operate on an international plane, where there is no supranational mechanism of compulsion and enforcement. It is therefore moral suasion, deriving from legitimacy, that will enable us to agree on the norms and standards of conduct and nudge us towards adherence.⁷⁰ Third, legitimacy bears a self-compounding effect. An institution considered to be legitimate will benefit from greater influence and compliance; this begets stability and efficacy, which will, in turn, allow it to command greater respect.⁷¹ The converse also holds true, and therefore on this premise, it is simply impossible to conceive of any effective or sustainable model of globalisation without legitimacy.

⁶⁹ Chief Justice Sundaresh Menon, “A Tale of Two Systems: The Public and Private Faces of Investor-State Dispute Settlement” (27 May 2021) Lalive Lecture 2021 (“Lalive Lecture”) at para 5.

⁷⁰ Bodansky at 327, citing Andrew Hurrell, “Legitimacy and the Use of Force: Can the Circle Be Squared?” (2005) *Review of International Studies*, Vol 31 Supp S1, 15–32 at 29 (“Bodansky”) at 328.

⁷¹ Bodansky at 327.

46. Admittedly, many of the challenges associated with securing the legitimacy of globalisation lie in the realm of extra-legal factors such as politics, geopolitics, and economics.⁷² But the law too has a vital role to play. For one, if the law is truly to serve as the currency of trust in a globalised world, then we need to fundamentally rethink and re-engineer our justice systems in a manner that will better serve that purpose. As I have argued elsewhere,⁷³ part of this effort includes widening our conception of the Rule of Law to focus on providing *accessible* and *proportionate* justice – accessible, because justice that is out of reach to some in our society is not justice, and will instead erode trust and build resentment against the system; and proportionate, because in a world of limited judicial resources, we should dispense with the fallacy that justice requires an unlimited outpouring of resources towards an exhaustive search for the truth, and instead recognise that what parties truly require is a fair and acceptable resolution to a real problem, and accordingly tailor the structure and complexity of our legal processes to the nature and size of that problem. Adherence to Rule of Law values might also serve as a useful guide as we address some of the unique issues that arise in the context of transnational commercial litigation,

⁷² See Bruegel, “Should we give up on global governance?” (24 October 2018): <https://bruegel.org/reader/global_governance#>, citing problems of: (i) the over-representation of certain countries (Europe, the US and Japan) in key institutions and the need to redistribute power and influence in favour of emerging and developing countries; (ii) difficulties arising from governance through sectorial institutions, each of which dealing with a specific field, but none dealing with cross-sectoral issues.

⁷³ Sundaresh Menon, Chief Justice, Keynote Lecture at the Negotiation and Conflict Management Group (NCMG) ADR Conference 2019, *Technology and the Changing Face of Justice* (14 November 2019).

such as forum-shopping, and, relatedly, the repeated or concurrent litigation of disputes and the refusal to accept finality when the stakes are so high. If we accept that globalisation must be grounded upon the Rule of Law and therefore commit to the realisation of this vision of justice on a global level, we would, I think, have taken an important step towards shoring up the normative and distributive weaknesses of globalisation and addressing the cracks that have appeared in its façade.

47. Let me illustrate an aspect of this with an example from the field of Investor-State dispute settlement (“ISDS”), which is one of the core aspects of the transnational legal infrastructure developed to support globalisation. In another lecture I delivered earlier this year, I examined the growing well of discontent that has plagued this field and considered what had led to, and how we may deal with, ISDS’s “crisis of legitimacy”.⁷⁴ One of the observations I made was that the arbitration community had understandably accepted certain features of the arbitral process, such as confidentiality, party-appointment, and the lack of an appellate mechanism, even though these might run counter to key Rule of Law values. This could be justified because arbitration originated as means of resolving *private* disputes and the sacrifice of some of these values resulted in other valuable benefits. But ISDS by contrast is also concerned with important issues of *public* law and policy, and the unthinking adoption of a

⁷⁴ Lalive Lecture at para 7, citing Chief Justice Sundaresh Menon, “SIAC Virtual Congress Lecture” at paras 11-14.

private means of dispute resolution for such disputes with the accompanying erosion of commitment to key Rule of Law values may account for some of ISDS's loss of legitimacy. And so, to regain that legitimacy, I suggested that ISDS needed to reconsider its structure and processes and reaffirm its commitment to the core Rule of Law values including upholding the rules of natural justice, ensuring greater transparency, and providing avenues for public scrutiny of its reasons and decisions. I accept that this might not be a complete answer, for there remain difficult questions as to whether a tribunal consisting of privately appointed arbitrators is best placed to decide issues touching on public interest and policy. But nonetheless, if we do manage to reform and revitalise the system of ISDS, this could stand as a shining example of how meaningful legal reform can influence the legitimacy of globalisation itself, since the legitimacy crisis affecting ISDS concerns not only its own future, but indeed also the public perception of the fairness and normative authority of our frameworks for the governance of global issues.

48. Finally, apart from structural legal reforms, we should also not underestimate the role that individual lawyers, judges, and legal professionals can play in contributing to the legitimacy of globalisation. One way we can do this is by norm-building, through the articulation and where appropriate institutionalisation of Rule of Law values whenever we discuss and debate transnational legal systems and issues. This extends also to taking a strong and unified stance against the known ills of globalisation, such as cross-border corruption, money laundering, and tax evasion, all of which may seem like

disparate wrongs but in fact insidiously contribute to our current climate of distrust. Another way is by fostering legal convergence in areas of shared interest. Even if full convergence is not possible or ideal, there may be benefit in maintaining open lines of communication in fields that require coordinated solutions. The Hague International Network of Judges is an example of an institution that addresses the problem of international child abduction in such a way;⁷⁵ and the Judicial Insolvency Network is yet another example that seeks to improve the management of cross-border restructuring matters.⁷⁶ One of the realities of our multipolar, globalised world is the dispersal of power into the hands of different actors who must commit to coming together and acting collectively in the many areas where it is sensible, and indeed *necessary* to do so. Within that context, legal professionals can play a significant part as honest brokers, whose role as interlocutors is to bring the relevant actors together, facilitate communication, and assist them with solving their problems, all in adherence to the framework of a more sustainable version of globalisation.⁷⁷

⁷⁵ HCCH, “The International Hague Network of Judges”: <<https://www.hcch.net/en/instruments/conventions/specialised-sections/child-abduction/ihnj>>.

⁷⁶ Judicial Insolvency Network: “Judicial Insolvency Network: A network of insolvency judges from across the world”: <jin-global.org>.

⁷⁷ Frank J Garcia, “Introduction: Globalization, Power, States, and the Role of Law” (2013) 54 BCL Rev 903 at 910-911, citing Prof Anne-Marie Slaughter: “Globalization, however, has brought to the fore another kind of power more suited to the new, flatter, and multipolar environment: horizontal power... One consequence of globalization is that on an international level, nation-states must increasingly operate through the mode of horizontal power. This mode also brings law and lawyers to the fore, as law creates spaces for horizontal power and structures for interconnection and cooperation. Moreover, to be able to achieve desirable outcomes through horizontal power, someone

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V. Conclusion

49. I have sought to explain my views this evening on the mutually transformative effect that globalisation and the law have had, and will continue to have, on each other. As we stand here buffeted by headwinds that seem to push us away from a unified world, I have no doubt at all that we cannot abandon the project of globalisation. The real challenge is to muster the will and the ability to formulate a better vision of globalisation. This is a necessary undertaking because the most pressing problems that the world faces require more, not less, multilateral cooperation. The significant scale, proliferation, and consequences of our contemporary problems mean that no State alone, however powerful, can effectively serve as a bulwark. And so, if we accept that globalisation remains the best, and perhaps only, solution to these major challenges of our times, then we must directly confront the reasons for its decline and acknowledge that we cannot continue to enjoy its benefits without also sharing in its costs and addressing its failings. The real question is how those downsides can best be managed, and to that end, I suggest that it will fall ultimately on the global polity, as well as all of us within the law and justice systems worldwide, to steer globalisation onto a more sustainable footing, grounded in a restored sense of legitimacy.

must bring together actors to solve problems and mediate disputes. As lawyers are trained to think in terms of rights and obligations from all sides of an issue, they are ideally placed to exercise power in a globalized world.”

50. Thank you all very much and I hope this will provide a useful context for the rest of our discussions.