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Session 2: Singapore - Treaty-Making and Implementation & the Status of International Law in Domestic Law

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1. The Singapore Constitution and Treaty-Making

Like most Asian common law jurisdictions which received independence from British colonial administration in the latter half of the twentieth century, the text of the Singapore Constitution is silent on the reception and status of international law within the domestic legal order. However, there have been conclusive judicial pronouncements by the apex Singapore court on these matters.

The Singapore Constitution establishes a modified variant of the Westminster system of parliamentary government and does not specifically identify which government agency has the power to enter into treaties. Following British practice, this falls to the parliamentary executive or Cabinet government, as part of executive authority vested in them by Article 23.

There is no requirement, as in the US model, that the executive needs Parliament's advice and consent in treaty-making. However, Parliament has a role in relation to transforming a treaty into domestic law through legislative enactment. The idea of self-executing treaties is not recognised under Singapore law, as this would contravene the separation of powers in enabling the executive to legislate through its treaty-making power.[1] It would be contrary to Article 38 of the Constitution, which vests legislative power in the Legislature "to hold that treaties concluded by the Executive on behalf of Singapore are directly incorporated into Singapore law, because this would, in effect, confer upon the Executive the power to legislate through its power to make treaties."[2] This reflects a dualist model which treats international and domestic law as distinct systems of law.[3] Treaty norms and all forms of international agreement must be legislatively incorporated through an Act of Parliament before they may be given direct effect within the domestic legal order. Such legislation may accord ministers or public bodies broad discretionary powers to enact regulations to implement international obligations.

In principle, this approach accords some degree of legislative review over executive policy. In practice, this has been a formality, as the ruling People's Action Party (PAP) controls 83 out of 93 parliamentary seats, making obtaining a simple majority to pass a bill a foregone conclusion. This does not preclude parliamentary debate, where scrutiny may range from the robust to cursory, depending on the subject-matter.

[1] *The Sahand*, [2011] 2 SLR 1093 (High Court), approving the House of Lords decision in *J.H. Rayner (Mincing Lane) Ltd. v. Department of Trade and Industry*, [1990] 2 AC 418.
[2] *The Sahand*, [2011] 2 SLR 1093 at [33].
[3] *Yong Vui Kong v Public Prosecutor* [2015] 2 SLR 1129 at [26]-[38] (Court of Appeal)

2. Status of International Law in Singapore Domestic Law

The courts have addressed the question of the status of international law in Singapore domestic law. They recognised Article 38 of the Statute of the International Court of Justice as an authoritative statement of the sources of international law, clearly distinguishing between primary sources and subsidiary methods for determining the existence of universally binding customary international law (CIL).[4] Arguments based on *lex ferenda* or "soft law", such as the *Beijing Statement of Principles of the Independence of the Judiciary* in the LAWASIA Region which contains non-specific statements underscoring the importance of the judicial role in securing rights, are discounted for this purpose.[5] However, Singapore the Attorney-General has still cited soft international law instruments as a way to understand the scope of a constitutional liberty, such as free speech, in the field of contempt of court law.[6] The intent is to promote a form of legal reasoning which engages domestic courts in dialogue with cosmopolitan values.

As far as binding international law is concerned, the status of a norm is shaped by whether it is a conventional or customary international law obligation. Treaty obligations will have the status of primary or subsidiary legislation, depending on which form is adopted. For example, in seeking to give effect to the *UN Convention on Contracts for the International Sale of Goods*, the domestic *Sale of Goods (United Nations Convention) Act* (Cap 283) provided that the Convention provisions "prevail over any other law in force in Singapore to the extent of any inconsistency." This ranks convention provisions over other statute law. So too, the *United Nations Act* (Cap 339), which seeks to enable Singapore to fulfill its Article 41 United Nations Charter obligations (to give effect to certain security council resolutions which are binding under chapter VII), is conscious of preserving constitutional supremacy (Article 4 of the Singapore Constitution) in providing that any regulations under the Act will not be invalid because it is inconsistent "with any written law other than the Constitution,"[7]

As far as customary international law norms (CIL) are concerned, the courts have accepted that CIL norms can apply in Singapore law without legislative intervention, provided these have been established as CIL by satisfying the tests of "extensive and virtually uniform" state practice and *opinio juris*.[8] So for example, while Article 5 of the *Universal Declaration on Human Rights* (which prohibits torture) was found to be a CIL norm, Article 17 (relating to the right of property) was not CIL given 'widespread state practice allowing for collective sales by majority vote.'[9] Multilateral treaties may also embody CIL norms.[10] Notably, CIL rules do not automatically apply as part of Singapore law: without judicial recognition, they are they are 'merely floating in the air' until 'applied as or definitively declared to be part of domestic law by a domestic court.'[11] This suggests "a dualist orientation towards

[4] *Yong Vui Kong v PP* [2010] 3 SLR 489 at [98].
[5] It was invoked in *PP v Nguyen Tuong Van* [2004] 2 SLR 328 but Kan J found it did not assist defence counsel's argument that mandatory death sentences were illegal: [99]-[100]
[6] The privately authored Universal Declaration on Human Responsibilities was cited to support a stricter test for contempt of court in *AG v Hertzberg Daniel* [2009] 1 SLR (R) 1103 at [11]. Notably, Singapore's first Prime Minister Lee Kuan Yew was a signatory to this non-binding instrument.
[7] United Nations Act, c. 339, § 2(3).
[8] *Yong Vui Kong v Public Prosecutor* [2010] 3 SLR 489 (CA) at [98] (holding that there was insufficient evidence to indicate that international law prohibited the mandatory death penalty, which was alleged to violate the prohibition against torture, cruel and inhuman punishment under art 5, UDHR)
[9] *Chan Kin Foo v City Developments Ltd* [2013] 2 SLR 895 at [28]-[32] (the issue was whether en-bloc sales violate the right to property)
[10] E.g. the right of innocent passage through the territorial sea for non-coastal state vessels under article 28, UNCLOS: *The Trade Resolve* [1994] 4 SLR 424 at [23] (High Court); the 'moving frontier' rule in relation to state succession embodied under art 29, Vienna Convention on the Law of Treaties and art 15, Vienna Convention on Succession of States in respect of Treaties: *Sanum Investments Ltd v Government of the Lao People's Democratic Republic* [2016] 5 SLR 536 at [47]-[49] and the right of consular access under art 36(1) Vienna Convention on Consular Relations: *Public Prosecutor v Nguyen Tuong Van* [2004] 2 SLR 328 at [31]-[37].
[11] *Yong Vui Kong v Public Prosecutor* [2010] 3 SLR 489 (CA) at [90].

CIL and domestic law, with a monist sensibility insofar as the courts can directly apply CIL without legislative intervention."[12]

CIL rules are received as part of Singapore common law and do not enjoy constitutional rank, such that domestic statutes prevail over CIL norms.[13] Even if there was a CIL norm prohibiting the death penalty as a form of inhuman punishment, the rank of received CIL norms as common law norms could not displace the *Misuse of Drugs Act*, as statutes are higher order laws. The Court of Appeal has made this clear by applying a strict dualist logic, finding that otherwise the views of other states could dictate the meaning of the Singapore Constitution 'regardless of what the people of Singapore, expressing their will through their elected representatives, think.'[14] The Court of Appeal found no reason why a norm which enjoyed the highest status under one legal system should enjoy similar status within another legal system, which supports a positivist view of consent-based international obligation. It noted even if Singapore were to adopt a monist system, this in itself did not address the issue of ranking and normative priority, in the event of a conflict.[15] Thus, a peremptory norm, such as the prohibition against torture, would not automatically acquire the status of a constitutional norm when transposed into domestic law; *jus cogens* norms cannot override domestic statutes, as distinct from the practice in other jurisdictions.[16]

It is clear that in the event of a clash between international and national law, national law prevails,[17] although the state in breaching international law will still incur state responsibility on the international plane, which is considered "a distinct and separate matter."[18] Domestic law is clearly ranked over treaties and international agreements.[19] Thus, apart from legislative incorporation, international treaty law has minimal effect on the domestic legal system of Singapore.

3. Singapore: Implementing Treaty Obligations

(a) National Courts

In terms of interpretation, Singapore courts will refer to treaties or *travaux preparatoires* to shed light on the meaning of implementing primary or subsidiary legislation, as section 9A(2)(3) of the Interpretation Act permits. [20] Courts generally operate along the lines of a presumption of concordance, in interpreting Singapore law in a manner consistent with Singapore's international legal obligations, as far as possible.[21] However international law, such as human rights law, cannot be read into the Constitution where the text and constitutional history militates against this; interpreting the text is sharply distinguished from changing the text by legislative amendment.[22] There has been judicial reference to human rights treaties that Singapore is party to, such as the *Convention on the*

[12] Thio, *A Treatise on Singapore Constitutional Law* (Academy Publishing, 2012) at 602
[13] *Nguyen Tuong Van v PP* [2005] 1 SLR (R) 103 at [44] (citing *Chung Chi Cheung v The King* [1939] AC 160)
[14] *Yong Vui Kong v PP* [2015] 2 SLR 1129 at [32] and [38](Rejecting the argument that a domestic court may rely on peremptory rules to overturn parliamentary legislation.
[15] *Yong Vui Kong v PP* [2015] 2 SLR 1129 at [37]
[16] *Re Victor Pinto* (13 March 2007, Supreme Court of Chile) Case No 3125-04 (Official Case No) ILDC 1093 (CL 2007) (prohibition against torture invalidated a domestic amnesty law).
[17] Chao JC, *Tan Ah Yeo v. Seow Teck Ming* [1989] 1 SLR (R) 134 (High Court) at [13]-[14]
[18] *Tan Ah Yeo v. Seow Teck Ming* [1989] 1 SLR (R) 134 (High Court) at [16]
[19] In *PP v. Salwant Singh s/o Amer Singh*, [2003] SGDC 146 (District Court), an international agreement which sought to stipulate the maximum terms of imprisonment a foreign national which Singapore wanted to extradite and try was found to violate article 93 of the Constitution, which vests judicial power in independent courts. The executive agreement was found to contravene judicial sentencing powers.
[20] Interpretation Act, 1985, (Cap 1). See *The Sahand*, [2011] 2 SLR 1093 (High Court) at [6].
[21] *Yong Vui Kong v PP* [2015] 3 SLR at [59]
[22] For example, the 1966 Constitutional Commission had considered including a clause prohibiting torture and inhuman punishment in the constitutional text, but this was not eventually adopted, even if it was unclear why. As such, this prohibition could not now be read into "law" in article 9, which provides that no one shall be deprived of life or liberty save in accordance with the law: *Yong Vui Kong v PP* [2010] 3 SLR 489 at [p74]-[75]

Rights of the Child; however, this was not for the purpose of founding a cause of action, but to point out consistency between an international standard and domestic law.[23]

Courts have imposed heavy sentences for breaches of statutory offences enacted to give effect to treaty obligations, to demonstrate Singapore's commitment to a treaty. For example, in relation to the *Convention on International Trade in Endangered Species of Wild Fauna and Flora* (CITES), which Singapore gave effect to by the *Endangered Species (Import and Export) Act*,[24] the courts have found that possessing endangered birds without import permits "went against the spirit" of Singapore's CITES commitment to co-operate with other countries, warranting deterrent sentencing.[25]

(b) Executive Policy and Treaties: Implementation and Activation

In becoming parties to treaties, the Singapore approach is take its treaty obligations seriously and to only become a party to conventions which serve Singapore's interests, and where the domestic legal framework is able to comply with international obligations; where there is doubt in this respect, further studies are taken of a convention while adjustments to policies may be made to accord with the 'spirit of the Convention'.[26] Singapore may also take inspiration from treaties that Singapore is not party to, and draw on them as "good practice" in formulating domestic policy or in drafting legislation.[27] Even if Singapore is not party to a treaty, in practice, many polices have already been designed to be compliant with treaty standards.[28]

The Singapore Government adopts a wide range of methods to implement treaty obligations, ranging from binding legislation to programmes and other non-binding 'soft law' measures which focus on educative and compliance promoting methods. The method of implementation adopted may turn on the type of activity being regulated and the nature of the obligations imposed.

Implementation through Legislation

When it comes to treaties viewed as serving the national interest, strenuous efforts are made for rapid accession and legislation to give domestic effect to the treaty. For example, the *Singapore Convention on Mediation (SCM) Bill* was designed to implement the *UN Convention on International Settlement Agreements Resulting from Mediation*, with the entire text of the Convention included in the law's schedule. Singapore played a major role in developing the Convention and in demonstrating leadership in "international rule of law efforts.[29] The relevant Minister declared in Parliament that Singapore aimed to be amongst the first countries to ratify the Convention and would take steps to do so after the SCM Bill was passed. Steps have been taken to promote the Convention by Singapore hosting workshops to provide other countries with information about domestic implementation and to assist the ratification process. The Government has also undertaken local outreach efforts to promote the Convention to the business and legal communities as well as schools.

[23] *CX v CY (minor: custody and access*), [2005] 3 SLR (R) 690 at [26], pointing out that article 18 endorses joint parental responsibility for raising children, which is reflected in article 46(1), Women's Charter.
[24] Endangered Species (Import and Export) Act, 2008, c. 92A.
[25] *PP v. Kuah Kok Choon,* [2000] 3 SLR(R) 752 (HC), at [30].
[26] Mrs Josephine Teo (Minister for Manpower), 94 SPR, 8 May 2019 (Singapore's Abstention from Vote on ILO Convention on Workplace Violence and Harassment). A concern was that Convention 190 sought to include domestic violence in workplace risk assessments, which was controversial.
[27] For example, the government has stated that it considers the standards in ILO Convention No 111 (Discrimination (Employment and Occupation) Convention, 1958) in tackling workplace discrimination: Dr Tan See Leng (Minister for Manpower), 95 SPR 26 July 2021, (Ratification of ILO Discrimination (Employment and Occupation) Convention 1958 (No 111)
[28] K Shanmugam, 92 SPR 7 July 2014 (Ratifying with Reservations Major Human Rights Treaties and Conventions)
[29] Edwin Tong Chun Fai (for Minister for Law) 94 SPR, 3 Feb 2020 (Singapore Convention on Mediation Bill)

The rush to implement international treaties has not been as evident in the field of international human rights law, where a more cautious approach is taken. Accession is first preceded by a careful review of national laws and policies and will proceed "when it is in our interest to do and when we are fully satisfied that we can give effect to its provisions."[30] Where a human rights treaty contains provisions contrary in some respect to Singapore law and policy, it is unlikely that Singapore will accede to that treaty. For example, it has reservations about specific provisions of the *International Covenant on Civil and Political Rights*, in relation to corporal and capital punishment, and is therefore unlikely to accede.[31] To accommodate cultural and religious minority rights, Singapore has made reservations to various human rights treaties such as the *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW) and the *Convention on the Rights of the Child* (CRC), acceding to both in 1995. Thus, unequal gender laws in relation to Muslim family and personal law under the *Administration of Muslim Law Act* (Cap 3) are immunized from Article 2(f) of CEDAW. This truncates the transformative impact that human rights treaties might otherwise have on domestic law,[32] although Singapore has subsequently removed reservations to human rights treaties, to pave the way for amending the Constitution to implement gender equality in relation to nationality laws. [33]

There appears to be a presumption that Singapore law is consistent with any human rights or labour treaty that is acceded to. As such, treaties do not provide a basis for law reform or transformational impetus. When Singapore acceded to the CRC, [34] the Government considered it was not accepting any rights "going beyond the limits" prescribed in the Singapore Constitution[35] or accepting obligations to introduce new rights as Singapore laws provided "adequate protection and fundamental rights . . . in the best interests of the child."[36] Accordingly, no dedicated child rights legislation was adopted to give effect to the CRC.

This approach reflects the executive presumption that Singapore law is consistent with standards in an international treaty which deal with individual rights, to which it becomes a party. For example, in relation to a parliamentary question asking why the *Internationally Protected Persons Bill*, enacted to give effect to the *Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons*,[37] omitted the Article 9 fair trial clause, the response was that this would be unnecessary as anyone prosecuted under the Act "would be entitled to the rights of due process guaranteed under the Constitution and our other laws."[38]

Some international agreements are couched in the form of obligations to engage in inter-state negotiations to reach a political consensus and to facilitate cooperation. This does not require a

[30] Prof S Jayakumar (Minister for Foreign Affairs), 69 SPR, 30 June 1998, col 539 (Accession to Human Rights Treaties)
[31] 84 SPR 28 Feb 2008) (Budget: Head N - Ministry of Foreign Affairs), col. 1206,
[32] Li-ann Thio, 'Reception and Resistance: Globalisation, International Law and the Singapore Constitution', (2009) 4(3) National Taiwan University Law Review 335-86 at 353.
[33] In 2004, Singapore removed its reservation to article 9(2) of CEDAW after equalizing nationality rights by amending article 122 of the Singapore Constitution to allow Singapore women married to foreign men to transmit citizenship by descent to their children. This was previously restricted to Singapore men. This initiative was less about gender egalitarianism and more pragmatic in reaction to the decline of birth rates in Singapore: see 77 SPR , 14 April 2004 (Constitution of the Republic of Singapore (Amendment) Bill), col 2792 at 2797-2798. Proposals to include 'gender' as a ground prohibiting discrimination have thus far been rejected, on the basis that discrimination against women would be covered under article 12(1), the general equal treatment clause:
[34] Convention on the Rights of the Child, G.A. Res. 44/25, Annex, U.N. Doc. A/44/49, at 167 (Nov. 20, 1989). Singapore acceded to the CRC in 1995.
[35] Instrument of Accession, Convention on the Rights of the Child at [3] (2 October 1995).
[36] Instrument of Accession, Convention on the Rights of the Child ¶ 3 (Oct. 2, 1995).
[37] Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, opened for signature Dec. 14, 1973, 1035 U.N.T.S. 167; 28 U.S.T. 1975 (*entered into force* Feb. 20, 1977).
[38] *Singapore Parliamentary Debates*, *Official Report* (6 March 2008) vol 84 at col 2447 "Internationally Protected Persons Bill" (Zainul Abidin Rasheed, Senior Minister of State (Foreign Affairs)).

domestic legal framework, as such agreements operate at the inter-state level, through quiet diplomacy, and do not require strong enforcement mechanisms. [39] In contrast, some international agreements require domestic legal controls to empower national agencies to ensure compliance with treaty obligations and to provide enforcement powers. For example, the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal was domesticated through the *1998 Hazardous Waste (Control of Export, Import and Transit) Act*, which introduced fines for a range of hazardous waste offences by companies.[40]

When it comes to trade, commerce and other economic initiatives, the object is usually to align with international standards through facilitative legal harmonisation to promote international trade and dispute settlement. This is usually done through binding domestic legislation. For example, the *1994 International Arbitration Act* (Cap 143A) incorporates the *UNCITRAL Model Law on Commercial Arbitration* which buttresses Singapore's position as a significant regional arbitration centre. With respect to protecting intellectual property rights, now considered key to the external economy, the 1998 *Trade Marks Act* (Cap 332) was enacted to give effect to Singapore's obligations under the *Agreement on Trade-Related Aspects of Intellectual Property Rights* (1994).[41]'

In the realm of terrorism and security, Singapore has given effect to international conventions through primary legislation[42] and has deployed subsidiary legislation to give rapid effect to various binding United Nations Security Council resolutions. Nonetheless, the Government has sometimes taken its time after signing a treaty to formally ratify it. For example, *the International Convention for the Suppression of Acts of Nuclear Terrorism* was signed in 2006 but not given effect by statute until 2017. In the interim, the Government conducted detailed capabilities studies to identify and develop the necessary operational capabilities to deal with the illicit use of nuclear and radioactive materials in Singapore.[43] Ratifying the convention was seen as a step towards joining the international community in its joint combat against terrorism, both locally and internationally.

Where existing legislation and administrative measures do not suffice to give effect to new international obligations, new legislation is usually adopted to "overcome any possible lacuna that would prevent Singapore from effectively fulfilling our obligations". For example, the 2001 United Nations Act (Cap 339) was passed to give effect to the UN Charter and empowers the Law Minister to adopt regulations to give effect speedily to UN Security Council resolutions (UNCSR) relating to wide-ranging non-forcible measures adopted under Article 41 of the UN Charter. For example, UNSCR 1373 was issued in the aftermath of the twin towers bombing in New York, and implemented by a regulation issued under the UN Act which requires all states to criminalise the collection of funds by Singapore

[39] Notably the government in 2014 adopted the Transboundary Haze Pollution act designed to enable the exercise of extra-territorial jurisdiction, based on the objective territoriality principle, making it an offence any Singaporean or non-Singaporean entity to cause or contribute to transboundary haze pollution in Singapore: 92 Singapore Parliament Reports, Transboundary Haze Pollution Bill, 8 April 2014.

[40] 94 SPR, 2 March 2020, Hazardous Waste (Control of Export, Import and Transit) (Amendment) Bill

[41] *Novelty Pte Ltd v Amanresorts Ltd* [2009] 3 SLR(R) 216 at [162] (CA).

[42] E.g. the Terrorism (Suppression of Financing) Act gave effect to the International Convention for the Suppression of the Financing of Terrorism which Singapore signed on 18 December 2001. The Act was adopted within a year months: 75 SPR, 7 August 2002 (Terrorism (Suppression of Financing)) Bill, cols 77ff. It sets out provisions for how terrorist property may be subject to warrants for search and arrest issued by a High Court judge, frozen or confiscated. The Convention also serves as an extradition treaty for terrorist financing offences between Singapore and other state parties. As of 2020, 11 individuals were charged under the Act and fined amounts ranging from $60-$1200: 94 SPR 2 March 2020, Number and Proportion of Singaporeans charged with offenders under Terrorism (Suppression of Financing) Act.

[43] Although it saw the threat of nuclear and radioactive attacks as remote in Southeast Asia as regional terrorist groups lacked the capacity to build nuclear devices, the threat assessment was enhanced given the rise of ISI which heightened the global terrorist threat using nuclear devices, Singapore in 2017 declared it was ready to ratify and give domestic effect to the 2005 International Convention for the Suppression of Acts of Nuclear Terrorism through the 2018 Terrorism (Suppression of Misuse of Radioactive Material) Bill, 94 SPR, 8 May 2017

citizens outside Singapore for criminal or terrorist activities outside Singapore. Other regulations implemented UNSCR 1737 requiring all states to freeze the assets owned by specific entities associated with supporting Iran's nuclear proliferation activities.[44] In this way, Singapore discharges its role as a responsible member of the international community. The Government is aware that inadequacies of domestic law are no excuse for failing to perform international obligations.[45]

Domestic legislation has also been resorted to, in order to give effect to treaty obligations to criminalise certain crimes, provide mutual legal assistance and or to enable criminal procedures necessary to establish some type of quasi-universal jurisdiction to ensure there is no safe haven against perpetrators of certain offences, e.g. the *UN Personnel Act* (2011)[46] (to implement the *Convention on the Safety of the United Nations and Associated Personnel* for offences committed in Singapore), the *Hostage Taking Act* (2010) (to implement the *International Convention against the Taking of Hostages*). These laws operate domestically to facilitate international cooperation in the investigation, prosecution and extradition of certain transnational offences.[47]

Beyond Legislation: Non Legalistic Approaches

With respect to certain treaties, such as with respect to labour law standards in ILO Conventions or human rights issues, the Government has demonstrated a preference to implement these obligations through non-binding guidelines and informal methods of complaint and dispute resolution. For example, *ILO Convention No. 100 (Equal Remuneration for Men and Women)* is implemented by the non-binding 2002 Tripartite Declaration between the Ministry of Manpower, Singapore National Employers Federation and National Trade Unions Congress. This is an aspirational commitment to the principle of equal pay for equal work, complemented by educative measures to promote fair labour standards. Complaints of non-compliance can be made to the Tripartite Alliance for Fair and Progressive Employment Practices (Tafep), and where there is evidence of discrimination, the matter is escalated to the Ministry of Manpower (MOM), which can take enforcement action and impose penalties against errant employers.[48] While MOM advisories are not legally-binding they are in practice closely scrutinized by MOM[49] in terms of proactive checks on discriminatory hiring practices. Sanctions may be imposed, in the form of suspending work pass privileges and through MOM warnings, with Tafep advising employers on the required rectifications.[50]

When Singapore became party to the *Convention on the Elimination of Racial Discrimination* (CERD) in November 2017, which reflected "our commitment to preserving a multiracial society where every person is equal before the law, regardless of race or religion," it attached a declaration to the effect that the Article 2(1)(d) obligations[51] to end racial discrimination by any person, group or organization could be "implemented by means other than legislation if such means are appropriate, and if legislation is not required by the circumstances." No new laws were introduced, although an Inter-

[44] E.g. the Monetary Authority of Singapore (Sanctions and Freezing of Assets of Persons – Iran) Regulations 2007 (S 104/2007) ("the MAS Regulations") and the United Nations (Sanctions – Iran) Regulations 2007 (S 105/2007) ("the UN Regulations"). See *The Sahand* [2011] 2 SLR 1093 at [26].
[45] Prof S Jayakumar (Minister for Law and Foreign Affairs), 73 SPR 15 Oct 2001 (United Nations Bill) col 2436 at 2443
[46] 87 SPR 3 Oct 2011 (United Nations Personnel Bill). This Bill extends Singapore's jurisdiction to dael with specific crimes against UN workers outside Singapore, to promote UN workers and their work in various global missions, as "a responsible member of the international community".
[47] 87 SPR 16 August 2010, Hostage Taking Bill col 893
[48] 95 SPR 26 July 2021, Ratification of ILO Discrimination (Employment and Occupation) Convention, 1958 (No 111)
[49] List of tripartite guidelines and advisories: https://www.mom.gov.sg/employment-practices/tripartism-in-singapore/tripartite-guidelines-and-advisories
[50] Oral Answer by Minister of State for Manpower Ms Gan Siow Huang to PQ on Employment Discrimination, MOM website, 5 March 2021 at https://www.mom.gov.sg/newsroom/parliament-questions-and-replies/2021/0304-oral-answer-by-minister-of-state-ms-gan-siow-huang-to-pq-on-employment-discrimination
[51] UN Treaty Collection, ICERD: https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-2&chapter=4&clang=_en#EndDec

Ministerial Committee monitors Singapore's progress in combatting racial discrimination and promoting awareness, with civil society organizations, of CERD norms. Existing laws designed to safeguard racial and religious harmony, and to protect minorities are considered sufficient to the task. Similarly, when Singapore acceded to the *Convention on the Rights of Persons with Disabilities* in 2013, it did not adopt legislation but sought to give effect to these values and a more inclusive society through 'Enabling Masterplans,' formulated in consultation with civil society and a Standing Committee on Disabilities coordinating inter-Ministerial disability-related policies and activities.[52]

The decision to approach these issues through policy rather than legal obligation has been consistently criticized by UN committees which urge Singapore to adopt a more legalistic approach, such as through incorporating CEDAW as part of national legislation or creating dedicated national mechanisms to deal with the advancement of women[53] and children.[54] Rather than comprehensive laws incorporating human rights treaties, discrete amendments to existing laws are presented as fulfilling treaty obligations; for example, the criminalisation of commercial sex with minors was said to be 'in line' with the CRC.[55] Domestically, it mainly falls to Parliament and civil society to ensure compliance with treaty standards through political means, rather than through judicial review.

4. Conclusion

The Singapore constitutional order provides broad discretion to the Executive branch in deciding what treaties to become party to and what sort of reservations to attach to them. Although domesticating legislation passes through the legislative branch, this is controlled by Cabinet, which currently controls more than a 2/3 parliamentary majority. Singapore chooses to be both intensively engaged with international law, but also to insist on local particularities, depending on its national interests. While the Singapore Government is cooperative where it comes to matter like trade, the environment, security, terrorism and transnational crimes, underscoring its responsibilities as a responsible member of the international community, it is more reticent in relation to public law matters like civil liberties and human rights when divergent standards, suspicions of politicization and global margins of appreciation shape the contours of international discourse.

The hierarchical superiority of the Constitution and statutes in relation to international norms which are domestically received provide courts great latitude not to give effect to international rules. Even if CIL rules are received as common law rules by judicial recognition (a form of state consent), even if they enjoy peremptory status, they cannot invalidate statutes. This approach consolidates state sovereignty based on the Westphalian model rooted in territorial integrity and the non-interference of states in domestic affairs. In this conception, international law is applied, provided it neither conflicts with national law nor thwarts national goals. A nationalist-oriented constitutional order allows international standards to be embraced within a project of legal harmonization, or rebuffed, as part of a project of legal resistance, which may itself be an expression of constitutional autochthony.

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[52] Initial Report, Singapore, Implementation of the Convention on the Rights of Persons with Disabilities, CRPD/C/SGP/1 (June 2016).
[53] CEDAW Committee, Concluding Observations: Singapore, CEDAW/C/SGP/CO/4 (10 Aug 2011), paras. 10, 12, 18.
[54] CRC Committee, Concluding Observations: Singapore, CRC/C/SGP/CO/2-3 (4 May 2011), paras. 9, 15.
[55] Ho Peng Kee, 83 Singapore Parliament Reports, 22 Oct 2007 at col 2175, referenced in *Tan Chye Hin v PP* [2009] 3 SLR 873 at [9].