

JURISDICTIONAL BRIEFS FOR INTERNATIONAL JUSTICE IN ASIA

Singapore



The following document surveys legal avenues that *may* be available to survivors of international crimes, specifically in **Singapore**. It includes a summary of the Singapore legal system and a review of potentially useful legislation and case law.

Nothing in this brief constitutes legal advice or an endorsement of particular legal services.

Please seek advice from legal professionals qualified in the relevant domestic jurisdiction.

Links to legislation are up-to-date at the time of writing and links to judicial decisions are provided for reference only. Please consult official versions of legislation or decisions.

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Practitioner Summary



Customary International Law May Be Applicable In Domestic Courts, But Only If Incorporated In Domestic Legislation Or Judicially Recognised.

The Constitution of Singapore does not explicitly recognise the relevance of customary international law. Because Singapore is a common law system, customary international law may be received through the common law, but this is only to the extent that it is not contrary to domestic statute.

Singapore Has Criminalised Grave Breaches And Genocide, But Is Reluctant To Recognise Universal Jurisdiction For All International Crimes.

The Geneva Conventions Act 1973 incorporates grave breaches of the Geneva Conventions into Singapore's criminal law with Section 3(1) indicating that Singapore can exercise universal jurisdiction over offences given in the Act. Genocide has also been incorporated in the Penal Code 1871, but Penal Code Section 4A only provides extraterritorial jurisdiction where the act has been committed by a citizen or permanent resident. Singapore is not a member of the International Criminal Court.

Domestic Safeguards For Singapore's Role In Global Business May Provide Opportunities For Accountability.

Singapore has enacted several statutes to protect the integrity of its role as a strategic trade and economic hub in Southeast Asia; some statutes may be relevant for individuals and corporations involved in the movement of arms used in atrocity crimes. For example, the Strategic Goods (Control) Act 2002 (SGCA) restricts the import, export, and transit of military and dual-use goods and technology. The SGCA makes it an offence to both move restricted goods (Section 5) and to 'arrange or negotiate' a contract for the movement of restricted goods (Section 6). Under Penal Code Section 11, corporations may be held criminally liable, but criminal prosecutions of corporations are rare.

Acquiring, Using, or Transferring Gains Made From Criminal Conduct—Including Transnational & International Crimes—Is An Offence.

The Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act 1992 makes it an offence, amongst others, to acquire, possess, use, conceal or transfer benefits from 'criminal conduct' (Section 54). The definition of 'criminal conduct' includes all conduct listed in the Act's Second Schedule including genocide, trafficking in persons, trafficking in arms, and contravention of United Nations Security Council sanctions. Moreover, it is an offence to fail to disclose the existence of property that one knows or reasonably suspects is related to criminal conduct when that knowledge or suspicion came about because of the person's work (Section 45(1)). This may not be relevant to accountability for direct perpetrators of atrocity crimes, but may be relevant to individuals and corporations who benefit from supporting such conduct.

Singapore's legal system is a common law system.

Article 4 of the Singapore Constitution provides that the Constitution is the supreme law of Singapore. Subordinate to the Constitution is legislation (including subsidiary legislation) and case law (see Article 2(1)). The doctrine of stare decisis applies, and while not binding, case law from England and Wales and more broadly the Commonwealth may be persuasive in aiding interpretation of statutes or domestic case law.

Part 4 of the Constitution lists Fundamental Liberties, some of which are applicable to non-Singaporean nationals. This includes Article 12(1) which states that, '[a]ll persons are equal before the law and entitled to equal protection of the law'.

This has been publicly interpreted by the Government to mean 'that everyone has equal access to the legal system in Singapore to seek redress for grievances' and that '[n]o one is denied access to the courts on grounds such as religion, race, descent or place of birth'.

Note, however, to seek redress for the violation of a right, that right must be recognised and enforceable under Singapore law.

Criminal offences are largely laid out in the Penal Code 1871 (Penal Code), which is based on the Indian Penal Code and closely related to the Malaysian Penal Code. Because of this, reasoning in Indian and Malaysian common law based on similar crimes may be persuasive.

Criminal procedure is governed by the Criminal Procedure Code 2010. There is no statute of limitations or prescription period for criminal offences.

The presence of the accused is generally required in criminal matters. However, under Criminal Procedure Code Section 156 and in the absence of the accused, the court has the discretion to proceed *ex parte* to hear and determine a complaint in limited circumstances (see especially Section 156(a)).¹

Civil wrongs, such as tort, are largely governed by common law. However, the Civil Law Act 1909 provides some statutory codification—including a right of action for wrongful acts causing death (Section 20).

Civil procedure is governed by the Rules of Court 2021, under the Supreme Court of Judicature Act 1969.

For up-to-date statutes and regulations, see Singapore Statutes Online, a government website providing free online access to Singapore legislation.

1. See Jennifer Marie and Mohamed Faizal Mohamed Abdul Kadir (eds), *The Criminal Procedure Code of Singapore - Annotations and Commentary* (Academy Publishing 2012) [08.052].

Part 8 of the Constitution vests the judicial power of Singapore in the Supreme Court and subordinate courts. The courts in Singapore have jurisdiction over three main types of law: criminal law; civil law; and family law.

The **Supreme Court** hears civil cases and criminal cases. The Supreme Court consists of:

- The **Court of Appeal**, which is the highest court in the country. The Court of Appeal hears all criminal appeals against decisions made by the General Division as well as certain categories of civil appeals as required by statutory law;
- The **General Division of the High Court**, which hears criminal matters, including those punishable with death or an imprisonment term exceeding 10 years and civil matters where the value of the claim exceeds S\$250,000. It also hears appeals from the State Courts, appeals from tribunals, and certain matters that must be commenced in the General Division (such as admiralty and bankruptcy proceedings). The High Court has the power to issue a mandatory order, a quashing order, a prohibiting order, or an order for review of detention.² These are collectively known as 'prerogative orders';
- The **Appellate Division**, which does not have criminal jurisdiction, but hears civil appeals that are not allocated to the Court of Appeal and any civil appeals or other processes that statutory law requires to be heard by the Appellate Division; and
- The **Singapore International Commercial Court** (SICC), which was established in 2014. Under Section 18D of the Supreme Court of Judicature Act 1969, the SICC has jurisdiction if: (1) an action is international and commercial in nature; (2) it is one that the General Division may hear and try in its original civil jurisdiction; and (3) the action satisfies other conditions as prescribed in the Rules of Court including that the relief sought is not a prerogative order. The SICC may hear matters of commercial arbitration and banking and financial disputes.

The lower tier in the judicial hierarchy includes the State Courts, the Family Justice Courts, and the Syariah Court (which adjudicates specific personal legal matters under Islamic law).

The **State Courts** hear civil cases and criminal cases and comprise the District Courts, Magistrates' Courts, Coroners' Courts, Small Claims Tribunals, Community Disputes Resolution Tribunals and Employment Claims Tribunals.

More specifically for this brief:

- **Magistrates' Courts** will be the court of first instance in criminal matters, where the conduct alleged is punishable by fine only or where the maximum term of imprisonment does not exceed 5 years (Criminal Procedure Code, Section 7(1)). In civil matters, the Magistrates' Courts can hear civil claims not exceeding S\$60,000, although claims under S\$20,000 may be heard in Small Claims Tribunals.
- **District Courts** may be the court of first instance for criminal matters where the conduct alleged is punishable by a fine only or where the maximum term of imprisonment does not exceed 10 years (Criminal Procedure Code, Section 8(1)). In civil matters, District Courts can hear claims between S\$60,000–S\$250,000, and in some instances up to S\$500,000.

2. Halsbury's Laws of Singapore Constitutional Law (Volume 6(3))(LexisNexis 2020) [78.380].

The State Courts handle about 80% of the overall caseload and around 90% of the total criminal caseload in Singapore.

International Obligations & Domestic Law

Relevance Of International Law In The Domestic System

Singapore adopts a dualist approach with respect to international law and domestic (or municipal) law.³ The dualist approach regards international law and domestic law as separate legal systems. This means that international law does not have legal effect in Singapore unless it is expressly incorporated into Singapore's domestic legislation or definitively pronounced to be part of Singapore law by the judiciary.⁴

Process For Concluding Treaties

The Constitution does not state which branch of government is responsible for concluding or entering into a treaty. However, in keeping with the British Westminster-model, the Executive enters into treaties by virtue of powers granted to it under Constitution Article 23.

The Executive does not need Parliament's consent to enter into treaties. As noted by Leng, Mohan, and Lim:

Parliament's consent is not sought or deemed to be required, and the executive branch has not been challenged in its exercise of the treaty-making power. It is therefore accepted as a matter of practice that whether there is a treaty in force between Singapore and a particular foreign State, is, or should be, settled by the Executive [as in the case of] *Attorney-General v Elite Wood Products (Australia) Pty Ltd and another* [1992] 1 SLR(R) 929 at 937.

In that case, the Court of Appeal took the view that the question whether an extradition treaty is in force between Singapore and a particular foreign State for the purposes of the Extradition Act ([Chapter] 103), and therefore whether Part II of the Act applies, should be settled by the Executive branch, and that the Court should not be concerned with the question whether a treaty subsists between Singapore and any State.

3. Halsbury's Laws of Singapore Constitutional Law (Volume 6(3))(LexisNexis 2020) [78.400].

4. Public Prosecutor v Tan Cheng Yew [2012] SGHC 241 at [56].

Relevant Treaties To Which Singapore Is A Party

- The four Geneva Conventions, acceded to in 1973;
- The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), acceded to in 1995;
- The Convention on the Prevention and Punishment of the Crime of Genocide (Genocide Convention), acceded to in 1995;
- The Convention on the Rights of the Child (CRC), acceded to in 1995, and the Optional Protocol to the Convention on the Rights of the Child on the involvement of Children in Armed Conflict (CRC-OP), acceded to in 2008;
- Convention on the Rights of Persons with Disabilities (CRPD), acceded to in 2013; and
- The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), acceded to in 2017.

Relevant Treaties To Which Singapore Is Not A Party

- Additional Protocol I to the Geneva Conventions
- Additional Protocol II to the Geneva Conventions
- Refugee Convention
- International Covenant on Civil and Political Rights
- International Convention on Economic, Social and Cultural Rights
- Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment
- Convention for the Protection of All Persons from Enforced Disappearances
- Rome Statute

Singapore is a Party to the Association of Southeast Asian Nations (ASEAN) Charter. Although ASEAN is a regional body largely focused on economic cooperation, the Charter does state one purpose of ASEAN is 'to strengthen democracy, enhance good governance and the rule of law, and promote and protect human rights and fundamental freedoms, with due regard to the rights and responsibilities of Member States of ASEAN' (Article 1(7)).

To this end, Singapore has endorsed the non-binding ASEAN Declaration of Human Rights and maintains a representative on the ASEAN Intergovernmental Commission on Human Rights.

Singapore has rich experience in legally holding individuals to account for atrocities committed during World War II. This includes trials held in Singapore regarding war crimes committed not only within Singapore, but also in the Andaman and Nicobar Islands (India), Brunei, Cambodia, Indonesia, Malaysia, Myanmar, Palau, Papua New Guinea, Thailand, and Vietnam.

For more on the history, processes, and outcomes of the Singapore Trials, see: <https://www.singaporewarcrimestrials.com>.

Application Of International Law

Treaty Application

While the Executive may enter into a treaty, Parliament must incorporate treaty obligations into domestic law before rights and duties are created.⁵ This is the case even where the failure to incorporate treaty obligations in domestic law is itself a treaty breach under international law. Where incorporation does occur, Section 9A(3)(e) of the Interpretation Act 1965 permits the use of treaties and their travaux preparatoires for interpreting meaning in the related implementing statutes.

Notably, domestic legislation that is explicitly contrary to treaty obligations takes precedence, even where it violates treaty obligations. The High Court noted this to be the case in Public Prosecutor v Tan Cheng Yew and another appeal (Tan Cheng Yew), citing favourably Diplock LJ in the English Court of Appeal decision of Salomon v Commissioners of Customs & Excise [1967] 2 QB 116 at (143E):

If the terms of [domestic] legislation are clear and unambiguous, they must be given effect to, whether or not they carry out Her Majesty's treaty obligations, for the sovereign power of the Queen in Parliament extends to breaking treaties... and any remedy for such a breach of an international obligation lies in a forum other than Her Majesty's own courts... [emphasis added by the Singapore High Court].⁶

However, Singapore's unincorporated treaty obligations are still relevant for purposes of interpretation. The High Court in Tan Cheng Yew continued by citing Diplock LJ's decision in Salomon as above:

*...But if the terms of the legislation are not clear but are reasonably capable of more than one meaning, the treaty itself becomes relevant, for there is a *prima facie* presumption that Parliament does not intend to act in breach of international law, including therein specific treaty obligations; and if one of the meanings which can reasonably be ascribed to the legislation is consonant with the treaty obligations and another or others are not, the meaning which is consonant is to be preferred.⁷*

5. See, as cited in Lim Chin Leng, Mahdev Mohan, and Jennifer ZJ Lim, 'Singapore and International Law' Singapore Law Watch (updated July 2020), The Sahand and Other Applications [2011] 2 SLR 1093 at 1107; Yong Vui Kong v Public Prosecutor [2015] 2 SLR 1129 at 1150 (however, please note that these links are not numbered in the same way as the citation).

6. [2012] SGHC 241 at [60].

7. Ibid.

Dharmalingam, The Death Penalty, & The CRPD

Singapore is a Party to the Convention on the Rights of People with Disabilities (CRPD). At time of writing, Singapore has yet to incorporate the CRPD into domestic law.

Under the CRPD, States are obliged to protect and respect the right to life of individuals with disabilities (Article 10), and their right to be free from torture, inhuman or degrading treatment (Article 15). The Committee on the Rights of Persons with Disabilities has clarified that the CRPD prohibits imposing the death penalty on individuals whose intellectual disabilities have prevented them from putting forth an effective defence.

In 2010, Nagaenthran Dharmalingam was found guilty of trafficking drugs from Malaysia into Singapore under Section 5 of the Misuse of Drugs Act 1973 (notably Section 17 states that a presumption of trafficking applies in circumstances that were present in this case). Under the Act's Second Schedule, Dharmalingam's offence was punishable by death.

Dharmalingam was assessed by a medical expert to have an IQ of 69, indicating that he had an intellectual disability. His counsel argued that Dharmalingam was mentally incompetent, also arguing his sentence would be contrary to CRPD Article 15. However, the Singaporean Courts refused to recognise that Dharmalingam had an intellectual disability despite accepting that he had an IQ of 69. While the Court of Appeal recognised that Singapore had ratified the CRPD, it noted that even if the imposition of the mandatory death penalty on Dharmalingam contravened treaty obligations, the Court could not overturn the imposition of the mandatory death penalty purely on that basis, since the mandatory death penalty was imposed by domestic legislation.

See Court of Appeal Judgment at [57].

When considering whether and how treaties apply in Singapore's domestic law, it is helpful to consider whether Singapore has made any reservations.

For example, Singapore has entered reservations to the Genocide Convention and ICERD that, in any dispute to which it is a party, Singapore must consent before referral to the International Court of Justice.

Notably, in the case of the Genocide Convention, Norway entered a communication to the UN Secretary-General stating that such a reservation was 'incompatible with the object and purpose' of the treaty.

Customary International Law Application

Singapore courts generally accept that customary international law may be invoked as part of the common law. This was noted in Yong Vui Kong v Public Prosecutor where the Court of Appeal said:

A rule of [customary international law] therefore would not require an act of legislation in order that it be transposed into domestic law but can be recognised and declared to be part of the domestic law by the courts.⁸

However, judges cannot declare that a rule of customary international law is part of domestic law if it is contrary to an existing statutory rule enacted by Singapore's Legislature. Likewise, the Legislature can override judicially incorporated customary international law rules by enacting a statute.⁹ Thus, customary international law remains subject to the hierarchy of domestic legal sources.

Extraterritorial Application

Extraterritorial Criminal Law Application If Written In Statute

In general, Singapore's criminal law does not have extraterritorial effect unless statute clearly states that an offence applies extraterritorially.¹⁰ This is codified in Penal Code Section 3 which states:

Any person liable by law to be tried for an offence committed beyond the limits of Singapore, shall be dealt with according to the provisions of this Code for any act committed beyond Singapore, in the same manner as if such act had been committed within Singapore [emphasis added].

For a discussion of Penal Code Section 4A regarding offences against the State and genocide, please see below.

This is supported by Supreme Court of Judicature Act 1969, Section 15(1), which provides that the criminal jurisdiction of the General Division includes all offences committed:

(a) within Singapore;

..

(d) by any person on the high seas where the offence is piracy by the law of nations [see Penal Code Chapter 6A];

(e) by any person within or outside Singapore where the offence is punishable under and by virtue of the provisions of the Hijacking of Aircraft and Protection of Aircraft and International Airports Act or the Maritime Offences Act; and

(f) in any place or by any person if it is provided in any written law that the offence is triable in Singapore [emphasis added].

8. Yong Vui Kong v Public Prosecutor [2015] SGCA 11 at [29], in the same paragraph citing Yong Vui Kong v Public Prosecutor [2010] SGCA 20 at [91].

9. See Yong Vui Kong v Public Prosecutor [2015] SGCA 11 at [31]-[32].

10. See Halsbury's Laws of Singapore – Criminal Law (Volume 8) (LexisNexis 2022) [90.003A].

Relevant statutes that explicitly apply to conduct that takes place *outside* of Singapore by non-nationals of Singapore also give effect to Singapore's treaty obligations. To constrain their operation, these statutes also require that the Public Prosecutor institutes, or consent to instituting, prosecution of the offence.

A non-exhaustive list of these statutes follow:

Treaty	Act	Extraterritoriality	Public Prosecutor's Consent
<p><u>The Geneva Conventions of 1949</u></p>	<p><u>Genocide Conventions Act 1973</u></p> <p>(Discussed further below)</p>	<p>Section 3(1)</p> <p>Any person, whatever his or her citizenship or nationality, who, whether in or outside Singapore, commits, aids, abets or procures the commission by any other person of any grave breach of any scheduled Convention as is mentioned in the following Articles respectively of those Conventions...</p>	<p>Section 3(3)</p> <p>No Magistrate's Court or District Court has jurisdiction to try any offence under this Section, and proceedings for the offence must not be instituted except by or on behalf of the Public Prosecutor.</p>
<p><u>International Convention for the Suppression of the Financing of Terrorism</u></p>	<p><u>Terrorism (Suppression of Financing) Act 2002</u></p>	<p>Section 34(1)</p> <p>Every person who, outside Singapore, commits an act or omission that, if committed in Singapore, would constitute an offence, an abetment of an offence, or a conspiracy or attempt to commit an offence under Section 3, 4 or 5 is deemed to commit the act or omission in Singapore and may be proceeded against, charged, tried and punished accordingly.</p>	<p>Section 36</p> <p>A prosecution under this Act must not be instituted except by or with the consent of the Public Prosecutor.</p>

<p><u>International Convention for the Suppression of Terrorist Bombings</u></p>	<p><u>Terrorism (Suppression of Bombings) Act 2007</u></p>	<p>Section 7</p> <p>Every person who, outside Singapore, commits an act or omission that, if committed in Singapore, would constitute a terrorist bombing offence is deemed to commit the act or omission in Singapore and may be proceeded against, charged, tried and punished accordingly.</p>	<p>Section 8</p> <p>A prosecution under this Act must not be instituted except by or with the consent of the Public Prosecutor.</p>
<p><u>International Convention against the Taking of Hostages</u></p>	<p><u>Hostage-Taking Act 2010</u></p>	<p>Section 4</p> <p>Every person who, outside Singapore, commits an act that, if committed in Singapore, would constitute a hostage-taking offence is deemed to commit the act in Singapore and may be proceeded against, charged, tried and punished accordingly.</p>	<p>Section 9</p> <p>A prosecution under this Act must not be instituted except by or with the consent of the Public Prosecutor.</p>
<p><u>International Convention for the Suppression of Acts of Nuclear Terrorism</u></p>	<p><u>Terrorism (Suppression of Misuse of Radioactive Material) Act 2017</u></p>	<p>Section 11</p> <p>Any person who, outside Singapore, commits an act that, if committed in Singapore, would constitute a nuclear terrorism offence is deemed to commit the act in Singapore and may be proceeded against, charged, tried and punished accordingly.</p>	<p>Section 14</p> <p>A prosecution under this Act must not be instituted except by or with the consent of the Public Prosecutor.</p>

Extraterritorial Criminal Law Application If Offence Is 'Specified'

Additionally, Penal Code Section 4B(1) permits 'specified offence[s]' of which the conduct or effect occurs in part outside of Singapore to be heard as if they occurred wholly within Singapore. This includes, under Section 4B(1)(c), where:

[T]he specified offence involved an intention to make a gain or cause a loss or exposure to a risk of loss or to cause harm to any person in body, mind, reputation or property, and that gain, loss or harm occurs in Singapore.

Such offences are 'specified' in Schedule 1 of the Penal Code and, amongst others, include:

- Dishonest misappropriation of property under [Penal Code] Sections 403 and 404.
- Receiving stolen property and related offences under [Penal Code] Sections 411 to 414.
- Fraud by false representation, non-disclosure or abuse of position under [Penal Code] Sections 424A and 424B.

These offences do not appear to require the consent of the Public Prosecutor.

Although none of these offences are atrocity crimes themselves, it leaves open whether individual or corporate gain accrued in Singapore could be related to crimes such as forced displacement and thus prosecutable.

Singapore does permit private prosecution, but under Criminal Procedure Code 2010 Section 11(10) this is only for 'summary cases before a Magistrate's Court for any offence for which the maximum term of imprisonment provided by law does not exceed 3 years or which is a fine-only offence'.

Extraterritoriality of Civil Law

Several non-criminal statutes contain extraterritorial provisions to regulate conduct that has an effect in Singapore¹¹— particularly in relation to commercial interests.¹²



Under Order 8, Rule 1 of the Rules of Court 2021, overseas service for originating processes in civil proceedings is possible with Court approval.

11. See, for example, Section 4 of the Transboundary Haze Pollution Act 2014 which provides that the 'Act extends to and in relation to any conduct or thing outside Singapore which causes or contributes to any haze pollution in Singapore'.

12. See, for example, Section 33(1) of the Competition Act 2004 which states that regardless of the location of the parties, agreements, abuses of dominant position, mergers, or anticipated mergers, the Act applies if infringement of the Act causes effects within Singapore.

Common Law Interpreting Intention Of Extraterritoriality In Statutes

In the absence of explicit extraterritoriality provisions in either criminal or civil law, it is still possible for Singapore courts to recognise extraterritorial application. This may be the case where: (1) the 'object and purpose' of the statute is best served by interpreting provisions as applying extraterritorially; (2) this interpretation does not cause issues for enforcement of the provision; and (3) the interpretation does not cause issues for international comity (or deference to foreign law that may be applicable).

Although construed narrowly to the specific set of facts, this was recognised in Huang Danmin v Traditional Chinese Medicine Practitioners Board,¹³ where the High Court found that, despite no express mention of extraterritoriality, provisions of the Traditional Chinese Medicine Practitioners Act 2000 (TCMP Act), nevertheless applied outside of Singapore.

In Huang Danmin v Traditional Chinese Medicine Practitioners Board, the appellant was a Singapore-registered traditional Chinese medicine (TCM) practitioner practicing in Malaysia. The appellant's Singapore TCM registration was cancelled because of improper treatment of a client in Malaysia. The Singapore Traditional Chinese Medicine Practitioners Board (the Board) based its decision on TCMP Act Section 19(1)(i), which authorizes the Board to cancel registrations if it is satisfied that the registered person has been guilty of professional misconduct or negligence. Section 19(1)(i) is silent as to whether "professional misconduct or negligence" is confined to acts committed *within* Singapore by a TCM practitioner. Accordingly, the legal question was whether Section 19(1) allowed the Board to take into account the appellant's treatment of the patient in his Malaysian clinic for the purposes of determining whether he was guilty of professional misconduct.

The court held that:

[T]he question of whether a statute should be interpreted as having any degree of extra-territorial effect depends on the extent to which its purpose would be served by such an interpretation and whether this interpretation would result in problems relating to enforcement and international comity.¹⁴

Regarding 'purpose', the Court cited Interpretation Act 1965 Section 9A(1), which states that a preferred interpretation will promote the purpose or object of the statute.

To identify the TCMP Act's purpose, the Court examined the relevant Second Reading Speech, finding that the Act was to ensure patients' interests and safety.¹⁵ Therefore, an interpretation of TCMP Act Section 19(1) that permitted extraterritorial application could be said to be in line with the Act's purpose because the professional misconduct or negligence was in the course of seeing patients in the course of the profession the Act regulated.

13. [2010] SGHC 152.

14. *Ibid* [31].

15. *Ibid* [22].

The Court then found there was little problem with enforcing the extraterritorial interpretation¹⁶ by reasoning that 'enforcement':

[D]epends largely on whether the penalty that is sought to be imposed on the party who has infringed the statute can be done so effectively. Where the party against whom enforcement is sought has substantial links to the domestic jurisdiction (either because such party is a citizen of that jurisdiction or has substantial property there), enforcement is more likely to be more successful. Finally,...where the penalty sought to be imposed involves the cancellation of a licence that allows the infringer to engage in some regulated activity in the domestic jurisdiction, there is certainty of successful enforcement for obvious reasons.¹⁷

Last, the Court found the extraterritorial interpretation was not an issue for international comity¹⁸ by reasoning that 'comity':

[Is] affected both by customary international law and legal history. For example, the interpretation of a statute to cover acts committed by a country's nationals in a foreign jurisdiction is regarded as less harmful to comity than if that statute were interpreted to cover acts committed by foreigners in that foreign jurisdiction. This is so despite the fact that in both situations, the State is seeking to punish an individual for acts committed in a foreign jurisdiction. The reason is probably because historically, law was regarded as personal and it was only until the advent of the territorial State that it became more fixed to the territory over which the State had effective control [citing James L Brierley, 'The Lotus Case', *Law Quarterly Review* 44 (1928) 155-156]. Furthermore, States do claim some form of jurisdiction over acts committed by their citizens in foreign jurisdictions....¹⁹

The Court accordingly held that:

...[S]ection 19(1)(i) of the TCM Act extends to a TCM practitioner whenever and wherever he conducts himself as a Singapore registered TCM practitioner.²⁰

Universal Jurisdiction & *Aut Dedere Aut Judicare* Obligations

Universal Jurisdiction

Regarding its operation in domestic law, the Singapore government has publicly stated before the United Nations General Assembly Sixth (Legal) Committee that:

16. Ibid [37] & [38].

17. Ibid [27].

18. Ibid [37] & [38].

19. Ibid [28].

20. Ibid [39].

[I]n Singapore, **piracy, genocide, and grave breaches of the Geneva Conventions** are subject to domestic prosecution on the basis of universal jurisdiction....[emphasis added]

On closer inspection, this appears to be the case in relation to piracy (see Penal Code, Section 130B and Supreme Court of Judicature Act, Section 15(1)) and grave breaches of the Geneva Conventions (see below). However, Penal Code Section 4A states that the offence of genocide –along with offences against the State in Penal Code Chapter VI—that occurs *outside of Singapore* may only be prosecuted in Singapore if the accused is a Singapore citizen or permanent resident. Therefore, extraterritorial genocide is not prosecutable under universal jurisdiction, but rather under active personality jurisdiction.

More broadly, the Singapore government has repeatedly reiterated before the Sixth Committee that universal jurisdiction should only be used as a ‘last resort’ and in alignment with ‘applicable principles of international law [including the principles of] immunity of State officials from foreign criminal jurisdiction, State sovereignty, and territorial integrity’.

Genocide Under The Penal Code & Universal Jurisdiction

It has not always been the case that jurisdiction is explicitly restricted to citizens and permanent residents for extraterritorial acts of genocide. A Party to the Genocide Convention since 1995, Singapore incorporated the crime of genocide into its Penal Code in 2007.

At this time, the elements of the crime of genocide were the same as provided by the Genocide Convention. Describing the new offence, the Parliamentary Second Reading Speech for the Penal Code (Amendment) Act 2007 described its introduction as:

[I]ntended to give greater effect to the Convention on the Prevention and Punishment of the Crime of Genocide, which Singapore acceded to in 1995. As Section 302 already covers murder, this new provision would cover actions that extend beyond the killing of individuals per se, such as acts committed with the intention of destroying, in whole or in part, a national, ethnic, racial or religious group, eg, imposing measures intended to prevent births within the group.²¹

The Penal Code (Amendment) Act 2007 was silent as to whether the offence applied extraterritorially or to non-Singapore nationals. However in 2019, the Criminal Law Reform Act 2019 introduced Section 4A to the Penal Code, restricting Singapore court’s jurisdiction to citizens or permanent residents where genocide is committed outside of Singapore.

21. However, note that Article 3 of the Genocide Convention obliges Parties to also criminalise conspiracy to commit genocide, incitement to genocide, attempt to commit genocide, and complicity in genocide.

According to the Parliamentary Second Reading Speech for the 2019 Act stated that certain crimes were being amended to be extraterritorial, as recommended by the Penal Code Review Committee (PCRC). The only mention of genocide in the PCRC's report is the recommendation to extend both the crime of genocide and offences against the State in order to (at Section 6, page 3):

[A]ddress[] the limitations in the Penal Code in dealing with persons who threaten Singapore's national security, if such persons had planned their activities abroad. [This] ensures that Singapore citizens and permanent residents who commit offences such as genocide or other offences against the State outside Singapore can be prosecuted in Singapore.

Singapore's dedication to the norms of sovereignty and non-interference should be seen in its context as a "small State". For example, in a dispute between the Philippines and China regarding the United Nations Convention on the Law of the Sea (UNCLOS), Singapore's Ministry of Foreign Affairs stated:

Singapore is not a claimant [S]tate and we do not take sides on the competing territorial claims. However, we support the peaceful resolution of disputes among claimants in accordance with universally-recognised principles of international law, including UNCLOS, without resorting to the threat or use of force. As a small [S]tate, we strongly support the maintenance of a rules-based order that upholds and protects the rights and privileges of all [S]tates.²²

Where there are international bodies that may be used for disputes between States such as the International Court of Justice, Singapore has both submitted to the relevant jurisdiction and accepted the outcome.²³

Aut Dedere Aut Judicare

Singapore has consistently and publicly stated that the exercise of universal jurisdiction under customary international law is distinct from jurisdiction exercised under treaty obligations. Most recently in 2023,²⁴ in Singapore described the obligation to investigate and extradite or prosecute certain crimes (aut dedere aut judicare) as specifically a treaty obligation:

22. As cited in Li-Ann Thio and Kevin YL Tan 'Singapore' Oxford Handbook of International Law in Asia and the Pacific (Simon Chesterman, Hisahi Owada, and Ben Saul eds) (Oxford 2019) 433, 443.

23. Ibid

24. This specific distinction was also drawn by Singapore in 2011.

[T]he principled distinction between the exercise of universal jurisdiction, **which is a principle of customary international law**, on the one hand, and the exercise of jurisdiction **pursuant to a treaty obligation to extradite or prosecute** or the exercise of jurisdiction by international tribunals constituted under specific treaty regimes on the other. The exercise of jurisdiction in each of these scenarios has its own specific set of considerations, juridical basis, objectives, and rationales. [Emphasis added]

Interpreted as a treaty obligation—and not a recognised obligation under customary international law—Singapore is obligated under international law to investigate and extradite or prosecute by being a Party to:

[The Geneva Conventions 1949](#)

[Single Convention on Narcotic Drugs 1961](#)

[Convention for the Suppression of Unlawful Seizure of Aircraft 1970](#)

[Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation 1971](#)

[Convention on the Psychotropic Substances 1971](#)

[Convention on the Prevention and Punishment of Crimes against](#)

[Internationally Protected Persons, including Diplomatic Agents 1973](#)

[International Convention against the Taking of Hostages 1979](#)

[Convention on the Physical Protection of Nuclear Material 1979](#)

[Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988](#)

[Convention on the Safety of the United Nations and Associated Personnel 1994](#)

[International Convention for the Suppression of Terrorist Bombings 1997](#)

[International Convention for the Suppression of the Financing of Terrorism 1999](#)

[Convention against Transnational Organized Crime 2000](#)

[United Nations Convention against Corruption 2003](#)

[Convention for the Suppression of Acts of Nuclear Terrorism 2005](#)

Extradition & Mutual Legal Assistance

Extradition

Extradition is principally governed by the [Extradition Act 1968](#), which provides for three different frameworks for the extradition. There are three possible frameworks, dependent on the requesting State: extradition to a foreign State is governed by [Extradition Act Part II](#); extradition to a declared Commonwealth country is governed by [Extradition Act Part IV](#); and extradition to Malaysia is governed by [Extradition Act Part V](#).

Singapore presently has extradition treaties with [Germany](#), [Hong Kong](#), [the United States](#), and [Indonesia](#), as well as the ability to extradite to all 40 Commonwealth countries. Under the [Criminal Procedure Code](#) Section 121(3), Singapore also has reciprocal agreements with Malaysia and Brunei Darussalam by which extradition may be carried out.

Prior to 2022, Singapore required that all extraditable offences be explicitly listed in an Extradition Act Schedule. At time of writing, this has changed to permit all crimes above a given threshold (as described in the definition of 'extradition offence' in Extradition Act, Section 2), with the exception of 'Excluded Offences' provided in the Act's First Schedule. Extraditable offences under multilateral treaties to which Singapore is a Party are found in the Act's Fourth Schedule.

In addition to having an extradition treaty or arrangement with the requesting State, Singapore has a 'dual criminality' requirement. This means that it is necessary that the crime for which an individual is extradited is criminalised in both Singapore and the requesting State's law (see the definition of 'extradition offence' in Extradition Act, Section 2). Notably, however, the requirement for dual criminality does not mean the offence in Singapore must be identically worded to that of the requesting State. Instead, Singapore uses a 'conduct-based approach' meaning that Singapore examines 'the underlying conduct as a whole' to determine sufficient similarities to satisfy the dual criminality requirement.



The Attorney-General's Chambers is the Central Authority for both extradition and mutual legal assistance requests.

Mutual Legal Assistance In Criminal Matters

Mutual legal assistance (MLA) in criminal matters is governed by the Mutual Legal Assistance in Criminal Matters Act 2000 and any relevant MLA treaty. Under Section 16(2), it is possible to receive assistance from Singapore without an existing MLA treaty 'if the appropriate authority of that country has given an undertaking to the Attorney-General that that country will comply with a future request by Singapore to that country for similar assistance'.

In addition to similar circumstances for mandatory and discretionary refusal common to most MLA legislation, Section 20(3) states that there must be dual criminality for any assistance in the provision of evidence, the enforcement of a foreign confiscation order, or search and seizure.

The Attorney-General's Chambers, International Affairs Division is Singapore's designated Central Authority and oversees the receipt of mutual legal assistance requests.

The International Affairs Division website on Mutual Legal Assistance [provides several sample forms and checklists](#) for seeking assistance from Singapore.

It also provides the useful [Practitioners' Guide to Asset Recovery in Singapore](#).

Singapore retains the death penalty.

If you are advocating for extradition to Singapore or mutual legal assistance for Singaporean matters, it is important to note that States without the death penalty often mandate refusal of assistance if the Requesting State cannot assure that the death penalty will not be carried out.

Sanctions

Singapore implements United Nations Security Council (UNSC) sanctions through the [United Nations Act 2001](#). As stated in United Nations Act Section 2(2), the Act does not apply to financial institutions that are regulated by other Acts.

Contravention of the United Nations Act is a criminal offence. Under Section 5(1)(a), individuals may be liable on conviction for a fine of up to S\$500,000, imprisonment of up to 10 years, or both. Under Section 5(1)(b), corporations are liable on conviction for a fine up to S\$1,000,000.

Singapore also may impose sanctions through the [Terrorism \(Suppression of Financing\) Act 2002](#) (giving effect to UNSC sanctions on 'terrorist' designated individuals or groups, but also providing additional designations made by Singapore) and the [Variable Capital Companies Act 2018](#) (similarly giving effect to UNSC Resolutions on terrorism and terrorist financing specifically regarding investment funds in Singapore, or 'variable capital companies').

Sanctions on financial institutions—including autonomous (or unilateral) sanctions—are enacted under the [Financial Services and Markets Act 2022](#) (FSMA). The FSMA strengthened and consolidated financial regulation powers of the [Monetary Authority of Singapore](#) (MAS), or the central bank of Singapore. This power to sanction financial institutions was previously found under the [Monetary Authority of Singapore Act 1970](#), under which Singapore [enacted autonomous sanctions against Russia in 2022](#). Notably, Singapore [very rarely](#) enacts autonomous sanctions.

Corporate contraventions of regulations [made by the MAS](#) under the FSMA are also criminal offences. Under Section 15(5), a corporation may be liable on conviction for a fine up to S\$1,000,000.

The Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act 1992 (CDSA) also operates in conjunction with sanctioning regimes. Section 54 makes '[a]cquiring, possessing, using, concealing or transferring benefits from criminal conduct' a criminal offence as well. Notably, 'criminal conduct' can include the offences provided under the United Nations Act and the FSMA.

A full list of enforcement actions taken in the last five years by MAS—including but not exclusive to actions taken for contravention of sanctions—can be found here:
<https://www.mas.gov.sg/regulation/enforcement/enforcement-actions>.

Selected Legislation In Depth

Geneva Conventions Act 1973 (GC Act)

AREA OF LAW

Criminal Law

CONDUCT ADDRESSED

Section 3(1) states that:

'Any person, whatever his or her citizenship or nationality, who, whether in or outside Singapore, commits, aids, abets or procures the commission by any other person of **any grave breach of any scheduled Convention as is mentioned in the following Articles respectively of those Conventions** ... shall be guilty of an offence and shall be liable on conviction [emphasis added]'.

The listed Convention Articles include:

Article 50 of the First Geneva Convention;
Article 51 of the Second Geneva Convention;
Article 130 of the Third Geneva Convention; and
Article 147 of the Fourth Geneva Convention.

Under these Articles, the prohibited conduct includes, but is not limited to: wilful killing, torture or inhuman treatment, unlawful deportation of a protected person, compelling a protected person to serve in the forces of a hostile power (including children), and extensive destruction and appropriation of property.

Under Section 3(1)(e), punishment for 'grave breaches' that include 'wilful killing' is life imprisonment. Under Section 3(1)(f), all other 'grave breaches' may be punished with a prison term of up to 14 years.

GC Act

Common Article 3 of all four Geneva Conventions indicates that Parties to the Conventions are bound, at a minimum, to protect ‘persons taking no active part in the hostilities’ in non-international armed conflicts from ‘violence to life and person, in particular, murder of all kinds, mutilation, cruel treatment and torture’ (Common Article 3(1)(a)) and ‘outrages upon personal dignity, in particular, humiliating and degrading treatment’ (Common Article 3(1)(c)).

Although none of the listed Convention Articles under the Act explicitly mention Common Article 3, they do state that the prohibitions apply if the conduct is ‘committed against persons or property protected by the present Convention’.

The Second Reading Speech for the Act does not explicitly exclude the application of ‘grave breaches’ to the conduct occurring in non-international armed conflict (see more below), rather it only refers to Common Article 3 protections as ‘minimum standards which contracting parties should also observe in the case of an armed conflict not of an international character occurring in the territory of one contracting party.’

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Section 3(1) indicates that Singapore may exercise universal jurisdiction over offences given in the Act.

Under **Section 3(2)**, where a ‘grave breach’ is committed outside of Singapore, ‘a person may be proceeded against, charged, tried and punished... in any place in Singapore as if the offence had been committed in that place’.

Under **Section 3(3)**, only the General Division of the High Court has the jurisdiction to try an offence under the Act. Likewise under **Section 3(3)**, proceedings may only be instituted ‘by or on behalf of the Public Prosecutor’.

The Criminal Procedure Code 2010 applies. Regarding presence of the accused, see above.

ADDITIONAL NOTES

The term ‘grave breaches’ of the Geneva Conventions has traditionally referred to violations of the Geneva Conventions that occur only in international armed conflict (meaning conflict between States)—as opposed to ‘war crimes’ which occur in international and non-international armed conflict (meaning conflict other than between States, including civil war). However, there is growing evidence to suggest that, as international criminal law has progressed, the distinction between ‘grave breaches’ and ‘war crimes’ is blurring particularly with reference to the continued development of customary international law.

In the absence of express legislative intent to include within the term 'grave breaches' harm against Common Article 3 protected persons, evidence of the progression of customary international law may assist.

This includes:

Nicaragua at [218];

Tadić at [127];

Ferdinandusse at 737 citing District Court of Stockholm, Arklöf, 18 December 2006, as reported in Oxford Reports on International Law in Domestic Courts (ILDC) (SE 2006) 633; and Klamberg (2009).

Researchers were unable to find any precedent in which offences under the Geneva Conventions Act reached trial.

Strategic Goods (Control) Act 2002 (SGCA)

AREA OF LAW

Criminal

CONDUCT ADDRESSED

The SGCA protects goods that make up components of military weapons and technology—especially those that could be used for creating or deploying weapons of mass destruction and including those with dual-use purposes—from being traded and transferred without the knowledge of the Singaporean government.

A detailed list of items subject to the Act and their specifications are available in the schedules Section of regularly issued Strategic Goods (Control) Orders. Under **Section 4A**, these items are prescribed by the Minister of Finance in their capacity as the Minister overseeing Singapore Customs.

Government decisions regarding listing or exemptions may be open to judicial review. In general, to seek judicial review in common law:

- '(a) [T]he subject matter of the complaint is susceptible to judicial review;
- (b) [T]he material before the court disclos[es] an arguable case or a prima facie case of reasonable suspicion in favour of granting the remedies sought by the applicant; and
- (c) [T]he applicant has sufficient interest in the matter'.²⁵

25. Jeyaretnam Kenneth Andrew v Attorney-General [2013] SGCA 56 at [5].

Adopted from UK case law,²⁶ grounds for review are broadly grouped into issues of ‘illegality, irrationality [or] procedural impropriety’.²⁷

For this Brief, issues of ‘illegality’ (error of material fact, failing to take into consideration relevant facts, or taking into consideration irrelevant facts) may be most relevant.

Subject to exceptions,²⁸ under SGCA **Section 5(1)** a person ‘must not:

- (a) export, tranship or bring in transit any strategic goods;
- (b) export any document in which any strategic goods technology is recorded, stored or embodied; or
- (c) transmit any strategic goods technology’.

Further and subject to exceptions, under **Section 5(2)** a person ‘must not’ export, tranship, bring in transit, or transmit any goods or technology if the person has been notified, knows, or ‘has reasonable grounds to suspect’ that the goods or technology are intended to be used in connection with the production, use, or delivery of weapons of mass destruction.

It is also an offence, under **Section 6(1)**, to ‘arrange or negotiate, or do any act to facilitate the arrangement or negotiation of –

- (a) a contract for the acquisition or disposal of any goods mentioned [Gazetted as a ‘strategic good’ or intended to be used in connection with the production, use, or delivery of weapons of mass destruction] if the person knows or has reason to believe that such a contract will or is likely to result in the removal of those goods from one foreign country to another foreign country; or

- (b) a contract for the acquisition, disposal or transmission of –

- (i) any technology [Gazetted as a ‘strategic good technology’ or intended to be used in connection with the production, use, or delivery of weapons of mass destruction] or
- (ii) any document in which such technology is recorded, stored or embodied,

if the person knows or has reason to believe that such a contract will or is likely to result in the transmission of such technology or removal of such document from one foreign country to another foreign country’.

Contravention of Sections 5 and 6 carry terms of imprisonment, fines, or both.

As part of its efforts following Russia’s invasion of Ukraine, Singapore used the SGCA ‘to constrain Russia’s capacity to conduct its war in Ukraine and cyber aggression’.

26. As described by Lord Diplock in *Unions v Minister for the Civil Service* [1984] UKHL 9 (22 November 1984).

27. As adopted in *Chng Suan Tze v Minister for Home Affairs* [1988] 2 SLR(R) 525; see Jaclyn L Neo, ‘All Power Has Legal Limits: The Principle of Legality as a Constitutional Principle of Judicial Review’ *Singapore Academy of Law Journal* 29 (2017) 667, 673.

28. Exceptions are found in *Strategic Goods (Control) Act 2002* Section 5(3) – Section 5(5).

RELEVANT DEFINITIONS

Taken verbatim from **Section 2(1)**:

“export” means to take out from Singapore goods by land, water or air, and includes the placing of the goods in a conveyance for the purpose of taking the goods out from Singapore; but does not include the taking out from Singapore of goods that have been brought in transit or transhipped;

“tranship” means to remove goods from the conveyance on which they were brought into Singapore and to place the goods on the same or another conveyance for the purpose of taking them out of Singapore, where these acts are carried out on a through bill of lading, through airway bill or through manifest;

“bring in transit” means to bring goods from any country into Singapore by land, water or air, where the goods are to be taken out from Singapore on the same conveyance on which they are brought into Singapore without any landing in Singapore, but does not include the passage through Singapore in accordance with international law of a foreign conveyance carrying goods; [and]

“transmit”, in relation to any technology, means to –
(a) transmit it in Singapore by electronic means; or
(b) make it available in Singapore on a computer, so that it becomes accessible (whether on a request, or subject to a precondition, or otherwise) to a person in a foreign country, whether the person is a specific person, a person within a specific class, any person in general or the person who carries out the transmission.

RELEVANT EXCEPTIONS

Under **Section 7(1)**, application for a permit to engage in conduct given in Section 5 and Section 6 must be made to the Director-General of Customs.

The Strategic Goods (Control) Regulations (SGCR) guide implementation of the Act. The SGCR includes specific rules regarding permits, registration, record-keeping, and other documentation regarding strategic goods trading. Under **Section 36** of the Act, the Minister has broad discretion in making the SGCR.

Section 36 states that the Minister may make regulations that exempt:

‘(a) any person or class of persons; or
(b) any activity in respect of all goods or technology, or goods or technology of a specified nature or description, from all or any of the provisions of this Act, subject to such terms or conditions as may be prescribed’.

At time of writing, **SGCR Section 13** exempts the following conduct from Section 5 and Section 6 offences: any act by or on behalf of the Singapore Government; relevant movement of goods or technology carried out 'by a military, naval or air force of a foreign government' or a 'visiting force' 'in the course of duty'; and diplomatic correspondence. The **SGCR Second Schedule** states that Singapore has entered into agreements for the status of 'visiting forces' only with Australia, France, New Zealand, Turkey, the United Kingdom, and the United States' forces in Singapore.

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Section 22 provides jurisdiction to District or Magistrate Courts; the Criminal Procedure Code 2010 applies.

ADDITIONAL NOTES

Because Singapore is a strategic trade and economic hub in Southeast Asia (see below), the SGCA is enforced regularly. Violations are not uncommon. Some of the most frequent enforcement measures of the Act include the following:

- Failure to comply with Section 7 provisions, including applying permits for the transfer of strategic goods as stipulated in Section 5 or the brokering of such goods as stipulated in Section 6. This failure to comply often derives from the misconception that a licence exemption in one country means a similar exemption in another, in this case, Singapore;
- Making false declarations about the goods being transferred or brokered. This can range from an error in the classification of goods within the Order's list to deliberate misinput of information to hide and mislead authorities about the true nature of items being transferred; and
- Breaching specific conditions placed on a given permit or registration for the transfer or brokering of strategic goods as set by the corresponding minister under Sections 7(7) and 8(6) of the Act, respectively.

RECENT CASE

In 2023, a Singapore Customs brought charges against the Singaporean geospatial and marine equipment supply company Hydronav and two of its employees for exporting a multi-beam echo sounder system (the tool) to the Myanmar Navy in 2018.

Ordinarily used for seabed mapping, the two ‘sub-systems’ within the tool were subject to the SGCA through their listing in the Schedule of the Strategic Goods (Control) Order 2017 (at time of writing, the Order has been amended). Hydronav and its employees did not seek a permit for export.²⁹

According to Singapore Customs, the company and its two employees exported the tool under a brokering scheme from the Norwegian company Kongsberg. Hydronav told Kongsberg that the tool would be sold to Bina Nusantara Perkasa, an Indonesian company with a history of past transactions with Hydronav (and whose director was an accomplice).

Upon acquiring the tool, Hydronav sold it to a Burmese company, Light of Universe, for US\$1.58 million, who provided it to the Myanmar Navy Hydrographic Centre, an arm of the Navy that actively conducts survey activities in the junta-led country’s waters. The Court found that this deal was actioned without Kongsberg’s knowledge—Norwegian authorities refused two previous purchase attempts when the Centre was listed as the end-user.

In sentencing, District Judge Loh Hui-min stated that, ‘[d]espite being enacted many years ago...there is a dearth of jurisprudence on the sentencing approach for [SGCA] offences’ (at [2]). However, it was not contested that the actions of the two employees did not meet the threshold for imprisonment (at [23]).

The Court took into consideration the legislative intent behind enacting the SGCA, stating:

[26] Put simply, a robust and credible export control regime for such strategic goods and technology is crucial to safeguarding the reputation and integrity of Singapore’s status as a major international shipping hub as well as enhancing domestic and regional security. As was further observed during the Second Reading Speech [for the SGCA], it also serves to foster greater confidence in our trading partners that such sensitive equipment and technologies will remain in safe hands and ensure increased access by our companies to the same [note omitted]...

[28] Given the public interest involved, I agreed with the Prosecution that the principles of general and specific deterrence would feature in considering the appropriate sentences to impose in the present case. A strong signal would therefore need to be sent that non-compliance will not be condoned.

Hydronav was fined more than S\$1.1 million as a ‘corporate offender’; the two employees were fined S\$35,000 and S\$45,000 respectively, with terms of imprisonment if they did not pay.

29. Hydronav also exported a controlled Unmanned Aerial Vehicle (UAV) to Myanmar without a permit.

Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act 1992 (CDSA)

AREA OF LAW

Criminal

CONDUCT ADDRESSED

The CDSA permits the confiscation of proceeds of crime related to corruption, drug trafficking, and other crimes including transnational and international crimes. **Part 6** of the Act provides several offences.

Most relevantly to this Brief, these include:

- **Section 51** *Assisting another to retain benefits from criminal conduct*; and
- **Section 54** *Acquiring, possessing, using, concealing or transferring benefits from criminal conduct*.

In connection with doing business in Singapore (see below), **Section 45(1)** of the CDSA also obligates disclosure to authorities where:

‘[A] person knows or has reasonable grounds to suspect that any property—

- (a) in whole or in part, directly or indirectly, represents the proceeds of;
- (b) was used in connection with; or
- (c) is intended to be used in connection with,

any act which may constitute drug dealing or criminal conduct (as the case may be) and the information or matter on which the knowledge or suspicion is based came to the person’s attention in the course of the person’s trade, profession, business or employment...’.

Under **Section 45(3)**, failure to disclose is also an offence. On conviction, an individual may receive ‘a fine not exceeding S\$250,000 or to imprisonment for a term not exceeding 3 years or to both’ (Section 45(3) (a)). A corporation may receive ‘a fine not exceeding S\$500,000’ (Section 45(3)(b)).

Note, however, that under **Section 45(6)**, ‘[i]t is a defence... that the person charged had a reasonable excuse for not disclosing the information or other matter in question’.

RELEVANT DEFINITIONS

Under **Section 2(1)**:

“**Criminal conduct**” is defined as ‘doing or being concerned in, whether in Singapore or elsewhere, any act constituting a serious offence or a foreign serious offence’;

“**Serious offence**” is defined by offences given in the Act’s **Second Schedule** and also includes conspiracy to commit, inciting others to commit, attempting to commit, or aiding, abetting, counselling or procuring the commission of any of the listed offences;

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A “**foreign serious offence**” is defined as an ‘offence...against the law of a foreign country or part thereof that consists of or includes conduct which, if the conduct had occurred in Singapore, would have constituted a serious offence’; and

“**Property**” is defined as ‘money and all other property, movable or immovable, including things in action and other intangible or incorporeal property’.

Under **Section 4(5)**, the Act applies to property both in and outside Singapore.

Corporations and their officers may be found liable under **Section 73** and **Section 80** respectively.

Under **Section 79**, offences under the Act or its regulations may only be tried with the consent of the Public Prosecutor.

The Criminal Procedure Code 2010 applies.

**ADDITIONAL
NOTES**

Under the CDSA’s **Second Schedule**, the Act applies to benefits accrued from the following offences, amongst many others:

- Piracy, piratical acts, buying or disposing of any person as a slave, genocide, rape, abetting of transnational organized crime, and criminal conspiracy to commit transnational organized crime under the **Penal Code 1871**;
- Transfer of strategic goods and brokering of strategic goods under the **Strategic Goods (Control) Act 2002**;
- Use of chemical weapons under the **Chemical Weapons (Prohibition) Act 2000**;
- Trafficking in arms under the **Arms Offences Act 1973**;
- Trafficking in women and girls under the **Women’s Charter 1961** trafficking in persons more generally under the **Prevention of Human Trafficking Act 2014**;
- Use of biological agents and use of toxins for a non-peaceful purpose under the **Biological Agents and Toxins Act 2005**;
- Dealing with property of an organized criminal group under the **Organised Crime Act 2015**; and
- Contravention of regulations made under the **United Nations Act 2001**.

Relevant Practice & Case Summaries

Yong Vui Kong, The Death Penalty & The Supremacy Of Domestic Law

Often cited for defining the relationship between customary international law and Singapore domestic law, Public Prosecutor v Yong Vui Kong³⁰ and its appeals related to the mandatory imposition of the death penalty.

Yong Vui Kong was a 19-year-old Malaysian who, in 2009, was convicted of trafficking 42.27g of diamorphine, an offence contrary to the Misuse of Drugs Act 1973 Section 5(1)(a). Under Section 33 of the Act, read with the Act's Second Schedule, the mandatory sentence upon conviction of unauthorised import or export of diamorphine above 15g is the death penalty.

Notably, the Misuse of Drugs Act applies extraterritorially under Section 8A, but only to Singapore citizens and permanent residents.

Yong Vui Kong appealed the sentence in 2010, arguing that the mandatory nature of the death penalty under the Misuse of Drugs Act was unconstitutional. This is because it contravened Singapore Constitution Article 9(1) affirms that 'no person shall be deprived of his life or liberty save in accordance with the law' and the term 'law' should include customary international law.

The Singapore Court of Appeal held that the term 'law' may include customary international law only to the extent that customary international law 'has been applied as or definitively declared to be part of domestic law by a domestic court' (at [91]). Consequently, the Court of Appeal upheld the sentence. (Notably, the Court also found that there was 'a lack of extensive and virtually uniform state practice to support' the argument that customary international law prohibited the mandatory death penalty under the Act as inhuman treatment (at [98])).

While, as noted above, the Singapore Constitution lists Fundamental Liberties that may be applicable to non-Singaporean nationals, this does not include the freedom from torture.

Following this appeal, the Misuse of Drugs (Amendment) Act 2012 came into effect. Under s33B of the Misuse of Drugs Act, drug trafficking offences that were previously punishable by death could instead be sentenced to imprisonment for life with caning of no less than 15 strokes. Yong Vui Kong successfully applied to the High Court for re-sentencing under Section 33B of the Act, and his death sentence was replaced with imprisonment for life and 15 strokes of the cane (see [5]).

Yong Vui Kong then appealed the sentence of caning on several grounds (see [6]), most notably, that caning constituted a form of torture that was prohibited under customary international law and treaty law. Therefore, according to the argument, this breached Singapore Constitution Article 9(1).

30. [2009] SGHC 4.

This argument included (see [25]):

- The prohibition of torture should be read into the Constitution since it constituted a *jus cogens* norm; and
- Since Article 15(1) of the Convention on the Rights of Persons with Disabilities (CRPD, to which Singapore is a Party) states that ‘no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment torture [emphasis added]’, this prohibition applied to everyone and therefore should be read into the Constitution.

Regarding the former, the Court stated that even if the prohibition of torture had acquired the status as of a *jus cogens* norm, it does not mean that *jus cogens* norms would automatically take precedence over domestic law (at [35]). In this case, even if caning constituted torture, caning was still expressly authorised and mandated by domestic statute (at [38]).

Regarding the latter, the Court held that treaties must be codified in domestic legislation in order to have effect within the Singapore legal system (at [45]). Since the CRPD had not yet been implemented through domestic legislation, it could not take precedence over domestic law.

In summary, the Court upheld the sentence by reaffirming that (at [53]):

Even if we accept that international law contains a prohibition on torture whether under [customary international law] or treaty law; even if that prohibition has *jus cogens* status; and even if we operate on the premise that caning amounts to torture, the simple reality is that Singapore’s dualist framework means that a domestic law *mandating* caning cannot be impugned *by reason alone* of its incompatibility with international law [emphasis in the original].

Therefore, Yong Vui Kong makes clear that where there is express legislative intent contrary to customary international law and non-incorporated treaty law, international law ‘must yield to contrary domestic legislation’ (at [34]). However, this may not foreclose opportunities where domestic law is silent.

Possibilities In Tort?

As noted above, tort law in Singapore is based on common law rather than statute.³¹ Although it has not been done, it is in theory possible to bring an action in tort under the common law for atrocity crimes committed outside of Singapore.

Relevant to this Brief, examples of tortious actions may include trespasses to the person such as battery, assault and false imprisonment.

31. See Halsbury’s Laws of Singapore – Tort (Volume 18) (LexisNexis 2022) [240.001] and [240.004].

When trespasses to the person result in death, Civil Law Act 1909 Section 20 provides a right of action.

The executor or administrator of the deceased may be able to bring an action for the benefit of certain dependents (including the spouse, parents, grandparents, children, grandchildren and siblings) of the deceased (Section 20(3)); in the absence of an executor or administrator, or their failure to bring such an action within 6 months of such death, any or all the dependents may bring the action (Section 20(4)).

The action may be brought to recover pecuniary loss (Section 20(5)). It must be brought within three years of the victim's death (Section 20(7)) unless the Foreign Limitation Periods Act 2012 applies.



Under Article 37(2) of the Constitution, the Singapore 'Government may sue and be sued'.

Under Section 19(5) of the Companies Act (1967), companies incorporated in Singapore have the capacity 'of suing and being sued'. See below for more on corporate liability.

To bring such an action, the following should be considered:

- **Regarding the possibility of a foreign plaintiff**, a foreigner has the same rights and liabilities in tort as a Singapore citizen. For torts committed abroad where the action is brought in Singapore, a Singapore court has jurisdiction in respect of foreign torts whenever it has jurisdiction *in personam* over the defendant including corporations.³²
- **Regarding arguments for Singapore as the most appropriate forum**, a Singapore court uses the common law test as set out in *Spiliada*³³ by Lord Goff. Summarised, this includes considering whether:
 - There is another available forum and court with competent jurisdiction; and
 - It would be in 'the interests of all the parties and the ends of justice' for that forum to be used.

Where proceedings begin by service within Singapore, it will be for the defendant to demonstrate that Singapore *is not* the appropriate forum. Where proceedings begin by service outside of Singapore, the burden shifts to the plaintiff to argue why Singapore *is* the most appropriate forum.³⁴

32. See Halsbury's Laws of Singapore – Tort (Volume 18) (LexisNexis 2022) [240.030].

33. *Spiliada Maritime Corp v Cansulex Ltd* [1987] AC 460.

34. See Halsbury's Laws of Singapore – Conflict of Laws (Volume 6(2)) [75.083].

- **Regarding the choice of applicable law**, Singaporean law can be applied subject to the 'double actionability rule'.³⁵ The double actionability rule provides that where a tortious act is committed abroad, an action can be maintained in the Singapore courts only if the alleged wrong is: (1) actionable under Singaporean law; *and* (2) actionable under the law of the country where the tort was committed. An exception to meeting both limbs of double actionability may be available in very limited circumstances.³⁶
- **Regarding time limits** and in applying the double actionability rule, under the Foreign Limitation Periods Act 2012 Section 3(2), read with Section 3(1), the relevant limitation period is that of the foreign law.

Class actions (or 'representative actions') are possible under Singapore law. See Rules of Court 2021, Order 4, Rule 6(1).

The Importance Of Business & Business Oversight

Singapore prides itself on being a global financial hub. Because of this, Singapore has an interest in ensuring financial institutions and corporations are well-regulated and do not contribute to corruption, money-laundering, or sanctions evasion. Increasingly, as recognised in other Asian jurisdictions, this regulation may also apply to human rights abuses.

The following may be useful to note:

- ***Corporate criminal liability exists, but corporate prosecutions are rare.***

Under Penal Code Section 11, a 'person' includes 'any company or association or body of persons, whether incorporated or not'. Therefore, companies may be held criminally liable.

For a company to be found to be criminally liable, Singapore follows the 'embodiment doctrine' outlined by Lord Reid in Tesco Supermarkets Ltd v Nattrass which states that the individuals responsible for the conduct must be acting as the 'embodiment of the company or, one could say, [that they] hear[] and speak[] through the *persona* of the company...' [emphasis in the original].

At time of writing, corporate prosecutions are rare. However, this may be changing following reforms related to transnational organized crime.

See, for example, the Precious Stones and Precious Metals (Prevention of Money Laundering and Terrorism Financing) Act 2019 Section 32(1).

35. See Halsbury's Laws of Singapore – Conflict of Laws (Volume 6(2)) [75.374] and [75.375].

36. See Rickshaw Investments Ltd v Nicolai Baron von Uexkull [2007] 1 SLR(R) 377 (CA) at [58].

- ***Company registration may be refused or cancelled if the company is 'likely to be used for an unlawful purpose'.***

Under Companies Act 1967 Section 20(2), the Accounting and Corporate Regulatory Authority (ACRA) 'must refuse to register the constitution of a proposed company where the Registrar is satisfied that:

- the proposed company is likely to be used for an unlawful purpose or for purposes prejudicial to public peace, welfare or good order in Singapore; or
- it would be contrary to the national security or interest for the proposed company to be registered'.

Under **Section 360(2)** and **Section 369**, this is also the case for foreign entities applying to transfer or receive registration in Singapore, respectively.

Furthermore, under **Section 377(8)**, ACRA must strike a foreign company off the register for the same reasons.

- ***Singapore's primary asset exchange has statutory obligations; decisions related to these obligations may be judicially reviewable.***

The Singapore Exchange (SGX, Singapore's primary asset exchange) is a listed company with statutory powers to regulate the market. The SGX has been designated an 'approved exchange' by the MAS under Section 9 of the Securities and Futures Act 2001. As an 'approved exchange' under the Act, the SGX has the following obligations, amongst others:

Section 15(1)

'...

- [to] as far as is reasonably practicable, ensure that every organised market it operates is a fair, orderly and transparent organised market;
- [to] manage any risks associated with its business and operations prudently;
- [to], in discharging its obligations under this Act, not act contrary to the interests of the public, having particular regard to the interests of the investing public;... [and]³⁷

Section 17(1)

...[E]nsure that the systems and controls concerning the assessment and management of risks to every organised market that the approved exchange operates are adequate and appropriate for the scale and nature of its operations.'³⁸

37. Penalties for contravention are found in Section 22, which states: 'Any approved exchange which contravenes Section 15(1), 16(1) or (3), 18(1), 19, 20 or 21(1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$200,000 and, in the case of a continuing offence, to a further fine not exceeding \$20,000 for every day or part of a day during which the offence continues after conviction'.

38. Penalties for contravention of Section 17(1) are found in Section 17(2) which states: 'Any approved exchange which contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$200,000 and, in the case of a continuing offence, to a further fine not exceeding \$20,000 for every day or part of a day during which the offence continues after conviction'.

Under **Section 25(1)**, 'business rules' and 'listing rules' that are set by the SGX (based on requirements from the MAS) are enforceable by court order.

In Yeap Wai Kong v Singapore Exchange Securities Trading Ltd,³⁹ the Singapore High Court has accepted that decisions made by the SGX in relation to its statutory regulation function are judicially reviewable.⁴⁰

- ***Corporate accountability legislation in other countries may nevertheless affect Singapore businesses.***

Although at time of writing there are no similar laws in Singapore, Singapore-incorporated companies must respect the corporate due diligence laws of the jurisdictions in which they may operate.

This means that foreign laws that require investigation of, and remediation for, forced labour or slavery in supply chains will nevertheless apply to Singapore businesses.

39. [2012] SGHC 103.

40. See Eugene K B Tan, 'Commercial Judicial Review In Singapore: Strategic Or Spontaneous?' Singapore Journal of Legal Studies [2020] 448, 464.

Project Background

Recognising the opportunities to address atrocity crimes in Asia, the AJC secretariat has commissioned and edited several reports on legal avenues to justice and accountability in the region. These include briefs on available legislation and causes of action for survivors of atrocity crimes in 9 Asian jurisdictions; a report on making sanctions a stronger tool for accountability; and primers related to strategies to address refoulement.

This series, 'Jurisdictional Briefs for International Justice in Asia', considers existing legal "hooks" that practitioners might consider if supporting survivors of international crimes.

It builds on the AJC secretariat's [scoping work on universal jurisdiction](#) and its [convening series](#), bringing together a diverse group of experts to examine [civil society's role in pursuing universal jurisdiction cases](#), [universal jurisdiction and the so-called Global South](#), and [opportunities for universal jurisdiction cases in Asia](#).

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Although broader, these reports are inspired by and modelled on the Syria Justice and Accountability Centre's resource '[A Summary of Legal Avenues for Victims of Crimes in Syria under US Law](#).'

About The Asia Justice Coalition

Founded in 2018, the Asia Justice Coalition's purpose is to improve the legal landscape in Asia to ensure justice and accountability for gross violations of international human rights law and serious violations of international humanitarian law. The Coalition operates through collaboration, resource-sharing, and coordinating efforts between local and international civil society organizations working in the region. Its work is accomplished by undertaking joint activities relating to justice and accountability and engaging in collective advocacy.



www.asiajusticecoalition.org

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