

**REPORT OF THE RAPPORTEUR-GENERAL**  
**MR NEW SIN YEW ON THE**  
**14TH ASEAN LAW ASSOCIATION GENERAL ASSEMBLY**  
**19 - 20<sup>TH</sup> OCTOBER 2023, MALAYSIA**

The President of the ASEAN Law Association, Hon. Chief Justice Sundaresh Menon,  
Chairman of ALA Malaysia, Chief Justice of Malaysia Tun Tengku Maimun binti Tuan  
Mat

Chairpersons of the National Committees, Heads of Delegations, Chief Justices and  
Judges of the ASEAN Judiciaries, and Attorneys-General of ASEAN,  
Secretary-General of ALA, Mr. Paul Quan,  
Members of ALA and distinguished guests,

1. I present to you my report as Rapporteur-General for the 14<sup>th</sup> ASEAN Law Association General Assembly and the ASEAN Law Conference which took place from 19<sup>th</sup> to 20<sup>th</sup> October 2023. I would like to acknowledge and record my appreciation to the valuable support of Ammera Binti Hadi and Soh Lip Shan in the preparation of this report.

**DAY 1: 19<sup>TH</sup> OCTOBER 2023**

**I. OPENING CEREMONY OF THE GENERAL ASSEMBLY**

2. “ASEAN Tapestry: Our Pride”, the theme is a celebration and exploration of this rich and intricate fabric known as the Association of Southeast Asian Nations.

Each member state is a unique thread having a distinct identity, when woven together by geography, culture and shared aspirations, forms a diverse and vibrant tapestry. This theme runs through the Opening Ceremony, the remarks of ALA Heads of Delegation, and the 2<sup>nd</sup> ASEAN Law Conference.

**Welcome Address by the Chair of ALA Malaysia, The Right Hon. Chief Justice Tun Tengku Maimun binti Tuan Mat**

3. The Right Hon. Chief Justice Tun Tengku Maimun binti Tuan Mat, Chair, ALA Malaysia, set the tone of this 2-day affair by expressing the ASEAN community's collective ambition to "*continue growing the ASEAN community into a peaceful, stable and resilient entity, equipped with enhanced capability to tackle challenges with efficacy and solidarity in diversity*". Chief Justice Tun Tengku Maimun highlighted that the key to fostering unity within the ASEAN community is through, first, mutual acceptance (which goes beyond mere tolerance and encompasses celebrating each other's differences) and, second, moderation. The success of ALA today is living proof of the enduring friendship and the collective effort amongst the ASEAN Community to uphold the rule of law and promote good governance across our diverse legal landscape. Chief Justice Tengku Maimun concluded her speech by remarking "*like a tapestry, without its threads, our community cannot thrive if any segment remains overlooked or unprotected. At the end of it all, our ASEAN tapestry which stretches beyond national boundaries, encapsulates the protection of our women, children, marginalized communities and the environment, all of which*

*require a strong reinforcement of the law to ensure a promising future which would still preserve the ASEAN Tapestry: Our Pride”.*

**Address by the ALA President, Hon. Chief Justice Sundaresh Menon**

4. The ALA President, Hon. Chief Justice Sundaresh Menon, in his opening address, brought into focus ALA’s role in ASEAN. He observed that ALA’s *“unique value proposition is to deliver legal content at a breadth and depth no other organisation can do”*. He added that the theme *“aptly focuses on the ties that bind us through a rich and vibrant tapestry of values that bear on the lives of our women, our children, the heritage of our marginalized societies and communities, the environment and the practice of law including the challenges and opportunities brought to us by the emergence and development of generative artificial intelligence, and all of these with ALA as the loom on which these values can be woven into the law.”* Chief Justice Sundaresh also commended the introduction of the inaugural ALA Moot as a significant milestone for the ASEAN community in encouraging inclusivity of and early exposure to *“a younger generation of lawyers who will be more accustomed to navigating issues of ASEAN law when they join the ranks of our profession”*.

**Keynote Address by the Rt. Hon. Prime Minister of Malaysia, Datuk Seri Anwar Ibrahim**

5. The Rt. Hon. Prime Minister in his Keynote Address highlighted ALA’s role in weaving principles of justice within the rule of law – a shared value by ASEAN

member states despite the diversity of its legal systems and culture. To uphold the rule of law, the independence of the judiciary is vital. In this regard, the Rt. Hon. Prime Minister commended ALA for its commitment in upholding the rule of law. The Rt. Hon. Prime Minister also highlighted shared issues faced by ASEAN countries and the challenges to overcome and achieve especially gender equality and creating safe spaces for children. The Rt. Hon. Prime Minister expressed his confidence that there is a shared vision towards resolving common issues despite the differences that shape the ASEAN Tapestry.

## **II. CONVENING OF GENERAL ASSEMBLY – Address by Chairs / Head of Delegates of ALA National Committee**

### **Hon. Justice Lee Seiu Kin, Chair, ALA Singapore**

6. Hon. Justice Lee Seiu Kin, Chair, ALA Singapore, began the address by welcoming the Chairs and Heads of Delegation from various National Committees. On behalf of the Singaporean delegates, Hon. Justice Lee expressed enthusiasm for the 14<sup>th</sup> General Assembly 2023, highlighting that this event marked a significant return to a physical meeting since the onset of the pandemic in 2020. Additionally, Hon. Justice Lee commended on the inaugural ALA ASEAN Law Moot, it as a valuable platform that broadened the ALA community to encompass law students.

**Hon. Attorney General Dato Seri Paduka Hj Ahmad Pehin Isa, Chair, ALA Brunei**

7. Hon. Attorney General Dato Seri Paduka Hj Ahmad Pehin Isa, Chair, ALA Brunei, commended ALA for continuously striving to realize its objectives of strengthening ties among the legal fraternities in the ASEAN member states through platforms such as the ASEAN Law Conference, where delegates from ASEAN nations “*come together to reflect on the past while analyzing the present to spearhead future developments in the legal field of the ASEAN community*”.

**H. E. Attorney Ly Chantola, Chair, ALA Cambodia**

8. H. E. Attorney Ly Chantola, Chair, ALA Cambodia, conveyed the Nation's strong commitment to collaborate closely and proactively with fellow ASEAN member States in addressing challenges that pose threats to socio-economic development. He also firmly believes that the legal community has a responsibility to provide assistance to the government in accelerating policy initiatives and facilitating economic recovery endeavors.

**Hon. Chief Justice Muhammad Syarifuddin, Chair, ALA Indonesia**

9. Hon. Chief Justice Muhammad Syarifuddin, Chair, ALA Indonesia shared that ALA Indonesia aligns with the theme “ASEAN Tapestry: Our Pride”, emphasizing the importance of maintaining the spirit of unity within the ASEAN

community in the years to come. The Hon. Chief Justice Muhammad Syarifuddin also commended on the inception of the inaugural ALAASEAN Law Moot.

**Hon. Justice Khoun Phasouk, Head of Delegation, Lao PDR**

10. The Head of Delegation for Lao PDR, Hon. Justice Khoun Phasouk, expressed his hope that the General Assembly would provide information and suggestion for the development and improvement for both ALA and Lao. Given ALA's achievements thus far, the Hon. Justice expressed his confidence that the 14<sup>th</sup> General Assembly would lead to the fulfilment of ALA's goals bringing greater strength and depth in expertise. This would be in line with the main purpose of the ASEAN countries in strengthening the capacity of the national judiciary and to promote the rule of law and governance. The Hon. Justice also expressed that the People's Supreme Court of Lao is committed to establishing ALA Lao and to participate in upcoming ALA activities.

**The Right Hon. Chief Justice Tun Tengku Maimun, Chair, ALA Malaysia**

11. The Right Hon. Chief Justice Tun Tengku Maimun, Chair, ALA Malaysia, highlighted that it is ALA members' collective duty to carry forward ALA's efforts and objectives in line with the ALA mandate which include cooperating with each other in promoting close relations. The presence of the delegations from each ASEAN country shows the dedication to the shared responsibility of the ALA members in tackling shared issues. The commitment to the pursuit of

justice surpasses borders and the members have come together with acceptance, compassion and moderation to embrace the huge task of realizing ALA's mandate.

**Hon. Chief Justice (Retired) Artemio V. Panganiban, Chair, ALA Philippines**

12. Hon. Chief Justice (Retired) Artemio V. Panganiban, Chair, ALA Philippines, shared that the Philippines judiciary is actively working on a strategic plan for judicial reform to advance the judiciary into the era of AI. Additionally, ALA Philippines extended a generous invitation to the Governing Council to hold the next Governing Council Meeting in Manila, with the Supreme Court of the Philippines being the host.

**Hon. Chief Justice Anocha Chevitsophon, Chair, ALA Thailand**

13. Hon. Chief Justice Anocha Chevitsophon, Chair, ALA Thailand, noted that the gathering at the General Assembly and the Governing Council Meeting exemplifies the principles of the rule of law, justice, and cooperation within the ASEAN region. The General Assembly serves as a reminder of ASEAN's distinctive mosaic which stands united. The strength of ASEAN lies in our ability to respect and embrace differences, it is the diversity which enhances ASEAN's capacity to address legal challenges of our time. The Hon. Chief Justice expressed her enthusiasm to the exchanges of ideas and best practices but also the opportunity to strengthen bonds that unite the ASEAN countries.

**Ms. Le Thi Kim Thanh, Vice-Chair, ALA Vietnam**

14. Ms. Le Thi Kim Thanh, Vice-Chair, ALA Vietnam, expressed happiness in being able to gather for the 14<sup>th</sup> General Assembly in person after taking into account the unavoidable postponement of the last 2 years. Despite the difficulties and challenges of the pandemic, the ALA family has achieved great results including the establishment of the ASEAN Law Institute, the many discussions and submissions to the ASEAN Secretariat, the newly initiated Moot Competition and the Virtual Trading Market Place. A warm congratulation was extended to the ALA Chairs and National Committees for all their achievements to date. Ms. Le Thi Kim Thanh expressed her hope to continue to develop and bring ALA to new heights.

**III. PLENARY SESSION 1: OUR WOMEN AND CHILDREN – FROM NOMINALISM TO SIGNIFICANCE**

15. This Session recognises women and children as the weavers of our tapestry where their roles are no longer nominal but central and significant to the quality of meaningful existence. Session 1 was co-moderated by Dato' Lim Chee Wee and Datuk Yew Jen Kie.
16. Datuk Yew Jen Kie set the course for the first session by describing that “A *tapestry would not be a rich and vibrant tapestry as envisioned if any unique thread is neglected or left out. Hence, it (ALA) has identified, amongst others,*



*the importance of the rights of women and children as one such unique threads to complete the tapestry that will surely be the pride of ASEAN".* Picking up from this, the first speaker, Edmund Bon started the first session by laying down the commonalities in standards on the obligations owed to women and children in ASEAN by referencing to the ratification of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Convention on the Rights of the Child (CRC). Mr. Edmund Bon pointed out that Cambodia, Philippines, Thailand and Timor-Leste have gone further to signing up for optional protocols that allowed complainants to lodge complaints directly with the treaty body. Mr. Edmund Bon noted that even though all ASEAN States have ratified CEDAW and CRC, further efforts could be taken to localise/nationalise these treaties. On the issue of human trafficking, Mr. Edmund Bon highlighted the weaknesses in Malaysian laws leading to the acquittal of the accused persons but efforts are being undertaken towards improving Malaysia's standing in respect of combating human trafficking.

17. The second speaker, Ms. Archaree Srisunakhua, gave her views through the lens as the Director of Chiangmai Women Correctional Institution, Department of Corrections. She shared her experience and her organisation's efforts in eliminating discrimination against women. Ms. Archaree highlighted the great strides that Thailand has taken to uphold the rights of women prisoners during incarceration and their reintroduction into society. 20 years ago, there was no healthcare for women prisoners in Thailand. The 'Inspire Project' in 2006 was a turning point in the treatment of women prisoners. The Bangkok Rules which followed upholds the principle of non-discrimination and peaceful re-integration

of female prisoners into society. She highlighted that although Thailand was the first to enact a national legislation on gender equality in Asia, enforcement and/or promotion of equality needs to be increased. As it stands, discrimination against women stubbornly persists and there are high occurrences of unrecorded cases of violence against women.

18. Towards the conclusion of the 1<sup>st</sup> Session, the ALA President, Hon. Chief Justice Sundaresh Menon posed a crucial question on steps that ALA could take to help ASEAN countries to promote gender equality and children's rights. Mr. Edmund Bon recommended that ALA could also work together with the Council of ASEAN Chief Justices (CACJ) and their relevant working groups which can help navigate through the differences in legal structure of the ASEAN countries and foster peer-to-peer learning among ASEAN judges. Mr. Edmund Bon also suggested a non-binding practical reference guide for ASEAN be drafted to overcome the lack of jurisprudence faced by ASEAN judiciaries.

#### **IV. PLENARY SESSION 2: OUR MARGINALISED HERITAGE – THE ASEAN SOLUTION**

19. Session 2 discusses our first people's rights to land, culture, education and intellectual property. The speakers for this session shared their experience and offered solutions to our marginalised heritage in respect of these areas. Session 2 was co-moderated by Tan Sri Datuk Seri Panglima David Wong Dak Wah and Ms. Intu-on Garnjana-goonchorn.

20. The first speaker, Attorney Dany Channraksmeychhoukroth, outlined the plenary session by outlining Cambodia's incorporation of modern principles of environmental law through ratification of international conventions or treaties and through the introduction of domestic legislations and policies. As part of its efforts to extend legal protection to indigenous communities, Cambodia promotes recognition of indigenous groups and their rights to land. This has resulted in an upward trend of registered interests in land amongst the indigenous people. In proposing the way forward, Attorney Dany emphasised the importance of bringing domestic legislations and enforcement in tandem with international standards and practices. She cautioned against the risks of overdevelopment brought about by tourism. She however encouraged adopting different development models for different indigenous groups as "*no one size fits all*". Attorney Dany pointed out that the preservation of indigenous communities' rights to land goes towards the bigger scheme of the preservation of culture, languages and customary laws distinct to each indigenous ethnic.
21. The second speaker, Ms. Ann N Edillon, focused on the protection of intellectual property rights over knowledge and use of traditional medicine which form part of the indigenous community's heritage. In conjunction with the rising awareness in the patentability of novel medicine, the issues connected to the registration of patent by indigenous groups came to light, to name a few – (1) exploitation for commercial gains by third parties of the indigenous community's knowledge; (2) use of medicinal herbs or plants without due recognition to the indigenous people who discovered their medicinal values; (3) the misuse of such medicinal herbs or plants without the full benefit of the indigenous

community's knowledge pertaining to their utilities and functions; (4) the incompatibility of the patent registration system with the workings of the indigenous communities (i.e. patents could not be registered under a particular indigenous group as opposed to an individual and the difficulties in tracing, identifying and attributing the discovery of a medicinal herb or plant's values to a specific source also poses a hindrance to registration of patent). To overcome the challenges enumerated, the Philippines government has taken immediate steps (1) to raise awareness amongst the indigenous communities; (2) to develop a research and development system premised on free, prior and informed consent from the indigenous people; (3) to maintain a digital record of knowledge and use of traditional medicine in concert with a similar effort by the ASEAN community as a whole; (4) to inculcate amongst the indigenous community the practice of entering into benefit sharing agreements.

22. The third speaker, Ms. Saithong Rattana, shared the Laos's experience in relation to land rights. She explained that the rights of the people of the Republic of Laos are safeguarded by the Constitution without any distinction between the indigenous groups from the other people of Laos. Against this backdrop of equality amongst the people of Laos, Ms. Saithong highlighted the different forms of land use granted to nationals as opposed to foreigners, i.e. right to land use is granted to the nationals via land titles whereas such right is granted to foreigners only via lease, concession and purchase of such rights from the State, rights of which are limited in terms of validity periods and land options. Irrespective of its forms, holders of land use rights are entitled to similar rights and subject to similar obligations (such as to develop and use land in

accordance with the Land Allocation Master Plan; to maintain the land in good condition; to not violate others' rights and interests; and to pay the relevant taxes and fees).

23. The fourth speaker, Dr. Chu Manh Hung, spoke in relation to education. Vietnam adopts a similar "free for all" approach insofar as right to education is concerned, boasting its 4A's framework which stands for Available, Accessible, Acceptable and Adaptable. To give effect to Vietnam's priority to instill a blanket right to education, continuous efforts are expended including research, evaluation, enactment and amendment of laws to safeguard such rights, allocation of financial resources to invest in the local education system; and strengthening of international cooperation in promoting awareness.
  
24. In his concluding remarks, the co-moderator, Tan Sri Datuk Seri Panglima David Wong Dak Wah demonstrated the different values ascribed to natural resources by different communities and the importance of striking a balance between competing interests. He gave an example of in Australia, where the laws mandate the release of catches which do not meet the minimum threshold in terms of size of the fish, an indigenous person did not comply with such law and was prosecuted. The court held that it is his customary right to fish irrespective of the size. This illustrates the need for a robust judiciary which strikes a balance between upholding the rule of law and protecting the indigenous communities' customary rights.

## **V. PLENARY SESSION 3: OUR ASEAN SENTINELS**

25. Session 3 focuses on Bar Associations, the sentinels of our profession, where a myriad of issues are explored, including diversity, forging new paths, use of technology in legal practice, mutual recognition of qualifications, and mutual support of each other's independence. Session 3 was co-moderated by Mr. Ng Jern-Fei KC and Dr. Loganathan Krishnan.
26. This Session began with a presentation by H.E. Mr Ly Chantola, President, Bar Association of the Kingdom of Cambodia on the promotion of diversity and inclusion in the legal profession. His Excellency shared statistics in respect of the diversity of the Cambodian legal profession where only 24.59% of Cambodian lawyers are female. Nevertheless, the ratio of women to men have improved over the years. For lawyers under the age of 35, the ratio of female is 301 females: 544 males. His Excellency also highlighted that in order to promote diversity and inclusion, special grants have been introduced for female lawyers. Since 2018, there have been policies of promoting persons from disadvantaged communities to be trainee lawyers. On the issue of diversity, Justice Mary Lim posed a question on whether in guarding the legal profession, we have overestimated the problem of diversity. In illustration, she drew an analogy of a person seeking to undergo surgery would want the best surgeon regardless of race and gender. In reply, Ms. Karen Cheah voiced her view that the lack of diversity in the profession is indeed a cause of concern. However, diversity should not compromise the merits and quality required for the legal profession.

27. Ms. Sarintorn Laungwattanawanich, Vice President, Foreign Affairs, Lawyers Council of Thailand under the Royal Patronage provided a presentation on technology's transformative Impact on Thailand's Legal Profession. Ms. Sarintorn shared that in 2018, the Court had introduced an online services platform which enabled e-filing. Now, 79% of cases are filed via e-filing and every one out of 5 cases proceed via e-Hearing through platforms such as Google Meet, Line, Webex and Zoom. Ms. Sarintorn aptly pointed out that these digitalization efforts show an embrace of technology and symbolizes the commitment to ensure justice thrives in a connected world.
28. The Session then continued with an engaging discussion by the 7 representatives of the ASEAN countries' Bar associations. In the spirit of collaboration between ASEAN countries, the panelists were asked on the existing legal framework in their country on the liberalizing of the legal industry for foreign law firms and lawyers. Ms. Karen Cheah, President of the Malaysian Bar, explained that Malaysia has a framework from 2014 to allow foreign law firms and lawyers to practice in Malaysia subject to certain limitations. Mr. Tony Nguyen, representative from Vietnam, shared that the liberalization in Vietnam was part of Vietnam's efforts under the World Trade Organization (WTO) since 2006 to allow foreign lawyers to appear in Court and the requirements for the establishment of a foreign law firm. Mr. On Hung Zheng, President of the Law Society of Brunei, explained that Brunei has a liberal system which allows foreign lawyers to practice in Brunei.

29. Throughout the discussion, a common theme of collaboration and desire to increase exchanges between ASEAN countries was shared amongst the panelists. Mr. Jason Chan SC, President, Law Society of Singapore, highlighted that personal connections between Bar Associations eases the path to agree on or resolve substantive matters. Ms. Sarintorn highlighted that, in general, communication, discussion and sharing would benefit ASEAN member states; and alternative dispute resolution is one such area which ASEAN member states would thrive working together. Madam Ira A. Eddymurthy, representative for Indonesia, noted that given the increasing use of Artificial Intelligence in all sectors, a cross-border unified Artificial Intelligence regulation across ASEAN as can be seen in the European Union (EU) may assist in determining liabilities, supervision and prohibition of the use of Artificial Intelligence. The same could be said for cross-border issues concerning personal data protection. Ms. Karen Cheah suggested that an interjurisdictional summit could be set up for ASEAN and that the legal profession in ASEAN and Asia come together to better compete against giants such as India.

## **DAY 2: 20<sup>TH</sup> OCTOBER 2023**

### **I. PLENARY SESSION 4: OUR ENVIRONMENT – UN’S CODE RED FOR HUMANITY**

30. Session 4 shines the spotlight on climate change and the environment. This session deliberates our responses to this serious threat. Session 4 was moderated by Atty. West Nareth Hib and Madam Dewi Savitri Reni. The session



dealt with the crucial question of how we, ASEAN and ALA can help change the natural course of global warming through corporate governance, sustainable development and alternative sources of energy.

31. The session began with a United Nation's video which showed the impact of global warming. The video highlighted the climate crisis that is attributable to emissions of greenhouse gases. Against this backdrop, Dr. Gary William Theseira, Council, Climate Governance Malaysia, highlighted the regulatory frameworks that exists internationally i.e., the Paris Agreement and EU Deforestation Regulation, and the national regulations in the ASEAN region. Under these frameworks, the law binds corporations and governments and holds them accountable for environmental impacts that they have caused.
  
32. The first speaker, Judge Comwatchara langong, Research Judge, Court of Appeal Region Three, Court of Justice of the Kingdom of Thailand highlighted the strides that Thailand has made with the introduction of green benches in the Supreme Court and the Appellate Court of the Court of Judges of Thailand. He shared that an environmental case procedural law for the courts have already been drafted and is in the process of approval. He also shared that the Administrative Court of Chiang Mai in July recently ruled in favour of a local resident who brought a case against the former Prime Minister and the National Environment Board (NEB) for neglecting their duties in tackling toxic air pollutants. Despite Thailand's progress in this area, Judge Comwatchara cautioned that the law alone is not enough and that enforcement of the law is of great importance. On the issue of litigation, a question was asked on the

effectiveness of climate litigation. The answer that came forth was that climate litigation is indeed an important tool, but it is only one of the tools that must be employed to tackle this serious issue. The second speaker, Dean Antonio GM La Vina, Executive Assistant to Chief Justice Artemio V Panganiban (Retired) highlighted that climate litigation is an important and vigorously employed tool in the Philippines. This is driven by the need to show the government and companies that they can and should be held accountable for failure to act and change. The third speaker, Associate. Prof. Dr, Jolene Lin, Director, Asia-Pacific Centre of Environmental Law, National University of Singapore, shared key findings of a 4-year study on climate litigation with a focus on the developing countries. The trends showed that over 95% of cases were filed against the government while other cases involved corporations. She too cautioned that litigation alone cannot achieve the need for a just transition and can be expensive, time consuming and cause political backlash. On this issue, the fourth speaker, Ms. Aldilla S. Suwana, Senior Associate, SSEK Law Firm highlighted her personal experience in relation to the case of fishing trawlers.

Fishing trawlers are common in this region and must be controlled to prevent overfishing and lessen its impact on marine wildlife and biodiversity. She lamented that enforcement in this area remains a challenge.

33. On the topic of food security, Ms. Aldilla emphasized the critical need for robust food security measures, noting that Indonesia has established a system to ensure rice security through 'Bulog.' She also pointed out the importance of addressing the emissions associated with food production, including those from

deforestation for agriculture and livestock emissions, which significantly contribute to climate issues.

Associate Prof. Dr. Jolene added that the costs of environmental protection often disproportionately affect marginalized and vulnerable communities, such as coal miners and those reliant on coal. She stressed the need for strategies that incorporate the perspectives and wisdom of these communities to create more equitable and effective environmental solutions.

34. Many suggestions and recommendations were given by the panelists on steps to be taken in tackling climate change. Dr. Gary raised an interesting possibility of having a heterogeneous regulation on the environment for ASEAN that would assist in resolving cross-border disputes and reduce redundancies of taking the same efforts multiple times. Dean Antonio highlighted that ALA being a key instrument of civil society is instrumental in slowing down climate change and allowing adaptation measures to be taken. Pushing for incentive-based laws would also help move corporations to be greener. Dean Antonio also recommended that ALA could contribute by providing necessary support to environmental defenders. Expanding on alternative sources of energy is also discussed to move away from our reliance on energy sources that emit greenhouse gas. It is apparent from the session that the problem of climate change is multi-faceted, and its response must be multi-dimensional.

## **II. PLENARY SESSION 5: ARTIFICIAL INTELLIGENCE – WE INNOVATE AND SURVIVE**

35. Session 5 showcases our survival through innovation. Artificial Intelligence and disruptive technology must be understood and embraced. This session was co-moderated by Prof. Dr. Jason Chuah and Asst. Prof. Dr. Saizi Xiao.
36. The first speaker, Mr. Chee Kin Lam, Managing Director & Head Legal & Compliance DBS Bank Ltd, initiated the session by explaining AI's remarkable effectiveness within the banking industry with its ability to swiftly process vast amounts of data. On ethical and legal fronts, Mr. Chee Kin strongly supports AI's application in handling quantitative data like credit models and fraud scoring. Nevertheless, he expresses concerns about the utilization of Generative AI, which can undertake tasks like searching, summarizing, and drafting emails. His reservations stem from the substantial data inputs required, including sensitive personal information, which heightens the risks associated with potential data leaks.
37. Prof. Dr. Colin Ong KC, Counsel, Elden Law LLP, delved into the central issue of whether AI could eventually replace human arbitrators in the realm of international arbitration. On the international plane, the New York Convention does not impose any restrictions on the selection of AI as an arbitrator. Turning to domestic laws, however, the legislations in the Netherlands, France, England, China, Indonesia, and Vietnam all either explicitly or indirectly mandate that arbitrators must be natural persons. This raises an immediate

question: Would party autonomy take precedence if the parties mutually agreed to appoint an AI arbitrator? At first glance, the answer seems to be in the affirmative. Professor Dr. Colin anticipates that arbitration hubs such as Geneva, London, Paris, and Singapore could emerge as pioneers in recognizing arbitral awards rendered by AI arbitrators.

38. Examining both sides of the coin, the appointment of AI arbitrators offers the potential for impartiality by eliminating sympathy bias and errors in interpreting facts and the application of the law. However, the effectiveness of AI arbitrators is significantly contingent upon the quality and diversity of the data input. The algorithms used may lack diversity, potentially leading to the development of biased algorithms rooted in racism, cultural prejudices, and language biases. Additionally, there are other conceivable concerns, such as the utilization of outdated input, excessive inflexibility, the risk of breaching confidentiality, and the challenge of assigning liability in cases of negligence.
  
39. Ms. Tatiana Polevshchikova, Senior Associate, Rybalkin, Gortsunyan, Dyakin & Partners, is a proponent of utilizing AI in arbitration to support legal counsel, tribunals, and arbitration institutions. She asserted that AI has demonstrated its ability to enhance efficiency and reduce costs. From the perspective of legal counsel, AI could significantly decrease time-related expenses by taking on tasks like reviewing and identifying relevant documents and preparing chronologies in complex cases with extensive document volumes. Where the arbitral tribunal is concerned, AI could be employed to condense facts, streamline documents submitted by parties, and even generate initial drafts of

arbitral awards, subject to human review by the tribunal. In the context of arbitration institutions, Ms. Tatiana envisions AI playing an administrative role in managing, registering, and advancing cases in a more organized manner, and in some cases, even assisting with decision-making. A concrete example illustrating Ms. Tatiana's vision is the implementation of AI for Data Sentencing in the High Court of Sabah and Sarawak for selected criminal offences, as shared by Tan Sri Datuk Seri Panglima David Wong Dak Wah, who was present in the audience.

40. The proposal to employ AI in arbitration and even courtroom settings has sparked significant concerns among the audience, primarily related to the safeguards necessary to ensure that AI maintains the same level of integrity as human judges do, apprehensions of side wars arising from disputes over the data to be supplied to AI, as well as the assignment of responsibility for decisions made by AI, a concern which is shared by Prof. Dr. Colin.
  
41. In response, Ms. Tatiana suggests that all parties relying on AI should certify the accuracy of preliminary documents generated by AI. Echoing this perspective, Mr. Chee Kin recommends implementing the "human-over-the-loop" approach for low-risk, high-volume matters and the "human-in-the-loop" approach for high-risk, low-volume matters. This viewpoint is shared by Prof. Dr. Colin and Asst. Prof. Dr. Saizi Xiao.