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**SPEECH BY PROFESSOR S JAYAKUMAR, MINISTER FOR LAW AND
MINISTER FOR FOREIGN AFFAIRS, AT THE OPENING CEREMONY OF
THE INTER-PACIFIC BAR ASSOCIATION 4TH ANNUAL CONFERENCE
AT THE SHANGRI-LA HOTEL, SINGAPORE
ON WEDNESDAY, 4 MAY 1994 AT 9.00 AM**

Introduction

Let me first warmly welcome all the foreign participants to Singapore. I also wish to congratulate the Organising Committee for a job well done. It is not an easy feat to assemble such an impressive gathering of nearly 500 distinguished lawyers from some 32 countries. You have a good cross section of delegates representing countries from different parts of the Pacific region, which are at different levels of economic development.

With growing interdependence of nations, there is not only greater flow amongst peoples across borders but there is also greater flow of information, knowledge and ideas. The harnessing of this flow for mutual benefit presents great challenges and tremendous possibilities. As politicians, economists and scientists do their part in unifying the positive development forces underlying the aspirations of the Asia-Pacific peoples, lawyers and others involved in the judicial and legal fields can play a role also. Organisations such as the Inter-Pacific Bar Association have a catalytic role. Conferences like yours are useful in establishing contacts, comparing approaches in different countries, and highlighting areas for further co-operation.

In my view, such an international Conference has a substantive objective as well as a more tangible, non-substantive one. As far as substantive matters are concerned, you will discuss wide ranging but relevant topics such as Politics and

Economics in the Asia Pacific, Cross Border Investment, Intellectual Property Law, Maritime Law, Environmental Law, Energy and Natural Resources Law and International Trade Law, amongst others.

It is not my intention to devote my speech to any of these substantive topics. I hope I have your understanding for this.

Instead, I wish to focus on a non-substantive feature of this international Conference. Such a distinguished international gathering of lawyers can help promote greater understanding and appreciation for the laws, legal systems and different legal philosophies obtaining in various countries. This objective could not, in my view, have greater relevance than today.

The controversy generated by the now well-publicised sentence of caning imposed by the Courts of Singapore on an American youth, Michael Fay, found guilty of vandalism raises the issue, both for lawyers and non-lawyers, whether in today's world, nations are prepared to understand and respect the right of each country to deal with its problems of crime, law and order. Together with others, Fay went on a 10-day spree of spray-painting cars, throwing eggs on the vehicles and other such acts. His actions, in the words of the Chief Justice, "were committed relentlessly and wilfully over a period of ten days, ... and amounted to a calculated course of criminal conduct". Due process of the law was followed. He was represented by counsel both at the trial and on appeal where he even had a Queen's Counsel.

Now, caning exists in our laws as one of the punishments for this and other offences. The British had introduced caning as a form of penalty. As in the case of the death penalty, we have not discarded it because we have found it effective. Michael Fay was not the only person, nor was he the only teenager, to be caned for such an offence. But he happens to be the first American to be sentenced to caning.

This triggered off a fierce debate, especially in the United States. At one side of the debate, some of the leading newspapers, columnists and politicians launched a vitriolic attack on Singapore and on the penalty of caning.

First, they argued that caning was a barbaric act and that it was tantamount to torture.

Secondly, they argued that we had deliberately singled this American out for such treatment (even though we had given full particulars of others who had been caned).

Thirdly, they said he was innocent and said his confession had been coerced. They ignored the fact that he had pleaded guilty and the fact that if he had claimed trial, he could have contested the validity of his confession.

Essentially, however, the brunt of their attack was that we were enforcing this penalty on an American. Their criticisms bordered on hysteria. Well known newspapers and columnists labelled it as a crime against humanity, and called Singapore a dictatorship and "lawless State". Editorials published in the New York Times called on readers to lodge protests with our Embassy in Washington and even offered the telephone number. Distinguished columnists also urged leading US companies in Singapore to pressurise the Singapore Government. The names of the CEOs were even printed in the editorials.

The irony in this debate was that the American people, on the other hand, were strongly in support of the decision taken by Singapore. Our Embassy in Washington was swamped by calls in support of the penalty. Polls conducted by US TV talk-shows and letters to newspapers in the US, even in Dayton, Ohio, the hometown of the offender, showed overwhelming support for Singapore's actions.

The case also attracted attention elsewhere. For example, in the United Kingdom, Good Morning TV telecast a programme on the case. A short clip of a man being caned was

shown. Viewers were invited to call a hot-line to give their views on "Should we bring back flogging". The programme's producers admitted that they expected their viewers to be put off. However, at the end of the programme, some 46,000 calls were received with 97% in favour of re-introducing caning in the UK.

In Canada, Toronto Star (26 April) reported the result of a survey on whether the Singapore Court was too harsh. 1,902 calls were received. Eighty-one per cent felt it was not too harsh.

I leave it to you to judge why there is this huge gulf between the people in those countries on the one hand and American newspaper columnists, liberals and the establishment on the other.

What is the issue?

What is the issue which arises from this episode? Is it merely a debate on the propriety or otherwise of caning as a penalty? It certainly was not, considering the relentless campaign which was unleashed to pressure us to completely exempt an offender from a penalty on no other ground than that the offender was an American national and that the critics disapproved the penalty.

The issue at stake is not on the caning penalty but a broader one: Whether a country should not respect the right of another country to enact and enforce its laws within its jurisdiction, even though one may disagree with that law, so long as such law is applied without discrimination and after due process of law.

To put it another way, can a country insist that its national who has committed an offence abroad be exempt from the laws of the country asserting jurisdiction because the value system or criminal justice system of the accused's country disapproves the law that he has violated or the penalty he would face?

This is a fundamental issue. If today we are told that we are not entitled to cane, then tomorrow we will be told that we cannot enforce the death penalty and on some other day, that we cannot enforce some other law.

The American media displayed unprecedented naivete in believing that its hysterical campaign could cause Singapore to cave in to such pressure and exempt Fay from caning. They failed to see that no Singapore Government can govern effectively if its citizens see the Government as having succumbed to US press pressure. It would be impossible for Singapore to enforce such tough laws in the future if it so exempted him from caning.

Singapore's approach to law and order

Of course, we have crimes in Singapore: we have our share of murder, rapes, robberies and housebreaking. However, compared to other countries and cities, we have relatively very low crime rates. People, both residents as well as visitors, feel safe and secure.

The US Embassy in Singapore in its Singapore Productivity Report March 94 stated that Singapore has a "rock-solid social and political stability and a cooperative labour movement. It also has a transparent legal and business environment ... Ghettos are non-existent and its low crime rate is the envy of richer countries".

This state of affairs has not come about by accident. To achieve this, we have had over the years to mould the legal system and legal norms to reflect our desired goals.

Singapore's approach to law and order is based on two basic principles.

Firstly, we believe that the legal system must give maximum protection to the majority of our people (who are law-abiding) from a small number of criminals, miscreants and juvenile delinquents. We make no apology for clearly tilting our laws and policy in favour of the majority.

Secondly, arrested persons have rights to due process of law. But when found guilty, offenders must be punished sufficiently so that they and others will be deterred from repeating the offence.

Other areas where we take a different approach to law and order:

Apart from the matter of caning, there are other areas where we take a different approach in enforcing law and order. Let me give you some illustrations.

Firstly, we have the death penalty. I realise some nations have abolished the death penalty and so have certain States in the USA.

Secondly, we have very strict laws for drug traffickers and drug addicts. Drug traffickers who traffick beyond stipulated amounts face mandatory death penalty. Drug addicts undergo compulsory treatment and rehabilitation at Drug Rehabilitation Centres.

Thirdly, we probably have the world's strictest gun-control law. Anyone who is in illegal possession of a firearm and discharges it in the course of committing a serious offence, gets the death penalty, whether or not the bullet killed, injured or even hit anyone.

In the first place such a criminal has no business to be in illegal possession of a firearm; worse still if he carries it with him to commit a serious crime, and even more so if he actually fires it. We view such a gunman as a terrorist, and he is dealt with as such. So, it is not "three strikes, you are out" but "one shot and you hang, even if you miss". Consequently, we have very few firearm offences despite being in a region where the trafficking of firearms is rampant.

Fourthly, we have prevention detention for vicious gangsters and notorious drug traffickers. By and large, our criminal system is based on principles and procedures you are familiar with - a person is convicted and sentenced after a trial

where evidence is adduced against him and witnesses appear for the prosecution and defence.

This system assumes that witnesses will step forward to testify. In certain cases, very vicious, hardcore gangsters threaten and intimidate witnesses and no one dares to testify. Should such a person go off scot-free to prey on our citizens and visitors? We have decided that this is not right. Therefore we have a law which enables preventive detention of such criminals. Some 700 or 800 gangsters and hardcore drug traffickers are under such preventive detention.

These are some features of our legal system which are unlikely to be found in your countries.

The question is "Are we right or wrong in taking such measures?". That in turn raises the question - who is to decide? Surely it must be the Singapore Government and Singaporean people who must decide? There will be no one else to put matters right if the situation of violent crimes in Singapore deteriorates to the same extent as it has in the US?

I do not expect all our distinguished foreign guests to endorse the measures I have mentioned. If you disagree, we will respect your right to maintain your viewpoint. You are also entitled to insist that your country should not adopt such measures.

Every society must decide what it considers appropriate for its circumstances. We have never claimed universal validity for our approach. But it works in Singapore and we intend to keep it that way.

All we ask is that other countries respect our right to deal with law and order problems in our country. When people visit Singapore whether as tourists or to reside here, they are subject to our laws. When they run foul of the law, they must accept the consequences and cannot claim for themselves any special immunity merely because they disagree with the substance

of our laws.

If there is acceptance and recognition of this principle, at least some good would have emerged at the end of the day from the otherwise totally disproportionate debate on this specific case.

On this note, I wish you all the best in your deliberations at this Conference.

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