CROSS-BORDER MOTOR ACCIDENTS AND THE MOTOR VEHICLES (THIRD-PARTY RISKS AND COMPENSATION) ACT

This article examines the recent Court of Appeal decision in *Nippon Fire & Marine Insurance Co Ltd* v *Sim Jin Hwee*, the ramifications of the decision and Parliament's response to the decision.

ON 3 July 1998, the Motor Vehicles (Third-Party Risks and Compensation) (Amendment) Act 1998 ("1998 Amendment Act") received the Presidential assent.[1] The 1998 Amendment Act was enacted to "ensure that Singapore registered and insured vehicles travelling into West Malaysia are covered for third party liability insurance and that the benefits of third party victims of road accidents caused by the use of Singapore vehicles in West Malaysia are preserved."[2]

The impetus for the 1998 Amendment Act was the decision of the Singapore Court of Appeal in *Nippon Fire & Marine Insurance Co Ltd* v *Sim Jin Hwee*[3] (the *Nippon Fire* case). The decision in the *Nippon Fire* case had great impact on the Singapore motor insurance industry as previously,[4] motor insurers had assumed that the benefits in the Motor Vehicles (Third-Party Risks and Compensation) Act extend to victims of road accidents in West Malaysia caused by the use of Singapore registered and insured vehicles. To fully appreciate the difficulties engendered by the *Nippon Fire* case, it is necessary to examine in detail the *Nippon Fire* case.

I THE *NIPPON FIRE* CASE

In the *Nippon Fire* case, the Court of Appeal held that a person injured in a motor accident on a Malaysian road does not have a statutory right

1 The 1998 Amendment Act has not come into operation as the date for the legislation to come into force as law has not been notified in the Gazette.

2 Per Minister for Communications, Mr Mah Bow Tan on the Second Reading of the Motor Vehicles (Third-Party Risks and Compensation) (Amendment) Bill 1998. See Official Reports of Parliamentary Debates, Singapore, Part III, Vol 69, column 243.

3 [1998] 2 SLR 806.

4 This understanding of the motor insurers may be seen in the stance taken in *Yong Moi* v *The Asia Insurance Co Ltd* [1964] 30 MLJ 307 where the insurer, in resisting the claim, did not dispute that the Motor Vehicles (Third-Party Risks and Compensation) Ordinance 1960 applied to the use of a Singapore registered and insured motor vehicle in West Malaysia which had caused the death of a passenger in the vehicle.

to recover directly against the insurer under section 9(1)[5] of the Motor Vehicles (Third-Party Risks and Compensation) Act (the Act) and may not rely on section 10(1)[6] of the Act.

The facts of the case may be shortly stated. In early December 1991, a Singapore registered motor vehicle driven by one Lim met with an accident on the Malaysian side of the Singapore-Johore Causeway. Sim, who was a passenger in the vehicle driven by Lim, suffered serious injuries which left him partially paralysed. At the time of the accident, the vehicle was registered in the name of Leong. Leong[7] was the hirer of the vehicle under a hire-purchase agreement entered with OCBC Finance Ltd. Leong's use of the vehicle was insured by the appellants, Nippon Fire & Marine Insurance Co Ltd ("the insurer"). The motor insurance policy issued by the insurer to Leong provided insurance cover for use of the vehicle in "West Malaysia, the Republic of Singapore, and that part of Thailand within 50 miles of the border between Thailand and West Malaysia."

Sim commenced proceedings against Lim[8] and Leong for damages in negligence for his injuries and obtained judgment against Leong,[9] who by then was a bankrupt.[10] Sim then sued[11] the insurer seeking payment of

5 The material part of which reads "If after a certificate of insurance has been issued under section 4(5) to the person by whom a policy has been effected judgment for a sum exceeding $5,000 in respect of any liability as is required to be covered by a policy under section 4(1)(b) (being a liability covered by the terms of the policy) is obtained against any person insured by the policy then ... the insurer shall ... pay to the Public Trustee as trustee for the persons entitled thereto any sum payable thereunder in respect of the liability ...."

6 The material part of which reads "Where under any policy issued for the purposes of this Act a person (referred to in this Act as the insured) is insured against liabilities to third parties which he may incur then [in the event of the insured becoming insolvent] if either before or after that event any such liability as aforesaid is incurred by the insured his rights against the insurer under the policy in respect of the liability shall, notwithstanding anything in any written law to the contrary, be transferred to and vest in the third party to whom the liability was so incurred."

7 Although Leong had agreed to sell the vehicle to one Wong and permitted the latter to have possession of the vehicle, ownership of the vehicle was not transferred to Wong. This was so as Wong had not paid the purchase price for the vehicle to Leong.

8 Although Lim was a named defendant, the respondent did not proceed to enter judgment against Lim.

9 It would appear that judgment was obtained against Leong on the basis that she was vicariously liable for Lim's (the authorised driver) negligent driving of the motor vehicle. This is undoubtedly correct, see *Candler* v *Thomas (trading as Leisure Lines)* [1998] RTR 214 where the English Court of Appeal affirmed the general principle that an owner of a vehicle is vicariously liable for the negligence of a driver who was using the vehicle at the material time for the owner's purpose and that the using of the vehicle partly for the owner's benefit and partly for somebody else's benefit did not render inapplicable the general principle.

10 Leong was made a bankrupt on 4 September 1992, prior to commencement of proceedings by the respondent. The respondent had obtained leave of court to proceed against Leong and judgment was obtained against Leong on 29 February 1996.

11 Although the respondent also commenced proceedings against the Motor Insurers' Bureau, that action was struck out.

the judgment sum awarded against Leong. The insurer denied liability on several grounds, *viz.*, (a) the policy did not cover an accident occurring in Malaysia; (b) title to the vehicle had passed to Wong by way of a sale; (c) the vehicle was driven by a person not authorised by Leong to drive; and (d) it had not been notified of Sim's action against Leong as required under section 9(3)(a) of the Act.

The Court of Appeal, in agreeing with the High Court's findings on grounds (b), (c) and (d), said that these three grounds "have little merit in them and are principally questions of fact or settled by authority ... The learned judge found in favour of the respondent on all these matters. They do not merit discussion in this judgment."[12]

The Court of Appeal upheld ground (a). The court identified the issue as one of pure construction of section 9(1) of the Act. According to the court, the words "any such liability as is required to be covered by a policy under section 4(1)(b)" in section 9(1) meant a policy covering liability "in respect of death of or bodily injury to any person caused by or arising out of the **use** of the motor vehicle", and that although the word "use" as defined in the Act is not restricted to use on Singapore roads, it means use on Singapore roads only by reason of the presumption that statutes are not to be interpreted as having extra-territorial effect unless expressly so provided. In adopting such a construction of the Act, the Court of Appeal differed from Rubin J who had, at first instance, held that the Act conferred benefits on Sim notwithstanding that he was injured in a road accident which occurred in West Malaysia.

The Court of Appeal took the view that "it would be absurd to give [the Act] extraterritorial effect for to do so would mean that an owner of a motor vehicle to comply with section 3 of the Act must have cover on roads all over the world."[13]

The upshot of the decision in the *Nippon Fire* case is that "liability" referred to in section 9(1) of the Act is a liability arising out of the use of a motor vehicle on Singapore roads. Thus, the respondent could not rely on section 9(1)[14] or section 10(1)[15] of the Act to sue the insurer directly. On section 10(1) of the Act, the court focused on the words "any policy issued for the purposes of this Act" and concluded that "by

12 [1998] 2 SLR at 812F–G.

13 [1998] 2 SLR at 812C–D, paragraph 20. From the judgment of the Court of Appeal, it appears that the concern that section 3 of the Act should not have extra-territorial effect was an important consideration.

14 It is section 9(1) of the Act which creates the right of action in favour of the third party. Section 9(2) of the Act clarifies that "the right of action created" in section 9(1) "shall vest in the persons entitled to the benefit of the judgment payable thereunder."

15 The relevant paragraph in section 10 is subsection (1)(a) as Leong (the insured) was a bankrupt.

necessary implication [the words] must refer to third party liabilities which fall within section 4(1)(b) of the Act. Since the respondent's claim falls outside section 4(1)(b), section 10(1)(a) of the Act would not apply."[16]

Although the Court of Appeal ruled that a third party injured in a road accident in West Malaysia caused by a Singapore registered and insured motor vehicle has no right, under the Act, to sue the Singapore insurance company (which has insured the use of the motor vehicle in West Malaysia), the ruling does not affect the victim's right to recover indirectly from the insurer if the insurance policy is valid as a contract at the date of judgment. This indirect recovery route exists because the tortfeasor will be able to seek an indemnity under the insurance policy for any damages which the tortfeasor is adjudged to be liable to such a third party. This indirect recovery route involves the insured tortfeasor claiming against the insurance company on the contract evidenced by the motor insurance policy. The monies recovered by the insured tortfeasor under the motor insurance policy will be available for payment to the third party provided the tortfeasor is solvent. The indirect recovery route does not secure to the third party the benefits under the Act such as the benefits in section 7, 8, 11, 13 and 14 of the Act. Where the insured tortfeasor is insolvent, the monies obtained under the motor insurance policy will have to be distributed in accordance with the general insolvency law with the result that the third party may not obtain full compensation for the injuries caused to him.

Thus, as a result of the *Nippon Fire* case, a victim of a motor accident in West Malaysia caused by the use of a Singapore registered and insured motor vehicle would, in a case where the tortfeasor is insolvent, have to obtain the assistance of the Official Assignee in Singapore to commence an action (in the name of the insolvent insured tortfeasor) in contract against the Singapore insurance company which insured the use of the motor vehicle in West Malaysia. However, a contractual action by the insolvent insured against the insurance company may not result in the third party recovering compensation in full or at all since the third party's claim against the insolvent insured is an unsecured claim.[17]

II COMMENTS ON THE *NIPPON FIRE* CASE

Although the Court of Appeal accepted that the Act was enacted "essentially to protect ... third parties, i.e., road accident victims",[18] the court restricted the scope of section 4 of the Act to the use of motor

16 [1998] 2 SLR at 812E.

17 The plight of a third party in a situation where the insured is insolvent was highlighted by the English Court of Appeal some 70 years ago in *Re Harrington Motor Co ex parte Chaplin* [1928] Ch 105.

18 [1998] 2 SLR at 809E.

vehicles *in Singapore only*. In restricting the scope of section 4 of the Act to the use of motor vehicles in Singapore, the court relied on the presumption that unless clear words are used, statutes are not intended to have extra-territorial application.

With all the respect which one would accord to any decision of the Court of Appeal, it is debatable whether the public interest is served by restricting the scope of section 4 of the Act to the use of motor vehicles *in Singapore only*. In this regard, it is worthy of note that, in Parliament, the Minister for Communications stated that "the Court's ruling [in the *Nippon Fire* case] is not in the public interest as it means that victims of motor accidents have to resort to indirect means in order to claim against the insurers. This will cause victims and the estates of deceased victims unnecessary expense and delay. In [the *Nippon Fire*] case, it would reduce the amount of damages payable to the injured passenger because the insurance monies will have to be shared with other creditors of the bankrupt insured."[19]

It is arguable that the benefits of the Act should extend to a victim of a motor accident which occurred in West Malaysia as the insurance policy itself covered the use of the motor vehicle in Singapore and West Malaysia. After all, if by the terms of an insurance policy issued to cover the use of a Singapore registered motor vehicle, a Singapore insurer[20] agrees to insure the use of the motor vehicle on West Malaysian roads, a finding of liability against the insurer will not prejudice it in any way.[21] Thus, there would have been justification for the court to hold that the benefits of the Act accrue to any person who is injured or killed (whether in Singapore or in West Malaysia) by the use of a motor vehicle which is insured for third party liability as required by the Act. In other words, where a motor vehicle used in Singapore is insured against third party liability in accordance with the Act, the benefits of the Act[22] accrue to the victims of road accidents caused by the use of that motor vehicle provided the accident occurs in a territory covered by the insurance policy. Since motor insurance policies issued in Singapore cover the use of the insured motor vehicle in Singapore and West Malaysia, the benefits of

19 See Official Reports of Parliamentary Debates, Singapore, Part III, Vol 69, column 245.

20 An insurer lawfully carrying on motor insurance business in Singapore.

21 This is so as section 9(1) of the Act provides that the liability must be "a liability covered by the terms of the policy." See *Bankers & Traders Insurance Co Ltd* v *National Insurance Co Ltd* [1985] 1 MLJ 401 and *Malaysian National Insurance Sdn Bhd* v *Lim Tiok* [1997] 2 MLJ 165. The words in question simply mean that, subject to sections 7 and 8 of the Act, the insurer is not to be held liable to the third party if by the terms of the policy, the insurer has not agreed to provide cover under the circumstances in which the liability arose.

22 The benefits include a direct action against the insurer under sections 9(1) and 10(1), the advantages given under sections 7, 8, 12, 13 and 14 of the Act.

the Act accrue to victims of road accidents caused by the use of the insured vehicle in Singapore and West Malaysia.

Any decision that a third party like Sim has the benefit of a direct action against the insurer under sections 9(1) or 10(1) of the Act does not necessarily entail a finding that the Act has extra-territorial effect in the whole world. In this regard, it is respectfully submitted that the reasoning[23] that if "use" is not limited to Singapore roads, the owner of a motor vehicle would have to obtain cover on roads all over the road is inexact. This is so as section 3 of the Act states that it shall not be lawful for any person to use or cause or permit any other person to use a motor vehicle unless there exists a policy covering third party liability as complies with section 4 of the Act. Section 3 of the Act is directed at the actual use of the vehicle and not an anticipated or the possible use of the vehicle. Section 3 of the Act means that if the owner wants to use his vehicle in Singapore, he must have third party liability insurance for its use in Singapore. It does not require him to have insurance cover in England if the motor vehicle is not used in England. Simply put, the offence in section 3 of the Act is directed at the actual use on roads and the offence does not cover anticipated or possible use of the motor vehicle.

In the *Nippon Fire* case, the concern that section 3 of the Act should not have extra-territorial effect weighed heavily on the court. The court relied on the rule of statutory interpretation that a statute generally operates within the territorial limits of the Parliament that enacted the statute. This rule of statutory interpretation is "based on international law by which one sovereign power is bound to respect the subjects and the rights of all other sovereign powers outside its own territory."[24] In connection with offence-creating statutory provisions, the rule of statutory interpretation presumes that in the absence of clear and specific words to the contrary, the offence-creating statutory provisions are not intended to make conduct taking place outside the territorial jurisdiction of the Executive in Singapore an offence triable in a Singapore criminal court.[25]

However, as there is only a presumption against extra-territorial application of offence-creating statutory provisions, it is open, in appropriate cases, for the court to hold that a particular statute has extra-territorial effect. After all, as Yong Pung How CJ pointed out in *PP* v *Taw Cheng Kong*, "it is not for the courts to dictate the scope and ambit of a section or rule on its propriety. That is a matter which only Parliament can decide: the courts can only interpret what is enacted."[26]

23 [1998] 2 SLR at 812C–D.

24 Per Lord Russell CJ in *R* v *Jameson* [1896] 2 QB 425 at 430. The Court of Appeal in *PP* v *Taw Cheng Kong* [1998] 2 SLR 410 at 432G–I approved the said passage from Lord Russell CJ's judgment.

25 See *PP* v *Taw Cheng Kong* [1998] 2 SLR 410 at 433A–B.

26 *Ibid* at 433G–H.

The critical question, in the context of the Act, is whether Parliament intended the Act to have extra-territorial effect. In this regard, it is pertinent to consider the following words of Lord Griffiths in *Holmes* v. *Bangladesh Biman Corporation*[27]

> "If as a result of international co-operation a number of countries agree to adopt the same law, the domestic legislation that gives effect to this international agreement in this country is not extra-territorial within the meaning of the rule. In such circumstances our domestic legislation is not an interference with the sovereignty of the other countries but the recognition of their wish that we should alter our own law to accord with the common will."[28]

Lord Griffiths' observation on extra-territoriality and international agreements involving a number of countries applies, it is submitted, with equal force to an international agreement or arrangement made between two countries. The issue is whether there is a bilateral arrangement between Singapore and Malaysia to give full effect to the rights of third parties (victims of road accidents) under the respective local legislation notwithstanding that the "liability" arises from a motor accident which occurs in each other's territory. In this connection, the Minister in his speech on the Second Reading of the Motor Vehicles (Third-Party Risks and Compensation) (Amendment) Bill 1998 said:

> "… historically, when the Act was first enacted in 1938, it was intended to cover the use of motor vehicles in Singapore and Malaysia when both countries were treated as a single territory under the British administration. To date, the scope of our Act has not changed even after the constitutional changes which occurred during the period 1959 to 1965. In fact, the Act still retains section 19(1)(f) which indicates that the legislative intent was to provide for compulsory third party liability insurance whenever Singapore registered motor vehicles are used in Malaysia. The practice of Singapore insurers has always been to issue insurance policies which

27 [1989] 2 WLR 481.

28 *Ibid*, at 495–496. It suffices to say that in *Holmes* v *Bangladesh Biman Corporation*, the House of Lords held that section 10(1) of the United Kingdom Carriage by Air Act 1961 did not enable legislation to be made in respect of non-Convention carriage by air, i.e., where the place of departure or the agreed stopping place or the place of destination was not within British territory. If, however, the place of departure or the agreed stopping place or the place of destination was within British territory (i.e., a carriage by air falling within the Hague Convention 1955 which amended the 1929 Warsaw Convention), United Kingdom legislation may be made to operate extra-territorially. See also the approach of Lord Scarman in *Air-India* v *Wiggins* [1980] 2 All ER 593 at 598–599 where the learned Law Lord held that article 5(2) of the Transit of Animals (General) Order 1973, SI 1973 No 1377 had a parial extra-territorial effect as it only criminalised extra-territorial conduct if the animals were on passage from, or landed at, a British port or airport.

> cover the use of Singapore registered vehicles in West Malaysia. The effect of such an insurance policy is to contractually extend the insurance coverage beyond Singapore in order to provide protection to third parties who might be injured or killed by the use of the insured vehicle. In this way, the practice is consistent with the legislative intent to provide the benefits of the Act to victims of road accidents occurring in West Malaysia... it is clear that the spirit and intent of the Act was to cover the use of Singapore registered vehicles within West Malaysia. Any other interpretation would lead to undesirable consequences and subject innocent victims of road accidents occurring in West Malaysia to unnecessary expense and delay in obtaining compensation for the injuries caused to them."[29]

A consideration of the legislative history of the Act and the history of the Malaysian corresponding legislation supports the Minister's statement that the legislative intent was (and is) to require compulsory motor insurance for use of motor vehicles in Singapore and West Malaysia. The history[30] of the Act and its corresponding legislation in the Malay States (which subsequently formed the states of West Malaysia) support the existence of a bilateral arrangement between the two countries designed to ensure that victims of motor accident occurring in Singapore and the Malay States receive compensation. By 1938, the United Kingdom had introduced in British Malaya,[31] legislation which made compulsory third party liability insurance in connection with the use of motor vehicles. The imposition of a framework of legislation in the Straits Settlements and the States of Malaya manifested the intent that all victims of motor accidents in British Malaya should receive compensation for injuries caused by the use of motor vehicles.

The existence of the bilateral arrangement at the time when Singapore and West Malaysia were part of British Malaya is to some extent supported by the approach of the insurance company in *Yong Moi* v *The Asia Insurance Co Ltd*.[32] In that case, the third party claim was made on behalf of the passenger who was killed in the accident in West Malaysia.[33] The insurance company defended the third party's claim on the ground that the tortfeasor was not insured as he was not driving the vehicle[34]

29 See Official Reports of Parliamentary Debates, Singapore, Part III, Vol 69, column 245.

30 At this juncture, it suffices to say that it is legitimate to refer to the legislative history of a statute to discern whether the statute is intended to have extra-territorial effect. See *Tomalin* v S *Pearson & Son Ltd* [1909] 2 KB 61.

31 British Malaya means the Straits Settlements, the Federated Malay States and the Unfederated Malay States.

32 [1964] 30 MLJ 307.

33 In the *Nippon Fire* case, the third party claim was that of the passenger who sustained injuries in the accident in West Malaysia.

34 A Singapore registered vehicle, an "Austin" motor-car No: SR 3851.

with the permission of the insured owner. Although the accident which gave rise to the third party's claim occurred in West Malaysia (on the road from Kulai to Segamat, West Malaysia), the insurance company[35] did not contend that the Motor Vehicles (Third-Party Risks and Compensation) Ordinance 1960 had no extra-territorial effect.

While *Yong Moi* v *The Asia Insurance Co Ltd* cannot be regarded as conclusive on the existence of the bilateral arrangement, the stance adopted by the insurance company in resisting the third party's claim is consistent with the understanding (at least, amongst motor insurers) that the benefits of the legislation[36] on compulsory motor insurance against third party liability extended to any road accident occurring in West Malaysia caused by the use of a Singapore registered and insured motor vehicle.

The changes in the constitutional status of Singapore and the States of Malaya did not alter the object underlying the framework of legislation which made compulsory third party motor liability insurance. From 1938 to the present, the bilateral arrangement has not undergone any change.[37] The continued "common will" of Singapore and Malaysia finds expression in the Act and its corresponding Malaysian legislation.[38] Applying Lord Griffiths' analysis in *Holmes* v. *Bangladesh Biman Corporation*, since there is a bilateral arrangement between Singapore and Malaysia on the adoption of third party motor liability insurance legislation designed to benefit motor accident victims, the Act and its corresponding Malaysian legislation are not to be regarded as extra-territorial and consequently, the presumption against extra-territorial criminality does not apply. In a case where there is such a bilateral arrangement, both countries agree to the extra-territorial application of each other's domestic law to give effect to the object of the arrangement. That being the case, there was nothing objectionable in section 3 of the Act applying to conduct in West

35 The insurance company carried on business in Singapore.

36 In that case, since the accident occurred on 6 October 1957, Part II of the Road Traffic Ordinance (Chapter 227 of the 1955 Revised Edition of the Laws of the Colony of Singapore) contained the provisions which conferred rights on third parties against motor insurers including the right to recover directly against the insurer who had insured the use of the motor vehicle. The Motor Vehicles (Third-Party Risks and Compensation) Ordinance 1960 came into force only on 5 February 1960. The third party commenced action against the tortfeasor on 20 February 1959 and obtained judgment against the tortfeasor on 29 May 1961. The insurance company in *Yong Moi* v *The Asia Insurance Co Ltd* did not dispute that both Part II of the Road Traffic Ordinance and the Motor Vehicles (Third-Party Risks and Compensation) Ordinance 1960 applied to an accident which occurred outside Singapore.

37 For the early statutory law which manifested this bilateral agreement, see the discussion under the rubric "**OBJECT OF THE ACT ACCORDING TO ITS LEGISLATIVE HISTORY**".

38 Part IV of the Malaysian Road Transport Act 1987.

Malaysia.[39] That such a bilateral arrangement exists between Singapore and West Malaysia is evident from the following statements of the Minister for Communications in his Second Reading speech, *viz.*,

> "As Malaysia has similar legislation, we have sought the co-operation of the relevant authorities in Malaysia to similarly amend their legislation. I have written to *the Malaysian Minister of Transport, Tan Sri Dr Ling Liong Sik, and he has agreed that our legislation should be harmonised to safeguard the interests of motorists*[40] and do not impede the movement of vehicles between Malaysia and Singapore."[41]

It remains to be said that in determining whether any particular statute has any extra-territorial effect, consideration must be given to the legislative history and the contextual setting against which the statute was first enacted. If consideration had been given to these matters, it is respectfully submitted that there would be sufficient ground to hold that the Act had a limited extra-territorial effect in that it was intended to apply in West Malaysia to benefit[42] victims of road accidents caused by the negligent use of motor vehicles registered in Singapore and insured by Singapore insurers. The Act's extra-territorial effect is limited to West Malaysia because of the bilateral arrangement imposed by the British administration from 1938 when legislation requiring compulsory third party liability motor insurance was first enacted.

Independently of the historical bilateral arrangement, there are also several factors[43] which justify an extra-territorial application of the Act

39 The offence under section 11 of the Act may also be committed in West Malaysia. The offence under section 11 of the Act relates to conduct after the use of a motor vehicle has given rise to "a liability as is required to be covered by a policy under section 4(1)(b)" of the Act. The "liability" is a liability in respect of the death of or bodily injury to any person caused by or arising out of the use (*on any road*) of the motor vehicle. As for the offences under section 15 of the Act, the offences may only be committed if a police officer — which must mean a Singapore police officer — makes a demand for the driver of the Singapore registered motor vehicle to produce the certificate of insurance or security. Given that Singapore police officers only enforce the law in Singapore, the offences in section 15 may only be committed in Singapore territory.

40 Italics added by writer to underscore the Malaysian Minister's agreement to preserve the bilateral arrangement between Singapore and Malaysia for the protection of victims of motor accidents occurring in each other's territory.

41 See Official Reports of Parliamentary Debates, Singapore, Part III, Vol 69, column 246.

42 It may also be contended that the penal provisions in the Act do not apply in West Malaysia or have limited application in West Malaysia in that only the conduct of residents of Singapore in West Malaysia attract penal sanctions under the Act.

43 These factors were suggested in *Driedger on the Construction of Statutes* (3rd Edition, 1993) at 343.

in West Malaysia *in relation to the use of Singapore registered motor vehicles.*[44] These factors are (i) the use of a Singapore registered motor vehicle which is responsible for the accident; (ii) a Singapore insurer insuring the use of the vehicle; (iii) the application of that part of the Act benefiting victims of accidents in West Malaysia does not interfere with the interests of the Malaysian jurisdiction as Malaysians stand to benefit from such an application; and (iv) the application of that part of the Act benefiting victims of accidents in West Malaysia is not unfair to the Singapore insurers, the insured persons and the victims of accidents in West Malaysia. The existence of these four factors show that the application of the Act in West Malaysia does not offend the dictates of comity for there is nothing that adversely[45] affects Malaysians or other foreigners. In this connection, it is worthy to note that

> "'Comity' in the legal sense is neither a matter of absolute obligation ... nor of mere courtesy and goodwill ... But it is the recognition which one nation allows within its territory to the legislative, executive or judicial acts of another nation, having due regard both to international duty and convenience, and to the rights of its own citizens or of persons who are under the protection of its laws ,..."[46]

It is respectfully submitted that the four factors set out above constitute sufficient ground for the court to hold that the Act has an extra-territorial effect in West Malaysia in relation to the use of Singapore registered and insured motor vehicles. Such a holding would have benefited victims of road accidents which occur in West Malaysia as they may, provided the accidents were caused by the use of Singapore registered motor vehicles covered by third party liability insurance policies issued by Singapore insurers, sue the Singapore insurers under sections 9(1) and 10(1) of the Act. That is to say, the use of a Singapore registered and insured motor vehicle constitutes a real and sufficient connecting factor with Singapore to justify application of the Act in West Malaysia to benefit victims of accidents caused by the use of such vehicles.

Moreover, no known principle of comity is violated if the Act is said to confer a right[47] on third parties (including Malaysians) injured in motor accidents to sue Singapore insurers of Singapore registered motor vehicles which were negligently used in West Malaysia. Thus, it may be asked

44 Emphasis added by writer.

45 It may be contended that the offence-creating provisions in the Act do not apply in West Malaysia or if applicable in West Malaysia, are confined to conduct of Singapore residents.

46 *Hilton* v *Gray* (1895) 159 US 113 at 163–64. This explanation of 'comity' was recently applied by the Supreme Court of Canada in *Morguard Investments Ltd* v *De Savoye* (1990) 76 DLR (4th) 256 at 268–69.

47 On the view that the penal provisions in the Act and its Malaysian corresponding legislation do not apply outside Singapore and West Malaysia respectively.

why the presumption against extra-territoriality, which is merely a rule of interpretation, should be given full effect to deny a third party the right to sue a Singapore insurer in a case where the accident was caused by the negligent use in West Malaysia of a Singapore registered and insured motor vehicle. Public interest[48] would have been served if the court had ruled that notwithstanding the occurrence of the accident in West Malaysia, Sim (the victim of the accident) could avail himself of the benefits under the Act. If that had been done, it would be unnecessary "for the law to be amended to restore to victims of road traffic accidents caused by the use of Singapore vehicles in West Malaysia, the right to make a direct claim against the insurers."[49]

If the overriding concern in the *Nippon Fire* case is the extra-territorial application of penal provisions in the Act, it is respectfully suggested that that concern could have been met by extending only the benefits of the Act to victims of motor accidents occurring in West Malaysia. In other words, the penal provisions in the Act would have no extra-territorial application in West Malaysia. Such an approach would have been justifiable on the ground that the application of the penal provisions to conduct in West Malaysia contradicts a rule of customary international law, *viz.*, that a sovereign power is bound to respect the subjects and rights of all other sovereign powers outside its own territory.[50] In the succinct words of Lord Halsbury in *Madeod* v *Attorney-General for New South Wales*,[51] "all crime is local." Alternatively, it is respectfully suggested that the application of the penal provisions in the Act to conduct in West Malaysia could be restricted to Singapore residents — this was the construction which the English court in *R* v *Jameson*[52] applied to a penal statutory provision.

From the report of the *Nippon Fire* case, it does not appear that Sim's counsel put forward any arguments founded on the historical facts

48 See the text to note 19, *supra.* According to the Minister for Communications, the ruling of the Court of Appeal "is not in the public interest as it means that victims of motor accidents have to resort to indirect means in order to claim against the insurers. This will cause victims and the estates of deceased victims unnecessary expense and delay. In [the *Nippon Fire*] case, it would reduce the amount of damages payable to the injured passenger because the insurance monies will have to be shared with other creditors of the bankrupt insured." See Official Reports of Parliamentary Debates, Singapore, Part III, Vol 69, column 245.

49 Per Minister for Communications. See Official Reports of Parliamentary Debates, Singapore, Part III, Vol 69, column 246.

50 See *R* v *Jameson* [1896] 2 QB 425 at 430. See also *Air India* v *Wiggins* [1980] 2 All ER 593 at 596e, Lord Diplock stated that "The presumption against a Parliamentary intention to make acts done by foreigners abroad offences triable by English courts is even stronger."

51 [1891] AC 455 at 478. See also Viscount Simonds in *Cox* v *Army Council* [1963] AC 48 at 67.

52 [1896] 2 QB 425 at 430.

surrounding the enactment in British Malaya of legislation relating to compulsory motor insurance against third party risks and the bilateral arrangement between Singapore and West Malaysia. Further, it does not appear that any argument on the limited extra-territorial application (i.e., that while the benefits under the Act have extra-territorial application in regard to Singapore registered and insured motor vehicles, the penal provisions in the Act do not apply to conduct in West Malaysia or that the penal provisions of the Act apply only to Singapore residents in West Malaysia) was canvassed before the Court of Appeal. One wonders whether the Court of Appeal might have concluded differently on the extra-territorial application of the Act if the foregoing contentions had been advanced.

It would appear that the decision in the *Nippon Fire* case is founded on the application of a presumptive rule of interpretation that the legislature does not intend a statute to have extra-territorial effect unless it is expressed clearly to have such effect. One may be permitted to question whether the presumption against extra-territoriality should be given such a decisive role in circumscribing the scope of the Act to achieve a less beneficent result. After all, the presumption against extra-territoriality is only a rule of interpretation based on the comity of nations that one country should not impose (i) on foreigners situate in a foreign territory obligations for acts done in the foreign territory or (ii) criminal sanctions for acts done in the foreign territory.[53] The principle of comity is not violated if the Act manifests a bilateral arrangement to achieve the common object of ensuring that road accident victims receive compensation.

III THE OBJECT OF THE ACT ACCORDING TO ITS LEGISLATIVE HISTORY

The legislative history of the Act supports the view that the Act was intended to benefit victims of road accidents occurring not only in Singapore but also in West Malaysia.

The immediate predecessor of the Act is the Motor Vehicles (Third-Party Risks and Compensation) Ordinance 1960.[54] In his Second Reading speech, the then Minister for Labour and Law[55] said that the Motor

53 This rule of interpretation has also been referred to as the presumption against extra-territorial criminality, see *Air-India* v *Wiggins* [1980] 2 All ER 593.

54 Ordinance No 1 of 1960 of the State of Singapore, a Colony of the United Kingdom.

55 Mr K M Byrne, who said that the only significant modification made to the Road Traffic Ordinance was that all payments of compensation by insurers in respect of third party risks were, under the Bill, required to be paid to the Public Trustee. See Singapore Legislative Assembly Debates, Official Report, Vol 12, January-June 1960 cols 16 and 17.

Vehicles (Third-Party Risks and Compensation) Bill "re-enacts the provisions of Part II of the Road Traffic Ordinance.[56]" Part II of the said Road Traffic Ordinance contained the provisions found in Part II of the Road Traffic Ordinance[57] of the Straits Settlements 1941 ("1941 Ordinance"). Part II of the 1941 Ordinance dealt with compulsory third party liability insurance connected with the use of motor vehicles. The 1941 Ordinance repealed the Straits Settlements Road Traffic (Third-Party Insurance) Ordinance 1938 and simply reproduced the provisions of the 1938 Ordinance in Part II of the 1941 Ordinance.

It was the 1938 Ordinance[58] which first introduced into the Straits Settlements compulsory insurance, based on the United Kingdom model, against liability to third parties arising out of the use of motor vehicles.[59] According to the then Attorney-General[60] of the Straits Settlements, the 1938 Ordinance "introduces the principle of compulsory third-party insurance, and reproduces substantially the provisions of Part II of the [United Kingdom] Road Traffic Act, 1930, as amended by Part II of the [United Kingdom] Road Traffic Act, 1934, and of the [United Kingdom] Third Parties (Rights against Insurers) Act, 1930."[61]

It is reasonable to conclude on the basis of this legislative history that the object of the Act is the same as that of the United Kingdom legislation on which the Act is modelled. It has always been said that the object of the United Kingdom legislation is to benefit all victims of road accidents by ensuring that they obtain compensation for their injuries. In this regard, it is respectfully submitted that the Court of Appeal's formulation of the object of the Act, *viz.*, that the Act is to benefit persons who are killed or injured in road accidents in Singapore, is somewhat restrictive.

More importantly, during the period prior to 1938 up to August 1957 (except for the Japanese interregnum), the Straits Settlements and the nine[62] Malay States were under British administration. When the 1938 Ordinance came into force, Part II of the Federated Malay States Road

56 Chapter 227 of the 1955 Revised Edition of the Laws of the Colony of Singapore.
57 Ordinance No 17 of 1941 which came into operation on 1 October 1946.
58 Straits Settlements Gazette Notification 1848 of 1938. The Road Traffic (Third-Party Insurance) Ordinance came into operation on the same day as Part II of the Federated Malay States Road Traffic Enactment 1937. Part II of the said Enactment 1937 provided for compulsory insurance against liability to third parties arising out of the use of motor vehicles.
59 The Ordinance referred to traction engines and motor cars. It was only in the 1941 Ordinance that the words "motor vehicles" were used in place of "traction engines and motor cars".
60 Mr C G Howell.
61 Straits Settlements Government Gazette 1938, Vol II at page 1032.
62 The states which now form West Malaysia.

Traffic Ordinance 1937 (dealing with compulsory motor insurance for third party liability) also came into force on 1 July 1938. Similar legislation also came into force in the Unfederated Malay States (except for Kelantan).[63] All these enactments contained corresponding provisions which showed that the various enactments were intended to have territorial application in the other territories. The first provision which indicated that the various enactments were intended to have extra-territorial effect in the other territories was section 15 in the 1938 Ordinance.[64] The said section 15 permitted production of a certificate of insurance, when required by a Singapore police officer, at a police office or station in the "Colony[65] or in the Federated Malay States or any Malay State named in the schedule" as may be specified by the driver.

It would be meaningless for a Singapore police officer to require production of the certificate of insurance except for the purpose of ascertaining whether there was in force, in relation to the use of the motor vehicle in question, compulsory motor insurance cover as required by section 4(1)(b)[66] of the 1938 Ordinance. This meant the production of a certificate of insurance covering the use of the motor vehicle in the Colony or the Federated Malay States or any of the Malay States mentioned in the schedule would have complied with the requirements of the 1938 Ordinance. Since the Malays States' enactments had a corresponding provision[67] permitting the production of a certificate of insurance in a Malay State or the Colony as the case may be, it must follow that a certificate of insurance covering the use of a vehicle (registered in the Colony) in the Malay States would have complied with the requirements of these enactments.

Another common provision[68] in these enactments made it clear that they recognised the extra-territorial application of the enactments in each

63 See for example, the Johore Road Traffic (Third-Party Insurance) Enactment (Enactment No 9 of 1938) which came into force on 1 August 1938.

64 For the corresponding provision in the Federated Malay States Road Traffic Ordinance 1937, see section 63 thereof.

65 Singapore was then part of the Straits Settlements which was a Colony of the United Kingdom.

66 Section 4(1)(b) of the 1938 Ordinance, identically worded (except for the modern words "motor vehicle") as section 4(1)(b) of the Act, required insurance cover "in respect of any liability which may be incurred ... in respect of the death or bodily injury to any person caused by or arising out of the use of the traction engine or motor car".

67 See note 64 *supra*, and section 15 of the Johore Road Traffic (Third-Party Insurance) Ordinance (No 9 of 1938).

68 See section 65(e) of the the Federated Malay States Road Traffic Ordinance 1937 and section 19(e) of the Johore Road Traffic (Third-Party Insurance) Ordinance (No 9 of 1938).

other's territory. Section 19(e)[69] of the 1938 Ordinance (the original predecessor of section 19(1)(f) of the Act) provided that the provisions of the 1938 Ordinance may be modified, in relation to "traction engines and motor cars brought into the Colony from a place outside the Federated Malay States and the States mentioned in the schedule[70]". The clear inference from the operation of section 19(e) is that no modification was required for motor vehicles coming into the Colony from the States in Malaya. The legal position in the Malay States was the reverse *vis-a-vis* the Colony. The modification scheme did not make any sense unless these enactments had extra-territorial effect in each other's territory in relation to the use of vehicles covered by third party liability insurance under policies issued in any one of the territories which was, with the other territories, subject to British administration.

If there be any doubt on the underlying rationale of section 18(1)(f) of the Motor Vehicles (Third-Party Risks and Compensation) Ordinance 1960 ("the 1960 Ordinance"), the immediate predecessor to section 19(1)(f) of the Act, the doubt would be dispelled by section 10[71] of the Singapore Road Traffic Ordinance 1961 and section 20[72] of the Malaysian

69 The provision read "The Governor in Council may make rules ... for providing that any provisions of this Ordinance shall, in relation to traction engines and motor cars brought into the Colony from a place outside the Federated Malay States and the States mentioned in the schedule by persons making only a temporary stay in the Colony, have effect subject to such modifications and adaptations as may be prescribed ...." The underlined words show that there was only a need to make rules for use in Singapore of motor vehicles coming from "outside" the Federated Malay States of Selangor, Perak, Negri Sembilan and Pahang and the States mentioned in the schedule, namely, Johore, Kedah, Perlis and Trengganu. Section 19(e) of the 1938 Ordinance was re-numbered section 62(e) in the 1941 Ordinance.

70 In 1941, the reference to "the Federated Malay States and any Malay State named in the schedule" in section 15 was changed to "any Malay State named in the Second Schedule". By Ordinance No 8 of 1955, an amendment was made to change the reference to "the Federation of Malaya". In 1963, when Singapore became part of Malaysia, the reference read "Malaysia". It suffices to say that in 1938, the schedule named the States in Malaya with the exception of Kelantan. However, the Second Schedule to the 1941 Ordinance included Kelantan.

71 The relevant part of which read "(1) The Registrar may ... issue a visitor's licence in respect of a motor vehicle brought into Singapore from a place outside Singapore and the Federation of Malaya ... (5) The Registrar shall not issue a visitor's licence unless he is satisfied that there exists in relation to the use of the motor vehicle a policy of insurance which complies with the requirements of the Motor Vehicles (Third-Party Risks and Compensation) Ordinance 1960 or of any rules made thereunder." It suffices to say that section 10 of the Road Traffic Ordinance 1961 which, by 1973, had been re-numbered section 11 of the Road Traffic Act (1973 Reprint) was repealed by Act 10 of 1977. There was no explanation for the repeal of the said provision.

72 The material part of which read "(1) A Registrar may ... grant a visitor's licence in respect of any motor vehicle brought into the Federation from a place *outside Malaya* ...(2) A visitor's licence shall ... (c) not be granted unless the Registrar is satisfied that there exists in relation to the use of such motor vehicle such certificate, policy of insurance ... as complies with the requirement of Part IV of this Ordinance." The

Road Traffic Ordinance 1958. These two provisions[73] clearly show that the laws of Singapore and Malaysia accepted that certificates of insurance issued in Singapore and Malaysia complied with the requirements of the Singapore and Malaysian legislation on compulsory third party liability insurance in relation to use of motor vehicles. It must follow that a certificate of insurance issued by a Singapore insurer gave to third parties injured in accidents (in West Malaysia) caused by the use of Singapore registered and insured vehicles the same rights the third parties would receive if they had been injured by the use of Malaysian registered and insured vehicles. In other words, such third parties would have had the right to sue Singapore insurers under sections 9(1) and 10(1) of the 1960 Ordinance just as they would have the right to sue the Malaysian insurers under sections 80(1) and 81(1)[74] of the Malaysian Road Traffic Ordinance 1958.

This then was the statutory law in Singapore and Malaysia which manifested the "common will" that victims of road accidents in the two countries were to be protected and to that end, full effect had to be given to the rights of third parties under the legislation of each country which made compulsory third party liability insurance in connection with the use of motor vehicles.

Thus, it was clear as at 1963 (prior to Singapore becoming part of Malaysia) that the Act had extra-territorial effect in West Malaysia and the corresponding Malaysian legislation had extra-territorial effect in Singapore. When Singapore became part of Malaysia, no issue of extra-territoriality arose because both Singapore and the nine Malay states were part of Malaysia. Certainly from 1963 to 1965, it cannot be disputed that "road" in the 1960 Ordinance meant roads in Singapore and West Malaysia. The only question is whether, on Singapore leaving Malaysia in 1965, "road" in the 1960 Ordinance became confined to roads in Singapore.[75]

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word "*Malaya*" was defined, under section 2(48) of the Interpretation and General Clauses Ordinance (Malayan Union Ordinance No 7 of 1948), to mean "the Malay States and the Settlements comprising the Federation of Malaya, *and the Colony of Singapore*". Part IV of the Road Traffic Ordinance 1958 was headed "Provisions Against Third Party Risks Arising Out of the Use of Motor Vehicles." See now section 21(1) of the Malaysian Road Transport Act 1987 (Act 333) where the words "outside Malaysia" appear instead of "from a place outside Malaya".

73 The position under the Federated Malay States Road Traffic Ordinance 1937 and under the 1941 Ordinance was exactly the same — see sections 10(1) and (5) of the former Ordinance and sections 10(1) and (5) of the 1941 Ordinance.

74 Sections 80(1) and 81(1) of the Malaysian Road Traffic Ordinance 1958 are substantially similar to sections 9(1) and 10(1) of the Act.

75 That is whether the "updating construction" is to be applied to the word "road" in the Act given the change in Singapore's constitutional status in 1965.

It is submitted that the various constitutional changes affecting Singapore, from internal government, to merger with the Federation of Malaya to form Malaysia and de-merger could not have changed the scope of section 4 of the Act because it and section 19(1)(f)[76] have not been amended during these transitions from Colony to an independent and sovereign republic. Section 19(1)(f) of the Act stands as a testament to the continuing legislative intent that the Act is intended to have extra-territorial effect in West Malaysia.

In other words, the bilateral arrangement (which was put in place since 1938) for both Singapore and Malaysia to give effect to the rights of third parties under compulsory motor insurance legislation continued as the legislative framework remained unchanged.

IV THE 1998 AMENDMENT ACT

Parliament enacted the 1998 Amendment Act to address the difficulties arising from the *Nippon Fire* case. Among other things, the 1998 Amendment Act clarifies the ambit of section 3(1) and amends section 4 of the Act by adding subsections (1A) and (1B).

The amended section 3(1) makes it clear that it is an offence for a person to use or to cause or permit any other person to use (a) any motor vehicle in Singapore without the requisite third party liability insurance cover and (b) a Singapore registered motor vehicle in any territory specified in the Schedule to the Act. West Malaysia is the territory specified in the Schedule.[77]

By section 4(1A), it is declared that a motor insurance policy which insures the use of a motor vehicle in Singapore and a territory specified in the Schedule[78] to the Act (namely, West Malaysia) "shall be deemed always to have been a policy of insurance (i) issued for the purposes of the Act and (ii) under which third parties are conferred rights by sections 9, 11, 13 and 14." By this legislative sleight of hand, victims of road accidents in West Malaysia caused by the use of Singapore registered motor vehicles

76 Section 19(1)(f) provides: "The Minister may make rules ... for providing that any provisions of this Act shall, in relation to motor vehicles brought into Singapore from a place outside Malaysia by persons making only a temporary stay in Singapore, have effect subject to such modifications and adaptations as may be prescribed ...." It suffices to say that no rules were made under section 19(1)(f) of the Act or the 1960 Ordinance. Rules were made under the equivalent provision of the Straits Settlements Road Traffic Ordinance (Act 17 of 1941), namely, section 62(e).

77 See section 9 of the 1998 Amendment Act.

78 This legislative technique enables the Minister to extend the benefits under the Act to third parties injured in road accidents which occur outside Singapore and West Malaysia and which are caused by the use of a Singapore registered and insured motor vehicle. See the new section 3(1) and (7) and the new section 4(1A) of the Act which were inserted by the 1998 Amendment Act.

are conferred rights under the Act. Such victims will, after timeously notifying the Singapore insurer of the commencement of legal proceedings against the tortfeasor and obtaining judgment against the tortfeasor, be able to sue the Singapore insurer directly under sections 9[79] or 10, as the case may be, of the Act. Such victims will also enjoy the benefit of sections 7, 8, 13 and 14 of the Act.[80]

The new section 4(1A) reverses the Court of Appeal's ruling in the *Nippon Fire* case and retrospectively confers the right on all affected persons to sue Singapore insurers under the Act if a motor accident involving a Singapore registered and insured vehicle occurs in West Malaysia. However, the new section 4(1B) provides that the retrospective effect of the 1998 Amendment Act does not extend to any person whose claim has, prior to the passing of the 1998 Amendment Act, been held by a Singapore Court not to give rise to an action against a Singapore insurer. Under section 4(1B), the decision of the Court of Appeal in the *Nippon Fire* case is preserved and, similarly, the decisions of other Singapore courts rendered before the commencement date of the 1998 Amendment Act are preserved.[81]

Given the amendments to sections 3 and 4 of the Act, it is not surprising that the reference to "Malaysia" in section 19(1)(f) of the Act was deleted by the 1998 Amendment Act and replaced with the word "Singapore". Since the amendments to sections 3 and 4 of the Act have made it clear that the benefits of the Act are (also) conferred on victims of road accidents occurring in West Malaysia caused by the use of Singapore registered motor vehicles, nothing is to be gained from preserving the word "Malaysia" in section 19(1)(f) of the Act.

The net effect of the 1998 Amendment Act is to equiparate the position of victims of motor accidents in West Malaysia caused by the use of Singapore registered and insured motor vehicles to the position of victims of motor accidents occurring in Singapore. The victims of motor accidents in West Malaysia caused by the use of Singapore registered and insured motor vehicles will (now) have all the benefits given by the Act including the right to recover directly against the Singapore insurer who had insured the use of the motor vehicle in West Malaysia. Such victims will also be able to rely on sections 7, 8, 10, 13 and 14 of the Act.

V CONCLUSION

At first sight, the proposition that the Act has extra-territorial effect in West Malaysia appears startling but given that Singapore and the states

79 See the amendment brought about by the 1998 Amendment Act to section 4(1)(b) of the Act and the new section 4(1A).

80 *Ibid*.

81 Presumably, this is in deference to the exercise of judicial power in the decided cases so that there can be no charge of interference with the judicial power of the courts.

in West Malaysia were under British administration at the time of the introduction of legislation on compulsory motor liability insurance, such a proposition is consistent with the historical facts. The historical facts and the scheme of the corresponding legislation in Singapore and Malaysia indicate that the Act is intended to have extra-territorial application in West Malaysia.

However, extra-territorial application of the Act to West Malaysia does not necessarily mean that the offence-creating provisions apply in relation to conduct in West Malaysia.[82] If the entire Act is said to have extra-territorial application to West Malaysia, Malaysia might have objected to the extra-territorial application of the penal provisions in the Act to West Malaysia.[83] In such an event, the Executive and Legislature in Singapore would have had to take the necessary steps to address Malaysia's objections.[84]

The legislative intent for the Act to have extra-territorial application in West Malaysia was formed and manifested at a time when both Singapore and West Malaysia were administered by a common colonial master, the United Kingdom. In that historical setting, there was nothing revolutionary in the Act and the corresponding Malaysian legislation having extra-territorial effect in each other's territory. The only question is whether Singapore's status and Malaysia's status as separate sovereign nations have changed the legislative intent for the Act to have extra-territorial effect in West Malaysia. In the case of Singapore, the deliberate omission to amend section 19(1)(f)[85] of the Act (i.e., the omission to replace the words

82 The accepted doctrine is that a sovereign nation enjoys the authority to enact, enforce and adjudicate its national law with respect to criminal or illegal conduct occurring outside its borders in two situations — (i) when such criminal conduct threatens the security of the country in question or (ii) when the criminal or illegal activity occurring abroad produces substantially detrimental or negative effects within the national territory of that country. See *Strassheim* v *Daily* (1911) 221 US 280 at 285.

83 The extra-territorial application of criminal provisions in the Act may, in the modern context of Singapore and Malaysia being separate sovereign nations, be criticised on the ground that it violates principles of customary international law.

84 It is pertinent to state that a holding that the entire Act has extra-territorial application in West Malaysia is likely to evoke a similar response from the Malaysian courts, ie, that the corresponding Malaysian legislation (Part IV of the Road Transport Act 1987) has extra-territorial application in Singapore.

85 The corresponding Malaysian provision was amended in 1984. Section 107(e) of the Road Transport Act 1987 provides that "The Minister may make rules ... for providing that any provisions of this Part [IV] shall, in relation to motor vehicles brought into Malaysia from a place *outside Malaysia* by persons making only a temporary stay in Malaysia, have effect subject to such modifications and adaptations as may be prescribed." The italicised words replaced the words "outside Malaya" when the Road Traffic Ordinance 1958 was modified in 1984 by PU (A) 136/84, the Modification of Laws (Road Traffic Ordinance) (Extension and Modification) Order 1984. The modification changed the words "the Federation", "the States of Malaya" and "Malaya" in the Road Traffic Ordinance 1958 to "Malaysia."

"outside Malaysia" with "outside Singapore") indicates strongly that there has been no change in the legislative intent of the Act. Consequently, the presumption of updating construction[86] is ousted.

It does not appear from the report of the *Nippon Fire* case that the arguments relating to the legislative history of the Act and the limited[87] extra-territorial application of the Act in West Malaysia were canvassed before the Court of Appeal. If such arguments were put forward, the court might well have been persuaded to take a different view of the object of the Act and the scope of sections 9(1) and 10(1) of the Act.

Be that as it may, as a result of the enactment of the 1998 Amendment Act, the difficulties arising from the *Nippon Fire* case no longer plague third party claimants who are victims of road accidents in West Malaysia caused by the use of Singapore registered and insured motor vehicles. Under the 1998 Amendment Act, any third party who is injured in an accident in West Malaysia caused by a Singapore registered and insured vehicle may (after timeously notifying the insurer of the commencement of legal proceedings and obtaining judgment against the tortfeasor) sue the Singapore insurer under section 9(1) of the Act and, where the insured tortfeasor is insolvent, under section 10(1) of the Act. Such victims will also enjoy other benefits under the Act just like victims of motor accidents which occur in Singapore.

Parliament moved swiftly to protect the rights of victims of motor accidents in West Malaysia caused by the use of Singapore registered and insured motor vehicles. Within three months of the *Nippon Fire* case,[88] remedial legislation was enacted to confer rights under the Act on victims of such motor accidents in West Malaysia. The 1998 Amendment Act has made it clear that the legal position is as understood by the motor insurance industry and the general public prior to the ruling of the Court of Appeal in the *Nippon Fire* case.[89]

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86 Sometimes referred to as a construction that is "always speaking", see Bennion on *Statutory Interpretation* (2nd Edition, 1992) at page 617. This construction is founded on the presumption that Parliament intends the court to apply to a statute a construction that continuously updates its wording to allow for changes (like changes in constitutional status) since the statute was initially framed. For cases where the "always speaking" construction was adopted, see *Gissing* v. *Liverpool Corporation* [1935] Ch 1 and *Zezza* v *Government of Italy* [1982] 2 WLR 1077.

87 Limited to Singapore registered and insured motor vehicles or limited to the application of the benefits under the Act but not the penal provisions.

88 Judgment was delivered by the Court of Appeal on 20 April 1998.

89 The Minister for Communications said that the 1998 Amendment Act "restores the law governing motor insurance coverage and the rights of road accident victims to the way it was prior to the ruling of the Court of Appeal." See Official Reports of Parliamentary Debates, Singapore, Part III, Vol 69, column 247.

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