

Transcript of remarks at press conference on Basic Law (2)

Reporter: My question is, the Basic Law Committee Chairman Li Fei has earlier said in the press conference that self-determination also amounts to a call for Hong Kong independence, so my question is will the lawmaker face any legal consequences or even be disqualified if he or she argues Hong Kongers should have a say in their future beyond 2047, even it's not related to independence at all, and would the scope be too wide, that have created a chilling effect that unnecessarily restrict Hong Kongers' free speech? And my second question is for Mr Yuen. You mentioned earlier that you have hoped this saga to be resolved at the Hong Kong local level, but have you ever considered resigning from your post to convince Beijing not to do so? If not, why? Have you tried hard enough? Thank you.

Chief Executive: The year 2047 is 50 years from 1997. Under Article 5 of the Basic Law, the "socialist system and policies shall not be practised in the Hong Kong Special Administrative Region, and the previous capitalist system and way of life shall remain unchanged for 50 years". So it is this part about Hong Kong that remains unchanged before 2047. What is a constitutional fact is that Hong Kong has been part of China, is part of China and will be part of China this side or the other side of 2047. The Basic Law is a national law and also a Hong Kong law, so any proposition about Hong Kong's future must be in accordance with the Basic Law, and this part of the Basic Law specifies very clearly that it is only the capitalist system that will remain unchanged before 2047. Hong Kong has been, is and will continue to be part of China.

Secretary for Justice: I have in the past, as you mentioned earlier, said I believed the dispute concerning the oath-taking can and should be resolved within the Hong Kong judicial system. I think I can tell you that I am still of

that view. However, in cases of this nature, there are bound to be differences of opinion, and such differences of opinion can be legitimate differences of opinion. In this case, the National People's Congress Standing Committee has exercised its power to make an interpretation of Article 104. And I think it would be necessary to look at the interpretation from an objective manner. In so doing, I think one has to bear in mind several factors, if I may put it very briefly. The first factor is the constitutional design of Hong Kong. You would appreciate that under both the constitutions of the People's Republic of China as well as the Basic Law, the power is vested in NPCSC to explain the legislation including national legislation, such as the Basic Law. And also in Hong Kong, the Basic Law deals with various aspects, including, among others, judicial independence on the one hand and the interpretation of the Basic Law by the Standing Committee of the (National) People's Congress. So in other words, both judicial independence and interpretation can co-exist. And they do co-exist under our constitutional framework as housed in the Basic Law. Secondly, I think one also has to bear in mind the background leading to this interpretation by the NPCSC and I won't go into the detail because that has already been explained in the session this morning in Beijing. The third factor which I would invite people to take into account is the content of the interpretation. If one looks at the interpretation, one would see that the explanation sets out the meaning of Article 104 in a broad sense. In other words, it sets out the principle. It is not case specific - rather it sets out the general principle as an aid to the interpretation or understanding of Article 104. I repeat it's not case specific. And lastly, I think you all would know that we have in the past four interpretations made by the NPCSC. Each time the Judiciary of Hong Kong remains independent. They remain professional, they remain strong and, speaking for myself, I have every confidence that after this interpretation by the NPCSC, the Judiciary of Hong Kong and all our judicial officers will continue to defend the

law, uphold the rule of law and discharge their judicial duty in an independent, fair and impartial manner. In short, I have every confidence that our Judiciary would continue to properly and professionally discharge their duties. I think having considered all these factors, I think if one thinks it still meaningful to consider the question of resignation, I would ask why. Because resignation is no more than a gesture and one has to consider what has been done in its proper context. That's why I summarised the various factors that I have done. And I emphasise again that not only do I have confidence in the Judiciary, the Department of Justice and indeed the entire Government of the HKSAR would continue to discharge our duty, to defend the rule of law, as well as to implement the Basic Law. Thank you.

(Please also refer to the Chinese portion of the transcript.)

Ends/Monday, November 7, 2016