

**2023 Training of China-AALCO Exchange and Research
Programme on International Law [HK Session]**

**“The Role of Hong Kong as an International Legal and
Dispute Resolution Centre as well as Capacity Building Centre
for Foreign-related Legal Affairs”**

**Monday, 31 July 2023 at
Function Hall, 1/F, Main Wing, Justice Place**

**Talk by Mr Clifford Tavares, PGC(LEAD)1
(1600 to 1615 hrs)**

Distinguished delegates, ladies and gentlemen,

1. Good afternoon. A warm welcome to Hong Kong to you all, our friends from AALCO, African Union, ASEAN, and many others from around the world.
2. I am delighted to have the opportunity to deliver this talk for the 6th Training Session of the China-AALCO Exchange and Research Program on International Law. This Training Session bears special meaning as it marks the first session after the pandemic. With the return to normalcy, the occasion has finally arrived for us to gather together for a face-to-face

session to discuss topics of international law which are close to our hearts.

3. China has always been committed to building a Community with a Shared Future for Mankind. This is best illustrated by the Belt & Road Initiative (BRI), which celebrates its 10th Anniversary this year. The BRI, with its five key areas of focus ¹ : (i) policy coordination, (ii) infrastructure development, (iii) investment and trade facilitation, (iv) financial integration, and (v) culture and social exchange, promotes win-win cooperation, building on mutual respect and trust among over 150 countries and 32 international organisations that have signed up to the BRI². Under the ‘One Country, Two Systems’ principle, Hong Kong, as an inalienable part of China, is both a beneficiary of and contributor to our Motherland’s national policies.

Role of Hong Kong as an International Legal and Dispute Resolution Centre

4. The topic of my talk today is: “The Role of Hong Kong as an International Legal and Dispute Resolution Centre as well as

¹ Opportunities In 5 Key Areas, Belt and Road Basics, HKTDC
(<https://beltandroad.hktdc.com/en/belt-and-road-basics>)

² 已同中國簽訂共建“一帶一路”合作文件的國家一覽, 中國一帶一路網
(<https://www.yidaiyilu.gov.cn/p/77298.html>)

Capacity Building Centre for Foreign-related Legal Affairs”. Allow me to share with you why I think Hong Kong stands out from other jurisdictions and is well placed to serve this role.

5. Hong Kong has long been regarded as an international legal and dispute resolution services centre in the Asia-Pacific region. As China’s only common law jurisdiction, Hong Kong maintains its own legal system and a strong rule of law tradition, and has a large pool of legal talents in international legal and dispute resolution services, including solicitors, barristers, arbitrators, mediators. These highly skilled legal and dispute resolution professionals can provide diversified and comprehensive services to both domestic and foreign investors, especially those engaged in trade and investment under the BRI.
6. Earlier this morning, you have heard about ‘One Country, Two Systems’ being the bedrock of Hong Kong’s stability and continued success, which principle is enshrined in the Basic Law, the constitutional document of the Hong Kong Special Administrative Region (HKSAR). The Basic Law also prescribes the various systems to be maintained in the HKSAR, including retaining its common law system, and expressly

provides that an independent judicial power exercised by the Judiciary is free from any interference.

7. Hong Kong receives strong support under national policies to establish itself as a leading centre for international legal and dispute resolution services in the Asia-Pacific region and beyond. Indeed, Hong Kong enjoys some very unique advantages in the provision of legal and dispute resolution services given its close proximity and cooperation with China, especially for business and investment involving Chinese entities.
8. In terms of arbitration, under the Interim Measures Arrangement (2019), Hong Kong is the first jurisdiction outside the Mainland where, as a seat of arbitration, parties to arbitral proceedings would be able to apply to the Mainland courts for interim measures which include the preservation of property, evidence and conduct. As at the end of 2022, the total value of assets preserved by 54 decisions issued by the Mainland Courts amounted to 14.5 billion RMB (that is approximately 2.1 billion USD). Currently, there are 7 qualified arbitral institutions under this Arrangement. The AALCO Hong Kong Regional Arbitration Centre, which you will be visiting on Thursday, is the latest addition to the list of

qualified arbitral institutions. Apart from the success of the Interim Measures Arrangement, the Reciprocal Enforcement Arrangement (1999) and its Supplemental Arrangement (2020) between the Mainland and Hong Kong have also provided a simple and effective mechanism in both places for reciprocal enforcement of arbitral awards.

9. As for mediation, the Department of Justice (DoJ) of the HKSAR, together with the legal departments of Guangdong and Macao, has set up the Greater Bay Area (“GBA”) Mediation Platform under a tripartite Joint Conference, to promote the wider use of mediation within the GBA. Since the first Joint Conference held in 2019, the GBA Mediator Accreditation Standards, the GBA Mediator Code of Conduct Best Practice and the GBA Cross-boundary Disputes Mediation Model Rules have been promulgated, with a view to establishing a GBA Mediator Panel. On the other hand, the Closer Economic Partnership Arrangement (CEPA) Investment Agreement concluded on 28 June 2017 provides a Mediation Mechanism for the settlement of investment disputes. In this regard, our Department has produced a set of mediation rules and criteria for the designation of mediation institutions and mediators.

10. The Hong Kong Judiciary has always maintained a pro-arbitration approach with minimal intervention to arbitral proceedings, as well as a pro-mediation approach by encouraging parties to resolve their disputes by mediation as opposed to litigation. The Judiciary's stance is well documented in open court judgments. In the recent case of *C v D*, the Hong Kong Court of Final Appeal, in dismissing an appeal, rejected the notion that it could review and set aside an arbitral tribunal's determination on the fulfilment of a pre-arbitration condition requiring negotiation.³ This is yet another manifestation of Hong Kong court's pro-arbitration approach, respecting parties' autonomy to submitting disputes to arbitration and limiting judicial intervention in arbitral process. The Judiciary's pro-mediation approach is manifested by the many mediation schemes that it has launched over the years, the latest ones being the Mediator-Assisted Financial Dispute Resolution in family proceedings, the Mediator-Assisted Case Settlement Conference in the District Court, the establishment of the Integrated Mediation Office in West Kowloon to refer suitable Small Claims Tribunal cases for pro bono mediation services.

³ *C v D* [2023] HKCFA 16

11. The pandemic has certainly changed the way we live and work, as we realised that the use of technology can enhance efficiency. Legal services are no exception. On Thursday, you will be visiting Hong Kong's home grown lawtech company, eBRAM (Electronic Business Related Arbitration and Mediation) International Online Dispute Resolution (ODR) Centre, which aims to provide efficient, cost-effective and secure platforms for resolving disputes, including commercial and investment disputes involving Belt & Road countries, through online negotiation, mediation and arbitration, for parties around the world. eBRAM is the only ODR service provider from Hong Kong listed under the APEC Collaborative Framework for Online Dispute Resolution of Cross-Border Business-to-Business Disputes to serve the APEC economies. You will learn about the latest developments in lawtech from eBRAM, including the online deal-making platform that it will be soon launching.

12. Countries that are involved in the BRI will be able to enjoy the outstanding services provided by our professionals. In particular, in light of the vision of enhanced collaboration and trading as well as investment activities between China and Africa under "Vision 2035 for the cooperation between China

and Africa” (中非合作 2035 年願景)⁴ and the “Nine Projects” (九項工程)⁵, we believe that there will be ample opportunities for our African friends to make use of Hong Kong’s legal and dispute resolution services and benefit from the presence of an extensive international network in this city.

Role of Hong Kong as a Capacity Building Centre for Foreign-related Legal Affairs

13. Hong Kong offers abundant capacity building opportunities for legal and dispute resolution professionals in the Asia-Pacific region and strives to become a training base on foreign-related legal affairs for them. As a capacity building centre, Hong Kong has hosted or organized various training workshops for both local and foreign legal experts. The China-AALCO Exchange and Research Programme you are currently participating in is one of the outstanding examples. Another example is the Investment Law and Investor-State Mediator Training co-organised by DoJ, the International Centre for Settlement of Investment Disputes (ICSID) and the Asian Academy of International Law (AAIL). We will be

⁴ 中非合作 2035 年願景, 國家國際發展合作署
(http://www.cidca.gov.cn/2021-12/09/c_1211480567.htm)

⁵ 中非合作論壇第八屆部長級會議“九項工程”內容解讀, 中華人民共和國商務部
(<http://ne.mofcom.gov.cn/article/sqfb/202201/20220103237203.shtml>)

organizing the 4th round later this year and early next year. You will be hearing from Ms Olga Boltenko, who was one of our trainers in that programme, about investment law this Wednesday. You will also be hearing from Dr Sun Jin, the Director-General of the International Organization for Mediation Preparatory Office, about investment mediation this Thursday.

14. DoJ also organises various events to gather government officials, professionals, experts from all over the globe to come to Hong Kong to join us in discussing latest developments in different areas of law. The Hong Kong Legal Week, our annual flagship event, will be held from 6 – 10 November this year. We have a series of events lined up for that week, including the international Judicial Summit co-organised with UNCITRAL. In May 2024, Hong Kong will be hosting the International Council of Commercial Arbitration (ICCA) Congress, a biennial international arbitration conference. We welcome you all to return to Hong Kong to join us then.
15. We also collaborate closely with various international organizations such as HCCH⁶, UNCITRAL⁷, UNIDROIT⁸

⁶ Hague Conference on Private International law

⁷ United Nations Commission on International Trade Law

⁸ The International Institute for the Unification of Private Law

and AIIB⁹ to provide secondment opportunities to these organisations for government counsel and lawyers in the private sector, to enhance their international exposure and to empower them to contribute further to Hong Kong's development.

16. Given the many strengths of Hong Kong, we are home to many international and regional law-related organisations. In 2020, DoJ opened the Hong Kong Legal Hub, providing office spaces to top-notch international and regional law-related organisations to establish their presence in Hong Kong. AAIL, AALCO Hong Kong Regional Arbitration Centre and eBRAM are all housed in the Hong Kong Legal Hub among others.
17. More recently, on 16 February this year, with the staunch support of the Central People's Government, the International Organization for Mediation Preparatory Office, which I mentioned earlier, was inaugurated at the Hong Kong Legal Hub. The to-be-established International Organization is a significant international initiative on promoting the use of mediation for resolving international conflicts. The setting up of the Preparatory Office here signifies a vote of confidence by the states signing the Joint Statement on the Future

⁹ The Asian Infrastructure Investment Bank

Establishment of the International Organization for Mediation in placing their trust in Hong Kong.

18. President Xi has repeatedly expressed that the principal tenet of ‘One Country, Two Systems’ must be adhered to in the long run. Hong Kong will continue to strengthen our position as an international legal and dispute resolution services centre. We will also further enhance our capability as a centre for capacity building for foreign-related legal affairs through continued collaborations with international organizations and strengthening our relationship with foreign jurisdictions – that of course includes AALCO members, friends from ASEAN and other places. Indeed, we have in March visited Bangkok to strengthen cooperation between the two places, and we plan to visit more stops in ASEAN in the future. We have in May received a delegation from Brunei to Hong Kong and in June implemented the Memorandum of Cooperation between the two sides by having an online seminar on lawtech and ODR held with the Supreme Court of Brunei Darussalam in collaboration with the AALCO Hong Kong Regional Arbitration Centre and eBRAM.¹⁰

¹⁰ Brunei participates in arbitration, dispute resolution seminar, Borneo Bulletin Online (<https://borneobulletin.com.bn/brunei-participates-in-arbitration-dispute-resolution-seminar/>)

Conclusion

19. At the Boao Forum for Asia Annual Conference this year, Premier of the State Council, Li Qiang emphasised the importance of working together to build a community with a shared future for mankind – countries should work together to maintain a peaceful and stable environment for development; to build a more vibrant centre of growth; and to expand effective ways for enhanced solidarity and cooperation.¹¹ Hong Kong will continue to contribute in every way we can towards helping achieve this vision.

20. Ladies and gentlemen, I hope that my talk this afternoon has bettered your understanding of what Hong Kong’s legal strengths and unique advantages can offer and has helped prepare you for the other lectures and visits this week. I look forward to strengthening our friendship and collaboration, and I wish you all an enjoyable stay in Hong Kong.

¹¹ Following the Vision of a Community with a Shared Future for Mankind and Bringing More Certainty to World Peace and Development, Keynote Speech by H.E. Li Qiang, March 30, 2023 (https://www.fmprc.gov.cn/eng/wjdt_665385/zyjh_665391/202303/t20230331_11052581.html)