

(Translation)

**Speech by Ms Elsie Leung, GBM, JP
Secretary for Justice**

**Congregation for the Award of Honorary Degree of Doctor of Laws at
the Chinese University of Politics and Law
on Monday, 27 December 2004**

President Xu, Heads of Offices, Distinguished Guests, Teachers and Students,

It is a pleasure for me to meet you all today. I am greatly honoured to receive an Honorary Degree of Doctor of Laws awarded by the Chinese University of Politics and Law (the “University”) out of the kindness of Chairman Jiang Zuyao and on the recommendation of President Xu Xianming. Not long ago, the Hon Mrs Rita Fan, President of the Legislative Council of the Hong Kong Special Administrative Region (“HKSAR”) also received an Honorary Degree of Doctor from the University. This serves well to demonstrate your care and concern for the HKSAR, by which I am deeply moved. My past association with the University came from the contacts I made with individual professors when I sought their advice from time to time. They include for example Professor Wu Changzhen, an expert in family law, Professor Lian Xisheng, an expert in constitutional law, Professor Jiang Ping, an expert in civil law and Professor Chen Guangzhong, an expert in criminal law. Today, I am particularly excited to meet face to face with the President, the Vice-President, teachers and students, and to experience the University’s strong academic atmosphere.

Historical Background

2. Today I would like to brief you on the implementation of “One Country, Two Systems” in Hong Kong and our future prospects. Before 1841, the Mainland and the international community knew very little about Hong Kong. Archaeological studies of Hong Kong did not begin until the twenties in the last century. From such archaeological studies we know that the history of Hong Kong can be traced back to over 6,000 years ago. However, in the forties of the nineteenth century, there were only some 3,000 villagers scattered in more than 20 villages in Hong Kong. Since its establishment as a port in 1841, Hong Kong had gradually developed into a commercial centre, and Chinese began to move from the Mainland to Hong Kong. Owing to the corruption of the Qing Government, China became a semi-colonial and semi-feudal country in the 19th century, and Britain, on the strength of three

unequal treaties, turned Hong Kong into her colony and ruled it for 156 years. The downfall of the Qing Dynasty in 1911 was followed by the establishment of the Republic of China. China was tormented by feudalism, warlords and bureaucratism, etc. for almost half a century afterwards, and our country saw wars and chaos year after year and was torn by internal and external strife. Stability was not achieved until the establishment of new China in 1949. In the early years after the establishment of the People's Republic of China, our country had gone through many twists and turns. The Anti-Rightist Movement and the Cultural Revolution in particular, had caused sufferings and calamities to many people. With the tightening of border controls since the early sixties, the interflow of people and goods between Hong Kong and the Mainland almost came to a halt. The development of Hong Kong in the political, economic, social and cultural aspects could only rely on external forces and largely followed the British and American modes of development. The gap between the two places had continue to grow as the socialist system was practised in the Mainland while the capitalist system was practised in Hong Kong. The implementation of the reform and open-door policy in China in the late seventies brought about an increase in business and investment activities in both places. Hong Kong gradually became one of the major investors in the Mainland. In the 1980's, after negotiations spanning two years, China and Britain signed the Joint Declaration on the Question of Hong Kong in September 1984 and the process of reunification of Hong Kong with the Mainland began. This included the drafting and the adoption of the *Basic Law*, the establishment of the Preliminary Committee, the Preparatory Committee and the Provisional Legislative Council, and the formation of the First Term Government. These were the results of the painstaking work of a lot of patriots who loved Hong Kong. Many different hurdles had been overcome in the process. At midnight on 30 June 1997, the Chinese and British Governments held a handover ceremony, unveiling a new constitutional order for Hong Kong. From unification to separation and then back to reunification with China, Hong Kong has reassumed its status as an inalienable part of the People's Republic of China and a special administrative region directly under the Central People's Government. Under the principles of "One Country, Two Systems" and "Hong Kong people governing Hong Kong", we enjoy a high degree of autonomy and independent executive, legislative and judicial powers. We can therefore see from history that the process of reunification not only involves changes in the political system but also requires recognition of our national identity and personal acceptance. Such a process could not be completed by merely a change of the national flag in 1997.

Our Vision and Mission

3. In his inaugural speech given at the First Term Government Swearing-in Ceremony, the Chief Executive Mr Tung Chee Hwa, outlined the blueprint of our mission and vision for Hong Kong. Our tasks were to meet all the challenges brought about by a new page in history, to ensure Hong Kong's continuous prosperity and stability, and to exercise responsibly the high degree of autonomy conferred by the *Basic Law*. We had to continue to ensure that the executive, legislative and judicial branches of the Government would operate independently, and keep up our efforts against corruption and maintain a clean society. The HKSAR would continue to maintain a free economy, to adopt policies favorable to free enterprises and free trade and to pursue the principle of fiscal prudence. To provide an favourable environment for investors and the people of Hong Kong, we would emphasize an executive-led system as well as an efficient civil service. We would be fully committed to preserving the fundamental rights of the people of Hong Kong and their way of life. We would uphold the rule of law, and ensure equality before the law. We would build a society in which everyone would lead a peaceful and comfortable life, and different sectors of the community would be given an opportunity to participate in public affairs. We would develop democracy in accordance with the provisions of the *Basic Law*. On social values, we would advocate a diverse cultural development in Hong Kong. We would promote among the people respect for and recognition of the finest Chinese traditional values including filial piety, devotion to family, humbleness and kindness, and striving for improvements. We would value harmony in society, and avoid antagonism from developing. We would protect individual rights and at the same time urge for social responsibility. Our great goal was to play a useful role in building our nation and to witness our nation on road to prosperity and re-unification¹. Despite the many challenges faced by us since reunification, our mission and vision have remained unchanged.

Smooth Transition

4. Let us first review how the "One Country, Two Systems" has been implemented since the promulgation of the *Basic Law*. The primary task of the HKSAR Government was to ensure smooth transition and reunification. In the small hours of 1 July 1997, I submitted the *Hong Kong Reunification Bill* to the Provisional Legislative Council (PLC) in my capacity as the Secretary for Justice of the HKSAR for ensuring the continuity of laws, legal proceedings, the judicial system, the civil service system, recognition of legal qualifications,

¹ See the Speech by the Chief Executive at the Ceremony to Celebrate the Establishment of the Hong Kong Special Administrative Region.

ownership of property, rights and legal obligations, etc., and to ratify the laws passed by the PLC for the purpose of reunification before the HKSAR Government was established.

5. In February 1997, the Standing Committee of the National People's Congress (NPCSC), in accordance with the requirements of Article 160 of the *Basic Law*, adopted the laws previously in force in Hong Kong, except for 24 ordinances (mainly relating to sovereignty, defence and foreign affairs) which were found in whole or in part to be in contravention of the *Basic Law*. This means that the common law and nearly all of the 600-odd ordinances previously in force continue to apply in the HKSAR. The legal vacuum left by those un-adopted laws, such as the amendments to the *Societies Ordinance* and the *Public Order Ordinance* in 1992 and 1995, was subsequently filled by the PLC through legislation ratified in the small hours of 1 July 1997. For the 40-odd ordinances which were rushed through the then Legislative Council within the two weeks before reunification, those found not to be in the interest of the public were suspended, subsequently amended or repealed.

6. Over the next few years, we have proceeded with the adaptation of laws so that they become consistent with Hong Kong's status as a special administrative region of the People's Republic of China by removing all colonial terms from the laws. We have completed 93% of the work on adaptation of laws. The remaining part may need more time to resolve as they involve policy issues.

7. On 1 July 1997, we introduced 10 national laws into Hong Kong by way of promulgation or legislation in accordance with Article 18 of the *Basic Law*. These laws, such as *the Law of the People's Republic of China on the National Flag*, *the Law of the People's Republic of China on the Garrisoning of the Hong Kong Special Administrative Region* and *the Regulations of the People's Republic of China Concerning Consular Privileges and Immunities*, were mainly related to sovereignty, defence and foreign affairs. After 1997, *the Law of the People's Republic of China on the Exclusive Economic Zone and the Continental Shelf* was also introduced. This serves to illustrate a smooth transition of the legal system only within a short time after the establishment of the HKSAR.

Establishment of a New Constitutional Order

8. *The Hong Kong Reunification Ordinance* guaranteed that judges of all levels who were in service before 1 July 1997 would be re-appointed, irrespective of their nationalities. In the small hours of 1 July 1997, the nomination of the Chief Justice and Permanent Judges of the Court of Final

Appeal was affirmed by the independent Judicial Officers Recommendation Commission, and after endorsement by the Provisional Legislative Council, they were appointed by the Chief Executive. The Court of Final Appeal was established under Article 81 of the *Basic Law*.

9. Our first Chief Executive was elected according to law in December 1996. In February, 1997, the Central Government appointed the secretaries of departments and directors of bureau who were previously civil servants to serve as principal officials upon the nomination of the Chief Executive. As the incumbent of the post of Secretary for Justice did not meet the nationality requirement, I was appointed in his place to ensure a smooth transition. The first term executive authorities were successfully set up.

10. On 24 March 1996, the Preparatory Committee for the Hong Kong Special Administrative Region of the National People's Congress endorsed the establishment of the Provisional Legislative Council to fill the gap left by the derailment of the "through train" in the hands of Chris Patten's constitutional changes. The foremost task of the Provisional Legislative Council was to ensure the smooth formation of the first Legislative Council by enacting election law, to legislate on those issues that were absolutely necessary, to enable the HKSAR Government to resume normal operation, and, thereby, to complete the establishment of a new government for Hong Kong.

Relationship between the Executive and the Legislature

11. Article 62(1) of the *Basic Law* provides that the executive authorities shall be responsible for formulating and implementing policies. In implementing policies, they need to introduce bills to the Legislative Council, and to apply for funding or manpower increase. The Legislative Council is vested with the power to enact, amend and repeal laws, and to approve public expenditure. But the introduction of bills by its members are governed by Article 74. Members of the Legislative Council may introduce amendment to government bills, provided that the amendment is within the scope of the original bill. If the amendment is appropriate, the Government may adopt it. If the amendment is unreasonable, the Government would lobby members to vote against it. The bicameral voting system ensures the protection of the interests of all social strata. Ultimately, if an unacceptable amendment is passed, the Government can withdraw the bill. Hence, the executive authorities are vested with the power to initiate legislation while the power of enacting laws rests with the legislature, illustrating the mutual coordinating and regulatory roles between the executive and legislative authorities. This is the meaning of executive-led government. It does not mean that the executive authorities could govern without any restraints. Their power is derived from

the *Basic Law* and must be exercised according to the law. Though this mechanism looks simple, experience in its implementation is essential and disputes in the early stage are inevitable. With experience gained from meetings and actual cases, the legislature is gradually building up its practices. In July 1999, the President of the Legislative Council made rulings with regard to such issues as public expenditure, political structure, and the operation and policies of the government. A few months ago, she also ruled on the scope of Member's motions which carried no legal effect. All these rulings enable us to have a better understanding of the *Basic Law* and also serve as a useful guide in the future discussions in the Legislative Council.

Compatibility of the *Basic Law* and Local laws

12. The *Basic Law*, a product of the civil law system, was enacted by the National People's Congress. A process of adjustment is required in order for it to work in conjunction with the local laws derived under the common law system. It has to be put into practice to make it perfect. After the reunification, the courts of the HKSAR have made a number of constitutional judgments, touching on matters like the legality of the Provisional Legislative Council², the power of the National People's Congress Standing Committee on legislative interpretation³, the perimeters of administrative orders⁴, the proper balance between the dignity of the national flag and the freedom of expression⁵, the freedom of association and professional qualifications⁶, the meaning of the provisions on the right of abode in Hong Kong⁷, the public's right to participate in public affairs⁸, the right to use Cantonese in litigations⁹, the right to property protection and the principles for the assessment of compensation for

² See the case of *Ma Wai-kwan, David* [1997] HKC 315

³ See the case of *Lau Kong Yung* [1999] HKCA 44 & 45

⁴ See *the Association of Expatriate Civil Servants of Hong Kong v the Chief Executive of the Hong Kong Special Administrative Region* [1998] HCAL No. 9

⁵ See *HKSAR v Ng Kung Siu & Another* (1999) 2 HKCFAR 469

⁶ See *Cheung Man Wai Florence v the Director of Social Welfare* (HCAL 25/99)

⁷ See *Tam Nga Yin & Others v the Director of Immigration* [2001] HKCFA 8 & 9 and *the Director of Immigration v Chong Fung Yuen* [2001] HKCFA 10

⁸ See *Chan Shu Ying v the Chief Executive of the Hong Kong Special Administrative Region* and the case of *Chan Wah and Tse Kwan Sang* (HCAL 151/99 and the judgments delivered in March and June 1999)

⁹ See the case of *Cheng Kai Nam, Gary* [2002] 1 HKC 41

resumption¹⁰, and the pay of civil servants¹¹ etc. All these cases have strengthened our confidence in implementing the *Basic Law*.

13. To quote an example, in the case of *Ng Kung Siu & Another*, the Court of Final Appeal acknowledged that the principle of “One Country, Two Systems” was of fundamental importance and that the national flag and the regional flag were the symbols of “One Country, Two Systems”. Hence, it was held that the protection of the national flag and the regional flag from desecration played an important part in the attainment of national unity and territorial integrity. *The National Flag and National Emblem Ordinance* was a law enacted by the HKSAR in accordance with Article 18 of the *Basic Law* to apply national laws. There were strong grounds for criminalizing desecration of the national and regional flags. This is a very good illustration that a national law applied to the HKSAR by the *Basic Law* is compatible with the *Hong Kong Bill of Rights Ordinance*. Since 1 July 1997, the *Basic Law* forms the backbone of our legal system and integrates with the common law, rules of equity, ordinances, subordinate legislation and customary laws. The *Basic Law* implements long-term policies of the Central Authorities in respect of the HKSAR. When the *Basic Law* was drafted, the legal system previously in force in Hong Kong had already been taken into account. It is therefore compatible with local laws, fully reflecting the principle of “One Country, Two Systems”.

Relationship between the Central Authorities and the HKSAR

14. On 29 January 1999, in the case of *Ng Ka Ling*, the CFA stated that it had the jurisdiction to examine whether legislative acts of the NPC and the NPCSC were consistent with the *Basic Law*. This triggered strong reaction in the Mainland. At the request of the HKSAR Government, the CFA clarified its decision on 26 February by stating that the HKSAR courts could not question the authority of the NPC or the NPCSC to do any act that was in accordance with the provisions of the *Basic Law* or to interpret the *Basic Law*, and that the HKSAR courts would have to follow any such interpretation. In the same decision, the CFA’s interpretation of Article 22(4) and Article 24(2)(3) of the *Basic Law* was different from the understanding all along held by the HKSAR Government. After a three-month inquiry, the HKSAR Government found that the consequence of the decision would be: 690 000 people would have the right

¹⁰ See the two cases of *Yin Shuen Enterprises Ltd. and Nam Chun Inv. Ltd v Director of Lands* (FACV 2/02 and FACV 3/02)

¹¹ See the two cases of *Lau Kwok Fai Bernard v HKSAR* (HCAL 177/02) and *Michael R Scott v HKSAR* (CACV 401/03)

to come and settle in Hong Kong within a short time and seven years later when they became permanent residents of the HKSAR, their children, in the approximate number of 970 000, would have the right to come and settle in Hong Kong. The HKSAR Government had no choice but to report this to the State Council and requested the State Council to seek a legislative interpretation from the NPCSC. Following the NPCSC's interpretation of Article 22(4) and Article 24(2)(3) of the *Basic Law* on 26 June 1999, the CFA adopted a correct interpretation of these two provisions in the case of *Lau Kong Yung* at the end of the same year. These cases demonstrate that under the new constitutional order, the HKSAR courts enjoy judicial independence and have the power to make judicial interpretation. However, under Article 158 of the *Basic Law*, despite the fact that the HKSAR courts are authorized to interpret the provisions of the *Basic Law* which are within the limits of the autonomy of the HKSAR, the NPCSC has reserved power to interpret any provision of the *Basic Law*. While the CFA, being the highest judicial authority of the HKSAR, has the power of final adjudication, the NPCSC, representing the highest organ of the State, has power to interpret the *Basic Law* by virtue of the *Constitution of the PRC* and the *Basic Law*. No HKSAR court can question an interpretation made by the NPCSC. This, however, does not mean that the judicial independence or the power of final adjudication of the HKSAR courts has been undermined. It is for the HKSAR courts to decide to which cases the NPCSC's interpretation is applicable, what its exact meaning is, and to what extent it has retrospective operation, and so on. The NPCSC can not overturn the judgments of the HKSAR courts. Not only the 86 people involved in the case were granted the right of abode in Hong Kong, but another 3,677 people were also granted the right of abode in Hong Kong because the HKSAR Government had given them written or implied undertaking that it would deal with their applications in accordance with the decision of the CFA. The NPCSC had not influenced the decisions of the judges throughout the whole proceedings. Although the CFA has confirmed that NPCSC's interpretation is constitutional and lawful, the HKSAR Government had repeatedly emphasized that it would not seek an interpretation from the NPCSC lightly. The NPCSC would not lightly exercise its power of legislative interpretation either. Any such interpretation would have to go through the specified procedures, i.e. consulting the Basic Law Committee. The NPCSC's interpretation had resolved a problem the HKSAR could not resolve on its own, enabling us to avoid the unbearable strain that would be brought by an increase in the population by 25% in ten years on our housing, education, medical and social services. The incident provided us with a better understanding of the relationship between the Central Authorities and the HKSAR: the NPC shall exercise the authority belonging to the NPC while the CFA of the HKSAR shall exercise the authority belonging to the CFA.

15. There are people who do not understand “One Country, Two Systems”. They believe that a high degree of autonomy is tantamount to independence and in order to give full play to the concept of “One Country, Two Systems”, the HKSAR must adopt an adversarial stance towards the Central Authorities and should take advantage of the differences between the systems of the two places in controversial issues such as the Cheung Tze-keung and Li Yuhui cases, auction of national treasures, the interpretation of the *Basic Law* by the NPCSC, the Falungong issue etc. Our ultimate objective is to handle these issues properly without doing any harm to the two systems. We always bear in mind that “One Country” and “Two Systems” are of equal importance and that the interests of the State are also the interests of the HKSAR.

16. At the beginning of 2004, the Chief Executive appointed the Chief Secretary for Administration, the Secretary for Constitutional Affairs and me to conduct researches and consult the Central Authorities and the public on the selection of the Chief Executive in 2007 and the formation of the Legislative Council in 2008 so as to take forward our democratic and constitutional developments according to the *Basic Law*. On 6 April this year, the NPCSC made a legislative interpretation of Article 7 of Annex I and Article III of Annex II to the *Basic Law*. On 26 April, the NPCSC made a decision on the two election methods, namely, except that the method of universal suffrage shall not be applied to the selection of the Chief Executive in 2007 and to the formation of the Legislative Council in 2008 and that the procedures for voting in the Legislative Council shall remain unchanged, the two election methods can be amended according to the principles laid down in the *Basic Law*. At that time some people considered that the Central Authorities had interfered with the affairs of the HKSAR, arguing that the Central Authorities should not have a hand in the HKSAR’s affairs except in defence and foreign affairs. The establishment and the systems of the HKSAR are decided by the National People’s Congress. While the political system is an integral part of the system of the HKSAR, election systems are central to the political system. The Central Authorities have the rights and responsibilities to participate in the making of amendments to the election methods. Besides, Article 7 of Annex I and Article III of Annex II to the *Basic Law* have stated that subsequent to the year 2007, if there is a need to amend the provisions of the election methods, the approval and the reporting of the amendments to NPCSC for the record are within the power and responsibilities of the Central Authorities. It can be seen that the role played by the NPCSC in the two election methods has been provided clearly in the *Basic Law*. The participation of the Central Authorities conforms fully to the provisions of the *Basic Law* and is by no means contrary to the spirit of “One Country, Two Systems” and “a high degree of autonomy”. It is for the HKSAR Government to consult the public as early as possible so as to come up with a proposal that is acceptable to the Central Authorities.

17. Since the Task Force was commissioned, four reports have been published. The First Report gives an account of the issues of legislative process raised by us, the results of the consultation exercise and our views. The Second Report sets out the results of the consultation on the issues of principle and our views. The issues stated in the two reports had been dealt with by the NPCSC's Interpretation and Decision issued on 6 April and 26 April 2004 respectively. In accordance with the Interpretation and Decision of the NPCSC, the Third Report sets out the areas which may be amended in respect of the methods for selecting the Chief Executive and for forming the Legislative Council, whereas the Fourth Report gives an account of the views gathered in the consultation exercise in respect of the Third Report. Issues are summarized and differences are narrowed in a bid to reach a consensus. We are now in the process of consulting the public. Since its establishment, the Task Force has conducted a number of seminars to listen to and canvass the views of a large number of members of the public. Participants of these discussions came from different sectors, including Executive Council members, Legislative Council members, District Council members, Election Committee members, academics, those from the industrial and commercial sectors, professionals, representatives of associations, expatriates and ethnic minorities. The views expressed in the seminars were recorded in summary and uploaded on the website of the Constitutional Affairs Bureau for the reference of the public. We will continue to listen to the views of all sectors of the community through different channels and make reference to these views before formulating specific proposals.

18. During the consultation process spanning a year, we found that the issues involved were highly controversial. While in Hong Kong on 26 April for a briefing on the Decision of the NPCSC, Mr Qiao Xiaoyang, the Deputy Secretary-General of the NPCSC, pointed out that the status of the *Basic Law* as the constitutional law was not fully understood and the public did not have an adequate understanding of it. If the controversy persisted or a political reform was rushed through, this would certainly lead to social polarization and aggravate conflicts. Our community simply could not afford the price of such a political experiment, and hence the Interpretation and the Decision were necessary.

19. I hope I could spend more time discussing with you issues concerning our constitutional development, but I can only give you a short briefing as our time is limited. After a full year of consultation, we have a better understanding of the relationship between the Central Authorities and the HKSAR and the real meaning of "One Country, Two Systems."

Foreign Recognition of the “One Country, Two Systems” Principle

20. In view of the cases and issues mentioned above, overseas media which did not understand the situation of Hong Kong have questioned whether the rule of law could be maintained after the handover, whether judicial independence would be undermined, and whether the legal system previously in force would be replaced by the Mainland’s legal system. We fully appreciate their concern. We have all along been proud of our legal system and our upholding of the rule of law. For this reason, the *Basic Law* specifically provided that the laws previously in force in Hong Kong shall be maintained and the legislative and judicial systems previously practised in Hong Kong shall remain unchanged. We cherish common law principles such as the presumption of innocence and equality before the law and so on. However, the law must keep pace with the times and make changes according to social circumstances. The legal system of the HKSAR must continue to develop to maintain its vitality.

21. With the accumulation of precedents, local and foreign communities gradually begin to acknowledge Hong Kong’s new constitutional order. They agree that we should keep an open mind to allow room for the development of our legal system and accept that the NPCSC’s interpretation of the *Basic Law* is constitutional and lawful. On the other hand, they begin to appreciate the significance of China’s resumption of sovereignty over Hong Kong: although Hong Kong is a special administrative region which enjoys a high degree of autonomy, it is part of one China and there are areas, like sovereignty, defence and foreign affairs, which must rest within China. In June 1997, a district court in the US held that a Hong Kong company could not institute proceedings in the US courts on the ground that it was not a legal entity (See *Matimak Case*). In November 1999, a US federal court held that a Hong Kong company, being a Chinese legal entity, could invoke the alienage jurisdiction of the US courts (See *Favour Mind Case*). Earlier on, a district court in the US refused to surrender a fugitive offender to Hong Kong on the ground that Hong Kong was not a state and, according to the US laws, could not enter into an agreement with the US on the surrender of fugitive offenders. On 24 May 2000, a US federal court of appeal overturned this decision, confirming the validity of the agreement signed between the HKSAR Government and the US Government on the surrender of fugitive offenders and agreeing that the fugitive offender should be surrendered to Hong Kong. The Surrender of Fugitive Offenders Agreement signed between Hong Kong and Australia also encountered procedural difficulties initially. But they were soon rectified by the Court of Appeal and the Agreement was brought into operation.

22. Two hundred conventions and multilateral or bilateral agreements remain in force in Hong Kong after 1 July 1997 after the exchange of a memorandum of understanding in accordance with the agreement made between the Chinese and British governments. The 100 conventions signed after the reunification and the 6 covenants on human rights involving Hong Kong, namely, ICESCR, ICCPR, CAT, CEDAW, CRC and CEARD, remain in operation. As a member of the Chinese delegation, we have submitted regular reports to the United Nations Commission on Human Rights and have attended meetings to answer questions. This arrangement not only reflects the sovereignty of our nation and preserves continuity, but also characterizes “One Country, Two Systems”.

23. Apart from the foreign courts which recognize the legal status of Hong Kong after the reunification, some retired local judges and expatriates working in HK have also expressed their confidence in the state of the rule of law in Hong Kong since the reunification. These judges, during interviews with the media, pointed out that the NPCSC’s interpretation had no adverse effect on judicial independence and that the rule of law in Hong Kong remained sound. A survey report published by a consultancy firm on political and economic risks in May 2001 revealed that “expatriates working and doing businesses in Asia had a high regard for Hong Kong’s legal system and its quality. They had greater confidence in Hong Kong’s legal system than in the legal systems of most Asian countries and of some western countries, e.g. the US. Following the resumption of sovereignty, there were some doubts about the continuance of HK legal system under the “One Country, Two Systems” principle. There were also worries about the dilution of the common law system, which underpins the *Basic Law*, by interference from the Central Government. Owing to these concerns and to the fact that many members of Hong Kong’s most active political party, the pro-democracy party, are legal professionals, the debate in HK on judicial independence has been more vigorous than that in any other Asian regions. The intensity of the debate has misled people into believing that the rule of law in Hong Kong would soon be eroded. In fact, our study shows that expatriates in HK still consider the legal system perfectly sound and their confidence in it remains high. As HK people are alert about the possible loss of judicial independence and the quality of the Judiciary, we have reason to be optimistic about the maintenance of the standard of judicial performance after 1997.” This commentary is reasonable and helps explain the many conflicts in Hong Kong. Regular reports made by the European Parliament, the British Parliament and the US Congress also share the same tone. We cannot rule out the possibility that some politicians and members of media in foreign countries have not understood the situation in Hong Kong, or that they might use Hong Kong as a bargaining chip for political purposes by giving criticisms and distorting facts wantonly. In response to this,

what we can do is to redouble our efforts in explaining patiently the situation in Hong Kong to overseas visitors or to foreigners during our overseas visits.

Consolidation of Experience

24. When I visited Australia in June 1997, I said, “The construction of the new government is by no means an easy task. It is certainly not a bed of roses. ... As from the 1st July, the *Basic Law*, which is our mini-constitution, will become effective. There may be constitutional challenges simply because e.g. a debtor wishes to delay repaying his debt, a criminal wishes to avoid the sentence that may be meted out to him, or one intends to attack the HKSAR Government for political reasons. There may be teething problems for the interface of the *Basic Law* with the common law. We are faced with obstacles and sometimes even crisis every day, which we will face fairly and squarely and deal with them to the best of our ability. The “One Country, Two Systems” concept is an untested one, whilst one has to be innovative and venture into new avenues, the interest of Hong Kong permits no risky decisions. During the past few years, there has been too much conflict in our society that it is now necessary for us to rebuild a society of mutual trust and harmony. The Government of HKSAR cannot simply ask people to trust us: we have to win their trust. All I ask for is time for us to prove that the HKSAR Government is worthy of the mission which the people have entrusted to us.”

25. Today when I look back, I find that the foregoing is a depiction of what has actually happened over the past few years, except that the difficulties we had encountered were even greater in terms of number and scale than we had expected. We have dealt with these difficulties calmly. The financial crisis led to the downfall of a number of Asian governments and also seriously affected our economy and livelihood. However leveraging on the Mainland and engaging ourselves globally, we manage to stand firm to meet the challenges brought about by globalisation and the restructuring of our economy.

26. After the reunification, Hong Kong has experienced the most trying time. The avian flu, the financial crisis, the right of abode issue, the bursting of the bubble economy, the decline of the real estate market, the challenges brought about by economic restructuring and globalization, the SARS epidemic and the difficulties arising from various reforms and the balancing of budget deficit have led to public complaints against the Government. Government officials have been frequently criticised by the public and politicians. Some people say that it is because the Government established under the political framework of the *Basic Law* lacks credibility. But I don't think so. Owing to the concept of “One Country, Two Systems” put forward by Mr. Deng Xiaoping and the hard work of our predecessors in the past two decades, sound hardware

has been put in place with the *Basic Law* providing a solid foundation for the prosperity and stability of Hong Kong. What we lack is the software which includes a political mainstream, political talents and experience of administration. Under the framework of the *Basic Law*, the legislature and the executive authorities should coordinate with and regulate each other. If there was a political mainstream, such as multi-party cooperation, a ruling party or social solidarity, we could reach a consensus in most cases. Coordination could only be achieved if people holding the same belief were elected to the Legislative Council and some others forming a ruling coalition. Under the colonial rule, Hong Kong people were deprived of the opportunity to learn politics and our concept of nation was shallow. For a long time, we did not have the chance to learn democracy as in western countries. It was not until 1985 that a small number of Legislative Council seats were returned by functional constituencies in Hong Kong. Further, it was only in 1991 that some seats were returned by geographical constituencies through direct elections. During the colonial era, we lacked political talents and London made all the important decisions. Hong Kong people need time to build up experience in ruling Hong Kong. For this reason, we should not think that the concept of “One Country, Two Systems” is a failure simply because Hong Kong is beset with problems. What matters is whether we can solve these problems. Having weathered the storms and turbulences, Hong Kong is still the freest economy in Asia. We have a relatively sound legal system, an independent Judiciary, a clean government and an industrious and law-abiding civil service. Hong Kong people enjoy all the rights and freedoms as guaranteed by the *Basic Law*, in particular freedoms of speech and press. There are many different channels for people to express their views and monitor the Government. We can have diversified cultural development that blends the essence of the east and the west. Hong Kong is still a stable, fair, liberal, democratic and caring society.

27. Through our efforts over the past few years, and with the staunch support of the Central People’s Government, such as the measures to stabilise our currency, the support rendered during the SARS epidemic, the introduction of Individual Visit Scheme for mainlanders, and CEPA, Hong Kong’s economy has experienced a strong rebound as a whole. While our momentum is picking up in the year to come, the question is how best we should continue to capitalise on our advantages, to leverage on the Mainland and to engage ourselves globally, in order to face the challenges of our time. As a matter of fact, China is also enjoying rapid growth and development. From the reports submitted at the Fourth Plenary Session of the 16th Central Committee of the CPC, we have not only learnt about our national leaders’ strategies on economic development, but also their determination to promote democracy and the rule of law, the importance they attached to maintaining social stability and harmony, as well as

their confidence in developing international relations and safeguarding world peace. As such, we are very optimistic about the future of Hong Kong.

28. It is true that Hong Kong is faced with quite a number of problems, and we are well aware of the difficulties we encounter in governance. In particular given our budgetary constraints, we have to balance the interests of different social strata. However, we tried hard to learn the lessons in adversity, and after critical self-examination, we took steps in various ways to narrow our gap with the public, to address their requests and to work with them. From a colony to being reunited with the Mainland, we have gradually come to realize our national identity and more and more of us are taking great pride in asserting ourselves as Chinese. We should not be deterred by difficulties. We have demonstrated endurance and persistence in the course of overcoming the obstacles, despite some of us were hurt in the process. Walking in the forefront of history has always been a formidable task. One has to prepare to face the hardest challenge, but the reward is most meaningful. The early legal disputes have now come to an end. The international community now agrees that the principle of “One Country, Two Systems” has been successfully implemented in Hong Kong. We have braved all the difficulties, backed by our belief that the great idea of “One Country, Two Systems” conceived by Mr. Deng Xiaoping is our hope for achieving national unity and the peaceful reunification of China and only success is allowed. We are entrusted by history with the task of turning this hope into reality and we are determined to accomplish it.