

(Translation)

**Speech by the Secretary for Justice, Ms Elsie Leung  
at the Seminar on Inter-regional Legal Issues of China  
in Beijing on 4 September 2005**

**Status and Development of Mutual Legal Assistance among  
Hong Kong Special Administrative Region,  
the Mainland, Macao and Taiwan**

The Honourable President Xiao, Ministers and distinguished guests, members of the judicial and legal professions, legal academics, ladies and gentlemen,

Good morning. I am greatly honoured to attend this seminar to-day to explore the inter-regional legal issues with so many members of the judiciary, legal professions and legal academics from four places on both sides of the Strait. The four places are part of one country, namely, China. Owing to historical factors, however, they each have their own legal systems. The Mainland practises a socialist legal system. Since the founding of the People's Republic of China, the development of the mainland legal system has taken a tortuous path and has once been seriously undermined. In 1978, it was put forward at the Third Plenary Session of the Eleventh National Congress of the Communist Party of China that the stability, continuity and authority of the legal system and laws should be enhanced. Subsequently, the existing Constitution and four constitutional amendments were passed by the National People's Congress (NPC). Over 200 laws as well as 650 administrative regulations currently in force were enacted by the NPC and its standing committee and the State Council respectively.<sup>1</sup> This shows that the mainland legal system is now back on the track of development. As President Hu Jintao said at the 50th anniversary of the establishment of the NPC in 2004, "a socialist legal system with Chinese characteristics centred on the Constitution has basically taken shape in China, which greatly promoted and safeguarded the country's reform and opening up, and the smooth progress of socialist modernization drive."

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<sup>1</sup> In addition, Local People's Congresses and their standing committees have enacted more than 7,500 local regulations, and the People's Congresses of autonomous ethnic areas have enacted over 600 autonomous regulations and separate regulations.

2. On 10 December 2001, China officially joined the WTO. According to the Protocol of Accession, China has the obligation to make public all the laws, regulations and other measures pertaining to trade in goods, services, trade-related aspects of intellectual property rights (TRIPS) and exchange control, and to apply and administer these laws, regulations and measures in a uniform, impartial and reasonable manner. In respect of the administration of justice, while the number of cases that need to be handled greatly increases, the Protocol has in accordance with the principle of procedural justice imposed stringent requirements<sup>2</sup> on judicial independence, equality among all parties and a timely and transparent procedure. In recent years, China has been actively promoting reform in the judicial structure so as to enhance efficiency of the judiciary, to persist in acting within the scope of the Constitution and laws, to abide strictly by the law, and to step up efforts in promoting the rule of law. All these reflect the confidence and determination of China in perfecting the legal system.

3. Hong Kong and Macao were occupied by Britain and Portugal respectively by force more than a hundred years ago<sup>3</sup> in consequence of the invasion of western powers and the corruption of the feudal monarchy. Until the resumption of sovereignty by the Motherland in 1997 and 1999, Hong Kong and Macao had been ruled as colonies of the two countries and so had gradually formed and developed their legal systems characterized by British and Portuguese laws respectively. In Hong Kong, Acts of the British Parliament were gradually replaced by the local legislation, while the common law, rules of equity, ordinances, subordinate legislation and a few customary laws applicable to local Chinese became the essential part of the system of law in Hong Kong<sup>4</sup>. In 1822, Portugal unilaterally announced the integration of Macao into its territory and gradually abolished the laws of the Qing government. It declared that Macao was its overseas territory and enforced the laws of the Portuguese colonial empire in Macao. The Criminal Code, Criminal Procedure Code, Civil Code, Civil Procedure Code, Commercial Code and other legislation of Portugal were fully extended to be applied to Macao. At the same time, Portugal started to enact laws for Macao<sup>5</sup>. Hence, a system of law based

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<sup>2</sup> Provision 2 of PRC's Protocol of Accession and the article "The principle of procedural justice of the WTO Protocol and the judicial reform of China in civil and commercial matters involving foreign interest" by Wen Yong.

<sup>3</sup> Please refer to the three Sino-British unequal treaties and the Sino-Portuguese Treaty of Peking.

<sup>4</sup> Article 8 of the *Basic Law* of the Hong Kong Special Administrative Region.

<sup>5</sup> The *Colonial Act of 1933*, Portuguese Government.

mainly on the Portuguese laws of the civil law system was gradually formed in Macao.

4. In the reunification of Hong Kong and Macao with the Mainland in 1997 and 1999 respectively, the People's Republic of China has peacefully solved the historical problems and maintained the prosperity and stability of these two places according to the principles of "One Country, Two Systems", "Hong Kong people ruling Hong Kong", "Macao people ruling Macao" and "a high degree of autonomy". One of the basic principles is that on the premise of "One Country", the previous capitalist system (including the legal system) shall remain unchanged. Accordingly, within the framework of the *Basic Law of the Hong Kong Special Administrative Region* and the *Basic Law of the Macao Special Administrative Region*, the laws previously in force shall remain unchanged and the previous legal systems shall continue to develop.

5. Taiwan is an inseparable part of China's territory. In its history, Taiwan has been forcibly occupied by Spain, the Netherlands and Japan. At the end of the Second World War, the international community recognised China's sovereignty over Taiwan.<sup>6</sup> After the birth of New China, the General Assembly of the United Nations adopted Resolution 2758 at its twenty-sixth session in 1971, restoring the lawful rights of the People's Republic of China as a member State of the United Nations and recognising it as the only representative of China. In 1949, the military and administrative personnel of the Nationalist Party retreated to Taiwan and consolidated its rule there. The legal basis of its powers to rule is the *Constitution of the Republic of China*,<sup>7</sup> which is based on the civil law system. Since 1949, the political system of Taiwan has undergone continuous development. Because of its policy of localisation, in particular, and its isolation from the other side of the Strait for half a century, its legal system has grown further apart from the Mainland's. Taiwan is basically a capitalist society.

6. "One Country, Two Systems" does not refer to a fixed form of political structure but is a basic policy and concept. "Two Systems" refers to the socialist system practised in the Mainland and the capitalist system practised in Hong Kong, Macao and Taiwan. The objective of implementing the "One

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<sup>6</sup> See Treaty of Shimonoseki, Proclamation of China's Declaration of War against Japan, Cairo Declaration, Potsdam Proclamation and Japan's Instrument of Surrender.

<sup>7</sup> See Complete Book of Six Codes (《六法全書》).

Country, Two Systems” principle is to achieve national unity taking into consideration that historically Hong Kong, Macao, Taiwan and the Mainland have been separated from each other for a long time while paying due respect to the situation of Hong Kong and Macao before reunification and the present status of Taiwan, as well as the opinions of people from all walks of life. Reasonable and sensible means are adopted to maintain the previous systems and the way of life with a view to safeguarding prosperity and stability so as to ensure that the people of Hong Kong, Macao and Taiwan will not suffer any loss because of reunification. Therefore, on the premise that the sovereignty of “One Country” must not be undermined, the content of “Two Systems” is not limited to any particular form. For example, democracy in Taiwan has developed earlier and quicker than that of Hong Kong. If “One Country, Two Systems” is to be implemented in Taiwan, it cannot be asked that the political structure of Taiwan should be the same as that of Hong Kong. To take another example, while the stationing of garrison in Hong Kong by the Central Government symbolizes its resumption of sovereignty over Hong Kong, the troops of Taiwan are in fact the troops of China, and so it is not necessary for the Central Government to have troops stationed in Taiwan. Not only is the concept of “One Country, Two Systems” applicable to Hong Kong, Macao and Taiwan, it is also able to preserve the advantages of the previous systems of the three places. It is highly flexible and is the best option for advancing the peaceful reunification of China.

7. In accordance with Article 31 of the *Constitution of the People’s Republic of China* and under the principle of “One Country, Two Systems”, the National People’s Congress enacted the *Basic Law of the Hong Kong Special Administrative Region* (hereinafter called the *Hong Kong Basic Law*) on 4 April 1990, prescribing the systems to be practised in the HKSAR, in order to ensure that the implementation of the basic policies of the People’s Republic of China regarding Hong Kong shall remain unchanged for 50 years. Chapter VII of the *Hong Kong Basic Law* specifies the circumstances under which Hong Kong may use the name of the HKSAR to participate in international events or enter into agreements with other jurisdictions, may on its own decide to participate in international organizations, conferences or enter into agreements, and the circumstances under which authorization of the Central Government is required.

8. Article 95 of the *Hong Kong Basic Law* authorizes the HKSAR Government to maintain, through consultations and in accordance with law, juridical relations with the judicial organs of other parts of the country, and

authorizes them to render assistance to each other. Article 96 allows the HKSAR Government to make, with the assistance or authorization of the Central Government, appropriate arrangements with foreign states for reciprocal juridical assistance. By virtue of these provisions, the HKSAR Government has signed agreements for mutual legal assistance in criminal matters with 19 countries (including 3 pre-Handover agreements which the Central Authorities allowed to continue in force)<sup>8</sup>. The scope of assistance covers the taking of statements, search and seizure warrants, orders for the production of documents, the service of judicial documents relating to criminal matters, and the execution of restraint and confiscation orders in respect of property. Seven multilateral agreements for mutual legal assistance in criminal matters are also in force in Hong Kong<sup>9</sup>. Under the *Mutual Legal Assistance in Criminal Matters Ordinance*, the HKSAR will provide legal assistance in criminal matters to a requesting party, even though no agreement is in place, so long as the jurisdiction of that party agrees to grant reciprocal assistance to the HKSAR. In addition, Hong Kong has also signed 14 agreements for the surrender of fugitive offenders<sup>10</sup> and 7 agreements for the transfer of sentenced persons<sup>11</sup>.

9. Since the Handover, Hong Kong has given effect to 624 requests for mutual legal assistance in criminal matters from 40 jurisdictions and made 86 requests for mutual legal assistance in criminal matters to 25 jurisdictions. We processed 100 foreign requests for the surrender of fugitive offenders and issued 68 requests for the surrender of fugitive offenders. By virtue of the relevant agreements, we have also received 4 sentenced persons so that they might return to Hong Kong to serve their sentences, and sent 7 sentenced persons back to the

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<sup>8</sup> They are, namely Australia, Belgium, Canada, Denmark, France, Ireland, Italy, South Korea, the Netherlands, New Zealand, the Philippines, Poland, Portugal, Singapore, Switzerland, Ukraine, the United Kingdom, the United States of America and Israel.

<sup>9</sup> They are, namely: (a) the United Nations Convention Against Illicit Traffic In Narcotic Drugs and Psychotropic Substances, 20.12.88; (b) the International Convention Against the Taking of Hostages, 17.12.79; (c) the Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, including Diplomatic Agents, 14.12.73; (d) the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 10.12.84; (e) the Hague Convention for the Suppression of Unlawful Seizure of Aircraft, 16.12.70; (f) the Montreal Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, 23.9.71; and (g) the International Convention for the Suppression of Terrorist Bombings, 15.12.97.

<sup>10</sup> They are signed with Australia, Canada, Finland, India, Indonesia, Malaysia, the Netherlands, New Zealand, the Philippines, Portugal, Singapore, Sri Lanka, the United Kingdom and the United States of America.

<sup>11</sup> They are signed with Italy, the Philippines, Portugal, Sri Lanka, Thailand, the United Kingdom and the United States of America.

United Kingdom to serve the remainder of their sentences. As regards civil matters, 8 conventions on private international law<sup>12</sup> afford Hong Kong and its co-signatories the convenience of mutual recognition and benefit. Hong Kong is a city where both people and goods move rapidly and cross-border activities are bustling. Without detailed arrangements for mutual legal assistance, it would be difficult for us to bring criminals to justice. We will continue to negotiate with other jurisdictions with a view to reaching mutual legal assistance agreements with them.

10. In comparison, there are fewer arrangements for mutual legal assistance between Hong Kong and the Mainland. At present, there are only the arrangements for mutual entrustment and service of judicial documents in civil and commercial matters and the mutual enforcement of arbitral awards between the two places. Since its implementation, the arrangement for the service of judicial documents between the Mainland and Hong Kong has been operating well. President Xiao has just made a report on this<sup>13</sup>, and you may also refer to the report issued by the Supreme People's Court in 2004 for details.

11. As regards the enforcement of arbitral awards between the two places, the Supreme People's Court and the HKSAR Government signed the arrangement on the mutual enforcement of arbitral awards in 1999. Judicial interpretation of the arrangement was made by the Supreme People's Court, and the HKSAR Government, in order to give effect to the arrangement, amended

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<sup>12</sup> (a) The New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 10.6.58; (b) the Hague Convention on the Conflicts of Laws Relating to the Form of Testamentary Dispositions, 5.10.61; (c) the Hague Convention Abolishing the Requirement of Legalisation for Foreign Public Documents, 5.10.61; (d) the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, 15.11.65; (e) the Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters, 18.3.70; (f) the Hague Convention on the Recognition of Divorces and Legal Separations, 1.6.70; (g) the Hague Convention on the Civil Aspects of International Child Abduction, 25.10.80; and (h) the Hague Convention on the Law Applicable to Trusts and on Their Recognition, 1.7.85.

<sup>13</sup> According to President Xiao Yang, in 2002-2003, there were 1594 pieces of judicial documents for mutual entrustment and acceptance of service by the courts of the two places, which has increased by 36.85%. Among them, 1453 pieces were entrusted by the Mainland to serve in Hong Kong, while 141 were by Hong Kong to the Mainland. These involved cases in matrimonial and family matters, estate, contract, infringement of ownership, damages, maritime injuries, intellectual property, etc. Cases related to contracts accounted for the majority of the documents served.

the *Arbitration Ordinance* which came into force on 1 February 2000<sup>14</sup>. Recently, there is an issue that has caused concern among members of the profession. If both parties to an arbitration are Mainland enterprises, can the arbitral award made in Hong Kong be recognized and enforced by the courts of the Mainland? This issue needs to be resolved, otherwise the significance of the arrangement will be greatly reduced.

12. Time does not allow me to elaborate on other aspects of mutual legal assistance, such as the surrender of fugitive offenders, transfer of sentenced persons and obtaining evidence in criminal and civil matters.<sup>15</sup> You may, however, wish to refer to the articles numbered 3, 7 and 12 in the proceedings of the Conference, which are excellent works with extensive coverage by Dr

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<sup>14</sup> Before the reunification, request for enforcement of arbitral awards in the Mainland and Hong Kong were made under the *New York Convention*. After the reunification, it is not proper to implement the *New York Convention* within one country. Therefore, in drawing up the underlying principles for the Arrangement, we made reference to the content of the *New York Convention*. As for the procedure, it was established in accordance with the agreement made between the parties and the laws of the places where the awards would be enforced. By so doing, we have taken into account the "One Country" as a whole as well as the differences between "Two Systems". This is the principle essential to making an arrangement on mutual legal assistance between the Mainland and Hong Kong. Since the commencement of the Arrangement, the HKSAR courts have enforced more than 60 arbitral awards in the Mainland, but there is no record in relation to the enforcement of arbitral award in Hong Kong by the courts in the Mainland. The reasons behind this, whether it is because of the mode of investment, the financial condition of the person against whom an arbitral award is enforced, or that the number of cases is small, are still under investigation. The HKSAR has written to the Law Society of Hong Kong, the Hong Kong Bar Association and eight major Chambers of Commerce, but we have not received complaints on any actual cases that met difficulties in implementing the Arrangement.

<sup>15</sup> The Mainland judicial authorities are holding discussion with Hong Kong on the arrangements for the surrender of fugitive offenders and transfer of sentenced persons. The surrender of fugitive offenders is extremely crucial to the combat of crimes in both places. Under the present arrangement, Hong Kong residents who have committed crimes in Hong Kong and fled to the Mainland will be repatriated to Hong Kong by the Mainland authorities through administrative means if they did not commit any offence in the Mainland. However, no Hong Kong laws are provided for the surrender of Mainland fugitive offenders who do not have right of abode in Hong Kong and did not commit any offence in the territory. This arrangement is far from desirable. Despite many years of negotiations, there remain some obstacles mainly because of the differences in the systems of the two places, including the retention or abolition of death penalty, definition of crimes and their similarities and differences, interpretation of national interests and public interests, difference in the procedures for surrender application and the conflicts in jurisdictions. However, most of the problems have now been solved through concerted efforts. I am confident that an agreement will be reached finally, especially when both sides are willing to adopt the principle and strategy of dealing with less formidable issue first based on mutual respect. If an agreement can be made on the surrender of fugitive offenders, it will not be difficult to reach another agreement on the transfer of sentenced persons. Arrangement of this type will not be possible without the consent of the Mainland authorities, the SAR Government and the prisoners.

Priscilla Leung, Deputy Dean of City University's School of Law, Professor Zhang Xian-chu, Professor Fu Hua-ling and Professor Choi Dik-wan, Law Professors of the Faculty of Law, University of Hong Kong.

13. With the economic ties between the two places growing ever stronger, mutual recognition of judgments by the courts will serve to boost the confidence of investors. Therefore, the Mainland judicial authorities are now holding discussions with the SAR Government on the arrangements for the reciprocal enforcement of judgments made by the courts in civil and commercial matters. I think it will not be long before an agreement can be reached. Given the difference between the legal systems under different jurisdictions of the two places, it would be an uphill task to reach a consensus. But I am confident that an agreement could still be reached if we deal with the less formidable issue first and limit the types of cases to a certain category. It is necessary to discuss the arrangements for mutual legal assistance in civil and criminal matters which include the investigation of crime and collection of evidence, transfer of evidence, testifying in court, search and seizure of documents, distress and confiscation of criminals' properties, etc. Since the laws of evidence practised in the two places are different, we hope to learn from the experience of other forms of mutual legal assistance first before making arrangement for discussions.

14. Although law enforcement officers of one jurisdiction have no enforcement powers in another, there is a good cooperation between the Mainland and Hong Kong law enforcement agencies at the working level. In this regard, the mainland public security authorities and the Hong Kong Police have established a reciprocal notification mechanism<sup>16</sup> and other authorities also pay visits to each other from time to time.

15. Although Hong Kong and Macao are two different jurisdictions with different legal systems, some agreements on mutual legal assistance have been made after reunification. For example, an *Arrangement on Transfer of Sentenced Persons* was signed on 20 May this year. To give effect to the Arrangement, Hong Kong has enacted the necessary legislation<sup>17</sup> and Macao has published it in its Official Gazette. At present, judgements of courts in

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<sup>16</sup> See Arrangements on the Establishment of a Reciprocal Notification Mechanism between the Mainland Public Security Authorities and the Hong Kong Police (with effect from 1 January 2001).

<sup>17</sup> See Transfer of Sentenced Persons (Amendment) (Macao) Ordinance.

civil and commercial matters and arbitral awards are mutually enforceable in the two places. Judgements of courts in Macao are enforceable in Hong Kong according to common law. In 2000, section 2GG of the *Arbitration Ordinance* was amended to ensure that decisions of arbitral tribunals in Macao would be covered when the relevant arrangement with the Mainland came into force. On the other hand, judgements of courts and arbitral awards in Hong Kong are enforceable in Macao in accordance with sections 1199 to 1205 of its *Civil Procedure Code*. Issues such as mutual legal assistance in criminal matters, surrender of fugitive offenders, obtaining evidence in civil and commercial matters and service of judicial documents are still under discussion. Since it takes only one hour to travel between the two places and the entry and exit procedures are very convenient, it should be quite easy for either of the two places to serve judicial documents and obtain evidence in the other. Nevertheless, a legal basis must be provided to ensure that the use of evidence so obtained meets the requirements of the law. We are now working towards an agreement on such issues.

16. The state policy towards Taiwan also adheres to the basic principle of “peaceful reunification and One Country, Two Systems”. Taiwan-related legal affairs have the following special features: (1) Because of the historical factor of prolonged separation between the two sides of the Strait, their legal relations have been in a “frozen” state. But in reality, the two sides have to handle disputes over marriage, succession, criminal liability, investment, intellectual property and maritime issues and, thus the legal matters involved; (2) Since the cross-Strait relations have been unstable and have their ups and downs, contacts and assistance between the two places change from time to time as a result of interaction across the Strait; (3) Taiwan-related affairs being politically highly sensitive, we have to adhere firmly to our principle on the one hand and be flexible on the other when dealing with issues concerning the laws, legal system and jurisdiction of Taiwan so as to facilitate exchanges between the people of the two places and promote their interests. After being elected General Secretary of the Central Committee of the Communist Party of China last year, President HU Jintao set forth the “four-point guideline” and “three favourables”<sup>18</sup> while attending a panel discussion of the Taiwan delegation to

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<sup>18</sup> “Four-point guideline”: To always adhere to the one-China principle; to spare no efforts in promoting economic and cultural exchanges across the Taiwan Strait; to further implement the principle of “placing hopes on the Taiwan people”; and to unite compatriots on both sides of the Taiwan Strait to jointly push forward the great rejuvenation of the Chinese nation.

the NPC. As far as legal affairs are concerned, since mutual legal assistance between the four places is conducive to economic and cultural exchanges across the Strait and beneficial to the people on both sides, we should explore this subject further.

17. In handling Hong Kong affairs involving Taiwan, the basic principle we have to adhere to is the “Basic Principles and Policies of the Central People’s Government in handling Hong Kong affairs involving Taiwan after 1997” (i.e. “Qian’s seven measures”) promulgated by the State Council on 22 June 1995. In the main, the promulgation encouraged various non-government exchanges between Taiwan and Hong Kong which included economic and cultural exchanges, contact between officials, investment, trading and commercial activities. It stipulated that approval of the Central Authorities was required in respect of various kinds of official contacts and visits, negotiations, the conclusion of agreements and the establishment of bodies. Taiwanese personnel in Hong Kong must abide by the *Basic Law* and the “One China” principle. They must not jeopardize the prosperity and stability of Hong Kong. The “Qian’s seven measures” have been implemented for ten years. Given that the cross-strait relations are always changing, I think it is the right time for us to review the ways to facilitate the contacts and bring about a closer tie between Taiwan and Hong Kong.

18. Given the sensitivity of the affairs involving Taiwan and the lack of experience of the HKSAR Government in handling such affairs, no arrangement on mutual legal assistance has been made between Hong Kong and Taiwan so far. Communication between the law enforcement agencies of the two places is conducted through the Interpol, and special incidents (such as traffic accidents involving Hong Kong residents) are handled on a case-to-case basis. At the “Wang-Gu Talk” held in Singapore in 1993, consensus was reached on 8 issues, including the *Agreement on the Use and Verification of Certificates of Authentication Across the Taiwan Straits* and the *Agreement on Matters Concerning the Inquiry and Compensation for Registered Mail Across the Taiwan Straits*. Discussions were also made on the subject of mutual assistance between the judicial organs of the two sides. Provisions for the mutual recognition of civil judgments were subsequently made by both the courts of the Mainland and Taiwan. On 15 January 1998, the Supreme

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“Three favorables”: “Anything beneficial to the Taiwan compatriots, conducive to the peaceful reunification of the motherland and to the great rejuvenation of the Chinese nation, we will do it with our utmost efforts”.

People's Court promulgated the *Provisions of the People's Court's Recognition of the Verdicts of Civil Cases made by Courts of Taiwan Area*. In Taiwan, it is also provided for in Article 74 of the *Act Governing Relations between Peoples of the Taiwan Area and the Mainland* that "To the extent that an irrevocable civil ruling or judgment, or arbitral award rendered in the Mainland Area is not contrary to the public order or good morals of the Taiwan Area, an application may be filed with a court for a ruling to recognize it." Therefore, I am of the view that mutual legal assistance between Taiwan and Hong Kong may also be discussed among non-government organizations on the model of the "Wang-Gu Talk". Any arrangements made are to be ultimately implemented by the governments of both sides through legislation or other means.

19. In *Chen Li Hung and Another v Ting Lei Miao and others*, the Hong Kong courts gave effect to an order delivered by the Taiwan court. The Court of Final Appeal decided to give effect to it as it considered that although the Central Authorities did not recognize the government of Taiwan as legitimate, the rights involved in the case were purely private, and giving effect to it accorded with the interests of justice, the dictates of common sense and the needs of law and order, and was nothing inimical to the sovereign's interests or contrary to public policy. The HKSAR enforced an order issued by the Taiwan court as it is allowed by the common law, and Section 2GG of the *Arbitration Ordinance* enables an arbitral award made in Taiwan to be enforceable in Hong Kong. Under Article 42 of the *Act Governing Relations with Hong Kong and Macau* in Taiwan, civil judgments made in Hong Kong are enforceable by the courts of Taiwan under the principle that all parties are on equal footing. As such, judgments made by the courts of Hong Kong and Taiwan can actually be enforceable even there is no agreement on mutual legal assistance between these two places. This also demonstrates that, before accomplishing the great task of reunification, mutual legal assistance between Hong Kong and Taiwan is made possible through non-government channels in accordance with their respective laws. As regards mutual legal assistance in other areas, more communication and understanding is needed before putting it in place in an appropriate way<sup>19</sup>.

20. It can be concluded from the above experience that the mutual legal assistance arrangements between Hong Kong and the Mainland, Macao as well as Taiwan are not yet fully developed. The difficulties encountered include:

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<sup>19</sup> Please refer to the papers on legal conflicts of mutual legal assistance in the four places across the Strait and the pros and cons of dual-track legalisation. These can be found in the Proceedings of the Conference.

- (1) Insufficient understanding of “One country, Two systems” often leads to the neglect of the overall interest of the country. When the mutual assistance arrangements are merely considered within the framework of the legal system which the Special Administrative Regions are accustomed to, or when the relations between different jurisdictions within a country are treated in the same mode as international cooperation, obstacles will be created in the negotiations on mutual legal assistance.
- (2) Differences in the legal systems of the above four places. There are different interpretations of the same word or phrase. For example, the elements for the categories of crime, the meaning of public order, differences in procedures and different standards in admissibility of evidence remain the subjects of much debate and discussions.
- (3) Conflicts of jurisdictions. With an increase in the flow of people and goods, cross-border crimes have been surging. It is quite common for some of the criminal acts to get started in one place and to finish in another place. If both places have jurisdictions over them, the difficulty is how the conflict should be resolved to avoid any dispute arising from the exercise of the jurisdiction.

21. Mutual legal assistance is highly beneficial to the people of the four places. Jurisdictions with different legal systems can work hand in hand not only to combat crimes and safeguard the rights of their citizens, but also to foster a deeper understanding of different legal systems and bring about social harmony across the region. As Lord Cooke of Thorndon of the Court of Final Appeal said in the case of *Chen Li Hung*, quoting Mr Justice Godfrey’s remarks, it is the lofty duty of the entire Chinese people to accomplish the great task of reunifying the motherland and reunification will tend to be promoted rather than impeded if judgements made by Taiwan courts are recognised in Hong Kong. This is in the interests of the People’s Republic of China and necessary as a matter of common sense and justice.

22. Mutual legal assistance is one of the topics of today’s seminar. I look forward to hearing the speeches and remarks of the learned speakers and participants. Your active participation and creative ideas will certainly open up a new and broader path to mutual legal assistance among the four places across

the Strait. May I wish the Congress on the Law of the World and this seminar every success, and all members of the judicial and legal professions and academics in the four places a long-lasting friendship.