

SJ speaks at luncheon of Commonwealth Law Conference 2009

Following is the speech by the Secretary for Justice, Mr Wong Yan Lung, SC, at the luncheon of the 16th Commonwealth Law Conference 2009 today (April 7):

Chief Justices, Attorneys General, Honoured Guests, Ladies and Gentlemen,

Introduction

In March 1983, the Hong Kong Post Office issued four commemorative stamps to mark Commonwealth Day. The stamps showed an aerial view of Victoria Harbour, including the airport at Kai Tak, a container ship entering the harbour, the Hong Kong flag and Her Majesty Queen Elizabeth II during a visit to Hong Kong.

Since then, the modest Kai Tak has been replaced by the world acclaimed Chek Lap Kok Airport where you landed. The Hong Kong flag has changed, and is accompanied by that of the motherland, flying over what was then a British dependent territory, and now the Hong Kong Special Administrative Region of the People's Republic of China.

It was in September 1983 that the Commonwealth Law Conference was last held in Hong Kong.

September 1983 was a time of great uncertainty in Hong Kong. The month began with the most severe typhoon to strike Hong Kong for twenty years. Political uncertainty as to the future caused the then floating Hong Kong dollar to depreciate rapidly, falling as much as 15% in two days. A property bubble had burst and banking stability was threatened, which sounds familiar as of today.

But the following year, after months of negotiation, the People's Republic of China and the United Kingdom signed the Sino-British Joint Declaration. For the almost twelve years since reunification with China in 1997, the constitutional protection for the high degree of autonomy and the rule of law in Hong Kong has demonstrably been working.

The promises of the Joint Declaration were reflected by the People's Republic of China in the Basic Law which came into force on 1 July 1997. While Hong Kong now has no formal connection with the Commonwealth, the Basic Law provides that the laws in force before 1997, including the common law and the rules of equity shall be maintained. National laws do not generally apply to Hong Kong and those which do are confined to defence and foreign affairs and other matters outside the limits of the autonomy of the region. That means in practice that many of those British laws, which before 1997 were directly applied to Hong Kong, had to be re-enacted as local legislation.

International Links

Chief Justice Andrew Li, in his address yesterday, talked about the diversity of the common law world as a strength and the significance of comparative jurisprudence in Hong Kong. In fact, the constitution of our Court of Final Appeal ensures that Hong Kong will benefit from the wisdom of top legal brains from other common law jurisdictions. On the panel of non-permanent judges of the CFA are top serving and retired judges from the United Kingdom, Australia and New Zealand.

Today, I would like to continue with that theme of international links by outlining for you the role Hong Kong plays in the international arena as a Special Administrative Region under the One Country Two Systems principle.

Under the Basic Law, the Central Government is responsible for defence and foreign affairs, but provision is made for Hong Kong to participate in many worldwide activities, either in its own right or with the specific authorization of the Central Government or as members of a China delegation.

Thus, at last year's Olympics in Beijing, athletes of Hong Kong-China participated separately from China in both the Olympics and the Paralympics. That separate participation exemplified Hong Kong's high degree of autonomy. While Hong Kong's status as part of China was reflected in Hong Kong hosting the equestrian events. Later this year, Hong Kong will also be hosting the East Asian Games in which some of your countries will again be participating.

The Basic Law also provides for Hong Kong to maintain and develop relations, and to conclude and implement agreements with foreign states and regions and relevant international organizations in the economic, trade, financial, monetary, shipping, communications, tourism and cultural fields. It is on that basis that Hong Kong is, for example, a separate customs territory and a separate member of the World Trade Organization and an associate member of the International Maritime Organization. Hong Kong has its own economic and monetary policy and its own tax regime, and is a free port, so Mainland customs duties and tariffs do not apply.

Apart from the external affairs which I have just mentioned, which Hong Kong can undertake on its own, Hong Kong may also be specifically authorized to negotiate and sign bilateral agreements for air services and reciprocal juridical assistance. While before 1997, air services to and from Hong Kong were negotiated as part of a British agreement with other destination countries, under the Basic Law, Hong Kong is authorized to negotiate its own bilateral agreements, of which there are now 63, with countries, including many Commonwealth countries, in every continent.

Hong Kong also has a network of bilateral agreements covering, among other things, extradition and mutual legal assistance in criminal matters. Again, many of those agreements are with Commonwealth countries. In addition to implementing those bilateral agreements, my department is active in the fight against trans-national crime through Hong Kong's membership of the Financial Action Task Force and the Asia Pacific Group, which combat money laundering and the financing of international terrorism and also through the Prosecutions Division's membership of the International Association of Prosecutors, which held its 12th Annual Conference in Hong Kong in 2007. As a leading financial centre, the Hong Kong Government

recognizes the importance of ensuring that the proceeds of crime do not find a safe home here.

Apart from bilateral agreements, many international conventions and treaties apply to Hong Kong. Even, in some cases, when the convention or treaty does not apply to the rest of China. Nonetheless, the Central Government accepts responsibility, as the State Party, for the implementation of all such treaties in Hong Kong. And so, for example, China is responsible for presenting Hong Kong's report on compliance with the International Covenant on Civil and Political Rights to the United Nations Committee in Geneva, although it has not yet ratified that Covenant so far as the Mainland of China is concerned. That report was prepared by the Hong Kong Government and Hong Kong Government officials attended before the Committee to answer questions upon it.

The Basic Law also provides that representatives of the Hong Kong government may participate as members of the China delegation in organizations which are limited to States. My department has been particularly active, as members of the China delegation, in the deliberations of the Hague Conference on Private International Law. Eight Hague Conventions apply to Hong Kong and my department has participated in the successful negotiation of a number of further conventions on both commercial and family law matters. As well as providing a multilateral network for international cooperation, we have found that a number of the Hague Conventions provide a useful model for similar arrangements between Hong Kong and the Mainland, addressing, as they do, the need to develop arrangements which are suitable for both common law and civil law jurisdictions. So that, while arrangements between Hong Kong and the Mainland reflect that both form part of a single state, the arrangement dealing with reciprocal enforcement of civil judgments adopts many of the solutions to be found in the 2005 Hague Convention on Choice of Court Agreements.

Almost sixty states are represented in Hong Kong by Consuls General with a further sixty represented by Honorary Consuls. Apart from country representatives, a number of international organizations also have their presence in Hong Kong, such as the Bank for International Settlements, the International Monetary Fund, the International Bank for Reconstruction and Development and the International Finance Corporation. In November last year, the International Chamber of Commerce opened an office of the Secretariat of its International Court of Arbitration here, the first office of the Secretariat to be established outside Paris.

Conclusion

In the first chapter of the Hong Kong 1983 Year Book, the then Attorney General commemorated the holding of the Commonwealth Law Conference in Hong Kong by analysing the legal structure of Hong Kong and the reasons for its success. While he alluded to the happy accident of geography and the importance of free trade, he emphasized that strict adherence to the rule of law is an essential element in creating the climate for success.

Today, more than a quarter of century since we last hosted the Commonwealth Law Conference, Hong Kong, like the rest of the world, is affected by the financial

crisis and a deepening recession. However, much of the current financial crisis has its origins outside Hong Kong. Hong Kong itself does not suffer the uncertainties which caused the lack of confidence in 1983. In fact, many will agree that because of what has happened in the past 26 years in China and in Hong Kong, we are now better placed to ride out the financial storm which is affecting the world economy.

Proximity to the Mainland and being the world's freest economy will continue to provide Hong Kong with an edge. However, the ultimate key to Hong Kong's success is still the strict adherence to the rule of law. This is not just holding on firmly to the core values and high standards, but also means a readiness to meet the new challenges of the modern day, to be responsive to the needs created by the new constitutional, economic and social order, as well as to be alert to the changes of the legal landscape of the world. Hong Kong is determined to remain international and to play our part. Just as the world leaders had worked hard in the G20 London Summit to restore the world economy by enhancing international cooperation, leaders in the legal field must work closely together to improve the dynamics of law in a rapidly changing world. Thank you.

On that note, it only remains for me to wish you all a fruitful conference and a very happy stay in Hong Kong.

Ends/Tuesday, April 7, 2009