

Speech by SJ at the Sixth ASEAN-China Prosecutors General Conference

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Following is the speech by the Secretary for Justice, Mr Wong Yan Lung, SC, at the Sixth ASEAN-China Prosecutors General Conference today (November 24):

Mr Chairman, Your Excellencies, Your Excellency Mr Tran Quoc Vuong, Your Excellency Mr Cao, ladies and gentlemen,

I am honoured to have been invited to attend this conference as part of the Chinese delegation, and to discuss the theme of "Strengthening co-operation in mutual legal assistance in criminal matters for effectively combating transnational crime".

But before I do so, may I thank Your Excellency Mr Tran Quoc Vuong, Prosecutor General, Supreme People's Prosecution Office, Socialist Republic of Vietnam, for the hospitality and assistance which have been provided to all of us since our arrival. I must also congratulate Your Excellency upon the arrangements which have been made to ensure that this important conference is as successful as we would all wish it to be.

The theme of the conference is well chosen. Transnational crime is a serious threat to the international community, and during a period of economic difficulty it is necessary for prosecutors to stay focused and alert to the circumstances they face. Transnational crime, after all, is at its most insidious when societies are distracted by other things. Whilst this phenomenon is by no means new, what is alarming is the way in which the perpetrators have expanded and diversified their activities as part of the globalisation process. Since criminal syndicates act in disdain of national boundaries, the responses of law enforcers must be suitably tailored. This means, for example, that whereas criminals are prepared to use the World-Wide Web to correspond, exchange information and effect transactions, those responsible for law enforcement must develop appropriate levels of expertise to disrupt their activities and to bring offenders to account.

As prosecutors, we have a vested interest in strengthening the ways in which our jurisdictions can assist one another in the combat of all forms of crime. While this is the shared aspiration of us all, it is incumbent upon us to take practical steps to turn this hope into a reality. Solid progress has undoubtedly been

made in recent times, and benchmarks have been set, but the process is ongoing, and mechanisms should be kept under review. In particular, prosecutors must promote arrangements which deal in a practical way with the consequences of globalisation, and this requires them to be both modern in outlook and innovative in deed. Priority should therefore be accorded to such issues as:

- enhancing the capacity of the criminal justice system to counter organised crime in a way which reflects the current realities;
- taking steps to change traditional attitudes to crime and involving citizens in crime prevention;
- ensuring the effective control of international borders;
- developing specialised teams to investigate and prosecute the latest modes of criminality;
- tightening legislative arrangements which do not deal comprehensively with organised crime and the proceeds of crime;
- increasing liaison between law enforcers and non-governmental organisations and business groups;
- strengthening procedures for international co-operation.

If mutual legal assistance agreements between jurisdictions are to deliver the desired results, they have to be comprehensive in ambit, and to reflect the importance of expedition in the handling of requests for assistance. Every effort should be made to ensure that evidence is gathered in a way which will facilitate its production in the requesting jurisdiction. If the finances of criminals are to be disrupted, there must be wide assistance between jurisdictions over the production of bank records. Although much has been done to improve mutual legal assistance arrangements, they are still sometimes slow and inefficient. In truth, no matter how stringent the legislation we have in place, little can be achieved if requests for assistance go unanswered, or if there are long delays in processing requests, or if the evidence sought cannot be provided because of local restrictions. It is no easy task to strengthen regional co-operation and to dismantle criminal operations, but our duty is to persevere. To make headway, we must acknowledge that the criminal syndicates have enormous resources at their disposal. They enjoy extensive worldwide networks, and they can quickly adapt themselves to changed circumstances. They also spare no expense to corrupt those in positions of authority. It is only by recognising the scale of the problem that we can hope to

counter it effectively.

In the course of particular investigations, the police may become aware that the crime in question has a transnational dimension, and such intelligence must be timorously acted upon. This requires that law enforcers elsewhere be notified, as this will ensure that measures to counter the criminality in question can proceed in tandem in different places. Even in situations where one jurisdiction has not requested mutual legal assistance from another, it will be beneficial if the responsible agencies can share relevant information as this will facilitate common objectives in the combat of organised crime, fraud, corruption, and even terrorism. Once mutual legal assistance agreements are created, their efficacy should be monitored, and if they are found in practise to be in any way wanting, remedial measures must be taken. At our peril do we disregard the importance of maximising co-operation at all levels.

The United Nations Convention Against Transnational Organised Crime (The Palermo Convention) applies to Hong Kong, and it reflects a commitment to enhance mutual legal assistance between states. It contains practical guidance as to how states can co-operate with one another. Techniques which have proved of value in terms of bilateral co-operation have been elevated to global status. The Palermo Convention makes provision for the electronic transmission of requests from one place to another. Such techniques are essential as traditional modes of legal assistance are often pedestrian in situations where time is of the essence. This arises, in particular, in the combat of money laundering, where procedural delay can and does frustrate the seizure of assets. The efficacy of our arrangements will be judged by the time it takes to have monies frozen, pending the making of a formal request, or, in a domestic case, by the time it takes to obtain a restraining order.

The Palermo Convention classifies an offence as "transnational" if it is :

- (1) committed in more than one state;
- (2) committed in a single state, but planned, prepared, directed or controlled in another state;
- (3) committed in one state, but involves an organised crime group whose activities cross national boundaries; or
- (4) committed in a single state, but has 'substantial effects' in another state.

The Palermo Convention defines "serious crime" as conduct capable on conviction of attracting at least four years' imprisonment. An organised crime group is described as "a structured group of three or more persons ... acting in concert with the aim of committing one or more serious crimes ... in order to obtain ... a financial or other material benefit". It is apparent, therefore, that many of the most common crimes qualify as serious and transnational, as they are grave, they affect more than one jurisdiction, and they involve at least several persons acting together in pursuit of financial gain.

The Palermo Convention encourages signatories to conclude appropriate bilateral or multilateral agreements providing for co-operation in the use of "special investigative techniques", such as electronic surveillance. Mutual legal assistance arrangements depend for their efficacy upon the willingness of jurisdictions to accept the notion of mutual recognition of decisions of foreign courts. The execution of requests for assistance involving communications interception would be greatly expedited if interception warrants issued in one jurisdiction were afforded recognition in another jurisdiction and could thereby be enforced in the other jurisdiction. As computer records which disclose the crime can be quickly erased, mutual assistance mechanisms which facilitate duly authorised requests between jurisdictions for interception warrants are important. Those who police the Internet must equally assist one another.

In Hong Kong, an example of the type of co-operation that is required is provided by the Securities and Futures Commission (SFC). The SFC uses its Internet Surveillance Programme - which monitors web sites, chat rooms and bulletin boards - to detect activities which target Hong Kong and which might infringe our laws. The SFC, as a regulatory body, concentrates upon the fraudulent solicitation of investors, market manipulation, the circulation of false or misleading information and insider trading. But when the SFC locates suspicious sites in other jurisdictions it passes on the information to law enforcers elsewhere. All such co-operation facilitates the policing of cyber space and must be encouraged on that account.

As mentioned earlier, transnational crime is associated with corrupt activity. If, therefore, effective mechanisms exist for the recovery of stolen assets, this can operate as a form of corruption

prevention. It is, after all, better to prevent corruption occurring in the first place, than to have to prosecute it once complete. In this regard, the United Nations Convention Against Corruption, which applies to Hong Kong, contains comprehensive mechanisms for the tracing and recovery of stolen assets. If such mechanisms are supported by effective laws on the ground, the effects of corruption can be redressed and corrupt officials placed on notice that they are within the reach of the law.

Since the reunification of Hong Kong with China in 1997, the Government of the Hong Kong Special Administrative Region has actively prosecuted all types of crime, and strengthened its capacity to combat transnational offending. Hong Kong plays an important role throughout the Asia-Pacific Region, and beyond, in the promotion of effective co-operation among law enforcers and prosecutors, and in encouraging best practise. The objectives which the international community set for itself at Palermo are ones to which those of us who are charged with upholding the law in Hong Kong are firmly committed. In no area is this more apparent than in the area of mutual legal assistance.

The Basic Law of the Hong Kong Special Administrative Region enables Hong Kong, with the approval or assistance of the Central People's Government, to enter into mutual legal assistance agreements with foreign jurisdictions. In consequence, Hong Kong is in a position to offer broad assistance to others. Evidence can, for example, be taken in Hong Kong in a criminal case which arises elsewhere but which is still being investigated. Confiscation orders from other jurisdictions can be enforced in Hong Kong. Search warrants can be used in Hong Kong to obtain evidence for production elsewhere. States wishing to benefit from these arrangements should either enter into a mutual legal assistance agreement with Hong Kong, or provide an undertaking of reciprocity to assist Hong Kong in comparable circumstances. As at October 1, 2009, Hong Kong had initialled 34 mutual legal assistance agreements in criminal matters with foreign countries, of which 27 have also been signed, and the process is ongoing.

In recent times, Hong Kong has gained important experience of co-ordinating initiatives to remove the profit from transnational crime. As a former president of the Financial Action Task Force, and as a founding member of the Asia Pacific Group on Money Laundering, Hong Kong recognises that transnational crime can only be

countered effectively if it is starved of its financing. This is obviously an essential area of law enforcement, and we are committed to doing all we can to assist our neighbours to uphold the integrity of their own financial systems. Hong Kong is both ready and willing to share our experience with others, and effective co-operation at the practical level with other jurisdictions in pursuit of common interests is our firm objective.

Thank you.

Ends/Tuesday, November 24, 2009