

Speech by the Hon Teresa Cheng, GBS, SC, JP
Secretary for Justice
at the Opening Ceremony of the 2019 Criminal Law Conference on
25 May 2019 (Saturday)

The Right Honourable Lady Justice Hallett, Ms Julie Read, Delegates from member states of the Association of Southeast Asian Nations (ASEAN), Members of the Judiciary, Fellow Members of the Legal Profession, Colleagues, Distinguished Guests, Ladies and Gentlemen:

- On behalf of the Department of Justice, I extend to you all a very warm welcome to the “2019 Criminal Law Conference” jointly organised by the Department of Justice, the Law Society of Hong Kong and the Hong Kong Bar Association. May I also welcome local and overseas participants alike to our Government headquarters here at Tamar.

- This is the 5th run in the “Criminal Law Conference” series. This conference series has become a very good tradition of our Department and the legal profession of Hong Kong, providing us with timely occasions to revisit our criminal justice regime and foster further collaboration. Compared with the topics discussed in the previous conferences, the criminal law issues that we are going to explore today have a distinctively international flavour.
- It has always been said that in this age of globalisation, the world is shrinking. With the advent of technologies, the flows of people, goods, information and funds across geographical and jurisdictional boundaries have increased exponentially. Hong Kong is an international financial centre and a

highly connected city. Our container port and airport are some of the busiest in the world. Half of the world's population is within the reach of a five-hour flight from Hong Kong. The mobile phone penetration rate in our city is 248 per cent.

- All these are of course great strengths of Hong Kong. Yet, they are also exposing us to risks and make us vulnerable to cross-border crimes. To effectively deliver justice and to meet the needs and expectations of the community, our criminal justice system must suitably evolve in response to the rapid changes in the local and international environments. Some of the most pressing criminal law issues arising from transnational flows of information, people and funds will be discussed today.

Cybercrime

- First - the flow of information. The cyberspace is now the main platform on which information is freely flowing round the clock and round the globe. Meanwhile, the attendant problem of cybercrime is something that every jurisdiction has to tackle.
- Cybercrimes often straddle multiple jurisdictions. The criminals, victims and computer servers and systems can be located in different corners of the world. The recent crackdown on the world's biggest DDoS (Distributed Denial of Service)-for-hire service provider shows the scale of the problem. DDoS is a malicious attempt to attack a server or network making it unavailable to legitimate users. DDoS service providers basically “lease” infected computers

to facilitate those who are willing to pay to make these attacks. In that crackdown taking place in April 2018, six top administrators of the scheme were arrested in the United Kingdom, Croatia, Canada and Serbia. It is reported that related suspects are targeted for prosecution by authorities from over 20 jurisdictions.

- Some states have come and acted together. The Convention on Cybercrime (commonly called the Budapest Convention) is the first international anti-cybercrime treaty. It contains provisions on criminalising a wide range of computer-related acts, including offences relating to computer data and systems, such as illegal access, and content-related offences, such as child pornography. The Convention also provides for international cooperation by way of

extradition and mutual legal assistance.

- On the other hand, some jurisdictions seek to reform their domestic laws. The CLOUD Act (Clarifying Lawful Overseas Use of Data Act) of the United States (U.S.) was passed last year, and it is a notable example. It empowers the U.S. authorities to access to data stored overseas, and, at the same time, facilitates foreign authorities to access to the U.S. stored data. It is not open to all authorities worldwide because there are some criteria as to whom the U.S. wishes to cooperate with. While these measures are no doubt powerful and would facilitate law enforcement, a careful balance has to be struck with the protection of fundamental rights and the respect of sovereign rights of foreign states. Australia has passed relevant legislation, and it would be interesting to see what

other states may or may not do.

- Different jurisdictions have their own ways of responding to the challenges. All these developments provide Hong Kong with much food for thought, and our Law Reform Commission and the society as a whole are reviewing and discussing our cybercrime regime, particularly in the wake of the landmark decision of the Court of Final Appeal in *Secretary for Justice v Cheng Ka Yee*.

Money laundering

- Money laundering is about flow of funds and is another problem that has a very strong cross-border dimension. Depriving criminals of their ill-gotten gains is one of the most direct ways of deterring

crimes and halting further offences. Hong Kong has put in place a mature and robust anti-money laundering statutory regime, under which the court is empowered to make restraint orders and confiscation orders to freeze and confiscate proceeds of crimes.

- We have been constantly updating and strengthening our legal framework, with some significant legislative proposals implemented last year. Hong Kong incorporated companies are now required to maintain a register of significant controllers. The purpose is to combat money laundering by enhancing transparency of company ownership and control. It enables law enforcement agencies to access certain beneficial ownership information to facilitate investigation.
- Also starting from last year, the statutory

requirements for customers due diligence and record-keeping is extending to cover not only financial institutions, but also some businesses and professions, including the legal professionals. Trust or company service providers are subject to a licencing regime and must satisfy a “fit-and-proper” test. The enhanced regime reduces the risk of those entities being misused as a vehicle for money laundering.

- We are always mindful of the importance of keeping our laws up-to-date and fit for purpose. The discussions today will no doubt enhance our work in that area.

Trafficking in persons

- The increasing flow of people worldwide enhances

the risks of trafficking in persons (TIP). Combatting TIP is a matter to which our Government attaches great importance.

- Although the “Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children supplementing the United Nations Convention against Transnational Organised Crime” (commonly known as the Palermo Protocol) does not apply to Hong Kong, our existing legislative framework covers a wide range of TIP conducts as defined in the Palermo Protocol. In fact, we have identified over 50 relevant provisions in our statute book, encompassing such offences as physical abuse, false imprisonment, criminal intimidation, child abduction, exploitation of children, illegal employment, etc.

- To ensure the effective implementation of anti-TIP work and heighten public awareness, the Hong Kong Special Administrative Region Government has established a high-level Steering Committee, chaired by the Chief Secretary for Administration, to tackle TIP. It also monitors the implementation of our “Action Plan to Tackle Trafficking in Persons and to Enhance Protection of Foreign Domestic Helpers in Hong Kong”. Regionally and internationally, we have maintained close liaison with foreign governments and interest groups.
- While we believe we have a well-established and comprehensive framework in place, we value opportunities to evaluate the existing regimes in Hong Kong and other jurisdictions and to explore how we

can better deal with the challenges we face together.

Sexual Offences

- Another discussion topic today is sexual offences, which is also about people. There is little doubt that the law on sexual offences aims at protecting those vulnerable from abuse or exploitation. However, some sexual offences have been criticised as discriminatory, inconsistent and inadequate as they might not comprehensively or accurately reflect modern values on sexual relationships and activities.
- The Law Reform Commission of Hong Kong has been reviewing common law and statute law governing sexual and related offences. Since 2012,

three consultation papers have been published covering a wide range of substantive offences, including non-consensual sexual offences, sexual offences involving children, and miscellaneous sexual offences. A report on “Voyeurism and Non-consensual upskirt-photography” recommending the introduction of those offences was just released last month.

- While sexual offences are mostly domestic in nature, there can also be an international angle. The Crimes Ordinance (Cap. 200) confers extraterritorial jurisdiction on the Hong Kong courts to deal with children-related sexual offences committed outside Hong Kong involving Hong Kong offenders or Hong Kong victims.

- The legislative intent is to combat child sex tourism as part of the implementation of the United Nations Convention on the Rights of the Child as applied to Hong Kong. It follows a strong international consensus that extraterritorial jurisdiction is an essential tool for combating sexual abuse against children.

Conclusion

- I hope the brief overview of the four topics has set the scene for the very enlightening and interesting discussions that we have ahead of us today. In closing, I would like to thank our two special guests again, Lady Justice Hallett and Ms Julie Read, and also to thank our co-organisers, the Law Society and the Bar Association, as well as David, our Director of Public

Prosecutions, and the team that has put this Conference together. They have been planning for this for a long time and put in a lot of efforts in getting together an interesting programme and also some very interesting reference papers that will inspire and assist in some of the discussions that we will have today.

- I thank you for the support and participation. I look forward to hearing the results of the frank, in-depth and productive discussions that you are going to have.

Thank you very much.