

**Opening Speech of Ms Teresa Cheng, SC
Secretary for Justice
Inaugural Global Conference – 2019 HCCH
Judgments Convention: Global Enforcement of
Civil and Commercial Judgments
9 September 2019 (Monday)**

Dr Christophe Bernasconi (Secretary General of the Hague Conference on Private International Law), Director-General Jia Guide (Director-General of the Department of Treaty and Law of the Ministry of Foreign Affairs of the People's Republic of China), Distinguished Guests, Ladies and Gentlemen,

2. It is my great honour and pleasure to welcome you all in particular our visitors and friends from overseas to this inaugural global conference in celebration of the successful conclusion of the “2019 HCCH Judgments Convention on the Recognition

and Enforcement of Foreign Judgments in Civil or Commercial Matters” (Judgments Convention). I would also like to take this opportunity to congratulate the Hague Conference on Private International Law (Hague Conference) for this remarkable achievement and to thank the Asian Academy of International Law, for its generous support to this Conference.

Judgments Convention fulfilling a long-felt need

3. With the rise of cyberspace and new technologies, trade crosses borders in a split second, transforming our economy into a truly global and connected one. What has been lacking for years is a global convention to provide for judgments recognition and enforcement which meets the needs of the economic developments. With the Judgments Convention, the gap is filled

and the rule of law reinforced internationally as envisioned in Goal 16 of the 2030 United Nations Agenda for Sustainable Development.

Rule of law and current situation in Hong Kong

4. Hong Kong has a strong and solid foundation for rule of law – the strong legal fraternity, the independent judiciary, the application of the common law and the protection of human rights guaranteed under the Basic Law. This, some say, is put to test in light of the recent protests and violence in parts of Hong Kong.

5. Hong Kong has always prided itself as an inclusive society not just for respecting different views harboured by different people, but also Hong Kong is a city that cherishes, respects and protects

the freedom of speech and expression, the right to assembly and generally freedom not just in our acts but also our thoughts. People from all walks of life, young and old, conservative or progressive are free to express and exchange their views whilst respecting even the diametrically opposite views of others.

6. That is the free and civilised society we all aspire to. Yet, as we all know, these rights are not absolute. Whilst enjoying the rights and freedoms that one is entitled to, one must also respect the rights of others. When these rights and freedoms are abused or misused, the free society will suffer. Where violence is resorted to, where disruptions affecting the rights and freedoms of others are inflicted, or where life and property are threatened or

vandalised, the general order of the society and the wellbeing of its people will be adversely affected.

7. The recent protests originate from, but by now has gone way beyond, the objections to the Hong Kong Special Administrative Region Government's (HKSARG) proposed amendments to the Fugitives Offenders Ordinance which includes safeguards based on the United Nations Model Extradition Treaty 1990.

8. Initially, peaceful processions have taken place but later on some of these public events have turned violent. When people overstepped the limit of peaceful demonstration and resort to violence, this cannot be tolerated by the society nor permitted in law. The laws of Hong Kong, our independent

prosecutorial and judicial systems will deal with these violations of law.

9. That, however, may not adequately address the causes of conflicts. With the onset of digital communication, and how research engines are designed to operate, confirmation bias becomes a prevalent mode and source of marketing and association. Views therefore become entrenched and polarised, and society divided sometimes without any rational basis and reasons.

10. What you have read, seen or heard on the news or social media, is just one piece of a complex social, economic and political jigsaw puzzle. Though it may take time, I assure you all that it is a puzzle that the Hong Kong people will be able to resolve together. As announced by the Chief Executive last

week, the HKSARG has started a cross-sector dialogue to talk through differences and look for common ground in the spirit of healing and reconciliation. The HKSARG will reach out to the community to start a direct dialogue with people from all walks of life, with different stances and backgrounds. It is our sincere and solemn wish to discuss grievances, issues, problems and solutions in a rational and respectful way.

11. The current situation in Hong Kong will subside. Hong Kong has always been resilient and despite recent disruptions, it will further advance itself to another level through its strong legal system, solid financial infrastructure and efforts of the citizens, and importantly also friends of Hong Kong like all of you here today, so I thank you all for coming to Hong Kong in this very important first

global conference after the conclusion of the Judgments Convention.

Judgments Convention – its impact and outline

12. Returning, if I may, to our theme, the Judgments Convention. As rightly noted by the Minister of Foreign Affairs of the Kingdom of the Netherlands, His Excellency, Mr Stef Blok during the signing ceremony of the Final Act of the Judgments Convention in the Great Hall of Justice in the Peace Palace, The Hague, the Judgments Convention “enhances the legal certainty and predictability that is important in international legal matters especially in international trade...”

13. Under the Judgments Convention, a judgment given by a court of a Contracting State (State of origin) shall be recognised and enforced in another Contracting State (requested State) in accordance with the provisions of Chapter II of the Judgments Convention. In this relation, a judgment of the State of origin would have to meet the threshold jurisdictional conditions provided for in Article 5 or 6 in order to be eligible for recognition or enforcement by a requested State. Such jurisdictional conditions include some familiar concepts such as habitual residence, consent to jurisdiction, place of performance of a contractual obligation, etc. A judgment that satisfies Article 5 or 6, nevertheless, may be refused recognition or enforcement on those limited grounds provided for in Article 7, which include traditional grounds such as lack of due process, public policy and fraud.

Unfinished business

14. While the Judgments Convention only deals with the jurisdictional bases that a court of the requested State will accept as legitimate grounds for the purpose of recognition or enforcement, but not the question of whether a court of the State of origin should exercise jurisdiction, we understand that there is plan for a further meeting of an Experts' Group to address these "matters relating to direct jurisdiction". There is thus unfinished business, difficult though they maybe, but I am sure that we would all be able to bring this into fruitful conclusion.

Challenges ahead

15. There has been discussion that the Judgments Convention has the potential of having the same impact as the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. The first challenge is for all the states to follow suit from what Uruguay has done by joining the Judgments Convention. Besides, given the scope for declarations and exclusions provided for in the Judgments Convention, it would be important for the success of the Judgments Convention as a global unified framework in recognition and enforcement of judgments across borders that its Contracting States are restrained in resorting to such declarations or exclusions.

Hong Kong's role

16. The HKSAR is most privileged to contribute to

the deliberations of the Judgments Convention. Since 1998 representatives of the HKSAR, as members of the Chinese delegation, have taken part in the Hague Conference's Judgments Project which gave birth not only to the present Judgments Convention but also the Choice of Court Agreements Convention 2005. Working closely with our counterparts in the Central Government and the Macao SAR, we participated actively in the discussions and the drafting of these two Conventions putting in the common law perspective. We are also very honoured that with the support of the Central Government, the Informal Working Group II and Group IV under the Judgments Project took place in Hong Kong in February this year. We are pleased that these meetings have contributed to the final conclusion of the Judgments Convention.

Hong Kong as a beneficiary of the Judgment

Project

17. Before concluding my remarks, I would like to pay tribute to the Hague Conference's Judgments Project for its helpful guidance to Hong Kong's bilateral arrangements with the Mainland China on reciprocal enforcement of judgments in civil and commercial matters. In January this year, Hong Kong and the Mainland entered into an "Arrangement on the Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Matters by the Courts of the Mainland and of the HKSAR". This particular arrangement was modelled on the advanced draft of the Judgments Convention.

18. The close resemblance between the now concluded Convention and the Hong Kong-Mainland Arrangement in various aspects are easily discernible. There is however one marked difference,

the Hong Kong-Mainland Arrangement covers some of the IP (intellectual property) related judgments. For instance, the Arrangement covers judgments on contractual disputes involving IP rights, and also tortious claims for infringement of certain IP rights. In the Arrangement, we adopted the definition of “IP rights” in the meaning of “intellectual property” as stipulated in Article 1(2) of the TRIPS Agreement (the Agreement on Trade-Related Aspects of Intellectual Property Rights).

19. This conference today brings together experts in private international law from various parts of the world, most of whom were directly involved in the policy formulation, drafting and negotiation of the Judgments Convention. They will no doubt provide us with useful insights, critical analyses and much food for thought. We will gain a great deal of deeper understanding of the Judgments Convention and its

important role in facilitating cross-border recognition and enforcement of judgments. We, in Hong Kong, welcome all of you from overseas and we are indeed most honoured and pleased to be able to host this very first inaugural global conference after the conclusion of the Judgments Convention with a view to spreading the news and encouraging more and wider adoption of the Convention in reinforcing international rule of law.

20. On this note, may I wish this inaugural global conference every success, and for those coming from overseas, an enjoyable stay in Hong Kong.

21. Thank you.