

Speech of Ms Teresa Cheng, SC

Secretary for Justice

Belt and Road Summit 2019

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Distinguished guests, ladies and gentlemen,

It gives me great pleasure to join you all here and welcome you to this thematic breakout forum: “Towards a Greater Success of Belt and Road Projects for Sustainable Investment – Hong Kong Can Lead”.

This session is graced with the presence of an array of distinguished experts sharing their insights and extensive experience on how to achieve the United Nations 2030 Agenda for Sustainable Development Goals, in particular Goal 16, which promotes the rule of law at the national and international levels, and ensures equal access to justice for all.

In this particular thematic breakout forum, the theme has four words that I would like to elaborate on: “Hong Kong Can Lead”. I would like to approach it in three ways, by looking at it in the present perfect tense, the present continuous tense and the future tense: Hong Kong has led, Hong Kong is leading, and Hong Kong will continue to lead.

“Hong Kong Has Lead”

Hong Kong has led. I will give you three examples to illustrate that. If I may, I start with the very important “One Country, Two Systems” principle that is enshrined in the Basic Law, which was adopted by the NPCSC (Standing Committee of the National People's Congress) in 1990.

After the adoption of the Basic Law in 1990, there

are two very important things that we all look at, and first of all, the “Two Systems”. How does it work in Hong Kong?

Hong Kong has a very high degree of autonomy. We have our own customs territory, immigration system, and tax system. We are a member of the WTO (World Trade Organization). Importantly, we have our own legal system, and the common law continues to be practised in Hong Kong. Those are very important features under the “Two Systems”.

Having said that, there is also the “One Country”. So attempts to threaten the territorial integrity of China, for example, by seeking the independence of Hong Kong, will not be tolerated under the “One Country, Two Systems” principle. We have that as our basic and very fundamental constitutional framework.

In that regard, why do I say we have led? Because after the Basic Law was adopted in 1990, other jurisdictions have probably taken some of the ideas and form another way of “Two Systems”. For example, with respect to the Dubai International Financial Centre and the Astana International Financial Centre, they actually have adopted the common law within their specified areas, notwithstanding that they are in the national jurisdictions which practise a different legal system respectively. Therefore, in a way, the arrangement under which the common law system is practised in Hong Kong within the civil law jurisdiction of China, is something that we have led, and others have followed.

The second thing Hong Kong has led is actually the judicial system. Under the Basic Law, our judges are appointed based on their judicial and professional qualities. Importantly, in the Court of Final Appeal, we have foreign judges from other common law jurisdictions

who sit as non-permanent judges on the bench and decide cases. These non-permanent judges come from around the world. We have, for example at the moment, the current President of the Supreme Court of the United Kingdom, the former Chief Justice of Canada, and the former chief justices of Australia, New South Wales, etc., who have also served on the Court of Final Appeal as non-permanent judges.

One very important point to bear in mind: our Court of Final Appeal is still, as far as I know, unique in the world, with non-permanent judges from other jurisdictions hearing all types of cases, not just civil and commercial. It hears constitutional related cases, criminal appeals, and a lot of judicial reviews, which find their way to the Court of Final Appeal. Our judicial system has been protected and enshrined in the Basic Law in this very unique way.

I say we have led because I notice that other jurisdictions have adopted a very similar approach, albeit only in part. For example, Singapore has an international commercial court that emphasises foreign judges, and they hear only civil and commercial cases.

The third matter that I would like to say that we have led is actually when China opened up forty years ago, Hong Kong was a bridge between foreign States and Mainland China for inbound investment into China. Hong Kong is still playing a very important role in that respect. Other jurisdictions have tried to play such role, but I do not think anyone has got anything near what Hong Kong has achieved as being the bridge for the inbound investment in the past 30 to 40 years.

I would like to conclude that we have, in the present perfect tense, “Hong Kong has led”.

“Hong Kong Is Leading”

Hong Kong is leading in a number of ways, and I use the phrase “is leading” in a present continuous tense because these are initiatives which have started and are still continuing before the missions of such initiatives are achieved.

The first is concerned with international arbitration. On April 2 this year, Hong Kong signed an arrangement with Mainland China on the provision of interim measures by the Mainland courts in aid of arbitrations seated in Hong Kong and administered by eligible arbitral institutions. In other words, for a company which chooses Hong Kong as the seat of arbitration, and uses one of those eligible arbitral institutions, it will be able to apply to the Mainland courts for interim measures such as preservation of assets, preservation of evidence and for other matters that may arise during the interlocutory stage of an ongoing

arbitration. That has been described by the international arbitration community as a game-changer. It allows access to justice for all to be achieved in a very important way. Hong Kong is the first and only jurisdiction outside of Mainland China that will enable parties conducting arbitration in Hong Kong to go and seek interim measures in the Mainland courts. We have taken a lead, and we are still working on it, and the coming into effect of the arrangement will be announced very soon.

The second matter that Hong Kong is leading is capacity building, in particular on investment mediation. Investment disputes have continuously in the past been conducted primarily by arbitration and probably will continue so. Yet there must be another way by which long term relationships, which is of course so important for the Belt and Road projects, to be preserved. Hong Kong has done the first Asian investment mediation training last year. Apart from Paris and Washington, Hong Kong is the

only place, the third place, and the first in Asia, that has conducted investment mediation training together with the ICSID (International Centre for Settlement of Investment Disputes of World Bank Group), and with participation from other international bodies such as the ECT (Energy Charter Treaty). That is still ongoing, we still need to build up a pool of investment mediators starting with the training in Hong Kong, and it will continue.

The third is something that happened a few days ago. On Monday, Hong Kong has the great honour of organising the inaugural global conference on the Judgments Project of the Hague Conference (2019 HCCH Judgments Convention: Global Enforcement of Civil and Commercial Judgments). The Hague Conference concluded the Judgments Convention on July 2 this year, and that Convention was ever so important in particular, again, from the Belt and Road perspective, bearing in mind the wide cross-border transactions, and therefore,

like it or not, disputes that could arise. The ease of recognition and enforcement of judgments across jurisdictions is ever so important for an investor investing in the Belt and Road projects. We are very happy that Hong Kong is the first jurisdiction in the world to hold this inaugural global conference for the Judgments Project. I know that Christophe (Secretary General of the HCCH, Dr Christophe Bernasconi) is going to say to you a little bit more in a moment about the importance of the Judgments Project, and I will stop here. Why do I say it is a continuing leading exercise? Because whilst we have conducted the first inaugural global conference, there are still a lot to be done, for example on how to encourage more States to join the Convention like Uruguay, the first country to join. We hope that the Convention will provide a good, predictable, certain and harmonised forum for resolution and enforcement of cross-border disputes.

“Hong Kong Will Continue to Lead”

Hong Kong will continue to lead, some of you may have a little bit of doubt about that in light of what is happening recently in Hong Kong. But let me assure you that Hong Kong is very resilient. We have had our ups and downs, but we have always come out stronger and better. Why would Hong Kong still be leading notwithstanding the situations that we have now? Let me give you one example in this way. The Chief Executive last week indicated that there are four specific actions that will be taken to deal with the current situation in Hong Kong. In particular, with respect to the third and fourth actions, there are a lot that we think may set some examples by which governments will be able to better govern, and better formulate their policies.

The third action that was promulgated by the Chief Executive was to conduct a direct dialogue between government officials and the general public from all walks

of life, from all backgrounds and from all status of political inclination. That dialogue is going to be conducted directly in various forums as well as in the district areas, so that we can collect the views directly from the people.

Another thing that is happening in parallel, and it is not a government action, but it is an action by people who love Hong Kong. Many, if not all, Hong Kong people love Hong Kong. They are conducting a lot of dialogues and setting up platforms by which views can be expressed through intermediaries including mediators, educational professionals, social welfare workers, who will then be able to collect the views of people including those who may not be very comfortable with talking to the Government directly at this stage. These sort of exercises will provide us with data by which we will then be able to analyse the deep-seated conflicts that have one way or another led to the current situation, and then allow the

Government to formulate policy in a way based on data and therefore scientifically, but also to be able to then formulate and analyse such policies and measures with the people and for the people. We hope that our experience in actually implementing the third and fourth actions explained by the Chief Executive may provide a good example and a good lesson to be learnt by the Government of the Hong Kong Special Administrative Region that we will be able to share in the future.

The second area that I will also like to say we will be leading is that of LawTech. Hong Kong is working hard in utilising technology to enhance its legal and dispute resolution systems, and I believe and understand that one of our speakers will be talking a little bit more about that.

The third matter that I would like to share goes back to one of the very first things I said, and that is – Hong Kong has been the bridge for China inbound investment.

In the current Belt and Road projects, China is looking at outbound investment. China is investing into other parts of the world along the Belt and Road countries. Again, Hong Kong will be able to play a very important role in providing the bridge, the platform or the springboard that connects the Mainland and foreign States, and providing important financing and capital market investments for such projects, which I believe again one of our speakers will be talking about, and also looking at dispute resolution, if disputes do unfortunately arise.

Ladies and gentlemen, I would like you to take home with these: “Hong Kong has led”, “Hong Kong is leading”, and “Hong Kong will continue to lead”.

Thank you very much.