

## **Summary of SJ's Remarks**

### **“COVID-19: Snapshots from Around the World” A Virtual Briefing for Patrons and Friends of the American Society of International Law May 29, 2020 — 7:00 a.m. (Hong Kong time)**

#### **A brief snapshot of the situation of Hong Kong in responding to the COVID-19 pandemic**

At the beginning of the virtual briefing, SJ first gave a brief snapshot of the situation of Hong Kong in responding to the COVID-19 pandemic by sharing various figures and statistics. SJ then shared the experience of Hong Kong in respect of the overall approach of the Government of the Hong Kong Special Administrative Region (“HKSARG”) in seeking to control and manage the COVID-19 situation. SJ described Hong Kong’s approach as characterized by four words: “recognize”, “strategize”, “legalize” and “revitalize”. In particular, SJ referred to the Prevention and Control of Disease Ordinance (Cap. 599), which has been in place in Hong Kong since 2008.

With respect of the element of “recognize”, SJ considered that the early recognition of the COVID-19 virus under the schedule of diseases of the Prevention and Control of Disease Ordinance (Cap. 599) was pivotal in ensuring that timely measures can be taken, such as the imposition of quarantine orders for confirmed cases. SJ then briefly discussed the timeline on the actions taken by Hong Kong in responding to the COVID-19 pandemic. In that regard, SJ mentioned that two weeks after the HKSARG “recognized” the COVID-19 virus on 8<sup>th</sup> January 2020, the HKSARG declared that Hong Kong was at the emergency level on 25<sup>th</sup> January 2020. Considering that the first reported and confirmed case of COVID-19 was on 23<sup>rd</sup> January 2020, the HKSARG has acted very speedily and proactively in addressing the situation. A steering

committee of the HKSARG was then set up and supported by an expert advisory panel. SJ also point out that all the decisions of the HKSARG were made on the basis of science and medical facts, and also some assessments on economic sectors and social behaviours.

SJ then proceeded to elaborate on the various initiatives under the element of “strategize” and described the policy adopted by the HKSARG as one of containment policy, with the aim to provide early identification, isolation and treatment. SJ mentioned that the first thing that the HKSARG did was to deal with the restrictions of entry of Hubei residents, and then the situation of border control. In respect of border control, a gradual and progressive process has been adopted by the HKSARG. The HKSARG first introduced the port health measures for incoming passengers and then exit screening. Afterwards, the HKSARG decided to suspend certain services between the Mainland and Hong Kong because the land and sea transportation services were quite frequent. The HKSARG then decided to close some of the borders in order to manage the pandemic situation and to ensure efficient use of resources.

SJ also discussed how Hong Kong got prepared for the influx of travellers, e.g. through the establishment of quarantine centres and medical facilities, as the second type of measures adopted under the element of “strategize”. About two weeks since the HKSARG declared that Hong Kong was in an emergency situation, compulsory quarantine measures were introduced for those coming from the Mainland. Further, about a month later, the HKSARG introduced a compulsory quarantine order for people coming from everywhere in the rest of the world. Afterwards, the HKSARG started to deny entry for visitors in order to contain and manage the imported cases.

In respect of the third type of initiatives adopted under the element of “strategize”, the HKSARG has made its best efforts in

increasing the capacity of the surveillance program. As remarked by SJ, “tests, tests and tests” is the key and this has actually enhanced the contact tracing and the source identification.

The fourth type of initiatives adopted under the element of “strategize” is concerned with social distancing. The HKSARG first imposed a limit on group gathering in public places, starting with the number of four. The HKSARG then also ordered the closure of or imposed restrictions on the operation of certain places like catering and some social public entertainment places.

SJ explained that “legalize” is an important element for supporting measures such as the imposition of quarantine orders and ordering the closure of premises for social distancing purposes. To achieve the element of “legalize”, the HKSARG invoked the Prevention and Control of Disease Ordinance (Cap. 599) and subsidiary legislations have been made by the Chief Executive-in-Council in order to “legalize” various measures such as compulsory quarantine.

SJ also mentioned that the court had to deal with the social distancing situation. In that regard, the court had to close for a certain period of time but then it still opened for urgent and emergency cases in order to provide the necessary services. The HKSARG had faced two cases on *habeas corpus* in respect of quarantine measures, but those have been dismissed by the court. This was because the HKSARG has always ensured that its measures are science-based arrangements and risk assessments have been conducted in deciding that certain people have to be placed in quarantine centres as opposed to the so-called “home quarantine”.

Regarding the element of “revitalize”, SJ explained the policy of “suppress and lift” as adopted by the HKSARG. Such policy recognizes that the COVID-19 virus unfortunately will likely be

around for a substantial period of time, and therefore the HKSARG has to strike a balance between the tug of war of public health, economy as well as the social acceptance of the way that social distancing measures and etc. are being imposed.

### **The sharing of Hong Kong's experience with other jurisdictions in containing the COVID-19 virus**

On Hong Kong's experience in containing the COVID-19 virus, SJ remarked that early recognition of the fact that there is the COVID-19 pandemic and the HKSARG needs to be ready to take measures is the most important thing. As for the second most important thing from Hong Kong's experience, SJ noted the need to get ready a set of legislation that would be invoked in pandemic situations. SJ, in particular, referred to the Prevention and Control of Disease Ordinance (Cap. 599) introduced back in 2008 in light of the severe acute respiratory syndrome ("SARS") pandemic in 2003. SJ also referred to the Emergency Regulations Ordinance (Cap. 241), which has been in place since 1922, which allows the HKSARG to deal with, among others, pandemic situations. That said, on consideration of the international legal principles of *lex specialis*, the HKSARG decided to invoke the Prevention and Control of Disease Ordinance (Cap. 599), which is more specific to the context of pandemics.

Another aspect of Hong Kong's experience that SJ considered worth sharing is concerned with managing the border in a very science-based approach. As remarked by SJ, the virus knows no nationality and the virus knows no borders. Given that controlling and managing the border would have implications on the rights of inbound travellers, SJ noted the importance for "legalizing" measures such as compulsory quarantine arrangements, and observed that this would involve the balancing of human rights as

well as the rights to health and the public health emergency matters at hand.

SJ pointed out that as compared with some other jurisdictions, Hong Kong has not passed any legislation that intervenes on the private rights in the private sectors. Some jurisdictions, for example, have passed legislations to impose a moratorium on the calling of contracts or calling of bonds or performance of contracts. SJ remarked that Hong Kong has not followed this approach because it was felt that we should allow risk to lie where it falls, very much following the rule of law.

Moreover, SJ mentioned that Hong Kong has catered for the situations of COVID-19 related disputes, and in that regard, an ODR platform<sup>1</sup> operated by eBRAM, with funding support from the HKSARG, has been introduced to resolve some of the COVID-19 disputes for the small and medium enterprises (“SMEs”).

**The single most important thing the world community can do to strengthen international cooperation in responding to the pandemic**

When asked about the single most important thing the world community can do to strengthen international cooperation in responding to the COVID-19 pandemic, SJ suggested that the world community should look at solidarity, and one step further – unity. As explained by SJ, unity is in the sense of better and more systematic coordination amongst countries and regions, for example on border controls and supply chain of goods and services. SJ again reminded the importance regarding the use of science-based information, removing all political concerns, and the

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<sup>1</sup> See [https://www.ebram.org/covid\\_19\\_odr.html](https://www.ebram.org/covid_19_odr.html).

observance of the rule of law during the COVID-19 pandemic. SJ remarked and concluded that solidarity and unity is the only way that the world community can come out of the COVID-19 pandemic together because this is after all our common destiny.