

SJ's speech at CISG conference (English only) (with photo)

Following is the speech by the Secretary for Justice, Ms Teresa Cheng, SC, at the conference in celebration of the 40th anniversary of the United Nations Convention on Contracts for the International Sale of Goods today (October 27):

Ms Joubin-Bret (Secretary of the United Nations Commission on International Trade Law, Ms Anna Joubin-Bret), Dr Neoh (Chairman of the Asian Academy of International Law, Dr Anthony Neoh), Ms Tung (President of the Willem C Vis Moot Alumni Association, Ms Sherlin Tung), distinguished guests, ladies and gentlemen,

It is a great pleasure and honour to welcome you all to this conference in celebration of the 40th anniversary of the United Nations Convention on Contracts for the International Sale of Goods (CISG). I would like to take this opportunity to thank the United Nations Commission on International Trade Law (UNCITRAL) and the Asian Academy of International Law for their support to this conference. My gratitude also goes to the Willem C Vis Moot Alumni Association as well as all the moderators and speakers.

As we gather today 40 years after its adoption, we must reflect on the impact CISG has made over the years. There are 94 contracting states (Note 1) from diverse legal traditions and economic development, which together represent over two-thirds of the global economy. As a multilateral instrument, it has established a fair, transparent, and uniform legal regime for cross-border sale of goods contracts. We are honoured to join the concerted worldwide efforts by over 10 countries from different continents (Note 2) in celebrating the 40th anniversary of CISG.

For historical reasons, while China (Note 3) is a contracting party to the CISG, the CISG is not currently applicable to the Hong Kong Special Administrative Region (Note 4). The Department of Justice issued in March 2020 a public consultation paper on the proposed application. A wide array of issues have been discussed in the paper, ranging from how CISG should be implemented locally, to the proper treatment of transactions between businesses in Mainland China and Hong Kong under the roof of "one country, two systems". We are consolidating the comments and studying this matter actively. We very much look forward to the enlightening views that our experts would share in this conference. Judging from the responses and submissions that we have received,

application of CISG to Hong Kong is an issue of great interest to our stakeholders. Should the CISG be applied to Hong Kong, such application could be made under Article 153 of the Basic Law (Note 5).

This conference has drawn literally all the top CISG experts together and for that we are most grateful. The event would contribute to the better understanding of the benefits of the CISG not just in Hong Kong but also in the Asia-Pacific, radiating further along the Belt and Road Initiative. Many countries participating in the Belt and Road Initiative are contracting parties to the CISG and it is already the universal standard by which parties of these countries transact. The Belt and Road Initiative can complement the reaching out of the CISG to the other countries, thereby creating a much broader rule-based environment that provides legal certainty to all.

In less than a year, the pandemic has transformed the globe. As the pandemic seems here to stay, we must all be vigilant but also innovative and plan to live and work in the new normal. Technology is the tool by which we can adapt and develop a sustainable new normal. Indeed, this virtual conference would not be possible without the development and application of technology. There is always some good out of every bad. The pandemic has made us rethink our means of communication. As this conference is accessible live online, we have reached out to 46 countries or regions with around 400 registrations.

The impact the pandemic has on businesses is, to say the least, unprecedented and catastrophic. Following the widespread disruption to the global supply chain, international business relations will likely end up in conflicts with increasing non-performance of contracts. The guidance and legal certainty the CISG provides in these times is pivotal to peaceful and amicable ways to prevent such conflicts from converting into disputes. Yet if they do, resolution of disputes usually in the form of mediation or arbitration will have to be invoked. Online dispute resolution (ODR) is the only sure way by which these conflicts can be resolved under the new normal.

Hong Kong has been a staunch supporter for the development of lawtech, as can be seen in the Policy Address of the Chief Executive in 2018. In particular we actively participate in the APEC-wide co-operative ODR framework for micro, small and medium enterprises in business-to-business transactions. The pressing need for simplicity and cost-effectiveness demands ODR to be a self-contained, universal and efficient system with minimal reference to national rules but reliance on a set of universal norms where diverse cultures and practice will converge and complement each other. By providing a uniform, neutral set of substantive rules, the CISG sets an example by which ODR should

aim to be. The Department of Justice and the UNCITRAL have signed a Memorandum of Understanding on November 4, 2019, for collaboration in the field of international trade law. As an initiative to explore issues relating to and thereby enhancing the use of ODR, the Department of Justice Project Office for Collaboration with the UNCITRAL will soon be set up in the Hong Kong Legal Hub to be officially opened at the Hong Kong Legal Week 2020.

In 2015, the United Nations adopted the 2030 Agenda for Sustainable Development. There are 17 Sustainable Development Goals, and Goal 16 aims to provide access to justice for all and build effective, accountable and inclusive institutions at all levels. In 2019, the Department of Justice set up the Inclusive Dispute Avoidance and Resolution Office and in 2020, we introduced the Vision 2030 for Rule of Law, a 10-year initiative aiming to align with and pursue the objects of the 2030 Agenda and Goal 16 in particular.

The pursuit of a wider adoption of a uniform law in support of international transactions and dealings builds a solid foundation for a rule-based society by which the diverse legal systems, culture and societal values can be converged and the people and businesses co-exist in harmony. The Preamble to the CISG clearly states, "The State Parties to this Convention ... (b)eing of the opinion that the adoption of uniform rules which govern contracts for the international sale of goods and take into account the different social, economic and legal systems would contribute to the removal of legal barriers in international trade and promote the development of international trade." Through the recognition of the common good, the adoption of inclusiveness as a norm and practice of multilateralism, the contemporary world will be able to adapt steadily and healthily to the new normal and achieve the Sustainable Development Goals of the 2030 Agenda.

Ladies and gentlemen, notwithstanding the pandemic I am so pleased that we are able to gather today in Hong Kong in this hybrid form with participants from 46 countries and regions. I look forward to the expert exchanges and I hope that we will be able to see you all in person here in Hong Kong very soon.

(Note 1) As of October 21, 2020, 94 countries are parties to the CISG. The entry into force date and the current status of the CISG are available at https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=X-10&chapter=10&lang=en .

(Note 2) A list of CISG@40 events can be found on UNCITRAL's webpage at <https://uncitral.un.org/en/cisg40events> .

(Note 3) The CISG entered into force for China on January 1, 1988. For details please refer to www.uncitral.org/uncitral/en/uncitral_texts/sale_goods/1980CISG_status.html .

(Note 4) The CISG was not applied to Hong Kong prior to July 1, 1997. During and after the transition, China has not deposited notification with the Secretary General of the United Nations for applying the CISG to Hong Kong.

(Note 5) Article 153 of the Basic Law provides that “(t)he application to the Hong Kong Special Administrative Region of international agreements to which the People’s Republic of China is or becomes a party shall be decided by the Central People’s Government, in accordance with the circumstances and needs of the Region, and after seeking the views of the government of the Region”.

Ends/Tuesday, October 27, 2020