

Speech by SJ at fifth Belt and Road Summit (English only) (with photo)

Following is the speech by the Secretary for Justice, Ms Teresa Cheng, SC, at the Thematic Breakout Session: Positioning Hong Kong for Deal-Making and Dispute Resolution under the Belt and Road Initiative of the fifth Belt and Road Summit today (November 30):

Good afternoon, ladies and gentlemen. At this annual Belt and Road Summit 2020, Hong Kong has adapted to the new normal in conducting this summit together with this thematic breakout forum online. By adapting to the new normal, it actually produces even better results for Hong Kong as our messages could reach out to more and further to places beyond the region. In this thematic breakout forum, we propose to share with you Hong Kong's strengths and plans in positioning Hong Kong for deal-making and dispute resolution under the Belt and Road Initiative.

Before going into the details, I would like to highlight two matters that have taken place this year: one leading to unfair and baseless attacks on Hong Kong's strengths and another unavoidably impacted the world, including Hong Kong.

The enactment of the National Security Law has generated a large amount of discussions internationally. It is incumbent upon me to explain to the international world that nothing in the National Security Law affects or impacts on our rule of law nor Hong Kong's autonomy as authorised under the Basic Law.

In 2019, violent incidents have occurred, citizens and police officers have been injured, shops, Mass Transit Railway stations, government facilities and many other properties have been maliciously destroyed or damaged. Some radicals have been openly advocating "Hong Kong Independence", offering ideas that urge for separatism and even shamefully pleading for interference by external forces in China's internal affairs and the affairs of the Hong Kong SAR as well as the imposition of sanctions to achieve their illegitimate aims. Illegal firearms and explosives have been found, posing a real risk of terrorism. The HKSAR has a constitutional obligation to legislate for certain specific national security offences in accordance with the Basic Law. It has not done so for the past 23 years and HKSAR became a gaping hole in China's national security, posing a major security risk to its national sovereignty, unity and territorial integrity.

In addition to being a SAR of China, Hong Kong is an international metropolis, an international financial centre and the global investment hub. Criminal activities endangering national security have not only affected social stability but also posed safety risks to foreigners residing in the HKSAR as well as businessmen and tourists and also brought uncertainties to commercial and investment activities.

Actions have to be taken. On May 28, 2020, the 13th National People's Congress made the "Decision on establishing and improving the legal system and enforcement mechanisms for the Hong Kong Special Administrative Region to safeguard national security" and entrusted its Standing Committee to formulate the National Security Law, which was passed, promulgated and came into effect in the HKSAR on June 30, 2020.

The passing of the National Security Law has brought stability and certainty back to our society, preventing acts that endanger national security, protecting the lives and properties of our people and enhancing certainty thereby encouraging commercial and investment activities.

Safeguarding national security is a matter of national sovereignty and is always within the purview of the Central Authorities. This is so in all states, be they unitary or federal states. In fact, many countries in the world have already enacted their own national security laws. In the United States, there are at least 20; the United Kingdom, nine; Australia, four; Canada, six, etc. Similarly, just like all other states, China enacts its own National Security Law in the exercise of her sovereign rights.

The National Security Law makes provisions for the protection of human rights and freedoms. It expressly provides that the HKSAR should respect and protect, in accordance with laws, human rights which the residents of HKSAR enjoy under the Basic Law. Furthermore, in formulating the National Security Law, important rule of law principles that are practised in both civil law and common law jurisdictions such as the presumption of innocence, protection against double jeopardy and fair trial are expressly provided for.

This enactment of the National Security Law has drawn unfair criticisms. For instance, media repeatedly, and therefore one cannot help but think deliberately, stated that judges for dealing with national security cases are "assigned" by the Chief Executive. Nothing is further from the truth. The Chief Executive designates a number of judges to form a list that will deal with national security cases. In other words, a list of specialised judges is to be formed. This is a practice that has existed within the current system in Hong Kong and in many jurisdictions. The benefit is that the judges on the list will become specialised in the particular area. The judge that will hear the specific case will be assigned and dealt with by the Judiciary. This is unequivocally stated by the Chief Justice in his statement dated July 2, 2020.

There are also unfair and wrong suggestions that "one country, two systems" policy and Hong Kong's autonomy has been adversely affected by the passing of the National Security Law by the Standing Committee of the National People's Congress. Such suggestions are again plainly wrong. National security is always a matter within the purview of the Central Authorities and the National People's Congress is the highest authority in the constitutional structure of China. National security is never something that is within the autonomy of Hong Kong. Hong Kong has a constitutional duty to pass its own legislation which has not been done. But this assignment of

duty thereby does not mean that the ultimate responsibility of the National People's Congress to ensure that Hong Kong does not become a gaping hole of national security is to be forgotten. It is entirely within the purview of the Central Authorities to pass the National Security Law.

Recently, a media has attempted even to comment on a particular ongoing case about the interpretation of the National Security Law in relation to a charge of sedition. I am not able to comment on this because the question is subjudice, but I urge the public to refrain from coming to a conclusion by reason of statements made by the media but to wait for the decision and reasons of the courts. Trial by media is to be avoided.

I must also refute the malicious attacks that the passing and implementation of the National Security Law is an affront to our much cherished judicial independence. This is easily refuted by the facts and also by looking at two statements. One from the Chief Justice of the Court of Final Appeal made on July 2, 2020, stating, "Designated judges, like all judges, are to be appointed on the basis of their judicial and professional qualities. These are the only criteria relevant to the appointment of judges. This therefore means, for example, that judges should not be designated (under the National Security Law) on the basis of any political considerations. This reinforces the principle that in the handling or determination of any legal dispute, only the law and legal principle will be considered". Secondly, in the Court of First Instance case of Tong Ying Kit v HKSAR, Judges (Anderson) Chow and (Alex) Lee remarked: "(t)here is no proper or sufficient basis to contend that, in relation to cases concerning offences under the National Security Law, the Chief Executive or the Government is in a position 'to interfere in matters that are directly and immediately relevant to the adjudicative function, for example, assignment of judges, sittings of the court and court lists', or that the liberty of any member of the Judiciary in Hong Kong 'in adjudicating individual disputes and in upholding the law and values of the constitution' is, or will be, interfered with by the Chief Executive exercising her power under Article 44...It must be borne in mind that a judge is bound by the Judicial Oath taken by him upon his appointment, which requires him to, inter alia, discharge his judicial duties in full accordance with the law and without fear or favour."

Let me now turn to the unavoidable impact that has affected Hong Kong alongside other places in the world. COVID-19 has created huge amount of challenges to all societies be they from developed or developing countries. This pandemic can only be tackled if we are to pay heed to the remarks made by the Director-General of the World Health Organization at the G20 Extraordinary Leaders' Summit on COVID-19 where he stated "no country can solve this crisis alone". He further referred to "a paradigm shift in global solidarity – in sharing experiences, expertise and resources, and in working together to keep supply lines open and supporting nations who need our support". In that regard, one cannot but recall the words of President Xi at section I of the 15th G20 Leaders' Summit on November 21, 2020, where he pointed out "China has proposed a global mechanism on the mutual recognition of health certificates based on nucleic acid test results in the form of internationally accepted QR codes. We hope more countries will join this

mechanism."

This mission of bringing about solidarity in order to deal with COVID-19 is perhaps the single most important thing right now that the Belt and Road Initiative countries should work on. It is only when the freedom of movement of goods and people are reinstated will the economy be back in its full strengths.

Hong Kong's strengths are not in any way affected notwithstanding these unfair criticisms and unavoidable challenges in 2020. The "one country, two systems" continue to function ensuring Hong Kong's autonomy continue to thrive. For instance just last Friday, the Department of Justice of Hong Kong and the Supreme People's Court signed the Supplemental Arrangement Concerning Mutual Enforcement of Arbitral Awards. This Supplemental Arrangement enhances the mutual recognition and enforcement mechanism of arbitral awards made in the Mainland and the Hong Kong SAR which has come into force since 2000. The Supplemental Arrangement provides for preservation measures to be obtained before or after the court's acceptance of an application to recognise and enforce an arbitral award.

In April 2019, also under Article 95 of the Basic Law, the Department of Justice and the Supreme People's Court also signed the game changing Arrangement Concerning Mutual Assistance in Court-ordered Interim Measures in Aid of Arbitral Proceedings by the Courts of the Mainland and of the HKSAR, making Hong Kong the first and only jurisdiction outside the Mainland where, as a seat of arbitration, parties to arbitral proceedings by eligible arbitral institutions would be able to apply to the Mainland courts for interim measures.

In the light of the many challenges posed by the COVID-19 pandemic, we have witnessed the importance of how technology and innovation can transform the landscape of legal and dispute resolution under the new normal. Affordability and inclusiveness in the provision of dispute resolution services become vital. On November 20, 2020, the APEC Economic Leaders issued a declaration which, among others, encouraged "the use of digital technology to resolve cross border business to business disputes". Hong Kong has officially opted into this APEC ODR Framework. The Department of Justice Project Office for collaboration with the UNCITRAL has officially opened in the Hong Kong Legal Hub on November 2 to work on the greater use of technology in international trade, including in the field of ODR. Locally, on June 29, 2020, the COVID-19 ODR scheme, operated by the eBRAM International Online Dispute Resolution Centre was launched in Hong Kong to offer cost effective and speedy ODR services to the general public and businesses. Further, as noted in the 2020 Policy Address, we will actively explore the development of the Hong Kong Legal Cloud, a state-of-the-art online facility equipped with advanced information security technology to provide data storage services for local legal and dispute resolution sector.

Inspired by the United Nations 2030 Agenda for Sustainable Development, the Department of Justice launched a new 10-year initiative entitled "Vision 2030 for Rule of Law". We aim to foster the proper understanding and

recognition of the rule of law in our community both locally and beyond. This Vision 2030 initiative is particularly relevant to the Belt and Road Initiative as we aim to build a strong rule of law community and achieve sustainable development of inclusive and fair societies at local, regional and international levels. The creation of a rule of law environment will provide protection, certainty and predictability for the people and businesses in their commercial and investment activities.

The Task Force on Vision 2030 has been set up with renowned members and experts of local and international legal community, providing guidance and advice on this initiative. One of the members of the Task Force, Professor Dr Surakiart Sathirathai, mentioned that, multilateralising regionalism is a matter that is well worth pursuing in strengthening a rule based society regionally that will be inclusive and fair. Strengthening multilateralism in economic development under the Belt and Road Initiative can only succeed with rules that are commonly acceptable, practical and inclusive in that it takes into account the socio-economic development and cultures of the jurisdictions. It is our intention to organise activities that will allow the cultural, social and economic development and legal traditions of various jurisdictions to be understood so as to provide a platform for the furtherance of the aims of the Belt and Road Initiative – that is to encourage extensive consultation, joint contribution and shared benefits as well as co-operation to enhance policy, infrastructure, trade, financial and people-to-people connectivity.

We are at an important time in history, in terms of the uncertainties in international relationships, the challenges to public health and the foreseeable downturn of the economy worldwide. This is the time we work in solidarity to deal with COVID-19 but also to try and work out rules by which the Belt and Road Initiative countries can adopt as soon as the economy is revived. This way "the new normal" can be put into use that will enable all to adopt and adapt to the new future. The "Vision 2030 for Rule of Law" initiative provides a perfect platform by which these aims can be achieved and we look forward to collaborating to achieve the 17 Sustainable Development Goals in line with the objectives of the Belt and Road Initiative. Thank you very much.

