

Welcome Address by the Chief Justice, The Hon Mr Justice Li, at the International Bar Association Conference

Ladies and Gentlemen,

I am honoured and delighted to be invited to deliver the opening address at this conference on "The Worldwide Application of the International Covenant on Civil and Political Rights".

For those who have come from overseas, I would like, on behalf of our community, to welcome you warmly to Hong Kong.

We are two weeks away from the first anniversary of the resumption of the exercise of sovereignty by the People's Republic of China and the establishment of the Hong Kong Special Administrative Region under the principle of "one country two systems" exercising a high degree of autonomy. We welcome your interest in coming to Hong Kong; what is now the most modern city of China with its own separate system. You will be able to discover for yourselves how we have fared in the new order. I venture to suggest that you will find that the early days have been promising and bode well for the future.

The ICCPR is the most important of all human rights instruments. Its preamble recognizes that these rights are equal and inalienable rights of all members of the human family, and that they derive from the inherent dignity of the human person. It contains internationally agreed norms. The rights and the values that they enshrine are those of a free society. And a free society is the very essence of the new order in Hong Kong, as it was in the old.

In both the old and the new order, the Covenant was constitutionally entrenched.

In the Basic Law, the constitution for the Hong Kong Special Administrative Region, the protection of the Covenant is entrenched. Chapter III sets out the fundamental rights and duties of residents. Article 39 provides in relation to the Covenant that its provisions as applied to Hong Kong shall remain in force and shall be implemented through the laws of the Hong Kong Special Administrative Region, that the rights and freedoms enjoyed by the Hong Kong residents shall not be restricted unless prescribed by law and that such restrictions shall not contravene the provisions of the Covenant.

Before 1997, the entrenchment was achieved through a similar provision in the Letters Patent. This was introduced in 1991 at the time of the enactment of the Bill of Rights Ordinance.

In 1991, some expressed the view that the common law would be sufficient to protect human rights. Especially with the benefit of the last seven years' experience in this new jurisprudential era, I am in no doubt that the common law would not have been as effective as constitutionally entrenched provisions. For all its vigour and adaptability, the common law would have to develop in this regard principally through cases on statutory interpretation and judicial review of administrative action. This would have to be done on a case by case basis. In contrast, constitutionally entrenched provisions set out the position clearly and comprehensively. It focuses public attention on the entrenched rights and enable challenges to be made for infringement. I firmly believe that the best legal framework for the implementation of the Covenant is through constitutionally entrenched provisions. In this respect, it could be said that we are in a better position than the United Kingdom.

The enactment of constitutionally entrenched provisions can only provide a solid platform for the protection of human rights. Whether there is effective protection depends whether there are sound institutions with people in them who have the concern for human rights and the will to enforce them.

An independent Judiciary is a pivotal institution in this regard. The statement of the Principles of the Independence of the Judiciary subscribed by the Chief Justices of Asia and the Pacific in Beijing in 1995 and re-affirmed in Manila in 1997 stated the objectives and functions of the Judiciary as including the following:

- (a) to ensure that all persons are able to live securely under the Rule of Law;
- (b) to promote, within the proper limits of the judicial function, the observance and the attainment of human rights; and
- (c) to administer the law impartially among persons and between persons and the State.

It is the Judiciary's constitutional duty to ensure that the acts of the legislature and the executive comply with these entrenched provisions for the protection of human rights and to strike them down, when they do not. By reason of the nature of the subject matter of

these cases, judgments in them are often controversial. But judges should be fearless in discharging their duty, irrespective of popular or media acclaim or criticism.

An independent legal profession is another institution with a very important role to play. Lawyers should be alert to and vigorous in the protection of human rights. There should be a good system of legal aid to provide adequate access to lawyers. And in an adversarial system of justice such as that we have in Hong Kong, the court is to some extent hostage to the arguments advanced by the parties. The Court will be greatly assisted by good arguments, arguments which are inventive and thorough including the citation of all relevant materials from various jurisdictions. As far as Hong Kong is concerned, we, particularly our own final appellate court, the Court of Final Appeal, would greatly value assistance from leading counsel not only in Hong Kong but also from other common law jurisdictions. I have therefore called for the adoption of a more flexible regime in the admission of overseas counsel for individual cases. Especially leading counsel from Australia, New Zealand and United Kingdom which have the closest affinity to our legal tradition and from which we have so far drawn leading judges for the panel for our final court.

There is one group of lawyers who are in a position to make an important contribution to the effective protection of human rights and who are often overlooked. I refer to the academic lawyers. They are independent from all centres of power, public and private. In the exercise of their academic freedom, their teaching and research on human rights questions as well as their critique of executive and legislative action and judgments of the court could play an important part. In Hong Kong, their contribution in the new jurisprudential era since 1991 has been most significant and should be acknowledged.

So far I have been speaking of the legal community. But the effective application of the Covenant requires concerted attention and determined action from everyone. From the executive and legislative branches of government which must conscientiously apply these norms in their action. From a free press exercising vigilance.

Above all, the protection of human rights needs the support of the public. Citizens who are aware of their rights and conscious that these rights are part and parcel of their rights and duties as citizens. The preamble to the Covenant recognizes this. It recites the realization

"that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant."

In the last analysis, it is only with the support of its citizens that one can truly have effective application of the Covenant in any society. As the well known American Judge, Judge Learned Hand so wisely observed:

"Liberty lies in the hearts of men and women; when it dies, there is no constitution, no law, no court can save it; no constitution, no law, no court can even do much to help it."

Finally, I wish to refer to the reporting obligation to the United Nations under the Covenant. This envisages international interest and scrutiny as part of the machinery for protection.

Before 1997, the United Kingdom as a party to the Covenant discharged the reporting obligation in respect of Hong Kong. As the People's Republic of China is not yet a party to the Covenant, there was anxiety as to whether there will be any reporting after 1997.

That anxiety has now been laid to rest. In December 1997, the Central People's Government has informed the United Nations that in line with the Joint Declaration and the Basic Law, and considering that China is not yet a signatory to the Covenant, she will make reference to the provisions under the Covenant and transmit reports on the Hong Kong Special Administrative Region to the United Nations through her permanent representative. She has also notified that the first report will be submitted in August 1998.

As you are aware, in March 1998, an announcement was made by Vice-Premier Qian Qichen, then also Foreign Minister, that the Chinese government is preparing to sign the Covenant.

Ladies and gentlemen, judging from the galaxy of talent present both from Hong Kong and overseas, I am sure you will have a fruitful and rewarding conference. As our economy has shown negative growth in the first quarter, we very much hope that those of you from overseas will have spare time in which to spend generously in our city. I thank you for listening and I wish the conference every success.

13 June 1998