



June 4, 2020

China Moves to Impose National Security Law on Hong Kong

Overview

China's legislature, the National People's Congress (NPC), on May 28, 2020, adopted a decision authorizing its Standing Committee (NPCSC) to write national security laws that will apply only to China's Hong Kong Special Administrative Region (HKSAR). The decision also requires the HKSAR government to pass local legislation to protect China's national security, although previous attempts to pass national security legislation in the city have failed in the face of massive public protests.

Many observers see the NPC decision as a violation of China's obligations under two of Hong Kong's foundational documents. The first is the 1984 Sino-British Joint Declaration on the Question of Hong Kong, the international treaty on the transfer of sovereignty over Hong Kong from the United Kingdom to China on July 1, 1997. The second is China's Basic Law of the HKSAR of 1990, which established the HKSAR. Both documents state that the HKSAR is to enjoy a "high degree of autonomy, except in foreign and defence affairs" and that the "rights and freedoms" of the people of Hong Kong will remain unchanged until at least 2047. Many observers also view the NPC's decision as contrary to China's "one country, two systems" policy, under which the people of Hong Kong are to govern Hong Kong. China insists the moves are necessary to "maintain and improve" the "one country, two systems" policy in a situation in which it believes the "one country" part of the formula has come under threat from advocates for resistance to China's central government in Beijing.

On May 29, 2020, President Donald J. Trump accused China of extending "the reach of China's invasive state security apparatus into what was formerly a bastion of liberty," and of doing so in violation of the Joint Declaration and the Basic Law. In response, the President said he would "begin the process of eliminating policy exemptions that give Hong Kong different and special treatment." He did not specify a timeframe for action. Multiple bills related to protecting Hong Kong's autonomy are pending in the U.S. Congress.

NPC Decision

The NPC decision authorizes the NPCSC to "formulate" and impose on Hong Kong legislation "to improve the HKSAR legal system and enforcement mechanisms." The legislation is to "effectively prevent, stop, and punish acts and activities to split the country, subvert state power, organize and carry out terrorist activities, and other behaviors that seriously endanger national security, as well as activities of foreign and external forces to interfere in the affairs of the HKSAR."

The NPC decision also states that the HKSAR government should complete local national security legislation required

by the Basic Law "as soon as possible." In addition, Hong Kong's Chief Executive is instructed to "effectively prevent, stop, and punish acts and activities endangering national security," carry out national security education in Hong Kong, and report regularly to Beijing about Hong Kong's national security work.

Finally, the decision states, "When needed, relevant national security organs of the Central People's Government will set up agencies in the HKSAR to fulfill relevant duties to safeguard national security in accordance with the law." It is unclear if these agencies will be branches of the national security organs, Hong Kong entities, or some form of joint entities. China's central government currently maintains in Hong Kong a Liaison Office, an Office of the Commissioner of the Ministry of Foreign Affairs, and a garrison of 12,000 People's Liberation Army soldiers.

Next Steps

Beijing

The NPC decision does not set a timeframe for the NPCSC to write the national security legislation or for central government national security organs to establish agencies in the HKSAR. The NPCSC, a select group of 159 of the full NPC's nearly 3,000 delegates, has the authority to pass legislation on its own, without having to return it to the full parliament for a vote. Once the NPCSC adopts the authorized national security laws, the NPC decision allows the NPCSC to decide to add the laws to the list of national laws applicable to the HKSAR in Annex III of the Basic Law. The NPCSC meets approximately every two months. It last met on May 18, 2020.

Hong Kong

To comply with the NPC decision, the HKSAR government and Hong Kong's Legislative Council (Legco) must pass the local legislation required by Article 23 of the Basic Law (See below). In addition, the HKSAR government is required to "promulgate and implement" the NPCSC-drafted national security legislation.

Article 23 of the Basic Law—The Hong Kong Special Administrative Region shall enact laws on its own to prohibit any act of treason, secession, sedition, or theft of state secrets, to prohibit foreign political organizations or bodies from conducting political activities in the Region, and to prohibit political organizations or bodies of the Region from establishing ties with foreign political organizations or bodies.

Reasons for the NPC Action

NPCSC Vice Chairman Wang Chen on May 22, 2020, alleged a surge in national security risks in Hong Kong over the last year justified the need for the NPC decision. He highlighted calls for Hong Kong independence, attacks on the Chinese national flag and national emblem, efforts to “incite” the people of Hong Kong to be “anti-China” and “anti-Communist Party of China,” activists’ “besieging” Chinese government’s institutions in Hong Kong, and alleged efforts to “discriminate against and exclude” people from mainland China. Wang lashed out, too, at external forces for providing “support and an umbrella for the anti-China forces disrupting Hong Kong.” Wang also argued that the HKSAR government’s failure for the last 23 years to comply with Article 23 of the Basic Law made the NPC decision necessary.

A 2003 effort by the HKSAR government to pass Article 23 legislation prompted an estimated 500,000-person protest and the subsequent resignation of then-Hong Kong Secretary of Security and now Legco member Regina Ip Lau Suk-ye. Many observers consider the 2003 protest a significant factor in China’s loss of support for then-Hong Kong Chief Executive Tung Chee-hwa, and his decision to resign in March 2005. (Officially, he resigned for health reasons.) No subsequent Chief Executive has submitted legislation to Legco to fulfill the requirements of Article 23 of the Basic Law.

Some Chinese officials and Hong Kong politicians called for passage of Article 23 legislation after the 2014 pro-democracy Umbrella Movement shut down portions of the city for nearly three months. Those calls increased in intensity following the outbreak of large-scale demonstrations in 2019 in response to the HKSAR’s attempt to revise a local ordinance to allow extraditions to mainland China. Chief Executive Carrie Lam Cheng Yuet-ngor declined to introduce Article 23 legislation, however, maintaining that conditions in Hong Kong were not suitable for addressing such a contentious issue.

Implications for Hong Kong

The NPC’s approval of the decision has started a process that may result in the people of Hong Kong being subject to national security laws imposed by China’s central government that are broader in scope than what is required by Article 23 of the Basic Law. For example, the NPC resolution requires the NPCSC laws to prohibit “terrorist activities” and “foreign and external forces interfering in the affairs of Hong Kong,” language which is not included in Article 23.

As a result, the NPCSC’s laws may end up prohibiting activities, behavior, and communications previously legal in Hong Kong. Some fear that efforts by Hong Kong residents to lobby the U.S. Congress could be considered illegal under the NPCSC’s laws, for example.

The establishment of new national security agencies in Hong Kong is another major concern for some. For example, it could open the way for mainland security personnel to conduct investigations and initiate criminal prosecutions in Hong Kong. During the 2019 protests,

activists claim mainland security personnel were already secretly working with the Hong Kong Police Force.

U.S. Response

On May 27, 2020, before passage of the NPC decision, Secretary of State Michael Pompeo informed Congress, under the U.S.-Hong Kong Policy Act of 1992 (USHKPA) (P.L. 102-383), of his certification that Hong Kong does not continue to warrant treatment under U.S. law in the same manner as before its handover to China on July 1, 1997. In his May 29 remarks, President Trump said his new approach to Hong Kong would “affect the full range of agreements we have with Hong Kong, from our extradition treaty to our export controls on dual-use technologies and more, with few exceptions.” He also said the State Department would revise its travel advisory for Hong Kong “to reflect the increased danger of surveillance and punishment by the Chinese state security apparatus.”

Statements by China and the HKSAR Government

After a June 3, 2020, meeting in Beijing with Chinese Vice Premier Han Zheng, Chief Executive Lam said Han had reiterated to her that the new national security legislation would target only “a small minority” of “criminals” in Hong Kong. On May 28, 2020, Chief Executive Lam welcomed the NPC’s decision, stating the NPCSC’s national security law “will not affect the legitimate rights and freedoms enjoyed by Hong Kong residents.” Lam also acknowledged “that the Hong Kong SAR still has the legal responsibility to enact legislation in accordance with Article 23 of the Basic Law and should complete the legislation to safeguard national security as soon as possible.”

Issues for Congress

It remains unclear how President Trump might implement his new policies on Hong Kong. The USHKPA authorizes the President to determine in an Executive Order “that Hong Kong is not sufficiently autonomous to justify treatment under a particular law of the United States, or any provision thereof, different from that accorded the People’s Republic of China.”

In 2019, Congress passed the Hong Kong Human Rights and Democracy Act (P.L. 116-76) in response to the proposed changes to the HKSAR’s extradition law and to provide support to the protesters. Congress may consider passage of other legislative measures to address the threat to Hong Kong’s autonomy and the human rights of Hong Kong residents. The Hong Kong Be Water Act (H.R. 5725 and S. 2758) would authorize the President to impose sanctions on persons and entities suppressing freedoms in Hong Kong. H.R. 6947 would allow the President to recognize Hong Kong as an independent country. S. 3798 would impose sanctions on “foreign persons” who are responsible for the erosion of China’s fulfillment of its obligations under the Joint Declaration.

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