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China's National Security Law for Hong Kong: Issues for Congress

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SUMMARY

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On June 30, 2020, China's National People's Congress Standing Committee (NPCSC) passed a national security law (NSL) for the Hong Kong Special Administrative Region (HKSAR). Hong Kong's Chief Executive promulgated it in Hong Kong later the same day. The law is widely seen as undermining the HKSAR's once-high degree of autonomy and eroding the rights promised to Hong Kong in the 1984 Joint Declaration on the Question of Hong Kong, an international treaty between the People's Republic of China (China, or PRC) and the United Kingdom covering the 50 years from 1997 to 2047.

The NSL criminalizes four broadly defined categories of offenses: secession, subversion, organization and perpetration of terrorist activities, and "collusion with a foreign country or with external elements to endanger national security" in relation to the HKSAR. Persons convicted of violating the NSL can be sentenced to up to life in prison. China's central government can, at its or the HKSAR's discretion, exercise jurisdiction over alleged violations of the law and prosecute and adjudicate the cases in mainland China. The law apparently applies to alleged violations committed by anyone, anywhere in the world, including in the United States.

The HKSAR and PRC governments have already begun implementing the NSL, including setting up the new entities the law requires. China's central government has opened its "Office for Safeguarding National Security" in Hong Kong; the Office and its staff are not subject to Hong Kong law when conducting their work. The HKSAR government has formed its "Committee for Safeguarding National Security," as well as created a new national security department in the Hong Kong Police Force (HKPF) and a new division in the HKSAR Department of Justice for prosecution of national security cases. The HKPF arrested at least 10 people for alleged violations of the national security law on the day after the law went into effect.

The NSL has received a mixed response in Hong Kong, where views about the PRC's treatment of Hong Kong are polarized. Supporters of the HKSAR government in the city's Legislative Council (Legco) welcomed the new law, while Legco's pro-democracy coalition condemned the law. Tens of thousands of Hong Kong residents participated in a largely peaceful demonstration on July 1, 2020, in opposition to the law, despite efforts by the HKPF to stop them turning out. On July 11 and 12, 2020, the pro-democracy political parties held an informal primary to select candidates for Legco elections to be held on September 6, 2020. More than 610,000 people, over 13% of eligible voters, participated. The HKSAR government has initiated an official investigation to determine, among other things, if holding the primary violated the national security law. The HKSAR government has also threatened to disqualify candidates who participated in the primary. The response to the NSL from Hong Kong's business community has varied from statements of support to expressions of serious concerns about the implications of the law for the city's economic future.

On July 14, 2020, President Trump signed the **Hong Kong Autonomy Act** (P.L. 116-149), which authorizes the imposition of sanctions on PRC and HKSAR officials, as well as "foreign financial institutions" that provide financial services to designated individuals. On the same day, President Trump signed Executive Order 13936, declaring that "the situation with respect to Hong Kong, including recent actions taken by the PRC to fundamentally undermine Hong Kong's autonomy, constitutes an unusual and extraordinary threat ... to the national security, foreign policy, and economy of the United States." The Executive Order authorizes the Secretaries of State and the Treasury to impose sanctions on persons "involved in developing, adopting, or implementing" the NSL or involved in or responsible for actions that undermine Hong Kong's autonomy, "undermine democratic processes or institutions" in Hong Kong, or limit the rights of Hong Kong residents. The Executive Order also suspends many of Hong Kong's special treatments under U.S. law, including in immigration matters.

Bills pending in Congress could potentially authorize additional sanctions on the PRC and HKSAR governments, or provide preferential treatment for Hong Kong residents who wish to relocate to the United States. They include **The Hong Kong Be Water Act** (H.R. 5725, S. 2758), **The Hong Kong Freedom Act** (H.R. 6947), **The Hong Kong People's Freedom and Choice Act** (H.R. 7428), **The Hong Kong Safe Harbor Act** (H.R. 7415, S. 4110), and **The Hong Kong Victims of Communism Support Act** (S. 3892).

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Overview

At 11:00 p.m. Hong Kong time on June 30, 2020, a new national security law went into effect in the Hong Kong Special Administrative Region (HKSAR, or Hong Kong) of the People's Republic of China (China, or PRC). Critics of the law, including many Members of Congress and the Trump Administration, view the law as violating obligations the PRC undertook in the 1984 Joint Declaration on the Question of Hong Kong, a treaty signed with the United Kingdom and registered with the United Nations.[1] Such critics charge that the law erodes the "high degree of autonomy" the PRC promised the HKSAR for 50 years, from 1997 to 2047. They also assert that it undermines the human rights of Hong Kong residents, calls into question the city's continued viability as a global financial and trading hub, and signals the effective end of the PRC's "one country, two systems" policy in Hong Kong.[2] The PRC and HSKAR governments portray the law as a necessary measure to close national security "loopholes" in HKSAR law, to move Hong Kong from "turmoil to stability" after a year of sometimes violent protests, and to rebalance the "one country, two systems" formula to emphasize "one country."[3]

The Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region (national security law, or NSL) criminalizes four broadly defined categories of offenses: secession, subversion, organization and perpetration of terrorist activities, and "collusion with a foreign country or with external elements to endanger national security" in relation to the HKSAR.[4] A May 28, 2020, decision by China's legislature, the National People's Congress (NPC), paved the way for the legislation by authorizing the NPC's Standing Committee (NPCSC) to implement laws "to establish and improve the HKSAR legal system and enforcement mechanisms for the protection of national security."[5] Among other provisions, the NSL directs the PRC central government to establish a national security office in Hong Kong and authorizes the office to exercise jurisdiction over certain national security cases, which are to be prosecuted and tried in mainland China. It also mandates the HKSAR government to establish national security bodies and outlines procedures for their work. Article 38 provides that the NSL applies to "offences ... committed against the HKSAR from outside the Region by a person who is not a permanent resident of the Region." Its scope thus apparently extends to alleged offenses

[1] "Joint Declaration on the Question of Hong Kong (with annexes). Signed at Beijing on 19 December 1984," in *Treaties and International Agreements Registered or Filed and Recorded with the Secretariat of the United Nations*, vol. 1399, nos. 23389-23396, 1985, pp. 33-87, https://treaties.un.org/Pages/showDetails.aspx?objid=08000002800d4d6e&clang=_en.

[2] See, for example, U.S. Department of State, "On Beijing's Imposition of National Security Legislation on Hong Kong," statement by Secretary of State Michael R. Pompeo, June 30, 2020, https://www.state.gov/on-beijings-imposition-of-national-security-legislation-on-hong-kong/.

[3] Liaison Office of the Central People's Government in the HKSAR, "Speech At The Launch Ceremony Of Events Marking The 23rd Anniversary of Hong Kong's Return To The Motherland," July 1, 2020, http://www.locpg.gov.cn/jsdt/2020-07/01/c_1210684535.htm.

[4] Hong Kong added an English version of the law to the HKSAR Gazette (similar to U.S. Code) on July 3, 2020. "The Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region," *Government of the Hong Kong Special Administrative Region Gazette*, vol. 24, no. 48, July 3, 2020, https://www.gld.gov.hk/egazette/english/gazette/volume.php?year=2020&vol=24&no=48&extra=1&type=0. The document includes a preamble stating that the translation "is published for information." The *Gazette* translation appears to be identical to that published by China's Xinhua News Agency "for reference" on July 1, 2020, available at http://www.xinhuanet.com/english/2020-07/01/c_139178753.htm.

[5] "Decision of the National People's Congress on Establishing and Improving the Legal System and Enforcement Mechanisms for the Hong Kong Special Administrative Region to Safeguard National Security," unofficial English translation, May 28, 2020, https://www.elegislation.gov.hk/hk/A215.

committed against the HKSAR anywhere, including in the United States, by anyone, including U.S. citizens.

Since China first signaled its intention to pursue such legislation on May 21, 2020, the international community has registered strong concern about its potential chilling effect on freedoms in the HKSAR. On May 30, after the NPC adopted its May 28 decision, President Trump announced that Hong Kong was "no longer sufficiently autonomous to warrant the special treatment that we have afforded the territory" since 1997.[6] He added that his Administration would "begin the process of eliminating policy exemptions that give Hong Kong different and special treatment."

On July 14, 2020, President Trump signed the Hong Kong Autonomy Act (HKAA, P.L. 116-149, H.R. 7440), which requires the President to impose sanctions on foreign individuals and entities he identifies as materially contributing to China's failure to preserve Hong Kong's autonomy, as well as on "foreign financial institutions that conduct significant transactions" for persons designated for sanctions under the law. Other pending legislation seeks to sanction the PRC and HKSAR governments and/or provide assistance to Hong Kong residents. On the same day he signed the HKAA, President Trump issued Executive Order 13936 on Hong Kong Normalization, which cites the Hong Kong Human Rights and Democracy Act (HKHRDA, P.L. 116-76) and the HKAA, as well as other laws, as providing authority (see "Response of the Trump Administration").[7]

Brief Recent History of the HKSAR

The United Kingdom transferred sovereignty over Hong Kong to China on July 1, 1997, under the provisions of the 1984 China-United Kingdom Joint Declaration on the Question of Hong Kong, an international treaty registered with the United Nations. In the Joint Declaration, China declared that among its "basic policies" toward Hong Kong was that the HKSAR "will enjoy a high degree of autonomy, except in foreign and defence affairs which are the responsibilities of the Central People's Government," a reference to the PRC government based in Beijing.[8] China pledged that all "basic policies" toward Hong Kong to which it committed in the Joint Declaration—including vesting Hong Kong with "independent judicial power, including that of final adjudication"—would "remain unchanged for 50 years," or until July 1, 2047. While China has not ratified the International Covenant on Civil and Political Rights (ICCPR), Annex I of the Joint Declaration states, "The provisions of the [ICCPR] and the International Covenant on Economic, Social and Cultural Rights as applied to Hong Kong shall remain in force." China refers to its arrangement for Hong Kong as "one country, two systems."

In 1990, in preparation for the handover of sovereignty from the UK to China and as required by the Joint Declaration, the NPC passed the Basic Law of the HKSAR. The Basic Law is a "mini-constitution" that the Hong Kong government describes as legally enshrining "the important concepts of 'One Country, Two Systems,' 'a high degree of autonomy,' and 'Hong Kong People administering Hong Kong.'"[9] The Basic Law established an executive-led government, headed by

[6] White House, "Remarks by President Trump on Actions Against China," May 30, 2020, https://www.whitehouse.gov/briefings-statements/remarks-president-trump-actions-china/.

[7] Executive Office of the President, "The President's Executive Order on Hong Kong Normalization," 85 *Federal Register* 43413, July 17, 2020, https://www.federalregister.gov/documents/2020/07/17/2020-15646/the-presidents-executive-order-on-hong-kong-normalization.

[8] Constitutional and Mainland Affairs Bureau, HKSAR, "The Joint Declaration," https://www.cmab.gov.hk/en/issues/jd2.htm.

[9] HKSAR, "Some Facts About the Basic Law," https://www.basiclaw.gov.hk/en/facts/index.html.

a Chief Executive; a local legislature, the Legislative Council (Legco); and an independent judiciary, including a separate Court of Final Appeal.

Two articles of the Basic Law are of particular relevance to China's decision to impose national security legislation on Hong Kong. The first, Article 23, states:

> The Hong Kong Special Administrative Region shall enact laws on its own to prohibit any act of treason, secession, sedition, subversion against the Central People's Government, 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.[10]

The second, Article 39, states:

> The provisions of the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and international labour conventions as applied to Hong Kong shall remain in force and shall be implemented through the laws of the Hong Kong Special Administrative Region.
>
> The rights and freedoms enjoyed by Hong Kong residents shall not be restricted unless as prescribed by law. Such restrictions shall not contravene the provisions of the preceding paragraph of this Article.

Successive HKSAR governments have been unsuccessful in passing the national security legislation required by Article 23. The HKSAR's 2003 effort to do so prompted an estimated 500,000-person protest in the city and the subsequent resignation of then-Hong Kong Secretary of Security and now Legco member Regina Ip Lau Suk-yee.[11] Also, when then-Hong Kong Chief Executive Tung Chee-hwa resigned in 2005, citing health reasons, many in Hong Kong saw his departure as related to the failure to pass the national security legislation.[12] No subsequent Chief Executive has submitted legislation to Legco to fulfill the requirements of Article 23 of the Basic Law.

Over the last 20 years, Hong Kong residents have organized other demonstrations and protests over their perception of an erosion of Hong Kong's autonomy, threats to their human rights, and a lack of progress on democratic reforms.[13] In 2014, an NPCSC decision setting new conditions on the selection of the HKSAR Chief Executive sparked the Umbrella Movement, an occupation of major streets in three locations across the city for more than 10 weeks. During those protests, the Hong Kong Police Force (HKPF) used tear gas, rubber bullets, and pepper spray against the largely peaceful demonstrators, an approach nearly without precedent in Hong Kong.[14]

In March 2019, the HKSAR government proposed legislation that would have permitted the extradition of alleged criminals from Hong Kong to other jurisdictions, including mainland China.[15] The proposal—later withdrawn—set off another round of large-scale demonstrations in

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[10] The full text of the Basic Law, as amended, and the various decisions and interpretations issued by the PRC government, is available online at https://www.basiclaw.gov.hk/en/basiclawtext/index.html.

[11] Keith Bradsher, "Security Laws Target of Huge Hong Kong Protest," *New York Times*, July 2, 2003; Keith Bradsher, "2 Top Officials in Hong Kong Resign in Wake of Protests," *New York Times*, July 17, 2003.

[12] "Hong Kong Leader Resigns," *CNN*, March 10, 2005.

[13] U.S. Congress, Senate Committee on Banking, Housing, and Urban Affairs, *Crisis in Hong Kong: A Review of U.S. Policy Tools*, Written Testimony of Dr. Michael F. Martin, 116th Cong., 2nd sess., June 4, 2020.

[14] For more about the Umbrella Movement, see CRS In Focus IF10005, *Protests in Hong Kong: The "Umbrella Movement" (Update)*, by Michael F. Martin.

[15] Legislative Council of the HKSAR, "Fugitive Offenders and Mutual Legal Assistance in Criminal Matters Legislation (Amendment) Bill 2019 (Papers)," https://www.legco.gov.hk/yr18-19/english/rescindedbc/b201903291/

early June 2019, as Legco considered the legislation.[16] The protests continued for the rest of 2019 and into 2020. Public opinion surveys indicated relatively strong opposition to the extradition law, rising disapproval of Chief Executive Lam and the HKPF, and general support for the protesters.[17] While the demonstrations were largely peaceful, some protesters vandalized what they considered pro-government or PRC-affiliated businesses. Hong Kong police responded by donning riot gear and deploying water cannons, tear gas, and other non-lethal weapons. In contrast to the situation during the Umbrella Movement, some of the protesters confronted the police and some protesters and HKPF officers were seriously injured.[18]

China's Justifications for Imposing National Security Legislation

In a May 22, 2020, explanation of the NPCSC's request for authorization to formulate new national security legislation for Hong Kong, NPC Vice Chairman Wang Chen cited growing risks to China's national security in the city since the outbreak of the anti-extradition bill protests in June 2019. Wang asserted that forces that were "anti-China" and wanted to "bring chaos to Hong Kong," were calling for Hong Kong's independence from China, for self-determination, and for a referendum on Hong Kong's future. He charged that protesters:

> openly insulted and defaced the national flag and emblem, incited Hong Kong people to be anti-China and anti-Communist Party, besieged the Central People's Government's institutions stationed in Hong Kong, discriminated against and excluded people from mainland China in Hong Kong; deliberately undermined social order in Hong Kong, violently confronted police enforcing the law, damaged public facilities and public property, and paralyzed the governance of the government and the operation of the Legislative Council.[19]

Wang also noted Hong Kong's failure for more than two decades to pass the local national security legislation required under Article 23 of the Basic Law. He blamed "strong obstruction and interference from anti-China forces disrupting Hong Kong and external hostile forces." Authorizing the NPCSC to formulate national security legislation was necessary, Wang argued, to "safeguard Hong Kong's long-term prosperity and stability."[20]

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papers/b201903291_ppr.htm. "Fugitive Offenders and Mutual Legal Assistance in Criminal Matters Legislation (Amendment) Bill 2019," March 29, 2019, https://www.legco.gov.hk/yr18-19/english/bills/b201903291.pdf.

[16] For more about the 2019 protests, see CRS In Focus IF11295, *Hong Kong's Protests of 2019*, by Michael F. Martin and Susan V. Lawrence.

[17] See Hong Kong Public Opinion Research Institute, *Anti-extradition Bill Movement: Public Sentiment Report*, March 31, 2020; and Centre for Communication and Public Opinion Survey, Chinese University of Hong Kong, *Research Report on Public Opinion During the Anti-Extradition Bill (Fugitive Offenders Bill) Movement in Hong Kong*, May 2020.

[18] U.S. Congress, Senate Committee on Banking, Housing, and Urban Affairs, Crisis in Hong Kong: A Review of U.S. Policy Tools, Written Testimony of Dr. Michael F. Martin, 116th Cong., 2nd sess., June 4, 2020.

[19] "(两会受权发布）王晨作关于《全国人民代表大会关于建立健全香港特别行政区维护国家安全的法律制度和执行机制的决定（草案）》的说明" ("(Authorized for Release) Wang Chen Gives Explanation on 'Draft' Decision of NPC on Establishment of Sound Legal System, Implementation Mechanism for Safeguarding of National Security in Hong Kong Special Administrative Region"), Xinhua, May 22, 2020, http://www.xinhuanet.com/politics/2020-05/22/c_1126019468.htm.

[20] Ibid.

In her written testimony for a House Committee on Foreign Affairs hearing held on July 1, 2020, University of Hawaii legal scholar Carole J. Petersen questioned that need for national legislation, noting:

> Hong Kong has legislation prohibiting violence and those laws are being enforced against those who allegedly committed acts of violence during the recent protests. Hong Kong also has its own statutes prohibiting most of the activities specified in Article 23, as well as laws prohibiting terrorism. The legal gap, if there was one, was small and there is no reason why the local legislature could not have completed the process of implementing Article 23 in a manner that complies with the [International Covenant on Civil and Political Rights].[21]

PRC statements and commentary have suggested that part of the motivation for China's decision to impose national security legislation on Hong Kong was a desire to push back against U.S. "interference" in Hong Kong. In November 2019, when Congress passed and the President signed the Hong Kong Human Rights and Democracy Act (HKHRDA; P.L. 116-76), China's Foreign Ministry issued a Ministry Statement—the only one it issued in all of 2019—accusing the United States of having "openly backed violent criminals who rampantly smashed facilities, set fire, assaulted innocent civilians, trampled on the rule of law, and jeopardized social order." The statement declared the HKHRDA would "only further expose the malicious and hegemonic nature of U.S. intentions to the Chinese people, including our Hong Kong compatriots."[22] The day before the NPCSC passed the new national security law, *Global Times*, a nationalist state-run Chinese tabloid affiliated with the Communist Party Central Committee's paper of record, *People's Daily*, asserted in an editorial, "When the national security law for Hong Kong confronts the U.S.' so-called Hong Kong Human Rights and Democracy Act, the latter will be immediately overwhelmed."[23]

Other possible PRC motivations for passing the NSL when it did include:

- To interrupt the momentum of the pro-democracy movement and undermine popular support for the ongoing protests in Hong Kong.
- To mark the 99th anniversary of the founding of the Communist Party on July 1, 2020, and the 23rd anniversary of Hong Kong's handover to China, also on July 1. At a July 1, 2020, press conference, Zhang Xiaoming of the PRC's State Council Hong Kong and Macao Affairs Office (HKMAO) stated, "On the 23rd anniversary of the establishment of the HKSAR, we have sent Hong Kong a 'birthday present' in the form of this law."[24]
- To allow Chinese leader Xi Jinping to claim he has strengthened PRC control over Hong Kong ahead of the 100th anniversary of the founding of the Communist Party of China in 2021—the first of two "centenaries" for which the Communist Party has set itself ambitious targets—and ahead of Xi's expected bid

[21] U.S. Congress, House Committee on Foreign Affairs, *The End of One Country, Two Systems?: Implications of Beijing's National Security Law in Hong Kong*, 116th Cong., 2nd sess., July 1, 2020, https://foreignaffairs.house.gov/hearings?ID=878C9D04-7712-47A7-BC92-86E4C028F749.

[22] Ministry of Foreign Affairs of the PRC, "Statement of the Ministry of Foreign Affairs," November 28, 2019, https://www.fmprc.gov.cn/mfa_eng/zxxx_662805/t1719774.shtml.

[23] "National Security Law Will Be New Start for HK: Global Times Editorial," *Global Times*, June 29, 2020.

[24] State Council Information Office of the PRC, "SCIO Briefing on the Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region," July 1, 2020, http://english.scio.gov.cn/pressroom/2020-07/04/content_76236573.htm.

for a third term as Communist Party General Secretary at the Party's 20th National Congress in 2022.[25]

- To head off the massive protest held annually in Hong Kong on the July 1 anniversary of the handover. (A large protest nonetheless went ahead on that day.) (See "HKSAR Government Implementation" below.)
- To provide the HKSAR legal tools to disqualify certain members of the pro-democracy camp from running in the September 6, 2020, Legco election. Asked about this possibility, the HKMAO's Zhang insisted on July 1, 2020 that the NSL "doesn't target the opposition or the 'pan-democratic' camp in the HKSAR as a hypothetical enemy. This is not our point." The NSL, he said, "targets only a very few criminals that seriously undermine national security, and does not focus on the entire opposition camp."[26]

China's Legislative Process Leading to the Law's Promulgation

The legislative process by which China imposed its national security law on Hong Kong involved unusual speed and secrecy. After the law went into effect, the Hong Kong Bar Association issued a statement declaring itself "gravely concerned with both the contents of the NSL and the manner of its introduction." On the latter point, the statement noted,

> Nobody in the HKSAR had seen so much as a draft or accurate summary of the NSL before its entry into force. In addition to the total absence of meaningful consultation, lawyers, judges, police and Hong Kong residents were given no opportunity to familiarise themselves with the contents of the new law, including the serious criminal offences it creates, before it came into force.[27]

The path to the NSL officially began with an October 2019 meeting of the Communist Party's Central Committee—the Fourth Plenum of the 19th Central Committee—at which committee members agreed on the need to "modernize" China's "governance system and governance capacity."[28] Included in a decision adopted at the end of the session was language on the need "to establish and improve the legal system and enforcement mechanisms for the maintenance of

[25] The Communist Party defines its two centenary goals as being "to finish building a moderately prosperous society in all respects by the time the Communist Party of China marks its centenary and to build China into a modern socialist country that is prosperous, strong, democratic, culturally advanced, and harmonious by the time the People's Republic of China celebrates its centenary." Footnote 1, "Secure a Decisive Victory in Building a Moderately Prosperous Society in All Respects and Strive for the Great Success of Socialism with Chinese Characteristics for a New Era," Xi Jinping report delivered at the 19th National Congress of the Communist Party of China, October 18, 2017.

[26] State Council Information Office of the PRC, "SCIO Briefing on the Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region," July 1, 2020, http://english.scio.gov.cn/pressroom/2020-07/04/content_76236573.htm.

[27] "The Law of the People's Republic of China ('PRC') on Safeguarding National Security in the Hong Kong Special Administrative Region ('HKSAR'): Statement of the Hong Kong Bar Association," July 1, 2020, https://www.hkba.org/sites/default/files/20200701%20HKBA%20statement%20on%20Safeguarding%20National%20%20Security%20in%20HKSAR.pdf.

[28] "(受权发布）中共中央关于坚持和完善中国特色社会主义制度推进国家治理体系和治理能力现代化若干重大问题的决定" ("(Authorized for Release) Decision of the CPC Central Committee on Major Issues Concerning Upholding and Improving the System of Socialism with Chinese Characteristics and Advancing the Modernization of China's System and Capacity for Governance"), Xinhua, November 5, 2019, http://www.xinhuanet.com/politics/2019-11/05/c_1125195786.htm.

national security in special administrative regions"—a reference to Hong Kong and neighboring Macao, a former Portuguese colony over which the PRC assumed sovereignty in 1999.[29]

At the time of the Fourth Plenum, according to a senior NPC official's later account, China had not decided to write new national-level legislation for Hong Kong. Other options included having the NPC or NPCSC amend or issue a fresh interpretation of existing legislation—presumably the Basic Law—or having the central government issue a directive.[30] In the subsequent months, however, China's cabinet, the State Council, worked in secret to draft a "Report on Maintenance of National Stability in the Hong Kong Special Administrative Region," which made the case for the combination of an NPC decision and new national legislation. China did not disclose the existence of the State Council report until May 22, 2020.[31]

On May 18, 2020, the 171-person NPCSC secretly reviewed the State Council report and agreed on the need "to establish a sound legal system and enforcement mechanism at the national level to safeguard national security in the HKSAR."[32] The official report on the NPCSC meeting by China's state news agency, Xinhua, made no mention of the report or of Hong Kong.[33] The first time the Hong Kong public learned about the NPCSC's Hong Kong-related work was on May 21, when the government released the agenda for the annual full session of China's parliament, the NPC, which ran from May 22 to May 28. The agenda included consideration of a draft NPCSC decision on "Establishing and Improving the Legal System and Enforcement Mechanisms for the Hong Kong Special Administrative Region to Safeguard National Security."[34]

On May 28, 2020, the NPC passed the Decision by a vote of 2,878 to one, with six abstentions.[35] Among other things, it emphasized the HKSAR's responsibility to safeguard national security, authorized "national security agencies of the Central People's Government" to "set up agencies in the HKSAR," and required the HKSAR's Chief Executive to carry out national security education. It also "entrusted" the NPCSC to formulate national security legislation for Hong Kong.[36] The NPCSC, which normally meets every two months, reconvened twice in June (on June 18-20 and June 28-30) to review and then unanimously pass *The Law of the People's*

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[29] Ibid.

[30] Shen Chunyao, Director of the Legislative Affairs Commission of the NPCSC, speaking at State Council Information Office of the PRC, "SCIO briefing on the Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region," July 1, 2020.

[31] "(两会受权发布）王晨作关于《全国人民代表大会关于建立健全香港特别行政区维护国家安全的法律制度和执行机制的决定（草案）》的说明" (Authorized for Release) Wang Chen Gives Explanation on 'Draft' Decision of NPC on Establishment of Sound Legal System, Implementation Mechanism for Safeguarding of National Security in Hong Kong Special Administrative Region), Xinhua, May 22, 2020, http://www.xinhuanet.com/politics/2020-05/22/c_1126019468.htm.

[32] Ibid.

[33] "十三届全国人大常委会第十八次会议在京闭幕 栗战书主持并讲话" ("The 18th Meeting of the 13th National People's Congress Closed in Beijing; Li Zhanshu Presided and Made Remarks"), Xinhua, May 18, 2020, http://www.xinhuanet.com/politics/leaders/2020-05/18/c_1126001926.htm.

[34] "(两会受权发布）第十三届全国人民代表大会第三次会议议程" "(Two Meetings Authorized for Release) Agenda for the 3rd Session of the 13th National People's Congress"), Xinhua, May 21, 2020, http://www.xinhuanet.com/politics/2020-05/21/c_1126016350.htm.

[35] Lu Zhenhua, "China's Legislature Approves Hong Kong Security Resolution," *Caixin Global*, May 28, 2020, https://www.caixinglobal.com/2020-05-28/chinas-legislature-approves-hong-kong-security-resolution-101560312.html.

[36] "Decision of the National People's Congress on Establishing and Improving the Legal System and Enforcement Mechanisms for the Hong Kong Special Administrative Region to Safeguard National Security," unofficial English translation, May 28, 2020, https://www.elegislation.gov.hk/hk/A215. See also CRS In Focus IF11562, *China Moves to Impose National Security Law on Hong Kong*, by Michael F. Martin and Susan V. Lawrence.

Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region. The legislation was not on the initial public agenda for either meeting, but was each time added at the last minute.[37]

On June 20, China's Xinhua News Agency published an excerpt of an official explanation of the law presented to NPCSC members on June 18. That excerpt, though, withheld details about the four categories of criminal offenses at the center of the legislation.[38] The law is only the second since 2008 for which the NPCSC did not first release a draft for public comment.[39] It is the first law to be passed without a public comment period since a 2015 amendment to the *Legislation Law of the PRC* mandated a public comment period for all legislation unless an NPC chairpersons' meeting proactively chooses to withhold the draft text.[40] The senior NPC official said the 16-person NPC Council of Chairpersons decided not to release the text for public comment because the legislation "was considered very special and sensitive."[41]

Immediately after the NPCSC passed the law on June 30, Chinese President Xi Jinping signed a presidential order to promulgate it in mainland China and the NPCSC listed it in Annex III of the HKSAR Basic Law, so that it could be applied in Hong Kong.[42] At 11 p.m., Hong Kong time, the same day, Hong Kong Chief Executive Carrie Lam promulgated the law in the HKSAR Gazette under Article 18 of the Basic Law.[43] Then authorities in China and Hong Kong released the Chinese-language text of the law.[44]

Although both Chinese and English are official languages in Hong Kong, when China's Xinhua News Agency released an English translation of the law nearly two hours after the law went into effect, it labeled the translation as being "for reference only."[45] On July 3, 2020, the HKSAR

[37] For the initial agenda for the 19th Meeting of the 13th NPCSC on June 18-20, see http://www.xinhuanet.com/politics/2020-06/09/c_1126093980.htm. For the initial agenda for the 20th Meeting of the 13th NPCSC on June 28-30, see http://www.xinhuanet.com/politics/2020-06/21/c_1126140876.htm.

[38] For an English translation of the excerpt of the explication made public, see http://www.chinalawtranslate.com/en/draftcontent-of-national-security-law. The Chinese text is at http://www.xinhuanet.com/politics/2020-06/20/c_1126139511.htm.

[39] Tweet by NPC Observer (@NPC_Observer), June 30, 2020, https://twitter.com/NPC_Observer/status/1277914562235424769. The other new law passed without the draft text having been released for public comment was the *Military Personnel Insurance Law*, promulgated on April 27, 2012.

[40] Article 37 of the *Legislation Law of the PRC*, as amended in March 2015, states, "For a bill on the agenda of a session of the Standing Committee, the draft law and an explanation of the drafting and amendment thereof, among others, shall, after the end of the session of the Standing Committee, be released to the public to solicit opinions, unless a decision not to release the same is made at the Chairmen's Meeting. The period during which public opinions are solicited on the same shall not be less than 30 days. Information on the solicitation of opinions shall be released to the public." *Legislation Law of the People's Republic of China* (2015 Amendment) [Effective], March 2, 2017, http://eng.mod.gov.cn/publications/2017-03/02/content_4774201.htm.

[41] Shen Chunyao, Director of the Legislative Affairs Commission of the NPCSC, speaking at State Council Information Office of the PRC, "SCIO Briefing on the Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region," July 1, 2020.

[42] "China's Top Legislature Adopts Law on Safeguarding National Security in Hong Kong, Adds It to Basic Law Annex," Xinhua, June 30, 2020, http://www.xinhuanet.com/english/2020-06/30/c_139178097.htm.

[43] Government of the HKSAR, "Promulgation of National Law 2020," Government of the HKSAR Gazette, June 30, 2020, https://www.gld.gov.hk/egazette/pdf/20202444e/es220202444136.pdf.

[44] "(受权发布）中华人民共和国香港特别行政区维护国家安全法" ("Authorized Release: PRC Law on Safeguarding National Security in the Hong Kong Special Administrative Region"), Xinhua, June 30, 2020, http://www.xinhuanet.com/gangao/2020-06/30/c_1126179649.htm.

[45] "English Translation of the Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region," Xinhua, July 1, 2020, http://www.xinhuanet.com/english/2020-07/01/

government added the Xinhua English translation of the law to its official Gazette, but noted that the text "is published for information," suggesting that it is not considered an official translation.[46] Discrepancies exist between the official Chinese text and English translation.[47]

Major Provisions of the National Security Law

The NSL consists of six chapters with a total of 66 articles. (See **Table 1**.) It defines four categories of crimes, states the relationship of the national security law to Hong Kong laws, sets standards for jurisdiction of national security criminal cases, and creates new PRC and HKSAR governmental bodies responsible for implementing the law. Penalties for offenses under the law range from "short-term detention or restriction" to life in prison.

According to the HKMAO's Zhang, the law reflects "the growing importance the central authorities attach to the top-level design of the system for the governance of Hong Kong," as well as the importance they attach to "better utilizing the rights provided to the central authorities by China's Constitution and the HKSAR Basic Law." With respect to "one country, two systems," Zhang says, the NSL "intends to move closer to the side of 'one country.'"[48] Critics assert that some of the law's provisions conflict with provisions of the International Covenant on Political and Civil Rights (ICCPR).[49] As noted above, both the 1984 Joint Declaration that China signed with the United Kingdom and the 1990 Basic Law that China wrote for Hong Kong provide for the ICCPR to remain in force in Hong Kong at least until 2047.

Table 1. Select Provisions of the *PRC Law on Safeguarding National Security in the HKSAR*

PRC explanations drawn from July 1, 2020, State Council Information Office Press Conference featuring Shen Chunyao, Director, Legislative Affairs Commission, National People's Congress Standing Committee, and Zhang Xiaoming, Deputy Director, State Council Hong Kong and Macao Affairs Office

Topic	Legal Provisions	Comments and PRC Explanations
Relationship to local HKSAR laws	***Article 62:*** *"This Law shall prevail where provisions of the local laws of the Hong Kong Special Administrative Region are inconsistent with this Law."*	Article 62 leaves the NSL's relationship to Hong Kong's mini-constitution, the Basic Law, unclear. Both are national laws. Some of their provisions appear inconsistent, particularly with regard to implementation of the ICCPR.

c_139178753.htm.

[46] "The Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region," *Government of the Hong Kong Special Administrative Region Gazette*, vol. 24, no. 48, July 3, 2020, https://www.gld.gov.hk/egazette/english/gazette/volume.php?year=2020&vol=24&no=48&extra=1&type=0.

[47] In Article 20(3), for example, where the Chinese text refers to "transferring the Hong Kong Special Administrative Region or any other part of the People's Republic of China to rule by a foreign country," the unofficial English text refers to "surrendering" the HKSAR or any other part of the PRC to a foreign country. In Article 9, where the Chinese-language text refers to measures to be taken related to "schools" (*xuexiao*), the unofficial English text refers not only to "schools" but also to "universities."

[48] State Council Information Office of the PRC, "SCIO Briefing on the Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region," July 1, 2020, http://english.scio.gov.cn/pressroom/2020-07/04/content_76236573.htm.

[49] Donald Clarke, "Hong Kong's National Security Law: An Assessment," China Leadership Monitor, July 13, 2020, http://www.prcleader.org/clarke. Human Rights Watch, "China: New Hong Kong Law a Roadmap for Repression," July 29, 2020, https://www.hrw.org/news/2020/07/29/china-new-hong-kong-law-roadmap-repression.

Topic	Legal Provisions	Comments and PRC Explanations
Power of interpretation	***Article 65:*** *"The power of interpretation of this Law shall be vested in the Standing Committee of the National People's Congress."*	Article 65 does not indicate whether Hong Kong courts may also interpret the law.
Retroactivity	***Article 66:*** *"This Law shall come into force on the date of its promulgation."*	The HKMAO's Zhang states, "the law is not retroactive." He notes, however, that existing HKSAR laws, including the Crimes Ordinance, Official Secrets Ordinance, the Public Order Ordinance, and the Societies Ordinance, contain national security-related provisions. According to Zhang, "These provisions shall be applied to punish crimes that have already been committed which endanger national security."
Jurisdiction	***Article 38:*** *"This Law shall apply to offences under this Law committed against the [HKSAR] from outside the Region by a person who is not a permanent resident of the Region."*	Article 38 provides for the NSL to apply to alleged violations committed by anyone, anywhere in the world.
Human rights protections	***Article 4:*** *"Human rights shall be respected and protected in safeguarding national security in the [HKSAR]. The rights and freedoms, including the freedoms of speech, of the press, of publication, of association, of assembly, of procession and of demonstration, which the residents of the Region enjoy under the Basic Law of the [HKSAR] and the provisions of the International Covenant on Civil and Political Rights [ICCPR] and the International Covenant on Economic, Social and Cultural Rights as applied to Hong Kong, shall be protected in accordance with the law."* ***Article 5:*** *"A person is presumed innocent until convicted by a judicial body. The right to defend himself or herself and other rights in judicial proceedings that a criminal suspect, defendant, and other parties in judicial proceedings are entitled to under the law shall be protected. No one shall be liable to be tried or punished again for an offence for which he or she has already been finally convicted or acquitted in judicial proceedings."*	Legal observers suggest other provisions of the NSL appear to undermine some of the rights provided for in Articles 4 and 5—such as freedom of speech, presumption of innocence, and the right to a fair trial—in certain situations. The NPC's Shen Chunyao states, "Rights and freedoms should be fully exercised, but within the scope of the law and in accordance with legal requirements." According to Shen, "In safeguarding national security, human rights must be respected. To respect human rights, national security must be maintained. These two are basically consistent and complement each other."
Crime of secession	***Article 20:*** *"A person who organises, plans, commits or participates in any of the following acts, whether or not by force or threat of force, with a view to committing secession or undermining national unification shall be guilty of an offence: (1) separating the [HKSAR] or any other part of the People's Republic of China from the People's Republic of China; (2) altering by unlawful means the legal status of the [HKSAR] or of any other part of the People's Republic of China; or (3) surrendering the [HKSAR] or any other part of the People's Republic of China to a foreign country."* ***Article 21:*** *"A person who incites, assists in, abets or provides pecuniary or other financial assistance or property for the commission by other persons of the offence under Article 20 of this Law shall be guilty of an offence."*	Article 20 appears to criminalize peaceful actions or speech related to the political status of Hong Kong, and also of Tibet, Xinjiang, and such jurisdictions as Taiwan and disputed maritime territories over which China claims sovereignty.
Crime of subversion	***Article 22:*** *"A person who organises, plans, commits or participates in any of the following acts by force or threat*	The law may restrict the right of assembly, procession, and

Topic	Legal Provisions	Comments and PRC Explanations
	of force or other unlawful means with a view to subverting the State power shall be guilty of an offence: *"(1) overthrowing or undermining the basic system of the People's Republic of China established by the Constitution of the People's Republic of China;* *"(2) overthrowing the body of central power of the People's Republic of China or the body of power of the [HKSAR];* *"(3) seriously interfering in, disrupting, or undermining the performance of duties and functions in accordance with the law by the body of central power of the People's Republic of China or the body of power of the [HKSAR]; or* *"(4) attacking or damaging the premises and facilities used by the body of power of the [HKSAR] to perform its duties and functions, rendering it incapable of performing its normal duties and functions."* ***Article 23: "****A person who incites, assists in, abets or provides pecuniary or other financial assistance or property for the commission by other persons of the offence under Article 22 of this Law shall be guilty of an offence."*	demonstration guaranteed by Article 27 of the Basic Law and the ICCPR.
Crime of terrorism	***Article 24:*** *"A person who organises, plans, commits, participates in or threatens to commit any of the following terrorist activities causing or intended to cause grave harm to the society with a view to coercing the Central People's Government, the Government of the [HKSAR] or an international organisation or intimidating the public in order to pursue political agenda shall be guilty of an offence:* *(1) serious violence against a person or persons;* *(2) explosion, arson, or dissemination of poisonous or radioactive substances, pathogens of infectious diseases or other substances;* *(3) sabotage of means of transport, transport facilities, electric power or gas facilities, or other combustible or explosible facilities;* *(4) serious interruption or sabotage of electronic control systems for providing and managing public services such as water, electric power, gas, transport, telecommunications and the internet; or* *(5) other dangerous activities which seriously jeopardise public health, safety or security."* ***Article 26:*** *"A person who provides support, assistance or facility such as training, weapons, information, funds, supplies, labour, transport, technologies or venues to a terrorist organisation or a terrorist, or for the commission of a terrorist activity; or manufactures or illegally possesses substances such as explosive, poisonous or radioactive substances and pathogens of infectious diseases or uses other means to prepare for the commission of a terrorist activity, shall be guilty of an offence."* ***Article 27:*** *"A person who advocates terrorism or incites the commission of a terrorist activity shall be guilty of an offence."*	Article 24 appears to make vandalizing public property an act of terrorism. With phrases such as "other dangerous activities which seriously jeopardise public health, safety or security," Article 24 also appears to make a broad range of political activities potentially vulnerable to a charge of terrorism.

Topic	Legal Provisions	Comments and PRC Explanations
Crime of collusion	***Article 29:*** *"A person who steals, spies, obtains with payment, or unlawfully provides State secrets or intelligence concerning national security for a foreign country or an institution, organisation or individual outside the mainland, Hong Kong and Macao of the People's Republic of China shall be guilty of an offence;* *a person who requests a foreign country or an institution, organisation or individual outside the mainland, Hong Kong and Macao of the People's Republic of China, or conspires with a foreign country or an institution, organisation or individual outside the mainland, Hong Kong and Macao of the People's Republic of China, or directly or indirectly receives instructions, control, funding or other kinds of support from a foreign country or an institution, organisation or individual outside the mainland, Hong Kong and Macao of the People's Republic of China, to commit any of the following acts shall be guilty of an offence:* *(1) waging a war against the People's Republic of China, or using or threatening to use force to seriously undermine the sovereignty, unification and territorial integrity of the People's Republic of China;* *(2) seriously disrupting the formulation and implementation of laws or policies by the Government of the [HKSAR] or by the Central People's Government, which is likely to cause serious consequences;* *(3) rigging or undermining an election in the [HKSAR], which is likely to cause serious consequences;* *(4) imposing sanctions or blockade, or engaging in other hostile activities against the [HKSAR] or the People's Republic of China; or* *(5) provoking by unlawful means hatred among Hong Kong residents towards the Central People's Government or the Government of the Region, which is likely to cause serious consequences."*	Article 29 appears to criminalize peaceful advocacy, including of the sort practiced by human rights defenders. The first part of Article 29, Zhang explains, covers misdeeds "similar to what we usually call espionage." The second part involves deliberately "committing criminal acts with a foreign country or with external elements." As an example of an action that might be covered under Article 29(4), Zhang recalls how during the anti-extradition bill protests, "some people went abroad to implore foreign governments to enact laws or impose sanctions on the Chinese government." He states, "This was intentional, and can be punished as a crime if it causes serious consequences." With regard to Article 29(5), Zhang states, "a general sense of 'hatred' will not constitute a crime," but provoking hatred in such a way as to "cause serious consequences" may constitute a crime. Zhang cites the example of a false 2019 rumor that the Hong Kong Police had killed protesters at a Hong Kong subway station, a rumor that he said "led to social discontent against the Hong Kong police."
Requirements for public servants and candidates for election	***Article 6:*** *"A resident of the Region who stands for election or assumes public office shall confirm in writing or take an oath to uphold the Basic Law of the [HKSAR] and swear allegiance to the [HKSAR] of the [PRC] in accordance with the law."* ***Article 35:*** *"A person who is convicted of an offence endangering national security by a court shall be disqualified from standing as a candidate in the elections of the Legislative Council and district councils of the [HKSAR], holding any public office in the Region, or serving as a member of the Election Committee for electing the Chief Executive."*	Zhang notes that Article 6 applies to "all public servants," broadening the requirement for oath-taking beyond the limited set of office holders covered in Article 104 of the Basic Law of the HKSAR, and beyond those assuming office to those standing for election, too. Zhang adds that the language of allegiance to the HKSAR "undoubtedly include[s] the meaning of allegiance to the country." Article 35 likewise applies to all public servants. This provision may have implications for Legco elections scheduled for September 6, 2020.
Powerful new Central Government Office for Safeguarding National	***Article 48:*** *"The Central People's Government shall establish in the [HKSAR] an office for safeguarding national security.... The staff of the Office shall be jointly dispatched by relevant national security authorities under the Central People's Government."*	Zhang notes that the Office is established on the basis of both the NSL (Article 48) and the NPSC's May 28 Decision (Provision 4). Article 49 assigns the Office a role "overseeing" and "guiding" the

Topic	Legal Provisions	Comments and PRC Explanations
Security and its handling of national security cases	***Article 49:*** *The office's mandate includes, "(2) overseeing, guiding, coordinating with, and providing support to the Region in the performance of its duties for safeguarding national security; (3) collecting and analysing intelligence and information concerning national security; and (4) handling cases concerning offence endangering national security in accordance with the law."* ***Article 54:*** *The Office, the Office of the Commissioner of the Ministry of Foreign Affairs in the HKSAR, and the HKSAR government shall "take necessary measures to strengthen the management of and services for organs of foreign countries and international organisations in the Region, as well as non-governmental organisations and news agencies of foreign countries and from outside the mainland, Hong Kong, and Macao of the People's Republic of China in the Region."* ***Article 55:*** *The Office "shall, upon approval by the Central People's Government of a request made by the Government of the [HKSAR] or by the Office itself, exercise jurisdiction over a case concerning offence endangering national security under this Law, if: (1) the case is complex due to the involvement of a foreign country or external elements, thus making it difficult for the Region to exercise jurisdiction over the case; (2) a serious situation occurs where the Government of the Region is unable to effectively enforce this Law; or (3) a major and imminent threat to national security has occurred."* ***Article 56:*** *"In exercising jurisdiction over a case concerning offence endangering national security," the Office "shall initiate investigation into the case, the Supreme People's Procuratorate shall designate a prosecuting body to prosecute it, and the Supreme People's Court shall designate a court to adjudicate it."* ***Article 57:*** *"The Criminal Procedure Law of the People's Republic of China and other related national laws shall apply to procedural matters, including those related to criminal investigation, examination and prosecution, trial, and execution of penalty, in respect of cases over which jurisdiction is exercised pursuant to Article 55 of this Law." Also, "The institutions, organisations and individuals concerned must comply with measures taken by the Office for Safeguarding National Security of the Central People's Government in the [HKSAR] in accordance with the law."* ***Article 59:*** *In cases over which the Office exercises jurisdiction, "any person who has information pertaining to an offence endangering national security under this Law is obliged to testify truthfully."* ***Article 60:*** *"The acts performed in the course of duty by the Office ... and its staff in accordance with this Law shall not be subject to the jurisdiction of the [HKSAR]."* *"In the course of performing duty, a holder of an identification document or a document of certification issued by the Office and the articles including vehicles used by the holder shall not be subject to inspection, search or detention by law enforcement officers of the Region."*	HKSAR's national security work, making it directly involved in the governance of Hong Kong. The NPC's Shen says the Office and the PRC authorities will "only exercise jurisdiction over a very small number of cases that may leave the country's national security in grave peril." Shen portrays the provision as a "low-intensity approach" to save the central government from having to invoke Article 18(4) of the Basic Law. That provision gives the NPCSC the power to declare a state of emergency in the HKSAR and the Central Government to "issue an order applying the relevant national laws in the Region," effectively ending any autonomy for Hong Kong. Article 56 mandates that in cases in which the Office assumes jurisdiction, the Office initiates investigation, the PRC's Supreme People's Procuratorate designates a (mainland China) entity to prosecute the case, and the PRC's Supreme People's Court designates a (mainland China) court to try it. Article 57 mandates that procedures in such cases will be dictated by PRC national laws, including the PRC's Criminal Procedure Law, and that everyone must comply with the Office's measures, with no apparent restrictions on the Office's power to require such compliance. Article 59 could potentially require journalists to testify about conversations with confidential sources. Article 60 makes the office and its staff explicitly unaccountable to Hong Kong authorities. Zhang says, "Because the power exercised by the office extends beyond the autonomy of the HKSAR, and many of the cases the office will investigate involve state secrets, it's entirely reasonable that the exercise of its legal duties should not be subject to the jurisdiction of the HKSAR."

Topic	Legal Provisions	Comments and PRC Explanations
New HKSAR Committee for Safeguarding National Security	***Article 12:*** *"The [HKSAR] shall establish the Committee for Safeguarding National Security. The Committee shall be responsible for affairs relating to and assume primary responsibility for safeguarding national security in the Region. It shall be under the supervision of and accountable to the Central People's Government."* ***Article 13:*** *"The Chief Executive shall be the chairperson of the Committee for Safeguarding National Security of the [HKSAR].... A secretariat headed by a Secretary-General shall be established under the Committee. The Secretary-General shall be appointed by the Central People's Government upon nomination by the Chief Executive."* ***Article 14:*** *"... No institution, organisation or individual in the Region shall interfere with the work of the Committee. Information relating to the work of the Committee shall not be subject to disclosure. Decisions made by the Committee shall not be amenable to judicial review."* ***Article 15:*** *"The Committee for Safeguarding National Security of the [HKSAR] shall have a National Security Adviser, who shall be designated by the Central People's Government and provide advice on matters relating to the duties and functions of the Committee. The National Security Adviser shall sit in on meetings of the Committee."*	Article 12 gives the Committee "primary responsibility" for national security in the HKSAR, but "under the supervision of and accountable to the Central People's Government." Article 13 provides for the Central Government to appoint the Committee's Secretary General, who will presumably oversee day-to-day work of the Committee. Article 14 makes the Committee's work secret and not subject to judicial review. Article 15 requires that a National Security Advisor designated by the Central Government advise the committee and attend its meetings.
New Hong Kong Police Force Department for Safeguarding National Security	***Article 16:*** *"The Police Force of the [HKSAR] shall establish a department for safeguarding national security with law enforcement capacity.* *"The head of the department for safeguarding national security of the Hong Kong Police Force shall be appointed by the Chief Executive. The Chief Executive shall seek in writing the opinion of the Office established under Article 48 of this Law before making the appointment."* *The department "may recruit qualified professionals and technical personnel from outside the [HKSAR] to provide assistance in the performance of duties for safeguarding national security."* ***Article 43:*** *When handling national security cases, the department "may take measures that law enforcement authorities, including the Hong Kong Police Force, are allowed to apply under the laws in force in the [HKSAR] in investigating serious crimes, and may also take the following measures:* *(1) search of premises, vehicles, vessels, aircraft and other relevant places and electronic devices that may contain evidence of an offence;* *(2) ordering any person suspected of having committed an offence endangering national security to surrender travel documents, or prohibiting the person concerned from leaving the Region;* *(3) freezing of, applying for restraint order, charging order and confiscation order in respect of, and forfeiture of property used or intended to be used for the commission of the offence, proceeds of crime, or other property relating to the commission of the offence;*	Article 16 requires Hong Kong's Chief Executive to seek the written opinion of the Central Government's Office for Safeguarding National Security before appointing the head of the HKPF's new Department for Safeguarding National Security. The provision for recruitment from outside the HKSAR is widely interpreted as authorizing recruitment from mainland China. Article 43 gives the police sweeping new powers, including related to search and seizure. It could also potentially require journalists to disclose conversations with confidential sources. The HKSAR issued implementation rules for Article 43 on July 7, 2020.

Topic	Legal Provisions	Comments and PRC Explanations
	(4) requiring a person who published information or the relevant service provider to delete the information or provide assistance; *(5) requiring a political organisation of a foreign country or outside the mainland, Hong Kong and Macao of the People's Republic of China, or an agent of authorities or a political organisation of a foreign country or outside the mainland, Hong Kong and Macao of the People's Republic of China, to provide information;* *(6) upon approval of the Chief Executive, carrying out interception of communications and conducting covert surveillance on a person who is suspected, on reasonable grounds, of having [been] involved in the commission of an offence endangering national security; and* *(7) requiring a person, who is suspected, on reasonable grounds, of having in possession [sic] information or material relevant to investigation, to answer questions and furnish such information or produce such material."*	
New HKSAR Department of Justice division for prosecution of national security cases	***Article 18:*** *"The Department of Justice of the [HKSAR] shall establish a specialised prosecution division responsible for the prosecution of offences endangering national security and other related legal work. The prosecutors of this division shall be appointed by the Secretary for Justice after obtaining the consent of the Committee for Safeguarding National Security of the [HKSAR]."* *"The head of the specialised prosecution division of the Department of Justice shall be appointed by the Chief Executive, who shall seek in writing the opinion of the Office established under Article 48 of this Law before making the appointment."*	Under Article 18, Hong Kong's Department of Justice must also set up a specialized division for national security cases. The HKSAR's Committee for Safeguarding National Security, with its central government-designated National Security Advisor and its central government-appointed Secretary General, must consent to the appointment of the division's prosecutors. The Chief Executive is required to seek the written opinion of the Central Government's Office for Safeguarding National Security before appointing the head of the new division.
Procedures for national security trials in Hong Kong courts	***Article 40:*** *The HKSAR "shall have jurisdiction over cases concerning offences under this Law," except when the Central Government's Office for Safeguarding National Security assumes jurisdiction.* ***Article 41:*** *"When circumstances arise such as the trial involving State secrets or public order, all or part of the trial shall be closed to the media and the public but the judgment shall be delivered in an open court."* ***Article 42: "****No bail shall be granted to a criminal suspect or defendant unless the judge has sufficient grounds for believing that the criminal suspect or defendant will not continue to commit acts endangering national security."* ***Article 44*** *stipulates that the Chief Executive shall designate the magistrates and judges who will preside over these trials.*	Article 41 allows for all or part of such trials to be closed to the public in certain circumstances, such as trials "involving State secrets or public order." Article 42, which makes denial of bail the rule, appears to be inconsistent with Article 9 of the ICCPR, which states, "It shall not be the general rule that persons awaiting trial shall be detained in custody." By denying bail "unless the judge has sufficient grounds for believing that the criminal suspect or defendant will not continue to commit acts endangering national security," Article 42 also appears to be inconsistent both with the NSL's Article 5, and with the ICCPR's Article 14, which states, "Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law."

Topic	Legal Provisions	Comments and PRC Explanations
		Article 44 appears to break down the previous "firewall" between the HKSAR's executive and judicial branches, and may not be consistent with provisions in the Joint Declaration and the Basic Law. Zhang states, "It will not affect the independent exercise of judicial power by court judges."
Requirement that the HKSAR pass its own national security legislation	***Article 7:*** *The HKSAR "shall complete, as early as possible, legislation for safeguarding national security as stipulated in the Basic Law of the [HKSAR] and shall refine relevant laws."*	Shen notes that Article 23 of the Basic Law of the HKSAR requires the HKSAR to pass legislation covering seven types of crimes, including two addressed in the NSL: secession and subversion. The "relevant laws" subject to "refinement" appear to include the HKSAR ordinances on Crimes, Official Secrets, Public Order, and Societies.

Sources: "The Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region," English translation as "published for information," *Government of the Hong Kong Special Administrative Region Gazette*, vol. 24, no. 48, July 3, 2020. State Council Information Office of the PRC, "SCIO Briefing on the Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region," July 1, 2020, http://english.scio.gov.cn/pressroom/2020-07/04/content_76236573.htm.

Initial Implementation

Both the PRC and the HKSAR governments have moved quickly to implement the NSL. The PRC government has appointed officials to serve in two new entities established by the law, and opened an office for one of those entities, the Office for Safeguarding National Security. The HKSAR government has formed the new entities required by the NSL and released new implementation rules for the law. The HKPF made its first arrests under the law on the first full day it was in effect.

Central Government Implementation

On July 3, 2020, China's cabinet, the State Council, announced that Luo Huining, the head of the central government's Liaison Office in Hong Kong, would serve concurrently as National Security Advisor to the Hong Kong government's new Committee for Safeguarding National Security.[50] It also announced the appointment of a head and two deputy heads of the newly established Office for Safeguarding National Security of the Central People's Government in the HKSAR.[51] (See **Table 2** below.) On July 8, the Office officially opened in a converted hotel in Causeway Bay, overlooking Victoria Park, the starting point for many of Hong Kong's largest demonstrations. Hong Kong's current Chief Executive, Carrie Lam, and her two predecessors, Tung Chee-hwa and Leung Chun-ying, were on hand for the opening ceremony.[52]

[50] "China Appoints Adviser to Committee for Safeguarding National Security of HKSAR," Xinhua, July 3, 2020, http://www.xinhuanet.com/english/2020-07/03/c_139185564.htm.

[51] "State Council Appoints Officials for Central Government National Security Office in HKSAR," Xinhua, July 3, 2020, http://www.xinhuanet.com/english/2020-07/03/c_139185578.htm.

[52] "Office for the New Security Law Agency Inaugurated," *RTHK*, July 8, 2020.

The personnel announcements clarified the relative power of the new positions for mainland officials created under the NSL. Luo is a member of the Communist Party of China's 204-member Central Committee and, in his capacity as head of the Central Government's Liaison Office in Hong Kong, is the top mainland Chinese official in the HKSAR. His concurrent appointment as national security advisor to the HKSAR national security committee makes that a more senior position than that of the director of the Central People's Government's national security office. Likely out of deference to the letter, if not the spirit, of the "Hong Kong people administering Hong Kong" principle that has been an important element of China's "one country, two systems" approach to Hong Kong, the National Security Advisor is not a full member of the HKSAR's national security committee. By law, he does, however, attend all meetings and provide "advice on matters relating to the duties and functions of the Committee." Some in Hong Kong now view Luo as the region's most powerful official, with his power outstripping that of Hong Kong's Chief Executive.

Prior to passage of the NSL, the central government operated three "organs" in the HKSAR, the Liaison Office, an Office of the Commissioner of the Ministry of Foreign Affairs, and a People's Liberation Army Garrison. None had a formal role in the day-to-day governance of Hong Kong. The NSL creates a fourth central government organ, in the form of the Office for Safeguarding National Security, which does reach into governance.

Table 2. Top Central Government Officials in Hong Kong

As of July 2020

Name	Position(s)
Luo Huining (骆惠宁)	• Director, Liaison Office of the Central People's Government in the HKSAR (since January 2020) • National Security Advisor, Committee for Safeguarding National Security of the HKSAR (since July 2020) • Member, Communist Party of China Central Committee (since 2012) • Deputy Director, Hong Kong and Macao Affairs Office of the State Council (since 2020; Luo is one of three Deputy Directors)
Zheng Yanxiong (郑雁雄)	• Director, Office for Safeguarding National Security of the Central People's Government in the HKSAR (since July 2020)
Xie Feng (谢锋)	• Commissioner, Office of the Commissioner of the Ministry of Foreign Affairs of the PRC in the HKSAR (since 2017)
Chen Daoxiang (陈道祥) (Major General)	• Commander, People's Liberation Army Hong Kong Garrison (since April 2019)
Cai Yongzhong (蔡永中) (Major General)	• Political Commissar, People's Liberation Army Hong Kong Garrison (since August 2018; previously served as the Garrison's Deputy Political Commissar from 2015 to 2018) • Member, Communist Party of China Central Commission for Discipline Inspection (since 2017; the body is equivalent in rank to the Party's Central Committee)

Source: Xinhua News Agency reports.

Notes: Officials' names are listed in Chinese style, with family names preceding given names. The 19th Party Congress' Central Committee has 204 full members. The 19th Party Congress' Central Commission for Discipline Inspection (CCDI) has 133 members. Cai, a member of the Li ethnic group, is one of four ethnic minority CCDI members.

HKSAR Government Implementation

On July 3, the HKSAR formally established the Committee for Safeguarding National Security of the HKSAR. (See **Figure 1** below.) On the same day, the government announced Edwina Lau Chi-wai, a HKPF officer since 1984, as Deputy Police Commissioner and head of the HKPF's new Department for Safeguarding National Security. It also announced the establishment of the Department of Justice's new division for prosecution of national security cases, and the Chief Executive's designation of six unnamed serving magistrates as judges to hear national security cases.[53]

Chief Executive Lam convened the first meeting of the Committee for Safeguarding National Security of the HKSAR on July 6, 2020.[54] It approved implementing regulations for Article 43 of the NSL, which went into effect the next day.[55] They stipulate the conditions under which:

- an HKPF officer may obtain a search warrant or conduct covert surveillance of any person or entity that may be violating the NSL (private properties can be searched without a warrant);
- a person may be required to surrender their travel documents to HKSAR authorities and be prohibited from exiting Hong Kong;
- the HKSAR government can confiscate the property of a person who allegedly violated the NSL;
- the HKPF can require a service provider to remove electronic content, identify a user, or assist in the decryption of messages or content distributed by the service provider (internet service providers must remove information identified by the HKPF as violating the NSL);
- foreign and Taiwan "political organizations or agents" must provide the HKSAR government information about their "activities concerning Hong Kong."

The rules apply within and outside of Hong Kong. Per Article 60 of the NSL, the Office for Safeguarding National Security of the Central People's Government in the HKSAR is not bound by the rules. In addition, Rule 4 stipulates:

> The Chinese text of these Implementation Rules is an authentic text, and these Implementation Rules are to be construed accordingly. The English translation text is for reference only.

This provision appears to continue a pattern by the PRC and HKSAR governments to move away from Hong Kong's bilingual legal and judicial system, as seemingly recognized in Article 9 of the Basic Law:

[53] HKSAR Government, "Establishment of Committee for Safeguarding National Security of HKSAR (with photos)," July 3, 2020, https://www.info.gov.hk/gia/general/202007/03/P2020070300653.htm.

[54] The Committee is chaired by Chief Executive Lam, and includes Lam's Chief Secretary for Administration, Financial Secretary, Secretary of Justice, Secretary of Security, Commissioner of Customs and Excise, Commissioner of the HKPF, Director of Immigration, Director of the Chief Executive's Office, and the head of the HKPF department for safeguarding national security established by Article 13 of the national security law.

[55] Committee for Safeguarding National Security of the HKSAR, *Implementation Rules for Article 43 of the Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region* , L.N. 139 of 2020, July 6, 2020, https://www.elegislation.gov.hk/hk/A406A; Kelly Ho, "Hong Kong Security Law: Police Handed Power to Do Warrantless Searches, Freeze Assets, Intercept Comms, Control Internet," *Hong Kong Free Press*, July 6, 2020.

> In addition to the Chinese language, English may also be used as an official language by the executive authorities, legislature and judiciary of the Hong Kong Special Administrative Region.

Figure 1. Official Photo of Committee for Safeguarding National Security of the HKSAR

Source: HKSAR Government.

Notes: Front Row (L-R): Financial Secretary Paul Chan Mo-po, Director of the Liaison Office of the Central People's Government in Hong Kong Luo Huining (National Security Advisor), Chief Executive Carrie Lam Cheng Yuet-ngor, Chief Secretary of Administration Matthew Cheung Kin-chung, Secretary of Justice Teresa Cheng Yeuk-wah; Back Row: Head of the Hong Kong Police Force Department for Safeguarding National Security Edwina Lau Chi-wai, Commissioner of Customs and Excise Hermes Tang Yi-hoi, Secretary of Security John Lee Ka-chiu, Commissioner of Police Chris Tang Ping-keung, Director of Immigration Au Ka-wang, Director of the Chief Executive's Office Eric Chan Kwok-ki. The flag on the left is that of the People's Republic of China. The flag on the right is that of the Hong Kong Special Administrative Region.

Questions About the Legality of Certain Speech

HKSAR Secretary of Justice Teresa Cheng Yuek-wah and Chief Secretary Matthew Cheung Kin-chung have warned that some of the more common slogans used by demonstrators, such as "restore Hong Kong; revolution of our times" (光復香港, 時代革命), may constitute violations of the NSL.[56] (See textbox below.) The first person to appear in a Hong Kong court facing

[56] "Don't Test Law by Using Protest Slogan: Teresa Cheng," *RTHK*, July 4, 2020; and "Mixed Signals on Legality of Protest Slogan," *RTHK*, July 5, 2020, https://news.rthk.hk/rthk/en/component/k2/1535736-20200704.htm. The slogan is sometimes translated as "liberate Hong Kong; revolution of our times."

charges for alleged violations of the NSL was a motorcyclist who purportedly drove his vehicle into a group of police officers while holding a flag displaying the slogans.[57]

Vague Provisions Create Uncertainty About the Legality of Slogans and Songs

Critics of the national security law fault the vagueness of its provisions for creating uncertainty about what actions and activities are illegal and who has the authority to adjudicate such questions. This issue has arisen in the context of slogans and songs used by people during legal and illegal demonstrations.

In 2019, demonstrators against a proposed HKSAR extradition law and the excessive use of force by the Hong Kong Police Force (HKPF) frequently chanted or displayed signs bearing the slogan, "restore Hong Kong; revolution of our times" (光復香港, 時代革命). Demonstrators also sang the song, "Glory to Hong Kong" (願榮光歸香港), which became the anthem of supporters of Hong Kong's autonomy and the protection of the rights of Hong Kong residents.

The PRC and HKSAR government have indicated they view the slogan and the song as associated with a separatist movement in Hong Kong. Following demonstrations on July 1, 2020, against the national security law, the HKSAR government issued a "solemn statement" regarding the use of slogans by demonstrators:

> The slogan "Liberate Hong Kong, the revolution of our times" nowadays connotes "Hong Kong independence," or separating the Hong Kong Special Administrative Region (HKSAR) from the People's Republic of China, altering the legal status of the HKSAR, or subverting the State power.[58]

The statement noted that "secession, subversion of state power and other acts and activities which endanger national security" are illegal under the national security law, and "call[ed] upon members of the public not to defy the law." An unnamed HKSAR official declined to answer a reporter's question about the legality of the song, "Glory to Hong Kong."[59]

The HKPF has arrested people who held up signs displaying the slogan or sang "Glory to Hong Kong" in shopping malls. The first person arrested for alleged violation of the national security law was a man standing behind a banner that read, "No to Hong Kong Independence." The words "no to" were written in small print, while the rest of the statement was in large print. HKPF officers also have arrested people holding up blank sheets of white paper, alleging that they are violating the national security law.[60]

Hong Kong Bar Association Chairman Philip Dykes argues that it was "premature" for the HKSAR government to declare the slogan illegal, and that it is up to Hong Kong courts to make a binding determination on the legality of the slogan.[61] Maria Tam Wai-chu, Hong Kong's sole representative on the NPCSC, expressed her skepticism that use of the slogan alone would be sufficient to prove a person had violated the national security law.[62] On July 4, Justice Secretary Cheng conceded that the HKSAR government's statement of July 1 on the matter was not legally binding, but reiterated the HKSAR government's warning not to test the national security law.[63]

Initial Arrests

On July 1, 2020, tens of thousands of Hong Kong residents demonstrated against the NSL in various locations across Hong Kong. The HKPF said it made "around 370 arrests," including 10

[57] "Man, 23, Charged with Terrorism and Secession," *RTHK*, July 3, 2020, https://news.rthk.hk/rthk/en/component/k2/1535625-20200703.htm.

[58] HKSAR government, "Government Statement," press release, July 2, 2020, https://www.info.gov.hk/gia/general/202007/02/P2020070200869.htm.

[59] Kelly Ho, "Gov't Refuses to Say If Protest Anthem 'Glory to Hong Kong' Is Illegal, Despite Ban in Schools," *Hong Kong Free Press*, July 10, 2020.

[60] Tom Grundy, "Security Law: Hong Kong Police Arrest 8 at 'Blank Placard' Silent Protest," *Hong Kong .Free Press*, July 6, 2020.

[61] Jeffie Lam, Sum Lok-kei, and Kimmy Chung, "National Security Law: Is Chanting 'Liberate Hong Kong; Revolution of Our Times' Now Illegal? City's Lawyers Aren't So Sure," *South China Morning Post*, July 3, 2020.

[62] Ibid.

[63] "Don't Test Law by Using Protest Slogan: Teresa Cheng," *RTHK*, July 4, 2020.

for alleged violations of the national security law.[64] (See **Table 3**.) Several times during the demonstration, the HKPF held up new, purple warning banners stating that the participants in the demonstration were at risk of arrest for violating the new national security law.[65] (See **Figure 2**.)

Table 3. Status of 10 People Arrested on July 1, 2020, for Alleged Violations of National Security Law

Description of Person and Circumstances of Arrest	Alleged Criminal Activity	Status
23-year-old man riding motorcycle and holding flag with the slogan, "Restore Hong Kong. Revolution of Our Times"	Inciting secession and terrorism	Remanded, awaiting trial in prison
15-year-old girl waiving flag with the words "Hong Kong Independence"	Inciting secession	Released on bail pending further enquiries
38-year-old man in possession of a flag with the words "Hong Kong independence"	Inciting secession	Released on bail pending further enquiries
36-year-old woman in possession of publications printed with "One Nation, One Hong Kong"	Inciting secession	Released on bail pending further enquiries
36-year-old woman in possession of publications printed with "One Nation, One Hong Kong"	Inciting secession	Released on bail pending further enquiries
67-year-old woman holding sign saying "Hong Kong Independence," as well as national flags of the United States and the United Kingdom	Inciting secession	Released on bail pending further enquiries
25-year-old man wearing shirt with the slogan, "Restore Hong Kong. Revolution of Our Times"	Inciting secession	Released on bail pending further enquiries
19-year-old man in possession of stickers printed with the slogan, "Restore Hong Kong. Revolution of Our Times"	Inciting secession	Released on bail pending further enquiries
26-year-old man in possession of a flag with the words "Hong Kong Independence"	Inciting secession	Released on bail pending further enquiries
22-year-old man wearing a T-shirt with the words "Free Hong Kong"	Inciting secession	Released on bail pending further enquiries

Source: Hong Kong media reports.

[64] Tweet by Hong Kong Police Force (@hkpoliceforce), July 1, 2020, 14:40 (UTC).

[65] Christy Leung, "Hong Kong National Security Law: Flags, Banners, and Slogans Advocating Independence, Liberation, or Revolution Now Illegal," *South China Morning Post*, July 1, 2020. The HKPF are supposed to display banners warning people of illegal activities, and the risk of HKPF action. These banners are color-coded.

Figure 2. New HKPF Purple Warning Banner

In English and Chinese

Source: Apple Daily.

Investigation of Pro-Democratic Political Parties' Primary

On July 11 and 12, 2020, the pro-democratic political parties held an informal open primary to select candidates for the Legco elections scheduled for September 6, 2020.[66] The intent of the primary was to narrow the field of pro-democracy candidates and increase the coalition's chances of winning a majority of the 70 Legco seats. The organizers of the primary had hoped that at least 170,000 of the HKSAR's 4.2 million eligible voters would participate in the primary; more than 600,000 people, over 13% of all eligible voters, participated.[67]

[66] For more about the primary and its implications for Legco's September 2020 elections, see CRS In Focus IF10500, *Hong Kong's Legislative Council (Legco)*, by Michael F. Martin.

[67] Rachel Wong, "'Hong Kong People Made History Again': Over 600,000 Vote in Democrats' Primaries as Co-

In an interview published three days before the primary, Secretary for Constitutional and Mainland Affairs Erick Tsang Kwok-wai stated that the primary might violate the national security law if a pro-democracy majority sought to use Legco to destabilize the HKSAR government.[68]

The day before the primary, the HKPF raided the offices of Hong Kong Public Opinion Research Institute (PORI), an independent public opinion surveying company that was helping pro-democracy political parties.[69]

On July 13, 2020, following the primary, a spokesperson for the HKSAR's Constitution and Mainland Affairs Bureau stated that the HKSAR government was conducting "an in-depth investigation" of the primary. The spokesperson said one focus of the inquiry was a statement by an organizer of the primary indicating a desire to win a Legco majority—more than 35 seats in the 70-seat chamber—in order to be able to veto the government's budget. The spokesperson said the statement "may constitute a breach of the offence of subversion under Article 22" of the NSL.[70] At a press conference, Chief Executive Lam stated

> If this so-called primary election's purpose is to achieve the ultimate goal of delivering what they call a 35-plus with the objective of objecting to or resisting every policy initiative of the Hong Kong Special Administrative Region Government, then it may fall into the category of subverting the state power, which is now one of the four types of offences under the new national security law.[71]

A spokesperson for China's HKMAO supported such an investigation, stating, "Relevant departments of the SAR Government have already received many related complaints and should investigate them according to law, with no leniency in punishment."[72]

If the HKSAR government decides the organizers and participants in the primary violated the NSL, according to Article 6 and Article 35 of the NSL, they could potentially be disqualified in the upcoming Legco elections, and, if convicted, permanently prohibited from running for office.

Other Forms of Implementation

In an apparent effort to comply with Article 10 of the NSL, which states that the HKSAR "shall promote national security education in schools and universities," the Hong Kong Education Bureau issued a notice to all schools, including pre-schools, reminding them of their obligations under the NSL, including helping students develop a "correct" understanding of China.[73]

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organiser Hails 'Miracle' Turnout," *Hong Kong Free Press*, July 12, 2020.

[68] Rachel Wong, "Hong Kong Legislative Primaries May Violate National Security Law, Mainland Affairs Minister Warns," *Hong Kong Free Press*, July 9, 2020.

[69] Tom Grundy, "Hong Kong Police Raid Office of Pro-democracy Camp Primary Election Co-organisers PORI; Seize PCs," *Hong Kong Free Press*, July 10, 2020.

[70] HKSAR Government, "CMAB Follows Up Election-Related Complaints in Serious Manner," July 13, 2020, https://www.info.gov.hk/gia/general/202007/13/P2020071300830.htm.

[71] HKSAR Government, "Primaries May Breach Security Law," July 13, 2020, https://www.news.gov.hk/eng/2020/07/20200713/20200713_205128_252.html. "CE Announces Investigation into Weekend Primaries," *RTHK*, July 13, 2020.

[72] "国务院港澳办：绝不允许操控香港立法会选举" (State Council Hong Kong and Macao Affairs Office: Primaries Manipulating Hong Kong Legislative Council Absolutely Not Permitted), Xinhua, July 14, 2020, http://www.xinhuanet.com/politics/2020-07/14/c_1126236724.htm.

[73] "教育局通知全港學校 包括幼稚園特殊學校 均須教國安法," ("Education Bureau Notifies All Hong Kong Schools, Including Pre-Schools and Special Schools, of Common Obligations to Educate about National Security Law"), Stand News (Hong Kong), July 4, 2020.

Education Secretary Kevin Yeung Yun-hung told Legco on July 8, 2020, that "no political propaganda activities should be allowed in schools, and no one, including students, should play, sing and broadcast songs which contain political messages or hold any activities to express their political stance." He specifically barred playing, singing, or broadcasting "Glory to Hong Kong," which, he said, "contains strong political messages and is closely related to the social and political incidents, violence and illegal incidents that have lasted for months." Children's right to free expression, he said, "is not absolute."[74]

Article 6 of the NSL states that those who stand for election or assume public office "shall confirm in writing or take an oath to uphold the Basic Law of the [HKSAR] and swear allegiance to the [HKSAR] of the [PRC] in accordance with law." The HKMAO's Zhang Xiaoming indicated on July 1, 2020, that the provision applies to all public servants.[75] Accordingly, the HKSAR government has proposed that all civil servants be required to take such an oath.[76] Secretary for the Civil Service Patrick Nip Tak-kuen told Legco on July 10, 2020, that HKSAR authorities had "agreed in principle" that staff members of publicly funded institutions, including universities, schools and hospitals, should also be required to take oaths.[77] Previously, Article 104 of the Basic Law required a narrower class of people—"Chief Executive, principal officials, members of the Executive Council and of the Legislative Council, judges, of the courts at all levels and other members of the judiciary in the Hong Kong Special Administrative Region"—to swear to uphold the Basic Law and allegiance to the HKSAR.

Secretary Nip told Legco that under the proposed regulations, civil servants may also be prohibited from participating in "anti-government protests." Legco members raised a number of questions in response to Nip's comments, including about the rights of civil servants, particularly their freedom of speech. Nip responded:

> Civil servants shall uphold political neutrality, meaning that they should support the administration and implement government policies. Any participation in anti-government protests will surely go against [the new requirements].[78]

Secretary Nip did not directly address what form of punishment a civil servant might face for non-compliance with the oath requirement, alleged violations of their oaths, or participation in "anti-government" demonstrations.

In addition, Hong Kong public libraries have suspended the circulation of several books written by pro-democracy advocates, such as Legco member Tanya Chan Suk-chong and Joshua Wong,

[74] "Outright Ban Placed on Protest Anthem in Schools," *RTHK*, July 8, 2020; HKSAR Government, "LCQ22: Restricting Students' Freedom of Expression," July 8, 2020, https://www.info.gov.hk/gia/general/202007/08/P2020070800306.htm.

[75] State Council Information Office of the PRC, "SCIO Briefing on the Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region," July 1, 2020, http://english.scio.gov.cn/pressroom/2020-07/04/content_76236573.htm.

[76] "Govt Proposes Oaths for All Civil Servants," *RTHK*, July 8, 2020, Civil Service Bureau, Government of HKSAR, "Progress of the Study on the Proposal on Oath-taking by Civil Servants and Political Neutrality of Civil Servants," draft for Legco discussion, July 10, 2020, https://www.csb.gov.hk/english/info/files/20200710_Oathtaking_and_PoliticalNeutrality_e.pdf.

[77] Natalie Wong, "National Security Law: Hong Kong Civil Servants Not Allowed to Join Anti-government Protests Under New Proposals, City Minister Warns," *South China Morning Post*, July 10, 2020.

[78] Ibid.

to determine if the books contain text forbidden by the NSL.[79] Hong Kong schools have reportedly been told to check their books for volumes that may violate the NSL.[80]

Remaining Steps for the HKSAR to Take

The NPC's May 28 decision requires that the HKSAR government enact the local national security legislation required by Article 23 the Basic Law "at an earlier date." (See "Brief Recent History of the HKSAR.") Article 7 of the NSL re-states the requirement:

> The Hong Kong Special Administrative Region shall complete, as early as possible, legislation for safeguarding national security as stipulated in the Basic Law of the Hong Kong Special Administrative Region and shall refine relevant laws.[81]

Speaking on July 1, 2020, NPC official Shen Chunyao reinforced that the HKSAR must both pass new Article 23 legislation—covering five types of crimes not specifically addressed in the NSL—and update its existing national security-related legislation. The latter includes the Crimes Ordinance, the Public Order Ordinance, the Official Secrets Ordinance, and the Societies Ordinance. All local national security-related legislation must be consistent with the NPC's May 28 Decision and the NSL.[82]

In addition, the May 28 NPC decision instructs Hong Kong's Chief Executive 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.[83]

Reaction in Hong Kong

Hong Kong's response to the national security law has ranged from active support to active opposition, largely along political divisions in the city. Chief Executive Lam, senior HKSAR officials, and pro-establishment Legco members and their parties praised the new law; Legco's pro-democracy coalition criticized it. Various professional associations in Hong Kong, including the Hong Kong Bar Association (HKBA) and the Hong Kong Journalist Association (HKJA), raised concerns about the law. Some members of the local and international business communities have issued statements supportive of the new law, while others have indicated that they are reevaluating their operations in Hong Kong.

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[79] "Libraries Pull Off Some Books by Political Figures," *RTHK*, July 4, 2020.

[80] "Hong Kong Gov't Tells Schools to Remove Books Breaching Security Law," *AFP*, July 6, 2020.

[81] "The Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region," *Government of the HKSAR Gazette*, G.N. (E.) 72 0f 2020, July 6, 2020.

[82] State Council Information Office of the PRC, "SCIO Briefing on the Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region," July 1, 2020, http://english.scio.gov.cn/pressroom/2020-07/04/content_76236573.htm. The HOSAR's Crimes Ordinance is available online at https://www.elegislation.gov.hk/hk/cap200. It includes provisions on treason, "assaults on the Queen," incitement to mutiny, incitement to disaffection, and "seditious intention," which may be contrary to the provisions of the national security law.

[83] "Decision of the National People's Congress on Establishing and Improving the Legal System and Enforcement Mechanisms for the Hong Kong Special Administrative Region to Safeguard National Security," unofficial English translation, May 28, 2020, https://www.elegislation.gov.hk/hk/A215.

Statements by the HKSAR Government

In a video statement to the U.N. Human Rights Council following the NPCSC's passage of the NSL, Chief Executive Lam said the law was justified due to escalating violence "fanned by external forces" and the "threat of terrorist acts."[84] On July 7, 2020, she told reporters:

> I'm pleased to say that in the last few days, I notice—you may dispute that—but I notice that there has been an increasing appreciation of the positive effect of this national security legislation, particularly in restoring stability in Hong Kong as reflected by some of the market sentiments in recent days. Surely this is not doom and gloom for Hong Kong. I'm sure with the passage of time and efforts and the facts being laid out, confidence will grow in "One Country, Two Systems" and in Hong Kong's future.[85]

Chief Executive Lam also responded to what she referred to as "unfounded allegations" about the NSL. Rather than constituting the death of "one country, two systems," Lam said, "The National Security Law aims to affirm and improve the implementation of 'One country, Two systems.'" She also stated, "[I]nstead of undermining people's freedom, the National Security Law will restore stability and help ensure the great majority of Hong Kong people could exercise their rights and freedoms, without being intimidated or attacked."

Response from the Legislative Council (Legco)

Legco President Andrew Leung Kwan-yuen and the 41 other pro-establishment Legco members issued a joint statement on June 30, 2020, before the text of the law was released, welcoming the new law, which they said plugs loopholes in the city's national security laws.[86] Leung said the law "can safeguard Hong Kong's long-term stability and prosperity, and protect according to law the rights and freedoms long enjoyed by the vast majority of law-abiding citizens."[87] Pro-democracy Legco members held a press conference after the law was approved, but before its release, stating their opposition to the law.[88] Tanya Chan, convener for the group, said the lack of transparency and the rushed manner in which the law was approved indicated that the PRC government no longer trusts the people of Hong Kong to govern Hong Kong.[89]

Response of Hong Kong's Pro-democracy Coalition

The initial response from participants in Hong Kong's pro-democracy coalition was a mix of expressions of continued commitment to their cause and pragmatic acts to protect themselves from possible prosecution under the new national security law. Although some of their earlier

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[84] Elson Tong, "Respect Beijing's Right to Protect National Security in Hong Kong, Leader Carrie Lam Tells UN Rights Council," *Hong Kong Free Press*, June 2020.

[85] HKSAR Government, "Transcript of Remarks by CE at Media Session Before ExCo Meeting," press release, July 7, 2020.

[86] "HKSAR LegCo President, Members Support Passage of Law on Safeguarding National Security in HK," *Xinhua*, June 30, 2020.

[87] Legislative Council of the HKSAR, "Transcript of Remarks by LegCo President on the Passage of The Law on Safeguarding National Security in the Hong Kong Special Administrative Region," June 30, 2020, https://www.legco.gov.hk/yr19-20/english/press/pr20200630-2.html.

[88] Legco members are informally organized into two coalitions, pro-democracy and pro-establishment, based on their general attitudes towards the policies of the PRC and HKSAR government. For more information, see CRS In Focus IF10500, *Hong Kong's Legislative Council (Legco)*.

[89] "Beijing showing its disregard for HK: opposition," *RTHK*, June 30, 2020.

concerns about the dangers of the NSL to human rights do not appear to be borne out in the final text (see discussion below), other threats appear to be real.

Some activists had feared the national security law would include the penalty of capital punishment. It does not, although Secretary of Justice Cheng appeared to leave open the possibility that a person could be remitted to mainland China and face a possible death sentence.[90] Some activists also had feared the law would be effective retroactively, making past actions and activities illegal. Article 66 of the NSL seemingly dispels that concern. The law does not, however, explicitly prevent previous events being introduced as evidence to demonstrate a pattern or behavior. In addition, Hong Kong election officials may cite previous statements by pro-democracy candidates that allegedly violate Articles 6 and 35 of the national security law to bar the candidates from running in the Legco elections scheduled for September 6, 2020.[91]

The Civil Human Rights Front (CHRF), the organizers of most of Hong Kong's largest protests, held its annual July 1 pro-democracy march on Hong Kong Island, despite the HKPF banning the event.[92] Tens of thousands of people attended the prohibited demonstration. In congressional testimony, Lee Cheuk-yan, former Legco member and one of the organizers of Hong Kong's annual June 4 Tiananmen memorial rally, expressed concern over promulgation of the NSL, under which shouting the slogans "down with Carrie Lam" or "defund the Police" could be considered acts of subversion.[93]

Several groups responded to the new law by disbanding. Demosisto, the political organization started by leading democracy activists Agnes Chow Ting, Nathan Law Kwun-chung, and Joshua Wong Chi-fung, dissolved itself on June 30, although some of its former members said they would continue the struggle for human rights in Hong Kong.[94] Pro-independence groups, Hong Kong National Front and Studentlocalism, also announced they were disbanding in Hong Kong, but would continue to operate outside of Hong Kong.[95] Other political activists have removed statements from the internet and cancelled accounts on various social media platforms out of fear of prosecution under the national security law.[96]

As they did in 2014 during the Umbrella Movement and during the demonstrations of 2019, protesters have responded with creative and innovative techniques to try to avoid violating the letter of the law, in this case the NSL. For example, rather than writing the possibly illegal slogan, "restore Hong Kong; revolution of our times," some are using the initial letters of the phrase in Cantonese—"GFHG, SDGM"—or rendering the Chinese characters into recognizable abstract

[90] "Not for us to say who could get death penalty: govt," *RTHK*, July 1, 2020.

[91] Natalie Wong, "National Security Law: Facing Disqualification, or Worse, Hong Kong Opposition Groups Head into Uncertain Election Season," *South China Morning Post*, July 1, 2020.

[92] Rachel Wong, "'Ready for the Battle': Hong Kong Protesters Vow Action as National Security Law Passed," *Hong Kong Free Press*, June 30, 2020.

[93] U.S. Congress, House Committee on Foreign Affairs, *The End of One Country, Two Systems?: Implications of Beijing's National Security Law in Hong Kong*, Testimony of Lee Cheuk-yan, 116th Cong., 2nd sess., July 1, 2020.

[94] Kelly Ho and Tom Grundy, "Joshua Wong's Pro-democracy Group Demosisto Disbands Hours After Hong Kong Security Law Passed," *Hong Kong Free Press*, June 30, 2020.

[95] Sum Lok-kei, "Hong Kong National Security Law: Future of City's Localist Movement Hangs in Balance as Groups Disband, Activists Quit or Flee City," *South China Morning Post*, June 30, 2020.

[96] Jennifer Creely, "Hongkongers Purge Social Media, Delete Accounts as Beijing Passes National Security Law," *Hong Kong Free Press*, July 3, 2020.

shapes. Other protesters are holding up blank pieces of white paper referring obliquely both to the censorship under the national security law, and the "white terror" created by the law.[97]

Response of Hong Kong Professional Associations

Two of Hong Kong's prominent professional associations, the Hong Kong Bar Association (HKBA) and the Hong Kong Journalists Association (HKJA), have expressed grave concerns about the implications of the national security law for key attributes of the city's socio-economic system that have contributed to Hong Kong's success and prosperity. On July 1, 2020, the HKBA released a statement saying that the provisions of the NSL

> operate to erode the high degree of autonomy guaranteed to the HKSAR under the Basic Law and the Sino-British Joint Declaration, and to undermine core pillars of the One Country Two Systems model including independent judicial power, the enjoyment of fundamental rights and liberties, and the vesting of legislative and executive power in local institutions.[98]

The HKBA asserts that provisions of the national security law conflict with provisions in the Basic Law, and that the NSL permits mainland officials not subject to local judicial review to operate in Hong Kong. Moreover, the HKBA states, the definitions of the crimes of succession, subversion, and terrorist acts and activities "are capable of being applied in a manner that is arbitrary, and that disproportionately interferes with fundamental rights, including the freedom of conscience, expression and assembly."[99] The HKBA also notes, "The omission of a contemporaneous authentic English version of the law is unusual given that a bilingual legal system operates in Hong Kong."[100] The lack of an official English version of the law may make it difficult for judges who do not read Chinese to serve on national security law cases, and put defendants who do not read Chinese at a disadvantage during their trials. Of the 22 judges who are members of Hong Kong's highest court, the Court of Final Appeal, at least 15 are foreign nationals, including citizens of Australia, Canada, and the United Kingdom.[101]

On July 1, 2020, the HKJA issued a statement expressing its "deep regret" about the law, saying:

> We urged the Standing Committee to adopt a "minimalist approach" in legislating. It turned out to be the opposite. The law enacted is much harsher; its scope much broader. Worse, there was no prior consultation.[102]

On July 7, 2020, the HKJA released its annual report on media freedom in Hong Kong, entitled, "Freedom in Danger."[103] The report focused on several developments that it sees as threatening freedom of the press in Hong Kong over the past year, including:

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[97] "Blank Paper, Graphic Cards Become Noon Protest Signs," *RTHK*, July 6, 2020.

[98] Hong Kong Bar Association, "The Law of the People's Republic of China ("PRC") on Safeguarding National Security in the Hong Kong Special Administrative Region ("HKSAR"): Statement of the Hong Kong Bar Association," press release, July 1, 2020, https://www.hkba.org/sites/default/files/20200701%20HKBA%20statement%20on%20Safeguarding%20National%20%20Security%20in%20HKSAR.pdf.

[99] Ibid.

[100] Ibid.

[101] Hong Kong Court of Final Appeal, "Hong Kong Non-Permanent Judges," accessed July 29, 2020, https://www.hkcfa.hk/en/about/who/judges/npjs/index.html.

[102] Hong Kong Journalists Association, "Statement Issued by the Hong Kong Journalists Association [on] the Hong Kong National Security Law"" press release, July 1, 2020.

[103] Hong Kong Journalists Association, *Freedom in Danger*, 2020 Annual Report, July 7, 2020, https://www.hkja.org.hk/en/publication/hkja-annual-report-2020-freedom-in-danger-2/.

- physical and verbal assaults on journalists by the HKPF;
- unwarranted restrictions on journalists trying to cover news events;
- inadequate mechanisms to address alleged HKPF misconduct;
- alleged withholding of information and the dissemination of misinformation by the HKPF and the HKSAR government; and
- alleged HKSAR efforts to undermine the independence of Radio Television Hong Kong (RTHK), a government-funded public broadcasting service that delivers educational, entertainment, and public affairs programming. Since 1954, RTHK (and its predecessor, Radio Hong Kong) have operated as independent agencies within the Hong Kong government.

The HKJA points to several articles in the national security law that could be used to undermine freedom of the press and the ability to protect journalists' sources. While acknowledging that Articles 4 and 5 of the law reiterate the basic rights of Hong Kong residents, including freedom of the press, the HKJA is concerned that news reports could be interpreted as "inciting, aiding and abetting" actions and activities that allegedly violate the national security law.[104] The HKJA suggests that Article 9 of the NSL, which authorizes the HKSAR government to "take necessary measures to strengthen public communication, guidance, supervision and regulation over matters concerning national security," could be used to limit internet access and restrict research and reporting by journalists. In addition, it says, Articles 43 and 59 of the law could be used to compel journalists to testify in cases involving alleged national security law violations both in Hong Kong and in mainland China, and divulge the identity of confidential sources.

On July 2, 2020, Hong Kong's Foreign Correspondents Club (FCC) wrote its second letter to Chief Executive Lam requesting guarantees regarding the freedom of the press in Hong Kong under the NSL. Asked about the letter during a press briefing on July 7, 2020, Chief Executive Lam said:

> If the Foreign Correspondents' Club or all reporters in Hong Kong can give me a 100 per cent guarantee that they will not commit any offences under this piece of national legislation, then I can do the same. It is not a question of me standing here to give you a guarantee of what you may or may not do in the days and weeks and years ahead. The law has clearly defined the four types of acts and activities which we need to prevent, curb and punish in accordance with the law.[105]

Commenting on Lam's statement, FCC President Jodi Schneider said, "So obviously, that doesn't sound terribly reassuring about press freedom."[106]

Response from the Hong Kong Business and Finance Community

The response of the Hong Kong business community to the NSL has been cautious and mixed. Some business associations and companies have expressed their support for the law. Others, including the American Chamber of Commerce in Hong Kong (AmCham HK), have been more reserved. Several social media companies have stated that they have suspended their cooperation

[104] Hong Kong Journalists Association, "Statement Issued by the Hong Kong Journalists Association [on] the Hong Kong National Security Law," press release, July 1, 2020, https://www.hkja.org.hk/en/statements/statement-issued-by-the-hong-kong-journalists-association-the-hong-kong-national-security-law/.

[105] HKSAR Government, "Transcript of Remarks by CE at Media Session Before ExCo Meeting," press release, July 7, 2020.

[106] "Threat Grows for Hong Kong's Press, Judiciary," *Asia Sentinel*, July 7, 2020.

with HKSAR authorities and at least one company, TikTok, owned by mainland China-based ByteDance, has ended service to Hong Kong due to the enactment of the national security law.[107]

Prior to the NSL's promulgation, outward flows of capital and deposits in Hong Kong bank accounts reportedly increased, suggesting an effort by Hong Kong residents and businesses to hedge against possible negative effects of the law. At the same time, mainland companies and investors reportedly moved capital into Hong Kong to support the local economy and reduce the potential negative economic effects of the NSL under a PRC government initiative called "Wealth Management Connect."[108] Between June 30 and July 10, 2020, Hong Kong's Hang Seng Index rose 5.3%, but the economy remains in a recession largely brought about by the Coronavirus 2019 (COVID-19) pandemic.[109]

The Hong Kong General Chamber of Commerce issued a statement on July 1, 2020, supporting the law as "instrumental in helping to restore stability and certainty to Hong Kong."[110] United Kingdom-based banks HSBC and Standard Chartered, two of the three banks that issue currency in Hong Kong (the third is Bank of China), released statements on June 4, 2020, supporting the unseen national security law, reportedly after facing sustained pressure from both the PRC and HKSAR governments to do so.[111] U.S. Secretary of State Michael R. Pompeo and UK Foreign Secretary Dominic Raab separately criticized HSBC for supporting the national security law.[112]

AmCham HK issued a statement following the promulgation of the NSL, indicating:

> We remain committed to Hong Kong as a home base for international business. It will take time for the business community to digest details of the law, but we hope it will not impact the dynamism and benefits of this great city, which continues to serve as an important gateway between East and West.[113]

The organization also stated that it looks forward to communicating with the HKSAR government "to seek further clarity on how the law will be interpreted and implemented, and the implications for American businesses operating and investing in Hong Kong." In a July 2020 survey of its members, AmCham HK reported 41% of the surveyed companies were "extremely concerned" and 36% were "somewhat concerned" about the NSL, but 64% said the company had no plans to relocate from Hong Kong.[114] Most of the surveyed companies indicated that they were mostly concerned about the ambiguity of the scope and enforcement of the law, and were

[107] "TikTok Halts Hong Kong Access After Security Law," *BBC*, July 10, 2020.

[108] Weizhen Tan, "As China Tightens Its Grip on Hong Kong, It's Also Paving the Way for Money to Flow into the City," *CNBC*, July 6, 2020.

[109] The Hang Seng Index closed at 24,427.19 on June 10, 2020, and 25,727.41 on July 10, 2020. On July 6, 2020, it closed at 26,339.16, up 7.8% over June 30, 2020.

[110] "HK General Chamber of Commerce Welcomes Security Law," *RTHK*, July 2, 2020.

[111] "HSBC and StanChart Back China Security Laws for HK," *BBC*, June 4, 2020.

[112] "Mike Pompeo Criticises HSBC for Backing Hong Kong Security Law," *BBC*, June 10, 2020. "HSBC Gets Veiled Rebuke from UK Government over Hong Kong," *BBC*, June 10, 2020; U.S. Department of State, "On China's Attempted Coercion of the United Kingdom," June 9, 2020, https://www.state.gov/on-chinas-attempted-coercion-of-the-united-kingdom/.

[113] AmCham HK, "Press Release: AmCham Statement on National Security Law," press release, July 2, 2020.

[114] AmCham HK, *AmCham Temperature Survey Findings: National Security Law*, July 13, 2020, https://www.amcham.org.hk/uploads/media/default/0001/08/a5e14d30d0931649e870629c1e282f9d93ba6309.pdf. The survey involved 183 companies, or 15 of AmCham HK's members.

adopting a "wait and see" approach. According to one study, the withdrawal of U.S. companies from Hong Kong could result in a 30% decline in rents for commercial real estate.[115]

Social media companies operating in Hong Kong have expressed concern about Article 43 of the national security law, which requires these companies to turn over to the HKSAR government and its courts any information relevant to a national security law investigations and cases. In cases being heard by mainland courts, Article 59 states, "any person who has information pertaining to an offence endangering national security under this Law is obliged to testify truthfully." Facebook, Google, LinkedIn, Microsoft, Telegram, Twitter, WhatsApp, and Zoom have temporarily stopped responding to HKSAR government requests for user information.[116] As noted above, TikTok has withdrawn from the Hong Kong market in response to the NSL.[117]

U.S. companies have expressed particular concern about Article 29, which prohibits "collusion with a foreign country or external elements to endanger national security."[118] Among the prohibited acts is receiving support to "commit" the imposition of sanctions or "other hostile activity" against the HKSAR or the PRC. Companies are reportedly worried that compliance with U.N. or U.S. sanctions against China or the HKSAR could be considered a violation of the national security law, and subject the company's Hong Kong office or staff to criminal prosecution. Similarly, Article 29's prohibition on the sale or possession of "State secrets or intelligence" is sufficiently broad and vague to possibly prohibit otherwise legitimate commercial activities. Businesses have raised parallel concerns about Article 26, which could expose social media companies to charges of supporting terrorist activities.[119]

A number of banks in Hong Kong are reportedly conducting internal audits to determine their exposure to possible compliance issues related to the Hong Kong Autonomy Act (P.L. 116-149), which could place restrictions on providing financial services to PRC and HKSAR officials if any are designated for sanctions by the U.S. government.[120] The banks face a conundrum as Article 29 of the national security law includes in the definition of collusion, "imposing sanctions or blockade, or engaging in other hostile activities against" the HKSAR or the PRC. The contradictions between the two laws may force banks to choose between doing business with sanctioning states or doing business with China and the HKSAR. Such a choice would leave unresolved the matter of compliance with sanctions requirements imposed by the U.N. Security Council.

[115] Cheryl Acribal, "Exodus of US Firms from Hong Kong to Avoid Sanctions Imposed in Wake of Security Law Would Hit Office Market Already Hurt by Unrest, Coronavirus," *South China Morning Post*, July 9, 2020.

[116] Paul Mozur, "In Hong Kong, a Proxy Battle over Internet Freedom Begins," *New York Times*, July 7, 2020; and Kelly Ho, "Zoom Suspends Data Requests from Hong Kong Gov't over National Security Law Concerns," *Hong Kong Free Press*, July 7, 2020.

[117] Ina Fried, "TikTok to Pull Out of Hong Kong," *Axios*, July 7, 2020; "TikTok Halts Hong Kong Access After Security Law" *BBC*, July 10, 2020.

[118] Wendy Wu, "Foreign Firms in Hong Kong face 'Huge Insecurity' over National Security Law," *South China Morning Post*, July 7, 2020.

[119] Tom Grundy, "Exclusive: Telegram to Temporarily Refuse Data Requests from Hong Kong Courts amid Security Law 'Terrorism' Fears," *Hong Kong Free Press*, July 5, 2020.

[120] Primrose Riordan and Leo Lewis, "Banks in Hong Kong Audit Clients for Exposure to US Sanctions," *Financial Times*, July 9, 2020.

Response of the Trump Administration

Prior to passage of the NSL, the Trump Administration made statements and announcements seeking to dissuade the PRC government from promulgating the NSL, including threatening to revoke Hong Kong's special treatment and impose sanctions on selected PRC and HKSAR officials. After the NSL went into effect, the Administration made additional statements and announcements expressing its disapproval. On July 14, 2020, President Trump signed the Hong Kong Autonomy Act (HKAA; P.L. 116-149) and issued Executive Order 13936 on Hong Kong Normalization, which implements some of the measures the Administration had previously threatened to take and establishes the means to impose sanctions.[121]

Select Administration Statements and Actions

On May 27, 2020, Secretary Pompeo informed Congress, under the United States-Hong Kong Policy Act of 1992 (USHKPA; P.L. 102-383, 22 U.S.C. 5701–5732), 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.[122] On May 30, 2020, President Trump stated that his Administration would eliminate "different and special treatment" for Hong Kong. He said the United States' new approach 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."[123]

Other recent Administration actions include the following:

- On June 12, 2020, the State Department amended the existing COVID-19 travel advisory for Hong Kong, adding language stating U.S. travelers to Hong Kong should "Exercise increased caution in Hong Kong due to **civil unrest, risk of surveillance, and arbitrary enforcement of laws other than for maintaining law and order**" [bold text is in the original].[124]
- On June 17, Secretary Pompeo joined his counterparts from the other members of the G-7 (Canada, France, Germany, Italy, Japan, the United Kingdom) plus the High Representative of the European Union in a statement on the NSL. It declared that China's decision to impose a national security law on Hong Kong "is not in conformity with the Hong Kong Basic Law and its international commitments under the principles of the legally binding, U.N.-registered Sino-British Joint Declaration."[125]

[121] Executive Office of the President, "The President's Executive Order on Hong Kong Normalization," 85 *Federal Register* 43413, July 17, 2020, https://www.federalregister.gov/documents/2020/07/17/2020-15646/the-presidents-executive-order-on-hong-kong-normalization.

[122] U.S. Department of State, "PRC National People's Congress Proposal on Hong Kong National Security Legislation," May 27, 2020. Section 205 of the USHKPA (as amended) states the Secretary of State, on "at least an annual basis, and in conjunction with the report required under section 301, shall issue a certification to Congress that indicates whether Hong Kong continues to warrant treatment under United States law in the same manner as United States laws were applied to Hong Kong before July 1, 1997."

[123] The White House, "Remarks by President Trump on Actions Against China," May 30, 2020.

[124] Department of State, "Hong Kong Travel Advisory," June 12, 2020.

[125] Department of State, "G7 Foreign Ministers' Statement on Hong Kong," press release, June 17, 2020.

- On June 26, 2020, Secretary Pompeo announced the imposition of visa restrictions on unnamed "current and former" Chinese officials "who are believed to be responsible for, or complicit in, undermining Hong Kong's high degree of autonomy, as guaranteed in the 1984 Sino-British Joint Declaration, or undermining human rights and fundamental freedoms in Hong Kong," and their family members."[126] China responded by threatening visa restrictions of its own on unnamed "U.S. individuals who have acted viciously on issues related to Hong Kong."[127]
- On June 29, 2020, Secretary Pompeo announced the United States was ending exports of U.S.-origin defense equipment to Hong Kong and would "take steps toward imposing the same restrictions on U.S. defense and dual-use technologies to Hong Kong as it does for China."[128] It was not clear from Secretary Pompeo's statement if this action is part of the enforcement of the provisions of P.L. 116-77, which requires a curtailment of commercial export licenses for certain munitions items to the HKPF.[129]
- Also on June 29, 2020, Secretary of Commerce Wilbur Ross suspended his department's "regulations affording preferential treatment to Hong Kong over China, including the availability of export license exceptions." Ross stated that "further actions to eliminate differential treatment are also being evaluated."[130]
- On June 30, Secretary Pompeo stated, "The Chinese Communist Party's decision to impose draconian national security legislation on Hong Kong destroys the territory's autonomy and one of China's greatest achievements," and repeated President Trump's pledge to "eliminate policy exemptions that give Hong Kong different and special treatment, with few exceptions."[131]
- On July 6, U.S. Consul General to Hong Kong Hanscom Smith referred to the national security law as "a tragedy for Hong Kong."[132] He also said the law was creating "an atmosphere of coercion and self-censorship" in the city and that the U.S. government was considering imposing additional sanctions.

Hong Kong Autonomy Act and Executive Order 13936

On July 14, 2020, President Trump signed The Hong Kong Autonomy Act (HKAA, P.L. 116-149). The act passed the House and the Senate by unanimous consent and was delivered to the President on July 2. The act authorizes the President to impose sanctions on "foreign persons" who are responsible for the erosion of China's fulfilment of its obligations under the Joint

[126] Department of State, "U.S. Department of State Imposes Visa Restrictions on Chinese Communist Party Officials for Undermining Hong Kong's High Degree of Autonomy and Restricting Human Rights," June 26, 2020.

[127] "China to Impose Visa Restrictions on U.S. Individuals Acting Viciously on HK-Related Issues," Xinhua, June 29, 2020, http://www.xinhuanet.com/english/2020-06/29/c_139175407.htm.

[128] Department of State, "U.S. Government Ending Controlled Defense Exports to Hong Kong," June 29, 2020.

[129] P.L. 116-77 is scheduled to sunset on November 27, 2020, in accordance with Section 3 of that act (133 Stat. 1174).

[130] Department of Commerce, "Statement from U.S. Secretary of Commerce Wilbur Ross on Revocation of Hong Kong Special Status," June 29, 2020, https://www.commerce.gov/news/press-releases/2020/06/statement-us-secretary-commerce-wilbur-ross-revocation-hong-kong.

[131] Department of State, "On Beijing's Imposition of National Security Legislation on Hong Kong," press release, June 30, 2020.

[132] "Security Law a Tragedy for Hong Kong: US Envoy," *RTHK*, July 6, 2020.

Declaration. In addition, the HKAA authorizes the President to impose sanctions on "foreign financial institutions that conduct significant transactions" with persons designated for sanctions under this act.

China responded to the President's signing of the HKAA by issuing a flurry of statements, including a Foreign Ministry statement, the fourth it had issued since December 2019 and the fourth in a row condemning the United States. The statement said, "The Chinese government firmly opposes and strongly condemns this move by the United States." It vowed, "China will make necessary response and sanction the relevant individuals and entities of the United States." The statement also urged the United States to "stop interfering in Hong Kong and other internal affairs of China in any way."[133]

Also on July 14, President Trump issued Executive Order (E.O.) 13936 on Hong Kong Normalization. In the E.O., the President declared a national emergency based on his determination that, "the situation with respect to Hong Kong, including recent actions taken by the PRC to fundamentally undermine Hong Kong's autonomy, constitutes an unusual and extraordinary threat ... to the national security, foreign policy, and economy of the United States."[134] Among other provisions, the E.O.:

- states that, "It shall be the policy of the United States to suspend or eliminate different and preferential treatment for Hong Kong to the extent permitted by law";
- authorizes the imposition of visa restrictions and economic sanctions on "any foreign person" that the Secretary of State and the Secretary of the Treasury, in joint consultation, determine was involved in or responsible for actions that undermine Hong Kong's autonomy, "undermine democratic processes or institutions" in Hong Kong, or limit the rights of Hong Kong residents, or was responsible for or complicit in the extrajudicial rendition, arbitrary detention, or torture of any person in Hong Kong or other gross violations of internationally recognized human rights or serious human rights abuse in Hong Kong, as well as on "any foreign person" who was "involved in developing, adopting, or implementing" the national security law;
- orders the executive branch to suspend the *Agreement with Hong Kong for the Surrender of Fugitive Offenders* and the *Agreement with Hong Kong for the Transfer of Sentenced Persons*, and "take steps to end the provision of training to members of the Hong Kong Police Force or other Hong Kong security services at the Department of State's International Law Enforcement Academies";[135]
- suspends differential treatment for Hong Kong under the Export Control Reform Act of 2018 (P.L. 115-232; 50 U.S.C. 4801 et seq.) and the Arms Export Control Act (P.L. 94-329; 22 U.S.C. 2751 et seq.);

[133] Ministry of Foreign Affairs of the PRC, "Statement by the Ministry of Foreign Affairs," July 15, 2020, https://www.fmprc.gov.cn/mfa_eng/zxxx_662805/t1797857.shtml.

[134] Executive Office of the President, "The President's Executive Order on Hong Kong Normalization," 85 *Federal Register* 43413, July 17, 2020, https://www.federalregister.gov/documents/2020/07/17/2020-15646/the-presidents-executive-order-on-hong-kong-normalization. For analysis of the Executive Order, see Cleary Gottlieb, "Executive Order Eliminates Differential Treatment for Hong Kong," July 21, 2020, https://www.clearygottlieb.com/-/media/files/alert-memos-2020/executive-order-eliminates-differential-treatment-for-hong-kong.pdf.

[135] *Agreement with Hong Kong for the Surrender of Fugitive Offenders*, Treaty Document 105-3, ratification agreed to by the Senate on October 23, 1997, https://www.congress.gov/treaty-document/105th-congress/3; *Agreement with Hong Kong for the Transfer of Sentenced Persons*, Treaty Document 105-7, ratification agreed to by the Senate on October 21, 1998, https://www.congress.gov/treaty-document/105th-congress/7.

- orders the executive branch "to eliminate the preference for Hong Kong passport holders as compared to PRC passport holders" with respect to the duration of nonimmigrant visas, and end treatment of Hong Kong as a separate "foreign state" from China for the purposes of the Diversity Visa program and per-country numerical limitations on immigration;
- orders the executive branch to reallocate refugee admissions within the ceiling set by an annual Presidential Determination "to residents of Hong Kong based on humanitarian concerns, to the extent feasible and consistent with applicable law"; and
- orders the executive branch to "take steps to terminate" Fulbright Program educational and cultural exchanges with both mainland China and Hong Kong.

The Executive Order cites authorities provided in the USHKPA, the HKHRDA, the HKAA, the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.; IEEPA), the National Emergencies Act (50 U.S.C. 1601 et seq.; NEA), Section 212(f) of the Immigration and Nationality Act of 1952 (8 U.S.C. 1182(f)), and Section 301 of Title 3, United States Code. It does not indicate which provisions are invoking which authority. The sanctions provisions, for example, include elements similar to those stated in the HKHRDA and the HKAA, as well as other elements not included in those laws.

Responses of Select Governments

At the U.N. Human Rights Council

On June 30, 2020, the United Kingdom's Ambassador to the World Trade Organization and the United Nations in Geneva delivered a joint statement on Hong Kong at the U.N. Human Rights Council on behalf of 27 countries, not including the United States.[136] (See **Table 4** below.) The statement expressed "deep and growing concerns" about the NSL and urged the PRC and Hong Kong governments to "reconsider" and "to engage Hong Kong's people, institutions and judiciary to prevent further erosion of the rights and freedoms that the people of Hong Kong have enjoyed for many years."[137]

Cuba's Ambassador to the United Nations delivered a counterstatement on behalf of 53 countries. It welcomed the national security legislation and stated, "Hong Kong affairs are China's internal affairs that brook no interference by foreign forces." The statement urged "relevant sides to stop interfering in China's internal affairs by using Hong Kong related issues."[138]

[136] It is not clear why the United States was not among the letter's signatories. Although the United States withdrew from the Human Rights Council in 2018, the signatories included other U.N. Member states that are similarly not members of the Council.

[137] Government of the United Kingdom, "UN Human Rights Council 44: Cross-Regional Statement on Hong Kong and Xinjiang," June 30, 2020, https://www.gov.uk/government/speeches/un-human-rights-council-44-cross-regional-statement-on-hong-kong-and-xinjiang.

[138] Permanent Mission of the PRC to the U.N. Office at Geneva and Other International Organizations in Switzerland, "Joint Statement delivered by Permanent Mission of Cuba at the 44th session of Human Rights Council," June 30, 2020, http://www.china-un.ch/eng/hom/t1793804.htm.

Table 4. Countries Expressing Either Criticism or Support for China's Handling of Hong Kong at the U.N. Human Rights Council

27 Countries Expressed Criticism; 53 Expressed Support

Countries Joining Joint Statement Criticizing China's Actions in Hong Kong and Xinjiang (27)	Countries Joining Joint Statement Supporting China's Action in Hong Kong (53)
Australia, Austria, Belgium, Belize, Canada, Denmark, Estonia, Finland, France, Iceland, Ireland, Germany, Japan, Latvia, Liechtenstein, Lithuania, Luxembourg, the Republic of the Marshall Islands, the Kingdom of the Netherlands, New Zealand, Norway, Palau, Slovakia, Slovenia, Sweden, Switzerland, and the United Kingdom	Antigua and Barbuda, Bahrain, Belarus, Burundi, Cambodia, Cameroon, Central African Republic, Comoros, Congo-Brazzaville, Cuba, Djibouti, Dominica, Egypt, Equatorial Guinea, Eritrea, Gabon, Gambia, Guinea, Guinea-Bissau, Iran, Iraq, Kuwait, Laos, Lebanon, Lesotho, Mauritania, Morocco, Mozambique, Myanmar, Nepal, Nicaragua, Niger, North Korea, Oman, Pakistan, Palestine, Papua New Guinea, People's Republic of China, Saudi Arabia, Sierra Leone, Somalia, South Sudan, Sri Lanka, Sudan, Suriname, Syria, Tajikistan, Togo, United Arab Emirates, Venezuela, Yemen, Zambia, and Zimbabwe

Source: Government of the United Kingdom, "UN Human Rights Council 44: Cross-Regional Statement on Hong Kong and Xinjiang," June 30, 2020, https://www.gov.uk/government/speeches/un-human-rights-council-44-cross-regional-statement-on-hong-kong-and-xinjiang. Dave Lawler, "The 53 Countries Supporting China's Crackdown on Hong Kong," Axios, July 2, 2020.

Australia

On July 9, 2020, Australia's Prime Minister Scott Morrison announced that his government is taking steps to suspend the nation's extradition agreement with the HKSAR.[139] He also indicated that Australia would extend the visas of Hong Kong residents to up to five years and allow Hong Kong residents to apply for permanent residency.[140] Australia provided a similar special immigration arrangement for Chinese nationals following the June 1989 Tiananmen Square crackdown.[141]

Canada

On July 3, 2020, Canada's Minister of Foreign Affairs, Francois-Philippe Champagne, announced a change to Canada's export controls policy, saying, "Effective immediately, Canada will treat exports of sensitive goods to Hong Kong in the same way as those destined for China. Canada will not permit the export of sensitive military items to Hong Kong." Champagne also announced that Canada was "suspending" its extradition treaty with Hong Kong and updating its travel advice for Hong Kong "to advise Canadians of the potential impacts of the new national security legislation."[142]

[139] Office of the Prime Minister of Australia, "Extradition Treaty with Hong Kong," press release, July 9, 2020.

[140] "Australia Warns Citizens in HK, Suspends Extradition," *RTHK*, July 9, 2020.

[141] Sue Green, "Chinese Students Win Right to Stay in Australia," *South China Morning Post*, November 2, 1993.

[142] Government of Canada, "Canada Takes Action Following Passage of National Security Legislation for Hong Kong," July 3, 2020, https://www.canada.ca/en/global-affairs/news/2020/07/canada-takes-action-following-passage-of-national-security-legislation-for-hong-kong.html.

Japan

Japan's Chief Cabinet Secretary Yoshihide Suga called the law "regrettable," and said, "The enactment of the national security law undermines the credibility of the 'one-country, two-systems' principle."[143] Prime Minister Shinzo Abe's Liberal Democratic Party approved a resolution calling for the Japanese government to cancel Chinese President Xi's planned visit to Japan.[144] The visit was originally scheduled for the spring of 2020, but was indefinitely postponed due to the COVID-19 pandemic.

Taiwan

Taiwan's Mainland Affairs Council on June 18, 2020, launched a "Hong Kong Humanitarian Aid Project."[145] It aims to provide assistance to those arriving in Taiwan from Hong Kong and "demonstrate the government's unwavering determination to care for Hong Kong citizens and its support for the transfer of Hong Kong capital and talent to Taiwan to participate in Taiwan's economic development." On July 1, 2020, the council opened a Taiwan-Hong Kong Office for Exchanges and Services, tasked with providing consultation services and assistance for Hong Kong residents arriving in Taiwan for "education, employment, investment, entrepreneurship, immigration, and settlement." The office also offers assistance to Hong Kong-based international companies exploring relocating their operations to Taiwan.[146]

United Kingdom

On July 1, 2020, British Foreign Secretary Dominic Raab told Britain's House of Commons that the NSL "constitutes a clear and serious breach of the Joint Declaration" signed between the United Kingdom and China in 1984. He added that

> having committed to apply the UN's International Covenant on Civil and Political Rights to the people of Hong Kong, China has now written into law wide-ranging exemptions, which cannot credibly be reconciled with its international obligations, or indeed its responsibilities as a leading member of the international community.

Raab announced that Hong Kong residents who hold British National Overseas (BN(O)) status and their dependents—an estimated 2.9 million of Hong Kong's population of eight million—will be allowed to live and work or study in the United Kingdom for five years.[147] At the conclusion of the five-year period, those eligible for the scheme will be allowed to apply for "settled status"—permanent residence—and, 12 months later, to apply for full British citizenship. Raab described

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[143] Jesse Johnson and Satoshi Sugiyama, "Tokyo Toughens Tone After Beijing Passes Hong Kong Security Law," *Japan Times,* June 30, 2020.

[144] Mari Yamaguchi , "Japan's Ruling Party Calls for Government to Cancel Xi Visit," *Washington Post,* July 7, 2020.

[145] Mainland Affairs Council, Republic of China (Taiwan), "Public Information on the Hong Kong Humanitarian Aid Project," June 18, 2020, https://ws.mac.gov.tw/001/Upload/297/relfile/8012/75961/2bccf36c-71a9-427c-a66d-e6c0dba51015.pdf

[146] Mainland Affairs Council, Republic of China (Taiwan), "MAC Minister Chen Ming-tong and THEC Chairperson Chang Hsiao-yueh Jointly Inaugurate the Taiwan-Hong Kong Office for Exchanges and Services and Hope for Support and Advice from All Sides," July 1, 2020, https://www.mac.gov.tw/en/News_Content.aspx?n=2BA0753CBE348412&sms=E828F60C4AFBAF90&s=E266426CF88E5963.

[147] According to the UK's Home Office, "Someone who was a British overseas territories citizen by connection with Hong Kong was able to register as a British national (overseas) before 1 July 1997," the date that the UK transferred sovereignty over Hong Kong to China. U.K. Home Office, "Media Factsheet: Hong Kong BN(O)s," May 29, 2020, https://homeofficemedia.blog.gov.uk/2020/05/29/media-factsheet-hong-kong-bnos/.

the program as "a special, bespoke, set of arrangements developed for the unique circumstances we face and in light of our historic commitment to the people of Hong Kong."[148]

On July 20, 2020, Raab announced two new measures. First, he stated that the UK would be extending to Hong Kong the arms embargo it has had in place against mainland China since 1989. Henceforth, he said, the UK will not export to Hong Kong "potentially lethal weapons, their components or ammunition." It will also bar exports of equipment that "might be used for internal repression, such as shackles, intercept equipment, firearms and smoke grenades." Second, noting that NSL had "significantly changed key assumptions underpinning our extradition treaty arrangements with Hong Kong," Raab said the UK was suspending its extradition treaty with Hong Kong. He raised particular concerns about Articles 55 to 59 of the NSL, which allow for cases to be prosecuted and tried in mainland China, stating that the NSL "does not provide legal or judicial safeguards in such cases." He also raised concerns about "the potential reach of the extra-territorial provisions" of the law, a reference to Article 38.[149]

Other Parliamentary Entities

In a July 1, 2020 statement, the European Union (EU) called on the PRC and HKSAR governments to fully comply with the ICCPR, and urged "China to avoid any act which undermines Hong Kong's autonomy in the legal field, including in terms of human rights."[150] On July 24, 2020, the Council of the European Union announced a decision to endorse "a coordinated package responding to the imposition of the national security law, to be carried out at EU and/or Member State level, as deemed appropriate," in nine fields. They are asylum, migration, visa, and residence policies; controls on the export of "sensitive equipment and technologies for end-use in Hong Kong," particularly those related to "internal repression"; scholarships for Hong Kong residents; support for Hong Kong civil society; observations of trials of the Hong Kong trials of pro-democracy activists; discussing risks to EU citizens presented by the NSL; "monitoring the extraterritorial effect" of the NSL; reviewing extradition agreements with Hong Kong; and "not launching any new negotiations with Hong Kong."[151]

The Inter-Parliamentary Alliance on China (IPAC), comprised of over 150 lawmakers from 16 countries and the European Parliament, has launched two Hong Kong-related campaigns.[152] One urges governments that have an extradition agreement with the HKSAR government to review and consider suspending such agreements.[153] Another advocates for legislation "to audit and

[148] United Kingdom Foreign and Commonwealth Office, "National Security Legislation in Hong Kong: Foreign Secretary's Statement in Parliament," July 1, 2020, https://www.gov.uk/government/speeches/foreign-secretary-statement-on-national-security-legislation-in-hong-kong. The U.K.'s Home Office announced details of the scheme on July 22, 2020. UK Home Office, "Home Secretary Announces Details of the Hong Kong BN(O) Visa," July 22, 2020, https://www.gov.uk/government/news/home-secretary-announces-details-of-the-hong-kong-bno-visa.

[149] United Kingdom Foreign and Commonwealth Office, "Hong Kong and China: Foreign Secretary's Statement in Parliament, 20 July 2020," July 20, 2020, https://www.gov.uk/government/speeches/hong-kong-and-china-foreign-secretarys-statement-in-parliament.

[150] European Council, "Declaration of the High Representative on behalf of the European Union on the adoption by China's National People's Congress of a National Security Legislation on Hong Kong," press release, July 1, 2020.

[151] Council of the European Union, "Council Conclusions on Hong Kong," July 24, 2020, https://www.consilium.europa.eu/media/45222/council-conclusions-on-hong-kong.pdf.

[152] Inter-Parliamentary Alliance on China, "Team," accessed July 29, 2020, https://www.ipac.global/team. Members of the U.S. Congress identified as IPAC members are Senators Bob Menendez and Marco Rubio, who serve as co-chairs, Senators Chris Coons and Mark Warner, and Representatives Joaquin Castro, Mike Gallagher, Anthony Gonzalez, Darin LaHood, Tom Malinowski, and Ted Yoho.

[153] Inter-Parliamentary Alliance on China, "No Extradition to Hong Kong," accessed July 29, 2020,

reduce strategic dependency on China," for protections for Hong Kong citizens in danger of persecution, and for the U.N. Secretary General to designate a U.N. Special Envoy "to monitor and report on Hong Kong."[154]

Possible Implications for Taiwan

The NSL appears to have given many in Taiwan new cause for concern about a January 2019 statement by Chinese leader Xi Jinping proposing a "one country, two systems" approach for Taiwan, a democracy of 23 million over which China claims sovereignty, and with which it has vowed to unify, but which it has never controlled. The United States terminated diplomatic relations with Taiwan in 1979, when the United States established relations with the PRC. The 1979 Taiwan Relations Act (P.L. 96-8; 22 U.S.C. 3301 et seq.) states, however, that it is U.S. policy "to maintain the capacity of the United States to resist any resort to force or other forms of coercion that would jeopardize the security, or the social or economic system, of the people on Taiwan."

The PRC originally developed its "one country, two systems" governance approach as an inducement to Taiwan to consider unification with mainland China. In 1981, then-NPCSC Chairman Ye Jianying offered a "nine-point proposal" for unification with Taiwan, including, "After the country is reunified, Taiwan can enjoy a high degree of autonomy as a special administrative region and it can retain its armed forces. The Central Government will not interfere with local affairs on Taiwan."[155] Although Taiwan has expressed no interest in such an arrangement, as China implemented its "one country, two systems" approach in Hong Kong after 1997, it made clear that it was doing so with an eye on Taiwan.

In January 2019, Chinese leader Xi suggested the time had come to "explore a Taiwan plan for 'one country, two systems.'" Xi stated,

> The specific form to realize "one country, two systems" in Taiwan will give full consideration to Taiwan's real situation.... Under the premise of ensuring national sovereignty, security, and development interests, the social system and life styles of Taiwan compatriots will be fully respected after the peaceful unification, and the private property, religious beliefs, and legitimate rights and interests of Taiwan compatriots will be fully guaranteed.[156]

Taiwan's President Tsai Ing-wen responded to Xi's 2019 remarks by stating, "I want to reiterate that Taiwan absolutely will not accept 'one country, two systems.'" She added, "The vast majority of public opinion in Taiwan is also resolutely opposed to 'one country, two systems,' and this opposition is also a 'Taiwan consensus.'"[157] In response to passage of the NSL, Tsai issued a

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https://www.ipac.global/campaigns/no-extradition. Kelly Ho, "Security Law: Global Coalition of Legislators Campaign to Axe Extradition Treaties with Hong Kong," *Hong Kong Free Press*, July 7, 2020.

[154] Inter-Parliamentary Alliance on China, "Campaign: Hong Kong," accessed July 29, 2020, https://www.ipac.global/campaigns/hong-kong.

[155] "Ye Jianying on Taiwan's Return to Motherland and Peaceful Reunification," interview with Xinhua News Agency, September 30, 1981, http://www.china.org.cn/english/7945.htm.

[156] "习近平：在《告台湾同胞书》发表 40 周年纪念会上的讲话" ("Xi Jinping: Speech on the 40th Anniversary of the 'Message to Taiwan Compatriots'"), January 2, 2020, http://cpc.people.com.cn/n1/2019/0102/c64094-30499664.html.

[157] Democratic Progressive Party, Taiwan, "President Tsai Issues Statement on China's President Xi's 'Message to Compatriots in Taiwan,'" January 2, 2019.

statement declaring that China had broken its promise to Hong Kong and "proven that 'one country, two systems' is not viable."[158]

Select Pending Legislation

Pending legislation in the 116th Congress to address the situation in Hong Kong includes the following.

- **The Hong Kong Be Water Act** (H.R. 5725, S. 2758) would require the President impose Global Magnitsky sanctions (visa bans and economic sanctions) on PRC or HKSAR government officials who have "knowingly suppressed or facilitated the suppression of the freedoms of speech, association, assembly, procession, or demonstration of the people of Hong Kong."[159]
- **The Hong Kong Freedom Act** (H.R. 6947) would allow the President to recognize Hong Kong as an independent country.
- **The Hong Kong People's Freedom and Choice Act** (H.R. 7428) would expedite the admission of Hong Kong's high-skill community and offer residency for Hong Kong residents who have fled to or found refuge in the United States.
- **The Hong Kong Safe Harbor Act** (H.R. 7415, S. 4110) would designate the people of Hong Kong as Priority 2 refugees, streamlining their admission process to the United States, and opening up an asylum route for frontline activists in immediate danger, while ensuring "that the United States Government continues to treat Hong Kongers as distinct from mainland China—despite the elimination of some autonomy for trade purposes."[160]
- **The Hong Kong Victims of Communism Support Act** (S. 3892) would prohibit the denial of a request for asylum from a Hong Kong resident "primarily on the basis of the applicant's subjection to politically motivated arrest, detention, or other adverse government action." It would also require the Secretary of State to, "develop a strategy for providing support and technical assistance to the United Kingdom of Great Britain and Northern Ireland, the Republic of China (Taiwan), the countries surrounding Hong Kong Special Administrative Region, and any other country offering to provide migration services and asylum to eligible Permanent Residents of the Hong Kong Special Administrative Region."
- **The PROTECT Hong Kong Act** (Placing Restrictions on Teargas Exports and Crowd Control Technology to Hong Kong Act) (H.R. 4270) would prohibit the export of certain defense items and services to the HKPF or the Hong Kong Auxiliary Police Force until the President certifies to Congress that the covered Hong Kong forces have not engaged in gross human rights violations for the one-

[158] Tsai Ing-wen, "Taiwan Supports Freedom in Hong Kong," statement released on Twitter, Tsai Ing-wen (@iingwen), June 30, 2020, https://twitter.com/iingwen/status/1277889561440337923. "Beijing's Move Shows 'One Country, Two Systems' Not Feasible: Tsai," *Focus Taiwan*, June 30, 2020, https://focustaiwan.tw/cross-strait/202006300009.

[159] The bill title refers to a quote attributed to martial arts master Bruce Lee that was used by protesters in 2019 to describe their flexible approach to organizing demonstrations, allowing for last minute changes in plans, or "flowing like water." For more Global Magnitsky sanctions, see CRS In Focus IF10576, *The Global Magnitsky Human Rights Accountability Act*, by Dianne E. Rennack.

[160] Office of Congressman Tom Malinowski, "Representative Malinowski Introduces the Hong Kong People's Freedom and Choice Act," press release, June 30, 2020.

year period leading up to the certification; there has been an independent examination of human rights concerns related to the covered forces' crowd-control tactics; and the Hong Kong government has adequately addressed such concerns.

Issues for Congress

United States relations with Hong Kong are governed primarily by the United States-Hong Kong Policy Act of 1992 (USHKPA; P.L. 102-383; 22 U.S.C. 5701–5732), which commits the United States to treating the HKSAR as separate from the rest of China in political, economic, trade, and other areas so long as the HKSAR remains "sufficiently autonomous." The act also states, "the human rights of the people of Hong Kong are of great importance to the United States and are directly relevant to United States interests in Hong Kong [and] serve as a basis for Hong Kong's continued economic prosperity."

In November 2019, Congress passed both the Hong Kong Human Rights and Democracy Act (HKHRDA), which amended the USHKPA, and P.L. 116-77, which prohibited the export of tear gas, rubber bullets, handcuffs, and other riot-control equipment and munitions to the Hong Kong Police Force and the Hong Kong Auxiliary Police Force for one year after enactment (in effect through November 26, 2020). The HKHRDA authorizes the President to impose sanctions on any "foreign person that the President determines is responsible for the extrajudicial rendition, arbitrary detention, or torture of any person in Hong Kong; or other gross violations of internationally recognized human rights in Hong Kong." The act also requires the President to submit to Congress a report "[n]ot later than 30 days after the President determines that legislation proposed or enacted by the Government of Hong Kong would put United States citizens at risk of extradition or rendition to the People's Republic of China or to other countries that lack protections for the rights of defendants." The report is to include "a strategy for protecting United States citizens and businesses in Hong Kong" in light of Article 38 of the National Security Law providing for, extraterritorial jurisdiction.

In formulating its possible responses to the NSL, Congress may consider its goals and objectives with respect to the situation in Hong Kong. In accordance with the USHKPA, Congress may consider whether it seeks restoration of Hong Kong's high degree of autonomy or the rights of Hong Kong residents. Congress may also consider whether to provide for the safety of Hong Kong residents who risk prosecution and imprisonment for expressing their political views, as well as for Hong Kong residents who no longer wish to live in the city as a result of the imposition of the NSL. Congress may consider, too, whether it seeks to provide support for those U.S. citizens and companies that wish to remain in Hong Kong, or assistance to those that wish to leave the city.

In crafting its response, Congress might consider the probable response of the PRC and HKSAR governments. Given the statements released by China's Central Government and the HKSAR government, punitive measures directed at the PRC and HKSAR governments may not elicit the responses Congress seeks. Congress might consider whether it seeks to support indirect measures aimed at non-governmental supporters of the national security law, such as key business leaders in Hong Kong and mainland China. Consideration of how other nations are responding to the situation in Hong Kong may be useful not only to learn about additional options, but also for possible multi-party coordination.

Witnesses at a July 1, 2020, House Committee on Foreign Affairs hearing on Hong Kong raised a number of questions for Congress.[161]

- Should the United States provide immigration options for Hong Kong political activists or for Hong Kong residents who no longer feel safe in the city? If so, should the United States designate Hong Kong residents as Priority 2 refugees, or consider some other status? Should the United States consider preferential treatment for residents with special skills or who own technology companies? Should the United States extend any safe harbor protections to Hong Kong residents with criminal records, mindful that a number of Hong Kong's leading democracy advocates have histories of arrest for their activities? To what degree should Congress factor in the protections offered by other countries, such as the United Kingdom?
- Should the United States join or lead efforts to persuade members of the U.N. General Assembly to seek a non-binding advisory opinion from the International Court of Justice on whether China has breached the terms of the U.N.-registered China-UK Joint Declaration on the Question of Hong Kong?[162]
- Should the United States consider supporting a recent call from 50 U.N. special rapporteurs, independent experts and working Groups for "[t]he establishment of an impartial and independent United Nations mechanism" to monitor and report annually on human rights in China, including in the HKSAR? The experts propose that such a mechanism could take the form of a U.N. special rapporteur, a panel of experts appointed by the U.N. Human Rights Council—from which the United States withdrew in 2018—or a Secretary General Special Envoy.[163]
- To what degree, if at all, should the United States engage with the U.N. Human Rights Committee's review of Hong Kong's fourth periodic report on its implementation of the International Covenant on Civil and Political Rights, informed by submissions by civil society organizations?[164] The review was originally scheduled for Session 129 of the Committee, which concluded on July 24, 2020, but due to COVID-19, the Human Rights Committee has postponed examination of Hong Kong's report until a later session.[165]

[161] U.S. Congress, House Committee on Foreign Affairs, *The End of One Country, Two Systems?: Implications of Beijing's National Security Law in Hong Kong*, 116th Cong., 2nd sess., July 1, 2020, https://foreignaffairs.house.gov/hearings?ID=878C9D04-7712-47A7-BC92-86E4C028F749.

[162] In congressional testimony, Carole J. Petersen noted, "in 2019, the ICJ issued an advisory opinion on whether decolonization was lawfully completed with respect to the Chagos Islands. And, although the U.K. wasn't very happy that that request was made; it was made because the majority of the General Assembly voted for it."

[163] United Nations Office of the High Commissioner for Human Rights, "UN Experts Call for Decisive Measures to Protect Fundamental Freedoms in China," June 26, 2020, https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26006&LangID=E.

[164] U.N. Human Rights Committee, "Fourth Periodic Report Submitted by Hong Kong, China Under Article 40 of the Covenant, Due in 2018," September 19, 2019, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=8&DocTypeID=45&DocTypeID=29.

[165] The website of the U.N. Office of the High Commissioner for Human Rights states, "Due to COVID-19, the examination of the state parties' reports (constructive dialogues) have been postponed to the 130th and future sessions," https://www.ohchr.org/EN/HRBodies/CCPR/Pages/CCPRIndex.aspx.

The Trump Administration has announced its intention to eliminate Hong Kong's "different and special treatment," with details provided in Executive Order 13936. The USHKPA and the HKHRDA, as well as other laws, such as the Global Magnitsky Human Rights Accountability Act (P.L. 114-328; P.L. 114-328, Title XII, Subtitle F; 22 U.S.C. 2656 note) or the anti-corruption and human rights measure enacted annually in the Department of State, Foreign Operations appropriations at Section 7031(c), provide the Administration with various authorities to implement such a policy. Beyond considering one or more of the bills already introduced, or additional legislation that may be introduced, Congress may also explore why the Administration has refrained from using some of the authorities provided to it in the USHKPA, the HKHRDA, and the HKAA.

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