

# DEMOCRACY IN HONG KONG

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HEARING  
BEFORE THE  
SUBCOMMITTEE ON EAST ASIAN  
AND PACIFIC AFFAIRS  
OF THE  
COMMITTEE ON FOREIGN RELATIONS  
UNITED STATES SENATE  
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# DEMOCRACY IN HONG KONG

THURSDAY, MARCH 4, 2004

U.S. SENATE,  
SUBCOMMITTEE ON EAST ASIAN  
AND PACIFIC AFFAIRS,  
COMMITTEE ON FOREIGN RELATIONS,  
*Washington, DC.*

The subcommittee met at 2:32 p.m., in room SD-419, Dirksen Senate Office Building, Hon. Sam Brownback (chairman of the subcommittee), presiding.

Present: Senator Brownback.

## OPENING STATEMENT OF SENATOR SAM BROWNBACK

Senator BROWNBACK. The hearing will come to order.

Today's hearing on Hong Kong is the first since 1999 and only the second hearing since the transfer of sovereignty in 1997. This hearing will review how Hong Kong functions as a special administrative region of China and it will examine U.S. policy with respect to the evolving situation in Hong Kong.

The future of Hong Kong is of personal interest to me. I enjoyed my trip to Hong Kong earlier this year where I had a chance to meet with some of our witnesses today. The future of Hong Kong is also of great interest to this committee, as well as other Members of the Senate as a whole.

The source of U.S. policy on Hong Kong is the 1992 Hong Kong Policy Act. That act allowed the United States to treat Hong Kong as a distinct entity, even as we recognize that it is legally a part of China. Hong Kong is a part of China, but its system of government is understood to be distinct from the system that governs the rest of the nation.

Our strong relationship with Hong Kong is based on this distinction. Hong Kong is a key trading partner because of its commitment to free markets. Hong Kong's open society is a valuable example to other Asian peoples experimenting with democratic reforms. Hong Kong is also a valuable ally on the war on terrorism. These characteristics illustrate why the United States supports a government in Hong Kong that is based on democracy.

In recent days, we have seen Beijing use official media sources to reject moves toward universal suffrage. Beijing also has begun to question the patriotism of those favoring democratic reforms. The reasons for these statements are unclear to me, but whatever the reasons for Beijing's concerns, they are unfounded. Patriotism and democracy go hand in hand, and Beijing has nothing to fear from the development of democracy in Hong Kong. After all, the

people of Hong Kong are not demanding independence and neither is the United States. In fact, last July's demonstrations in Hong Kong, as well as those in January, clearly indicate that people can air their grievances without undermining stability.

Today's hearing is first and foremost a discussion of U.S. policy. We will discuss how Hong Kong can build its democracy and what role the United States should play in that development. Hong Kong's residents continue to demonstrate the power of the people, and that power should be affirmed through democratic processes that make all government officials accountable to a voting public.

An essential part of this discussion is the Basic Law, the document that governs the Hong Kong Special Administrative Region. There is much confusion about the Basic Law and I hope we can have a meaningful discussion of it today. Whether the Basic Law can help us reach the goal of real democracy in Hong Kong remains an open question, but one thing should be clear: our goal of democratic reform should be met sooner rather than later.

In the end, Beijing must not obscure the meaning of two systems in its "one country, two systems" formula. The U.S. relationship with Hong Kong is based on the understanding that it will have a separate system of government and our Hong Kong Policy Act declares democratization to be a fundamental principle for U.S. Hong Kong policy. If there is one thing everyone can take from today's hearing, I hope it would be this: If Hong Kong is forced away from autonomy and democratization, U.S. policy will be forced to change as well.

We have three panels that will be presenting today on this topic and on this discussion. We will have questions back and forth. The first panel features Mr. Randy Schriver, who is Deputy Assistant Secretary of State for East Asian Affairs at the State Department. I look forward to his testimony.

Mr. Schriver, welcome to the committee. We are delighted you are here. Your full written testimony will be put in the record. You are free to summarize if you would choose to do so.

**STATEMENT OF RANDALL G. SCHRIVER, DEPUTY ASSISTANT SECRETARY OF STATE, BUREAU OF EAST ASIAN AND PACIFIC AFFAIRS**

Mr. SCHRIVER. Thank you, Mr. Chairman, and thank you for the opportunity to speak to you today about a very important topic at a very important time. We are here to talk about the future of Hong Kong and, in particular, the prospects for democratic development.

The underlying goal associated with U.S. policy has remained consistent both before reversion and after, and that is to help the people of Hong Kong preserve their way of life and their prosperity, as well as to contribute to political progress there. This is good for Hong Kong but also promotes U.S. interests.

We view Hong Kong today as still a work in progress. It is a unique political entity, established through source documents that we know, the Joint Declaration of 1984, the PRC/UK Joint Declaration, the subsequent promulgation of the Basic Law, but it is also defined as an entity after nearly 7 years of experience of the Hong Kong Government running most of its day-to-day affairs on its own.

So this is a very *sui generis* situation we have with Hong Kong. We have embraced this unique status, Mr. Chairman, as you mentioned, through our legislation which does give us the legal foundation to treat Hong Kong in a special way as an entity distinct from the PRC, but in a special way with respect to things like export controls. So this is unique. We have embraced that unique nature, but yet it is a work in progress, particularly when we start to look at questions related to the political evolution of Hong Kong.

What we can say, as a consequence thus far in the experience of the last 7 years, is that Hong Kong does remain a very free economy. Civil liberties have been protected. There remains freedom of the press, freedom of assembly, and strong rule of law. Though political freedoms continue to lag—and this is something that we will spend I think the majority of our time on—these liberties and rights that Hong Kong continues to enjoy are in fact very fundamental human freedoms. I would note also that they are necessary elements, though not, of course, sufficient in and of themselves, but necessary elements to sustaining a vibrant democracy so when the political elements follow, these other strong elements are already in place and will be to the benefit of the people of Hong Kong.

We do have profound interests in Hong Kong. There are over 50,000 Americans who work and live there, over 1,000 American firms operate there. Hong Kong is our 14th largest trading partner. There are significant foreign-directed investment of U.S. origin, and this is a very strong trade and economic relationship. Hong Kong is a modern, sophisticated economy, is also a strong partner of ours in regional and international economic and trade fora. They have been a partner, for example, in promoting economic openness in the Doha Round. I think these elements are well known and often cited, the economic and trade aspects.

I think it is also important to note, as you did, Mr. Chairman, in your statement, that we have been developing a bilateral relationship in areas that are very key to U.S. security interests as well. Hong Kong as a port is the No. 1 source of U.S.-bound sea containers. So their decision to join the Container Security Initiative and the implementation subsequent to that has been key to protecting our homeland, and those that have been involved with that program would tell you that Hong Kong is a model for those that are also beginning the process of implementing the Container Security Initiative.

Hong Kong has been a key partner in the war on terror. Particularly, they have played a very valuable role in counter-terrorism finance efforts, and they, of course, chaired the Financial Action Task Force in 2003, which plays a key role in curbing financial resources for terrorists.

Our law enforcement cooperation across the board is excellent. Hong Kong continues to be a port of call for U.S. ships, and Hong Kong's autonomous and effective system of export controls allows us to continue to rely on Hong Kong as a partner in the protection of sensitive technologies, not allowing those technologies to proliferate to places that they should not go.

So it is one of the freest cities in the world, and in fact the Index of Economic Freedom, which the Heritage Foundation and the Wall Street Journal publish annually, ranks Hong Kong as No. 1 as the

freest and most open economy in the world out of a list of 155 economies, and that is a place it has enjoyed for a decade, the top place. So this creates a comparative advantage for Hong Kong as an open economy. It also is to our advantage because many American firms choose Hong Kong as its Asia base of operation because of that openness and because they can count on the rule of law there.

Of course, the people of China as well also benefit from Hong Kong, and this is not just in the direct economic sense and the development and modernization that China has enjoyed through its relationship with Hong Kong, but it is also due to the fact that Hong Kong and its institutions are an excellent model for China to learn from.

But neither the Economic Freedom Indexes nor the economic openness address the questions of political freedom, and that is really where I would like to spend the rest of my time in the statement.

Mr. Chairman, you noted that the events of the last year have amply demonstrated the desire of the people of Hong Kong for a greater voice and to advance the democratization process that is their right under the Basic Law. The United States has been very clear. Our longstanding policy is that Hong Kong should move toward greater democratization and universal suffrage. The Hong Kong people have shown their desire for this and they have shown their strong interest in protecting their civil liberties, most notably last July the half a million people—Secretary Powell 2 days ago called them the brave 500,000 people—who took to the streets, who peacefully protested the national security legislation which they feared would impact their civil liberties, and again on New Years Day this year with 100,000 demonstrators also voicing their desires for greater democratization and political progress.

What is important at this juncture is that the Hong Kong Government consult fully with the people of Hong Kong on measures to move forward on democratization and toward a government that more fully represents the people of Hong Kong. The Hong Kong Government did the right thing last year when they pulled the legislation related to national security. They listened to the voice of the people. It is important now that they listen to the people on other aspects of political development and primarily we are speaking of the articles that relate to democratization and universal suffrage, specifically articles 45 and 68 of the Basic Law, which make clear that the ultimate aim is universal suffrage.

Hong Kong is clearly ready for this. We have seen progress at a more local level. We noted the November elections for the District Council and the 400 seats there. This is the level, of course, where the roots of the institution of democracy are planted. Hong Kong has this experience with the District Council elections. Hong Kong is a very sophisticated, mature, cosmopolitan society. They are clearly ready to begin this process of consultation and move in the direction we all hope they will.

China has a vital stake in Hong Kong's evolution. If it is true, as Premier Wen Jiabao said in Bali last year, that Hong Kong people can govern Hong Kong well, then it is only natural that the people of Hong Kong should have a voice in the development of



Hong Kong's democracy. What they are asking for, as you noted, Mr. Chairman, is not a separate Hong Kong, not a separate status or independence. What they are asking for is for a voice and for a government that is responsive to their will and what was promised to them and what is their right in the Basic Law.

Today's disagreements in Hong Kong are not simply about policy. They are a lot about process and about how to govern. They are clearly not about whether one person or one group is imbued with more or less patriotic fervor. Many residents in Hong Kong feel as though their future and their future success is best secured by political reform. An unproductive debate about who is more patriotic or less patriotic or if there is foreign interference in Hong Kong's development is at best a diversion but, more troubling, could actually be destructive to Hong Kong's political evolution and political progress.

Our view is that the people of Hong Kong have made this point repeatedly and have expressed their desires very clearly in the past 8 months, and it is time for the government of Hong Kong to listen and it is time for China to listen as well. Important decisions and choices will be made in Hong Kong, but it is also true that important decisions and choices will be made in Beijing with respect to Hong Kong's future. Chinese sovereignty is a reality that will affect and heavily influence the success of those that are dedicated to democracy in Hong Kong.

Certainly some of the recent statements attributed to authoritative voices in Beijing reflect a profound discomfort with the development of democracy in Hong Kong. Some in China, as I made reference to earlier, have gone so far as to say that the demonstrations last July and on New Years Day were the result of a shadowy foreign element or foreign hand. We feel this reflects a very fundamental misreading of the role of public debate in open society. We feel, of course, that public debate serves to promote the kind of development that will, in fact, secure Hong Kong's prosperity, but also the stability which Beijing talks about. The key to stability is, in fact, giving the people a voice and providing them a government that is responsive to their will, as is their right under the Basic Law.

These voices notwithstanding, there is one thing on which we can all agree. We want, and we do need, Hong Kong to succeed. Again, in our view the best way to ensure that success is to continue the movement toward democratization. While respecting Chinese sovereignty, we make these very points in a straightforward manner in Hong Kong and in Beijing. It is important that China understand our interests here and that our interests are in the preservation of Hong Kong's current freedoms, but also in the continued democratization of Hong Kong. U.S.-China relations will suffer if the cause of freedom and democracy in Hong Kong suffers. That outcome would not be good for people in Hong Kong, in Beijing, or in the United States.

In conclusion, despite all the changes in the past 11 months, what has not changed is our interest in Hong Kong and our fundamental interest in the protection of human rights and the promotion of democratic institutions. Hong Kong residents can be proud of the work that they have done to try to secure political

progress and achieve political progress for their future and what they have achieved.

As Secretary Powell stated 2 days ago at Heritage's B.C. Lee lecture when he spoke about the brave half million people, it is important to all of those who cherish democracy that Hong Kong remain open and tolerant and that its political culture continue to thrive under the Basic Law with China. This administration will continue to communicate this view to Hong Kong, to the people, the government there, as well as the central authorities in Beijing.

With that, Mr. Chairman, I look forward to your questions.  
[The prepared statement of Mr. Schriver follows:]

PREPARED STATEMENT OF RANDALL G. SCHRIVER

Mr. Chairman, thank you. I appreciate the opportunity to testify before the Committee today about a subject that engages Americans and America's interests directly: the future of Hong Kong, including the prospects for democratic development in Hong Kong.

The underlying goal associated with U.S. policy toward Hong Kong before and after the 1997 reversion has been consistent: it is based on our desire to help the people of Hong Kong preserve their prosperity and way of life. This also promotes important U.S. interests.

Hong Kong is a work in progress and the people of Hong Kong face the challenge of redefining their economic and political structure. The 1984 Joint Declaration of the UK and the PRC, the subsequent promulgation of the Basic Law, and Hong Kong's sustained, autonomous management of its day-to-day affairs laid a foundation for Hong Kong's continued economic success, as well as its political development. The United States embraces and supports Hong Kong's uniqueness through passage and implementation of the Hong Kong Policy Act of 1992 which established the legal authority to treat Hong Kong as an entity distinct from the People's Republic of China.

As a consequence of these agreements and legislation, Hong Kong in the years since reversion has continued to enjoy economic freedoms, civil liberties, freedom of press and assembly, and strong rule of law. Though some political freedoms continue to lag—a trend I will address in detail later on—the liberties and rights Hong Kong has enjoyed contribute to the preservation of fundamental human freedoms. I might also add that they are necessary, though not sufficient in and of themselves, to sustaining a vibrant democracy.

America has a profound interest in commitment to the success of Hong Kong. Some 50,000 Americans live and work there. Hong Kong hosts more than 1,000 American firms there, 600 of which have regional operational responsibilities and employ a quarter of a million people. Cumulative American foreign direct investment in Hong Kong, a region with nearly seven million residents, totaled over \$35 billion at the end of 2002. We also have considerable trade interests in Hong Kong. Total exports of goods and services amounted to \$16.8 billion in 2002, while imports of the same reached approximately \$13.3 billion, making Hong Kong our 14th largest trading partner.

With global trade in goods at \$408 billion, Hong Kong has a vital interest in liberalizing trade internationally. During recent trade discussions at Cancun, we counted Hong Kong among the most vocal and effective supporters of open market principles, and, more generally, Hong Kong has been at the forefront of efforts in the Doha Round to reduce barriers to trade.

Beyond the trade and investment statistics, there exists an evolving but vital bilateral cooperation with Hong Kong authorities which greatly enhances America's security. Hong Kong, the single largest source of U.S.-bound sea containers, joined the Container Security Initiative in September 2002 and made its program operational eight months later in May 2003. In joining the CSI, the Hong Kong Government underscored our common interest in protecting the smooth functioning of the global trading system in the face of terrorist threats. In addition to CSI, Hong Kong, the second largest financial market in Asia, has worked closely with us and through the premier global institution for attacking money laundering, the Financial Action Task Force, which Hong Kong chaired in 2003, to find ways to cut off terrorist access to financial sources. Law enforcement cooperation, across-the-board, has been excellent and targeted at protecting the safety and well-being of the people of Hong Kong and America alike. And Hong Kong has been a welcoming port-of-call for visits

by American ships; the carrier Kitty Hawk and its battle group will visit Hong Kong later this week.

I would also note that Hong Kong has an effective, autonomous, and transparent export control regime that is strengthened through pre-license checks and post-shipment verification of Hong Kong companies by U.S. Department of Commerce representatives. During the mid-February visit to Hong Kong by Commerce Assistant Secretary Julie Myers, Hong Kong government officials agreed to work with us to strengthen our already close cooperation. They well understand the importance of ensuring that the basic infrastructure supporting our export control cooperation is in good shape. Our exports of high technology commodities to Hong Kong depend on the integrity of Hong Kong's separateness and on the effective and vigorous enforcement of Hong Kong's export control rules and regulations.

What this all means is that in most respects the people of Hong Kong remain in charge of the important aspects of their destiny. It is one of Asia's freest cities and on the Index of Economic Freedom, a measure that was co-published on January 9 by the Heritage Foundation and The Wall Street Journal, Hong Kong ranks at the top of a list of 155 economies surveyed—and has been in the number one spot for ten years. This economic openness matters. It is one of the reasons that many American firms choose Hong Kong as their Asian base. They can count on the rule of law to protect their investments and promote their unfettered operation.

As a result, the people of Hong Kong look forward to a future based on a continuation of today's freedoms and progress toward democratization. The Chinese government in Beijing itself has said that in the future, the people of Hong Kong will govern themselves and will hold their leaders accountable.

Hong Kong's openness, its international status, its welcoming attitude to business people throughout the world, its active participation in economic organizations, including the World Trade Organization—these are elements of Hong Kong's comparative advantage.

The people of mainland China benefit from Hong Kong's openness as well. Hong Kong has played a key role in helping alter the landscape in China, especially in South China, where ten million workers or more in at least 65,000 Hong Kong-run factories are gainfully employed and learning how to do business with an international focus, and according to free market principles. Hong Kong provides access to capital markets and listings on the Hong Kong stock exchange for PRC companies that are also becoming more international in their orientation everyday. And Hong Kong institutions such as the Independent Commission Against Corruption are a model for the PRC government's own efforts in dealing with corrupt practices.

But neither the Economic Freedom Index nor the economic openness of Hong Kong measures political freedom and it is this subject and the issue of democracy that I want to address in a bit more detail.

Events of the past year have amply demonstrated the desire of the people of Hong Kong to advance the democratization process, as is their right under the Basic Law. The United States has been very clear: our longstanding policy is that Hong Kong should move toward greater democratization and universal suffrage. The Hong Kong people have shown their desire for movement on this issue and the protection of civil liberties. Last July 1, a half million Hong Kongers peacefully protested national security legislation (Article 23), subsequently withdrawn by the government, that had the potential to restrict their civil liberties. The people of Hong Kong spoke, eloquently and peacefully, of their desire for a more effective, more democratic, more responsive government. The New Year's Day 2004 demonstration of 100,000 people in Hong Kong was another reflection of the desire of the Hong Kong people to advance the democratization process.

What is most important at this juncture in Hong Kong's ongoing evolution is for the Hong Kong Government to consult fully with the public on measures to move toward a government that more fully represents the interests of the people. We applauded the Hong Kong Government's willingness last year, in the aftermath of the July demonstrations, to consult with the governed before moving forward with the proposed national security legislation. We think it is just as important now to listen to the public with regard to enlarging Hong Kong's democratic experiment, as envisioned in Articles 45 and 68 of the Basic Law, which make clear the ultimate aim of universal suffrage. In fact, Hong Kong's Secretary for Constitutional Affairs Stephen Lam said on October 20, 2003 that "we need to listen to views in society on what proposals we should consider over the constitutional reform of 2007." I can think of no better argument for effective and continuing public debate than this statement.

As Secretary Powell said in hearings on the budget in January, "We join the people of Hong Kong in urging open and frank discussion to promote constitutional reform and democratization through electoral reform and universal suffrage."

In this context, we commend the Hong Kong Government's conduct of late November elections for the District Council's 400 seats as showcasing democracy at its best—at the grass roots where people live and work and their representatives deal with mundane issues of popular concern—from collecting garbage to the quality of the local school systems. It is at this level that the roots of the institution of democracy are planted, where political leaders emerge and are trained and help build the kind of public consensus and unity that is necessary in the life of any democratic society. Strengthening and encouraging these building blocks of democracy will strengthen and expand the quality of civic and political engagement in Hong Kong.

China has a vital stake in Hong Kong's evolution. In fact, Premier Wen Jiabao recognized just that in remarks he made last October in Bali. If, as the Premier said then, "Hong Kong people can govern Hong Kong well," then it is only natural that the people of Hong Kong should have a voice in the development of Hong Kong's democracy. What they are asking, it seems clear to me, is not for a Hong Kong separate from the mainland; that issue was long settled before reversion in 1997. Hong Kongers are asking for government that is more responsive to the will of the people.

Democracy is predicated on the assumption that there will be disagreements, and disagreements are settled in democracies by the ballot box. Today's disagreements in Hong Kong are over how best to govern, not on whether one person or one group is imbued with more or less patriotic fervor. I have little doubt that the people of Hong Kong, government and citizens alike, are dedicated to maintaining prosperity and stability in the context of the arrangements made for the return of Hong Kong to Chinese sovereignty in 1997. Many of them believe Hong Kong's future is best served by reform of the political structure and better communication between government and the governed. An unproductive debate on who is the most patriotic or whether some people in Hong Kong are being influenced by outsiders is the last thing that men and women of goodwill should engage in; what could work best is for all parties, across the political spectrum in Hong Kong, to forge responsible positions that contribute to the resolution of Hong Kong's governing structure.

Our view is that the people of Hong Kong have made that point repeatedly in the past eight months to their government and that it is time for the governments in Hong Kong—and in China—to listen to them.

Important decisions and choices must be made by the authorities in Hong Kong. Chinese policymakers in Beijing will also make decisions regarding Hong Kong's future. Chinese sovereignty is a reality that will heavily influence the success of those dedicated to democracy in Hong Kong. Certainly some of the recent statements attributed to authoritative voices in Beijing reflect a profound discomfort with the development of democracy in Hong Kong. Some in China have gone so far as to suggest that the peaceful demonstrations in Hong Kong in support of universal suffrage are inspired by shadowy, foreign elements. This notion reflects a fundamental misreading of the role of public debate in an open society, which in fact serves to promote the kind of political, economic, social and civic development that is essential to Hong Kong's stability and prosperity and, we believe, to China's interests as well.

Those voices notwithstanding, there is one thing on which we all can agree—we want and need Hong Kong and its people to succeed. In our view, the best way to ensure Hong Kong's sustained success is continued movement toward democratization. Modern political rights and freedoms are essential to the success of a cosmopolitan and sophisticated society as found in Hong Kong. These attributes undeniably and irrevocably go together.

While respecting Chinese sovereignty, we make these very points in a candid, straightforward manner to our interlocutors in Hong Kong and Beijing. It is important that China understand our strong interest in the preservation of Hong Kong's current freedoms, as well as our interest in the continued democratization of Hong Kong as called for in the Basic Law. U.S.-China relations will suffer if the cause of freedom and democracy suffers in Hong Kong. None of us—in Hong Kong, in Beijing, in Washington or elsewhere—would benefit from such an outcome.

Before I conclude, Mr. Chairman, let me quote from the 2003 Hong Kong Policy Act Report which reviewed trends as of April 1, 2003, well before the most recent ferment in Hong Kong. Despite all the changes of the past eleven months, what has not changed is our interest in Hong Kong, in "the protection of human rights and the promotion of democratic institutions. Hong Kong residents share many values and interests with Americans and have worked to make Hong Kong a model of what can be achieved in a society based on rule of law and respect for civil liberties."

It is important to us and to those who respect and cherish democracy around the world that Hong Kong remain an open and tolerant society, one with a vibrant and evolving political culture. This Administration will continue to communicate this

view to the Hong Kong Government, the central government authorities in Beijing and the people of Hong Kong.

With that, Mr. Chairman, I would be delighted to take your questions.

Senator BROWNBACK. Thank you very much, Mr. Schriver. Thank you for the strong position the administration has taken. What the Secretary said 2 days ago in the meetings, what National Security Advisor Condoleezza Rice said yesterday with Mr. Martin Lee, the lead democracy advocates, the administration has been very clear and very forthright and I appreciate your strong position and statement on this.

I wanted to ask you a couple of questions on it. Considering the ambiguity of many of the provisions in the Basic Law, are you satisfied that the Basic Law provides Hong Kong with the means to meet the democratic aspirations of its people? In other words, is the basis there in the Basic Law to move toward universal suffrage for the people of Hong Kong for their leadership in Hong Kong, the Legislative Council, the leadership just within Hong Kong?

Mr. SCHRIVER. I think if the Basic Law is faithfully implemented, the foundation is there. I think, because of the ambiguity, the key is what are the aspirations and the expectations of the people of Hong Kong and what is it that is being delivered to them. If there is a gap there and a significant gap, then we have to call into question if this is a foundation that is strong enough to get the kind of political progress that Hong Kong needs and deserves. So because of ambiguity, I think that is the key measure, what are the expectations and what is actually being delivered to them, and clearly there are some signs that are troubling and some statements that are troubling. But the very basic point, yes, if faithfully implemented, I believe the foundation exists.

Senator BROWNBACK. The administration's view is that they can move toward universal suffrage and indeed the Basic Law provides for a movement to universal suffrage for the people of Hong Kong.

Mr. SCHRIVER. Yes, sir.

Senator BROWNBACK. A number of people are watching, obviously, what takes place in Hong Kong. How is the rest of Asia viewing the events in Hong Kong and its public demonstrations for democracy? Do you get a feel from your position as Deputy Assistant Secretary on East Asian and Pacific Affairs of how this is being viewed throughout Asia?

Mr. SCHRIVER. I have some sense of it, Mr. Chairman. I think it is watched very carefully not only by those who have developing democratic institutions themselves, but those that have developing relationships with China, and they want to make judgments about how China will behave, how China will be responsive to democracies. I think throughout Asia the key point that has impressed people is that the economic freedoms have been sustained and Hong Kong as a trading partner for the respective Asian countries has essentially been unimpeded since reversion.

But again, I think the kinds of concerns that we have about democratization is shared by other democracies in Asia and I think virtually every country is watching China, how it responds, if it will respond in a sophisticated manner, perhaps, worst case, a heavy-handed manner. People will make judgments about how

China might behave in their own bilateral relationships, even though this is an internal matter from a Chinese perspective.

Senator BROWNBACK. When I was in Hong Kong in January, a number of statements and accusations were put forward by the Beijing Government. They put linkages between the development of the Hong Kong policy and their view and ties toward Taiwan. Can you articulate the view of the administration of any parallels or any connections between U.S. views toward Hong Kong and a relationship with Taiwan with the move toward democratization in Hong Kong?

Mr. SCHRIEVER. Well, our support for democracy is universal, whether it be in Hong Kong, Taiwan, or anywhere else. We have been very supportive of the democratization in Taiwan. We have been supportive of that development. There is an election coming up there that is of great interest to us, but we are proud and we admire what they have done there.

I think China has a certain view about the relationship between the development in Hong Kong and events on Taiwan because, of course, they would tell you that the model of "one country, two systems" was developed with Taiwan in mind prior to the Hong Kong experience. So they have some incentive to want that to succeed, to do well, so it will be an attractive model to Taiwan.

I think they are two very different cases and how we manage the policy is very different. The similarity being, we have guidance from the Congress and we have policies that are embedded in U.S. law, but the Hong Kong Policy Act and the kind of relationship we are able to develop with Hong Kong I think is very different than the kind of relationship we develop with Taiwan.

Taiwan's democratization has essentially been rapid and been successful, and though Beijing has certainly been uncomfortable with it and has adopted a posture that is at times threatening and coercive, for the most part Taiwan's democratization has been unimpeded from Beijing's intimidation. Again, there has been remarkable progress in less than a decade. Their first Presidential election was less than 10 years ago. So this has been a rapid development and essentially I think unimpeded from events in Beijing.

Senator BROWNBACK. It has been my assertion on this issue that it is good for Beijing, it is good for Hong Kong, and it is good for the world if Hong Kong is allowed to develop on democratization. It sends the right signals to Taiwan, not the wrong signals. It will move toward more stability and attract probably more investment and more support for Hong Kong. And yet, the Beijing Government continues to fight this, even though there is a clear march of history toward democracy as well. I do not understand the reticence on the part of the Beijing Government. Can you give that to me in light of your discussions with them on this issue?

Mr. SCHRIEVER. It is always difficult to speak with great clarity and specificity when you are trying to give the Chinese perspective on something. I think they do have an interest in Hong Kong succeeding and this model succeeding, but they also value the political control and keeping firm rudder control on developments.

I think one of the ironic things is there really is so much that we could agree on with China on matters related to Hong Kong. We want it to succeed. We think Hong Kong's success would best

be ensured through implementation of the Basic Law, which China would say the same, and we do want stability and continued prosperity in Hong Kong. Our very strong view is that stability is best ensured through democratization. Maybe that is where the divergence is, that they have a different comfort level with democratization, the pace and the scope, and how that could affect stability.

I would posit that you are more likely to get people out on the streets again if people continue to feel frustrated that their voice is not heard, that they do not have a government that is responsive to them, and that there is not progress on implementation of these articles related to universal suffrage. If stability is the ultimate goal, which is not our only goal, but if it is part of what you are seeking, we are very clearly of the mind that democratization is key to that.

Senator BROWNBACk. Well, thank you very much for your position and your view, and thank you very much for the administration's strong statement. I hope this continues to be a very high priority item within the administration to press universal suffrage for the people of Hong Kong.

Mr. SCHRIVER. Thank you, Mr. Chairman.

Senator BROWNBACk. Our second panel includes four guests from Hong Kong. I would like to make it clear at this point that we extended invitations to officials from Hong Kong Progressive Alliance and the Democratic Alliance for the Betterment of Hong Kong to testify this afternoon. Those invitations were declined. We do have three members of the Hong Kong Legislative Council, including Mr. Martin Lee, the founder of Hong Kong's largest democratic party, Mr. James To, and Mr. Cheuk-yan Lee. In addition, we have Mr. Yuk-Kai Law, Executive Director of the Hong Kong Human Rights Monitor.

Because of the number of witnesses we have today, it will be necessary for all witnesses to observe the time limits and to summarize their statements, if possible. I would note to all of you that your written testimony will be included in the record, so you are free to summarize in your presentations.

I also want to say a thank you to all of you gentlemen for being here today. I know you have suffered personal name-calling and characterizing that is completely unfair. I regret that you have had to go through that, and I also want to thank you for being here and for putting clearly as well that if you could go to Beijing, you would cancel your trip to Washington. It seems odd to me that I can go to Beijing and you cannot. I look forward to trying to understand a little better why that dichotomy exists.

With that, I am delighted to have each of you here. Mr. Martin Lee, we look forward to hearing your testimony first and then we will hear the other panelists in the order I introduced them.

**STATEMENT OF MARTIN LEE, MEMBER, LEGISLATIVE  
COUNCIL, HONG KONG**

Mr. MARTIN LEE. Thank you, Mr. Chairman, for giving us an opportunity to come to your country and explain to you what is actually happening in Hong Kong.

I will start with the history of democracy in Hong Kong. It really only started in 1985 when the legislature had our first-ever elected

members. Now, but in that year there were not democratically elected legislators. I was elected by the lawyers, and I remember after the votes came in and I was declared the winner, I held my first-ever press conference as a politician, and I was asked this question. What would you like to do now that you are in the Legislative Council? I said, very simple. Next time, that is, 1988, I do not want to be elected by the lawyers. I wanted to be elected by the people of Hong Kong. That was my first democratic dream. It was dashed because there were no democratic elections in 1988. It only came in 1991 after the Basic Law was promulgated on the 4th of April 1990. On that occasion I did run for the Hong Kong island and I was elected.

Then we look forward, Mr. Chairman, and I have to come, therefore, to the Basic Law because that is our mini-constitution. It was passed exactly 10 months after the tragic events of Tiananmen Square on the 4th of June 1989. But in spite of that, the way forward was clearly set out in article 45 and article 68 of the Basic Law which prescribed very clearly that the ultimate aim is to have the Chief Executive to be elected by universal suffrage and likewise the entire legislature. Then Annex I says we could actually have a Chief Executive to be democratically elected in the year 2007 and the entire legislature in 2008.

This is the ongoing debate in Hong Kong. Mr. Chairman, you should have watched the wonderful demonstration on the 1st of July last year. It was, I suggest, the most dignified demonstration the world has ever seen. The people were angry when they went to the demonstration, angry with the government, but when they saw there were so many other people here, they became very happy. I was there, Mr. Chairman, and I saw happiness written on every face. It was a dignified demonstration because people had to wait on an average of 3 hours, at least, before they could actually start the march, but they were patient. There was not any angry word spoken.

The question now is what do we do now about democracy in Hong Kong. The Beijing Government thought at first that if they would give a lot of economic benefit to the Hong Kong community, that would dampen the enthusiasm for democracy. But it did not turn out that way.

On the 23rd of November last year at our District Council elections, the pro-Beijing parties were crushed. We won with a very, very large margin that we did not expect to be so. Beijing became worried, extremely worried, that in the forthcoming Legislative Council election on the 12th of September this year the democratic camp will be able to muster a majority in the Legislative Council.

Beijing has, therefore, ordered the Hong Kong Government to stop everything. The Beijing Government does not even want the Hong Kong Government to announce a time table as to when the Hong Kong Government will consult with the people of Hong Kong as to the way forward. The general perception, therefore, Mr. Chairman, is that there is too much intervention from Beijing in this very internal affair in Hong Kong. Namely, do the people of Hong Kong want earlier democracy or later?

But this should not be. The Beijing leaders should have no fear about the results of democracy in Hong Kong. Nobody in Hong



Kong wants independence for Hong Kong, unlike Taiwan, and our party, the democratic party, has always supported the one China policy. We strongly support the “one country, two systems” policy enshrined in both the Joint Declaration and the Basic Law.

There are varying signals in the recent weeks, but we are confident of the long-term future because we have confidence in the new leaders in Beijing, President Hu Jintao and Premier Wen Jiabao. Both of them have traveled overseas recently and both of them have spoken of their desire and ambition to bring about democracy to China. It may not be the same sort of democracy that you, Mr. Chairman, are used to, but it is a very useful beginning. They are talking about respecting the will of the people, and that I would submit is the beginning of democracy.

Hong Kong people have learned to trust these new leaders. Recent public opinion polls show that Hong Kong people have more confidence in the Beijing leaders than our own leader, Mr. Tung Chee-hwa in Hong Kong, but because of the strong criticism of the advocates for democracy in Hong Kong, the most recent poll showed that the popularity ratings of our top Chinese leaders have come down slightly.

I hope and I am confident that the trouble we are facing in Hong Kong is short-term. I have confidence that the leaders, when they finally understand what is really happening in Hong Kong, will put their fears away so that they can also learn to trust the Hong Kong people, because what we need is mutual trust. We have learned to trust them. I hope they will soon learn to trust us.

My vision, Mr. Chairman, is not only for my country to remain a big country. I want to see it becoming a great nation where the human rights of the 1.3 billion people in China will be respected by those in government and will be protected by the rule of law.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Martin Lee follows:]

PREPARED STATEMENT OF MARTIN LEE

Mr. Chairman and Members of the Committee:

Thank you very much for this opportunity to discuss the history and importance of the development of democracy in Hong Kong.

Being one of the elected representatives of Hong Kong and having been engaged in the campaign for democracy for more than two decades, I am morally obliged to explain to the international communities the ongoing situation of Hong Kong, and the aspirations of our people for democracy.

I am perplexed when I hear criticisms in Hong Kong about my loyalty to my country. But I will never be inhibited about speaking. All along, it is well known that I have supported the reunification of Hong Kong and Taiwan with my country; I oppose the independence of Taiwan and Tibet, and I have the vision that the success of “One Country Two Systems” policy in Hong Kong would be conducive to our reunification with Taiwan and beneficial to the modernization of China.

On December 19, 1984, the Sino-British Joint Declaration was signed, setting out the terms of the resumption of sovereignty of Hong Kong to China. In this important treaty, our Chinese government pledged to the international communities and to Hong Kong people that our freedoms and way of life would continue unchanged for 50 years.

Hong Kong people were also promised “a legislature constituted by elections” and that all of our present day rights and freedoms would continue. These solemn international guarantees were used to seek the support of the international and Hong Kong communities.

Since then, the international communities have taken a natural interest in the development of democracy and the preservation of basic freedoms in Hong Kong.

I welcome this hearing as a continuation of our regular provision of information about developments in Hong Kong's historic transition.

#### THE BENEFITS OF DEMOCRACY

Hong Kong people have had democratic elections for a minority number of seats in the Legislature since 1991, and we have a free press, an independent judiciary and a lively civil society.

In order to preserve these rights and win the support of the international communities, both the Joint Declaration and the Basic Law, Hong Kong's mini-constitution, envision a gradual process of democratization with a full democracy as the defined ultimate goal. The Basic Law would allow the election of our Chief Executive in 2007, and of the entire Legislative Council in 2008 by universal suffrage, subject to a change to the electoral rules according to certain defined procedures. A constitutional reform in 2007 is called for in the Basic Law.

The poor performance of the Tung Chee-hwa's administration has reminded Hong Kong people that a democratic and an accountable system as promised is essential for our future. They are now understandably eager to see the promises fulfilled. Public opinion survey after survey show that Hong Kong people want to participate directly in electing their own leaders for both the legislative and executive branches.

The latest public opinion poll, conducted last month by the Chinese University of Hong Kong showed that 68.7% of Hong Kong people want the Chief Executive to be elected by universal suffrage in 2007 and 75.6% agreed that the Legislative Council should be directly elected in 2008. Another poll undertaken last December (10-14/12/03) by the University of Hong Kong showed similar findings. And a recent survey commissioned by Civic Exchange and conducted by the Hong Kong Transition Project showed that 88% want constitutional reform, with 81% supporting direct election of the Chief Executive.

In short, Hong Kong people want democracy.

#### FREEDOM MATTERS

Why does democracy matter to Hong Kong people?

Freedom and the rule of law are not just abstract theories to us. Hong Kong people truly understand that a free society protected by the rule of law will enable them to plan and lead their own way of lives without arbitrary interference from the government, to become prosperous by their own hard work and to provide good opportunities for their future generations. It is what enabled Hong Kong to become the eighth largest trading center in the world.

With this, Hong Kong has become and maintained itself as an open and vibrant society where people peacefully and freely express their political views individually and through their elected representatives.

#### PEACEFUL PROTESTS

On July 1 of last year, more than half a million Hong Kong people took to the streets to protest against proposed national security legislation, known as Article 23, and to demonstrate in favor of democratic elections. The bill would have rolled back freedoms, including those of the press, and undermined other basic liberties.

For ordinary citizens in Hong Kong, this near-passage of the pernicious bill was the catalyst in recognizing that the freedoms we have long taken for granted could not be protected over the long term without democracy. On January 1 of this year, more than 100,000 people marched to demand constitutional reform.

Our Chinese government has recently had a leadership change. And our government's initial reaction to these peaceful marches by Hong Kong people was quite measured.

Our leaders President Hu Jintao and Premier Wen Jiabao have appeared willing to listen to Hong Kong people's concerns about the local economy and taken steps to help revive it. The bill was eventually withdrawn.

Presently, the governance of Tung's administration is in crisis. We have now come to the time when implementing full democracy is essential in continuing not only to ensure effective governance by the Administration, but to maintain freedoms and the rule of law.

#### PATRIOTISM

In Hong Kong in recent weeks, there has been a wide public debate about the meaning of "patriotism." This debate was launched by the re-publishing of comments made by China's late leader Deng Xiaoping, that only "patriots" who "love the motherland" should be allowed to hold government office.

Equating our demand for democracy to the quest for independence is groundless. In fact, far from seeking for independence, Hong Kong people want to see our country, China, become not just a large nation, but a great one.

We believe we are truly patriotic because as we see it, democracy is the only way to make "One Country Two Systems" work in the long term and the success of "One Country Two Systems" is conducive to the reunification of Taiwan, and beneficial to the modernization of our nation.

#### CHINA'S NEW LEADERS

Our new leaders President Hu Jintao and Premier Wen Jiabao, have won the admiration of many people in Hong Kong for the way they handled the SARS crisis last year. In his recent visit to Hong Kong, Premier Wen has gained a good impression from Hong Kong people by showing himself to be a caring and responsive leader.

President Hu delivered a speech to the Australian Parliament last year, saying that the government was increasingly involving the Chinese people in decision-making and would take concrete steps to safeguard the legitimate rights of the people.

President Hu said, "Democracy is the common pursuit of mankind, and all countries must earnestly protect the democratic rights of their people."

I couldn't agree more.

In addition to our leadership change in China, there are other factors that should lead to a more open approach to democracy. China is now a member of the World Trade Organization, an achievement I strongly encouraged on previous visits to Washington.

Beijing is already preparing to host the Olympic Games in 2008. China has signed the International Covenant on Civil and Political Rights, and signed and recognized the International Covenant on Economic, Social and Cultural Rights.

#### BUILDING TRUST

On a visit to the United States in 2002, our President Hu spoke to the U.S.-China Business Council. He said:

China needs to deepen its understanding of the U.S., so does the U.S. of China. Enhanced understanding and trust between the two sides will help boost a healthy growth of bilateral relations.

I think those were very wise words and good advice from our leader about U.S.-China relations.

Although the relationship between Hong Kong and China is not a country to country relationship but rather Hong Kong being an inseparable part of China, I also believe that these words are excellent advice for how our leaders in China should deal with the people of Hong Kong. After nearly seven years of reunification, we hope to embark on a path of mutual trust and cooperation with our new Chinese leaders.

And we hope that our Chinese leaders will in turn honor their own promise that "Hong Kong people will rule Hong Kong" in a meaningful way—through democratic elections.

Senator BROWNBACK. That is a beautiful thought and a great statement. I appreciate that greatly.

Mr. James To is a member of the Legislative Council from Hong Kong. Thank you very much as well for traveling to be here with us. The floor is yours.

#### **STATEMENT OF JAMES TO, MEMBER, LEGISLATIVE COUNCIL, HONG KONG**

Mr. To. Mr. Chairman, actually I, together with Martin Lee, are of the same political party, the democratic party, and we share the same value, vision, and also the analysis of the recent situation of Hong Kong and the projected development of the democracy of Hong Kong.

I just want to briefly talk about the recent patriotism controversy. Recently the pro-Beijing newspaper in Hong Kong just attacked many of our pro-democracy colleagues in the Legislative

Council, and some pro-Beijing newspapers even named several persons and divided it into so-called four categories of non-patriotism persons.

The first is to topple the Chinese Government. They are talking about a pro-democracy movement in China when, at the same time, in Hong Kong they formed a group to support the students in Beijing in 1989 and led millions of Hong Kong people at the time to protest against the massacre in Beijing.

We love our country. So we want not just in Hong Kong, but in mainland China, for our fellow citizens to enjoy the human rights protection and the freedom that we can enjoy in Hong Kong. As citizens of one country, the PRC, we have every right to demand our country to advance, demand our country to respect the rights of people, not just in Hong Kong but in the mainland. So I feel that, as a truly patriotic person of the country, we should have the right to advance the cause.

The second category of the named non-patriotic persons includes those who have only uttered a phrase in respect for the Taiwan people's wish of their future. I think on this I would say in Hong Kong we have the freedom of speech, so any person who just utters a thing in respect for other people's wishes is within the freedom of speech area. Of course, I would say many of the Hong Kong people would support the peaceful unification of Taiwan, but I think that the serious attack on any person in Hong Kong within that freedom of speech area should not be the right thing.

And the third category is to go to the foreign place to bad-mouth Hong Kong. On this category my response is very simple. We would tell the whole world about the truth of Hong Kong. Especially being a representative of the Hong Kong people, I feel it is my duty to inform the whole world about the truth of Hong Kong, the development of Hong Kong, and so any attack or any allocation of bad-mouthing Hong Kong is misconceived.

And finally, about the category of persons who oppose article 23 legislation. I can recite to you, Mr. Chairman, that in a motion debate that I sponsored in December 2002, I said a true patriotic person should oppose the article 23 legislation. Why did I say that? Because I feel that all along Hong Kong is more advanced in human values, in international norms in comparison with the mainland. And our country needs a place—and Hong Kong is always the place—to have that kind of experiment in the more advanced system. So any article 23 legislation which restricts freedom would undermine that kind of process and experimental view or possibility. So I feel that true patriots of our country should oppose any article 23 legislation which would restrict our freedom.

These are my remarks.

Senator BROWBACK. Thank you very much, Mr. To. I appreciate that.

We have a third and final member of the Legislative Council elected in Hong Kong, Mr. Cheuk-yan Lee. Thank you very much for joining us today, and a pleasure to have you here. The floor is yours.

**STATEMENT OF CHEUK-YAN LEE, MEMBER, LEGISLATIVE  
COUNCIL, HONG KONG**

Mr. LEE. Thank you, Mr. Chairman, for the invitation. I am the General Secretary of the Hong Kong Confederation of Trade Unions, the independent and democratic trade union center in Hong Kong, representing 170,000 workers.

For the CTU, my organization, we believe that democratic rights are part of workers' rights. Over the years, I have been struggling for workers' rights for almost 25 years now, and in Hong Kong I feel very much frustrated with the fact that before the handover and after reunification with China, the whole political system is totally skewed toward the business interests. Therefore, we have always from the workers' side been suffering, because of a lack of democracy, from a lack of workers' rights. We have no minimum wage, no working hours limitations, no right to collective bargaining, and we have a very wide disparity between the gap of the rich and poor. That is the backdrop that we in the trade movement have been, over the years, fighting for our democratic rights because we believe that this is the only fair thing to do.

Mr. Chairman, we are now at a very important time in the history of Hong Kong. First, after 6 years under the Chief Executive, elected by a small minority of 800 people, people of Hong Kong, now very clearly realize that this whole political system does not work because the Chief Executive does not have the mandate to rule, and therefore cannot really rally the people's support especially facing economic hardship. And it is very difficult for one without a mandate to steer Hong Kong toward the future, and the people very much realize that now.

Second, the people of Hong Kong have shown their aspiration with more than half a million marching against the national security bill and, of course, also marching for universal suffrage. So the people have already spoken, and their aspiration should be respected.

But again, it is also a very important time in history because we also see obstacles toward democracy in Hong Kong. A very clear example is what James To has mentioned, the recent debates on patriotism. We in Hong Kong want to discuss the substance, the Road Map toward a democratic future, but the Chinese Government, the central government, has said that they want to discuss principles first, abstract principles like patriotism. Therefore, after talking about principles, lots of power brokers in Hong Kong, and the vast interest groups, jumped into this opportunity to put forward attacks on the democratic camps for being unpatriotic or not supporting "one country, two systems."

I would say these attacks are tactics of delay, delaying tactics of avoiding discussion on the real substance, and also very counter-productive, as you can see when people are being attacked for not being patriotic enough. The whole society is divided. Again, this is not good for Hong Kong when the society is being divided.

And the second obstacle toward democracy, regrettably I would say, is because of the business community. Some of the business community, instead of pressing forward for the necessary political reform, also try to hinder Hong Kong's democratization to preserve their vested interests. I always say that they are having the polit-

ical free lunch because they do not even have to pay for campaign money. They just control. They are part of the 800 and they can control the whole government. Some of them are talking about democracy leading to a welfare state and the economy will collapse.

Of course, these arguments are absurd because experience will show that democracy and economic prosperity go hand in hand. I would say what local business leaders fear is, in my view, a level playing field in which all Hong Kong people are given a voice in the territory's governance. To them "all animals are equal, but some animals are more equal than others."

Mr. Chairman, after talking about the obstacles, I still think there are grounds for optimism.

First, the Chinese leadership has so far not said or done anything irrevocable. In other words, there are still chances for consensus in Hong Kong's political future development and universal suffrage in 2007 and 2008.

And second, Mr. Hu Jintao, the President of the PRC, has stressed recently that there was no socialism without democracy, and he talked about the people should be allowed to monitor the government, should be allowed to participate in government, and he has also revealed that the International Covenant on Civil and Political Rights would be put to the National People's Congress for ratification.

So it seems that things are opening up. It seems that there is a process of modernization. These are all good signs. It is not natural for the Chinese leadership to experiment with Hong Kong in the area of democracy. It already has freedom and it is "one country, two systems." So is it not natural to go forward for further democracy to show to the Chinese leadership it is good for prosperity and stability? So we believe that having Hong Kong move forward with full democracy is both good for Hong Kong and also for our country and our compatriots in China.

Mr. Chairman, I think more than half a million people of Hong Kong have spoken and their voice should be respected and their aspirations for a democratic future should be respected. Thank you.

[The prepared statement of Mr. Cheuk-yan Lee follows:]

PREPARED STATEMENT OF CHEUK-YAN LEE

Mr. Chairman, thank you for inviting me to present my views to you and the sub-committee on Hong Kong's democratic development. I am the General Secretary of the Hong Kong Confederation of Trade Unions (the CTU), an independent workers' organization dedicated to the promotion of decent work, social justice and democracy. The CTU, comprised of 64 affiliated unions, represents more than 170,000 workers from all major industries and occupations. I am also a directly elected member of the Legislative Council (the LegCo) of the Hong Kong Special Administrative Region (the HKSAR), the People's Republic of China (the PRC).

The CTU and I believe that political right is an integral part of worker's rights, and political democracy is an indispensable condition for workers' full enjoyment of the rights to decent work, as stipulated in the International Covenant on Economic, Social and Cultural Rights and various conventions of the International Labor Organization. It is the reason why the CTU and I have played an active part in Hong Kong's democratic movement since the 1980s.

It is indisputable that Hong Kong's political system was, and still is, skewed toward business interests. Under British colonial rule, the Governor was appointed in London, and members of his cabinet, the Executive Council, were almost exclusively recruited from a handful of big business. In the first 10 years after China's resumption of the exercise of sovereignty over Hong Kong, the Chief Executive is selected, under the Basic Law, the mini-constitution of the HKSAR, by an Election Com-

mittee, in which the business sector have a disproportionate representation in their favor.

The detrimental consequences of this unfair political arrangement on workers' welfare are evident. There are no laws regulating workers' working hours in Hong Kong. Nor are there any statutory provisions on minimum wages protecting workers from excessive exploitation. Employees are still being denied a voice at work, and labor unions are deprived of the right to bargain collectively with the employers. Hong Kong has one of the most uneven distributions of income in the world (Hong Kong's Gini Coefficient, a common measure of income inequality, reached its record hike at 0.525 in 2001), while business profit's share of national incomes is among the highest in all advanced economies (45% of GDP in Hong Kong cf. 30% in the United States).

It is well established that an undemocratic society, where societal conflicts could not be resolved through proper political means, is less able to weather the storms at times of difficulties. Hong Kong is no exception. Economic recession in past few years has triggered a crisis of legitimacy and governance. Successive opinion polls reveal that more than 60% of respondents have no confidence in the Chief Executive, and majority of Hong Kong people register their dissatisfaction with the executive branch of the HKSAR Government as well as the legislature. All available evidences lead to the conclusion that the existing political system no longer works, and it is not conducive to rallying people's support for steering Hong Kong forward. Failure to institute reforms will, sooner or later, adversely affect Hong Kong's stability and prosperity.

Local political scientists and commentators rightly point out that the present impasse has largely stemmed from the flaws in the design of Hong Kong's political system. At the heart of the problem is the lack of popular support due to its weak political mandate. The only logical solution is: electing both the Chief Executive and all members of the LegCo by universal suffrage. An overwhelming proportion of Hong Kong people subscribe to this view. A recent survey finds that more than two thirds of respondents agree that the Chief Executive should be popularly elected in 2007, while over three quarters of the population support electing the entire legislature by universal suffrage in 2008.

Hong Kong people's call for electing the Chief Executive and all members of the LegCo on a one-person-one-vote basis in 2007 and 2008 respectively is in line with relevant provisions of the Basic Law. Articles 45 and 68 of the Basic Law stipulate that the methods for selecting the Chief Executive and forming the LegCo shall be specified in the light of the actual situation in the HKSAR and in accordance with the principle of gradual and orderly progress. The ultimate aim, as promulgated in the Basic Law, is the election of the Chief Executive (upon nomination by a nominating committee) and all members of the LegCo by universal suffrage. Given our level of economic development, tradition of the rule of law, free flow of information, a vibrant civil society and experiences in organizing territory-wide polling (the actual situation), Hong Kong is well equipped for introducing a universal suffrage system (gradual and orderly progress) in 2007 and 2008. And Hong Kong people are, undoubtedly, more than capable of choosing their own leaders.

Mr. Chairman, I would like to stress that the Central Government of the PRC has definitely a stake in Hong Kong's political development. Annex I of the Basic Law stipulates that,

If there is a need to amend the method for selecting the Chief Executives for the terms subsequent to the year 2007, such amendments must be made with the endorsement of a two-thirds majority of all the members of the Legislative Council and the consent of the Chief Executive, and *they shall be reported to the Standing Committee of the National People's Congress for approval* (emphasis added).

Hong Kong people, including the "democratic camp," are prepared to engage in a rational and meaningful dialogue with the Central Government, with a view to reaching a consensus on the method of electing the Chief Executive.

I have to admit, however, that there are grave differences between local community and the Central Government over the pace of Hong Kong's democratization, and resolving these differences is no easy task. Our community would like to have a discussion more focused on the concrete road map tackling Hong Kong's existing political impasse while the Central Government insisted on reaching consensus over some abstract principles. In fact, no one in the HKSAR would object to the principles relating to Hong Kong's democratic reform raised by the Chinese leadership, including the patriotism proviso and support for the "One Country, Two Systems" model, provided they are construed in strict accordance with the Basic Law. But local power brokers and vested interest groups are fast in exploiting the opportunity

to launch attacks on us, the democratic camps, putting forward accusations of unpatriotic or not supporting "One Country, Two Systems." Some even go further to suggest that we are not qualified to stand for the coming Legislative Council Election. This is both counter-productive and obviously a delaying tactics of avoiding discussions on substance.

Regrettably, some business community, instead of pressing the territory forward into the necessary political reforms, also tried to hinder Hong Kong's democratization to preserve their vested interests. The business sector argues that Hong Kong is not ready for democracy, because local politicians do not understand business. One prominent business leader even warned that democracy would turn Hong Kong into a welfare state, causing the economy to collapse. Their arguments are simply absurd. The claims that direct election would result in a drastic increase in welfare outlays is empirically unfounded and a total disregards of serious debates in election campaign. What local business leaders fear is, in my view, a level playing field, in which all Hong Kong people are given a voice in the territory's governance. To them, "all animals are equal, but some animals are more equal than others."(George Orwell's Animal Farms)

Mr. Chairman, despite the above obstacles, there are also reasons for optimism. First, the Chinese leadership has so far not said or done anything irrevocable. In other words, there are still chances for reaching a consensus on Hong Kong's future political development, and universal suffrage in 2007 and 2008 is still a viable option.

Second, Mr. Hu Jintao, President of the PRC, had stressed recently that that there was no socialism without democracy. In his address to the French National Assembly early this year, Mr. Hu also revealed that the International Covenant on Civil and Political Rights would be put to the National People's Congress for ratification once all conditions were in place. It is evident that present Chinese leaders had committed themselves in China's political modernization process. Hong Kong's democratization should be foremost and very much part of this modernization process. Experiences of introducing a universal suffrage system in the HKSAR will interact valuably with the Mainland. This is both good for Hong Kong and our country.

Mr. Chairman, more than half a million Hong Kong people took part in the historic rally on July 1, 2003. They stood up and defended their fundamental rights, in a most dignified manner. Hong Kong people showed, once again, solemnly, to the Chinese leadership as well as the international community, that they have a strong sense of responsibility and they care about the territory they call home. The people of Hong Kong have spoken and their aspiration for a democratic future should be respected. The Central Government's response to the demonstration has been rational and restrained. This is the best indication of its determination to maintain stability and prosperity in Hong Kong. Against these backdrops, I am confident that a blueprint for Hong Kong's democratic reform, which is beneficial to both the HKSAR and the mainland, could be worked out.

Thank you very much, and I would be happy to answer any questions.

Senator BROWNBACK. Thank you.

Mr. Law, Human Rights Monitor Director in Hong Kong. I hope I pronounced your name correctly.

Mr. LAW. Yes.

Senator BROWNBACK. Very good. Thank you very much for joining us today.

**STATEMENT OF YUK-KAI LAW, HUMAN RIGHTS MONITOR  
DIRECTOR, HONG KONG**

Mr. LAW. Thank you, Mr. Chairman. Thank you for inviting the Monitor to testify before you.

We have to set out firstly that the right to democracy has been promised to Hong Kong when China signed the Sino-British Joint Declaration. It says that the International Covenant on Civil and Political Rights shall remain in force. Article 25 of the International Covenant on Civil and Political Rights provides for the right to be elected and to vote by universal and equal suffrage. Un-



fortunately, both the British and the Chinese authority have failed to conform with these international standards.

In fact, the U.N. Human Rights treaty body, the Human Rights Committee, has severely criticized Hong Kong. In 1995, the Human Rights Committee criticized Hong Kong's electoral system as it does not meet the requirements of article 25 that is on universal and equal suffrage, as well as article 2 on non-discrimination, article 3 on gender equality, and article 26 on equal protection of the law.

The committee particularly underscored the concept of functional constituencies which give undue weight to the will of the business and professionals, discriminates against most voters on the basis of poverty and functions. This clearly constitutes a violation of articles 2, 25, and 26. That is exactly what it said in a U.N. hearing.

Unfortunately, after the handover, that is, reunification, the elections in Hong Kong have a further reduction in the franchise in the functional constituencies. It is a reduction by 90 percent. Also, 2 million people who were voters were no longer eligible to vote in this kind of so-called functional constituencies, thus making these small-circle elections even more repugnant.

In 1999, the U.N. Human Rights Committee again reaffirmed their criticism. So the violation continues even under Chinese rule. And the way to elect a Chief Executive is no better, as our friends have pointed out. Only 800 people are eligible to vote for the Chief Executive. This is grossly unfair.

Luckily the Hong Kong people know their rights and try to claim their rights. Two major incidents have significantly highlighted these kind of rights, highlighted the people's demand for democracy. On July 1 last year, more than half a million people took to the streets to express their demand for power to the people. And several months ago, in the District Council elections, they turned out in an unprecedented amount and voted for a lot of pro-democracy candidates. And according to polls, it is quite clear that the Hong Kong public is in favor of early reform.

In December 2003, the public opinion program at the University of Hong Kong showed that 73 percent and 78 percent of the respondents support universal suffrage for electing the Chief Executive in 2007 and for all the Legislative Councilors in 2008, respectively. Even after the very serious attacks by the Chinese authority recently, these figures remain high. They are still respectively, 68.7 percent and 75.6 percent in spite of these vicious attacks.

We have to highlight to the committee that the recent developments by the political campaign to attack these pro-democracy politicians and social activists and the pro-democracy citizens in Hong Kong has flattened the freedoms of Hong Kong.

Instead of responding to the call for democracy, the only thing the government had promised is to release a time table by the end of last year, and that is not realized because the Chinese authority intervened. They asked the Hong Kong authority to hold a bit. And now we do not see any clear steps forward.

The Chinese authorities have clearly orchestrated a political campaign against pro-democracy candidates, politicians, activists, and others. What they want to do is to terrify these people, is to intimidate the public so that they would desist from their demands.

The chilling and intolerant atmosphere is totally inconsistent with the promise of maintaining a free Hong Kong way of life, as guaranteed by the Basic Law.

Some people have been singled out: Martin Lee has been singled out for soliciting foreign invention on internal matters of Hong Kong; Szeto Wah for being the chairperson of the Hong Kong Alliance in Support of Patriotic Movement in China. It is clear that China is now testing a hard-line policy toward Hong Kong. The objective is to silence everybody.

Unless the Hong Kong people speak out at this moment, we will face the very likely situation that such hard-line policy will be affirmed and continue and undermine Hong Kong's human rights and future autonomy and our democracy deficit will never be properly addressed.

Mr. Chairman, thank you for your invitation.  
[The prepared statement of Mr. Law follows:]

#### PREPARED STATEMENT OF YUK-KAI LAW

Mr. Chairman and distinguished members of the Senate Subcommittee on East Asian and Pacific Affairs, thank you for inviting me to testify on the status of Democracy in Hong Kong.

The Hong Kong Human Rights Monitor is the largest indigenous membership-based human rights organization in Hong Kong. We aim to promote better human rights protection in Hong Kong, both in terms of law and practical daily life, and to encourage greater human rights awareness.

Our submission will focus on two areas: (a) the demand for democracy by Hong Kong people; and (b) the recent developments which have threatened freedoms in Hong Kong.

#### DEMAND FOR DEMOCRACY

The International Covenant on Civil and Political Rights was extended to Hong Kong in 1976 by the United Kingdom while Hong Kong was under British rule. Article 25 of the Covenant provides,

*Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions.*

*(a) To take part in the conduct of public affairs, directly or through freely chosen representatives;*

*(b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;*

*(c) . . .*

In extending the Covenant to Hong Kong, the United Kingdom has made the following reservation:

*The Government of the United Kingdom reserves the right not to apply subparagraph (b) of Article 25 in so far it may require the establishment of an elected Executive or Legislative Council in Hong Kong . . .*

The Sino-British Joint Declaration between China and the United Kingdom provides that the Covenant "as applied to Hong Kong", i.e. as qualified by any declared reservations such as the above, "shall remain in force" in Hong Kong after 1997. The continue application of the Covenant "as applied to Hong Kong" was repeated in Article 39 of the Basic Law.

In the Letter of Notification of treaties applicable to Hong Kong after 1 July 1997, deposited by the Government of the People's Republic of China with the Secretary-General of the United Nations on 20 June 1997, China informed the United Nations that the Covenant "will continue to apply to the Hong Kong Special Administrative Region with effect from 1 July 1997," although China was not yet a party to it at that time. China signed the Covenant in 1998.

Unfortunately, both the British and Chinese Governments have failed to ensure that the electoral system in Hong Kong conform with their international obligations under the Covenant.

The United Nation Human Rights Committee, the treaty body responsible for monitoring the implementation of the Covenant by treaty parties, concluded in their concluding observations in 1995,

*The Committee is aware of the reservation made by the United Kingdom that article 25 does not require establishment of an elected Executive or Legislative Council. It however takes the view that once an elected Legislative Council is established, its election must conform to article 25 of the Covenant. The Committee considers that the electoral system in Hong Kong does not meet the requirements of article 25, as well as articles 2 [on non-discrimination], 3 [on gender equality] and 26 [on equal protection of the law] of the Covenant. It underscores . . . the concept of functional constituencies, which gives undue weight to the views of the business community, discriminates among voters on the basis of property and functions. This clearly constitutes a violation of articles 2, paragraph 1, 25 (b) and 26. It is also concerned that laws depriving convicted persons of their voting rights for periods of up to 10 years may be a disproportionate restriction of the rights protected by article 25. . . .*

*The Committee recommends that immediate steps be taken to ensure that the electoral system be put in conformity with articles 21, 22 and 25 of the Covenant.*

“Functional constituency elections” are an unfair system whereby business or professional groups elect a member or two of the Legislative Council to represent their interests on a special restricted franchise. Currently half of the 60 seats in the Legislative Council are reserved for functional constituencies.

Unfortunately, the United Kingdom has done nothing to bring the electoral system in line with the international standards laid down in the Covenant in response to the UN criticisms.

Even worse, under Chinese rule, the Hong Kong SAR Government has abandoned the reforms initiated by the last Governor of Hong Kong. As a result, in the Legislative Council elections on 24 May 1998, the franchise in functional constituency elections in Hong Kong has been further reduced more than 90% by the Hong Kong SAR Government. Approximately 2 million voters were deprived of their votes in the functional constituencies, thus making these “small circle elections” even more unrepresentative.

In November 1999, after hearing a report on Hong Kong by the Chinese Government, the UN Human Rights Committee again concluded,

*The Committee reiterates its concern, expressed in paragraph 19 of its concluding observations, adopted at the end of the consideration of the [previous] periodic report, that the electoral system for the Legislative Council does not comply with articles 2, paragraphs 1, 25 and 26 of the Covenant. . . .*

*The HKSAR . . . should take all necessary measures to maintain and strengthen democratic representation of HKSAR residents in public affairs.*

In 2001 the UN Committee on Economic Social and Cultural Rights also stressed in its concluding observations after considering the report submitted by China on behalf of Hong Kong on the implementation of the International Covenant on Economic Social and Cultural Rights that the “undemocratic features” of the Legislative Council made it difficult for the HKSAR to fully realize economic, social and cultural rights.

It is clear that the current electoral system for returning the Legislative Council continues to violate the Covenant. Most of the 800 persons who are given the power to elect the Chief Executive are themselves returned by a system similar to functional constituencies. Therefore the electoral system for returning the Chief Executive is in no way better. These electoral systems all fall foul of international standards and perpetuate the democracy deficit in Hong Kong.

Notwithstanding that there are provisions in the Basic Law which continue to deny universal and equal suffrage to Hong Kong people, the system continues to violate international standards.

#### HONG KONG PEOPLE’S DEMAND FOR DEMOCRACY

Two major events that took place in 2003 highlighted Hong Kong people’s desire for democracy: the July 1st demonstration and the District Councils Election 2003.

On July 1, 2003, more than half a million Hong Kong people took to the streets to protest against the national security legislation under Article 23 of the Basic Law, the mini-constitution for Hong Kong, and to demand for “power to the people”.

The way the Chief Executive and his supporters in the Legislative Council have attempted to push through the national security legislation has made a lot of Hong Kong people realize that without democracy, existing rights can easily be taken away by legislation. They have also been reminded that without democracy, it is very difficult for the people to have the required checks against abuses by the authorities in their enforcement of such laws. It has become very common knowledge that protection of freedoms and human rights requires democracy.

The repeated failures of the government in various livelihood areas, including health, housing, employment and education have indicated a lack of competency of the Hong Kong SAR Government and a lack of ability for it to take public opinions and people's interests seriously. These in turn have pointed to the fact that without democratic elections, we cannot create a government sensitive enough to the opinions and demands of the general public. Worst of all, people have come to feel so hopeless that, without democracy, there is no way to get rid of an incompetent and insensitive Chief Executive who to a great extent has to be held responsible for failing to address their livelihood issues thus far, as long as he maintains support from Beijing. A lot of Hong Kong people have found that their livelihood difficulties are closely related to the lack of democracy, or have demanded democracy in order to remove leaders they do not consider fit for such important political positions.

Hong Kong people came to realize that when the Government does not listen to our demands, we are forced to take our destiny into our own hands. As a result, they took to the streets to demand democratic changes.

Another key event which has highlighted the strong demand for democracy was the District Councils Elections on November 23, 2003. Although the District Councils are more of an advisory body with very limited political power, people still chose to use their voting powers to support pro-democracy candidates. 1.07 million voters cast their ballots in the Election, a turnout rate of 44%, both numbers the highest in Hong Kong's history of district elections. Many of the pro-Beijing candidates were voted out because of their political affiliation to the pro-Beijing faction.

Opinion polls also showed a high demand for universal suffrage. In December 2003, the Public Opinion Program at the University of Hong Kong released survey results showing that 73% and 78% of the respondents supported universal suffrage for the Chief Executive in 2007 and for all Legislative Councilors in 2008, respectively. Even after a series of public opinions attacks from the Central Government and pro-Beijing figures, the demand for universal suffrage remained high. According to a more recent poll in February 2004 by the Hong Kong Institute of Asia-Pacific Studies at the Chinese University of Hong Kong, 68.7% and 75.6% of the respondents agreed or strongly agreed to elect by universal suffrage the Chief Executive in 2007 and all of the Legislative Councilors in 2008, respectively.

As a result, since the Re-unification with China, the demands for universal and equal suffrage to elect the Chief Executive and all seats of the Legislative Council in Hong Kong have never been as high as they have recently been.

However, even before the Hong Kong people have had the chance to be consulted, Beijing, through its followers and official media, have closed off the possibility of universal suffrage in 2007/2008.

#### FREEDOMS IN HONG KONG THREATENED BY THE RECENT DEVELOPMENTS

After the two key events mentioned above, the Chinese authorities seem to be very determined to tighten political control over Hong Kong while assisting Hong Kong economically at the same time.

The Hong Kong SAR Government's plan to release a timetable for a consultation on constitutional review by the end of 2003 has been shelved after the Chinese Government approached the Chief Executive in December 2003. Instead, a Constitutional Development Task Force was set up by the Hong Kong authorities to clarify the concerns of Beijing.

The Chinese authorities have orchestrated a political campaign against pro-democracy politicians and activists in Hong Kong who opposed Article 23 legislation, criticized one-party dictatorship of the Chinese Communist Party, expressing their views and demanding universal and equal suffrage.

In particular, the Pro-Beijing media and figures have singled out a number of pro-democracy Legislators, including Martin Lee, for soliciting foreign "intervention" on internal matters of the HKSAR. Szeto Wah for being chairperson of the Hong Kong Alliance in Support of Patriotic Democratic Movement, Margaret Ng for speaking out against the legislation of Article 23; Emily Lau for supporting the wishes of the people of Taiwan.

People have begun to compare the Hong Kong of today to China during the time of the Cultural Revolution. This campaign has taken up the theme of attacking po-

litical opposition to Beijing as being “unpatriotic” and characterizing it in the form of a “political movement”.

The Hong Kong Human Rights Monitor is concerned that the Chinese authorities have started to change their policy towards Hong Kong. They are now testing a hard line policy towards Hong Kong with the objective of intimidating pro-democracy politicians, activists and ordinary citizens, and of dampening the demand for democracy. The chilling and intolerant atmosphere is totally inconsistent with the promise of maintaining a free Hong Kong way of life. The freedoms of conscious, political opinions, expression, assembly and association guaranteed under the International Covenant on Civil and Political Rights are under threat.

Unless Hong Kong people speak out against the hardline policy currently being tested, such policy will be continued and undermine Hong Kong’s human rights and future autonomy. Our democracy deficit will not be properly addressed.

Mr. Chairman, this concludes my formal testimony. Thank you.

Senator BROWNBACk. Thank you very much, Mr. Law. Thank you for your thoughts too. This is an excellent panel, quite illuminating to me.

In the essence of time, because we have got a vote called at 4 o’clock, I am going to truncate some of the questions that I would ask here.

Mr. Lee, first, I appreciate all of you coming here and the bravery with doing this, and I am sorry that you have had to suffer the attacks that you have. One thing I have just not understood—and maybe you can explain it to me—is why I can go to Beijing and you cannot.

I have been to Beijing several times, most recently less than a year and a half ago. It is a beautiful city, if you ever get to go there. It is quite an impressive place, and I believe it has grown substantially since the first time I was there in 1985.

But can you explain this to me? I do not understand this.

Mr. MARTIN LEE. Mr. Chairman, in 1985, I too went to Beijing. It was all right. I was then a member of the drafting committee of the Basic Law, and so I had to go to the China mainland about a week every month.

Until the 4th of June, 1989, when I, with many others in Hong Kong, strongly condemned the Tiananmen massacre, and since then I was not allowed to go back. It is as simple as that.

Now, of course, recently the Chinese leaders and also Mr. Tung, our Chief Executive, have asked the Hong Kong people to forget about those terrible events on the 4th of June. Of course, it is impossible to forget. But they have certainly not forgotten. They have remembered and those of us who dared to criticize Beijing will not be allowed back. I certainly cannot see why this should be so. If I have committed any criminal offense, I am quite prepared to be charged and prosecuted for whatever offense I might have committed. But they are not charging me with anything. They just do not allow me into mainland China.

Senator BROWNBACk. What is so striking to me about this is you have got the discussion taking place on the interpretation and the time table for the Basic Law. It seemed the three of you, representing the majority of those who have voted in the electorate, should be the people talking with the Beijing Government. I do not know of a more credible voice that could speak for the people of Hong Kong. And yet, they still refuse to hear your voice.

Mr. MARTIN LEE. I think the leaders in Beijing are much happier to listen to those who say the words that they like to hear and not the words that we would speak if we were to go to Beijing.

I have got to say, though, I think article 41 of the Chinese Constitution gives the right to every Chinese citizen to criticize his or her own government in Beijing. But for our criticisms, we are now condemned to remain in Hong Kong. We could go to Macao. We could go to Taiwan, but not to mainland China.

Senator BROWNBACK. I believe you even offered to cancel your trip to Washington if they would let you go to Beijing. Is that correct?

Mr. MARTIN LEE. And Beijing's representative in Hong Kong said that I was dreaming.

And my response was the great Martin Luther King had one dream. This Martin Lee has two dreams. The first dream is to see democracy come to Hong Kong, and the second dream is to be able to go back to my native land. I think it is a shame that Hong Kong people are not allowed back to mainland China. I think this shows one of the very many failings of our Chief Executive. Even after 6½ years, he could not make sure that Chinese citizens can go to mainland China.

Senator BROWNBACK. This seems like a complete positive to me to move toward universal suffrage in Hong Kong. It seems positive to Hong Kong. And this is an outsider looking at it. I admit that. It seems positive for the people of Hong Kong. It seems positive to the people of China and the leadership in Beijing. You are not asking to separate from China. You seek to be a loyal citizens of China. It helps and is positive with the relationship with the rest of the world. I do not understand. Why is the Beijing Government fighting this and not willing to talk to you about time tables or specifics but wanting to talk about nebulous concepts like patriotism?

Mr. MARTIN LEE. I think probably, Mr. Chairman, the answer lies in this, that when the Basic Law was finally promulgated, the Chinese Government thought that they would take about 10 years to make sure that they could groom the pro-Beijing party, the DAB, so that it could win elections. And this is why they thought after 10 years of grooming this party, they could let Hong Kong have democracy. That was the plan I believe.

But they have recently woke up to the idea that their party, the party DAB, was not getting the support of the Hong Kong people at all. And I believe many people in Beijing then thought of moving the goal posts and postponing the arrival of democracy to Hong Kong.

Now, I believe it is wrong. They should let things develop naturally because, as I said, whoever forms a majority in the Legislative Council after there are democratic elections in Hong Kong, whichever party wins is not going to bring about instability.

At the moment we have the most terrible and unworkable political system in the world. We have a Chief Executive who was actually chosen by Beijing through a Beijing-controlled election committee. And all the senior officials were appointed by Beijing, but at the sole suggestion and nomination of Mr. Tung. So he is accountable to Beijing and they, that is, these ministers, are account-

able to him. And none of them is accountable to the people of Hong Kong or to the legislature.

And that is why the thing does not work. Mr. Tung does not have any party in the Legislative Council who is committed to supporting him. Even the pro-Beijing party would abandon him if they believe that it is too costly a price to pay for supporting the government on any particular issue.

Now, we want to change the system. Let the Hong Kong people decide as to who should govern, who should be the Chief Executive, and who should be in the Legislative Council, and together when both the Chief Executive and the legislators have the mandate of the people, then you have a workable system.

But I entirely agree with you, Mr. Chairman. I think the Beijing leaders should be persuaded that the only possible way forward for Hong Kong is to bring about democracy. They have nothing to fear. I can assure you, and I only hope that somebody can assure the Beijing leaders that they have nothing to fear.

Senator BROWNBACK. Mr. To or Mr. Lee, do you have anything to add to those statements?

Mr. LEE. Mr. Chairman, our fight for democracy in Hong Kong is also a fight for democracy in China. That is my view because I believe that if there is a Hong Kong democratically elected government, it is a good demonstration for the whole China that democracy does work. There will be freedom and it will be a better China. I sincerely hope the Chinese leadership sees things as we do, that it is good for China itself.

But I think the problem is, as you have observed, we have no chance, no opportunity at all to speak to Chinese leaders face to face to gain their trust, to gain a good communication through face-to-face talks so that they know we are the real patriots. They know that we are working for the good of Hong Kong and the good of China.

And there are always these power brokers/middlemen who are trying to smear the pro-democracy camp in Hong Kong, and I think that explains why when we come here there are a lot of names of names, attacks on us. So when the Chinese leadership looks at all these things, they will gradually have a mistrust of us, and I think that is the basic problem, that there are always those who want to divide the people of Hong Kong and the Chinese leadership, instead of bridging. So I think the power brokers who are working for their own interests want to maintain Hong Kong as it is without real democracy and they are working toward that. I think they are an obstacle toward democracy in Hong Kong and China.

Senator BROWNBACK. I appreciate your thoughts about the lack of democracy hurts workers and worker rights. I had not fully thought through that because I am so used to a democracy here and the expression of many people. But if we did not have a democracy here, you would have fewer workers' rights because you would have more control by those that are able to get into the system rather than the people voting and politicians putting forward policies that resonate with the people. So an excellent point.

Mr. To.

Mr. TO. Mr. Chairman, when the late Chinese leader, Mr. Deng Xiaoping, invented the concept of "one country, two systems," he

was thinking about solving the problem of Taiwan, reunification of Taiwan. Now, you know Taiwan has a "one person, one vote" to elect their leader. But in Hong Kong I think the international community all along is thinking about that except for foreign affairs and defense. Hong Kong people ruling Hong Kong means a real thing that Hong Kong people should choose their own leader of Hong Kong.

However, if Beijing is not determined enough to let the Hong Kong people realize their wish under the Basic Law permissible in 2007 and 2008 for full democracy, I think it will not even undermine the demonstration effect of Hong Kong to Taiwan, but the Taiwan people would feel that, well, it is only several years after the resumption of exercise of sovereignty of Hong Kong. China is doing something like that. And how can the Taiwan people feel very good about the good effect of "one country, two systems"?

So I think I share the same feeling with the chairman in your introductory remarks, that it is difficult to comprehend that, why Beijing would not allow Hong Kong to have a full democracy in order to really demonstrate the promise of "one country, two systems" and Hong Kong people ruling Hong Kong.

Senator BROWNBACK. Mr. Lee, let me get to the specifics on this. Beijing is not willing to discuss when to go to universal suffrage in Hong Kong at all, or do they say this is provided for in the Basic Law, but we cannot do this by 2007, and yes, we are going to go to universal suffrage, but we are going to put the timeframe off? What is the specific status that they have said toward universal suffrage?

Mr. MARTIN LEE. Well, the top leaders, that is Hu and Wen, have not departed from the language of the Basic Law. So they merely repeat the key words, which is development must be gradual according to local conditions. But you can interpret those phrases in whichever way you like.

However, there are a number of people from Beijing, as well as in Hong Kong, the pro-Beijing people, who have put all sorts of twisted meanings to those words and they interpret those words to mean, therefore, if you go to a direct election in 2007 and 2008, then you are doing it by taking one step only. They said whereas you should do it by a number of steps.

But even then they are wrong because we actually started in the year 1997, and at that time the Chief Executive was selected by a committee of 400 people. Then the second time was 2002. This time it was enlarged to 800 people. So you can say there is already development. For the election of the legislators too, there have been steps moving forward from 24 democratically elected members to 30, and then from 30, you could actually move up to 60, or somewhere in between.

So the top Chinese leaders I believe have not actually come to a decision on this important issue. They are still listening to all sorts of people. They have sent people down to Hong Kong to find out the general feelings in Hong Kong. I hope they can come to a decision soon, and I hope the decision will not be too far away from the clear wishes of the Hong Kong people as was shown on the 1st of July demonstration last year. So I do hope the Beijing leaders will finally see the wisdom of allowing Hong Kong people to have



democracy because, as you said, the Hong Kong people want it and they deserve it.

If you look at the conditions of Hong Kong and you ask yourself which country in the world had democracy with the people they had and if you compare it with Hong Kong people now, the civil society and the very dignified way of their demonstration and the intelligence of the people of Hong Kong, if you put them all together, and you say which people in the world deserve democracy more than the people of Hong Kong.

Senator BROWNBAC. They are ready and it is capable of happening. Your party's position is universal suffrage, direct elections, all eligible people entitled to vote by 2007. Is that correct?

Mr. MARTIN LEE. Office of the Chief Executive, and by 2008 of all the legislators.

Senator BROWNBAC. And there is no doubt in your mind but that Hong Kong can achieve that, that the system can be put in place as well.

Mr. MARTIN LEE. Absolutely no doubt. We are ready.

Senator BROWNBAC. Thank you all very much for being here. I deeply appreciate it. This is an issue of great concern here.

We have the third panel that I am going to call up, and I am going to try to do this quickly, by 4 o'clock on the third panel. Then I will adjourn at 4 o'clock.

The third panel is going to consist of Professor James Feinerman, Professor of Asian Legal Studies at Georgetown University Law School; Ms. Ellen Bork, Deputy Director of the Project for a New American Century; and Mr. John Tkacik, Research Fellow in China Policy at the Heritage Foundation.

If I could, with the three panelists coming up, I am going to ask you to really truncate your comments so that we can conclude at 4 o'clock. I believe there is a press conference planned with the legislators at 4 o'clock just outside and we will try to conduct that then and ahead of the vote.

Mr. Feinerman, thank you very much for joining us. As I said, we are running about on 13 minutes. So if each of you would please just take about 4 minutes for your comments. I apologize for truncating you, but if you could comply with that, I would be deeply appreciative.

**STATEMENT OF JAMES V. FEINERMAN, ASSOCIATE DEAN,  
INTERNATIONAL AND GRADUATE PROGRAMS, JAMES M.  
MORITA PROFESSOR OF ASIAN LEGAL STUDIES, GEORGETOWN  
UNIVERSITY LAW CENTER**

Mr. FEINERMAN. I will be very brief. Thank you, Mr. Chairman and the subcommittee, for holding these hearings and providing an opportunity for us to present our views about the important things that are happening in Hong Kong and the mainland right now.

I have already submitted an extensive written statement, so I will just try and summarize.

Senator BROWNBAC. Those will be put in the record for all the panelists.

Mr. FEINERMAN. Of course, as you well know, the United States has enacted a domestic law in the Hong Kong Policy Act of 1992. You yourself were cosponsor of a joint resolution last year, and

Hong Kong and its future are a matter of great interest to the U.S. Government and people.

In recent weeks we have seen also in Hong Kong that the people have taken to the streets again to call for greater democracy in the territory, and I think that there is reason for us to share their concerns and hope that the central government in Beijing will see the merit of the claims they are making.

This, of course, follows on the half million people that protested last July when the Chief Executive was attempting to ram through the draconian security legislation in the face of public opposition.

I would also note that I think that in many ways what is being threatened on the part of Beijing really flies in the face of both the letter and the spirit of both the Joint Declaration and the Basic Law. The Joint Declaration is a solemn international legal obligation between the People's Republic and the Government of Great Britain, and the Basic Law was drafted by the PRC side with the assistance of Hong Kong people and I think also should be honored.

It is also ironic that in a time when just next week or the following week the National People's Congress in China will meet for its annual 2-week session and amend the constitution of the People's Republic of China to include, for the first time, the phrase, "human rights," in the rights that are respected and enshrined in the PRC constitution, that human rights are in danger of being denied in their advancement in Hong Kong. I think that given the fact that Hong Kong has long enjoyed, even before the 1997 handover, through the incorporation of British common law and elements of the English constitution, many of the aspects of democracy and human rights, that it would be a shame if those promises to continue that same system in force for 50 years after the handover were denied.

I would just mention two things that are discussed extensively in my written testimony. The provisions that were mentioned already by the Deputy Assistant Secretary with regard to both article 45 and article 68 of the Basic Law that provide for the direct election eventually without a specific time table being spelled out for both the Chief Executive and the legislature. Here again, I think there is room for some disagreement, honest or otherwise, about whether any time table was ever intended, whether there were expectations on both sides about what the timing would be.

But it is important to note that the aim is clear in that legislation, and the aim that is stated, with regard to the legislature, is that the ultimate aim is the election of all the members of the Legislative Council by universal suffrage. I think there is no reason to delay or deny that right.

So, in conclusion, I would say that since the Basic Law provides for the possibility of instituting direct popular democracy as early as 2007 and because of where Hong Kong stands today, it makes eminent good sense to look forward to implementing these political arrangements as soon as possible, that the intentions of the Sino-British Joint Declaration and other attendant legal documents should be put in force.

Finally, I would just say, ironically, that although Beijing often decries foreign interference in its internal affairs and takes great umbrage whenever that happens, it seems to be interfering right

now in the internal affairs of Hong Kong, and particularly the promise that it made at the time of the handover that there would be a “gang ren zhi gang,” Hong Kong administered by Hong Kong people. And I think that it should follow its own preaching and get out of the way.

Thank you.

[The prepared statement of Mr. Feinerman follows:]

PREPARED STATEMENT OF PROF. JAMES V. FEINERMAN

Mr. Chairman and Members of the Subcommittee:

Thank you for holding these hearings and for providing an opportunity for me to present my views and to share information gathered on recent visits to the Hong Kong Special Administrative Region (HKSAR) of the People’s Republic of China (PRC) and in ongoing work in the field of the rule of law in China. Given Hong Kong’s population, strategic position, and economic importance, it remains necessary to focus upon a number of other significant considerations in formulating United States policy towards the HKSAR. Of course, the United States has enacted in domestic law the Hong Kong Policy Act of 1992,<sup>1</sup> to indicate our continuing interest in economic and political relations with the territory and in the well-being and prosperity of its citizens. In addition to United States actions and responses to moves taken by the PRC, recurrent questions surrounding the PRC’s intervention in the HKSAR’s governance despite promises that Hong Kong would enjoy at least fifty years of autonomy following its return to PRC sovereignty remain difficult to answer.

In recent weeks, thousands of Hong Kong residents have once again taken to the streets to call for greater democracy in the territory. Six years after the handover, the populace is calling for the semi-autonomous Hong Kong government to speed up reforms that would grant them more say in the choice of leaders and legislators. The first series of protests last summer was triggered by the Hong Kong government’s attempts to pass a security law designed to prevent subversion against the central government in Beijing—seen by many as signal of an erosion of the freedoms the territory was promised under Hong Kong’s mini-constitution, the Basic Law. After an estimated half-a-million people protested on July 1, Hong Kong’s Chief Executive Tung Chee-hwa backed down and delayed a vote on the controversial security bill, originally scheduled for early July, 2003.

*Introduction*

An increasing cause for concern in the international community is the Chinese government’s antagonism towards the desire of the Hong Kong people for the establishment of a modicum of the democratic political process as expected under the terms of the Sino-British Joint Declaration and Hong Kong’s Basic Law by 2007. Hong Kong’s future has become even more problematic in the wake of the failed attempt to enact draconian national security legislation pursuant to Article 23 of the Basic Law by means of a truncated legislative process and the sympathetic reaction of many Hong Kong residents to the goals of pro-democracy forces. Harsh rhetoric from Beijing has been addressed to those in Hong Kong who publicly voiced their support for dissident elements, boding ill for the enjoyment of promised civil liberties.

This drama has been played out in Hong Kong before, so the residents of Hong Kong are understandably worried. A protracted series of negotiations lead to the adoption of the Basic Law, a “mini-constitution” for post-1997 Hong Kong. Three successive drafts were circulated, and public comment was invited. Strong public reaction to the undemocratic nature of the government proposed for Hong Kong after 1997 in these drafts led to strident statements from both PRC and Hong Kong representatives. Officials from China threatened to impose a framework on Hong Kong unilaterally if its representatives persisted in their “intransigence.”

<sup>1</sup>United States-Hong Kong Policy Act of 1992, Public Law 102–383, 102nd Congress [S. 680]. (codified at 22 U.S.C. 5701 *et seq.*) Sec. 2, para. 6, “Findings and Declarations,” 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. A fully successful transition in the exercise of sovereignty over Hong Kong must safeguard human rights in and of themselves. Human rights also serve as a basis for Hong Kong’s continued economic prosperity.

To allay fears in Hong Kong over the prospect that the United Nations International Covenant on Civil and Political Rights, in force in Hong Kong as a result of British colonial rule, would no longer apply after the Chinese takeover, China agreed to its incorporation in the territory. Although British attention to human rights in Hong Kong had been rather limited, the threat of the removal of this basic underpinning for civil liberties was nonetheless troubling. Adherence to international human rights standards and the conventions enunciating them since the handover of Hong Kong has been generally good, with a few glaring exceptions which will be noted below.

#### *The Legal Framework*

On July 1, 1997, the United Kingdom relinquished sovereignty over Hong Kong to the People's Republic of China according to an agreement between those two nations reached in 1984.<sup>2</sup> As an international agreement between the two nations which have had the most direct control over Hong Kong's fate, this document is the starting point for any analysis of Hong Kong's post-1997 legal system. Yet, the Joint Declaration itself merely anticipated the construction of a new framework to implement the broadly-worded, precatory document that established the process for the transfer of sovereignty.

On April 4, 1990, the Chinese National People's Congress in Beijing passed a Basic Law for the Hong Kong Special Administrative Region,<sup>3</sup> which came into effect in 1997; the President of the PRC subsequently promulgated this law. Among other provisions, this Basic Law contains guarantees of individual rights, leaving to future determination the precise means for enforcement of these rights.

#### *Current Rights Situation in Hong Kong*

Despite its status as one of the United Kingdom's last remaining colonies (or "Dependent Territories," in quaint British usage), Hong Kong had come to enjoy considerable economic prosperity and rather extensive civil and political liberties during the two decades immediately preceding its return to Chinese sovereignty. The formal instruments of government were controlled by the appointed Governor; the nominal legislature, Hong Kong's Legislative Council, was hardly a democratic body. Its 56 members were either personally selected by the governor (20 non-official members) or elected by professional bodies and district boards (26 non-official members). An additional ten members were public servants, who served by virtue of their official positions (10 official members). Yet, despite the undemocratic nature of their selection, in the decade preceding 1997, the membership of the Legislative Council had come to include (by appointment and election) a reasonably large group of younger, outspoken members who voiced the concerns of the Hong Kong citizenry. Moreover, the obvious concern of the Hong Kong government for the wellbeing of its people—manifest in its commitment to public housing projects, mass transit and other infrastructural improvements and public health and social welfare—convinced the populace of the benign intentions of their nonelected overseers.

As a British colonial dependency, Hong Kong also enjoyed many of the protections of the unwritten English constitution and common law as well as the rule-of-law tradition. These were—to a great extent—transplanted to Hong Kong and have taken root. The Hong Kong judiciary, particularly at its higher levels, was scrupulously honest and independent of (and resistant to) any executive or legislative interference with its adjudication. Significant indigenization of the judiciary and the legal profession has occurred over the past twenty-five years; local Chinese professionals are well trained and already largely in control of these institutions. Until 1992, final appeals from the Hong Kong Court of Appeal were taken to the Privy Council in London; since that time, in preparation for Hong Kong's return to Chinese sovereignty in 1997, a new Final Court of Appeal was established. The Chinese government, among other guarantees, promised that Hong Kong could retain this legal system for at least 50 years after China recovers sovereignty over Hong Kong.

#### *Some Issues Arising from Hong Kong's Return to Chinese Sovereignty*

As already noted, the United Kingdom and the People's Republic of China concluded a Joint Declaration with three annexes in 1984 under which Britain has agreed to restore Hong Kong to China on July 1, 1997. Hong Kong then became,

<sup>2</sup>Joint Declaration of the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People's Republic of China on the Question of Hong Kong, Dec. 19, 1984, Gr. Brit. T.S. No. 20, reprinted in 23 Int'l. Leg. Mats. 1366 (1984) [hereafter "Joint Declaration"].

<sup>3</sup>The Basic Law of the Hong Kong Special Administration Region of the People's Republic of China, adopted on 4 April 1990 by the Seventh National People's Congress of the People's Republic of China at its Third Session. [hereafter "Basic Law"].

pursuant to Article 31 of the Chinese constitution, a Special Administrative Region (SAR) of China and, in the words of the Joint Declaration, was expected to “enjoy a high degree of autonomy, except in foreign and defense affairs, which are the responsibility of the Central People’s Government.” Following the ratification of the Joint Declaration in 1985, the National People’s Congress of China, through an appointed Basic Law Drafting Committee (BLDC), undertook the writing of a Basic Law—in effect, a constitution for post-1997 Hong Kong—which was (among other things) to insure Hong Kong’s autonomy: “[T]he socialist system and socialist policies shall not be practiced in Hong Kong, and . . . Hong Kong’s previous capitalist system and lifestyle shall remain unchanged for 50 years.”

In connection with the transfer of sovereignty, the British government in Hong Kong attempted to establish a toehold for representative government in Hong Kong before 1997 by aiming for the direct election of at least ten members to the Legislative Council by 1991, with further increases before 1997. Members of the pre-1997 Legislative Council had proposed that at least 50 percent of the seats there should be directly elected by 1997, with a mechanism put in place to provide for 100 percent direct election by 2003. The last British Governor of Hong Kong, Chris Patten, proposed speeding up this timetable to provide more representative rule by 1995. China threatened to “react” to any precipitous rush toward participatory democracy in Hong Kong before 1997 as a hostile act. In crude, almost scatological, language that echoed the denunciatory harangues of the worst days of the Cultural Revolution, Patten, the British and any Hong Kong Chinese who sided with them were vilified repeatedly and at great length. The parallels with recent rhetoric emanating from Beijing is ominous.

Moreover, before 1997, in response the outpouring of popular support in Hong Kong for the mainland pro-democracy demonstrators in 1989 and thereafter, thinly veiled threats against Hong Kong individuals and groups issued from both the Chinese government and its representatives in Hong Kong. China stated that it would not allow Hong Kong to become a “base for subversion” against the People’s Republic, although it has never made clear what activities it would count as subversive. Three successive drafts of the Basic Law were publicized, with little attempt to answer substantive criticisms of earlier drafts by responsible Hong Kong parties (and Hong Kong members of the BLDC). Two members of the BLDC who were also current members of the Legislative Council at that time, teachers’ union leader Szeto Wah and lawyer Martin Lee, were expelled from the BLDC and accused of “counter-revolutionary activities” for their involvement in protests against the 1989 massacre in and around Tiananmen Square. A Bill of Rights for Hong Kong, which was supposed to be published in January 1990 by the Hong Kong Government, was delayed because of mainland pressure. When it was eventually adopted in June, 1991, the Chinese authorities announced that it would not bind them after 1997 and that they felt free to reject any or all of it after the resumption of Chinese sovereignty. So much for guarantees that Hong Kong’s pre-1997 legal system would continue in force!

#### *A Brief History of PRC Interference in Hong Kong Governance*

Almost immediately after the establishment of the People’s Republic of China on the mainland in 1949, the Chinese government began a program of infiltration and sought to wield influence over the affairs of the British colony which remained in Hong Kong. Once it became clear that the British were not leaving Hong Kong, China reached a *modus vivendi* with the British colonial government which permitted China, isolated from much of the world after the Korean War, to use Hong Kong as a kind of entrepot for contact with the non-socialist world. Much of China’s foreign exchange was earned through Chinese-controlled enterprises based in Hong Kong and from direct sales to Hong Kong of basic commodities. Surplus population and individual malcontents were allowed to flee across China’s border with Hong Kong; eventually, almost two million refugees entered Hong Kong from 1949 until the late 1960s. Whatever hopes China might have had that such an influx would destabilize Hong Kong and encourage the British to leave were dashed by Hong Kong’s resilience; resources were mobilized to house and maintain at a subsistence level the colony’s swelling population.

At the end of the 1960s, China’s “Great Proletarian Cultural Revolution” washed over into Hong Kong briefly, as political radicals sought to achieve—in line with then-current political thinking on the mainland—the immediate revolutionary transformation of Hong Kong and the expulsion of the colonial power. Militant trade unionists and other pro-mainland activists tried their best to turn the populace against the British, but to no avail. After a brief period of disorder, the government firmly re-established its control. Successive temporary waves of immigrants from

the mainland recurred, but they were easily absorbed by Hong Kong's growing economy.

By the early 1980s, attention began to focus on the 1997 deadline for return of the leased New Territories (which account for over 90 percent of Hong Kong's total land area) to China under the terms of an 1898 treaty. China made it clear that it would not countenance any continuation of British control and that it intended to resume sovereignty. As a practical matter, the rest of Hong Kong would have to revert along with the New Territories. Initial resistance to China's stance, contemplated by then-British Prime Minister Thatcher (flush from her victory in the Falklands), was later prudently abandoned in the face of Chinese resolve. A handful of senior Hong Kong Chinese officials were promised full British passports and residency in Britain, but only a pitiful number availed themselves of the offer. On the other hand, the basic human rights of the rest of Hong Kong's people were left to the determination of the same Chinese leaders who ordered the People's Liberation Army to fire on students in Tiananmen Square. From an international human rights perspective, this was clearly unacceptable; however, the international community, which at that same time was scarcely bestir itself to worry about Bosnia and Somalia in the throes of all-out war, proved unable to focus upon a possible crisis in Hong Kong years before its return to the mainland.

*Reasons for the Current Concern Over Democracy in Hong Kong*

Hong Kong's Basic Law, often described as a "mini-constitution," which was agreed by both sides before the handover, allows the possibility of direct elections for the Chief Executive and all of its Legislative Council from 2007. But it also says Beijing must approve any electoral changes, which means China has the final say. China's Communist Party clearly fears growing demands for full democracy could threaten its control over the territory and possibly spread to mainland China. Some mainland officials have said they doubt Hong Kong's patriotism after a massive protest against the local Beijing-backed government last year. The march drew half a million people into the streets to denounce attempts by Hong Kong leader Tung Chee-hwa to push through an unpopular anti-subversion bill. As the Chairman well knows, having co-sponsored a Joint Resolution in the Senate last summer expressing support for democracy in Hong Kong, both the legislative and executive branches of the United States government have expressed serious concerns about compliance with, and implementation of, the Joint Declaration and the Basic Law in the light of these experiences.<sup>4</sup>

Notwithstanding these wide-ranging differences, there remains a great deal of common interest between the United States and the PRC in the resolution of other numerous issues which may make the PRC heed expressions of concern over the smooth transition in Hong Kong in the runup to 2007. On the regional level, continuing peace and prosperity in East and Southeast Asia and even free access to the high seas to the east and south of the PRC will require China to maintain stability, balance and positive engagement with the international community.

Below, I attempt to examine just a few problem areas with regard to pace of democratization in Hong Kong, and the legal underpinnings of the claims made by both pro-democracy forces and representatives of the PRC insofar as the gradual introduction of self-governance was promised to Hong Kong, to evaluate their current status and to weigh various options for possible progress.

THE LEGAL AND POLICY BASES FOR DEMOCRATIZATION IN HONG KONG AFTER 1997

Under the Sino-British Joint Declaration of 1984, Hong Kong returned to Chinese rule in 1997 with the understanding it would maintain limited self-government and be allowed to enjoy its capitalist way of life at least until 2047. The current Chief Executive, C.H. Tung, was installed for five years, and again in 2002 for a second term, after being selected by a pro-Beijing electoral committee. Hong Kong's local laws are passed by a 60-member Legislative Council, but only 24 of its members are directly elected by Hong Kong voters. The rest are selected by an electoral committee or by groups called "functional constituencies," representing a small segment of the total population of seven million. Ironically, the same Basic Law that required the government to enact the security legislation which proved so broadly unpopular last summer also calls for it to pursue greater democracy by 2007. Yet Tung's attempts to push ahead with the security laws, while not moving on the democratization, has left many in the territory frustrated and suspicious.

<sup>4</sup>S.J. Res. 14, "Expressing support for freedom in Hong Kong," In the Senate of the United States, 108th Congress, 1st Session, June 27, 2003.

Rev. Louis Ha, a Roman Catholic priest, has said that the aim of the protests has been to promote the drive for universal suffrage, as well as to educate people about democracy, and encourage democratic values such as tolerance and respect in peoples' everyday lives. The Catholic bishop of Hong Kong, head of Hong Kong's 230,000 Catholics, has also appealed to the government to listen to the voices of the people. "Hong Kong people have the quality and ability to rule ourselves," he has been quoted as saying. "Give us a chance to show the whole world that we will do well on our own."<sup>5</sup>

#### RECENT DEVELOPMENTS AFFECTING PROSPECTS FOR HONG KONG'S DEMOCRATIZATION

Communist China welcomed back Hong Kong in 1997 under its "one country, two systems" policy, whereby Hong Kong people could still enjoy a bustling free press, freedom of speech and religion, and rule of law. It promised a fair degree of autonomy, and with Britain drafted Hong Kong's the basic law. But when it comes to the "one country, two systems" policy under which Britain handed Hong Kong over in 1997, there's a wide gulf between the aspirations of the majority in Hong Kong and China's authoritarian rulers. What's happening now in China is about the next steps toward democratization in Hong Kong in 2007. Democracy is being debated. What's being talked about is the right of Hong Kong citizens in 2007 to elect a Chief Executive, like an American state governor, of their own choice.

Hong Kong is not a full democracy. Under a complex system carried over from British colonial days, only some politicians are freely elected, while trade groups and China also have their say. People do not directly elect the Chief Executive. But over the past year, hundreds of thousands of Hong Kong citizens have expressed their desire for greater democracy. As many as 100,000 people took to the streets on New Year's day, and 500,000 did so on July 1st last year. Under pressure, Chief Executive Tung Chee-hwa, last year promised to draw up plans for a consultation process on the possible introduction of direct elections in 2007. Pursuant to the Basic Law, 2007 is the earliest chance for constitutional reform and movement towards the ultimate goal of direct elections. The Basic Law provides that after 2007 major changes to the constitutional framework in Hong Kong may take place, the ultimate aim of these changes being the election of the Chief Executive and the Legislative Council by direct election.

Last month, a Hong Kong task force finished three rounds of talks with leaders in Beijing on the future of democracy in the territory. Hong Kong's Chief Secretary for Administration Donald Tsang and his team completed the talks after their meeting with the Chinese parliament, the National People's Congress, to seek their advice on holding full elections in Hong Kong by 2007. The Chief Secretary said of his mission, "The most important thing of the trip is to give us an opportunity to express the public opinion. I think we have reached that target," he told reporters, calling the result of the meeting "satisfactory." Tsang said Beijing wants thorough discussions on principles before Hong Kong proceeds with its constitutional development and a web page would be established to seek further public opinion on the issues. Chinese leaders have appeared non-committal on the issue, questioning only whether Hong Kong actually wanted universal suffrage.

The task force was created by Hong Kong Chief Executive Tung Chee-hwa early this year, following the street protests last summer calling for a speedier transition to universal suffrage in the territory.

Reportedly, China will not allow Hong Kong to choose its next leader through full elections, according to a local press report that quoted unnamed sources close to the Beijing leadership. Also a consultation exercise to seek the public's view on increased democracy in the city was just a "show" intended to placate the pro-democracy camp, the *South China Morning Post* (SCMP) has reported. The source told the SCMP that Beijing would draw up its own plan to guide what form the next selection process for the city's chief executive would take in 2007.

A three-day trip to Beijing last month by a task force charged with seeking the Chinese leadership's opinion on the issue ended in near farce when China's top leaders snubbed the delegation. Beijing later poured cold water on democracy hopes, saying it would have the final say in how Hong Kong chooses its next leader and that "patriots" would rule the territory. That sparked hot debate on what defined a patriot and whether China would consider anti-government campaigners patriotic enough to allow them to stand in any election. Beijing is also expected to take a

<sup>5</sup> Fr. Ha is editor of the Catholic periodical, *Kung Kao Po*, as well as a member of the Democratic Development Network (DDN) that formed last summer in Hong Kong. See <<http://www.cnsnews.com/ViewForeignBureaus.asp?Page=/ForeignBureaus/archive/200307/FOR20030714c.html>>

tougher position on Hong Kong if pro-democracy forces become the dominant power in the territory's top law-making body in elections in September and then work against China-backed leaders, according to unidentified sources. In 1997, Beijing established a provisional legislature and effectively dismantled electoral changes made by Britain in the waning years of colonial rule.

*Post-2007 Political Reform and Democratization in Hong Kong.*

Hong Kong's constitutional journey has been unique. Most former colonies were released from their imperial power decades ago; Hong Kong was almost the last major territory to achieve such status. Furthermore, these former colonies became independent and replaced their former colonial administration with the institutions of democratic government. Hong Kong was absorbed by another sovereign power, and preserved its former administration almost unchanged. In Hong Kong's case, in fact, a virtue was made of continuity with the colonial era. Many civil servants simply carried over.

Then, why does Hong Kong need reform? Hong Kong has an established system of rights and operates by the rule of law. It enjoys a high standard of living and—aside from the recent recession—consistently high levels of economic growth. Although many people express discontent with the Government, there are no signs of mass unrest. And the PRC, as sovereign, would have to be persuaded of the benefits of any reform. Is it worth expending energy on the constitutional reform project? Some have suggested that the current system might continue for several more decades, with full suffrage and direct elections coming at the end of the fifty-year period, say in 2037, rather than “as early as” 2007.

Hong Kong's governance today is essentially that of a colonial administration, a form more appropriate to the nineteenth than to the twenty-first century. The relatively favorable outcome of this governance to date—at least in terms of living standards and rights—should be regarded as exceptional. Particularly in the light of the few spectacular glaring failures of the Tung administration, it is definitely not something that can be relied upon for the long term. Also, under British rule there were certain checks and balances on Hong Kong's colonial governance system, such as accountability to the democratically-elected British Parliament. In that position today is China's National People's Congress, a far different institution. It is not clear that in Hong Kong's present situation the continued enjoyment of human rights, the rule of law, and ultimately of living standards, can be assured.

By its own terms the constitution mandated by the Basic Law should begin to change—with a gradual expansion of directly elected seats in the legislature and a progression, albeit without a definite timetable, towards full democracy. As Hong Kong approaches the ten-year anniversary of its handover, it is only common sense to plan for these changes. Secondly, Hong Kong's governance structure increasingly seems inherently unstable: a legislature enjoying an gradually growing mandate from the people but little power, facing an executive selected by a narrowly-based committee which wields very considerable power. It is highly unlikely that such a situation can accommodate the changes that lie ahead. Finally, recent experience with the HKSAR's response to SARS and the Article 23 legislation reveals how far Hong Kong needs to reform over the long term.

*The Chief Executive*

Hong Kong's executive model is that of a colonial administration, similar to the former administrations of Britain's other ex-colonies. The civil service wields both substantial power of policy-making and power to administer policies. The Chief Executive is selected by an Election Committee which is in turn selected by the Mainland Chinese authorities or under their auspices—the latter process being conducted in secrecy. With the departure of British administrators, many Hong Kong residents believe that the executive tends to represent the interests of local business elite. At the same time, the democratically-elected portion of the legislature appear to represent the “have-nots,” pressing for social-welfare policies such as a minimum wage, more public housing, lower government charges and fees. This tends to polarize policy debates in the HKSAR.

As provided in the Basic Law, the Chief Executive is expected to be chosen by direct election eventually, even though the initial selection process provides for the narrower and less democratic committee-selection process. Article 45 spells out the details:

**Article 45**

The Chief Executive of the Hong Kong Special Administrative Region shall be selected by election or through consultations held locally and be appointed by the Central People's Government.



The method for selecting the Chief Executive shall be specified in the light of the actual situation in the Hong Kong Special Administrative Region and in accordance with the principle of gradual and orderly progress. The ultimate aim is the selection of the Chief Executive by universal suffrage upon nomination by a broadly representative nominating committee in accordance with democratic procedures.

The specific method for selecting the Chief Executive is prescribed in Annex I: "Method for the Selection of the Chief Executive of the Hong Kong Special Administrative Region."<sup>6</sup>

Moreover, the Basic Law envisages an executive accountable to the legislature (Article 64).

#### *The Legislature*

The Basic Law sets out a program for increasing the proportion of legislators elected by direct election. This was meant to increase the popular mandate and legitimacy of the legislature. Increasing power for the Hong Kong Legislative Council, or Legco, might follow the trajectory of the European Parliament, which when established had little power, but gradually took more power. Also, being directly elected, the European Parliament enjoyed greater legitimacy than the other European governmental institutions, parallel to the experience in Hong Kong.

The majority of Legco's members are not directly elected and tend to side with the government. Legco's voting procedures also handicap its effective performance. The Hong Kong Legco also has almost as many committees as a large developed country parliament like the UK, but only one-tenth as many legislators. In the 2000 Legco, 30 seats are from Functional Constituencies (professional groups, business and other sectors) and 10 are selected by an Election Committee. In countries with bicameral legislatures, frequently members of one chamber are selected other than by geographical direct election. For example, the House of Lords in Britain includes not only hereditary and appointed Lords but also bishops. The United States Constitution provides every State with two Senators, while member of the House of Representatives are elected proportionally to population. Yet, in most countries, these second chambers are with another chamber which is fully directly-elected. Hong Kong's Functional Constituency and Election Committee elections to the legislature are almost unique.

The Election Committee will not be used again. But by 2007, unless there is some change, the 30 Functional Constituency seats will continue to exist. This functional constituency system is highly anomalous. In 1998—among other shortcomings—10 out of 28 functional constituencies were unopposed, while many others were returned by a "small circle" of individual voters or by companies under common control. Three ways have been suggested to address the issue of Hong Kong's functional constituencies: abolition (arguing that they are anachronistic and should simply be abolished); reform (to make them more democratic and representative of the people); or dilution (to reduce their influence by creating more directly elected seats). Any of these solutions would be preferable to maintenance of the status quo.

Here again, the Basic Law contemplates eventual movement towards fully representative government. Article 68 makes clear its "ultimate aim":

#### **Article 68**

The Legislative Council of the Hong Kong Special Administrative Region shall be constituted by election.

The method for forming the Legislative Council shall be specified in the light of the actual situation in the Hong Kong Special Administrative Region and in accordance with the principle of gradual and orderly progress. The ultimate aim is the election of all the members of the Legislative Council by universal suffrage.

The specific method for forming the Legislative Council and its procedures for voting on bills and motions are prescribed in Annex II: "Method for the Formation of the Legislative Council of the Hong Kong Special Administrative Region and Its Voting Procedures."<sup>7</sup>

#### *The Judiciary*

As the post-1997 experience has made painfully clear, the independence of the judiciary cannot be relied upon when the power of the Executive is as pervasive as it is in Hong Kong. It is ultimately unreasonable, in the absence of other strong institutions of government, to expect individual judges to resist the executive. The

<sup>6</sup>The text of Annex I is appended at the end of this testimony.

<sup>7</sup>The full text of Annex II is appended at the end of this testimony.

independence of the judiciary needs to be buttressed by strengthening other institutions such as the legislature.

Most notoriously, the judiciary's independence was circumscribed after 1997 by the outcome of the Ng Ka Ling case, which arose out of a challenge to a local Hong Kong immigration statute severely inhibiting right of abode in Hong Kong (guaranteed in the Basic Law) for children born to parents resident in Hong Kong.<sup>8</sup> Exercising its power of constitutional judicial review to overturn several provisions which derogated that right, the Court declared it would take a purposeful and generous approach to interpreting constitutional rights guaranteed in the Basic Law. In its judgment, the Court also explicitly declared that in deciding such disputes the Court of Final Appeal (CFA) would have to determine when to refer provisions respecting local-central relations or matters of central authority to the Standing Committee of the NPC.<sup>9</sup> The court concluded it was not required in this case.

The HKSAR government, at Chief Executive Tung's direction, filed a motion for the CFA to "clarify" its judgment declaring its power to examine acts of the NPC. In a second brief judgment, the Court explicitly stated that it did not hold itself above the NPC, essentially restating its original position.<sup>10</sup>

A more serious attack on the judgment and the rule of law occurred in May 1999 when the government, after issuing a report claiming the judgment would produce a flood of 1.67 million migrants into Hong Kong, made a request to the Standing Committee of the NPC to interpret the relevant provisions of the Basic Law, effectively seeking to overturn the CFA judgment.<sup>11</sup> As a result of this end-run around the CFA, the finality of judgments of the CFA in Hong Kong has clearly been called into question and the rule of law has been put in doubt. Full confidence in the rule of law requires both respect for the authority of the CFA and confidence in its genuine ability to render final judgments.

#### *A Note on Human Rights*

These are enshrined in the Basic Law and in statute, and protected by the courts. However, Article 23 of the Basic Law on subversion—which occasioned such controversy last summer when attempts were made to push through legislation implementing it—and other provisions such as those enabling the Chinese Central Government to intervene in Hong Kong's affairs (Article 18) and to interpret the Basic Law (Article 158), the superior privileges of "Chinese citizens", set limits on the enjoyment of human rights. In practice, the non-democratic nature of government and the power of the executive pose further dangers. Also, with regard to the media, there are important issues of newspapers' self-censorship and censorship by newspaper owners which affect the actual enjoyment of freedoms guaranteed by the Basic Law and international human rights agreements.

#### *Conclusion*

The Basic Law of Hong Kong provides for the possibility of instituting full direct popular democracy in 2007. Hong Kong is, therefore, at a stage where it makes eminent good sense to look forward, to ask what type of political arrangements should be made for the next steps in its democratic development, and to begin planning. For Hong Kong, the issue is not whether to have or not have democracy or constitutionalism; these institutional commitments are provided in an international agreement, the Sino-British Joint Declaration. Furthermore, Hong Kong's own popular commitment to democracy, human rights and the rule of law favors liberal constitutional democracy.<sup>12</sup> Fundamental to Hong Kong's economic future is the widely acknowledged fact that human rights and the rule of law give economic actors more confidence in the system. Moreover, democratic countries are better able to respond

<sup>8</sup>Article 24 of the Basic Law (the first Article in the chapter entitled "Chapter III: Fundamental Rights and Duties of the Residents") provides that Hong Kong residents include "persons of Chinese nationality born outside of Hong Kong" of Hong Kong residents. Under the Article, such residents are entitled, as are other Hong Kong residents, to the right of abode and a permanent identity card. Suit was initiated by several children who claimed that their basic right of residence was effectively denied under a newly enacted immigration ordinance which required them to apply on the mainland for an exit permit.

<sup>9</sup>Basic Law, art. 158.

<sup>10</sup>*Ng Ka Ling v. Director of Immigration*, Court of Final Appeal, Final Appeal No. 14 of 1998 (Feb. 26, 1999).

<sup>11</sup>The government's decision to undermine a Final Court Judgment has produced strong condemnation from the Democratic camp, the Bar and leading constitutional scholars. Michael C. Davis, "Home to Roost," *South China Morning Post*, May 16, 1999, at 10.

<sup>12</sup>Michael C. Davis, "Constitutional Theory and Hong Kong Practice," paper delivered at Hong Kong Democratic Foundation seminar titled "Thinking about 2007," October 21, 2000. See <<http://www.hkdf.org/seminars/001021/01oct21.htm>>

to crises such as the late-1990s' East Asian economic crisis and the more recent SARS.

The 1984 Sino-British Joint Declaration provides for democratic rights, as well as incorporating in Hong Kong international human rights covenants.<sup>13</sup> In practice, since the hand-over, there have been some problematic developments and failures to make progress. The current electoral system works to the advantage of a tiny elite. A two-thirds majority of the Legco would have to vote to institute full universal suffrage after 2007. Even amendments to government bills, proposed by legislators, require the Chief Executive's approval to be considered. Even more problematic is the fact that amendment of the Basic Law is vested in the National People's Congress (NPC).<sup>14</sup>

Attacks on the judicial independence is probably the greatest causes for concern about continued protection of human rights. On the other hand, continued exercise of freedom of speech and association is the greatest cause for optimism. The 1991 Bill of Rights Ordinance remains in force after the handover, minus certain key provisions; it copies almost verbatim the International Covenant on Civil and Political Rights (ICCPR).<sup>15</sup> At least, the PRC government continues to file reports on behalf of Hong Kong under the international human rights covenants. Yet, as is clear from the concerns expressed above about the willingness of both the PRC and Hong Kong governments to follow through on settled expectations about the pace of democratization in the HKSAR, much more remains to be done. Judiciously applied, foreign pressure to maintain the pace established by the HKSAR's foundational documents can encourage progress for the millions of Hong Kong residents whose democratic aspirations should not be dashed.

THE BASIC LAW OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION OF THE  
PEOPLE'S REPUBLIC OF CHINA

ANNEX I: METHOD FOR THE SELECTION OF THE CHIEF EXECUTIVE OF THE HONG KONG  
SPECIAL ADMINISTRATIVE REGION

1. The Chief Executive shall be elected by a broadly representative Election Committee in accordance with this Law and appointed by the Central People's Government.

2. The Election Committee shall be composed of 800 members from the following sectors:

Industrial, commercial and financial sectors—200

The professions—200

Labour, social services, religious and other sectors—200

Members of the Legislative Council, representatives of district-based organizations, Hong Kong deputies to the National People's Congress, and representatives of Hong Kong members of the National Committee of the Chinese People's Political Consultative Conference—200

The term of office of the Election Committee shall be five years.

3. The delimitation of the various sectors, the organizations in each sector eligible to return Election Committee members and the number such members returned by each of these organizations shall be prescribed by an electoral law enacted by the Hong Kong Special Administrative Region in accordance with the principles of democracy and openness.

Corporate bodies in various sectors shall, on their own, elect members to the Election Committee, in accordance with the number of seats allocated and the election method as prescribed by the electoral law.

Members of the Election Committee shall vote in their individual capacities.

4. Candidates for the office of Chief Executive may be nominated jointly by not less than 100 members of the Election Committee. Each member may nominate only one candidate.

5. The Election Committee shall, on the basis of the list of nominees, elect the Chief Executive designate by secret ballot on a one-person-one-vote basis. The specific election method shall be prescribed by the electoral law.

6. The first Chief Executive shall be selected in accordance with the "Decision of the National People's Congress on the Method for the Formation of the First Gov-

<sup>13</sup> Joint Declaration, para. 3(5) & Annex I, art. XIII.

<sup>14</sup> Basic Law, art. 159.

<sup>15</sup> Hong Kong Bill of Rights Ordinance, No. 59 (1991) reprinted in 30 Int'l. Leg. Mats. 1310 (1991); International Covenant on Civil and Political Rights, 6 Int'l. Leg. Mats. 368 (1967).

ernment and the First Legislative Council of the Hong Kong Special Administrative Region.”

7. If there is a need to amend the method for selecting the Chief Executives for the terms subsequent to the year 2007, such amendments must be made with the endorsement of a two-thirds majority of all the members of the Legislative Council and the consent of the Chief Executive, and they shall be reported to the Standing Committee of the National People’s Congress for approval.

ANNEX II: METHOD FOR THE FORMATION OF THE LEGISLATIVE COUNCIL OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION AND ITS VOTING PROCEDURES

*I. Method for the formation of the Legislative Council*

1. The Legislative Council of the Hong Kong Special Administrative Region shall be composed of 60 members in each term. In the first term, the Legislative Council shall be formed in accordance with the “Decision of the National People’s Congress on the Method for the Formation of the First Government and the First Legislative Council of the Hong Kong Special Administrative Region.” The composition of the Legislative Council in the second and third terms shall be as follows:

Second term

Members returned by functional constituencies—30

Members returned by the Election Committee—6

Members returned by geographical constituencies through direct elections—24

Third term

Members returned by functional constituencies—30

Members returned by geographical constituencies through direct elections—30

2. Except in the case of the first Legislative Council, the above-mentioned Election Committee refers to the one provided for in Annex I of this Law. The division of geographical constituencies and the voting method for direct elections therein; the delimitation of functional sectors and corporate bodies, their seat allocation and election methods; and the method for electing members of the Legislative Council by the Election Committee shall be specified by an electoral law introduced by the Government of the Hong Kong Special Administrative Region and passed by the Legislative Council.

*II. Procedures for voting on bills and motions in the Legislative Council*

Unless otherwise provided for in this Law, the Legislative Council shall adopt the following procedures for voting on bills and motions:

The passage of bills introduced by the government shall require at least a simple majority vote of the members of the Legislative Council present.

The passage of motions, bills or amendments to government bills introduced by individual members of the Legislative Council shall require a simple majority vote of each of the two groups of members present: members returned by functional constituencies and those returned by geographical constituencies through direct elections and by the Election Committee.

*III. Method for the formation of the Legislative Council and its voting procedures subsequent to the year 2007*

With regard to the method for forming the Legislative Council of the Hong Kong Special Administrative Region and its procedures for voting on bills and motions after 2007, if there is a need to amend the provisions of this Annex, such amendments must be made with the endorsement of a two-thirds majority of all the members of the Council and the consent of the Chief Executive, and they shall be reported to the Standing Committee of the National People’s Congress for the record.

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THINKING ABOUT 2007

The formal institutions of government, namely the constitution, the executive, the legislature, the judiciary, and the electoral system. Hong Kong’s constitutional journey is in specifics unique. Most former colonies were released from their imperial power decades ago; Hong Kong was almost the last major territory to achieve such release. Further, these former colonies mostly achieved independence and replaced their former colonial administration with the institutions of democratic government. Hong Kong was absorbed by another sovereign power, and preserved its former administration almost unchanged. Indeed, in Hong Kong’s case a virtue was made of continuity with the colonial era.

## THE NEED FOR REFORM

Hong Kong has an established system of rights and operates by the rule of law. It enjoys a high standard of living and—the recent recession apart—a high level of economic growth. Although many people express discontent with the Government, there are no signs of mass unrest. And Mainland China, the sovereign, would have to be persuaded of the benefits of any reform. Is it worth expending the energy of the people on the constitutional reform project?

Hong Kong's governance is essentially that of a colonial administration, a form more appropriate to the nineteenth than to the twenty-first century. The relatively favorable outcome of this governance to date in terms of living standards and rights should be regarded as exceptional—more a matter for congratulation than something that can be relied upon for the long term. It should perhaps also be remembered that under British rule there were certain checks and balances on Hong Kong's colonial governance system, such as accountability to the democratically-elected British Parliament. It is not clear that in Hong Kong's present situation the continued enjoyment of human rights, the rule of law, and ultimately of living standards, can be assured.

Even on its own terms the constitution mandated by the Basic Law is in the process of change—with a gradual expansion of directly elected seats in the legislature and a progression, albeit without a definite timetable, towards full democracy. It would seem imprudent not to plan for these changes. Secondly, Hong Kong's governance structure would appear inherently unstable: a legislature enjoying an increasing mandate from the people but little power, facing an executive selected by a narrowly-based committee which wields very considerable power. New ideas and mechanisms are surely needed to make even the current structure operate successfully, let alone to accommodate the changes that lie ahead. Thirdly, the review of contemporary constitutional experience provided by the Workshop reveals just how far Hong Kong is from being an optimal polity. Reform can bring substantially greater fulfillment to the people, and assure greater stability and prosperity for community in the long term.

## 1. INSTITUTIONS OF GOVERNMENT

## 1.1 CONSTITUTION

Comparison of Hong Kong's constitution, the Basic Law, with those of other polities reveals shortcomings. However, it should first be asked, what kind of a document is the Basic Law? Most constitutions are written by and on behalf of the peoples of states that are independent, or that are to become independent. Hong Kong, however, is an entity within a state, and its constitution was written for it by representatives of the current sovereign power, China, within parameters agreed with the former sovereign, Britain. The Basic Law, as a document, thus has characteristics of a charter conferred on the people by the sovereign, perhaps analogous to the charters granted to certain cities in Medieval Europe. At any rate, development or replacement of the Basic Law cannot be considered in isolation, but involves the consent and perhaps the participation of the sovereign power. Ultimately, there must be the question of convergence between the constitution of the satellite and that of the sovereign.

The Basic Law does not express the aspirations or fundamental will of the people. Hence it does not show how power flows from the people. It does not show what in deepest terms Hong Kong is about. Most constitutions set out such aspirations in their preamble to provide a framework for the specific provisions that follow.

## 1.2 EXECUTIVE

As already stated, Hong Kong's executive largely follows the form of a colonial administration, similar to the former administrations of Britain's other ex-colonies. The civil service wields both substantial power of policy-making and power to administer policies. The Chief Executive is selected by an Election Committee which is in turn selected by the Mainland Chinese authorities or under their auspices—the latter process being conducted in secrecy.

Essentially, with the departure of British administrators, it would appear that the executive tends to represent the interests of local business elite, the "haves". The thrust of the executive's policy formulation—for example, in areas such as land use, the absence of a competition law, neglect of anti-pollution regulations, etc.—tends to align with the wishes of the business elite. And the democratically-elected portion of the legislature would appear to represent the "have-nots". These legislators tend to press for welfare-type policies such as a minimum wage, more public housing, lower government charges. This already anomalous situation could be exacerbated by any further concentration of power within the executive. Such further concentra-

tion might be more divisive to Hong Kong society, and result in more polarised debate over policy.

Rather, the Basic Law envisages an executive accountable to the legislature (Article 64).

### 1.3 LEGISLATURE

#### *Power of legislature*

The Basic Law sets the direction of increasing the proportion of legislators elected by direct election. As discussed above, this means increasing the popular mandate and legitimacy of the legislature. If stability and proportionality in the governmental system—and in society as a whole—is to be maintained, it would appear that the increasing mandate of the legislature should be matched by its increasing power. Speakers at the Workshop drew attention to the European Parliament which on establishment had little power, but gradually took more power to itself because, being directly elected, it had higher legitimacy than the other European governmental institutions.

#### *The composition of Legco.*

The majority of its members are not directly elected and tend to side with the government. Legco's voting procedures—the requirement for the geographical seatholders and the others to approve separately each motion—are also a handicap to effective performance. This was demonstrated by the failure in October 2000 to come to a view on whether or not to approve the vote of thanks for the Chief Executive's Policy Address.

Committee procedure. It was pointed out that in the UK, Parliamentary committees do most of the work in debating and if necessary modifying a bill, so that when it comes to the House for a reading, it's rare for further amendments to be made or for significant further debate to be necessary. However, in Hong Kong, amendments are rarely made as a result of committee input. As a result that the reading of the bill in the full session of Legco to some extent duplicates, or renders redundant, the work of the respective committee.

Ratio of committees to legislators. The Hong Kong legislature has almost as many committees as a large developed country parliament like the UK, yet one-tenth as many legislators. This means heavy demands on the time of individual legislators, and presumably correspondingly lower quality of input into debate. One option would be to increase the number of Legislative Council seats. However, in order to maintain public confidence in value for money, any such increase in the number of legislators should probably not come before an increase in the powers and functions of the legislature.

### FUNCTIONAL CONSTITUENCIES

In the 2000 Legco, 30 seats are from Functional Constituencies and 10 are selected by an Election Committee. In polities with second chambers, the second chamber frequently does have members selected other than by geographical direct election. For example, the House of Lords in Britain includes not only hereditary and appointed Lords but also bishops. However, such narrowly-based second chambers are supplementary to the primary chamber which is fully directly-elected. Hong Kong's Functional Constituency and Election Committee elections to the legislature are almost unique.

The Election Committee will not be used again. But by 2007 there will still be 30 Functional Constituency seats. The Workshop felt the functional constituency system to be highly anomalous. Among the shortcomings noted was the fact that in 1998, 10 out of 28 FCs were unopposed, while many others were returned by a "small circle" of individual voters or by companies under common control. The Workshop suggested three ways to address the issue of Hong Kong's functional constituencies.

*Abolition* (anachronistic and should simply be abolished); *reform* (make them more democratic and representative of the people); *dilution* (reduce their influence by creating more directly elected seats).

### 1.4 JUDICIARY

Two points were made:

Firstly, Hong Kong needs a *constitutional court*.

Secondly, the *independence of the judiciary* cannot be relied upon when the power of the Executive is as pervasive as it is in Hong Kong. It is ultimately unreasonable, in the absence of other strong institutions of government, to expect individual

judges to resist the executive. The independence of the judiciary needs to be buttressed by strengthening other institutions such as the legislature.

Human rights. These are enshrined in the Basic Law and in statute, and protected by the courts. However, Article 23 of the Basic Law on subversion, and other provisions such as those enabling the Chinese Central Government to intervene in Hong Kong's affairs (Article 18) and to interpret the Basic Law (Article 158), the superior privileges of "Chinese citizens", set limits on the enjoyment of human rights. In practice, the non-democratic nature of government and the power of the executive pose further dangers.

Media. Important issues include the proliferation of newspapers, self-censorship, censorship by newspaper owners, the role of the press council, training and quality of journalists, shortfall of investigative journalism, and the social standing of journalists.

Senator BROWNBACK. It is a good point.  
Ms. Bork.

**STATEMENT OF ELLEN BORK, DEPUTY DIRECTOR, THE  
PROJECT FOR A NEW AMERICAN CENTURY**

Ms. BORK. Thank you very much. It is a pleasure to be here.

I am going to move right to a couple of points, developing a point that Jim Feinerman made about Beijing's interference in Hong Kong and the appropriate U.S. response. For a number of years I have observed that the United States policy effectively embraces Beijing's terms for Hong Kong's governance and this creates a real problem. If the United States' top priority, as it should be, is to promote freedom and democracy in Hong Kong, it is very difficult to do so while relying on the framework that Beijing itself has developed for Hong Kong's governance. I can certainly understand and respect why Hong Kong democrats work within that framework. Certainly they do not mean to challenge Beijing's sovereignty and I do not think the United States does or anyone else does. But that does not preclude people from criticizing the mechanism that Beijing has put in place and the reality that this mechanism has created.

I would suggest that we defer much too much to the language of "one country, two systems." In fact there is one country, but the two systems is not nearly as distinct as many of us would hope, and I think that that is what Hong Kong's democrats are trying to bring about by asserting their democratic rights and that is what U.S. policy should also do. So in short, there is a bit of a contradiction. It concerns me.

I am very pleased that Randy Schriver raised the attacks on the patriotism of Hong Kong democrats. I think it was essential that the United States, as a democratic country, speak up on that point. In no way does it imply interference in China's affairs.

But at the same time, U.S. officials have to resolve this fundamental contradiction that they have been operating under since well before the Bush administration. For a long time, U.S. policy has been geared toward avoiding a confrontation with Beijing. I do not think a confrontation has to be such a scary thing. It is a truthful thing if the United States and other democratic countries that pledged to defend Hong Kong's rights and freedoms speak up for them and stop accepting that a system that Beijing has put in place is likely to lead to democracy. We hope that it might, but

there are many ways in which Beijing has tried to ensure that it will not.

So I would just leave it there.

[The prepared statement of Ms. Bork follows:]

PREPARED STATEMENT OF ELLEN BORK

I am grateful for the opportunity to speak here today about the struggle for democracy in Hong Kong and U.S. policy on that subject. It has been my privilege to work in support of Hong Kong's democrats and rights activists in a number of positions, including as a staffer on this committee under the chairmanship of Senator Helms, and for the Hong Kong Democratic Party and Its chairman Martin Lee.

THREE POINTS

There are three points I would like to make. First, this year will be decisive for the Future of freedom and democracy In Hong Kong. Hong Kong's people have expressed their desire for an elected legislature and chief executive in every way possible—through elections, marches and opinion polls. Meanwhile, Beijing has laid down a tough line against democracy and started a campaign of character assassination against Hong Kong's pro-democracy camp. Beijing has even raised the specter of dismantling the Hong Kong legislature in the event that pro-democracy candidates do well in upcoming legislative elections in which 30 out of 60 seats will be determined by democratic methods.

Second, the attractive-sounding "one country, two systems" formula for Hong Kong's governance under mainland sovereignty, is a fiction. The international community, including the United States, sees in the "one country, two systems" formula the prospect that Beijing will tolerate democratic expansion in Hong Kong. In fact, Beijing never intended to grant real autonomy and maintains significant control over the most important levers of power. By its own account full democracy is not in the cards any time soon.

Third, the U.S. must stop accepting Beijing's blueprint for Hong Kong. It flies in the face of President Bush's support for democracy throughout the world. Beijing's position that democracy is not possible in Hong Kong and its attacks on Hong Kong democrats as "unpatriotic" must be a priority for U.S. policy. Now that Beijing has indicated that democracy is not possible for decades, the U.S. has a choice to make—either to try to advance democracy now, or to acquiesce to a situation that has grave consequences for Hong Kong, for the rest of China and for Taiwan.

CRITICAL MOMENTS FOR HONG KONG

Last July, Hong Kong was swept up in the most dramatic events since its 1997 return to Chinese rule. Well over one-half million people marched to protest new national security laws that would threaten rights of association, press, and religion. This pressure led to the withdrawal of the legislation and the resignation of two very unpopular government officials, one of whom was deeply involved in the national security laws and widely known to be hostile to democracy and civil liberties. A few months later, Hong Kong's democrats made a strong showing in low-level elections for the district councils.

Popular discontent in Hong Kong over Beijing's efforts to implement the new national security laws—the effort to impose them was kicked off by Qian Qichen, the vice premier—went much deeper than the specific laws themselves or the unpopular officials Beijing installed to run Hong Kong. "People in Hong Kong can see that the problem isn't just with an individual, but with the structure," Yeung Sum, an elected legislator and chairman of the Hong Kong Democratic party, told The Washington Post. Hong Kong's people have shown once again, as they often have, that they favor full democracy now. Poll results taken by the respected Hong Kong Transition Project at Hong Kong Baptist University show the same thing.

Beijing sees the upcoming elections in September for the Legislative Council as a threat. Thirty of 60 seats will be up for democratic election. Their political party allies—the Liberal Party and the Democratic Alliance for the Betterment of Hong Kong have lost support politically owing to their stance on the national security legislation. The leader of the DAB, Tsang Yok Sing resigned after the party fared poorly in the district councils elections. While James Tien of the Liberal Party gained some favor for withdrawing support for the national security legislation at a critical moment, he has recently endorsed the mainland position that democrats are unpatriotic.



In response, Beijing has launched an intimidation campaign based on accusations of disloyalty against Hong Kong's democrats. To be sure, Beijing's methods in Hong Kong are different than they are on the mainland. There, members of Falun Gong, the China Democracy Party and labor activists and Tibetans and Christians find themselves arrested, locked up, and even tortured. Just last week, two protesters were arrested and charged with allegedly obtaining state secrets, a charge which the organization Human Rights in China believes is related to their efforts to document an ongoing crackdown on unofficial Christian churches.

However, while its methods in Hong Kong are so far much less harsh, Beijing is still determined as it is on the mainland. Members may have read Tuesday's story in *The Washington Post* about Beijing's arrests of Hong Kong residents with British citizenship. It is impossible to say that Hong Kong's democrats are not in danger of some form of punishment or imprisonment or what kinds of charges they may face for their activities in the near future.

#### WHAT "ONE COUNTRY, TWO SYSTEMS" REALLY MEANS

Most analyses of Hong Kong concentrate on trends, asking whether Beijing is interfering or not and whether Hong Kong is less free than it was under British rule. While I would submit that the trend in Hong Kong is not good, and Beijing is interfering in Hong Kong affairs, I would like to suggest that members look at the situation in Hong Kong another way: Beijing never intended Hong Kong to enjoy a high degree of autonomy and definitely not democracy. Indeed, from the beginning Beijing set up Hong Kong's system of governance to prevent that.

In the terms of Sino-British Joint Declaration, a treaty signed in 1984, China offered guarantees for Hong Kong's autonomy and freedom, including an independent judiciary, a free market, civil liberties, freedom of the press and a "legislature constituted by elections." Of course, in the lexicon of the Chinese Communist Party, democracy and elections mean very different things than they do in Western usage. Great Britain and China agreed that these guarantees would be codified in a Basic Law, drafted by the Beijing-controlled committee and enacted by the National People's Congress without the consent of the Hong Kong people.

The system Beijing set up through the Basic Law gives itself crucial direct and indirect controls over Hong Kong's affairs—including the executive branch, the legislature and important aspects of the judiciary. The chief executive is appointed by Beijing. As a fig leaf, there is a choice made by a small "Election committee" of 800 people overwhelmingly dominated by pro-Beijing appointees. In visits to the United States, Tung Chee-hwa has told Members of Congress and others that he won a hard fought election campaign. In fact, the indication that he had won his first term came when Jiang Zemin singled him out for a handshake in a meeting in the Great Hall of the People.

China also has indirect control of the legislature. Only twenty-four of its 60 seats are currently selected through democratic elections. Thirty seats are assigned to functional constituencies that are chosen by business, professional and other groups, many of which are very small. Six seats are chosen by the "Election Committee." While a few of these constituencies return pro-democracy candidates, most are dominated by very conservative, business people who take Beijing's line.

In the next elections in September, there will be 30 seats up for democratic election, and 30 for the functional constituencies. Beijing has already threatened to dissolve the legislature if it does not like the outcome of the elections. Incidentally, when China took control of Hong Kong, it dissolved the outgoing legislature constituted under the British, undid the very minor reforms of Chris Patten, and on July 1, 1997, installed the "Provisional Legislature." One of the things this appointed legislature did was to revise the election law to establish a system of proportional representation that was designed to reduce the power of pro-democracy candidates.

As for the future, Beijing's Basic Law does not provide for full democracy. Indeed, there are various barriers within the Basic Law to achieving democracy, including the provision that any changes to the methods for choosing the chief executive and constituting the legislature must get a two thirds vote of the current legislature and the approval of the sitting chief executive.

There is quite a lot of discussion going on in Hong Kong now about what Deng Xiaoping, and the legal experts who drafted the Basic Law, thought or meant about its provisions. One of the legal experts recently said, Hong Kong might have democracy "in the 2040's" or even "the 2030's, but absolutely not as soon as 2007." As the Oxford scholar Steve Tsang has written, "To a Westerner, the idea of Hong Kong people administering Hong Kong within the framework of 'one country, two systems' may imply that after 1997 Hong Kong will be free to run its own domestic affairs

with no interference from Beijing as long as PRC sovereignty is acknowledged. Such an interpretation is totally unacceptable to Beijing.”

However, U.S. policymakers and Members of Congress should not engage in this exercise too much. It is highly problematic for democratic politicians and policymakers to rely on the intent of senior cadres of the Chinese Communist Party in trying to decide what should or should not happen in Hong Kong. Which brings me to my third point—that Washington has relied much too heavily on the Basic Law and China’s own framework for governing Hong Kong in formulating U.S. policy.

#### CRITICAL MOMENT FOR U.S. POLICY

U.S. policy toward Hong Kong has reached a critical moment. For many years, the U.S. has accepted Beijing’s blueprint for Hong Kong’s political development. In fact, Secretary Powell did so just yesterday at the Heritage Foundation when he expressed his desire that Hong Kong’s “political culture continue to thrive under the ‘Basic Law.’” On the few other occasions on which top U.S. officials have spoken publicly about Hong Kong, they too have linked U.S. support for democracy to the provisions of the Basic Law.

This is part of a pattern. The U.S. has for many years tried to avoid confronting Beijing over Hong Kong. Before the handover, the U.S. felt that it could stay in the background while Great Britain negotiated its way out of Hong Kong. The U.S. tried to take the position that while it wanted Beijing to respect its commitments in the Joint Declaration, the U.S. had no claim to be able to determine that any particular Chinese action violated those commitments. On one occasion, assistant secretary of state Winston Lord told this committee, “The United States does not offer legal interpretations of agreements to which it is not a party.” This overly legalistic approach enabled the U.S. to stay silent at important times.

To be fair, the U.S. does more than any other country to express support for the ideal of democracy in Hong Kong. President Bush raised Hong Kong with General Secretary Jiang Zemin during their meeting at the president’s ranch in Texas when the effort to pass the national security laws was just getting underway. But it was also problematic that President Bush did not raise Hong Kong with General Secretary Hu Jintao at the last G-8 meeting. In other words, the U.S. has a short term approach to Hong Kong, which tries to mitigate the worst developments, while not challenging Beijing on the big picture, or pursuing a democracy agenda of its own.

A stronger response, and a broader vision, is necessary. First, the U.S. should respond to the intimidation campaign against democrats. Not doing so lends credence to the attacks on people, including Martin Lee, for associating themselves with democracy and seeking support from the international community of democracies, including the United States.

Second the U.S. must resolve the inherent contradiction in its policy. The U.S. cannot advance democracy in Hong Kong according to terms set forth and interpreted by Beijing. Questioning the provisions of the Basic Law is not a challenge to Beijing’s sovereignty, no matter how much Beijing suggests that. However, so long as Washington seeks to advance democracy within the constraints set down by Beijing, two things will be true: democracy will not advance, and Hong Kong’s democrats will face serious jeopardy.

Senator BROWNBACK. That is a good thought.  
Mr. Tkacik.

#### STATEMENT OF JOHN J. TKACIK, JR., RESEARCH FELLOW IN CHINA POLICY, THE HERITAGE FOUNDATION

Mr. TKACIK. Thank you very much for having me here, Mr. Chairman. I first want to say how much I admire you and the leadership you have shown in forming American policy in Asia, and I hope that this panel continues that.

One of the things I would like to do at the beginning is pick up on what both Jim and Ellen said, which is the United States policy embraces Beijing’s terms, when we look at China policy, when we look at Hong Kong policy, when we look at Taiwan policy even. Hence, we wring our hands about whether Beijing is being fair to attack Hong Kong political figures as being unpatriotic because let

us remember, patriotism in Beijing does not mean love of China. Patriotism in Beijing means love of and loyalty to the Chinese Communist Party. That is their business. But let us make sure we are looking at this in the proper framework.

Second, "one country, two systems" does not mean that Hong Kong is free to run its own affairs. "One country, two systems" merely means that Beijing will treat Hong Kong pretty much the same way it treats Tibet or Xinjiang.

I was asked to put the Hong Kong issue in a broader strategic perspective. I have a six-page statement and I was sort of hoping I could read it, but what I will say is that the two major American concerns I think with Hong Kong are being eroded.

One is 15 years ago, America saw Hong Kong as a beacon of freedom to China, and I have to say that over the last 7 years, we have seen that flicker out. It is a very dimming light, if it still shines at all in China.

Second, I would say anybody that looked at the "one country, two systems" model has to be embarrassed by what is going on in Hong Kong. Anybody that argued that Hong Kong's successful transfer to Chinese sovereignty under the "one country, two systems" model would reassure democratic Taiwan that it too would be free to thrive and run its own affairs has to be completely discredited at this point.

The real question I think American leaders have to ask themselves now is what are you going to do about it. What is America's executive leadership, what is its legislative leadership going to do? And I am not sure there is a whole lot left to be done for Hong Kong's people at this point. Hong Kong is already under Chinese sovereignty. There is little that you can do beyond the mere symbolic. If the United States, however, is serious about giving the people of Hong Kong the leverage they need in their bid for a government responsive to the people via universal suffrage, I think our leadership in the United States has to take some kind of action, not just words.

I suggest substantively that the administration and Congress could, for instance, make China's implementation of its promises for democratization in Hong Kong a touchstone of our overall strategy toward China. Unfortunately, I am afraid that the United States really does not have a clear strategy toward China aside from watching and waiting. I was heartened by Secretary Powell's comments on Tuesday at the Heritage Foundation encouraging China to become democratic but there was no "if not, then what do you do?"

One thing you could do is adopt Secretary Powell's language on Taiwan, for instance. He said many times whether China chooses peace or coercion to resolve its differences with Taiwan will tell us a great deal about the kind of role China seeks with its neighbors and seeks with us. I think if you substitute Hong Kong into that, you have a very effective symbolic gesture.

One thing that is I think concrete that you could do, that the administration and Congress could do I think, is refrain from calling China a "partner in diplomacy to meet the dangers of the 21st century." This is how the administration refers to China now despite China's massive military buildup opposite Taiwan. I think you

have to use sticks as well as carrots with the Chinese. I think it is important that the United States continue to reiterate its strong support for the Hong Kong people.

Give substance to your verbal expressions of concern. I think a persuasive measure would reside in an informal cessation of Presidential or Vice Presidential visits to or from China until progress on Hong Kong's democratization in the spirit, not the letter, of the UK-PRC Joint Declaration and the Basic Law is clear. The Congress I think could also adopt a similar stance, either explicitly in a resolution that House and Senate leaders refrain from visits to China while Hong Kong's continued processes of democratization is in question, or implicitly as senior members find it "inconvenient" to visit China or to host visits from Chinese counterparts while Hong Kong's democratization is in question.

There is another small demonstration of concern. I think Congress should, indeed, mandate the Commerce Department to reexamine the integrity of our dual-use and advanced technology exports to Hong Kong. I think such a reexamination might reflect that Hong Kong's law enforcement agencies are, indeed, capable of maintaining the insulation between the SAR and China that is necessary to satisfy the United States that such technologies are protected from improper use or re-export. But then again, it might not. You will never know, but I think it is an important issue.

I think finally we just have to be realistic in our China policy. China's leaders must be made to see that, like Taiwan, how China chooses to realize its pledges on universal suffrage and democracy for Hong Kong will tell us a lot about China's respect for democracy. At some point, the scales must fall from our eyes and China must be dealt with as she is, not as we hope she might possibly become some day.

In sum, I would just raise one last point. I think it was today that Hong Kong's Chief Executive, C.H. Tung, asked what is unpatriotic, and his answer was "listen to one's words, watch one's behavior." "One country, two systems" is a family affair. It is a country's affair. A country's affair. It is our own affair. Foreigners should not interfere, nor should foreign interference be tolerated.

My point is that this is not a matter of patriotism. This is a matter I think of freedoms and it is a matter of the commitments that China made not just to the people of Hong Kong, not just to the British Government, not just in a declaration that now resides in the United Nations. I think it made an implicit contract with the international community, and I think it is up to us to demonstrate our support for the people of Hong Kong.

Thank you very much.

[The prepared statement of Mr. Tkacik follows:]

PREPARED STATEMENT OF JOHN J. TKACIK, JR.

Chairman Brownback and Members of the Subcommittee:

Thank you for the opportunity to appear before you today to discuss U.S. policy towards Hong Kong in the broad context of America's interests in China and East Asia. Mr. Chairman, your outstanding efforts to put the expansion of freedom and democracy at the top of America's agenda and to help repressed peoples of countries like Iran, North Korea, and Burma, are a tremendous contribution to American foreign policy. I hope that today's hearing on Hong Kong will serve to remind Beijing's leaders that their commitments to preserve Hong Kong's freedoms were not just to the people of Hong Kong but enshrined in an international agreement that is depos-

ited with the United Nations, and that the world's democracies have a stake in the survival and success of Hong Kong.

#### THIRTY YEARS OF HONG KONG WATCHING

My first professional glimpses of Hong Kong came thirty years ago as a Vice Consul based in Taipei working on U.S. visa and immigration matters, and after serving nearly a decade in Taiwan and China, I returned to Hong Kong as Deputy Chief of the Consular Section at the U.S. Consulate General. After the Tiananmen Incident in June 1989, I was the Deputy Consul General in Guangzhou, with responsibility for all State Department political and economic reporting from south China, including the Special Economic Zones (SEZs) of Shenzhen and Zhuhai which are adjacent to Hong Kong and Macao in China's prosperous Pearl River Delta. From Guangzhou, I was transferred to the State Department in Washington where I was Chief of China Analysis in the Bureau of Intelligence and Research. I retired from the Foreign Service in 1994 and later worked for a year as a vice president of RJR Nabisco China based in Hong Kong, and then did private consulting work on China business opportunities. I have been with The Heritage Foundation since June 2001 as a resident fellow in China research.

I tell you this because I have watched Hong Kong evolve from the West's peephole on Maoist China in the 1960s and 1970s, to China's most important financial, trade and shipping center in the 1980s and 1990s. Since the Retrocession of Hong Kong to China in 1997, I have seen Shanghai move in to rival Hong Kong as China's commercial nerve center, and I expect Hong Kong's importance in East Asia to diminish as two dynamics take place.

First, the Central People's Government in Beijing will continue to make Shanghai ever more attractive to international businesses—not to mention Chinese commercial enterprises—with ever expanding telecommunications, transport, shipping, aviation, electric power and water infrastructures.

Second, Hong Kong will gradually merge with China's adjacent Special Economic Zones and become seamlessly integrated with the Pearl River Delta economy and with South China's political and defense structures.

#### HONG KONG, A DIMMING BEACON OF FREEDOM TO CHINA

If these two processes continue unchecked, it will likely mean that by the year 2047, Hong Kong will have merged totally with China, politically and strategically as well as economically and socially. The ultimate effect, all things being equal, will be the disappearance of Hong Kong as an entity distinct from the rest of the People's Republic. Of course, this was not what was contemplated by the United Kingdom, nor the people of Hong Kong or the international community at the time the UK-PRC Joint Declaration of 1984 was signed. At the time, China's leader Deng Xiaoping reassured the world that after 1997, "Hong Kong People would rule Hong Kong," and that for "fifty years, there would be no change."

Since 1997, however, China's policies toward Hong Kong have undermined both those pledges. The other witnesses today will certainly give more eloquent testimony than I can to that effect. My modest contribution to this hearing will be to consider some of the ways that this affects America's broader strategic interests in East Asia.

First and foremost, America's primary strategic interest in Asia must be the democratization of China. As Secretary of State Colin Powell said Tuesday March 2 in his B.C. Lee lecture at *The Heritage Foundation*, "We believe, too, that if the democracies of Asia can be consolidated and strengthened, and if new Asian democracies join them, then when China comes inevitably to accept systematic political reform, its leaders will see democracy in the same light that they have seen market economics."

15 years ago, China watchers in the United States, both in and out of government, saw Hong Kong as a beacon of freedom for China and an inspiration to political reform. Indeed, their hopes were justified by the vibrant political debates in China, especially in South China where I was reporting, in the year or so before the Tiananmen crackdown. Not only had Hong Kong's mature legal system been an anchor for contracts and business agreements that facilitated outside investment in the Pearl River area, but Hong Kong's legal guarantees for broader civil and human rights began to change the way Chinese thought about governance. Hong Kong's influence was subtle.

When I first arrived in Guangdong, Hong Kong's Cantonese language television and radio programs were wildly popular, and South China's 63 million Cantonese speakers vastly preferred Hong Kong programming to domestic Chinese broadcasts. I recall watching a rerun of an American detective series called "Hunter" in which a malefactor was collared by the police and read his "Miranda" rights, the right to

remain silent, to have an attorney, and the caution that anything said could be used against him. The program was faithfully dubbed into Cantonese with Mandarin subtitles. And by the time I left Guangzhou three years later, this sort of exposure to Western legal procedures was standard fare for South China television viewers.

But it was about that time that the Central Government in Beijing began to take measures that ensured Hong Kong's "well water" would not interfere with China's "river water" after 1997. China resolutely prohibited British attempts to push Hong Kong's political institutions toward full, universal suffrage, and in the end even disbanded the last Hong Kong Legislative Council that was supposed to provide the "through-train" across the July 1, 1997 transition to Chinese sovereignty. After 1997, self-censorship in Hong Kong's news media became commonplace (although Hong Kong still boasts several popular printed journals that continue a lively political debate, even on the ultra-taboo topic of Taiwan). Television and radio programming is tame and even halfway daring programming is punished—by the media owners themselves.

In 2002, at Hong Kong's flagship English newspaper, the *South China Morning Post*, for example, the independent-minded editor, Jonathan Fenby, was replaced, followed by the features editor, Charles Anderson, and then Willy Lam, the China editor and prominent China-watcher, who was replaced by an editor trained at the mainland's *China Daily*. Other dismissals followed. The paper's Beijing correspondent, Jasper Becker was fired for "insubordination" when he described Chinese President Jiang Zemin's unimpressive performance at a joint press conference with President Bush.

Last year, the Hong Kong Broadcasting Authority fined a popular talk-show host for expressing the opinion that the city's deputy director of housing was a "dog." Multinational satellite TV corporations carefully water-down their Chinese language programming out of Hong Kong to permit their transmission into China. And proposed anti-sedition legislation under "Article 23" of Hong Kong's Basic Law would have permitted the Hong Kong government to silence a journalist who questioned the government's mishandling of the SARS epidemic.

The latest controversies over the "Article 23" legislation and demands for constitutional reforms in Hong Kong are now under full-scale assault from Beijing and Beijing's appointees in Hong Kong's government. In short, Hong Kong has not proved to be the beacon of democratic values into China that we once thought it might be. If Beijing's tactics are successful in cowing legitimate dissent in Hong Kong, and if the international community sits on its hands in acquiescence, China will instead become the beacon of authoritarian control to Hong Kong.

#### "ONE COUNTRY, ONE SYSTEM"

Similarly, those who argued that Hong Kong's successful transfer to Chinese sovereignty under the so-called "one Country, two systems" model would reassure democratic Taiwan that it too would be free to thrive and run its own affairs in a similar "one country, two systems" structure, must surely be embarrassed.

When I was in Guangzhou in 1992, Beijing's overt strategy for the Shenzhen SEZ was "internationalization." The Shenzhen SEZ could claim special privileges because ingress and egress from the rest of China involved transiting a "soft line" border-crossing between the SEZ and Guangdong Province. Beijing's ultimate goal was to strengthen that "soft line" while lowering the "hard line" between Hong Kong and the SEZ.

By 2002, the Hong Kong government began to ease barriers to economic flows with mainland China, particularly those affecting the flow of "people, cargo, capital, information and services" from China back into Hong Kong. As such, Hong Kong's labor force, which lost 650,000 manufacturing jobs to mainland China over the past decade, began to feel the pain of integration with China's lower-cost manufacturing and services base. Integration will also equalize property values (further depressing Hong Kong's real estate market), enable Chinese from Shenzhen to compete directly in the Hong Kong labor market, and begin the process of gradually integrating Hong Kong and Shenzhen into one seamless zone.

Many Hong Kong businesses still urge the government to streamline traffic across the border and better coordinate infrastructure development with Shenzhen. Last year, China began to implement a "Closer Economic Partnership Agreement" (CEPA) which basically sealed Hong Kong's demise as a manufacturing base. But with it immigration rules barring Chinese workers from migrating to Hong Kong were relaxed, so that Chinese were treated equally with all other foreigners. Restrictions on Chinese tourists coming to Hong Kong were eased and the amount of money they could spend in Hong Kong was more than doubled. The result has been

a dramatic influx of cash that has returned the color to Hong Kong's anemic economy, but at the same time has encouraged an inflow of PRC citizens.

The degree of integration between Hong Kong and the rest of China raises serious concerns that blurring the line makes it increasingly difficult to justify keeping the two jurisdictions separate for export purposes, particularly the export of advanced technology products that have dual civilian-military uses. Such separate treatment is authorized by Section 103(8) of the Hong Kong Policy Act of 1992. It is no secret that People's Liberation Army front companies operate extensively in Hong Kong, and I have heard concerns that they make use of Hong Kong's special status to import denied technology that is unavailable via other channels. Because export licenses are not required for advanced technology shipments to Hong Kong, there is no record-keeping, much less verification or follow-up, on such exports.

Although, I have heard nothing but praise from U.S. officials who interact with their Hong Kong counterparts in the Customs and Excise Service and Trade and Industry Department. It is too much to ask even of these dedicated and professional law enforcement officers to enforce Hong Kong's regulations against the interests of Beijing's military and security services.

I have heard only the highest praise for the professionalism and cooperation of Hong Kong's Joint Financial Intelligence Unit in sharing its intelligence on money-laundering. Indeed, Hong Kong's participation in the Financial Action Task Force's Asia/Pacific Group on Money Laundering and the Egmont Group of financial intelligence units. Hong Kong has proven itself to be the Asian linchpin for terrorism-related money-laundering intelligence.

In general, Hong Kong's participation in international criminal, terrorism and narcotics intelligence has set the standard for Asia. Some argue that Hong Kong's participation has also resulted in more professional participation by China, although the State Department's latest report on "Money Laundering and Financial Crimes" indicates that China's cooperation in such activities remains comparatively weak.

#### CONCLUSION

Following Hong Kong's 1997 handover to China, the Special Administrative Region suffered twin blows from the Asian Financial Crisis and the 2001 global recession. Its manufacturing base has basically migrated to China, its position at the center of Asian finance has been eroded by steady competition from Singapore, and its role as the "Gateway to China" has been supplanted by Shanghai. There is a marked trend toward integrating the Shenzhen SEZ with Hong Kong via "internationalization", the CEPA and the lowering of immigration and customs barriers with China. China has begun the process of imposing its defense, internal security and intelligence priorities on Hong Kong via the so-called "Article 23" legislation. Finally, the idea of "Hong Kong People Ruling Hong Kong" has been debased by Beijing's renegeing on the spirit of its pledges in the Basic Law to implement "universal suffrage" in the period "after 2007".

Hong Kong is already fully integrated into China with the CEPA, and all indications are that the trend is toward a Hong Kong SAR that is integrated into China politically. At bottom, this is the essence of "one country, two systems."

#### RECOMMENDATIONS

I am not sure there is much left that can be done for Hong Kong's people. Hong Kong is already under Chinese sovereignty, and there is little to be done that goes beyond the merely symbolic. If the United States is serious about giving the people of Hong Kong leverage in their bid for a government responsive to the people via universal suffrage election, then our political leaders must take action.

(1) Substantively, the Administration and Congress should:

- Make China's implementation of its promises for democratization in Hong Kong a touchstone of our overall strategy toward China. Unfortunately, the Administration does not seem to have a clear strategy for China aside from watching and waiting.
- Adopt Secretary of State Powell's language on Taiwan as a model. The Secretary has declared that "whether China chooses peace or coercion to resolve its differences with Taiwan will tell us a great deal about the kind of role China seeks with its neighbors and seeks with us."
- Refrain from calling China a "partner in diplomacy to meet the dangers of the 21st Century." This is how the Administration now refers to China despite China's massive military build-up opposite Taiwan.
- Use sticks as well as carrots. Just this past Tuesday Secretary Powell noted "half a million brave people marched through the streets of Hong Kong to

peacefully oppose legislation that would have curbed their civil liberties,” and proclaimed that “it is important to all those who cherish democracy that Hong Kong remain open and tolerant, and that its political culture continue to thrive under the ‘basic law’ with China.” But he offered no “or else.”

(2) Give substance to your verbal expressions of concern. A persuasive message would reside in an informal cessation of Presidential or Vice Presidential visits to or from China until the progress of Hong Kong’s democratization in the spirit—not the letter—of the UK-PRC Joint Declaration and the Basic Law is clear. The Congress could also adopt a similar stance, either explicitly in a resolution that House and Senate leaders refrain from visits to China while Hong Kong’s continued processes of democratization is in question, or implicitly as senior members fine it “inconvenient” to visit, or to host visits from Chinese counterparts.

(3) As another small demonstration of concern, the Congress should mandate that the Commerce Department reexamine the integrity of our dual-use and advanced technology exports to Hong Kong. It may reflect that Hong Kong’s law enforcement agencies are indeed capable of maintaining the insulation between the SAR and China necessary to satisfy the United States that such technologies are protected from improper use or reexport.

(4) Finally be realistic in our China policy. China’s leaders must be made to see that, like Taiwan, “how China chooses to realize its pledges on universal suffrage and democracy for Hong Kong will tell us a great deal about China’s respect for democracy in the rest of Asia.” At some point, the scales must fall from our eyes, and China must be dealt with as she is, not as we hope she might possibly become someday.

Senator BROWNBACK. Thank you very much. Because the vote has been called, I will not be able to ask any questions of this panel. I do appreciate very much your presentations.

I want to say in conclusion I have been to Hong Kong several times. It is a beautiful city. It is and can be a leading city. I think it is going to be key to how we frame our policy toward it in the future and recognize the difficulties.

I look to this panel and to others to advise us if we need to take steps to amend the Hong Kong Policy Act, the 1992 policy act, to try to frame and put forward more of our concerns on universal suffrage. I am pleased with the administration’s aggressive statements. I think those are important in our long-term relationship with Hong Kong. I think what happens in Hong Kong is going to be viewed and watched around the world, and it is very important that it move toward universal suffrage by 2007. The people of Hong Kong are ready for it. It does not threaten Beijing. It needs to happen and we need to put strength behind our words in saying and doing that as well.

I just want to thank the panelists. I particularly want to express my thanks to the people who traveled from Hong Kong to be here and suffered the barbs and arrows that you have to simply stand for freedom and what is put forth in the Basic Law. Godspeed to you in this effort of the dream of mankind, which is to be free, and carrying that on forward.

The hearing is adjourned.

[Whereupon, at 4:05 p.m., the subcommittee adjourned, to reconvene subject to the call of the Chair.]

