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CRISIS IN HONG KONG: A REVIEW OF U.S. POLICY TOOLS

HEARING

BEFORE THE

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS UNITED STATES SENATE

ONE HUNDRED SIXTEENTH CONGRESS

SECOND SESSION

ON

EXAMINING CURRENT U.S. POLICY TO ADDRESS THE CRISIS IN HONG KONG

JUNE 4, 2020

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CRISIS IN HONG KONG: A REVIEW OF U.S. POLICY TOOLS

THURSDAY, JUNE 4, 2020

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
Washington, DC.

The Committee met by videoconference at 11 a.m., Hon. Patrick J. Toomey, presiding.

OPENING STATEMENT OF SENATOR PATRICK J. TOOMEY

Senator TOOMEY. This hearing will come to order.

Today the Committee meets again for a remote hearing via video. A few videoconference reminders: Once you start speaking, there will be a slight delay before you are displayed on the screen. To minimize background noise, please click the mute button until it is your turn to speak or ask questions. If there is a technology issue, we will move to the next Senator until we resolve the issue. The 5-minute clock still applies. You should all have one box on your screen labeled "Clock" that will show how much time is remaining. And with 30 seconds remaining, I will try to remember to gently tap the gavel to remind Senators that their time has almost expired. And to simplify the speaking order process, we will simply go by seniority.

First, I want to thank the Chairman, Chairman Crapo, for scheduling this very important hearing. He cannot be with us at this time because he has another commitment on another Committee on which he serves, and so he asked me to fill in for him, and I am pleased to do that.

I also want to take a moment to thank Senator Brown. Ranking Member Brown was very helpful in enabling us to put together especially this very, very impressive lineup of witnesses, and I am grateful to Senator Brown for his cooperation.

The purpose of the hearing is to conduct oversight on a current U.S. policy to address the crisis in Hong Kong, the Administration's responses so far, and what additional legal authorities and other tools Congress may consider providing to complement that response.

The Chinese Communist Party in Beijing has been waging an aggressive and systematic campaign that seems designed to eliminate the distinction between the freedoms enjoyed by the people of Hong Kong versus the absence of those freedoms on Mainland China. Let us be clear: The Chinese Communist Party wants to bring the people of Hong Kong to heel lest Mainlanders decide that they want some of those freedoms themselves.

For decades, Hong Kong has been an amazing place to live. I had the pleasure to live in Hong Kong for a year back in 1991. The people of Hong Kong are very special people. It is a very special place, and largely because of the basic freedoms that the people of Hong Kong have enjoyed: freedom of assembly, a free press, freedom of speech, an independent judiciary, a partially democratic electoral system of Government. And because these freedoms have included economic freedom as well—in fact, Hong Kong is one of the freest economies in the world—Hong Kong has been one of the most prosperous societies on the planet, despite the fact that is essentially a small rock in the water with no natural resources other than a harbor.

Now it seems that the Chinese Communist Party is undermining these freedoms. Over 8,000 protesters have been arrested for peacefully demonstrating since last year. Independent booksellers have been shut down, independent media outlets harassed, prodemocracy electoral candidates disqualified, intervention in Hong Kong's school curriculum, and even the kidnapping of Hong Kong citizens.

It is chilling that today, on the 31st anniversary of the Tiananmen Square massacre, these offenses seem to be culminating in a new piece of legislation being imposed from the Mainland onto Hong Kong, the so-called national security bill that will make it unlawful to have any dissent in Hong Kong. It is quite possible that thousands of peaceful protesters were killed in Tiananmen Square in 1989, on this day, for one reason: they were dissenting against the Chinese Communist Party's authoritarian rule, and they were advocating for a representative Government elected by its people.

The Chinese Communist Party's national security legislation would destroy the "one country, two system" arrangement that they had committed to. This legislation criminalizes, among other things, subversion that many people in Hong Kong believe will be used really to stifle dissent. Hongkongers could face arbitrary arrest and long prison sentences merely for speaking their minds. Independent media voices shuttered, Beijing censorship and surveillance is likely to grow. And the causes for Hong Kong's financial and economic success could wither as some of the reasons that make Hong Kong such an attractive place to work and do business will erode with the erosion of freedom and autonomy.

The Chinese Communist Party's campaign should not be surprising. Principles such as freedom and transparency and the just rule of law are antithetical to the Communist Party's mission. Look at some of the other behavior that the Chinese Communist Party has engaged in: treatment of Uighurs in Xinjiang, aggression toward neighbors in the South China Sea, being dishonest to the world about the COVID pandemic, and the unbelievable effort to control the behavior of its own 1.3 billion citizens through this so called social credit system. They are tweaking and prodding people's behavior using an Orwellian system of advanced technology to surveil, censor, and punish and reward people—all of this with respect to Hong Kong, in spite of the Chinese Communist Party's obligation from the 1984 international treaty with the U.K., which was called the "Joint Declaration" that is registered at the United Nations. This treaty set out the Chinese Communist Party's obliga-

tion for when Hong Kong passed from the U.K.'s control back to the Chinese Government's, and it established that Hong Kong would have, and I quote, "a high degree of autonomy," and that its citizens would enjoy many of the basic rights and freedoms that we have in the United States. But now many fear that the Chinese Communist Party's Orwellian system on the Mainland could be the future of Hong Kong.

I recently introduced with my colleague Senator Van Hollen—and I want to thank him for his leadership in this area. We introduced a bill that is designed to push back on the Chinese Communist Party's aggression and make those responsible think twice about continuing to quash Hongkongers' basic freedoms, It is called the "Hong Kong Autonomy Act", and it targets entities that inhibit Hongkongers' freedom of speech, press, and assembly; independent judiciary; democratic processes; and the high degree of autonomy that was promised to the people of Hong Kong.

Notably, the bill also penalizes the banks that choose to finance the erosion of Hong Kong's autonomy and put marginal profits ahead of basic human rights. This would be an unprecedented action toward the Chinese Communist officials, and it is intended to create obstacles to that aggression and obstacles that the leadership in Beijing has not encountered before.

The bill has a tailored approach to sanctioning bad actors. There is a delayed on ramp before sanctions become mandatory, and there is a clear off ramp by which entities can avoid the sanctions. There is bipartisan interest in getting legislation like this done as soon as possible. The Chinese Communist Party must know that there are consequences to its actions. Otherwise, the lesson that they will conclude is that they can continue the aggression against Hong Kong and perhaps in other places around the world.

Senator Brown, I recognize you for your opening statement.

OPENING STATEMENT OF SENATOR SHERROD BROWN

Senator BROWN. Thank you, Mr. Chairman. Thanks to you, Senator Toomey, and to Chairman Crapo and Senator Van Hollen for your work in putting together this hearing. And, Lee Cheuk Yan, thank you for the work you do as part of the trade union movement. It is an international workers' movement, and you fit that bill, and thank you for the work you have done.

At our hearing earlier this week, a number of us said this Committee must show Americans that we are on their side, that we see our black and brown fellow citizens, that we hear them, that their lives matter, and that we are going to fight for change.

Today's hearing cannot be an immediate return to old habits.

We are going to hear a whole lot of rightful condemnations of China's repression today. God knows they deserve it. But Monday night, the President of the United States ordered tear gas and rubber bullets to be used on peaceful protesters.

He did not use the arm of the State to stop violence. Again, these were peaceful protesters demanding justice for their fellow Americans. No, the President used it to stage a photo op in front of a church.

All of us on this Committee stand with protesters in Hong Kong, who just want a voice in their Government, to exercise funda-

mental democratic rights. I hope my colleagues will also stand with the millions of our black and brown fellow Americans, who essentially want the same thing.

That will also allow us to set a better example for the world. I think everyone on this Committee wants the U.S. to be a global leader—a beacon of democracy to oppressed people everywhere who long for freedom. The President of the United States is making that harder.

You can bet authoritarian Governments around the world, especially in Moscow and Beijing, hear loud and clear the President's messages stoking doubts about our elections, about suppressing voters, about inciting violence. They will use our President's words and our President's actions to justify their own brutality in Beijing and Moscow.

Today's hearing, as Chairman Toomey said, falls on the 31st anniversary of Tiananmen Square. It is a good opportunity for us to recommit ourselves to human rights everywhere—in Tiananmen Square and in Lafayette Square alike.

When the United Kingdom handed Hong Kong back to China in 1997, China promised the people of Hong Kong that they would enjoy certain freedoms, including the right to elect their leaders. Those guarantees have ensured Hong Kong's stability and prosperity.

China's new security law reneges on that promise and on its international obligations. Beijing's actions are an assault on the city's autonomy, the rule of law, and fundamental freedoms guaranteed by the Basic Law and the 1977 Sino–British Declaration. China's leaders seem determined to impose this draconian law. An assault on Hong Kong's democratic activists, on human rights advocates, on journalists, and others on trumped-up charges of sedition and national security violations will follow. The U.S. must stand with the people of Hong Kong.

If China allows the new security law to go into effect, the U.S. and its allies must respond by making clear the long-term costs to China of encroaching on Hong Kong's sovereignty, and that Beijing's, shall we say, Kafkaesque definitions of "secession," "sedition," and "foreign interference" are too vague and too malleable to be useful legal tools in a modern State.

China's authoritarianism and repression have mounted against its own people—in Hong Kong and Tibet, against the Uighurs, and others. President Trump leads China's leaders to believe they can tighten their grip on their own people, and our President, the President of the United States, will continue to look the other way.

His opposition to the Hong Kong Human Rights and Democracy Act, his silence on human rights violations, his persistent praise for President Xi Jinping, his reluctance to challenge Chinese leaders for fear of putting his trade deal at risk, it all sends a pretty clear message: China, you are free to do whatever you want to repress your own people as long as I, the President of the United States, get my photo ops.

Mr. Chairman, I am sensing a pattern.

Six years ago, Representative Chris Smith of New Jersey, a Republican, and I, then cochairs of the Congressional-Executive China Commission, introduced legislation to require the certification Sec-

retary Pompeo made last week: If Hong Kong were no longer sufficiently autonomous, it should no longer enjoy its special status under U.S. law, period.

This decertification, and the President's follow-on announcement last week to begin a process to limit Hong Kong's special status, were a start—even though tentative, partial, hesitant, and long overdue. They at least begin, the President at least begins to acknowledge that the Hong Kong security law puts the "one country, two systems" framework—and the people of Hong Kong—at serious risk.

We need a broad new long-term bipartisan strategy on China. But there are also steps we must take in the urgent short term. While I would support effective, calibrated additions to our present sanctions arsenal, an approach that narrowly focuses on unilateral U.S. sanctions, including new mandatory secondary sanctions on large foreign banks, may be ineffective and have unintended consequences harmful to our strategic interests.

We also know that the time necessary to craft targeted new legislation could delay the Administration from taking forceful action now, using powerful tools Congress has provided. Those include the 2019 Hong Kong Human Rights Act, the Global Magnitsky law, and, most importantly, broad authorities contained in the International Emergency Economic Powers Act.

President Trump could use these authorities tomorrow. He should have made it clear months ago he would use them to respond to action against Hong Kong. Congress should press the White House to do its job, with a comprehensive and multilateral approach.

At a time when the President has turned his back on the world—the withdrawal from the World Health Organization in the midst of a pandemic being just the latest example—we must step in and fill that leadership void created by the absence of our Chief Executive.

We must draw our British, European, and Asian allies into a long-term strategy, using robust economic, financial, diplomatic, trade, and other tools to make clear to China's leaders that violating their agreements on Hong Kong will implicate China's strategic relationships not just with the U.S., but with other world powers. We should incorporate that robust aid to democracy and human rights advocates, journalists, civil society organizations, and others who are committed to preserving Hong Kong's freedoms.

Finally, we have to make clear that China will pay a real economic price for enforcing this repressive new law. That could include changes in tariff treatment, in export controls and trade finance, in immigration—the entire range of benefits China now enjoys through Hong Kong's unique position as a financial center and a gateway to the West.

China makes it clear—through its economic espionage, its aggressive military posture, its abuse of our export controls, and its cheating on international trade rules that puts American workers out of jobs—that it sees itself more as an adversary than a partner of the West. Well, an adversary of workers in the West. We know that China has no problem with Western CEOs.

We must confront China's abuses, and its breach of its commitments to maintain Hong Kong's autonomy directly. We must confront it directly on this Committee.

I welcome our witnesses. I look forward to hearing their ideas on how best to do that.

Thank you all.

Senator TOOMEY. Thank you, Senator Brown.

I am going to introduce our witnesses now. I will introduce all of them; then I will recognize them sequentially before we begin with questions.

Our first witness for today will be Dr. Michael Martin. Dr. Martin is a specialist in Asian affairs for the Congressional Research Service of the Library of Congress, providing Congress with political and economic analysis of Burma, China, Hong Kong, and Southeast Asia. From 1994 to 1998, he was the assistant chief economist for the Hong Kong Trade Development Council. Prior to his time with the Hong Kong Trade Development Council, Dr. Martin taught at Hong Kong Baptist University, Doshisha University in Kyoto, Japan, Colby College, and Tufts University.

Next we will turn to two sanctions experts who are now in the private sector.

Mr. Harrell, formerly with the State Department and now a senior fellow at the Center for a New American Security, will give us his statement.

And then we will hear from Mr. Eric Lorber, formerly with the Treasury Department and now a senior director at the Center of Economic and Financial Power at the Foundation for Defense of Democracies.

Finally, we will conclude with Mr. Lee Cheuk Yan. Mr. Lee, in fact, is joining us from Hong Kong where he is testifying on behalf of the Hong Kong Labour Party, and he joins us literally moments after participating in a vigil in Hong Kong commemorating the victims of the Tiananmen Square massacre 31 years ago. Mr. Lee, we thank you for your testimony and your perspective as a Hongkonger on what is going on today.

Thanks to all of you for your written testimony. It is very helpful to us. It will be made part of the record. I ask our witnesses to honor and remember the 5-minute rule for your oral testimony so that each Senator has an opportunity to ask you questions. And I also would like to remind the Senators that we, too, have a 5-minute rule, which I hope to stick to very closely.

With that, Dr. Martin, please begin with your statement.

STATEMENT OF MICHAEL F. MARTIN, SPECIALIST IN ASIAN AFFAIRS, ASIA SECTION, FOREIGN AFFAIRS, DEFENSE, AND TRADE DIVISION, CONGRESSIONAL RESEARCH SERVICE

Mr. MARTIN. Thank you, Chairman Toomey, Ranking Member Brown, and the other Members of the Committee. It is an honor and a privilege to testify at today's hearing.

Before I begin the details of my oral statement, I ask that the document that I submitted previously to the Committee be included in the record as well as to be permitted the opportunity of submitting a more detailed written statement subsequent to this hearing.

Senator TOOMEY. Without objection.

Mr. MARTIN. OK. In addition, CRS submitted *In Focus*, a two-page report about the recent NPC decision, and I ask that that also be included in the record.

Senator TOOMEY. Without objection.

Mr. MARTIN. OK. Thank you very much.

With the remainder of my time, I would like to augment some of the materials that I have already submitted that are now part of the record, and, in particular, I want to point out that in my statement that I submitted, I mentioned "crises in Hong Kong" because in my assessment there are multiple crises in Hong Kong.

In my statement, I spoke primarily about the political crises that I see as well as the economic crises that are going on in Hong Kong. But I also see two other important crises that the Committee might want to consider.

First, there is a cultural crisis going on in Hong Kong in many different ways, which I can discuss later. Denise Ho, a musician, really cannot find a job right now in Hong Kong because she has been blacklisted because of her political activities.

In addition, I believe there is an existential crisis going on in Hong Kong. The very nature of Hong Kong is at risk, and many people in Hong Kong, including my fellow with Mr. Lee Cheuk-yan, see what is going on in Hong Kong as threatening the very nature of Hong Kong to its very core. And so I want to just augment that the crises that I referred to are multifaceted, and I would be happy to discuss that more later.

What I would like to also talk about now is what can be done, and as Senator Brown already enumerated, there is in existing law a lot of possibilities for the Administration to take action in various forms, and we can discuss those in greater detail, as well as there has been legislation recently passed by Congress, including the Hong Kong Human Rights and Democracy Act, that provide the Executive branch with additional ways and means by which they could take action.

There is pending legislation that we can discuss, including, Senator Toomey, a bill that you cosponsored that attempts to address those issues. And I suspect that there will be other legislation introduced that will try to find other ways of addressing these crises.

What I would present before the Committee right now is: What are your goals, what are your intentions, what do you hope to accomplish? You already mentioned the concept or the idea of somehow taking action against the Chinese Communist Party or the People's Republic of China. From what I can see, the People's Republic of China, with the support of the Hong Kong SAR Government and the chief executive, Carrie Lam, are fully committed to the course of action they have underway. And it is unclear to me what actions, if any, will dissuade them from their current path. I am not saying it is without any hope, but we should be realistic about what will change their attitudes, what will alter their behavior.

In addition, there are the people of Hong Kong to think about, and let me be rather open here. Mr. Lee, Martin Lee, who you know, Joshua Wong, who you probably have all met or many of you have met, if they wish to leave Hong Kong, they probably have options on how they can leave Hong Kong. However, what I think

about are the many protesters on the street every day or many days who have no such options. They probably cannot get access to other countries as readily as Mr. Lee. So you might want to think about vehicles or mechanisms, if you wish, to assist them.

I would add another group that may not be thought of. As Hong Kong continues to change, among the 7.5 million Hongkongers, there may be many who just simply do not want to live under such an autocratic Government. So you may also wish to consider legislation to address how to deal with them.

I see I am out of time, and I am happy to comment and respond to other issues and answer any questions that may be asked of me.

Senator TOOMEY. Thank you, Dr. Martin.

Next, Mr. Harrell, you are recognized.

STATEMENT OF PETER HARRELL, ADJUNCT SENIOR FELLOW, ENERGY, ECONOMICS, AND SECURITY PROGRAM, CENTER FOR A NEW AMERICAN SECURITY

Mr. HARRELL. Senator Toomey and honorable Members of the Committee, it is an honor for me to testify to you today. Like Dr. Martin, I have submitted a longer written statement for the record.

I believe that four principles should guide the U.S. response to the crisis in Hong Kong.

First, hold China to account while mitigating costs to the people of Hong Kong;

Second, as Dr. Martin suggested, we need to think of our response to Hong Kong within the context of an American broader strategy toward China;

Third, we should use the full range of American tools;

And, finally, we need to galvanize a global coalition and live up to our own values here at home.

Let me now briefly address three specific areas of U.S. policy: treating Hong Kong more like China under U.S. law, holding China to account in ways that advance overall strategy; and building a global diplomatic coalition.

U.S. law treats Hong Kong differently from China in many respects. There is a legitimate debate about whether broad measures to align Hong Kong's treatment under U.S. law with China will pressure Beijing or whether such measures will fundamentally impose costs on the people of Hong Kong without impacting Beijing's decisions.

I fundamentally believe that U.S. law cannot and should not indefinitely treat Hong Kong separately if Beijing does not treat the city as autonomous. But as the U.S. aligns policy, we must take care to mitigate harm to the people of Hong Kong.

I recommend several immediate steps. Last year, Congress prohibited the export of crime control equipment to Hong Kong for 12 months. It is time to make that ban permanent. We should also impose export controls and surveillance technologies that can be used to monitor citizens online and in person.

After China enacts the planned new national security law, I recommend a much broader range of steps that the U.S. should take to align Hong Kong's treatment with China under U.S. law and have spelled out a number of those specific steps in my written submission. But we also need to be careful to avoid taking steps

that contribute to China's own objectives in ways that would actually enable China to do things like move the financial center currently in Hong Kong onto Mainland China, a long-term Chinese goal.

I also recommend diplomatic steps. Inviting Mr. Lee to testify today is an example of how the U.S. can highlight the prodemocracy movement. And like Dr. Martin, I would urge this Committee to consider granting visas to the citizens of Hong Kong who do not wish to live under Chinese authoritarian rule.

The second area of U.S. policy response is measures that fit into America's emerging strategy toward China. Several Members of this Committee, including Chairman Toomey and Senator Van Hollen, have introduced legislation to impose more sanctions over China's erosion of Hong Kong's autonomy. Targeted sanctions on Chinese officials involved in repression and on companies that facilitate Chinese repression are a valuable step. But we must also think more broadly about a response that fits within our larger strategy. We should join with allies to launch a comprehensive campaign to push back on Chinese subversion of democratic rules and corruption. We need to increase our efforts to press back on China's survival agenda, both within China and globally, and we need to take steps to secure our own country against malign influence.

I urge the Senate to consider legislation that would launch a comprehensive national supply chain security review to identify supply chain vulnerabilities in the U.S. and close them.

I also urge the Senate to consider beneficial ownership legislation supported by many Members of this Committee to ensure that the Chinese Government cannot set up secret shell companies in the United States and use them to pursue its objectives.

Finally, we need to galvanize a global coalition to counter China's illiberalism. Over the past year many allies have cracked down on China's unfair economic practices, but too many continue to downplay China's abuses of democratic rights. We need to galvanize our allies to speak out and act through sanctions as well as in multilateral forums such as the G7 against China's repression.

But to be frank, to galvanize a global coalition, we must live our values at home. In recent days protests from London to Auckland have been focused on developments here in the U.S., not Hong Kong. Police abuses of unarmed men and women and U.S. security forces using riot control equipment to disperse peaceful protesters and to block access to national memorials undercuts U.S. leadership. While Governors and mayors must keep the peace, the world is watching our response. By failing to live up to our ideals, we make the world less just, less safe, and less free.

In closing, let me mention the Tiananmen Square massacre 31 years ago. It was a major setback for the cause of democracy. Yet the photo of an anonymous protester staring down a line of tanks remains an inspiration to people everywhere, and in the 1990s and the early 2000s, we saw a surge of democracy around the world.

The last decade has seen a reversal of that earlier democratic trend, both in China and globally. Yet I hope that a strong, smart response to China's erosion of democracy in Hong Kong can help turn the tide and promote a new democratic renewal.

Thank you, and I look forward to your questions.

Senator TOOMEY. Thank you, Mr. Harrell.

Mr. Lorber, you are recognized for 5 minutes.

STATEMENT OF ERIC B. LORBER, SENIOR DIRECTOR, CENTER ON ECONOMIC AND FINANCIAL POWER, FOUNDATION FOR DEFENSE OF DEMOCRACIES

Mr. LORBER. Thank you. Senator Toomey, Ranking Member Brown, and distinguished Members of the Senate Committee on Banking, Housing, and Urban Affairs, I am honored to appear before you today to discuss the crisis in Hong Kong and review U.S. policy tools.

This is a precarious moment for the people of Hong Kong, and the United States has an important role to play in supporting them in the face of efforts by the Chinese Communist Party to undermine their freedoms. Economic sanctions can be an impactful part of a comprehensive U.S. effort to support the peaceful, prodemocracy forces in the city. However, we need to have realistic expectations about their effectiveness. Sanctions will be unlikely to restore many of the freedoms that the CCP has taken away from the people of Hong Kong.

Our objectives toward Hong Kong should be three-fold.

First, our primary objective should be deterring the CCP and local authorities from further cracking down on the prodemocracy citizens of Hong Kong;

Second, we should ensure that any action we take does not further push Hong Kong into Beijing's control;

And, third, we should work to target the economic impact of these actions so that we do not harm legitimate businesses, including U.S. companies and financial institutions operating in Hong Kong.

Achieving these objectives will be challenging. Congress and the Administration must carefully calibrate economic pressure on Beijing to do so. Too much pressure could further isolate Hong Kong from global markets, hurting Hongkongers and causing U.S. and other foreign companies to downsize their exposure or even leave the jurisdiction altogether. This would have an outsized impact on the financial health of U.S. businesses and could lead to significant fallout in financial markets. It could also lead to a damaging response from Beijing.

However, too little pressure may not move the needle enough. A weak response could signal to Beijing that it has the green light to increase its aggression, crack down on the prodemocracy movement, and further erode the freedoms enjoyed by those in Hong Kong.

The Hong Kong Autonomy Act, introduced by Senators Toomey and Van Hollen, is a good step toward balancing these considerations and achieving these objectives. As I discuss in my written testimony, the legislation is designed to pressure the CCP and entities contributing to the undermining of rights in Hong Kong. It is structured to deter these entities from continuing to support this assault on the people of Hong Kong.

I believe there are a number of additional modifications to the legislation that would make it even more effective, increasing its

impact while limiting downside risk. This includes narrowing the secondary sanctions component as well as providing the Administration and any Administration sufficient flexibility to ensure that this pressure does not cause unintended market impacts, significant escalation, or real damage to businesses and international financial markets.

We should be clear that risks exist with this approach. China would be likely to respond and could take such steps as countersanctions, adding U.S. companies to the unreliable entities list, or threatening to renege on its commitments under Phase 1 of the trade deal.

Economic sanctions are not a panacea for countering China's aggression in Hong Kong. We must temper our expectations for what they can achieve and consider the risks of their use. Nevertheless, a carefully calibrated and flexible sanctions program designed to deter future Chinese encroachment, as part of a broader strategy that includes aggressive diplomatic pushback on China's intervention, close coordination with allies, such as United Kingdom, concerned about these Chinese measures, and supporting the peaceful democratic forces in Hong Kong can increase the chances of ensuring that this democracy under siege is not completely subsumed by the Mainland.

Thank you, and I look forward to your questions.

Senator TOOMEY. Thank you very much, Mr. Lorber.

At this time, Mr. Lee, you are recognized for 5 minutes.

STATEMENT OF LEE CHEUK YAN, GENERAL SECRETARY OF THE HONG KONG CONFEDERATION OF TRADE UNIONS, AND VICE CHAIRMAN, HONG KONG LABOUR PARTY

Mr. LEE. Thank you, Chairman Toomey, Ranking Member Brown, and honorable Members of the Committee, and other honorable panel members. Thank you for your invitation to me to speak to this Committee at this very, very critical moment in Hong Kong. I also want to express our appreciation for the full Senate and Congress for your concerns and actions on supporting Hong Kong.

I am Lee Cheuk Yan, General Secretary of Hong Kong Confederation of Trade Unions, also a former elected member of the Legislative Council of Hong Kong, and a founding advisory board member of Hong Kong Democracy Council. I am also the Chairman of Hong Kong Alliance In Support of Patriotic Democratic Movement of China, the alliance of people organizations in Hong Kong formed in 1989 to support the democracy movement in China that sadly ended by brutal and bloody suppression by the Chinese Communist Party.

Today actually is the 31st anniversary of the June 4th massacre, and the Hong Kong Alliance had persistently organized the vigil for over 30 years. But this year it was banned by the police in the name of public health. It has always been recognized by the people of Hong Kong that the annual candlelight vigil symbolized that Hong Kong still enjoyed the freedom under "one country, two systems." So the Hong Kong Government is telling the world that Hong Kong is now under "one country, one system" by banning the vigil. This is no surprise when we all witnessed the suppression

over the last year with police brutality, massive arrests, and banning of rallies and marches that had been going on in Hong Kong, so the banning of candlelight vigil is no surprise. But, still, people attended in massive numbers to light a candle in commemoration.

The Chinese Communist Party jailed the Nobel Peace Prize Laureate Liu Xiaobo 11 years for just advocating democracy and constitutional reform, and he was criminalized and they said that he incited the subversion of the State. Four people were jailed for 3 years for brewing and selling Remember June 4th wine, just wine is subversion. Pastor Wong Yi was sent to 9 years in prison for inciting subversion of State power just for standing up for religious freedom. The CCP defined subversion or other national security crimes in accordance to their own political needs and not the law. The law is only an instrument of suppression for them.

For example, when it comes to Hong Kong, you know, a question is always asked: Can the Hong Kong Alliance shout the slogan of "End One Party Rule"? Which we have been doing that for over 31 years. Or the people of Hong Kong shouted for the downfall of the Hong Kong Chief Executive? Are these acts of subversion?

There are suggestions from some of the NPC members that actually End One Party Rule may be caught by law. And so you can see that the guillotine can strike down anytime they believed politically necessary.

The other crime of foreign intervention can be subjected to also very, very broad interpretation. Is my presence and testimony at this hearing today a crime of foreign intervention? Can Hong Kong civil society contact their international counterparts without being accused of foreign intervention? Though we do not know the final wording of the law or how the court will interpret the law, it is very difficult to imagine the court departing from this decision of the CCP on all national security cases. I do not think there will be any independence of the judiciary in all these national security cases.

The other horrifying aspect is that they are going to set up a national security agency in Hong Kong. Is that going to start spying on the people of Hong Kong? So it is very sad that to announce to the world Hong Kong is now one country, one system. The rule of law now is being turned to become rule by law and rule of fear. We can win against this fear by believing in the people of Hong Kong and that they will continue to fight for democracy.

Last year, the U.S. Congress overwhelmingly passed the bipartisan Hong Kong Human Rights and Democracy Act. And per the law, the Secretary of State certified last week that Hong Kong no longer enjoys meaningful and sufficient autonomy from China to warrant the special relationship it has enjoyed. I think this is very important that the Administration and Congress work together on the appropriate response.

I believe it would be deeply irrational for President Xi Jinping to strike at Hong Kong. By "burning" Hong Kong, he will also burn China with it because Hong Kong is still economically useful to China. And I would tell the friends here that we Hongkongers will fight on.

Thank you.

Senator TOOMEY. Thank you very much, Mr. Lee.

I will recognize myself for the first round of questions, and before I pose my first question, I do want to very briefly follow up on a point that Dr. Martin made, observing the fact that most of the brave people of Hong Kong who have protested for their own freedom had very limited choices.

I noted very favorably the decision by the U.K. Government to move in a direction of allowing significant numbers of Hong Kong residents to move to the U.K. I would be very interested in pursuing policy changes here in the United States that would make such an option available to the people of Hong Kong to come to America. It would be wonderful for the people of Hong Kong. It would also be wonderful for America if people pursued that, should it come to that.

My first question is to Mr. Lee. I cannot help but go to the question of the vigil that you just participated in. My understanding is that you personally are out on bail. I am concerned, frankly, about the personal risks that you and others have taken. Everyone on the streets tonight in Hong Kong were taking great personal risk. What was it like to be part of that? How was it different from previous vigils? What is the mood of the people who were participating in the commemoration?

Mr. LEE. There is a tension before the candlelight vigil, what the police will do to us when we enter the Victoria Park. Will we be arrested? And today what happened is, you know, they have all these loud speakers warning us that if you go into Victoria Park, you know, this is an unauthorized assembly, and you also will be caught by the ban of regulation of the pandemic. You know, they are frightening people with all these scary threats about, you know, breach of the law. But the whole Hong Kong, everyone come out to light a candle, so I think because the number of people that are attending, you know, the police today do not take any action.

But the problem with Hong Kong now is they have a formula, and it is sort of, you know, banning the marches and the assembly. And then anyone that comes out, you have to take your own personal risk and responsibility. For example, I was under, you know, fixed charges for three incidents, and the charges include incitement to get people to join unauthorized assembly, organize and participate unauthorized assembly. So in three incidents already I was charged. And today, tonight, I may be charged for the fourth incident.

So, in a way, now it is very different time than the past. In the past we would view, oh, we will be secure to pursue peaceful marches and also to exercise our freedom of assembly. But now it is a different ball game. They will try to ban all marches, and then when you come out to march, then they will arrest you.

So I think, you know, Hong Kong people now have to face the fact that, you know, you take a personal risk to make any stand in Hong Kong. So I do not know what will happen to me because of my role in tonight's candlelight vigil, but I would only say that, you know, I am ready to face the consequence.

Senator TOOMEY. That is extraordinary personal courage, Mr. Lee. Let me ask you this: When the national security legislation, as it is called, is fully implemented, how is that going to affect peo-

ple's freedom of speech and press and assembly? How is that going to change things when that is fully implemented?

Mr. LEE. The national security act, firstly, I have to point out this is made in China. You know, totally is so absurd, that today Carrie Lam tell the world, tell the people of Hong Kong that they are going to rush the station. And one thing that she said is there will be consultation. Where is the consultation? Laughingly, it is in Beijing, not in Hong Kong. Why not in Hong Kong? They said that this is a national law, but this so-called national law is going to be implemented in Hong Kong. And so we can see how frustrated we are when we look at this Administration in Hong Kong, when they can, you know, tell the people of Hong Kong that no consultation at all about the law in Hong Kong.

And the second answer I want to make is that, you know, how impacted on Hong Kong—it is the Hong Kong Alliance who organizes the candlelight vigil every year. We do not know whether we can hold a similar vigil next year. I think we will be banned from doing that. And we are even worried that our organization calling for democracy in China will be seen as subversion, then banned totally in Hong Kong. So we do not know how many organizations in Hong Kong they will ban, how many people they will arrest for, you know, subversion. And one thing that we are very much worried about, I think all of you may know that we will be have a Legislative Council election in September, so this is a very important election. And because the people of Hong Kong are behind the prodemocracy group, so we may win more seats than in the past. But then with the national security law, we are worried that they have one more instrument or one more tool to, you know, play around with the election and they may disqualify candidates. So they may ask candidates, you know, imagine, "Do you support the national security law?" You say, "No, I do not support it." Then disqualify. So they are really playing a very, very dirty trick.

And the other thing that I worry about, how about the press? If the press report some of the activities that they are labeled "subversion," will the journalists or the media be also banned? So it would really, you know, come into the way of life in Hong Kong, destroying many aspects of the freedom that we have enjoyed in the past, and we may not have that in the future, and we will have to live in fear. And I do not think this is—you know, we are very sad that this is happening to Hong Kong.

Senator TOOMEY. Thank you, Mr. Lee.

Senator Brown.

Senator BROWN. Thank you, Chairman Toomey.

I will start with Mr. Harrell, if I could, please. As I noted in my opening statement, the President has pulled his punches with China on human rights, on Hong Kong, by praising Xi Jinping on the COVID crisis earlier, as you remember, to protect his partial trade agreement. Do you think it might have stayed the hand of China's leaders if the President had been more clear and concise and emphatic and forceful about the potential consequences of China imposing this new security law in Hong Kong?

Mr. HARRELL. Thank you, Senator Brown. My short answer to that question is yes. I think over the last several years, we have seen the U.S. justifiably and rightly begin to get much tougher

with China over an entire range of trade abuses, whether it is unfair subsidies or intellectual property theft. But we have as a country, I fear, taken a much lighter hand with respect to Chinese abuses of human rights and democracy, and I think this has sent a message to China that as long as it gives the United States a couple of the things President Trump wants on the trade front, with his Phase 1 trade deal, it will have a fairly free hand with respect to cracking down on human rights and democracy, whether in Hong Kong or in Mainland China and Xinjiang and other areas.

I commend the Congress for the steps Congress has taken to create new sanctions around human rights and other steps, but I think there is no substitute for Presidential leadership on issues of freedom and democracy, and I fear that we have sent the wrong message to China on those issues over the last several years.

Senator BROWN. Thank you, Mr. Harrell.

This next question is both for you and Mr. Lorber. Some have argued we should respond to China's imposition of the new security law by revoking its special status because Beijing will have effectively gutted its autonomy and transform Hong Kong into just another Chinese city. Others note the other side, that revoking Hong Kong's special economic status completely will hurt the people of Hong Kong and drive it further into China's arms.

Which of those do you think is more correct? And what do you think a Hong Kong under a new security law, assuming it is strongly enforced, would actually look like? Let us start with Mr. Harrell and be brief as you could, and, Mr. Lorber, too, if you could be brief. Thank you.

Mr. HARRELL. I will be brief. I have submitted some detailed comments on this question in my written submission. My short answer is that I think if China will not treat Hong Kong as autonomous, we cannot either. I think we should take steps to align customs treatment, export controls treatment, CFIUS treatment, and other areas of law if China will not treat Hong Kong autonomously.

I do think we should think carefully about how to mitigate the impacts on the people of Hong Kong. You know, differentials on visa policy and things like that I think continue to make sense. And I am realistic our measures will have some costs on Hong Kong. But as a moral matter and as a message of signaling to Beijing, I think we cannot keep the treatment unequal when China has asserted one country, one rule in Hong Kong.

Senator BROWN. Thank you.

Mr. Lorber, your comments, your thoughts on that question?

Mr. LORBER. Thank you, Senator Brown. I agree with Mr. Harrell on this. I think that there is a fine balance to be struck here between those two competing sides, and I think that, you know, once the announcement was made—or the circumstance was made by Secretary Pompeo and the announcement was made by the President last Friday, the Administration now has various levers it can adjust to sort of strike what that proper balance is.

So, for example, I think it would make sense to revisit the extradition treaty with Hong Kong if the national security law is put in place. The same thing with the export control restrictions that apply differentially between Hong Kong and China. But I think there are other potential measures that may be too onerous or too

problematic to revisit in a serious way, including financial relationships, for example, between the Federal Reserve and the Hong Kong Monetary Authority and other entities over there that could have serious, long-term, and really potentially problematic financial impacts on Hong Kong.

Senator BROWN. Thank you, Mr. Lorber.

Mr. Martin, as an economist who has lived in Hong Kong and knows the terrain, I enjoyed overhearing your conversation you had with your other panelists before, just the informal time you lived in Hong Kong. What do you think will be the actual long-term economic effect of withdrawing Hong Kong's special status under U.S. law, assuming major trade, finance, export control, and immigration benefits are eventually withdrawn by the U.S. in response to the security law? What will be the actual long-term economic effect on—if you want to bring in U.S. economic effect, too, but especially on Hong Kong?

Mr. MARTIN. OK, and I will try to be as brief as possible. First, I would start out by pointing out that if you look at the provisions of the U.S.–Hong Kong Policy Act—and I admit I am not a lawyer—the President is supposed to, if he uses that authority, implement such by indicating the aspect of Hong Kong that is no longer sufficiently autonomous to warrant special treatment in U.S. law. So there appears to be a tie between the President's determination and which aspect of U.S. relations to Hong Kong he is suspending, and that is supposed to be done by an Executive order.

But getting to the core of your question, it really depends a lot on how both the Hong Kong and the international business community responds to the new effective business, cultural, and financial environment in which they operate. So for large Hong Kong companies, they have options. For the members of Amcham Hong Kong and U.S. companies, bigger ones, they have options. They can relocate. Singapore would be a logical alternative to Hong Kong for a regional economic hub. So there are alternatives out there that they could take.

Hong Kong's economy will start hollowing out. It will economically slowly transform into any other Mainland city in the end. The people I am particularly concerned about are, based on my time at the Hong Kong Trade Development Council, actually the people who provide the greatest economic dynamic quality to Hong Kong, small and medium-sized Hong Kong entrepreneurs, U.S. entrepreneurs, who may not have an alternative on where else they can go, and they will see, as my testimony points out, their economic status, their prosperity diminish, and Hong Kong will become increasingly more bifurcated with a few elite wealthy who are closely tied to the leadership in Beijing and an increasingly large percentage of the population who are low-income, low-wealth, really without much economic opportunity.

Senator BROWN. Thank you, Mr. Martin.

Mr. Chairman, thank you.

Senator TOOMEY. Thank you.

Is Senator Moran on the call?

[No response.]

Senator TOOMEY. Senator Moran.

[No response.]

Senator TOOMEY. OK. If not, then we will go to Senator Reed.

Senator REED. Thank you, Mr. Chairman. Thank you very much, gentlemen, for your very insightful testimony.

Mr. Harrell, I want to go back to a point you raised about beneficial ownership, how critical it is to identify the interests that China has here in the United States so we can take effective action against them. Can you elaborate a little bit on that point?

Mr. HARRELL. Thank you, Senator Reed, for the opportunity to comment on that. As many Members of this Committee know, there has been a lot of discussion in Washington over the last couple of years about how the U.S. can crack down on the ability of individuals and companies and, indeed, foreign Governments to set up anonymous shell companies here in the United States, which they can then use to launder their wealth, which they can then use as fronts for other nefarious activities.

As you know, a number of Members of this Committee as well as a bipartisan group over in the House has been working for the last year or two now on beneficial ownership legislation that would require disclosure of who actually owns companies in the United States to the U.S. Treasury Department. And I think that adopting that legislation on beneficial ownership would really help secure the United States against a range of malign activities, including, but not limited to, folks in China who want to launder their money into the United States and engage in other malign activities here.

Senator REED. Well, thank you very much, Mr. Harrell. I am one of those people who have been promoting the legislation. In addition, with respect to the national defense act, we have language that requires defense companies to begin to survey their suppliers to determine the beneficial ownership of all their suppliers on national security grounds.

One other final question on this. Even though legislation would be absolutely in order, my sense is the SEC could order public companies today to disclose the beneficial ownership of their shareholders. Is that your sense, too?

Mr. HARRELL. Can you hear me?

Senator REED. Now.

Mr. HARRELL. I am not an expert on SEC laws and do not want to comment in detail. I do think there are steps the SEC can and should take to improve disclosure on public companies which would be valuable. But I believe even more important is the beneficial ownership legislation that, Senator, you as a supporter know would also get the very opaque private companies that exist in many States in this country.

Senator REED. I concur. Let me just ask a final question, Mr. Harrell. The efficacy of unilateral sanctions does not appear to be particularly compelling, so you might want to comment on the fact that we have to have more than a unilateral U.S. response. And the flip side of that perhaps is there are countries that may very well take advantage of the situation. If we impose significant economic restrictions on Hong Kong, they could rush in.

Can you comment on both those aspects, the less than significant impact of unilateral sanctions together with opening up opportunities for others to exploit our departure?

Mr. HARRELL. I think particularly when we are talking about unilateral sanctions on a very large country like China, they are just not going to be nearly as effective as multilateral sanctions. You know, what we have seen over the last couple of years, when you talk about an Iran or a Venezuela or a pretty small economy, you know, we do have a lot of clout. I think China is just qualitatively different from small countries, and I think unilateral sanctions on Chinese officials and on companies, though having symbolic impact and, where those companies do a lot of business in the U.S., some real impact, will not have nearly as much efficacy as a multilateral approach.

On that, I would say one heartening development over the last year or two has been that both the European Union and the U.K. have adopted sanctions rules in their own law that allow sanctions akin to the U.S. Global Magnitsky Act on corruption and human rights abuses. So there is actually an existing tool we could use to press the U.K. and the European Union to take action with us to impose multilateral sanctions on Chinese officials involved in repression in Hong Kong, which I do think would be much more effective than a unilateral U.S.-only action.

Senator REED. Thank you very much.

Thank you, Mr. Chairman.

Senator TOOMEY. Senator Menendez.

Senator MENENDEZ. Thank you, Mr. Chairman.

Let me start today by expressing my solidarity with the people of Hong Kong. Over the past year, they have been an inspiration to people the world over as they stood up in the face of oppression demanding their basic rights, for the freedom of speech, assembly, for the right to votes, rights that were promised to them under the Sino–British Declaration and their basic law.

Unfortunately, as we witnessed last week, Beijing has betrayed its promises to the people of Hong Kong, and today it is clear and obvious to one and all that Hong Kong is no longer autonomous. Indeed, as we confront our own yet unfulfilled dreams of equality and justice and reflect on our own struggles here at home to form our own more perfect union, one line in particular from a Hong Kong report just submitted by the State Department stood out to me. It said, "The people of Hong Kong turned out in the millions to protest these violations of their human rights and fundamental freedoms. Instead of listening to their grievances and finding a democratic solution, the Hong Kong Government deployed tear gas and made mass arrests, including of peaceful demonstrators."

These are standards that we must hold Beijing and Hong Kong to, Mr. Chairman. But in order for that judgment to stand, we must hold ourselves to the values of our own highest aspirations as well. Sadly, it is not just Beijing that betrayed Hong Kong but, in my view President Trump as well.

All last summer, as the people of Hong Kong marched, at times with American flags, the President was silent. When we considered the Hong Kong Human Rights and Democracy Act, which I was proud to sponsor, the President said he was against it. And when we passed it, the President said he stood not with the people of Hong Kong, but with President Xi. He said he stood with President Xi.

So it is no surprise to me that Beijing would think it had a green light in Hong Kong, and now it is incumbent on us to make sure that Beijing pays a price for its actions. It is critical not just for the people of Hong Kong, but for our larger policy with China. Our response must be swift and clear and targeted at Beijing, not the people of Hong Kong to whom we owe a deep moral debt.

Unfortunately, President Trump has still not made clear exactly what he will do to make Beijing pay a price, and most of the measures he discussed at his press conference last week will affect Hongkongers far more than Beijing. It is inevitable that Hong Kong will suffer in the years ahead. If Hong Kong is no longer autonomous, we simply cannot extend to it the benefits as a separate trade and customs territory that it has previously received and which Beijing has taken advantage of for its own ends. But in the final analysis, Beijing, not Hong Kong, must be held to account for the bad behavior that has led us to where we are today.

To that end, as the Ranking Member of the Senate Foreign Relations Committee, I would like to work with the Chairman and the Ranking Member of the Banking Committee to develop a tight and targeted approach to impose the appropriate penalties on Beijing, hopefully maybe through the NDAA.

Now, let me turn to the witnesses in the little time I have left. Mr. Lorber and Mr. Harrell, how should U.S. policy balance putting pressure on China and shifting the treatment of Hong Kong under U.S. law to now be more like the treatment of Mainland China without the burden falling disproportionately on everyday citizens of Hong Kong?

Mr. LORBER. Thank you, Senator. I appreciate the question, and it is a great one. I think what the Administration should be focused on is selecting which measures it is going to adjust, which core bilateral relationships we currently have with Hong Kong that are now up for question given the certification of nonautonomy, and it should adjust, similar to the conversation that Senator Brown and Mr. Harrell and I were having, things like extradition treaty maybe up for consideration, export control differentials should be considered.

From a U.S. sanctions perspective, what this body can do, I think that your language and your approach at having a targeted approach to this makes a lot of sense. We have to sort of carefully balance both the need to put pressure on Beijing while at the same time making sure that we do not exact too much economic pain on Hong Kong in a way that drives U.S. and non-U.S. businesses out of the jurisdiction and makes Hong Kong lose its luster more quickly.

Mr. HARRELL. I agree with Mr. Lorber on the need to take a calibrated approach to reviewing the individual areas of U.S. law, and I very much agree with you, Senator, on the need to hold Beijing and not the people of Hong Kong to account.

As you and your fellow Members of this Committee and the Foreign Relations Committee, Senator, look at targeted sanctions, I would urge you to think not only about individuals and financial institutions where I know you and your staff are already thinking, but also very directly and aggressively against the kinds of Chinese companies that may directly facilitate surveillance and repression

in Hong Kong, whether companies providing digital surveillance in Hong Kong or online surveillance in Hong Kong or who might help buildup the same kind of censorship apparatus in Hong Kong that exists in Mainland China. And I would be thinking carefully and in a calibrated way about the tech sector as well as the financial sector here.

Senator MENENDEZ. I appreciate that.

I know my time is up, Mr. Chairman. I have other questions for the record which I will submit. I felt compelled to make a statement because I think this is a critical moment.

Thank you, Mr. Chairman.

Senator TOOMEY. Thank you.

Is Senator Warner on the call?

[No response.]

Senator TOOMEY. OK. Senator Cortez Masto.

[No response.]

Senator TOOMEY. Senator Jones.

[No response.]

Senator TOOMEY. OK. If there are no other Senators, then we can move on to the second round of questions, and I will direct my first question of the second round to Mr. Lorber. One of the things that we have attempted to do—"we" being Senator Van Hollen and I—in crafting the Hong Kong Autonomy Act is to use secondary sanctions as a mechanism to attempt to dissuade or at least establish that there will be a price to be paid by Chinese Communist officials who would involved themselves in the repression of the people of Hong Kong.

So, first, I would like your thoughts on how we have designed those secondary sanctions. We have tried to calibrate them in a thoughtful way. As you know, they are imposed gradually. It is a fact that in the first year they are not mandatory. It is also the case that banks can choose not to do business with the offending parties and thereby avoid this.

What are your thoughts about how this is crafted?

Mr. LORBER. Thank you, Senator. I think it is well crafted, particularly on the secondary sanctions, because of the fact that it creates an incentive for both deterrence and for behavior change. There is an incentive for deterrence because financial institutions would know who is listed on the list as persons undermining the freedoms in Hong Kong, so do not do business with them. And then to the extent that a financial institution does come into troubled water, there is a structural incentive to change behavior, because as you mentioned, after year one a certain number of penalties will apply; but then after year two, an additional set of penalties will apply. So that structure is done in such a way that it incentivizes a change in behavior.

One really important point to note on this—and I mentioned this in my written testimony—it will be important, as the legislative process continues, to make sure that the financial institution components of the legislation really target those financial institutions that are actively engaged in undermining the rights and the freedoms of the people in Hong Kong. I think there should be this understanding that you do not want to cast the net too wide because that would have potentially unintended consequences. But to the

extent that you can find and there is evidence that financial institutions are actively supporting these activities, I think it makes sense as a legislative provision.

Senator TOOMEY. Thank you.

Mr. Lee, I wonder if you could respond to this question, and it is about how the Chinese Communist Party responds. I understand that it is probably inevitable that the national security legislation is going to be implemented, and some suggest that no matter what anyone else does, they are going to do whatever they are going to do. But it seems to me that they might care somewhat about consequences for their actions, and perhaps having this legislation that we have contemplated might cause some of the actors in Beijing to think twice about further repression on Hong Kong. I wonder what your thoughts are about how the Chinese Communist Party officials see the kind of legislation that we are contemplating.

Mr. LEE. When you look at the Chinese Communist Party, they always want to play sort of what we call now "wolf warrior" type of, you know, response. They always try to seem very strong.

But when you look at China itself, actually Xi Jinping had a big problem with their own economy, so with the problem with his own economy, and they tried to impose on Hong Kong the national security law, and there will be retaliation into the economy in China. So when China tried to undermine our economy, Hong Kong economy may be hurt, but at the same time, the China economy will be hurt because 70 percent of renminbi settlement is in Hong Kong. So they need Hong Kong as the financial center.

So I think it is very much an irrational act on the part of Xi Jinping to do that. But my question, I do have an answer. Is Xi Jinping's irrationality in undermining Hong Kong economy and hurting its own economy, is he—he is the one that does that, but it is the whole party behind it, you know, it is the whole Communist Party, you know, they may lose their own interest in the whole hurting of Hong Kong economy when they have their own money in Hong Kong.

So I think, you know, Xi Jinping may be very, very much seen to be a strong leader, but I wonder whether the others will go along with him when their own economic interest is being hurt. So I think the suggestion that there should be a very surgical type of, you know, sanction is something that people have to think about so that inside the Communist Party their own interests that are being hurt, economic interest being hurt, and they have to think twice. Xi Jinping may not think twice, but the whole party has to think twice when their own interest is being hurt.

Also, I want to put in one word about the global coalition, the diplomat coalition. I think this is very helpful because, you know, what—you know, it cannot be one country that takes up China. It has to be a united effort on the part of all the countries concerned. And so the G7 is very important to band together, you know, and to target China and tell China that they have to stop intervening in Hong Kong.

So thank you for the question, but I would hope that the American Government can help in promoting this global coalition, and also, you know, remember one thing, this is the Sino–British Joint Declaration. So the United Nations should also come in. And now

I think the U.K. Government has not yet found a way into United Nations system, so I think by banding together as a global coalition, the global coalition can help push in getting a United Nations intervention in Hong Kong, including, you know, a special envoy to Hong Kong.

Thank you.

Senator TOOMEY. Thank you very much. I will recognize Senator Brown.

[Pause.]

Senator TOOMEY. OK. Senator McSally.

Senator MCSALLY. Thank you, Senator Toomey. Thanks, everybody, for your testimony today.

Mr. Lorber, you talked extensively about the importance for targeted and flexible sanctions, but also not so optimistic that China is going to change their behavior. So what other tools do we have in our public policy toolkit? I got the message on sanctions, if you have anything else to say about that. But what else can we do in order to deter or to change China's behavior in basically taking over Hong Kong, is what we are seeing with the steps that they are taking, cracking down and going back on their word and their agreement? What else can be done in order to try and deter and change their behavior, whether it is related to sanctions or any other diplomatic, economic—if you are in charge, Mr. Lorber, what else do we have to offer?

Mr. LORBER. Thank you, Senator. I think perhaps the most important thing, in addition to kind of the economic pressure discussion that we have already had, really relates to what Mr. Lee and Mr. Harrell were talking about, where there needs to be some type of sustained diplomatic outreach with other countries who have vested interests in the freedoms that the Hongkongers have historically enjoyed. So certainly the U.K. has done a good job already, I think, with Boris Johnson potentially offering visas, but doing two things as part of this: One is providing a backstop, allowing for Hongkongers, if they are threatened, to seek some type of asylum or the ability to move to different jurisdictions if the situation worsens, and at the same time casting or creating an international public diplomacy campaign highlighting what is going on in Hong Kong. Everybody sort of knows it, but there has not been this unified front of people across the world with freedom-loving countries saying this is not acceptable, this is not OK. Essentially, it has been the United States and a few other small statements here and there. But I think that is what I dealing with do in addition to the kind of pressure discussion.

Senator MCSALLY. Great. Thank you.

Also, I wanted to ask you, so if they were to terminate the special relationship we have relating to the import of certain sensitive goods, as you know, semiconductors and other things, so Hong Kong has that special relationship allowing for that, but with, you know, China continuing to move toward taking them over, that becomes obviously a security issue for us. So if we were to terminate that special relationship, you know, what are the implications of that for the U.S., for our economy, and also for Hong Kong?

Mr. LORBER. Yeah, so that relationship sort of runs in some sense two ways, right? So Hong Kong can import—or can export

goods to the United States differentially than China can, and Hong Kong has different export control regulations that govern it from China. So the U.S. can send certain goods to Hong Kong that it cannot send to China.

I think it is realistic to assume that as China takes more and more control, as Mr. Harrell was saying, the likelihood of those export control goods being sent on to China is increasingly significant. So I do think that creating symmetry between those two countries, between Hong Kong and China, in terms of export controls makes a lot of sense. Will that hurt Hong Kong economically? It might, to be perfectly blunt. It is hard to assess what that impact would be without further analysis, but I think that from a national security perspective from the United States, I think it makes a lot of sense to do.

Senator MCSALLY. Great. Thank you.

And in my last little bit of time, Mr. Lee, can you just share—I mean, we are trying to balance this, putting pressure to change behavior of China so they stop encroaching on the freedoms and, again, their agreement of the past and the way of life in Hong Kong, where we put that pressure on them and look for different tools, but also protecting the rights of the people of Hong Kong. And we are also needing to, again, protect U.S. national security. So, Mr. Lee, can you just share, as China continues to encroach and continues to take away the freedoms of the people of Hong Kong, you know, what else can be done in order to strike that balance?

Mr. LEE. Of course, we are concerned, you know, what will happen in the future to the economy of Hong Kong, but one thing I think for sure about the people of Hong Kong, if there is further invasion into our rights and freedom and encroachment, Hong Kong is no longer Hong Kong. And even if we can so-called make money, we are not willing to sacrifice our spirit and our freedom, and I think people of Hong Kong are ready in a way, sadly, to be ready for the economy to be hurt, because China is the one that tramples on our freedom. And when you trample on the freedom, one thing, even without any sanction in the world, one thing will happen. When China tramples on the freedom of the people of Hong Kong, the people of Hong Kong will lose complete confidence. So even without any sanctions—you know, financial center is 100 percent built on confidence. You know, talents in Hong Kong working for the economy is 100 percent on confidence. If people lose confidence in Hong Kong, then actually without any sanctions the Hong Kong economy will go down. So in this way we have to be prepared to maybe, sadly, have some hard time ahead of us, but it is because of Xi Jinping, because of his, you know, attack on the freedom of Hong Kong. And then if Hong Kong becomes to be ruled by fear, you know, how can one place where people are fearful can be a financial center? That is absurd.

So I am sure that we are having a hard time, but in a way, this is inevitable because Xi Jinping has already wanted to strike Hong Kong.

Senator MCSALLY. Thank you, Mr. Lee. We stand with you for freedom.

Mr. LEE. Thank you.

Chairman CRAPO [presiding]. Thank you. And this is Senator Crapo. I am back from the Judiciary Committee now, and, Senator Van Hollen, you are next.

Senator VAN HOLLEN. Thank you, Mr. Chairman. And I want to thank you and Ranking Member Brown for scheduling this important hearing. To all the witnesses, and especially to Mr. Lee, thank you for your very long distance testimony and, most importantly, for all you have done as part of the trade union movement, your work for democracy and human rights in Hong Kong, and, of course, that is what brings us together today, the actions that the Government of China has taken and is in the process of taking in violation of its international commitments; in violation of the basic law, and in violation of the "one country, two systems" principle; and, most importantly, in violation of the rights of the people of Hong Kong.

It is essential, in my view, that the United States take action to stand up for the important principles that the people of Hong Kong in the streets are standing up for, and Congress on a bipartisan basis has taken the lead in these issues. I know it has been referenced a number of times that we passed the Hong Kong Human Rights and Democracy Act last year. There is, of course, the Magnitsky Act. It is very true that the Trump administration has lots of existing authorities that, in my view they need to be implementing and implementing right now to send a signal that these continuing actions have consequences. It may not stop the Government of China, but it is very important to send those signals so that can be part of the calculation and their decision making.

I also want to thank Senator Toomey, and I know he has been chairing the Committee hearing for most of this session. I was very pleased to partner with him on this legislation, the Hong Kong Accountability Act, because I do think it is important that Congress, again, on a bipartisan basis, makes sure that we deploy a full arsenal and tools at our disposal in terms of sanctioning. And, of course, that bill, our bill, targets—provides secondary sanctions on the banks that help support and are complicit in helping individuals who in turn have been working to undermine human rights and democracy in Hong Kong. And we think it is important that Congress move forward on this, but I want to emphasize again that today the Trump administration has plenty of authority to take steps immediately.

Let me also say—and, you know, I know when we scheduled this hearing, we could not anticipate the events here in the United States. But it is a reality that we witnessed something right here in Washington, D.C., that I never thought I would witness in my lifetime, and that was the President of the United States, along with the Attorney General, Secretary of Defense, and others, deploying military police to break up a peaceful assembly outside the White House in order to make way for the President to have a political stunt in front of historic St. John's Episcopal Church not far from the White House. They deployed rubber bullets. They deployed tear gas against people who were peacefully gathering to protest against injustice around the country. And for the President of the United States to be part of that undermines his credibility

and the credibility of the United States in speaking with a strong, unified voice when it comes to standing up for human rights.

Now, we all know that that is not our system of Government in the United States. We all know that was the exception. In fact, I never imagined it would ever happen here in the United States. That is the kind of thing that happens daily in Hong Kong. That is why it is important that we take action to prevent that kind of suppression of free speech. But the President has totally undermined that, at least from the Executive branch, in the decisions he took and the actions that he has taken.

I also find it difficult, because the President consistently has taken this kind of tone also in foreign relations. We are, of course, here on another anniversary of the Tiananmen Square massacre. Here is what the current President of the United States said about that years ago, and I think it is important to read what he said because it puts in context his unwillingness to move forward today. He said, "When the students poured into Tiananmen Square, the Chinese Government almost blew it. Then they were vicious. They were horrible. But they put it down with strength," he replied. And he went on to say that our country right now is perceived as weak, as being spit on by the rest of the world.

So our current President of the United States back at that time was celebrating the brutal tactics of the Government of China in Tiananmen Square. And that just brings me back to why we need to act on a bipartisan basis here in the U.S. Congress, because it is the Congress that has passed this earlier legislation that apparently the President is unwilling to move forward immediately on. And I do think it is important that we pass the legislation that Senator Toomey and I introduced because it actually requires an Administration to take action, and if they do not take action, then we as a Congress can do a backup.

So, Mr. Chairman, I guess I have got one eye on the clock here, but I know we heard from Mr. Lee. I would like to hear from Mr. Lorber, first of all, what your view is on that piece of legislation that Senator Toomey and I have introduced, and then to Mr. Harrell.

Chairman CRAPO. If you could both be brief, please, we are quite a bit over on the time.

Mr. LORBER. Thank you, Senators. Senator Van Hollen, of course, I think the Hong Kong Autonomy Act, which you introduced with Senator Toomey, is a well-designed piece of legislation. If the purpose of sanctions in the context of Hong Kong are really to deter the CCP from further undermining the rights and freedoms in Hong Kong, the legislation does get at that because it creates a deterrent impact by saying, first, if you undermine the rights, you will be added to this list where there are discretionary sanctions at the first instance; and if you continue to engage in that activity, well, those sanctions then become mandatory. That is both for the persons listed and for certain financial institutions that are directly supporting them. And I think that is a very smart way to do it because it creates a deterrent impact and it creates a real behavioral change—an incentive to change behavior over time.

Senator VAN HOLLEN. Thank you.

Mr. Harrell.

Mr. HARRELL. I agree with what Mr. Lorber said about the act. The other point I would make on the act is I actually think it fills a gap in existing sanctions laws, including the Hong Kong Freedom and Democracy Act that many Members of this Committee worked on in November. The act enables the targeting of individuals involved in sort of physical acts of repression—arbitrary arrests, detentions, those kinds of things; whereas, your proposed new legislation would broaden the ambit I think in important ways to get at sort of more generalized erosions of freedom and autonomy in Hong Kong that do not necessarily rise to the level of act of the kind of specifically targeted detentions that were targeted in the legislation from last November.

Senator VAN HOLLEN. Thank you, and I thank you, Mr. Chairman, Ranking Member, Senator Toomey. And, Mr. Lee, again, thank you for your testimony.

Chairman CRAPO. Thank you.

Senator Warner.

Senator WARNER. Thank you, Mr. Chairman. And I want to thank you and Senator Brown for holding this hearing. I think it is relevant not only obviously in terms of Hong Kong, but I think we are seeing a pattern from the Chinese Government that is extraordinarily disturbing. In my role as Vice Chairman of the Intelligence Committee over the last year-and-a-half, we have had 13 classified briefings about the threat that the Chinese Government poses to industries in America, academic institutions in America. We have seen the Chinese Government manipulate and use some of its technology advantages in terms of Alibaba, Tencent, Huawei—Huawei a little more conscious than most—and they have been able to create a survival State that is unprecedented, that would make Orwell blush.

So I think looking at these issues in Hong Kong is extraordinarily important. As a matter of fact, you may have seen that—I am sure our panel saw that there is kind of a rethinking of China's technology expansion, and our friends the British have proposed a technology alliance among G7 and certain other key Nations that I think we need to explore.

That being said, that is one of the reasons I know a number of my colleagues have raised this as well, why it is so important that in our country we live by our values. If there is going to be a coalition of the willing that wants to avoid the kind of Chinese surveillance State, the Chinese Government practices, I think we have to again live those values as well to present a counterargument.

Before I get to my question, I also want to really state something that I think is really, really so important, and I hope my colleagues will take this to heart. In the last year-and-a-half of doing this, I think it is important that when we cite our concerns with China, we make clear that our beef is with the Chinese Communist Party, President Xi Jinping. It is not with the Chinese people. We literally stand with the people of Hong Kong. And some of the things I hear, particularly out of the Administration, with this broad brush, is that they in a sense impugn sometimes, I believe, the patriotism and commitment of Asian Americans, Chinese Americans in particular, and I think that is not what we should be focused on, whether it is, particularly amongst Chinese Americans, questioning

their loyalty and commitment to our Nation. And I just hope we will all bear that in mind. I would point out my problem, again, is with the Government of China, and we stand with the people of Hong Kong.

Mr. Lorber, the first question I want to ask you is, as has been pointed out, the Chinese elite and the Communist Party elite that we have talked about that, you know, talk like they are Communists yet take advantage of this system, this kind of crony capitalism on steroids that exists in China, they have used the autonomous nature of Hong Kong in so many ways to kind of line their own pockets. If we go through this kind of change and if China changes the status of Hong Kong, what will that do to the elite's ability to leverage the independence of Hong Kong?

Mr. LORBER. Thank you, Senator. I do think that if you were to seriously rethink the special relationship with Hong Kong and move it back to sort of consider it as part of Mainland China, it would make it more difficult for Chinese elites to be able, for example, to move money through Hong Kong into Western markets, into real estate, into other areas. With that said, I do think there is a balancing act that really does need to be achieved here, and that balancing act is ensuring that you are protecting the rights and freedoms of Hong Kong and making clear to the Chinese Communist Party in particular and the elites in the party that what they are doing is unacceptable, while at the same time making sure that you are not driving Hong Kong too far into Chinese control. And, again, it is a situation where, if you press too hard on Hong Kong right now, I think there is the possibility that you accelerate the process of Chinese control. So it is really that kind of balancing act that needs to be struck here.

Senator WARNER. Well, thank you.

Mr. Chairman, I do not have a clock here, but I am going to presume that, as usual, I have gone too long. So I will not ask Dr. Martin my other question. Thank you, Mr. Chairman.

Chairman CRAPO. You are right on time, and you can send that question for a written response. How is that?

Senator WARNER. Thank you, sir.

Chairman CRAPO. Next is Senator Cortez Masto.

Senator CORTEZ MASTO. Thank you, Mr. Chairman, Ranking Member, for this important discussion.

I so appreciate all the panelists that are joining us today. And like my colleagues, I obviously have concerns about what we see happening in Hong Kong right now. Hongkongers have demonstrated on the streets for freedom and democracy. They have inspired us with their bravery and showing that democratic aspirations universal. They have looked at the United States as a beacon of freedom. It is pivotal at a time when there is an upswing in authoritarianism that the United States continues to stand by our values both abroad and here at home. There is no doubt there is a longstanding injustices in this country, especially for our communities of color that are disproportionately impacted by the health crisis, the economic crisis, and, yes, we are in the middle of a civil rights crisis as well. It is, therefore, incumbent upon us that we do the important work of dismantling systemic racism and creating a more just America. And tackling our crisis at home will bolster our

ability to lead in promoting universal rights abroad. So that is why it is so important that we continue to have this discussion as well.

One of the areas I would love to focus on involves companies and banks, and I know yesterday morning Peter Wong, the top executive at HSBC, signed a petition in support of China's national security law of Hong Kong. This comes days after calls to boycott HSBC due to its silence on Beijing's new national security law of Hong Kong. And then Jardine Matheson Holdings, another British trading firm, also recently announced its support for the law.

So my question to Mr. Lorber and Mr. Harrell and Dr. Martin is: How is the Chinese Government pressuring foreign and multinational companies to support this law? And will U.S. banks in Hong Kong come under similar pressure? Let me start with Mr. Lorber and then I would ask Mr. Horowitz and Dr. Martin as well.

Mr. LORBER. Thank you, Senator. My understanding is that the Chinese Communist Party, not just in Hong Kong but more generally, engages in both subtle but then also in certain cases more overt pressure techniques. So it can be anything from slowing down the purchases of U.S.-origin products or pushing Chinese tourists not to go to particular countries or work with particular companies within those countries as a way to pressure companies.

As we have seen over the last few years, it has become more overt in many ways with the Chinese Communist Party just out and out publicly threatening companies if they do not go along with foreign policy preferences.

In terms of U.S. institutions broadly, U.S. banks and others, you have seen that as well. The Chinese Communist Party has threatened U.S. companies.

In terms of what will happen in Hong Kong on that particular score, I do not know what the dynamics have been and I do not necessarily know what will happen.

Senator CORTEZ MASTO. Thank you.

Mr. Harrell, do you have any comments, or Dr. Martin?

Mr. HARRELL. Thank you very much, Senator, for this question. I think this is a tremendously important issue. As Mr. Lorber says, over the last couple of years we have seen more and more, first, quiet and now increasingly overt and direct pressure by the Chinese Communist Party and the Chinese Government on companies, including American companies. We had the instance where airlines from around the world had to remove Taiwan as a country from their websites. We, of course, had the issue with the NBA just here in America, the basketball league, just earlier this year. We are seeing more and more of this, and I think we are seeing it because as we see in the instances you brought up, it is working. China is getting companies to censor themselves. It is getting companies to come out in support of the actions that China is taking.

When you talk to companies about this, I think that they feel there is a collective action problem. For any given company to stand up to China, they feel very much in a pickle because if they are singled out by the Chinese, they lose business, but other companies will continue to do business in China. And I think we as a country and with our allies need to have some dialogue about how to kind of collectively stiffen the spine of the corporate sector to stand up here.

So I have urged, for example, companies to come together around a code of conduct in China where they would commit up front to not take collectively and as a group to not supporting various things the Chinese Communist Party wants them to do, because I think it gets them out of this individual action where they are afraid of sticking their neck out and having it chopped off toward more of a collective approach where I think you could see some more backbone out of the corporate sector.

Senator CORTEZ MASTO. Yeah, and I think it is interesting, because we have also had this conversation today that I appreciated about while we are looking at U.S. sanctions being very prescriptive so they do not harm companies, right? But at the same time, we see these actions by companies that are supporting a law that we are trying to address in Hong Kong.

I know my time is up, but, Dr. Martin, I did not know if you had a comment.

Mr. MARTIN. If I may, Chairman Crapo.

Chairman CRAPO. Yes, please be brief.

Mr. MARTIN. I will keep it as brief as possible.

First off, I would point out with respect to HSBC, which is actually a British bank—that is where its headquarters are now—the pressure came directly from the previous chief executive, CY Leung, who is a vice chairman of the China People's Political Consultative Committee, a very high Chinese entity that advises the National People's Congress and the leadership of China. So he openly basically called for everybody to remove all their money from HSBC until HSBC came out in support of the pending national security legislation. That is very overt from somebody who used to be very high in the Hong Kong Government.

The other entity that I would point to to keep an eye on is the liaison office for the Chinese Central Government in Hong Kong. They have a history of being very active in the internal affairs of Hong Kong, and on the economic front, they have been known to call up businesses and basically say, "Do not do business with this U.S. company, this foreign company, or even Hong Kong companies because of their politics." So *Apple Daily*, Jimmy Lai's newspaper, lost a lot of advertising allegedly because of pressure from the liaison office. So they have that mechanism.

And to finish up one point, as Mr. Lee pointed out, there are Legco elections coming up on September 6th, and that liaison office has in the past very openly campaigned and financed and assisted proestablishment politicians who are running for office at Legco district council and other places. And most recently, the Chinese Central Government announced in a break from past policies that that liaison office can operate inside Hong Kong and is not subject to the provisions of the basic law in terms of central Government bodies not being involved in Hong Kong's internal affairs.

So there are mechanisms, and I pointed to several of them, that are being utilized to apply pressure not just on Hong Kong companies, not just on Chinese companies, but U.S. companies, British companies, to basically toe the line to what has been decided by the central Government.

Senator CORTEZ MASTO. Thank you. Thank you very much.

Chairman CRAPO. Thank you.

Because of the time, I am going to forgo my questions. I do understand that Senator Brown does want to ask another question. Senator Brown, are you——

Senator BROWN. Mr. Chairman, I am fine with that. I do not need to do that, and I know in the interest of time I do not have any comments to wrap up the hearing either, which probably surprises you, Mr. Chairman.

Chairman CRAPO. I was expecting some.

Senator BROWN. This was a really good hearing, and I so appreciate our trade unionist friend tuning in from halfway around the world, so thank you to all the witnesses who were really good today. I thought this was really uplifting for all of us, and thanks to all of you for your fight for human rights.

Chairman CRAPO. All right. Thank you, Senator Brown. And as I said, I will not ask any further questions. I apologize that I was not able to be here for the first part of the hearing. We had a very contentious hearing in the Judiciary Committee that I had to participate in. But I do deeply appreciate the fact that each of you are willing to come here and present your testimony to us today. As Senator Brown said, this is a critically important issue, and we are very concerned about the rights of the people of Hong Kong and want to make sure that we do everything we can to help protect the autonomy of Hong Kong and protect the freedoms of the Hong Kong people.

With that, for Senators wishing to submit questions for the record, those questions are due in 1 week, on Tuesday, June 11th, and I would expect you may get some additional questions from Senators, either those who were not able to ask their questions or who had some others come to mind.

As to the witnesses, we ask if you do receive questions that you please respond promptly to those questions in writing.

Again, thank you all for your fight for freedom and for autonomy and your advice and your counsel to us as we move forward on this legislation. And thank you for joining us here today.

With that, the hearing is adjourned.

[Whereupon, at 12:43 p.m., the hearing was adjourned.]

[Prepared statements, responses to written questions, and additional material supplied for the record follow:]

PREPARED STATEMENT OF CHAIRMAN MIKE CRAPO

Today is a significant day, in a number of respects.

Today, the Committee meets to assess what options it may have to inject some leverage or restraint into an escalating political and human rights crisis in Hong Kong.

Today marks the 31st anniversary of China's deadly authoritarian crackdown, in Beijing's Tiananmen Square, against what was once probably the best opportunity a peaceful prodemocracy movement ever had of securing any degree of positive political reform and basic human rights from the Chinese Government.

Today also marks the first time in 30 years that the Hong Kong police ever prohibited the annual June 4th candlelight vigil to honor the victims at Tiananmen Square.

The Hong Kong police order cited the need for social-distancing as justification for the banned vigil, despite Hong Kong's having largely returned to normal.

Yet, the order comes coincidentally less than a week after mainland China shook the world by its announcement that it would soon impose a new National Security Law that could criminalize almost anything that China's Communist Party deems subversive.

Fortunately, for us, we have a witness today who, as a Hongkonger, can speak to his impression of whether or not there is any linkage of the vigil to the new law, and expound further on what he is seeing on the ground in the city.

On Thursday, May 28th, China's National People's Congress approved a draft decision to pursue, likely by sometime in August, the enactment of the new National Security Law, by a vote of 2,878 to 1.

China's announcement comes after a year of protests against the mainland in the city, which startled China's Communist Party.

The National Security Law, in addition to potentially jailing Hong Kong citizens—and others—for doing anything subversive, like exercising what the U.S. guarantees as constitutional rights to free speech or assembly.

More ominously, the law also enables China's Communist Party leaders to set up so called security agencies in Hong Kong to monitor and presumably deter activities of Hongkongers, and others, who it finds suspicious.

What's more, the proposed law would not need to be debated by the Hong Kong legislature at all before China circumvents the City's autonomous legislative process by unilaterally placing the new law under an annex of the Basic Law, or mini-constitution, that currently permits Hong Kong to enjoy 50 years of self-government.

Ironically, it is precisely this Basic Law that leaves it to Hong Kong's legislature itself to pass the national security law.

In its pursuit of its own National Security Law, some analysts assess China as beginning to end, far ahead of schedule, Hong Kong's autonomy, and the world recognized governing principle agreed to by China and Hong Kong of "one country, two systems," which will have a fundamental impact on Hong Kong's freedoms, its laws and how it is recognized by the global community.

Thus far, world leaders have responded to China's bypass of Hong Kong's legislature through various statements of deep concern.

The U.S. response was the strongest, with Secretary of State Pompeo reporting to Congress on May 27th that the United States no longer considers Hong Kong autonomous from China.

Two days later, President Trump announced that his Administration would begin the process of eliminating special treatment for Hong Kong, while placing numerous options on the table, including revoking the City's special status as a separate customs territory, revising U.S. export controls and imposing sanctions.

Banking's own Senators Toomey and Van Hollen have introduced their "Hong Kong Autonomy Act", a bipartisan bill that seeks to confront and deter China's attack on Hong Kong's autonomy, with a set of strong, mandatory, primary and secondary financial sanctions.

Today, we have invited three of our four witnesses specifically to help the Committee assess the various proposals thus far propounded, and particularly the use of sanctions, to deter China from breaching either its treaty obligations to Hong Kong or those under the Basic Law.

I am most interested in the witnesses' views on several questions.

First, what is the impact of Secretary Pompeo's report to Congress, on May 27, that the United States no longer considers Hong Kong to be autonomous from China?

Second, how best can the United States support the people and institutions of Hong Kong through targeted economic and financial pressure, and coordinate with U.S. allies and partners?

And third, what would be the likely impact of secondary sanctions on financial institutions and how best can we ensure that the impact is contained to those who contribute to the demise of Hong Kong's autonomy?

I look forward to working with Senators Toomey, Van Hollen, Ranking Member Brown, the other Members of the Committee and the Administration, to make sure that we get this right.

PREPARED STATEMENT OF SENATOR SHERROD BROWN

Thank you Mr. Chairman. At our hearing earlier this week, a number of us said that this committee must show Americans that we are on their side—that we see our black and brown fellow citizens, that we hear them, that their lives matter. And that we're going to fight for change.

Today's hearing can't be an immediate return to old habits.

We are going to hear a whole lot of rightful condemnations of China's repression today—God knows they deserve it. But Monday night, the President of the United States ordered tear gas and rubber bullets to be used on peaceful protesters.

He didn't use the arm of the State to stop violence—again, these were peaceful protesters demanding justice. No, he used it to stage a photo op.

All of us on this Committee stand with protesters in Hong Kong, who just want a voice in their own Government, to exercise fundamental democratic rights. I hope my colleagues will also stand with the millions of our black and brown fellow Americans, who want the same thing.

That will also allow us to set a better example for the world. I think everyone on this committee wants the U.S. to be a global leader—a beacon of democracy to oppressed people everywhere who long for freedom. The President is making that harder.

You can bet authoritarian Governments around the world, especially in Moscow and Beijing, hear loud and clear the President's messages stoking doubts about our elections, suppressing voters, and inciting violence. And they will use his words and his actions to justify their own brutality.

Today's hearing falls on the 31st anniversary of Tiananmen Square. It's a good opportunity for us to recommit ourselves to human rights everywhere—in Tiananmen Square and in Lafayette Square alike.

When the U.K. handed Hong Kong back to China in 1997, China promised the people of Hong Kong that they would enjoy certain freedoms, including the right to elect their leaders. Those guarantees have ensured Hong Kong's stability and prosperity.

China's new security law reneges on that promise and on its international obligations. Beijing's overstep is an assault on the city's autonomy, the rule of law, and fundamental freedoms guaranteed by the Basic Law and the 1977 Sino–British Declaration. China's leaders seem determined to impose this draconian law. An assault on Hong Kong's democratic activists, human rights advocates, journalists, and others on trumped-up charges of sedition and national security violations will follow. The U.S. must stand with the people of Hong Kong.

If China allows the new security law to go into effect, the U.S. and its allies must respond by making clear the long-term costs to China of encroaching on Hong Kong's sovereignty, and that Beijing's Kafkaesque definitions of "secession," "sedition," and "foreign interference" are too vague and malleable to be useful legal tools in a modern State.

China's authoritarianism and repression have mounted against its own people—in Hong Kong and Tibet, against the Uighurs, and others. And President Trump leads China's leaders to believe they can tighten their grip on their own people, and our President will continue to look the other way.

His opposition to the Hong Kong Human Rights and Democracy Act; his silence on human rights violations; his persistent praise for President Xi Jinping; his reluctance to challenge Chinese leaders for fear of putting his trade deal at risk—it all sends a pretty clear message: China, you're free to do whatever you want to repress your own people, so long as I get my photo ops.

I'm sensing a pattern.

Six years ago, Rep. Chris Smith and I, then cochairs of the Congressional-Executive China Commission, introduced legislation to require the certification Secretary Pompeo made last week: that if Hong Kong was no longer sufficiently autonomous, it should no longer enjoy its special status under U.S. law.

This decertification, and the President's follow-on announcement last week to begin a process to limit Hong Kong's special status, were a start—even though tentative, partial, and long overdue. They at least begin to acknowledge that the Hong

Kong security law puts the "one-country, two-systems" framework—and the people of Hong Kong—at serious risk.

We need a broad new long-term bipartisan strategy on China. But there are also steps we must take in the urgent short term. And while I would support effective, calibrated additions to our present sanctions arsenal, an approach that narrowly focuses on unilateral U.S. sanctions, including new mandatory secondary sanctions on large foreign banks, may be ineffective and have unintended consequences harmful to our strategic interests.

We also know that the time necessary to craft targeted new legislation could delay the Administration from taking forceful action now, using powerful tools Congress has already provided. Those include the 2019 Hong Kong Human Rights Act, the Global Magnitsky law, and most important, broad authorities contained in the International Emergency Economic Powers Act.

President Trump could use these authorities tomorrow. He should have made clear months ago that he would use them to respond to action against Hong Kong. Congress should press the White House to do its job, with a comprehensive and multilateral approach.

At a time when the President has turned his back on the world—the withdrawal from the WHO being just the latest example—we must step in, and fill that leadership void.

We must draw our British, European, and Asian allies into a long-term strategy, using robust economic, financial, diplomatic, trade, and other tools to make clear to China's leaders that violating their agreements on Hong Kong will implicate China's strategic relationships not just with the U.S., but with other world powers. And we should incorporate robust aid to democracy and human rights advocates, journalists, civil society organizations, and others there committed to preserving Hong Kong's freedoms.

Finally, we have to make clear that China will pay a real economic price for enforcing this repressive new law. That could include changes in tariff treatment, export controls, trade finance, immigration—the entire range of benefits China now enjoys through Hong Kong's unique position as a financial center and gateway to the West.

China makes it clear—through its economic espionage, its aggressive military posture, its abuse of our export controls, and its cheating on international trade rules that puts American workers out of jobs—that it sees itself more as an adversary than a partner of the West.

Well, an adversary of workers in the West—we know they have no problem with western CEOs.

We must confront China's abuses, and its breach of its commitments to maintain Hong Kong's autonomy, directly on this committee.

I welcome our witnesses, and look forward to hearing their ideas on how best to do that.

PREPARED STATEMENT OF MICHAEL F. MARTIN

SPECIALIST IN ASIAN AFFAIRS, ASIA SECTION, FOREIGN AFFAIRS, DEFENSE, AND TRADE DIVISION, CONGRESSIONAL RESEARCH SERVICE

JUNE 4, 2020

Chairman Crapo, Ranking Member Brown, Members of the Committee, My name is Michael Martin. I am a Specialist in Asian Affairs for Congressional Research Service (CRS). It is an honor and a privilege to testify at today's hearing concerning the crises in Hong Kong and U.S. policy options.

Crises in Hong Kong

The decision of China's National People's Congress (NPC) authorizing its Standing Committee (NPCSC) to write national security laws for Hong Kong precipitated another in a series of crises for the residents of Hong Kong. Many people in Hong Kong fear the NPCSC legislation will undermine the rights and freedoms enshrined in the 1984 Sino–British Joint Declaration on the Question of Hong Kong (the international treaty on the transfer of sovereignty over Hong Kong from the United Kingdom to China on July 1, 1997) and promised by the People's Republic of China (China, or PRC) to the residents of Hong Kong in the Basic Law of the Hong Kong Special Administrative Region (HKSAR) of 1990. Some Members of Congress may share the fears of these residents of Hong Kong that the city's "social and economic systems," which China pledged would remain unchanged for at least 50 years, will soon become a memory.

This action is the latest in a series of political crises that the people of Hong Kong have had to face since July 1, 1997. Some of these have been initiated by the PRC Government, and some have been caused by the actions of the HKSAR Government. The people of Hong Kong also have experienced several economic crises since the establishment of the HKSAR, both of an external and internal nature, including the Asian Financial Crisis of 1997 and a prolonged decline in Hong Kong's middle class. "Hongkongers", as they often call themselves, have also been coping with various cultural crises, including the immigration of thousands of people from mainland China, which many worry will destroy the distinctive characteristics of the city they love and wish to preserve.

Brief History of Hong Kong

In some respects, the crises facing the residents of Hong Kong stem from the city's unique history. In 1842, China ceded Hong Kong Island to the United Kingdom "in perpetuity" as a provision of the Treaty of Nanking, ending the First Opium War (1839–1842). In 1860, the United Kingdom obtained title to Kowloon as part of the First Convention of Peking. Following China's defeat in the First Sino–Japanese War (1894–1895), the United Kingdom signed a 99-year lease for the New Territories, the third and largest part of the Crown Colony of Hong Kong, as part of the Second Convention of Peking on June 9, 1898 (see Figure 1). That lease started a clock, set to expire in 1997, that would determine the future of Hong Kong.

The transformation of the small fishing village of Hong Kong into a "world city" that at various times has been a major manufacturing center, a major trading hub, a nucleus for regional international finance, and a fountainhead for influential art and culture was made possible by the city's status as a British Crown Colony, separate from mainland China. Hong Kong is physically remote from the United Kingdom—it took over 3 months by ship in the 1860s to travel from London to Hong Kong. This meant that the Governor of Hong Kong and British civil servants assigned to administer the colony operated with a high degree of autonomy from the United Kingdom's central Government, with the exceptions of defense and foreign policy. The United Kingdom garrisoned British troops in Hong Kong to defend the colony, and the Governor refrained from participating in foreign policy matters.

Figure 1. Map of Crown Colony of Hong Kong

Showing portions acquired in 1842 (Hong Kong Island), 1860 (Kowloon), and 1898 (New Territories)

Source: www.ChinaTouristMaps.com

The British Governors of Hong Kong generally adopted a laissez-faire economic policy and an Executive-led governance system. Exceptions were made for certain sections of the local economy, where largely British companies were granted monopolies or oligopolies, giving rise to Hong Kong's business "tycoons," a word derived

from Chinese, meaning "big lord." Many of these tycoons became close advisors to Hong Kong's Governors, and were often appointed to the Governor's advisory Executive Council, and later to Hong Kong's Legislative Council (Legco). For much of British colonial rule, only some of the Legco members were elected by a popular vote, providing only limited democracy.

The political separation of Hong Kong from the rest of mainland China also resulted in the city's unique linguistic, cultural, and social character. The native language of the vast majority of people in Hong Kong is Cantonese, while the predominant language in mainland China is Mandarin (or "guanhua," or "speech of officials"). In Hong Kong, people write using the traditional Chinese characters; in mainland China, they use simplified characters adopted by the PRC in the 1950s and 1960s. The people of Hong Kong have created a distinctive culture that combined elements of British and southern Chinese traditions. Social attitudes incorporated elements of the city's British heritage, such as the concepts of justice, the rights of the individual, and the rule of law, as well as Chinese values, such a filial piety, respect for one's elders, and responsibility to one's family and community.

By 1982, the PRC had made it clear to the United Kingdom that it had no intention of renewing the lease for the New Territories, and sought to negotiate terms for the transfer of sovereignty over Hong Kong from the United Kingdom to the PRC.[1] After the PRC and the United Kingdom concluded the Joint Declaration in 1984, many people in Hong Kong wondered if the two separate communities of mainland China and Hong Kong could find a way to make Deng Xiaoping's concept of "one country, two systems" work. The Joint Declaration appeared to provide sufficient reassurances that China would respect and protect Hong Kong's distinct social, economic, political, and cultural identity. In the Joint Declaration, China promised, "The current social and economic systems in Hong Kong will remain unchanged, and so will the life-style."[2] China also pledged that:

> Rights and freedoms, including those of the person, of speech, of the press, of assembly, of association, of travel, of movement, of correspondence, of strike, of choice of occupation, of academic research and of religious belief will be ensured by law in the Hong Kong Special Administrative Region. Private property, ownership of enterprises, legitimate right of inheritance and foreign investment will be protected by law.[3]

These commitments by the PRC were to "remain unchanged for 50 years," or until June 30, 2047.

Between 1984 and 1997, thousands of Hong Kong's wealthier residents, many with tertiary educations, hedged their bets by obtaining citizenship in Australia, Canada, the United Kingdom, and the United States, as a precaution in case the PRC did not live up to its obligations in the Joint Declaration. The vast majority of Hong Kong residents, however, lacking the wealth or formal education to obtain foreign citizenship, had no alternative but to stay in Hong Kong and hope for the best.

Political Crises

In 1990, the NPC passed the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China (Basic Law) to fulfill one of China's obligations under the Joint Declaration.[4] The Basic Law established a governance structure for the HKSAR very similar to that created by the United Kingdom. The Basic Law provides for an Executive-led Government, headed by a Chief Executive (rather than a Governor), with a separate legislature, the Legislative Council (Legco), and an independent judiciary with a separate Court of Final Appeal (rather than the United Kingdom's Privy Council). One distinctive aspect of Legco is the division of its members into those elected by universal suffrage in multiseat geographic districts and those selected by limited suffrage by "functional constituencies," representing various economic, social, and religious sectors.[5]

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[1] James Griffiths, "The Secret Negotiations That Sealed Hong Kong's Future", CNN, June 22, 2017.

[2] "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", December 19, 1984, Section 3(5).

[3] Ibid.

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

[5] For more about Legco, and its geographical and functional constituencies, see CRS *In Focus* IF10500, Hong Kong's Legislative Council (Legco).

The Basic Law reaffirms the commitments made by China in the Joint Declaration. In addition, Articles 45 and 68 of the Basic Law state that the "ultimate aim" is for the Chief Executive and "all the members of the Legislative Council" to be elected by universal suffrage.

Before the HKSAR was established and the Basic Law went into effect, Hong Kong experienced a relatively minor, but potentially telling political crisis about the implementation of the Joint Declaration and the practice of "one country, two systems." Initially, it seemed the PRC Government attempted to avoid interfering in the internal affairs of the HKSAR in accordance with the Basic Law. As time passed, the PRC Government became more active in the governance of Hong Kong.

Annex I and Annex II of the Basic Law state the process by which the method of selecting the Chief Executive and the Legco members can be changed, "subsequent to the year 2007." Even before the HKSAR was established in July 1997, prodemocracy advocates in Hong Kong began pushing for a rapid transition to the election of the Chief Executive and all Legco members by universal suffrage. The responses of the PRC and HKSAR Governments have led some to question if the "ultimate aim" of election by universal suffrage will ever be attained.

"Through Train" Legco and "Provisional" Legco

Legco members serve 4 year terms. Based on the continuity of this cycle, a new Legco was to be selected in 1996 and serve until 2000, spanning the time when sovereignty over Hong Kong was transferred from the United Kingdom to the PRC. The 1996 Legco was dubbed the "Through Train" Legco that would provide an element of stability during a time of political transition. In 1992, the last British Governor of Hong Kong, Chris Patten, introduced to the newly selected 1992 Legco proposed reforms to the selection of the 1996 Legco members that allowed every Hong Kong voter the opportunity to vote for one Legco member based on a geographical constituency and one Legco member based on a socio-economic "functional constituency."

The PRC, however, had already stipulated in the Basic Law the selection process for the first HKSAR Legco, and Patten's reforms did not conform to those conditions. Negotiations between the PRC and United Kingdom failed to resolve their differences. After Patten's reforms were approved by Legco in 1994, the PRC's Provisional Working Committee, which was responsible for the Hong Kong's transition to the HKSAR, instructed the 400-member Selection Committee, which selected the HSKAR's first Chief Executive Tung Chee-hwa, to also choose 60 members of a "Provisional Legislative Council", that would take office as of July 1, 1997.

On July 1, 1997, the "Through Train" Legco was officially disbanded, replaced the Provisional Legislative Council. Elections for the HKSAR's 1st Legco were held on May 24, 1998, and its members took office on July 1, 1998.

Patten's political reforms and the establishment of the Provisional Legco highlighted the political division in Hong Kong between prodemocracy political parties that advocated the rapid adoption of universal suffrage, and proestablishment political parties that generally supported the decisions of the PRC and HKSAR Governments. The events also raised questions among many Hong Kong residents about China's willingness to permit democratic reforms in Hong Kong.

Right of Abode[6]

In 1999, two cases were brought to the HKSAR's Court of Final Appeal (CFA) regarding the interpretation of Article 24 of the Basic Law that defines "permanent residents" of Hong Kong and determines who has the right of abode in the HKSAR. In both cases, the question was whether children born in mainland China who had at least one parent who had the right of abode in the HKSAR also had the right of abode, even if the parent had obtained permanent resident status in Hong Kong after the child's birth. The HKSAR Government estimated that up to 1.67 million people could potentially apply to immigrate into Hong Kong if the CFA affirmed that right, and that this influx could overwhelm the city's housing, education, and social service resources.[7] At the time, Hong Kong's population was 6.6 million, and many people were opposed to the possible massive influx of mainland immigrants.

In both cases, the CFA ruled that the children had the right of abode. In response, Chief Executive Tung Chee-hwa asked the NPCSC to provide an "interpretation" of Article 24, as permitted by Article 158 of the Basic Law. On June 26, 1999, the

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[6] For more about the "right of abode" crisis in Hong Kong, see Anne R. Fokstuen, "The Right of Abode Cases: Hong Kong's, Constitutional Crisis", *Hastings International and Comparative Law Review*, vol. 26, no. 2 (Winter 2003); and Karmen Kam, "Right of Abode Cases: The Judicial Independence of the Hong Kong Special Administrative Region v. The Sovereignty Interests of China", *Brooklyn Journal of International Law*, vol. 27, no. 2 (2002).

[7] Ibid.

NPCSC released its interpretation of Articles 22(4) and 24(2)(3) of the Basic Law, effectively overturning the CFA's decision, as well as criticizing the CFA for interpreting the Basic Law without consulting the NPCSC.

Although the NPCSC's decision was relatively popular in Hong Kong, legal scholars were concerned about the manner in which the issue was brought to the NPCSC and the logic of the NPCSC's interpretation. Article 158 of the Basic Law states that the CFA, and not the Chief Executive, should bring matters involving Basic Law interpretation to the NPCSC. In addition, the NPCSC's decision indicated that the CFA's rulings were "not consistent with the legislative intent" of Article 24, and then added additional conditions to be met in order to qualify for right of abode. To some legal observers, this constituted not just an "interpretation," but also an amendment of the Basic Law, raising concerns that the PRC Government might use its power to "interpret" the Basic Law to curtail the rights of Hong Kong residents in the future.

2003 National Security Legislation[8]

Existing Hong Kong laws dating back to before July 1997 refer to acts against the Queen of England or the United Kingdom.[9] Article 23 of the Basic Law states:

> The Hong Kong Special Administrative Region shall enact laws on its own to prohibit any act of treason, secession, sedition, subversion against the Central People's Government, or theft of State secrets, to prohibit foreign political organizations or bodies from conducting political activities in the Region, and to prohibit political organizations or bodies of the Region from establishing ties with foreign political organizations or bodies.

In February 2003, then-Secretary of Security Regina Ip Lau Suk-yee introduced to Legco proposed national security legislation to bring Hong Kong laws into accordance with the change in sovereignty over Hong Kong and fulfill the HKSAR Government's obligation under Article 23. The legislation may have been introduced in response to comments by then Vice Premier of China's State Council Qian Qichen in 2002 that the HKSAR Government should quickly pass national security laws.

The draft legislation faced strenuous opposition in Hong Kong, including objections from the Hong Kong Bar Association and the Hong Kong Journalists Association, who thought the law would unduly restrict people's freedom of speech, freedom of association, and press freedom.[10] On July 1, 2003, while the legislation was pending in Legco, an estimated 500,000 people joined a peaceful demonstration against the proposed national security law.[11] Prior to Legco's scheduled vote on the bill on July 9, 2003, members of the proestablishment Liberal Party announced their opposition to proceeding with the legislation. Seeing that the bill would not be approved by Legco, Chief Secretary Donald Tsang Yam-kuen announced on July 6, 2003, that further consideration of the national security legislation was being indefinitely postponed.

On July 16, 2003, Ip resigned her position as Secretary of Security, citing "personal reasons." On March 10, 2005, Tung resigned as Chief Executive for "health reasons." In Hong Kong, both resignations are generally considered to be closely tied to the failure to pass the national security legislation.

NPCSC Decisions of 2004 and Proposed Election Reforms of 2005

Prodemocracy activists have been pressing the PRC and HKSAR Governments to transition to the election of the Chief Executive and all Legco members by universal suffrage ever since the HKSAR was established in July 1997. Annex I and II of the Basic Law stipulate the process for amending the manner of selection of the Chief Executive and Legco "for the terms subsequent to the year 2007." For Hong Kong residents supportive of democratic reforms, this language raised the possibility of changing the selection process for the Chief Executive in 2007 and the Legco elections of 2008. Following his failure to pass national security laws, Chief Executive Tung faced local political pressure to propose suitable elections reforms.

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[8] For more about the political crisis caused by the proposed 2003 national security legislation, see Elson Tong, "Reviving Article 23 (Part I): The Rise and Fall of Hong Kong's 2003 National Security Bill", *Hong Kong Free Press*, February 17, 2018.

[9] For example, Cap. 200 Crimes Ordinance states a person has committed treason if she or he "kills, wounds or causes bodily harm to Her Majesty, or imprisons or restrains Her;" or "instigates any foreigner with force to invade the United Kingdom or any British territory."

[10] For more about the provisions of the 2003 legislation, and the objections to the legislation, see "Q&A: HK's Anti-Subversion Bill", BBC, July 1, 2003.

[11] Keith Bradsher, "Security Laws Target of Huge Hong Kong Protest", *New York Times*, July 2, 2003.

On April 6, 2004, the NPCSC issued an interpretation of Annex I and II of the Basic Law.[12] The NPCSC determined that a five-step process had to be followed in order to make any proposed changes in the selection of the Chief Executive or Legco members:

- Step 1: The Chief Executive must submit a report to the NPCSC indicating whether there is a need to make any changes (in accordance to Articles 45 and 68 of the Basic Law);
- Step 2: The NPCSC will "make a determination 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" if conditions are suitable for election reforms;
- Step 3: The Chief Executive will introduce proposed amendments to the Basic Law to Legco;
- Step 4: Legco may amend and then vote on the proposed amendments; a two-thirds majority of all the Legco members is required to approve the amendments;
- Step 5: The Chief Executive must give his or her consent to the proposed amendments as approved by Legco.

In the case of amendments to the selection of the Chief Executive, the Chief Executive is to report the outcome to the NPCSC "for approval." For amendments to the election of Legco members, the amendments are to be reported to the NPCSC "for the record."

On April 26, 2004, the NPCSC issued a decision regarding the selection processes for the Chief Executive in 2007 and Legco members in 2008.[13] The decision cited the expansion of the previous 400-member Selection Committee into the 800-member Election Committee in 2002, and the increase in the number of geographical constituency Legco members as evidence of democratic reforms, without mentioning the disbanding of the "Through Train" Legco in 1997. In the decision, the NPCSC determined that conditions in Hong Kong were not suitable for selection of the Chief Executive by universal suffrage in 2007 or for electing Legco members by universal suffrage in 2008 and that "appropriate amendments that conform to the principle of gradual and orderly progress" may be made provided that the ratio between geographical constituency and functional constituency seats in Legco remains unchanged.

Chief Secretary Tsang was appointed Chief Executive after Tung resigned in March 2005, and announced plans to propose reforms for the selection of the Chief Executive in 2007 and Legco in 2008. Tsang proposed expanding the Election Committee to 1,600 members, including all the elected or appointed District Council members, and adding 10 new seats in Legco—5 in geographical constituencies and 5 new functional constituencies for District Council members—in accordance with the NPCSC's April 2004 decision.

Hong Kong's advocates for democracy were initially split on Tsang's proposed reforms, with some willing to accept gradual reform and others pushing for more substantial changes and a clear timetable for the implementation of universal suffrage. A prouniversal suffrage rally on December 4, 2005, drew an estimated 250,000 people.[14] On December 21, 2005, Legco rejected the proposed election reforms. Democracy advocates in Hong Kong shifted their attention to the next elections of 2012, when a new Chief Executive and new Legco were to be chosen.

NPCSC Decision of 2007 and the Election Reforms of 2010[15]

Chief Executive Tsang and the PRC Government were disappointed by the defeat of their proposed election reforms. Prodemocracy political parties and activists in

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[12] National People's Congress Standing Committee, The Interpretation by the Standing Committee of the National People's Congress of Article 7 of Annex I and Article III of Annex II to the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China, April 6, 2004.

[13] National People's Congress Standing Committee, "Decision of the Standing Committee of the National People's Congress on Issues Relating to the Methods for Selecting the Chief Executive of the Hong Kong Special Administrative Region in the Year 2007 and for Forming the Legislative Council of the Hong Kong Special Administrative Region in the Year 2008", April 26, 2004.

[14] Keith Bradsher, "Pro-Democracy Protesters March in Hong Kong", *New York Times*, December 4, 2005.

[15] For more about the NPCSC's 2007 decision and the 2010 election reforms, see CRS Report RS22787, "Prospects for Democracy in Hong Kong: China's December 2007 Decision" and CRS Report R40992, "Prospects for Democracy in Hong Kong: The 2012 Election Reforms".

Hong Kong started public discussions on possible reforms for the upcoming 2012 elections. A clear divide between the prodemocracy and proestablishment coalitions arose over the way in which, and how soon, Hong Kong residents should be able to vote directly for their Chief Executive and all Legco members. In 2006, Chief Executive Tsang initiated a public consultation process to discuss possible election reforms, and on December 12, 2007, submitted a report to the NPCSC as required by Step 1 of the NPCSC interpretation of the Basic Law of April 4, 2004.

On December 29, 2007, the NPCSC issued another decision on possible election reforms in Hong Kong. In this decision, the NPCSC announced:

- The selection of the fourth Chief Executive in 2012 cannot be done via universal suffrage;
- The 2012 Legco elections will not be done via universal suffrage, and the ratio between geographical and functional constituency seats will remain unchanged;
- "[T]he election of the fifth Chief Executive of the Hong Kong Special Administrative Region in the year 2017 may be implemented by the method of universal suffrage;"
- The election of all Legco members by universal suffrage can occur "after the Chief Executive is selected by universal suffrage;"
- Any proposal to select the Chief Executive by universal suffrage must also establish a nominating committee "formed with reference to the current provisions regarding the Election Committee in Annex I to the Hong Kong Basic Law."[16]

The NPCSC's interpretation of December 2007 was a blow to Hong Kong's supporters of democratic reforms as it further delayed the adoption of universal suffrage for both the Chief Executive and Legco, and added new conditions on the formation of a nominating committee. The interpretation closed the door on the adoption of universal suffrage in 2012, and meant the soonest the Chief Executive could be directly elected was in 2017—twenty years after the establishment of the HKSAR. The NPCSC also established new conditions on the nomination process for the Chief Executive that effectively transformed the Election Committee into the nominating committee. Prodemocracy politicians feared that the nominating committee would be able to block the nomination of any prodemocratic candidates for Chief Executive. Once again, it seemed to many that Hong Kong's democratic transition was being delayed, and the PRC Government was making sure it could influence or control the outcome of those elections.

Despite the NPCSC's December 2007 decision, Chief Executive Tsang and Legco were able to compromise on election reforms in 2010, expanding the size of the Election Committee to 1,200 members, and adding 10 Legco seats—5 geographical constituency seats and 5 functional constituency seats to be filled by 5 elected District Council members chosen by Hong Kong voters who cannot vote in any of the other functional constituencies. The PRC and HKSAR Governments and the proestablishment Legco members presented the reforms as evidence of progress toward universal suffrage. The prodemocracy Legco members split over the reforms, with some raising concerns that the PRC and HKSAR Governments will use the reforms to delay further progress toward democracy.

Proposed Election Reforms of 2014, the NPCSC Decision, and the Umbrella Movement[17]

In October 2013, the recently selected new Chief Executive Leung Chun-ying (CY Leung) started a formal public consultation process to discuss possible election reforms for both the 2016 Legco elections and the 2017 selection of the Chief Executive. He created the Task Force on Constitutional Development headed by the Chief Secretary for Administration Carrie Lam Cheng Yuet-ngor, Secretary for Justice Rimsky Yuen Kwok-keung, and Secretary for Constitutional and Mainland Affairs Raymond Tam Chi-yuen. In July 2014, the Task Force released its report on the public consultation that reflected a wide range of views on elections reforms.

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[16] National People's Congress Standing Committee, "Decision of the Standing Committee of the National People's Congress on Issues Relating to the Methods for Selecting the Chief Executive of the Hong Kong Special Administrative Region and for Forming the Legislative Council of the Hong Kong Special Administrative Region in the Year 2012 and on Issues Relating to Universal Suffrage", December 29, 2007.

[17] For more about the proposed election reforms of 2014, the NPCSC's August 2014 decision, and the Umbrella Movement, see CRS Report R44031, "Prospects for Democracy in Hong Kong: The 2017 Election Reforms" (Update) and CRS *In Focus* IF10005, "Protests in Hong Kong: The 'Umbrella Movement'" (Update).

During the public consultation process, a group known as "Occupy Central with Love and Peace", (OCLP) formed by Professor Chan Kin-man, Reverend Chu Yiu-ming, and Professor Benny Tai Yiu-ting, commissioned a public opinion poll in June 2014, in which registered voters could choose among three alternative election reform proposals.[18] Nearly 800,000 people, or about 22 percent of Hong Kong registered voters, participated in the survey.[19] The voters were also asked if Legco should approve a Government proposal that "cannot satisfy international standards allowing genuine choices by electors." Nearly 88 percent of the surveyed voters said that Legco should veto such a proposal. The PRC and HKSAR Governments dismissed the survey results as meaningless.[20]

On July 15, 2014, Chief Executive Leung submitted the required report to the NPCSC to begin the five step process for election reform. On August 31, 2014, the NPCSC released its decision in response to Leung's report, setting three critical restrictions on the election of the Chief Executive by universal suffrage:

1. "A broadly representative nominating committee shall be formed. The provisions for the number of members, composition and formation method of the nominating committee shall be made in accordance with the number of members, composition, and formation method of the Election Committee for the Fourth Chief Executive," [the Election Committee that selected C.Y. Leung].
2. "The nominating committee shall nominate two to three candidates for the office of Chief Executive in accordance with democratic procedures."
3. "Each candidate must have the endorsement of more than half of all members of the nominating committee," [more than 600 members].[21]

The NPCSC's August 2014 decision was broadly condemned by supporters of democracy in Hong Kong. The Election Committee is chosen by a complex process with limited suffrage that effectively guarantees that a majority of members will be supporters of the PRC and HKSAR Governments.[22] Ex-Legco member and past chair of the Democratic Party Martin Lee succinctly summarized the pan-democrats' objections to the NPCSC's decision: "Hong Kong people will have one person, one vote but Beijing will select all the candidates-puppets. What is the difference between a rotten apple, a rotten orange, and a rotten banana?"[23] Chief Executive Leung and the proestablishment Legco members supported the NPCSC's decision.

Demonstrations against the NPCSC's decision arose in various parts of Hong Kong. Two Hong Kong student organizations—the Hong Kong Federation of Students (HKFS) and Scholarism, a prodemocracy student activist group—organized a week-long class boycott at the end of September 2014 to protest the NPCSC August 2014 decision. At the end of the boycott, several hundred students organized a protest march to Tamar Park in Admiralty, where Hong Kong's Central Government Office, Legislative Council Complex, and Chief Executive's Office are located (see Figure 2). Supporters of the students quickly swelled the ranks of protesters to several thousand on Saturday, September 27, and protesters began blocking major roads in Admiralty. On September 28, tens of thousands of people gathered in Admiralty, including the OCLP supporters, calling for the resignation of Chief Executive Leung and "genuine universal suffrage."

On the evening of September 28, hundreds of Hong Kong Police Force (HKPF) officers unsuccessfully attempted to break up the demonstration, firing 87 rounds of tear gas into the crowd, spraying protesters with pepper spray, and striking dem-

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[18] The three proposals included one by a group known as the Alliance for True Democracy (ATD), another by the political party, People's Power, and a third submitted by the Hong Kong Federation of Students (HKFS) and Scholarism. The ATD proposal was selected by 42.1 percent of the surveyed voters, the HTFS/Scholarism proposal received 38.4 percent, and the People's Power proposal was chosen by 10.3 percent (9.1 percent either abstained or didn't make a selection). Survey results available online at: *https://www.hkupop.hku.hk/chinese/release/release1164.html.*

[19] "Hong Kong Democracy 'Referendum' Draws Nearly 800,000", BBC, June 30, 2014.

[20] Jonathan Kaiman, "Hong Kong's Unofficial Prodemocracy Referendum Irks Beijing", *Guardian*, June 25, 2014.

[21] National People's Congress Standing Committee, "Decision of the Standing Committee of the National People's Congress on Issues Relating to the Selection of the Chief Executive of the Hong Kong Special Administrative Region by Universal Suffrage and on the Method for Forming the Legislative Council of the Hong Kong Special Administrative Region in the Year 2016", August 31, 2014.

[22] The composition of the Election Committee is specified in Annex I of the Basic Law, which establishes a selection process similar to that of the functional constituency seats in Legco. For more details about the selection of the 2106 Election Committee, see *https://www.elections.gov.hk/ecss2016/eng/figures.html.*

[23] Demetri Sevastopulo and Julie Zhu, "Hong Kong Democracy Activities Vent Their Anger Against Beijing", *Financial Times*, September 1, 2014.

onstrators with batons.[24] To defend themselves, protesters held up umbrellas, giving rise to the protest's name, the "Umbrella Movement".

Figure 2. Map of Occupied Streets during Umbrella Movement

Source: The Atlantic

The police action against the protesters in Admiralty gave rise to demonstrations in two other locations in Hong Kong—Causeway Bay and Mong Kok—where protesters blocked roads and erected barricades. The ranks of protesters swelled to more than 100,000 people.[25] The three occupation sites remained in place for over 70 days. The Mong Kok protest site was forcibly cleared on November 24 and 25, 2014.

The Admiralty protesters were removed on December 11, 2014, and the Causeway occupation was dismantled by police on December 15, 2014.

Chief Secretary Lam formally announced the start of a second round of public consultation to Legco on January 7, 2015.[26] The second round of consultation ended on March 7, 2015. On April 22, 2015, Lam presented the results of the second round of public consultation to Legco and announced the election reform legislation that would be introduced to Legco would comply with the NPCSC's decision. Lam presented the official text of the resolution to Legco on June 17, 2015.

After 2 days of debate, Legco defeated the proposed resolution on June 18, 2015, by a vote of 28 against and 8 for the motion. To pass, the resolution needed the support of at least 47 (two-thirds) of the 70 Legco members. The final tally was the result of a walkout by 32 of the proestablishment members conducted just after Legco President Jasper Tsang Yok-sing called for a vote on the motion.

In contrast to the 2010 election reforms, the prodemocracy Legco members were united in their opposition to the 2015 election reform proposals, perhaps because of the Umbrella Movement and the outcome of the OCLP public opinion poll. The use of tear gas, pepper spray, and batons buoyed popular support for the Umbrella Movement, but also demonstrated the HKPF's willingness to use greater force to break up largely peaceful demonstrations against the PRC and HKSAR Governments.

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[24] Bon Cheng and Yvonne Chiu, "Tear Gas and the Betrayal of Hong Kong", *Time*, October 16, 2014.

[25] Elizabeth Barber, "Hong Kong Student Protesters Call for Huge Rally After Government Scraps Talks", *Time*, October 9, 2014.

[26] The text of CS Lam's statement to Legco is available online at *http://www.info.gov.hk/gia/general/201501/07/P201501070519.htm.*

Disqualification of Legco Members[27]

In September 2016, Hong Kong voters selected the 70 members of the HKSAR's 6th Legco. The results were encouraging for supporters of democratic reforms and the Umbrella Movement, but irregularities in the oath taking process provided an opportunity for the HKSAR and PRC Governments to remove six prodemocracy Legco members from office and increase the proestablishment coalition's control over Legco.

Among the winners were seven candidates from five new political parties that had emerged from the Umbrella Movement. Together with the traditional prodemocracy political parties, they won 19 of the 35 geographical constituency seats, and 11 of the 35 functional constituency seats. Under Legco's procedural rules, the prodemocracy coalition's majority of geographical constituency seats gave them the ability to slow down or block legislation proposed by the HKSAR Government. Their combined 30 Legco votes also meant they could veto any proposed amendments to the Basic Law.

The new Legco members took their oaths of office on October 12, 2016. Five of the oaths were ruled invalid by Legco President Andrew Leung Kwan-yuen because of political statements made during the oath-taking process, including those taken by Sixtus Baggio Leung Chung-hang and Yau Wai-ching, both members of Youngspiration, one of the political parties that emerged from the Umbrella Movement. Plans were made for the five Legco members to retake their oaths. On October 18, then-Chief Executive Leung and then-Justice Secretary Yuen, however, filed a suit in Hong Kong's High Court to prohibit Leung and Yau from retaking their oaths.

While the suit was still pending in Hong Kong courts, NPCSC issued an "interpretation" of Article 104 of the Basic Law on November 7, 2016.[28] Article 104 states:

> When assuming office, the Chief Executive, principal officials, members of the Executive Council and of the Legislative Council, judges of the courts at all levels and other members of the judiciary in the Hong Kong Special Administrative Region must, in accordance with law, swear to uphold the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China and swear allegiance to the Hong Kong Special Administrative Region of the People's Republic of China.

In its decision, the NPCSC determined that all Hong Kong public officials who are required to take an oath of office must "accurately, completely and solemnly read out the oath prescribed by law." Failure to do so, the NPCSC states, "shall be treated as declining to take the oath." According to the decision, "no arrangement shall be made for retaking the oath." The decision concludes with the statement, "An oath taker who makes a false oath, or, who, after taking the oath, engages in conduct in breach of the oath, shall bear legal responsibility in accordance with the law."

On November 15, 2016, the High Court disqualified Leung and Yau, ruling they "declined" to take their oaths. The High Court's ruling did not rely on the NPCSC's decision, focusing instead on the events of October 12, 2016, and the requirements of Hong Kong's Oaths and Declarations Ordinance (ODO). Chief Executive Leung and Secretary Yuen subsequently filed suits against two pan-democrats and two new political party members alleging that their oaths were not valid. On July 14, 2017, the High Court disqualified those four Legco members.

By-elections were subsequently held to fill five of the six empty seats (one of the disqualified Legco members is still appealing his disqualification), but two of the winners were then disqualified when the Hong Kong courts ruled two prodemocracy candidates were inappropriately ruled ineligible in the by-elections. While the court decisions was a victory for the disqualified candidates, they left the seats vacant, and the HKSAR Government decided not to hold new by-elections to fill the vacancies.

The disqualification of six elected Legco members eliminated the prodemocracy coalition's majority in the geographical constituencies, but left the coalition enough votes to block amendments to the Basic Law. Legco President Leung and the proestablishment Legco members took the opportunity to change Legco's procedural rules to prevent the prodemocracy Legco members from delaying consideration of

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[27] For more about the 2016 Legco elections and the disqualification of Legco members, see CRS *In Focus* IF10500, "Hong Kong's Legislative Council (Legco)", and CRS *Insight* IN10739, "Hong Kong's High Court Disqualifies Four More Legislators".

[28] National People's Congress Standing Committee, "Interpretation of Article 104 of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China by the Standing Committee of the National People's Congress", November 7, 2016.

pending legislation. Previously, the prodemocracy Legco members had used their majority of geographical constituency seats to block proposed procedural changes.

The disqualification crisis has raised additional concerns about the HKSAR Government using other means to prevent prodemocracy candidates from running for office. Under Hong Kong law, anyone convicted and sentenced to more than 3 months in prison is not eligible to run for elected office for a period of 5 years. The arrest and prosecution of several prodemocracy politicians for alleged crimes with possible penalties of more than 3 months in prison is viewed by many in Hong Kong as a way of tipping the outcome of the Legco elections scheduled for September 6, 2020. In addition, some proestablishment politicians have said candidates for the Legco elections should be asked if they support the pending national security laws to be promulgated by the NPCSC as a litmus test for their allegiance to the Basic Law, and possible grounds for disqualification.

Proposed Extradition Law of 2019 and the 2019 Protests[29]

Most of the political crises prior to 2019 were precipitated by actions undertaken by the PRC Government. The political crisis of 2019, however, was sparked by the decision of Chief Executive Lam to propose legislation that would have permitted the extradition of criminal suspects from Hong Kong to mainland China. The crisis was exacerbated by the decision by the Hong Kong Police Force (HKPF) to respond to largely peaceful demonstrations with excessive force, as well as the PRC Government's efforts to discredit the protests as being directed by "foreign agitators." Escalating tensions were possibly dissipated by the onset of different crisis in 2020, the outbreak of Coronavirus Disease 2019 (COVID–19) in Wuhan, China, and the people of Hong Kong voluntarily taking preventive measures to protect their health.

On April 3, 2019, Hong Kong's Chief Executive Carrie Lam Cheng Yuet-ngor submitted to Legco proposed amendments to the Fugitive Offenders Ordinance (FOO) that would permit—for the first time—extradition of alleged criminals from Hong Kong to mainland China, the Macau Special Administrative Region (Macau), and Taiwan. In addition, the legislation sought to amend Hong Kong's Mutual Legal Assistance in Criminal Matters Ordinance (MLAO) to include mainland China, Macau, and Taiwan.

Legco was scheduled to take up the proposed amendments on June 12, but large-scale demonstrations on June 9 and 12 led Chief Executive Lam to announce on June 15 the suspension of consideration of the bill. These demonstrations were largely peaceful, with some violent confrontations between the HKPF and a relatively small number of protesters, particularly on the evening of June 12. After a standoff lasting several hours, an estimated 5,000 Hong Kong police officers in riot gear used tear gas, rubber bullets, pepper spray, and truncheons to disperse the demonstrators.[30] Chief Executive Lam and then Police Commissioner Steven Lo Wai-chung characterized the day's demonstration a "riot." Two days later, Chief Executive Lam announced an indefinite delay in Legco's consideration of the extradition bill.

On the following Sunday, June 16, according to the demonstration's organizers, an estimated 2 million Hong Kong residents again peacefully marched from Victoria Park to the HKSAR Government headquarters; the Hong Kong Police Force stated that 338,000 people participated.[31] During the June 16 demonstration, the protesters called on Lam to comply with "Five Demands" (see text box).

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[29] For more about the extradition law crisis and the 2019 protests, see CRS *In Focus* IF11248, "Hong Kong's Proposed Extradition Law Amendments; CRS *Insight* IN11165, "Hong Kong Chief Executive Lam To Withdraw Extradition Bill; Protests Continue"; and CRS *In Focus* IF11295, "Hong Kong's Protests of 2019".

[30] James Griffiths, Helen Regan, and Ben Westcott, et al., "Hong Kong Protests Over China Extradition Bill", CNN, June 12, 2019.

[31] "Huge Turnout by Protesters Keeps Heat on Hong Kong's Leader", *New York Times*, June 16, 2019.

In the weeks that followed, people gathered to demonstrate in various parts of Hong Kong against the extradition bill and in support of the Five Demands. The HKPF responded to the demonstrations by sending out officers in riot gear to break up the protests. This response frequently resulted in violent confrontations between the HKPF officers and more militant protesters. The HKPF used tear gas, rubber bullets, pepper spray, and truncheons to disperse the protesters. The protesters responded by throwing bricks and petrol bombs in front of the advancing police officers to slow their advance. Protesters and journalists complained about the HKPF's excessive use of force. The HKPF denied the allegations and blamed the violence on the protesters.

Lam announced on September 4, 2019, that she would formally withdraw the controversial extradition bill. She also said the Independent Police Complaints Council (IPCC), whose members are appointed by the Chief Executive, would look into the allegations of excessive use of force by the HKPF and the factors that contributed to the protests.

The protests continued throughout the fall and into January 2020, demanding that Lam meet the other four demands. Most of the demonstration were largely peaceful, with violent confrontations between the HKPF and more militant protesters sometimes occurring after the planned demonstration was over. During the course of the protests, the HKPF:

- have arrested more than 9,000 people;
- fired 16 live rounds, wounding 3 protesters;
- fired more than 10,000 rounds of rubber bullets at protesters, journalists, and emergency medical volunteers tending to the injured;
- discharged nearly 16,000 tear gas canisters;
- deployed nearly 2,000 bean bag rounds and over 1,800 sponge rounds, blinding one journalist in one eye; and
- injured more than 2,000 people. [32]

In addition, 520 HKPF officers were injured during the protests, including one shot in the leg with an arrow.

In May 2020, the IPCC released its report on the 2019 protests. The IPCC report made no general determination on the issue of alleged excessive use of force by the HKPF, nor did it describe the allegations against the HKPF in much detail. It stated that individual allegations of police misconduct are to be investigated by the HKPF's Complaints Against Police Office (CAPO), and the IPCC's role is "to monitor and review" CAPO's investigations. The IPCC report did, however, repeatedly describe in detail allegations against people involved in the demonstrations, who are frequently referred to as "violent protesters." [33] Chief Executive Lam praised the IPCC report, and indicated she saw no need for an independent investigation of the sort being demanded by the demonstrators. Others characterized the IPCC report as a "whitewashing" of HKPF's misconduct.

Large-scale demonstrations in Hong Kong were effectively brought to an end by the arrival of COVID–19 on January 23, 2020 (see section on health crises below). Most Hong Kong residents, relying on their past experiences with Avian flu (H5N1) in 1997 and severe acute respiratory syndrome (SARS) in 2003, voluntarily under-

[32] Figures based on information in Progressive Scholars Group, "Silencing Millions: Unchecked Violations of Internationally Recognized Human Rights by the Hong Kong Police Force", January 24, 2020; and the postings of Kong Tsung-gan, "Arrests and Trials of Hong Kong Protesters", at *https://medium.com/@KongTsungGan/arrests-and-trials-of-hong-kong-protesters-2019-9d9a601d4950.*

[33] The phrase "violent protesters" appears nearly 300 times in the IPCC's 1,011-page report.

took measures to protect their health, such as staying at home, wearing masks in public, and avoiding crowds. The HKSAR Government also announced emergency public health measures that prohibited large-scale demonstrations, and the HKPF stopped issuing approvals for protests. Small-scale gatherings continue to occur almost on a daily basis.

The 2019 crisis began as a protest against a proposed extradition law, gained support as a demonstration against police brutality, and eventually became a popular expression of dissatisfaction with the PRC and HKSAR Governments. In response to the perceived excessive use of force by the HKPF, some of the protesters began using more militant methods.[34] The escalation of violence also drew growing concern by China's leaders, who saw the Hong Kong protests as an emerging threat to national security, and applied increasing pressure on Chief Executive Lam and the HKPF to stop the protests.

National Security Law[35]

The continuation of the antigovernment protests into 2020 despite COVID–19 and the inability of the HKSAR Government to stop the protests apparently led the PRC Government to try to take control over the situation. China's leaders replaced the heads of the Hong Kong and Macao Affairs Office (HKMAO) in Beijing and its Liaison Office in Hong Kong with officials with a known record of maintaining local discipline and control. Official statements by the PRC Government began portraying the Hong Kong protests as a threat to national security and called for the enactment of antisedition laws required by Article 23 of the Basic Law.

Hong Kong law prior to July 1, 1997, prohibited acts of treason against the Queen of England and the United Kingdom. Article 23 of the Basic Law required the HKSAR Government to pass local ordinances to replace those outdated laws. As previously described, an effort to do so in 2003 failed, and contributed to the resignation of the Secretary of Security and the Chief Executive. Since that effort, no Chief Executive had attempted to fulfill the HKSAR Government's obligation under Article 23.

Article 23 of the Basic Law

The Hong Kong Special Administrative Region shall enact laws on its own to prohibit any act of treason, secession, sedition, subversion against the Central People's Government, or theft of state secrets, to prohibit foreign political organizations or bodies from conducting political activities in the Region, and to prohibit political organizations or bodies of the Region from establishing ties with foreign political organizations or bodies.

China's National People's Congress (NPC), on May 28, 2020, adopted a decision authorizing the NPCSC to write national security laws that will apply only to Hong Kong. The decision also requires the HKSAR Government to pass local legislation to protect China's national security, as required by the Basic Law, and authorizes China's "national security organs" to "set up agencies in the HKSAR to fulfill relevant duties to safeguard national security in accordance with the law."[36]

Many observers see the NPC decision as a violation of China's obligations under the Joint Declaration and its commitments in the Basic Law. On May 30, 2020, President Donald J. Trump accused China of extending "the reach of China's invasive State security apparatus into what was formerly a bastion of liberty."[37] President Trump also said he would "begin the process of eliminating policy exemp-

[34] One of the phrases often spray painted by protesters was "It is you who taught us peaceful protests don't work."

[35] For more information about China's decision to impose national security laws on Hong Kong, see CRS *In Focus* IF11562, "China Moves To Impose National Security Law on Hong Kong".

[36] "Highlights of China's Decision on Hong Kong National Security Legislation", Xinhua, May 28, 2020.

[37] White House, "Remarks by President Trump on Actions Against China", press release, May 30, 2020.

tions that give Hong Kong different and special treatment."[38] He did not specify a timeframe for action.

The NPC decision is seen by many in Hong Kong as undermining the city's "high degree of autonomy," threatening the human rights of Hong Kong residents, and weakening the independence of Hong Kong's judicial system. Some observers see the pending NPCSC national security laws as an existential risk to Hong Kong. Some Hong Kong residents are actively pursuing ways of emigrating from the city; others have transferred their wealth and savings to offshore banks.

Some commentators see these moves as premature as the NPCSC has not yet approved the national security laws and their provisions are unknown. Following a trip to see China's leaders in Beijing, Chief Executive Lam issued a statement assuring the Hong Kong public that the laws "will only punish a small minority of people who engage in acts and activities that seriously threaten national security."[39]

Observations on Political Crises

The series of political crises in the HKSAR—some more serious than others—indicate certain patterns in the behavior of the PRC and HKSAR Governments. First, the PRC Government has demonstrated a willingness to intervene in the internal affairs of the HKSAR, principally via the NPCSC's authority to interpret and render decisions about the Basic Law. Second, some progress has been made in democratic reforms, but that progress has also been accompanied by new conditions and restrictions that provide the PRC Government a greater role in Hong Kong's elections. Third, Hong Kong's Chief Executives have generally acted more as agents of the PRC Government conveying decisions to the people of Hong Kong than representatives of the people of Hong Kong to the PRC Government. Fourth, both the PRC Government and the HKSAR Government appear to be fearful of representative democracy in Hong Kong, and are attempting to construct sufficient constraints to maintain control over governance of the city.

Economic Crises

The people of Hong Kong have also faced a series of economic crises since the establishment of the HKSAR in 1997. The Asian Financial Crisis struck just after the Hong Kong was transferred from the United Kingdom to the PRC, and speculators attempted to destabilize the Hong Kong dollar and the Hong Kong stock market. Hong Kong's economy also was hit by the ripple effects of the Global Financial Crisis of 2007. In addition, structural economic changes since 1997 have made Hong Kong more dependent on China. Those structural changes have also resulted in a growing income and wealth disparity in Hong Kong, the erosion of Hong Kong's middle class, the loss of economic opportunity for the city's youth, and a rise in poverty among the Hong Kong's elderly.

Asian Financial Crisis of 1997

The HKSAR Government had to confront a major economic crisis within days of its establishment. The rapid movement of speculative capital in Southeast Asia had destabilized many of the region's financial markets and led to the rapid devaluation of several currencies. Some speculators launched a simultaneous assault on shares listed on the Hong Kong Stock Exchange and the Hong Kong dollar, which is linked to the value of the U.S. dollar under a currency board system.[40]

Finance Secretary and future Chief Executive Donald Tsang and Hong Kong Monetary Authority (HKMA) Chief Executive Joseph Yam Chi-kwong successfully fought off the speculative attacks by having the HKSAR Government buy more than $15 billion in shares on the Hong Kong Stock Exchange. After that speculative attacks were over, the HKSAR Government gradually sold off its holdings, making almost $4 billion in profits.[41]

The HKSAR Government's successful defense of the Hong Kong dollar and the Hong Kong Stock Exchange raised local confidence in the new Government. Throughout the financial crisis, the PRC Government expressed its support for the HKSAR Government, but avoided intervening in the situation. This, in turn, led

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[38] Ibid.

[39] Tony Cheung and Jun Mai, "Beijing Has Heard Opinion of Hong Kong People and Remains 'Very Firm' on National Security Law for City, Carrie Lam Says After Visit", *South China Morning Post*, June 3, 2020.

[40] The Hong Kong Monetary Authority, by the exchange of U.S. dollar assets for Hong Kong dollars in circulation, maintains the value of the exchange rate between 7.75 and 7.85 Hong Kong dollars to 1 U.S. dollar.

[41] Hong Kong Monetary Authority, "Asian Financial Crisis: Difficult Decisions in the Disposal of Shares After Stock Market Operation", September 18, 2019.

many to think that the PRC Government would abide by the "one country, two systems" policy and respect Hong Kong's high degree of autonomy.

Global Financial Crisis of 2007[42]

In late 2007, Hong Kong once again faced a financial crisis, this time originating in the United States. Instabilities in U.S. derivatives markets led to the bankruptcy of Lehman Brothers and fears of the collapse of U.S. financial markets. The financial contagion spread to Hong Kong in the autumn of 2008 as the U.S. economy slipped into a severe recession.

Hong Kong's economy also slid into a recession, as the global economic slowdown led to a decline in global trade. The HKSAR Government responded with a combination of fiscal and monetary stimulus measures that led to recovery in early 2009, aided by the resumption of global economic and trade growth. Hong Kong, and the global economy, were also assisted by China's decision to implement a lending and investment boom to promote economic growth.

Like the 1997 economic crisis, the HKSAR Government's response to the 2007 global financial crisis was well received by the people of Hong Kong. Hong Kong residents also generally had a favorable view of China's actions, which helped Hong Kong recover without directly intervening in Hong Kong's affairs.

Hong Kong's Structural Economic Changes

Although the HKSAR Government may have received praise for its ability to weather external financial crises, gradually over the last two decades the structure of Hong Kong's economy has changed in ways that raise concerns among substantial numbers of Hong Kong citizens about their livelihoods. Some of these concerns may contribute to lower support for Hong Kong's own Government and frustration about how Hong Kong has developed under Chinese rule.

During the last 20 years, Hong Kong has become more dependent on the mainland economy for economic growth and opportunity. Over time, Hong Kong's economy has specialized in the provision of financial, legal, and trade-related services for manufacturing and shipping companies operating in mainland China, or for mainland companies seeking to expand their operations overseas. As a result, many of the professional jobs that supported Hong Kong's middle class have been transferred to mainland China, resulting in a significant loss in employment opportunities that earn incomes to support a comfortable standard of living in Hong Kong. According to conversations with recent university graduates in Hong Kong, the nominal salary offered to new graduates in the last few years is approximately the same as in 1997. However, the cost of living in Hong Kong has increased substantially, especially the cost of housing. Many Hong Kong couples have postponed getting married or having children because they cannot afford to rent their own apartment.

The structural changes in Hong Kong's economy over the last 20 years can been seen in its rising wealth and income inequality, the increase in poverty (especially among its older population), and public opinion polls about the city's economic health. Between 1996 and 2016, Hong Kong's Gini coefficient for household income rose from 0.518 to 0.539—the 8th highest income inequality in the world, according to the World Bank.[43] According to Hong Kong's Census and Statistics Department, 20 percent of the city's population lives below the official poverty line.[44] The Hong Kong Public Opinion Research Institute (PORI), an independent public opinion research group formed out of the previous Public Opinion Program at the University of Hong Kong (HKPOP), has conducted a regular survey of public "concern for the economic problems of Hong Kong" dating back to 2005. On a scale of 0–10 ("extremely not concerned" to "extremely concerned"), the average rating throughout the 15 years has ranged between 6.75 and 7.5, indicating a fairly high level of concern about the economy.[45]

The perceived loss of economic opportunity has contributed to political discontent among much of the Hong Kong population. Although the HKSAR Government has shown the ability to address exogenous economic shocks, it has arguably not taken

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[42] For more about Hong Kong and the global financial crisis of 2007, see Janet L. Yellen, "Hong Kong and China and the Global Recession", Federal Reserve Bank of San Francisco, FRBSF Economic Letter 2010-04, February 8, 2010.

[43] The Gini coefficient is a measure of income or wealth inequality, ranging from zero for perfectly equal distribution to 1.0 for perfectly unequal distribution (all income or wealth is possessed by one individual). By comparison, the U.S. Gini coefficient in 2016 was 0.414, according to the World Bank. Source: *https://worldpopulationreview.com/countries/gini-coefficient-by-country/*.

[44] Census and Statistics Department, "Poverty Situation", December 13, 2019.

[45] *https://www.pori.hk/pop-poll/current-condition/n006*

sufficient actions to address the economic sufferings caused by structural economic changes.

Health Crises

Since 1997, Hong Kong has faced serious health crises, including an outbreak of Avian (H5N1) flu in 1997, SARS in 2003, and COVID–19 in 2020. The response of the HKSAR Government to each of these health crises has received mixed reviews, with particularly sharp criticism of the response to COVID–19.

In May 1997, a Hong Kong boy contracted Avian flu and died. Investigations into the source of the disease pointed to imported chickens from mainland China. During the course of the outbreak, 18 people were confirmed to be infected, of which 6 died. To contain the disease, the HKSAR Government slaughtered more than 1.5 million chickens in December 1997.[46] While the mass slaughter and other measures apparently successfully contained the disease, the HKSAR Government was criticized for failing to take adequate measures to dispose of the dead chickens and for overcompensating the city's chicken vendors.

In March 2003, SARS spread from neighboring Guangdong Province to Hong Kong. By the beginning of June, 1,750 cases had been confirmed and 286 people had died of the disease.[47] Hong Kong's Department of Health conducted studies of the outbreak of the disease and implemented public health measures, such as shutting down schools and universities, monitoring overseas arrivals, compulsory isolation and surveillance of contacts, districtwide cleansing campaigns, and preventative education campaigns. Most Hong Kong residents voluntarily wore masks when in public and avoided leaving their homes. Companies and businesses implemented strict sanitation regimes in their buildings. Overall, the HKSAR Government was viewed as responding well to the public health crisis, although there was a shortage of personal protective equipment (PPEs) for medical staff at the start of the SARS outbreak.

In the eyes of many Hongkongers, the HKSAR Government has not done as well in responding to the COVID–19 pandemic. Soon after COVID–19 was confirmed in Wuhan, many Hong Kong residents voluntarily adopted the safety measures they learned during the SARS outbreak in 2003, such as wearing masks and avoiding leaving the home. Doctors, nurses, and other medical staff began wearing PPE when treating patients who presented with COVID–19 like symptoms. The city quickly experienced an acute shortage of PPE.

The HKSAR Government, however, was relatively slow to implement preventative measures and initially resisted calls to close the border with mainland China. To many people in Hong Kong, it seemed that Chief Executive Lam and her top advisors were more concerned about offending China's leaders than protecting the health of Hong Kong residents.[48] After a strike by unionized medical workers, the HKSAR Government closed the border with mainland China and implemented a mandatory 14-day quarantine program for overseas arrivals. It subsequently undertook more restrictive measures to contain the spread of COVID–19, including the closing of all restaurants, bars, and entertainment clubs, as well as prohibiting the public gathering of more than 4 people.

As of the start of June 2020, the number of confirmed COVID–19 cases has leveled off at below 1,200 with 4 deaths.[49] New confirmed cases are generally arrivals from overseas. While it appears the city has contained COVID–19, the HKSAR Government's apparent initial reluctance to implement the necessary preventative measures has been subjected to widespread criticism.

Cultural Identity Crises

Beyond the political, economic, and health crises, Hong Kong residents are contending with various cultural identity crises. The regular influx of immigrants from mainland China under various programs has given rise to tensions between the largely Mandarin-speaking immigrants and the Cantonese-speaking Hongkongers.[50] China's Liaison Office in Hong Kong and other PRC officials have allegedly applied pressure on Hong Kong and foreign companies to cut business ties with prodemocratic businesses, newspapers, magazines, artists, and musicians in an ef-

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[46] Paul K.S. Chan, "Outbreak of Avian Influenza A(H5N1) Virus Infection in Hong Kong in 1997", Clinical Infectious Diseases, vol. 34, no. Supplement 2 (May 2002).

[47] Lee Shiu Hung, "The SARS Epidemic in Hong Kong: What Lessons Have We Learned?" *Journal of the Royal Society of Medicine*, vol. 96, no. 8 (August 2003).

[48] Sarah Wu, "Coronavirus Widens Hong Kong Anger at Government, China", Reuters, February 20, 2020.

[49] Data from *https://www.worldometers.info/coronavirus/*.

[50] For one such account of those tensions, see Julie Zhu, "Mainlanders in Hong Kong Worry as Anti-China Sentiment Swells", Reuters, October 30, 2019.

fort to silence their voices.[51] Many in Hong Kong are concerned that the PRC Government is attempting the cultural "mainlandization" of Hong Kong.

The perceived threat to Hong Kong's distinctive cultural identity has given rise to an "anti-mainlander" attitude among some Hong Kong residents. Some people resent the recent immigrants and disparage their lack of understanding of Cantonese. A smaller segment of Hongkongers have developed nationalist attitudes and support Hong Kong's independence, which worries the PRC Government.

Since the establishment of the HKSAR, the Hong Kong Public Opinion Research Institute (PORI), an independent research group, has interviewed Hong Kong residents on how they identify themselves among four options—Hongkonger, Hongkonger in China, Chinese in Hong Kong, or Chinese.[52] In August 1997, 34.9 percent of residents said they were Hongkongers, 24.8 percent responded Hongkonger in China, 20.1 percent chose Chinese in Hong Kong, and 18.6 percent selected Chinese.[53] In early June 2020, PORI conducted another survey; 50.5 percent said they were Hongkongers, 25.0 percent responded Hongkonger in China, 12.6 percent chose Chinese, and 11.0 percent selected Chinese in Hong Kong.

Effects of the Hong Kong's Crises

The cumulative effects of the various crises experienced by the people of Hong Kong since the establishment of the HKSAR Government in 1997 have left many Hong Kong people with little hope for their future, a loss of trust in the PRC and HKSAR Governments, and growing sense of desperation. Some look forlornly to the past, and wish for a return to the days as a British colony. A few call for Hong Kong independence, similar to that of Singapore, as a way out of the city's woes. Others look to the United States, the United Kingdom, and other Nations to rescue Hong Kong from the PRC and HKSAR Governments.

According to PORI, the people of Hong Kong have lost trust in the PRC and HKSAR Governments. As of May 2020, 67.4 percent of the people surveyed were dissatisfied with the performance of the HKSAR Government, and 18.6 percent were satisfied.[54] In addition, 62.9 percent of the respondents said they distrusted the HKSAR Government, and 27.3 percent said they trusted the HKSAR Government.[55] All four of the HKSAR's Chief Executives have seen their public ratings decline during their terms in office, and received worst ratings than former Governor Patten.[56] When asked about their satisfaction with the performance of the HKPF in November 2019, 59.2 percent said they were dissatisfied and 33.8 percent indicated they were satisfied.[57] A January 2020 poll of Hong Kong residents found 58.9 percent had, in general, negative views of the PRC Government, and 22.6 percent had positive views of the PRC Government.[58] In addition, PORI's "Public Sentiment Index" in 2020 has been at its lowest levels in 28 years.[59]

Many political activists, in conversations with CRS, have said that it is up to them to defend and preserve the Hong Kong they know and love. Whether it is by running for elected office, organizing demonstrations, or confronting HKPF officers in riot gear, they are trying to preserve Hong Kong's high degree of autonomy and protect their rights and freedoms promised in the Joint Declaration and enshrined in the Basic Law.

Why Hong Kong Matters

Given the U.S. commitment to democracy and human rights, Hong Kong matters because the fate of its 7.5 million residents is important. In addition, as stated in the U.S.–Hong Kong Policy Act, "the United States has a strong interest in the continued vitality, prosperity, and stability of Hong Kong." Hong Kong also matters because it matters to the People's Republic of China, and what matters to the PRC most likely matters to the United States, particularly at a time when China is de-

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[51] Based on CRS interviews with Hong Kong residents, as well as various news accounts. For example, see "'Liaison Office Trying To Coerce Business Sector'" RTHK, May 16, 2019.

[52] Hong Kong Public Opinion Research Institute, "People's Ethnic Identity", *https://www.pori.hk/opinion-charts-3.*

[53] Percentages do not add to 100 percent due selection of "other" or nonresponse.

[54] *https://www.pori.hk/pop-poll/hksarg/h001*

[55] *https://www.pori.hk/pop-poll/hksarg/k001*

[56] Donald Tsang received better ratings that Patten for his first 3 years in office, but his ratings fell below that of Patten for the rest of his time as Chief Executive. Carrie Lam's rating are well-below that of any of her predecessors at a similar time during their terms in office (*https://www.pori.hk/pop-poll/chief-executive/combined/rating*).

[57] *https://www.pori.hk/pop-poll/disciplinary-force/x001/satisfaction*

[58] *https://www.pori.hk/pop-poll/government/v003*

[59] *https://www.pori.hk/pop-poll/public-sentiment-index*. PORI's Public Sentiment Index is a measure of people's appraisal of the quality of the HKSAR Government and of society.

scribed by some U.S. officials and scholars as the foremost "great power" with which the United States is in competition.[60]

U.S. Interests

Most descriptions of U.S. interests in Hong Kong focus on the economic, trade, and investment ties. As reported by the State Department, Hong Kong hosts more than 1,300 U.S. firms, "with about 300 U.S. firms basing their Asian regional operations in the city."[61] An estimated 85,000 U.S. residents live, work, and study in Hong Kong. According to the U.S. International Trade Commission, U.S.–Hong Kong merchandise trade in 2019 exceeded $35.5 billion dollars, and the United States' trade surplus of $26.1 billion was its largest among all trading partners.[62] Hong Kong is a major hub for U.S. financial and investment flows into Asia, particularly the PRC. Hong Kong financial institutions, lawyers, and trade-related service companies continue to be important providers of services for U.S. companies seeking business opportunities in Asia.

Arguably equally important are the political and social values shared between the people of Hong Kong and the United States. Most Hong Kong residents want to be able to elect their representatives in the HKSAR Government in free and fair elections. They want to enjoy the freedom of speech, association, assembly, religion, and the press; the same freedoms in Article 1 of the U.S. Bill of Rights. Hong Kong wants to preserve its system of rule of law, as reflected in the British common law heritage it shares with the United States, and not be subjected to rule by law, as is practiced in the PRC.

In these days when democracy and human rights are being threatened by autocratic Governments, some of them elected in seemingly free and fair elections, the goals and aspirations of the majority of residents of Hong Kong may be a positive example to the people of other Nations in the region and throughout the world.

China's Interests

When the PRC and the United Kingdom were negotiating the Joint Declaration and as the date of the handover of Hong Kong approached, many in Hong Kong were hopeful that the PRC Government would abide by the terms of the Joint Declaration and the Basic Law to ensure the prosperity and stability of the HKSAR and demonstrate to Taiwan that peaceful reunification is possible. Some scholars even speculated that the example of Hong Kong would open China's leaders to the possibility of political reforms in mainland China, with greater tolerance of human rights and limited democracy. Since 1997, the actions of the PRC and HKSAR Governments have led many in Hong Kong to conclude that these were false hopes.

As previously discussed, China's leaders appear to see the events of 2019 and 2020 in Hong Kong as a threat to its national security and territorial integrity. They appear to fear that the challenges presented by the Hong Kong protests will inspire similar political movements in Tibet and the Xinjiang Uyghur Autonomous Region. The events in Hong Kong may also move Taiwan to renounce the "One China Policy", and embrace independence. As such, it is important to the PRC Government to demonstrate that Hong Kong is "an inalienable part of the People's Republic of China," as stated in Article 1 of the Basic Law.

Hong Kong continues to play a valuable role in advancing China's economic goals. A significant portion of China's trade with the world flows through Hong Kong or is facilitated by financial, legal, and other trade-related services provided by Hong Kong. Hong Kong remains a major conduit for investment into mainland China, as well as for the rising volume of mainland investments around the world, including Belt and Road Initiative (BRI) projects.[63] Hong Kong also provides a mechanism to insulate the mainland economy from external economic shocks, such as the global financial crisis of 2007. The HKSAR is also to play a pivotal role in the Greater Bay Area Initiative, which seeks to integrate the economies of Guangdong Province, Hong Kong, and the Macau Special Autonomous Region.

Awareness of the importance of Hong Kong to the PRC is important as Congress and the U.S. Government consider what actions, if any, to take to address the per-

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[60] For example, see Testimony of Secretary of Defense Mark T. Esper, "Department of Defense Posture Statement", U.S. Congress, Senate Committee on Armed Services, 116th Cong., 2nd sess., March 4, 2020; and Ashley J. Tellis, "The Return of U.S.–China Strategic Competition", in *Strategic Asia 2020: U.S.–China Competition for Global Influence*, ed. Ashley J. Tellis, Alison Szalwinski, Michael Wills (National Bureau of Asian Research, 2020).

[61] Department of State, "2019 Hong Kong Policy Act Report", March 21, 2019.

[62] Ibid.

[63] The BRI is China's plan to develop a network of transportation and telecommunications infrastructure to facilitate global trade and telecommunications. For more about BRI, see CRS *In Focus* IF10273, "China's 'One Belt, One Road'".

ceived threats to Hong Kong and U.S. interests in Hong Kong. The preservation or advancement of U.S. goals and objectives may be weighed against the effects on China's goals and objectives, and how the PRC Government may respond to measures taken by the United States.

U.S. Policy Options

U.S. policy regarding Hong Kong is stated in the U.S.–Hong Kong Policy Act of 1992 (P.L. 102-383). The Hong Kong Human Rights and Democracy Act of 2019 (P.L. 116-76) reaffirmed and augmented the existing policy by new provisions and authorities. Past Congresses and Administrations have generally agreed on the basic principles of U.S. policy on Hong Kong, including support for Hong Kong's high degree of autonomy, protecting the human rights and freedoms of the Hong Kong residents, and preserving the city's distinctive social and cultural heritage, and have strived to find ways to assist Hong Kong as it faced various political, economic, health, and cultural crises since the establishment of the HKSAR.

Current U.S. Policy Regarding Hong Kong

The U.S.–Hong Kong Policy Act of 1992, as codified, states in section 5721(a):

> Notwithstanding any change in the exercise of sovereignty over Hong Kong, the laws of the United States shall continue to apply with respect to Hong Kong, on and after July 1, 1997, in the same manner as the laws of the United States were applied with respect to Hong Kong before such date unless otherwise expressly provided by law or by Executive order under section 5722 of this title.

In addition, the Act stipulates in section 5721(b):

For all purposes, including actions in any court in the United States, the Congress approves the continuation in force on and after July 1, 1997, of all treaties and other international agreements, including multilateral conventions, entered into before November 27, 2019, between the United States and Hong Kong, or entered into before November 27, 2019, between the United States and the United Kingdom and applied to Hong Kong, unless or until terminated in accordance with law. If in carrying out this subchapter, the President determines that Hong Kong is not legally competent to carry out its obligations under any such treaty or other international agreement, or that the continuation of Hong Kong's obligations or rights under any such treaty or other international agreement is not appropriate under the circumstances, such determination shall be reported to the Congress in accordance with section 5731 of this title.

Section 5722(a) of the Act provides the President the authority to suspend the special treatment of Hong Kong:

> On or after July 1, 1997, whenever the President determines that Hong Kong is not sufficiently autonomous to justify treatment under a particular law of the United States, or any provision thereof, different from that accorded the People's Republic of China, the President may issue an Executive order suspending the application of section 5721(a) of this title to such law or provision of law.

The text appears to tie the suspension of Hong Kong's treatment under a particular law or a provision of a law to a determination that Hong Kong is not sufficiently autonomous with respect to the law in question.

Section 5726 of the Act, as amended by the Hong Kong Human Rights and Democracy Act, provides limited visa eligibility protection to Hong Kong residents who participated in the Umbrella Movement:

> Notwithstanding any other provision of law, applications for visas to enter, study, or work in the United States, which are submitted by otherwise qualified applicants who resided in Hong Kong in 2014 and later, may not be denied primarily on the basis of the applicant's subjection to politically motivated arrest, detention, or other adverse Government action.

The Hong Kong Human Rights and Democracy Act added new elements to U.S. policy regarding Hong Kong. Section 6(a) of the Act states that it is U.S. policy:

1. to safeguard United States citizens from extradition, rendition, or abduction to the People's Republic of China from Hong Kong for trial, detention, or any other purpose; [and]
2. to safeguard United States businesses in Hong Kong from economic coercion and intellectual property theft.

Section 7(b) requires the President to impose financial and visa sanctions on "each foreign person that the President determines is responsible for:

A. the extrajudicial rendition, arbitrary detention, or torture of any person in Hong Kong; or

B. other gross violations of internationally recognized human rights in Hong Kong."

In addition, P.L. 116-77 prohibits the issuance of export licenses for the sale of "tear gas, pepper spray, rubber bullets, foam rounds, bean bag rounds, pepper balls, water cannons, handcuffs, shackles, stun guns, and tasers" to the Hong Kong Police Force for a period of 1 year after the date of enactment, or until November 27, 2020.

Finally, the Further Consolidated Appropriations Act, 2020 (P.L. 116-94) provides "not less than $1,500,000" for "democracy programs for Hong Kong, including legal and other support for democracy activists." The funds are appropriated under the heading "Democracy Fund" for the Human Rights and Democracy Fund of the Bureau of Democracy, Human Rights, and Labor, Department of State.

Actions by the Trump Administration

U.S. policy and law provides the Administration with the authority to take action regarding the current situation in Hong Kong, if it chooses to do so. On May 30, 2020, President Trump stated that he was "directing my Administration to begin the process of eliminating policy exemptions that give Hong Kong different and special treatment."[64] He also indicated that this directive "will affect the full range of agreements we have with Hong Kong, from our extradition treaty to our export controls on dual-use technologies and more, with few exceptions." In addition, his Administration "will take action to revoke Hong Kong's preferential treatment as a separate customs and travel territory from the rest of China," and the State Department will revise its "travel advisory for Hong Kong to reflect the increased danger of surveillance and punishment by the Chinese State security apparatus." Finally, President Trump said, "The United States will also take necessary steps to sanction PRC and Hong Kong officials directly or indirectly involved in eroding Hong Kong's autonomy and—just if you take a look, smothering—absolutely smothering Hong Kong's freedom."

To date, the only action taken since the President's statement is the State Department's amending an existing travel advisory for Hong Kong on June 12, 2020. The new text warns U.S. visitors to "[e]xercise increased caution in Hong Kong due to civil unrest, risk of surveillance, and arbitrary enforcement of laws other than for maintaining law and order."[65]

Pending Legislation

Several bills have been introduced that would further amend U.S. policy in Hong Kong, and provide new authorities and tools to implement U.S. policy.

The Hong Kong Autonomy Act (S. 3798) would impose property- and visa-blocking sanctions on foreign persons and foreign financial institutions that "contravene the obligations of China under the Joint Declaration or the Basic Law."

The Hong Kong Be Water Act (H.R. 5725, S. 2758) would impose property- and visa-blocking sanctions on any foreign person who is an official of Hong Kong's Government or China's Government and who knowingly suppressed the freedom of speech, association, procession, or demonstration in Hong Kong. The Act would also block property transactions involving a Chinese national, an entity owned or controlled by China's Government, or an officer or senior official of such an entity, if that individual or entity has attempted to undermine the autonomy, basic liberties, and human rights of the people of Hong Kong.

The Hong Kong Freedom Act (H.R. 6947) would "authorize the President to recognize the Hong Kong Special Administrative Region of the People's Republic of China as a separate, independent country."

The Hong Kong Victims of Communism Support Act (S. 3892) would grant asylum to individuals who currently possess the Right of Abode (Permanent Residency) in Hong Kong by birth and who have maintained a continuous residency in Hong Kong since birth. The Act also states that an application for asylum "may not be denied primarily on the basis of the applicant's subjection to politically motivated arrest, detention, or other adverse Government action."

The Placing Restrictions on Teargas Exports and Crowd Control Technology to Hong Kong Act (H.R. 4270) would prohibit the issuance of licenses to export certain

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[64] White House, "Remarks by President Trump on Actions Against China", press release, May 30, 2020.

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

defense items and services to the Hong Kong Police Force or the Hong Kong Auxiliary Police Force. Unlike P.L. 116-77, the restrictions on U.S. exports would not terminate a year after enactment, but would remain in place until the President certifies to Congress that:

1. the Hong Kong Police have not engaged in gross violations of human rights during the 1-year period ending on the date of such certification; and
2. there has been an independent examination of human rights concerns related to the crowd control tactics of the Hong Kong Police and the Government of the Hong Kong Special Administrative Region has adequately addressed those concerns.

Issues To Consider

As Congress considers what actions, if any, to take to address the situation in Hong Kong and the current political crisis in the city, it may consider what objectives or goals it seeks to achieve, and identify reasonable expectations of what it may be able to achieve. Among the various goals or objectives being discussed are:

- Make the PRC and HKSAR Governments fulfill their obligations and commitments contained in the Joint Declaration and the Basic Law;
- Punish those responsible for violations of the obligations and commitments contained in the Joint Declaration and Basic Law;
- Punish the Hong Kong Police Force for its excessive use of force during the protests of 2019;
- Seek to limit the Hong Kong Police Force's access to the weapons and equipment used to physically harm Hong Kong protesters and suppress legitimate political demonstrations in Hong Kong;
- Protect the participants in the 2019 protests from arrest, detention, imprisonment, or other forms of unjust punishment for their involvement in legitimate efforts to protect their rights and freedoms;
- Promote the adoption of universal suffrage for the election of Hong Kong's Chief Executive and all Legco members in a manner acceptable to the majority of Hong Kong residents;
- Maintain Hong Kong's role as a regional hub for international trade, investment, and finance beneficial to U.S. companies and residents; and
- Support Hong Kong as a society in Asia that supports democracy, human rights, and the rule of law.

As laudable as many of these goals and objectives may seem to Congress, it may be useful to view them in terms of how feasible they may be to achieve. China's NPC has approved its decision to impose national security laws on Hong Kong, and the NPCSC plans to fulfill its obligation to write such legislation and add it to Annex III of the Basic Law. Similarly, Chief Executive Lam and the HKSAR Government appear committed to complying with the NPC's decision.

As such, Congress may consider how it would respond to a new Hong Kong that could emerge if the NPCSC's national security laws are enacted and the HKSAR Government proposes the local legislation required by the NPC's decision. One may anticipate the NPCSC's legislation will spark more demonstrations, some peaceful and some confrontational. The HKPF may respond with the greater use of force, more tear gas, more rubber bullets, and more pepper spray. More protesters and police officers could be injured.

Some of the legislation that has been introduced would impose sanctions on PRC and HKSAR officials responsible for the erosion of Hong Kong's autonomy and the rights of Hong Kong residents. Arguably there is another segment of the Hong Kong community that has potentially been complicit in these undesirable developments in Hong Kong—Hong Kong tycoons and business leaders who have supported and encouraged the PRC and HKSAR Government. If Congress were to subject these tycoons and business leaders to targeted sanctions, they may use their influence with China's leaders and Chief Executive Lam to adopt a new approach to addressing the grievances of the people of Hong Kong.

Finally, two segments of Hong Kong society could be overlooked as Congress considers its options. The first group consists of the thousands of unnamed protesters who have put their personal safety at risk by joining the demonstrations over the last year. Individuals such as Lee Chuek-yan, who will testify at today's hearing, as well as Joshua Wong, Martin Lee, and Jimmy Lai, most likely can easily find refuge or sanctuary in another country, if they so desire. The unnamed protesters, however, may lack the connections, notoriety, and financial resources to emigrate from Hong Kong if they wish to do so.

The second group consists of those Hong Kong residents who, having seen the new Hong Kong being imposed by the PRC and HKSAR Government, have decided they do not wish to live in such a society. The wealthier Hong Kong residents most likely already have contingency plans and will leave when they decide it is in their best interest to leave. Hong Kong's small business owners, junior professionals, blue collar service workers, and working poor likely lack the means to escape their undesirable and undeserved fate.

Chairman Crapo, Ranking Member Brown, and Members of the Committee, thank you for this opportunity to testify at today's hearing.

PREPARED STATEMENT OF PETER HARRELL

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JUNE 4, 2020

Chairman Crapo, Ranking Member Brown, honorable Members of the Committee, it is an honor to be asked to testify to you today on an issue of critical importance to U.S. foreign policy, "The Crisis in Hong Kong: A Review of U.S. Policy Tools".

You have invited me to testify on a somber day. This is not only because of the global COVID–19 pandemic and the demonstrations and unrest against injustice in the United States that have we have seen over the past week, but because today, June 4, marks the anniversary of the massacre that ended 2 months of proreform protests in Tiananmen Square, one of the darkest days for democracy in modern China. Earlier this week the Hong Kong authorities denied, for the first time in decades, a request for a permit to hold a memorial vigil in Hong Kong to mark Tiananmen. Yet as I reflect on China's repression 31 years ago, I cannot help but think of the iconic photo of an anonymous Chinese protestor staring down a line of Chinese tanks, which remains an inspiration to people everywhere of the power we all possess to stand up for justice in the face of repression.

China's erosion of Hong Kong's autonomy over the past decade, including Beijing's announcement last month that China will force a new national security law on Hong Kong that China may use to punish prodemocracy activists and protestors in the city, should be seen not as a unique act, but rather as one element of the Chinese Government's growing global assertiveness and challenge to liberal democracy. Under the leadership of Xi Jinping, the Chinese Communist Party (CCP) has become more antidemocratic both at home and abroad. China's growing assertiveness against countries, entities, and individuals that express support for democratic values, whether it is the National Basketball Association here in the United States or the assistance that China increasingly provides other authoritarian States to track and repress their own citizens, poses a serious threat to freedom and democratic values everywhere.

I believe that four principles should guide the U.S. response to China's attacks on Hong Kong's autonomy:

- First, hold China to account while mitigating unintended costs to the people of Hong Kong. The Chinese Government, not the people of Hong Kong, should bear the brunt of the costs of China's erosion of Hong Kong's autonomy. While the United States should not indefinitely treat Hong Kong as legally distinct from China in many respects if China does not treat Hong Kong as autonomous, shifts in specific U.S. laws should be tailored to specific Chinese actions and changes in specific areas be structured to help rather than harm Hong Kong citizens.
- Second, ensure that the U.S. response to China's erosion of Hong Kong's autonomy fits within the context of America's overall strategy towards China. The U.S. response to Hong Kong is not only about Hong Kong. It is also about signaling to China what future types of Chinese actions are unacceptable and the kinds of U.S. responses that future actions will draw. Our response also has to recognize that despite America's rivalry with China and justified anger at many of China's actions, the U.S.–China relationship continues to include important economic and strategic interests and that the U.S. will need to work with China on global threats such as climate change.
- Third, use the full range of tools. Faced with Chinese aggression, there is an understandable desire to impose costs by denying China financial and economic privileges. Measures such as targeted sanctions can and should play an important role in highlighting repression. But other policy responses, such as diplo-

matic engagement and offers of visas to Hong Kong citizens, can be equally powerful.

- Finally, the United States must galvanize a global coalition and live up to our own values. Aside from a handful of countries such as the United Kingdom (U.K.), the international response to China's planned new national security law for Hong Kong has been disappointing. The United States must galvanize a global coalition to bring diplomatic and other forms of pressure to bear to highlight the steady erosion of Hong Kong's autonomy. But we must be honest with ourselves: in recent days protests in global cities from London to Auckland have been focused on the developments here in the United States rather than developments in Hong Kong. Police abuses of unarmed men and women and U.S. security forces using riot control equipment to disperse peaceful protestors profoundly undercuts U.S. leadership. While governors and mayors are justified in taking steps to protect our own cities from violence, the world is watching our response and judging it and us. By failing to live up to our ideals, we will be making the world less just, less safe, and less free.

I plan to address three specific areas of U.S. policy responses in my remarks today: treating Hong Kong more like China under U.S. law, holding China to account in ways that advance overall U.S. strategy, and building a global diplomatic coalition. But first, I would like to briefly address how China has eroded Hong Kong's autonomy over the past decade.

China's Growing Erosion of Hong Kong's Autonomy

Those of you who have had the privilege to visit Hong Kong understand what a unique city it is. I first visited the city nearly 20 years ago, just a few years after China resumed sovereignty over the territory. I was captivated by the architecture, the food, and most importantly the entrepreneurialism and spirit of Hong Kong's people.

In 1984, when China's sovereignty over Hong Kong remained more than a decade in the future, China committed that it would protect Hong Kong's freedoms and autonomy under "one country, two systems" for 50 years following the United Kingdom's handover of Hong Kong in 1997. China made these commitments in the Sino–British Joint Declaration—a document that both the U.K. and China filed with the United Nations as a treaty, and which provided that the "rights and freedoms" of Hong Kong citizens would be ensured.[1]

The United States codified the concept of "one country, two systems" into U.S. law in 1992 when Congress passed the Hong Kong Policy Act (HKPA). The HKPA provided that the United States would continue in force the treatment of Hong Kong under various U.S. laws, such as U.S. customs laws, that were in effect prior to the British handover of the territory so long as Hong Kong remained "sufficiently autonomous" from the People's Republic of China, as provided by the terms of the Joint Declaration. Pursuant to the HKPA, for 23 years since Britain handed Hong Kong back to China, U.S. customs laws, export controls, and other areas of law have continued to provide Hong Kong with different and more advantageous treatment than mainland China.

Over the past decade, however, China has steadily chipped away at Hong Kong's autonomy. In June 2014 the Chinese Government released a white paper asserting that China had "comprehensive jurisdiction"[2] over Hong Kong and limited the nominating process for Hong Kong's Chief Executive, undercutting Joint Declaration commitments that the Chief Executive would be chosen by "universal suffrage."[3] The nongovernmental organization Reporters Without Borders ranked Hong Kong 80th in terms of global press freedom in 2020,[4] still well ahead of China (at 177 out of 180), but down from 34 in 2010.[5] In 2016, Beijing pressed for the disqualifica-

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[1] Official Publication: "Sino–British Joint Declaration on the Question of Hong Kong", reprinted by *Loyola of Los Angeles International and Comparative Law Review*, July 1, 1997.

[2] "The Practice of the 'One Country, Two Systems' Policy in the Hong Kong Special Administrative Region". The Information Office of the State Council, People's Republic of China, 2014, via *South China Morning Post*, *https://www.scmp.com/news/hong-kong/article/1529167/full-text-practice-one-country-two-systems-policy-hong-kongspecial.*

[3] "China Rules Out Open Elections in Hong Kong", *The Guardian*, August 31, 2014, *https://www.theguardian.com/world/2014/aug/31/china-rules-out-open-elections-hong-kong.*

[4] Reporters Without Borders, "World Press Freedom Index—2020", 2020, *https://rsf.org/en/ranking.*

[5] Reporters Without Borders, "World Press Freedom Index—2010", 2010, *https://rsf.org/en/world-press-freedom-index-2010.* Hong Kong ranked 18th in 2002, the first year Reporters With-

Continued

tion of two proindependence Hong Kong legislators who had modified their oath of office in a way that China viewed as insulting,[6] with four more legislators disqualified in 2017.[7] Also in 2017, the Chinese Foreign Ministry suggested that the Joint Declaration had ceased to have "practical significance."[8]

Last year, Chinese efforts to encroach on Hong Kong's autonomy accelerated. In April, pro-Beijing lawmakers in Hong Kong proposed a bill that would have allowed extraditions to China in some circumstances, a measure that prodemocracy activists warned could be used to target activists, journalists, and others who refused to toe Beijing's line. Hundreds of thousands of people turned out for protests that, at times, the Hong Kong security forces repressed with violence. Protests continued even after the Hong Kong Government shelved the proposed extradition law, and, in a testament to the spirit of Hong Kong, in late November prodemocracy candidates overwhelmingly won local elections in the city.[9] Here in Washington, the U.S. Congress passed the Hong Kong Human Rights and Democracy Act, which required the Secretary of State to periodically certify that Hong Kong remained sufficiently autonomous from China to merit separate treatment from China under U.S. law and to impose certain sanctions on individuals and entities that engage in repression in Hong Kong.[10]

In early 2020, concerns over the COVID–19 pandemic appeared to have quieted the protests in Hong Kong's streets. Yet prodemocracy forces in Hong Kong could justifiably feel that their work had achieved a degree of success in securing their rights, with the extradition law on ice and global attention focused on their resistance to encroaching authoritarianism. That ended early last month when Beijing announced that it planned to increase its authority over the city by mounting an end run around Hong Kong's legislature and citizens. Rather than continuing to press for legislative reform within Hong Kong to expand China's powers, China itself would draft a new national security law for the city criminalizing acts of secession, subversion, terrorism, and foreign interference in Hong Kong, and force the Hong Kong executive to promulgate the law without turning to Hong Kong's legislature.[11]

Last week, China's National People's Congress formally decided to move forward with preparing the national security law, which is expected to be finalized over the summer. The precise terms of the law are not yet clear, including definitions of the crimes and the extent to which individuals accused of the crimes would be tried in Hong Kong versus mainland China. But democratic activists across Hong Kong fear the consequences will be draconian. In response to China's actions, last Wednesday Secretary of State Mike Pompeo found that Hong Kong no longer met the standards of autonomy that served as the basis for Hong Kong's differential treatment under U.S. law. He stated "No reasonable person can assert today that Hong Kong maintains a high degree of autonomy from China, given facts on the ground."[12]

U.S. Policy Responses

I will now turn to addressing the options for U.S. policy responses to this erosion of Hong Kong's sovereignty. The first area to discuss is steps to treat Hong Kong more like China under U.S. law.

1. *Treating Hong Kong More Like China Under U.S. Law:* Last Friday, following Secretary Pompeo's statement regarding Hong Kong's increasing lack of autonomy, President Trump announced that his Administration would "begin the process of

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out Borders compiled its index. *https://rsf.org/en/reporterswithout-borders-publishes-first-worldwide-press-freedom-index-october-2002.*

[6] "Hong Kong Pro-Independence Lawmakers Disqualified From Office", BBC, November 15, 2016, *https://www.bbc.com/news/world-asia-china-37984118.*

[7] Benjamin Haas, "Hong Kong Pro-Democracy Legislators Disqualified From Parliament", *The Guardian*, July 14, 2017 *https://www.theguardian.com/world/2017/jul/14/hong-kong-pro-democracy-legislators-disqualified-parliament#maincontent.*

[8] "China Says Sino–British Joint Declaration on Hong Kong No Longer Has Meaning", Reuters, June 30, 2017, *https://www.reuters.com/article/us-hongkong-anniversary-china/china-says-sino-british-joint-declaration-on-hong-kong-no-longer-has-meaning-idUSKBN19L1J1.*

[9] Keith Bradsher, Austin Ramzy, and Tiffany May, "Hong Kong Election Results Give Democracy Backers Big Win", *The New York Times*, November 25, 2019, *https://www.nytimes.com/2019/11/24/world/asia/hong-kong-election-results.html.*

[10] U.S. Senate, "Hong Kong Human Rights and Democracy Act of 2019", S. 1838, 116th Cong., 1st sess., *https://www.congress.gov/bill/116th-congress/senate-bill/1838/text.*

[11] "Hong Kong Security Law: What Is It and Is It Worrying?", BBC, May 29, 2020, *https://www.bbc.com/news/world-asia-china-52765838.*

[12] "P.R.C. National People's Congress Proposal on Hong Kong National Security Legislation", U.S. Department of State, press release, May 27, 2020, *https://www.state.gov/prc-national-peoples-congress-proposal-on-hong-kong-national-securitylegislation/.*

eliminating policy exemptions that give Hong Kong different and special treatment." [13]

U.S. law treats Hong Kong differently from China in myriad ways. U.S. imports of goods from Hong Kong face different tariff rates than goods imported from China and have not been subject to the tariffs of up to 25 percent that President Trump has imposed over the past 2 years on some $370 billion of U.S. imports from China. U.S. export control laws allow a greater range of exports of sensitive and dual-use items to Hong Kong than to mainland China. The United States has an extradition agreement with Hong Kong, as well as an agreement on aviation landing rights. The Committee on Foreign Investment in the United States (CFIUS) process does not publish a formal framework regarding how it reviews foreign investments from specific countries, but CFIUS categorizes Hong Kong and China differently and has the potential for differential treatment. The United States has the ability to treat visa applicants from China and Hong Kong differently.

There is a legitimate and important debate about whether broad measures to align Hong Kong's treatment under U.S. law with China across all these areas will bring effective pressure to bear against Beijing or whether such measures will simply impose costs on the people of Hong Kong without impacting Beijing. I fundamentally believe that U.S. law cannot indefinitely continue to treat Hong Kong separately in most respects if Beijing does not treat the city as autonomous. Beijing needs to understand that it cannot have it both ways, denying Hong Kong's autonomy while the world still treats Hong Kong as autonomous. But the U.S. Government should take a nuanced approach towards aligning aspects of U.S. treatment of Hong Kong with China while working to preserve differential treatment when it serves both U.S. interests and the interests of the people of Hong Kong.

One immediate step that the U.S. should take is to permanently halt the export of U.S. crime control equipment such as tear gas to Hong Kong. Last year, in the wake of media reports that Hong Kong police were using U.S.-made tear gas against protestors, Congress passed S. 2710, [14] which generally prohibited the export of crime control equipment to Hong Kong for a period of 1 year. It is time to make that ban permanent. I also urge the U.S. to impose robust export controls on U.S. surveillance technologies that can be used to monitor Hong Kong citizens online and in person. While the practical reality is that Hong Kong authorities can obtain many surveillance technologies from the Chinese, the United States should nonetheless ensure that U.S. technology will not facilitate the surveillance of Hong Kong citizens.

I recommend more significant steps after China actually follows through on its plans to impose a draconian national security law on Hong Kong. With Chinese officials drafting the law over the next 2 months, U.S. policy should make clear the costs China will face after the national security law is enacted. Specific steps that I recommend the U.S. Government take to align Hong Kong and China's treatment under U.S. law after the national security law is imposed include:

- Announce that Hong Kong Government officials and their immediate families will receive visas to visit the United States on the same basis that the U.S. grants such visas to Chinese officials and their families.
- Direct the Treasury Department and other agencies involved in CFIUS to treat investments from Hong Kong-domiciled companies comparably to investments from mainland Chinese companies.
- Direct the Commerce Department to begin treating most exports of sensitive and dual-use goods to Hong Kong similarly to the way it treats exports of such goods to mainland China.
- Pause U.S. extraditions to Hong Kong and initiate a review of the U.S. extradition agreement with Hong Kong.
- Announce a scheduled phase-in for tariff rates that will increasingly treat Hong Kong the same as China for customs purposes.

In other areas of U.S. law, however, I would refrain from making major changes. For example, I would not advise the United States to end the U.S.–Hong Kong aviation agreement, which would force D.C. to negotiate with Beijing over flights to the city—increasing Beijing's influence. I would continue to treat visa applications by

[13] President Donald J. Trump, "Remarks by President Trump on Actions Against China" (Rose Garden, Washington, May 29, 2020), *https://www.whitehouse.gov/briefings-statements/remarks-president-trump-actions-china/*.

[14] U.S. Senate, A bill to prohibit the commercial export of covered munitions items to the Hong Kong Police Force, S. 2710, 116th Cong., 1st sess., *https://www.congress.gov/bill/116th-congress/senate-bill/2710.*

ordinary Hong Kong citizens liberally. I would not work to disrupt Hong Kong's status as a global financial hub, which would undercut Hong Kong's economy and likely drive financial activity into mainland China—facilitating a long-term Chinese goal of seeing Shanghai supplant Hong Kong as the region's leading financial center.

I spoke earlier in my remarks about deploying the full range of U.S. tools. In addition to taking steps to align the treatment of Hong Kong and China under U.S. law, the United States should deploy diplomatic and other tools support the prodemocracy movement in Hong Kong. For example, last September, the Congressional-Executive Commission on China invited several leaders of the Umbrella Movement to testify at a hearing.[15] I urge members of both the Senate and the House to pursue other hearings and public meetings to stand with prodemocracy activists from Hong Kong, which sends a powerful diplomatic and symbolic message of U.S. support.

I also commend the recent United Kingdom announcement that the U.K. will offer work visas and a potential path to citizenship for nearly three million Hong Kong residents, beginning after China enacts the national security law.[16] Britain's offer is a powerful repudiation of Beijing's authoritarian move and threatens a "brain drain" from the city the that will undercut some of the advantages that Xi Jinping hopes to obtain by asserting Beijing's authority over Hong Kong. The United States should similarly offer a new visa program for Hong Kong residents who fear Chinese persecution to allow them to immigrate to America.

2. *Holding China to Account To Advance Overall U.S. Strategy:* The second area of U.S. policy response should focus on measures to penalize Beijing. The Hong Kong Human Rights and Democracy Act passed last November requires the President to sanction Chinese officials involved in "the extrajudicial rendition, arbitrary detention, or torture of any person in Hong Kong" and "other gross violations of internationally recognized human rights in Hong Kong." Several members of Congress have introduced other legislation to impose sanctions over China's erosion of Hong Kong's autonomy. Targeted sanctions on Chinese officials involved in repressing freedom in Hong Kong make sense, as do targeted sanctions against officials involved in other Chinese abuses of human rights and fundamental freedoms, such as the bill Congress recently passed to impose sanctions on officials involved in China's repression of its Uighur minority.[17]

In addition to sanctions, there is a broad range of potential measures that the United States can deploy against China in the wake of its erosion of Hong Kong's autonomy. In deploying a broader suite of measures against China, the U.S. Government should be thinking not only about Hong Kong, but about how the U.S. response to Hong Kong fits within America's emerging overall strategy of geopolitical and economic competition with China. China's erosion of Hong Kong's autonomy is part of a much broader trend of Chinese illiberalism at home and abroad. China has engaged in an inhumane crackdown on its Uighur population that has involved the detention of some one million people. China has harnessed its economic power to bully countries from Norway to Australia that have criticized the Chinese Government and its antidemocratic practices. Having built one of the world's most successful surveillance and censorship apparatuses at home, China has begun to export its model of surveillance and censorship to other Governments.[18] In recent months China has further escalated its efforts to assert control of the South China Sea and stoked tensions with India. The U.S. response to China's encroachment on Hong Kong should be part of a broader strategy to combat Chinese threats to democracy.

We also have to be frank in acknowledging the potential costs to the United States of hasty, economically significant actions. The United States and China continue to have one of the world's most important trading relationships, with two-way goods trade valued at more than $550 billion in 2019 despite the impacts of new U.S. tariffs reducing trade flows.[19] For many American companies, China is one of

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[15] U.S. Congress, Congressional-Executive Commission on China, "Hong Kong's Summer of Discontent and U.S. Policy Responses", 116th Congress, 1st sess., 2019, *https://www.cecc.gov/events/hearings/hong-kongs-summer-of-discontent-and-uspolicy-responses.*

[16] Telegraph Reporters, "Boris Johnson Says 3m People in Hong Kong Will Get Path to British Citizenship", *The Telegraph*, June 3, 2020, *https://www.telegraph.co.uk/news/2020/06/03/boris-johnson-says-3m-people-hong-kong-will-get-path-british/*.

[17] U.S. Senate, "Uyghur Human Rights Policy Act of 2020", 116th Cong., 2nd sess., *https://www.congress.gov/bill/116thcongress/senate-bill/3744/text?q=%7B%22search%22%3A%5B%22uighur%22%5D%7D&r=1&s=4.*

[18] Paul Mozur, Jonah M. Kessel, and Melissa Chan, "Made in China, Exported to the World: The Surveillance State ", *New York Times*, April 24, 2019, *https://www.nytimes.com/2019/04/24/technology/ecuador-surveillance-cameras-policegovernment.html.*

[19] "Trade in Goods With China", U.S. Census Bureau, *https://www.census.gov/foreign-trade/balance/c5700.html.*

their largest markets. U.S. and Chinese financial markets are intertwined to a degree and global financial markets will react badly to hasty decoupling, an issue that we have to take particularly seriously during the current global economic crisis. China's economic size and sophistication also make it fundamentally different from smaller countries such as Venezuela and Iran, that have few options to circumvent and retaliate against U.S. economic pressure. All out economic war with China would be costly to the United States for uncertain gains.

I urge Congress and the Executive Branch to respond to China's attacks on Hong Kong's autonomy by pursuing action against the Chinese illiberalism in at least three specific areas: Antidemocracy and corruption; antisurveillance; and securing the U.S. against undue Chinese influence.

First, antidemocracy and corruption. The U.S. Government should join with close allies to launch a comprehensive campaign to push back on Chinese subversion of democratic rules and its corruption. This would include a Government-backed effort to identify and publicize corruption by both individual Chinese officials and by Chinese companies operating around the world. We should also expose and publicize the acts of individual Chinese officials subverting democratic norms around the world. The United States and allies such as the United Kingdom and European Union, which have sanctions authorities on the books to target Government officials and others involved in human rights abuses and corruption, should use those tools to take action against Chinese officials and companies found to be involved.

Second, antisurveillance and censorship. China has developed a sophisticated domestic surveillance apparatus that it is increasingly exporting to the world. In recent months the world has borne the costs of Chinese censorship that helped to suppress early reports of the COVID–19 pandemic. China, meanwhile has signed deals to export surveillance technology to Zimbabwe, Ethiopia, Angola, Zambia, and Uganda, among many other countries.[20] Growing use of Chinese surveillance and censorship tools, not just in China but globally, poses a profound threat to democratic values. The United States and its allies need to mount an aggressive campaign to deter countries from deploying Chinese censorship and surveillance campaigns and, to the extent we can, to push back on China's censorship and surveillance inside China's borders.

Third, securing the United States against undue Chinese influence. Over the last decade, China has not hesitated to weaponize its economic power in pursuit of geopolitical goals. Here in the United States, China retaliated against the National Basketball Association after Houston Rockets General Manager Daryl Morey supported democratic protestors in Hong Kong. China is currently engaging in economic coercion against Australia and Canada over political disputes. The U.S. Government needs to ensure that our economy and markets are protected against undue Chinese influence.

Over the past several years, Congress and the Executive Branch have taken a handful of steps to protect the U.S. against Chinese influence, reforming the CFIUS process to tighten reviews of Chinese acquisitions of U.S. companies, banning Huawei and other Chinese equipment from communications networks, and beginning to focus on ensuring supplies of critical materials, such as rare earth elements. In recent months the United States ramped up production of critical medical equipment. Much more needs to be done. The U.S. Government needs to launch a comprehensive national supply chain security review to identify supply chain vulnerabilities and close them. U.S. Government agencies should ensure that Chinese companies that are listed in the United States adhere to U.S. financial standards. We need a beneficial ownership law that ensures that the Chinese Government cannot set up secret shell companies in the U.S. and use them as vehicles to pursue its objectives. And the United States Government should ensure that companies are able to stand up to Chinese bullying and adhere to American values when they operate in China.

Securing the United States against sources of undue Chinese influence does not mean cutting off the U.S. from China economically or terminating the ability to Chinese citizens to travel, study, and work in America. But it does mean taking smart, tough steps to secure the U.S. against Chinese influence.

3. *Building a Global Diplomatic Calition:* Finally, the United States should lead by galvanizing a global coalition to counter China's illiberalism. Over the past year

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[20] Arthur Gwagwa and Lisa Garbe, "Exporting Repression? China's Artificial Intelligence Push Into Africa", Net Politics blog on Council on Foreign Relations, December 17, 2018, *https://www.cfr.org/blog/exporting-repression-chinas-artificialintelligence-push-africa*; Samuel Woodhams, "Huawei, Africa and the Global Reach of Surveillance Technology", DW, September 12, 2019, *https://www.dw.com/en/huawei-africa-and-the-global-reach-of-surveillance-technology/a-50398869.*

many U.S. allies have begun to shift their perspectives regarding China's economic practices, criticizing anticompetitive Chinese practices and recognizing the security risks that come from excessive dependence on China. The European Union, for example, labeled China a "systemic rival" in a report issued last year,[21] and is taking steps to strength its review of foreign investments, and particularly Chinese investments, in European strategic assets.[22] It is reportedly also seeking authorities to review and block takeovers by companies that have received unfair support from non-European Governments.[23] Japan has earmarked more than $2 billion from its COVID–19 response funds to help Japanese firms re-onshore production from China.[24] A growing number of countries have announced plans to prohibit the use of Huawei equipment in their 5G telecommunications networks, and others, such as the U.K. appear to be reevaluating earlier decisions to allow limited use of Huawei.

This shift on economic issues is heartening. But many allies continue to downplay China's illiberalism and abuses of human rights, including China's erosion of Hong Kong's autonomy. The U.K., Australia, and Canada joined the U.S. in issuing a tough statement condemning China's announcement of a national security law for Hong Kong.[25] But the two paragraph European Union statement left much to be desired.[26]

Building a global coalition against Chinese illiberalism will take time and diplomatic skill—just as the growing coalition against Chinese economic abuses has taken several years of patient diplomatic work. But the fact that diplomacy will take time is not an argument against it, but rather an argument to get started. The United States should work bilaterally to urge more European and other allied States to issue strong condemnations of China's planned national security law so that its implementation faces a global opprobrium. Close allies, such as Canada and the U.K. should be asked to join in imposing targeted sanctions on Chinese officials engaged in corruption and human rights abuses, as our allies have sanctioned corruption and human rights abuses elsewhere.

The United States should also look for different multilateral venues to press for action. For example, the United States could use the G7, or an expanded group of close, like-minded democracies, to call out China's illiberalism and repression, including its erosion of Hong Kong's autonomy and to commit to taking specific steps to counter Chinese threats to democracy. (Of course, Russia rejoining the G7 would profoundly undermine the group's effectiveness as a group of like-minded democracies and would likely destroy its utility as a group.)

The U.S. Government should also encourage allies who have specific tools to challenge China's actions to use them. The U.K., for example, could try to seek an opinion from the International Court of Justice on the question of whether China has violated the Sino–British Joint Declaration. China would almost certainly block such a move and refuse to accept the court's jurisdiction, much as China has ignored international legal rulings that its South China Sea activities violate international law. But even the attempt to use international law to reign in China's abuses would be nonetheless valuable as a diplomatic and political maneuver.

Where allies are unwilling to join the United States in imposing economic or legal measures, D.C. should not simply let them off the hook. Instead, the United States should press them to take other types of measures to stand against China's growing authoritarianism regarding Hong Kong and around the world. In 2016, for example,

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[21] European Commission, "EU–China: A Strategic Outlook", March 12, 2019, *https://ec.europa.eu/commission/sites/betapolitical/files/communication-eu-china-a-strategic-outlook.pdf*.

[22] European Commission, "Guidance to the Member States Concerning Foreign Direct Investment and Free Movement of Capital From Third Countries, and the Protection of Europe's Strategic Assets, Ahead of the Application of Regulation (EU)" 2019/452 (FDI Screening Regulation), March 25, 2020, *https://trade.ec.europa.eu/doclib/docs/2020/march/tradoc-158676.pdf*.

[23] Sam Fleming, Javier Espinoza, and Michael Peel, "EU Seeks To Curb State-Backed Foreign Rivals", *Financial Times*, June 2, 2020, *https://www.ft.com/content/8f8fc72d-1c05-488e-93f0-f60a4dce18b6*.

[24] Isabel Reynolds and Emi Urabe, "Japan To Fund Firms To Shift Production Out of China", *Bloomberg*, April 8, 2020, *https://www.bloomberg.com/news/articles/2020-04-08/japan-to-fund-firms-to-shift-production-out-of-china*.

[25] United States Department of State, United Kingdom Foreign and Commonwealth Office, and Australian Foreign Ministry, "China's Proposed New Security Law for Hong Kong", joint press release, May 28, 2020, *https://www.gov.uk/government/news/joint-statement-from-the-uk-australia-canada-and-united-states-on-hong-kong*.

[26] Council of the European Union, "Declaration of the High Representative on Behalf of the European Union on Hong Kong", press release, May 29, 2020, *https://www.consilium.europa.eu/en/press/press-releases/2020/05/29/declaration-of-the-highrepresentative-on-behalf-of-the-european-union-on-hong-kong/*.

the Dalai Lama visited the European Parliament.[27] China sharply condemned the move and threatened retaliation. But the meeting was a powerful symbolic show of support for the people of Tibet. The United States should press European political leaders to meet with Hong Kong activists as a diplomatic display of support even where countries may shy away from coercive economic measures.

As I said earlier in my remarks, the United States must also live up to our values here at home. In recent days China has promoted stories that liken recent protests in the United States to the Hong Kong protests of last year. In recent days the spokeswoman for China's Foreign Ministry trolled the U.S. State Department on social media, writing "I can't breathe" in response to a U.S. State Department statement criticizing China for breaking its promises to Hong Kong.[28] She also praised a statement by the President of the African Union criticizing the murder of George Floyd in Minneapolis last month and racism in the United States.

China's moral relativism is false and disingenuous. Americans can read coverage of events in this country unfiltered by a Great Firewall, and unlike citizens in mainland China, have a constitutional right to speak and peacefully protest against their Government. But if we care about America's standing, we also have to acknowledge that repeated instances of police brutality against African Americans and the aggressive tactics recently adopted by U.S. policy and security forces against peaceful American protestors exercising their constitutional rights to protest racism, profoundly undercuts out moral authority. Images of protestors gathering in London, Brussels, Berlin, Dublin, Paris, Toronto, Vancouver, Auckland, Sydney, and other cities to protest injustice in the U.S. have been striking. Statements by democratic leaders saying that they are watching U.S. development with "horror and consternation" and calling for a "de-escalation of tensions" in the United States are not the words of Governments keen to join the U.S. in a global diplomatic campaign. We must remind the world that we as Americans learn from our missteps and are relentlessly committed to a brighter, more democratic, and more equal future.

Closing Remarks

In closing, I'd like return to the Tiananmen Square massacre that occurred 31 years ago today. That massacre was a major setback for the cause of democracy. Yet in the 1990s and early 2000s we saw a global surge of democracy in Eastern Europe, Africa, and other regions. Even in China, there was hope for gradual political opening and reform alongside economic growth.

The last decade has seen an unfortunate backsliding of that democratic trend, both within China under Xi Jinping, and globally as countries around the world erode the freedoms of their citizens.[29] A strong, smart U.S. response to China's erosion of democracy in Hong Kong can help turn the tide and promote the same type of global democratic renewal we saw in the decade after Tiananmen.

PREPARED STATEMENT OF ERIC B. LORBER

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JUNE 4, 2020

Introduction

Chairman Crapo, Ranking Member Brown, and distinguished Members of the Senate Committee on Banking, Housing, and Urban Affairs, I am honored to appear before you today to discuss the crisis in Hong Kong and review U.S. policy tools.[1]

This is a precarious moment for the people of Hong Kong, and the United States has an important role to play in supporting them in the face of efforts by the Chinese Communist Party (CCP) to undermine their freedoms. Economic sanctions can be an impactful part of a comprehensive U.S. effort to support the peaceful, pro-

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[27] "Dalai Lama: 'I Am One of the Admirers of the Spirit of the European Union'", European Parliament, press release, September 15, 2016, *https://www.europarl.europa.eu/news/en/headlines/eu-affairs/20160909STO41741/dalai-lama-i-am-one-of-the-admirers-of-the-spirit-of-the-european-union.*

[28] Hua Chunying (Spokesperson CHN), "I Can't Breathe", May 30, 10:43 a.m., Twitter, *https://twitter.com/SpokespersonCHN/status/1266741986096107520?s=20.*

[29] "NEW REPORT: Freedom in the World 2020 Finds Established Democracies Are in Decline", Freedom House, press release, March 4, 2020, *https://freedomhouse.org/article/new-report-freedom-world-2020-finds-established-democracies-are-decline.*

[1] The views expressed in this testimony are my personal views and do not represent the views of the Foundation for Defense of Democracies, K2 Intelligence/Financial Integrity Network, or the Treasury Department. Pursuant to legal and ethical obligations, I cannot discuss internal deliberations that occurred during my tenure at the Treasury Department.

democracy forces in the city. However, we need to have realistic expectations about their effectiveness. Sanctions will be unlikely to restore many of the freedoms that the CCP seeks to take away from the people of Hong Kong. They can, however, give the CCP pause.

To achieve this objective, sanctions must be carefully calibrated to both apply pressure on the CCP and those materially contributing to the erosion of rights in Hong Kong, while minimizing the costs to the people of Hong Kong and mitigating the risks to the international financial system and U.S. businesses. Such tools must also provide the Trump administration—and future Administrations—with the flexibility to apply this pressure in smart ways.

The Hong Kong Autonomy Act (HKAA), introduced by Senators Toomey (R-PA) and Van Hollen (D-MD), is a good step towards this aim. As I discuss below, the legislation is designed to pressure the CCP, entities contributing to the undermining of rights in Hong Kong, and financial institutions that do business with them. It is structured to deter these entities and financial institutions from continuing to support this assault on the people of Hong Kong. I believe there are a number of additional modifications to the legislation that would make it even more effective, increasing its impact while limiting downside risk.

I will focus my testimony today on four key issues to consider when weighing a response to China's intervention in Hong Kong. First, I will address how economic pressure can help the United States achieve realistic objectives. Second, I will discuss some of the risks of ramping up U.S. coercive measures on China. Third, I will analyze the Hong Kong Autonomy Act, noting how it can place pressure on China in a way that may deter further aggression. Finally, I will make a number of recommendations to enhance the legislation to ensure the Administration has appropriate flexibility.

Using Economic Power To Achieve U.S. Policy Objectives Toward Hong Kong

As Secretary of State Michael Pompeo rightly noted when declining to certify that Hong Kong remains autonomous under Section 301 of the Hong Kong Policy Act, "No reasonable person can assert today that Hong Kong maintains a high degree of autonomy from China, given facts on the ground."[2] Indeed, over the last year, in concert with local authorities, the CCP has moved aggressively to curtail the rights historically enjoyed by the people of Hong Kong, including:[3]

1. In 2019, the Government of Hong Kong, acting with the support of the Government of China, introduced an extradition bill that would have permitted Hong Kong to detain and transfer people wanted in countries with which it has no formal extradition agreements, including the Chinese mainland.[4]
2. Following the introduction of the extradition bill and robust protests by the people of Hong Kong, authorities in the city, with apparent assistance from the CCP, violently cracked down on protesters.[5]
3. In May 2020, China introduced and passed legislation that would ban acts in Hong Kong that endanger China's national security, including subversion and separatism. This legislation, which is on the way to being enacted, would likely permit China's security services to operate in Hong Kong, further eroding the city's historical independence from the CCP.[6]

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[2] Secretary of State Michael R. Pompeo, U.S. Department of States, Press Statement, "P.R.C. National People's Congress Proposal on Hong Kong National Security Legislation", May 27, 2020. (*https://www.state.gov/prcnational-peoples-congress-proposal-on-hong-kong-national-security-legislation/*)

[3] U.S. Department of State, Bureau of East Asia and Pacific Affairs, "2020 Hong Kong Policy Act Report", May 28, 2020. (*https://www.state.gov/2020-hong-kong-policy-act-report/*)

[4] Ethan Meick, U.S.–China Economic and Security Review Commission, "Hong Kong's Proposed Extradition Bill Could Extend Beijing's Coercive Reach: Risks for the United States", May 7, 2019. (*https://www.uscc.gov/sites/default/files/Research/USCC%20Issue%20Brief—HK%20Extradition%20Bill.pdf*)

[5] Daniel Victor and Mike Ives, "Why Are People Protesting in Hong Kong?" *New York Times*, October 15, 2019. (*https://www.nytimes.com/2019/10/15/world/asia/what-are-hong-kong-protests-about.html*)

[6] Secretary of State Michael R. Pompeo, U.S. Department of States, Press Statement, "P.R.C. National People's Congress Proposal on Hong Kong National Security Legislation", May 27, 2020. (*https://www.state.gov/prcnational-peoples-congress-proposal-on-hong-kong-national-security-legislation/*); U.S. Department of State, Bureau of East Asia and Pacific Affairs, "2020 Hong Kong Policy Act Report", May 28, 2020. (*https://www.state.gov/2020-hong-kong-policy-act-report/*); Lily Kuo, "Chinese Parliament Approves Controversial Hong Kong Security Law", *The Guardian* (UK), May 28, 2020. (*https://www.theguardian.com/world/2020/may/28/china-vote-npc-nationalsecurity-laws-hong-kong-us-protest*)

These actions have substantially undermined the Sino–British Joint Declaration (the "Joint Declaration") and the Basic Law. They signal that China is increasingly aggressive in exercising political control over the city despite the "one country, two systems" principle.[7] Indeed, as President Donald Trump said last week, it increasingly looks like "one country, one system."[8]

The people of Hong Kong, despite turning out in the streets in massive numbers last year, have thus far been unable to successfully push back on China's renewed efforts to subsume the city into the mainland's framework for political and social control. Likewise, U.S. efforts to deter China's encroachment have been unsuccessful to date. Despite the passage of Hong Kong Human Rights and Democracy Act of 2019,[9] the CCP appears to have concluded that usurping Hong Kong is worth the economic cost that may result from sanctions imposed by the United States.

While President Trump announced last week that the Administration may take additional measures under the Hong Kong Policy Act, including tightening export control restrictions on certain U.S. goods going to Hong Kong and increasing customs and tariffs on goods coming to the United States from the city, it is not clear whether these measures will impact CCP decision making.[10] But influencing China's future actions toward Hong Kong is exactly what Congress and the Administration should now consider.

It is unrealistic to expect China to reverse the steps it has taken over the last year. The CCP has made it clear, through the recent passage of legislation potentially permitting China's national security agencies to operate in Hong Kong, that it is willing to pay a price for its aggression. The Administration and members of Congress should therefore maintain realistic expectations that any efforts, including economic pressure, will not convince the CCP to reverse course on the legislation or otherwise restore the freedoms it has revoked from the people of Hong Kong.

However, the United States can and should support the people of Hong Kong, and our primary objective should be deterring the CCP and local authorities from further cracking down on the prodemocracy citizens of Hong Kong. At the same time, Washington should work to ensure both that Hong Kong is not further pushed into Beijing's control and that U.S. companies operating in Hong Kong are protected as much as they can be.

Achieving these three objectives will be challenging. Congress and the Administration must carefully calibrate economic pressure on Beijing to do so. Too much economic pressure could further isolate Hong Kong from global markets, hurting Hongkongers and causing U.S. and other foreign companies to downsize their exposure in Hong Kong or even leave the jurisdiction altogether. This would have an outsized impact on the financial health of U.S. businesses and could lead to significant fallout in financial markets. It could also lead to a damaging response from Beijing.

However, too little pressure may not move the needle enough. A weak response could signal to Beijing that it has the green light to increase its aggression, crack down on the prodemocracy movement, and further erode the freedoms enjoyed by those in Hong Kong.

Properly calibrated economic sanctions can help deter the CCP. In the fall of 2019, the Trump administration's threat of international sanctions to deter Turkey from engaging in sustained, widespread aggression in northern Syria prevented a significant humanitarian crisis. Thanks to the issuance of Executive Order 13894, the accompanying designations, and the clear threat by the Administration to impose both

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[7] The relevant language of the Joint Declaration states that "the Hong Kong SAR (HKSAR) will be directly under the authority of the Central People's Government and will enjoy a high degree of autonomy except in foreign and defense affairs which are the responsibilities of the Central People's Government;" and that the "the social and economic system in Hong Kong before the resumption of the exercise of sovereignty by China will remain unchanged, and so will the life style. Rights and freedoms, private property, ownership of enterprises, legitimate rights of inheritance and foreign investment will be protected by law." Government of the Hong Kong Special Administrative Region, Constitutional and Mainland Affairs Bureau, "The Joint Declaration", accessed June 1, 2020. (*https://www.cmab.gov.hk/en/issues/joint2.htm*). For the language of the Basic Law, see: Government of the Hong Kong Special Administrative Region, Constitutional and Mainland Affairs Bureau, "The Basic Law", accessed June 1, 2020. (*https://www.cmab.gov.hk/en/issues/basic2.htm*)

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

[9] Hong Kong Human Rights and Democracy Act of 2019, H.R. 3289, 116th Congress (2019). (*https://www.congress.gov/116/bills/hr3289/BILLS-116hr3289pcs.pdf*)

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

primary and secondary sanctions on wide swaths of the Turkish economy,[11] Turkey quickly ended its incursion.

Likewise, the United States and the European Union imposed sanctions in 2014 to deter Russia from engaging in additional destabilizing activities in Eastern Europe. Of course, deterrence is always difficult to measure. However, evidence suggests that Russia was planning to broaden its overt military action in eastern Ukraine to wrestle key cities and territories away from Ukrainian Government control, but thought twice after biting sectoral sanctions took effect.[12]

The lesson here is that carefully calibrated sanctions designed to deter additional encroachment on Hong Kong's freedoms can create a deterrent impact. These tools should be coordinated, to the extent possible, with other countries that share U.S. interests in Hong Kong, particularly the United Kingdom.

At the same time, we must acknowledge that over time, Hong Kong may lose its luster as one of the world's preeminent financial centers. With the city increasingly under CCP control, it is likely that global financial institutions, particularly those based in the United States, will find Hong Kong a less attractive place to do business. This is not a given; global financial institutions with deep ties to Asia and Hong Kong, particularly those based in Europe, may try to maintain a significant presence in the jurisdiction. Nevertheless, it will likely be more challenging to do so. While other policy tools, such as visas for Hongkongers looking to leave the jurisdiction, are outside the scope of my testimony, these measures should be considered by the Administration and Congress as the situation develops.

The Risks of Using of Economic Power

While economic pressure may limit further CCP efforts to undermine freedoms in Hong Kong, three significant downside risks exist: Chinese retaliation; isolating Hong Kong and pushing it further into China's orbit; and the potential negative impact to U.S. companies operating in Hong Kong. Caution is therefore necessary in developing a sanctions program against those responsible for the erosion of rights in Hong Kong.

First, China will likely respond to economic pressure on Chinese persons and financial institutions over Hong Kong. In recent years, China has become increasingly aggressive in using its own tools of economic coercion. The United States should expect that China will respond in kind to U.S. pressure.[13] The CCP has a range of options, including but not limited to:

- *Adding U.S. Companies to the Unreliable Entity List/Counter-Sanctions.* In May 2019, China announced the creation of an Unreliable Entity List. In response to the addition of Huawei to the U.S. Commerce Department's Entity List, the measure was designed to intimidate U.S. firms from cooperating with U.S. export controls.[14] The exact modalities of the Unreliable Entity List are unclear but could include national security investigations of activities by U.S. firms or other restrictions. China could use the Unreliable Entity List to identify U.S. companies and direct Chinese firms to cease doing business with them.
- *Accelerate Efforts To Undermine Hong Kong's Freedoms.* China could accelerate its efforts to pacify Hong Kong, including by more aggressively cracking down on the prodemocracy movement and implementing the new national security law.

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[11] Executive Order 13894, "Blocking Property and Suspending Entry of Certain Persons Contributing to the Situation in Syria", October 14, 2019. (*https://www.treasury.gov/resourcecenter/sanctions/Programs/Documents/13894.pdf*)

[12] For example, see: Nigel Gould-Davies, "Sanctions on Russia Are Working", *Foreign Affairs*, August 22, 2018. (*https://www.foreignaffairs.com/articles/russian-federation/2018-08-22/sanctions-russia-are-working*); see also: Eric Lorber, "Assessing U.S. Sanctions on Russia", Testimony Before the Senate Committee on Banking, Housing, and Urban Affairs, March 15, 2017. (*https://www.banking.senate.gov/imo/media/doc/Lorber%20Testimony%203-15-17.pdf*)

[13] Eric Lorber, "Economic Coercion, with a Chinese Twist", *Foreign Policy*, February 28, 2017. (*https://foreignpolicy.com/2017/02/28/economic-coercion-china-united-states-sanctions-asia/*); see also: Peter Harrell, Elizabeth Rosenburg, and Edoardo Saravalle, "China's Use of Coercive Economic Measures", Center for a New American Security, June 11, 2018. (*https://www.cnas.org/publications/reports/chinas-use-of-coerciveeconomic-measures*)

[14] The criteria for a U.S. firm being added would include (i) if it is boycotting, cutting off supplies to Chinese companies, or taking other specific discriminatory actions against Chinese companies; (ii) whether these actions are taken for noncommercial purposes, in violation of market rules or in breach of contractual obligations; (iii) whether these actions cause material damage to the legitimate interests of Chinese companies and relevant industrial sectors; and (iv) whether these actions constitute a threat or potential threat to China's national security. Lester Ross and Kenneth Zhou, "China's Unreliable Entity List", WilmerHale, July 29, 2019. (*https://www.wilmerhale.com/en/insights/client-alerts/20190729-chinas-unreliable-entity-list*)

- *Selective Law Enforcement Measures.* China could respond with politically motivated arrests of U.S. citizens, corporate officers of U.S. firms, or other Westerners. The arrests of Canadian citizens Michael Korvig[15] and Michael Spavor[16] in retaliation for the detention of Meng Wanzhou are an example of this strategy.[17]
- *Additional Tariffs/Abrogation of the U.S.–China Trade Deal.* China could abrogate parts of the Phase One trade deal.[18] The United States has not indicated it would leave the Phase One trade deal as a result of the current tension over Hong Kong. Nevertheless, China could increase its tariffs across-the-board on U.S. goods or, while not formally leaving the deal, appreciably slow its purchases of U.S. goods. There is some evidence that this may already be occurring.[19]

While China's response will likely depend on the level of economic and political pressure the United States imposes, any such U.S. actions should be taken with reprisals in mind.

Second, too much economic pressure could push Hong Kong further into China's orbit. If the United States ramps up sanctions on Hong Kong, U.S. and international companies may seek to reduce their exposure and move their operations elsewhere. This would likely lead to a significant reduction of businesses based in Hong Kong as a global financial center and thus could spawn a major departure of the Hongkongers and Westerners who support the freedoms and rights they have historically enjoyed. This would leave behind a population in Hong Kong that is more willing to accept China's draconian security measures and less willing to stand up for their rights.

Third, sanctions on foreign persons and foreign financial institutions in Hong Kong could have blowback effects on U.S. companies operating in the city, particularly in the financial sector. Approximately 1,300 U.S. firms, including 726 regional operations, have a physical presence in Hong Kong, and there are approximately 85,000 American residents living in the city.[20] Likewise, U.S. financial institutions have a substantial presence in Hong Kong and often work closely with systemically important Chinese banks operating both in the city and on the mainland. All of this should inform the types of sanctions being considered and the targets of those sanctions. If not done properly, imposing sanctions could have a deleterious impact on U.S. companies in Hong Kong and could prompt them to move their operations and business elsewhere.

These downsides are significant. They must be taken into account when considering sanctions pressure. Punitive measures must be carefully calibrated. They must limit the downside impacts on Hong Kong and U.S. companies, and they should be considered with a clear understanding that China will likely respond.

The Hong Kong Autonomy Act: Carefully Calibrated To Deter Further Chinese Efforts To Undermine Hong Kong's Freedom

The Hong Kong Autonomy Act, introduced by Senators Toomey and Van Hollen, is narrowly crafted to create deterrent pressure on China and incentivize those penalized under HKAA to cease their malign activities. With certain modifications, the HKAA can provide the Administration with sufficient flexibility and limit the downside risk to U.S. companies and those of our partners and allies.

The HKAA is designed to incentivize persons materially contributing to the failure of the Government of China to meet its obligations under the Joint Declaration

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[15] "Michael Kovrig Arrest: Canadian Held in China 'Not Allowed To Turn Lights Off'", BBC (UK), December 21, 2018. (*https://www.bbc.com/news/world-us-canada-46645710*)

[16] Anna Fifield, "China Accuses Two Detained Canadians of Stealing State Secrets", *Washington Post*, March 4, 2019. (*https://www.washingtonpost.com/world/asia—pacific/china-accuses-two-detained-canadians-of-stealing-andselling-state-secrets/2019/03/04/766f2796-3e7e-11e9-a44b-42f4df262a4c—story.html*)

[17] See, for example: the U.S. Department of Justice's superseding indictment of Meng Wanzhou. Superceding Indictment, United States of America v. Huawei Technologies Co., Ltd., Huawei Device Co., Ltd., Huawei Device USA Inc., Futurewei Technologies, Inc., Wanzhou Meng, Cr. No. 18-457 (S-3) (AMD) (E.D.N.Y filed February 13, 2020). (*https://www.justice.gov/usao-edny/press-release/file/1248966/download*)

[18] President Donald Trump, The White House, "Remarks by President Trump at Signing of the U.S.–China Phase One Trade Agreement", January 15, 2020. (*https://www.whitehouse.gov/briefings-statements/remarks-presidenttrump-signing-u-s-china-phase-one-trade-agreement-2/*)

[19] "China Halts Some U.S. Farm Imports, Threatening Trade Deal", *Bloomberg News*, June 1, 2020. (*https://www.bloomberg.com/news/articles/2020-06-01/china-halts-some-u-s-farm-imports-threatening-tradedeal?srnd=premium&sref=Pw1Mp35R*)

[20] U.S. Department of State, Bureau of East Asian and Pacific Affairs, "U.S. Relations With Hong Kong", July 17, 2018. (*https://www.state.gov/u-s-relations-with-hong-kong/*)

and the Basic Law to cease those actions. The legislation creates that incentive by increasing economic penalties for continued bad behavior. The sanctions become more certain and more intense over time if those persons do not cease their malign behavior. The HKAA works as follows:

1. Ninety days after the enactment of the legislation and annually thereafter, the secretary of State must determine in a report whether a foreign person is materially contributing to the failure of the Government of China to meet its obligations under the Joint Declaration. As part of that report, the secretary will also include an explanation for why that foreign person has been included and identify any foreign financial institution that knowingly conducts a significant transaction with that person.
2. On the date that the report is submitted, the President may impose sanctions on any foreign person. These sanctions include blocking that person's property or visa revocation. If that person is included in two reports (for example, the first report issued 90 days after the enactment of the HKAA, and then the subsequent report 1 year later), the President must impose sanctions on that foreign person.
3. For foreign financial institutions, 1 year after inclusion in the first report, the President shall impose 5 out of 10 penalties stipulated.[21] Two years after the report, the President shall impose the full 10 penalties on that foreign financial institution.[22]

Four important points stand out about this legislation. First, it targets both those persons materially contributing to China's failure to uphold its obligations under the Joint Declaration and those foreign financial institutions doing business with those persons. This is broad, but it is also likely to ensure that the sanctions have teeth. Designating natural persons or companies (such as CCP members, Government officials in Hong Kong who have undermined the city's freedoms, or companies supporting their activities) is important symbolically as a show of support for the prodemocracy forces in Hong Kong but is unlikely to change China's willingness to intervene. Broadening the sanctions to include financial institutions that do business with these persons will be more likely to have an impact. It would put pressure on those institutions to cease doing business with those persons or risk losing access to the international financial system.

Second, the HKAA's structure creates a deterrent impact and an incentive for a positive change in behavior over time. The annual reporting requirement and potential sanctions on foreign persons listed in the reports creates a powerful incentive not to materially contribute to China's failure to meet its obligations. Foreign persons will not want to be included in these reports, as inclusion triggers discretionary sanctions, and therefore at least some will likely think twice before engaging in any actions that could lead to them appearing in the report. Likewise, foreign financial institutions will not want to conduct knowing and significant transactions with entities that may be included in these reports, deterring them from supporting such activity.

In addition, the legislation provides a clear incentive for foreign persons and foreign financial institutions that are included in the reports to change their activity over time or suffer increasingly certain or worse penalties. For example, for foreign persons included in the first report, the President has discretionary authority to impose blocking sanctions on those persons. However, if those persons appear on a second report, the President must impose blocking sanctions. As a result, the foreign person identified in the first report has a substantial incentive to cease contributing to the crisis in Hong Kong; if he or she does not, blocking sanctions are certain.

Likewise, foreign financial institutions have an incentive to cease conducting transactions with foreign persons listed in the report. If they continue doing business with a listed foreign person 1 year after the initial listing, they will be subject to 5 of 10 penalties. However, if they continue conducting such transactions for an-

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[21] These penalties include: a prohibition on loans from U.S. financial institutions; a prohibition on designation as a primary dealer in U.S. Government bonds; a prohibition on service as a repository of U.S. Government funds; a prohibition on foreign exchange; a prohibition on certain banking transactions through the U.S. financial system; blocking sanctions; a restriction on exports; a ban on U.S. persons' investment in equity or debt; the exclusion of corporate officers; and sanctions on principal executive officers.

[22] As discussed below, this language could be further sharpened to make clear that if the foreign financial institution ceases conducting knowing and significant transactions with the listed foreign person any time after the issuance of the first report (before the year one marker is hit), any time between year one and year two, or any time after year two, such sanctions will be lifted.

other year, they will be subject to the full 10 penalties (some of which are particularly powerful, such as blocking provisions). In short, if they do not change behavior, they will face a broader range of economic pressure.

Third, the HKAA provides the Administration with substantial flexibility. Under the reporting requirement, the President may decline to include a foreign person on the report who otherwise materially contributes to the crisis in Hong Kong if those contributions do not have a significant and lasting negative effect, are not likely to be repeated in the future, and have been reversed or otherwise mitigated through positive countermeasures taken by that foreign person. Combined with determining what specific actions fall under the definition of a material contribution, as defined in Section 5(f) of the HKAA, these provisions provide the President with significant leeway when deciding which entities are included in the report.

Likewise, the same language applies to foreign financial institutions identified in the report.

Furthermore, the President actually has more flexibility with foreign financial institutions, which must conduct knowing and significant transactions with the identified parties in order to be included in the report. In particular, the "significant" qualifier has allowed successive Administrations to refrain from imposing draconian sanctions when it believed doing so was unwarranted or would otherwise cause undesirable impacts.[23]

In addition, the legislation contains a waiver provision whereby the President may waive the sanctions on foreign persons and foreign financial institutions if he or she determines that doing so is in the national security interest of the United States. There may be, for example, good national security reasons for declining to penalize foreign financial institutions, particularly as some of them may be systemically important. The legislation, however, does contain a resolution of disapproval provision, which could complicate such a waiver (see below).

Fourth, the HKAA is narrowly scoped to avoid causing a massive shock to the international financial system or undue harm to U.S. businesses. The legislation targets only those foreign persons and foreign financial institutions engaged in specified activity. It is not a comprehensive program broadly targeting foreign persons or foreign financial institutions operating in Hong Kong. This, coupled with the flexibility discussed above, should help this Administration and future Administrations effectively manage potential economic blowback on U.S. companies and those of our allies and partners.

Suggested Modifications and Recommendations

While this legislation can play an important role in deterring future Chinese efforts to undermine Hong Kong's freedoms, it should be sharpened. Doing so can help limit the risk of further isolating Hong Kong and negatively impacting international financial markets and U.S. companies, while ensuring the Executive branch retains significant flexibility.

This can be done in two primary ways. First, the legislation as drafted targets foreign financial institutions, regardless of whether their transactions with the foreign persons directly involve the undermining of rights in Hong Kong. As discussed above, this provision is designed to increase the economic impact and make companies think twice about contributing to China's malign activities. However, this provision may be overbroad in that it targets foreign financial institutions whose business relationships with listed foreign persons do not involve their efforts to undermine freedom in Hong Kong.

For example, if a financial institution provided general banking services to a company listed in the report but had nothing to do with that company's efforts to undermine freedom in Hong Kong, that financial institution could still be subject to U.S. secondary sanctions. This provision would likely have the unintended consequence of accelerating U.S. and global financial institutions from exiting Hong Kong. Some may conclude that maintaining substantial operations in the jurisdiction is too risky given the sanctions exposure and could decide to either slim down their business

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[23] The Office of Foreign Assets Control (OFAC) at the U.S. Department of the Treasury generally considers a number of factors when determining whether a transaction is "significant," including: (1) the size, number, and frequency of the transaction(s); (2) the nature of the transaction(s); (3) the level of awareness of management and whether the transaction(s) are part of a pattern of conduct; (4) the nexus between the transaction(s) and a blocked person; (5) the impact of the transaction(s) on statutory objectives; (6) whether the transaction(s) involve deceptive practices; and (7) such other factors that the secretary of the treasury deems relevant on a case-by-case basis. See: FAQ 542 in U.S. Department of the Treasury, Office of Foreign Assets Control, "OFAC FAQs: Other Sanctions Programs", accessed June 1, 2020. (*https://www.treasury.gov/resourcecenter/faqs/Sanctions/Pages/faq-other.aspx#ukraine*). The HKAA uses a modified set of factors.

presence or exit altogether. This would likely be a painful proposition for these financial institutions, and such a shift could further isolate Hong Kong and push it closer to the mainland.

As a way to mitigate this outcome, this committee might consider limiting the scope of the foreign financial institution restriction to activity directly tied to the undermining of rights and freedoms in Hong Kong. For example, the sanctions could apply to foreign financial institutions that knowingly conduct significant transactions with foreign persons in furtherance of those foreign persons' material contribution to China's failure to fulfill its obligations under the Joint Declaration and Basic Law.

This or a similar modification would narrow the impact of sanctions while directly targeting the undesirable activity. It would also give the sanctions increased credibility, as the designations would be clearly linked to illegitimate efforts by China's Government to undermine Hong Kong's special status.

Second, the HKAA contains a congressional review component for when the President is considering a national security waiver or terminating sanctions under the legislation. This resolution of disapproval mechanism, which is similar in concept to Section 216 of the Countering America's Adversaries Through Sanctions Act (CAATSA), would provide Congress with additional oversight and would limit the President's flexibility when considering the imposition or lifting of sanctions.

The committees of jurisdiction have an extremely important role in ensuring that U.S. sanctions programs are being properly implemented and that these programs are effective. Assessing their efficacy is critical, as Administrations continually view sanctions as tools of first resort. Congress should continue to conduct aggressive oversight of their use. At the same time, Congress should balance the need for oversight with a desire to provide Administrations with a degree of flexibility. As noted above, this flexibility is critical in ensuring Administrations can take the most impactful actions possible.

As this body observed in the winter of 2018, when the Trump administration indicated its intent to delist Rusal and EN+, two companies designated for being owned or controlled by Russian Specially Designated National (SDN) Oleg Deripaska,[24] a review can thrust a largely technical discussion into the more heated realm of politics.

As a general rule when considering including aggressive disapproval mechanisms, Congress should follow two maxims. First, Congress should be reluctant to insert itself into working-level decisions, such as whether to issue licenses or waivers for specific companies, absent a compelling national security rationale. While there certainly are circumstances where aggressive intervention is appropriate and justified, a considered decision to refrain can often be beneficial for U.S. sanctions.

Second, Congress should include disapproval mechanisms in legislation only when there is a serious, sustained policy disagreement with an Administration. For example, while the review mechanism specified in Section 216 created heated debates both during the passage of CAATSA and during the Rusal/EN+ delisting episode, the justification for including the review provision in the legislation was understandable. There was substantial concern in Congress at the time that the incoming Administration was going to prematurely lift U.S. sanctions on Russia.

In the case of Hong Kong, however, such a disagreement does not appear to exist. As was made clear by President Trump last week, the Administration is willing to take action against China as a result of the CCP's interventions.[25] This generally accords with Congress' inclination to raise the pressure on the CCP for its aggression. Including a disapproval mechanism in this case does not provide much benefit to congressional oversight, as it seems unlikely that the Administration would waive or terminate sanctions in an untimely fashion or for an unjustified reason. Including this mechanism could, however, come at a cost, particularly if the Administration were forced to consider sanctioning a large, systematically important company. In such an instance, providing the Administration with the appropriate amount of flexibility is critical. If such waivers are subject to review, particularly in a heated political context, the ultimate outcome could be detrimental to U.S. companies and

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[24] Office of Foreign Assets Control Director Andrea M. Gacki, U.S. Department of the Treasury, Letter to Senate Majority Leader Mitch McConnell, December 19, 2018. (*https://www.treasury.gov/resourcecenter/sanctions/OFAC-Enforcement/Documents/20181219-notification-removal.pdf*)

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

global financial markets. I therefore recommend amending the legislative text to excise the disapproval mechanism.

Finally, certain language in the legislation should be clarified, particularly in the context of the penalties imposed on foreign financial institutions. For example, as currently drafted, it is unclear whether a foreign financial institution that ceases to conduct knowing and significant transactions with a foreign person identified in a report would no longer be subject to sanctions. Likewise, if that foreign financial institution ceased doing business with a listed entity after the first year (but before the second), it is unclear whether the foreign financial institution would still be under some, none, or all of the prescribed penalties. This language may be contained in the termination provision but should be explicitly incorporated into the provisions detailing the timing of the imposition of penalties.

Conclusion

Economic sanctions are not a panacea for countering China's aggression in Hong Kong. We must temper our expectations for what they can achieve and consider the risks of their use. Nevertheless, a carefully calibrated and flexible sanctions program designed to deter future Chinese encroachment, as part of a broader strategy that includes aggressive diplomatic pushback on China's intervention, close coordination with allies concerned about China's measures, and supporting the peaceful democratic forces in Hong Kong, can increase the chances of ensuring that this democracy under siege is not completely subsumed by the mainland.

Thank you, and I look forward to your questions.

PREPARED STATEMENT OF LEE CHEUK YAN

GENERAL SECRETARY OF THE HONG KONG CONFEDERATION OF TRADE UNIONS, AND VICE CHAIRMAN, HONG KONG LABOUR PARTY

JUNE 4, 2020

Chairman Crapo, Ranking Member Brown, and the honorable Members of the Committee—Thank you for your invitation to me to speak to this Committee at this very crucial moment in Hong Kong. I also want to express our appreciation for the full Senate and Congress for your concerns and actions on supporting Hong Kong.

I am Lee Cheuk Yan, General Secretary of Hong Kong Confederation of Trade Unions, a former elected member of the Legislative Council of Hong Kong, and a founding advisory board member of Hong Kong Democracy Council (HKDC). I am also the Chairman of Hong Kong Alliance In Support of Patriotic Democratic movement of China, the alliance of people organizations in Hong Kong formed in 1989 to support the democracy movement in China that sadly ended by brutal and bloody suppression by the Chinese Communist Party.

Today is the 31st anniversary of the June 4th massacre and the Hong Kong Alliance had persistently organized the candlelight vigil to condemn the massacre for the last 30 years but this year it was banned by the Police in the name of Public Health. It had always been recognized by the people of Hong Kong that the annual candlelight vigil, attended by hundreds of thousands of people, symbolized that Hong Kong still enjoyed the freedom under "One Country Two System". So, the Hong Kong Government is telling the world, Hong Kong is now under "One Country One System". This is no surprise when we all witnessed the suppression over the last year with police brutality, massive arrests and banning of rallies and marches.

Sadly, for the people of Hong Kong, the CCP escalated its threat to our freedom with the unilateral decision by the National People Congress to impose on Hong Kong its version of National Security Law without any consultation or legislative scrutiny by our Hong Kong Legislature. The national Security Law is like constructing a guillotine in Hong Kong ready to strike at anyone deemed to be a threat to the authoritarian regime. It aims to instill fear among the people with the presence of the guillotine and can strike down anytime when the political need arises. It contains four elements of offence: subversion, secession, foreign intervention and terrorism. All these crimes are very vague and poorly defined in China.

The CCP jailed the Nobel Peace Prize Laureate Liu Xiaobo 11 years for advocating democracy and constitutional reform in the name of inciting the subversion of the State. Four people were jailed for 3 years for brewing and selling Remember June 4th wine and under the charge of subversion. Pastor Wong Yi was sent to 9 years prison for inciting subversion of State power just for standing up for religious freedom. The CCP defined subversion or other national security crimes in accordance to their own political needs and not the law. The law is only an instrument of suppression for them. Can the Hong Kong Alliance marches under the slogan of

"End One Party Rule"? Or the people of Hong Kong shouted for the downfall of the Hong Kong Chief Executive? Are these acts of subversion?

There are suggestions from some of the NPC members that this may be caught by the Law. The guillotine can strike down any time they believed politically necessary. The other crime of foreign intervention again can be subjected to very broad interpretation. Is my presence and testimony at this hearing today a crime of foreign intervention? Can Hong Kong Civil Society contact their international counterparts without being accused of foreign intervention? Though we do not know the final wording of the Law or how the Court will interpret the Law, it is very difficult to imagine the Court of departing from the political decision of the CCP on all National Security cases. I do not think there will be any independence of the Judiciary in these cases.

The other horrifying feature of the decision by the National People Congress is the suggestion to create a national security agency in Hong Kong responsible for enforcing the Security Law. Are they trying to create an agency in Hong Kong to spy on the people they seen as a threat? Will people of Hong Kong be pressured to report on their neighbors or colleagues? Where is Hong Kong's "high degree of autonomy" as promised under the Basic Law when China can send in a national Security Agency to enforce the law?

It is sad to announce to the world Hong Kong is now "One Country, One System". The rule of law that we are proud of is turned to become rule by law and rule of fear. We can win against this fear by believing in the people of Hong Kong and that they will continue to fight for democracy and freedom. But in this fight, we need International supports to stand with Hong Kong against this Giant of authoritarian rule.

Last year, the U.S. Congress overwhelming passed the bipartisan Hong Kong Human Rights and Democracy Act. Per the law, the Secretary of State certified last week that Hong Kong no longer enjoys meaningful and sufficient autonomy from China to warrant the special relationship it has enjoyed. The Administration and Congress must now work together on the appropriate response—and consider all tools available—like those specified in the Hong Kong Human Rights and Democracy Act that was passed and other additional ways to add pressure on the CCP and Hong Kong officials, like the Hong Kong Autonomy Act introduced by Senator Toomey and Senator Van Hollen.

I believe it would be deeply irrational for President Xi Jinping to strike at Hong Kong now when the China economy is badly hit by the Coronavirus pandemic. By "burning" Hong Kong, he will also burn China with it because Hong Kong is still economically useful to China.

Are the people in China ready to suffer for this reckless and stupid act? The economy of Hong Kong will also suffer but money is not everything—it is more important for Hong Kong to preserve our freedom and way of life, or else Hong Kong is no longer Hong Kong and we are left with the body without the spirit. We do not want this to happen to Hong Kong. We must stop the Law and the continuous intervention of Hong Kong by the CCP. And we will fight on.

Thank you.

RESPONSES TO WRITTEN QUESTIONS OF SENATOR MORAN FROM MICHAEL F. MARTIN

Q.1. There is regular discussion that overuse of sanctions could lead to the erosion of the dollar's primacy. Do you take that seriously, and how should that impact our approach to Hong Kong?

A.1. The primacy of the U.S. dollar in global financial markets is based on the perception that the currency represents a secure store of value, particularly in times of economic crisis, and is nearly universally accepted as a medium of exchange. Financial sanctions that restrict or prohibit the use of the U.S. dollar, or preclude the involvement of U.S. financial institutions in transactions, create an incentive to find alternative currencies or financial instruments in order to conduct trade and investment transactions.

For the last decade, the People's Republic of China (PRC) has been actively promoting its currency, the renminbi, as an alternative to the U.S. dollar for purposes of trade and investment.[1] The PRC Government has encouraged the use of renminbi for the settlement of trade transactions, as well as the denomination of trade contracts in renminbi. The HKSAR Government has actively supported the effort to globalize the renminbi, and has developed various renminbi-denominated investment instruments in Hong Kong, such as renminbi bonds.

The United States currently treats the Hong Kong dollar as a convertible currency, and the Hong Kong Monetary Authority (HKMA) manages its currency based on the value of the U.S. dollar, maintaining an exchange rate between 7.75 and 7.85 Hong Kong dollars to 1 U.S. dollar through a currency board system. If the U.S. Government no longer recognizes the convertibility of the Hong Kong dollar, it would make conducting financial transactions more difficult and weaken Hong Kong's role as a global financial center. It could encourage the HKSAR Government and the HKMA to abandon the current link to the U.S. dollar, and possibly link the Hong Kong dollar to the renminbi.

The imposition of sanctions either on Hong Kong or the PRC would not seriously erode the global acceptance of the U.S. dollar, but it could promote the establishment of regional renminbi hubs, based out of the PRC and the HKSAR. If liquidity in renminbi asset markets grows substantially as a result, spurred by global financial institutions' presence in Hong Kong, it could make renminbi financing more attractive, which in turn could create more attractive alternatives to the use of the U.S. dollar in financial transactions in Asia and in other countries with substantial Chinese investment.

Q.2. If existing or proposed sanctions can't deter the Chinese Government from a further crackdown—if China is willing to bear the costs as a matter of national importance—how would you recommend responding?

A.2. At this time, it is unclear what sanctions or changes in current U.S. treatment of the PRC or the HKSAR are being considered by the Trump administration. President Trump's statement of May 29,

[1] The name of the PRC's currency is the "renminbi," or "people's currency." Its base unit is the "yuan." Some sources use the base unit, "yuan," as a substitute for the name of the currency.

2020, provided few details of what changes will be made. He did explicitly state, "We will take action to revoke Hong Kong's preferential treatment as a separate customs and travel territory from the rest of China." He also indicated that he intends to sanction "PRC and Hong Kong officials directly or indirectly involved in eroding Hong Kong's autonomy," but did not indicate in what manner those sanctions would be imposed.

The U.S.–Hong Kong Policy Act, as amended by the Hong Kong Human Rights and Democracy Act, provides mechanisms by which the Trump administration could impose sanctions on the PRC or the HKSAR Governments, or officials of those two Governments. In addition, legislation has been introduced, such as H.R. 5725, H.R. 7083, S. 2758, and S. 3798, that would provide additional authorities to impose sanctions.

Until specific sanctions or restrictions are imposed, it is difficult to predict or speculate how the PRC or the HKSAR Governments will respond. At this point, there may be little the U.S. Government or Congress can do to stop the National People's Congress Standing Committee (NPCSC) from promulgating the national security laws for the HKSAR. Once those laws are released, Chief Executive Carrie Lam Cheng Yuet-ngor would likely move forward with fulfilling the obligations of the HKSAR Government to pass implementing legislation through Hong Kong's Legislative Council (Legco) as stated in the National People's Congress decision of May 28, 2020.

The opportunity for Congress and the Trump administration to respond would come after the NPCSC and the HKSAR Government have taken action, and the United States has a better understanding of the severity of the threat to Hong Kong's autonomy and the rights of Hong Kong residents.

Q.3. What are the most-likely ways that China will retaliate to U.S. sanctions related to Hong Kong? Would China be able to retaliate by partially or completely abrogating the Phase One trade agreement?

A.3. Without knowing what sanctions the United States will impose on the PRC and/or Hong Kong, it is hard to anticipate the response of the PRC Government. Most likely, the initial response will be to condemn what the PRC Government considers another example of U.S. interference in China's "internal affairs." Beyond that, CRS cannot predict the PRC Government's response. Partially or completely abrogating the Phase One trade agreement, or not fulfilling China's obligations under that agreement, are options that China's leaders may consider. Current trade flows, however, seem to indicate that there are already problems with compliance with that trade agreement, in part due to the global COVID–19 pandemic.

RESPONSES TO WRITTEN QUESTIONS OF SENATOR MENENDEZ FROM MICHAEL F. MARTIN

Q.1. For a number of years now I have been concerned about Hong Kong's access to dual use and other sensitive technologies given its status as separate from the Mainland. That access will and must clearly and appropriately come to an end now.

What is your expectation for the economic effect of ending dual use exports will have on Hong Kong's economy and for U.S. exports?

A.1. According to the Department of Commerce's Bureau of Industry and Security (BIS), of the $37.4 billion of U.S. exports to Hong Kong in 2018, less than $450 million were subject to a BIS license requirements.[1] Of those goods subject to BIS license requirements, $361.4 million were encryption technology or software granted BIS license exceptions.

The Hong Kong Special Administrative Region (HKSAR) Government would like to make the city a major high-tech center to expand its economic base. To that end, the HKSAR Government is working with Guangzhou, Macau, and Shenzhen to support the Greater Bay Area (GBA) initiative announced by China's President Xi Jinping in 2017. Under this initiative, Hong Kong would be a hub for research and design of new technology, and neighboring Guangdong Province would become the development and manufacturing base for such products.

Ending dual use exports to Hong Kong would hinder the development of the GBA, but the current volume of goods being exported from the United States would not cause significant harm to Hong Kong's economy in general.

Q.2. Is the best way to end this treatment simply to go cold turkey, or are there other more effective ways to wind-down this treatment?

A.2. It depends on one's goal or objective. In general, if the goal is to cut off access to dual use exports, a "cold turkey" approach would prevent Hong Kong companies from attempting to secure the controlled technology before the prohibition goes into effect. If, however, the goal is to prevent the illegal transfer of controlled technology into mainland China, while maintaining commercial opportunities for U.S. companies to work with Hong Kong partners, making gradual changes to incentivize legal exchange of dual use technology may be preferable.

RESPONSES TO WRITTEN QUESTIONS OF SENATOR WARREN FROM MICHAEL F. MARTIN

Q.1. Dr. Martin, due to the enactment of S. 2710 into law, a 1-year prohibition is currently in effect on the United States exporting certain munitions (i.e., tear gas, pepper spray, rubber bullets, foam rounds, bean bag rounds, pepper balls, water cannons, handcuffs, shackles, stun guns, and tasers) to the Hong Kong Police Force. Prior to this prohibition going into effect, which American companies manufactured covered munitions that were exported to the Hong Kong Police Force?

A.1. NonLethal Technologies Inc. of Pennsylvania has been identified as a supplier of tear gas and other riot gear to the Hong Kong

[1] Office of Technology Evaluation, Bureau of Industry and Security, Department of Commerce, "U.S. Trade with Hong Kong—2018", October 4, 2019.

Police Force (HKPF).[1] Spent tear gas canisters gathered by journalists and protesters during the 2019 demonstrations show the company's name (see image below, taken in Hong Kong on August 24, 2019). The online news service BuzzFeed News published an in-depth examination of the company on September 5, 2019.[2]

In addition, two Florida-based companies, Defense Technology, owned by the Jacksonville-based company Safariland, and AMTEC Less-Lethal (ALS), which is part of Pacem Defense Corporation, reportedly sold nonlethal weapons and riot gear to the HKPF.[3]

According to a State Department report, U.S. companies provided the HKSAR Government with 291 "nonautomatic and semiautomatic firearms" and 20 ground vehicles in 2017.[4]

The HKSAR Government and the HKPF have reportedly turned to Chinese suppliers to obtain tear gas canisters, other nonlethal weapons, and riot gear in response to the U.S. prohibition of sales.[5] The Chinese tear gas is reportedly more toxic and burns at a higher temperature than the U.S. tear gas, causing more harm to people struck by the canisters or exposed to the tear gas. The HKPF has refused to release the list of ingredients in the tear gas

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[1] Rajesh Kumar Singh, "U.S. Company Supplying Tear Gas to Hong Kong Police Faces Mounting Criticism", Reuters, October 11, 2019.

[2] Rosalind Adams, "Made in America: For $9.50 an Hour, They Brew Tear Gas for Hong Kong", BuzzFeed.News, September 5, 2019.

[3] Manuel Madrid, "Anti-Riot Bullets Made by Two Florida Companies Used To Brutalize Protesters in Hong Kong", *Miami New Times*, August 14, 2019.

[4] Ryan Browne, "U.S. May Have Supplied Tear Gas Used Against Hong Kong Protesters", CNN, August 15, 2019.

[5] Hillary Leung, "Tear Gas Is Now a Fact of Life in Hong Kong. Residents Are Wondering What It's Doing to Their Health", *Time*, December 4, 2019.

canisters.[6] A study of remnants in tear gas canisters collected at Hong Kong demonstration locations determined that Chinese-made tear gas is more dangerous than that previously provided by the United States.[7]

RESPONSES TO WRITTEN QUESTIONS OF SENATOR SINEMA FROM MICHAEL F. MARTIN

Q.1. The SWIFT payment system is the backbone on which most financial transfers take place. However, China is developing its Cross-Border Inter-Bank Payments System (CIPS) as a SWIFT alternative. Right now, the Administration is pushing Chinese firms out of the western financial system and the Chairman of the Securities and Exchange Commission supports delisting Chinese companies from U.S. stock exchanges. Can you address the pro and cons of forcing Chinese businesses out of western monitored financial institutions?

A.1. The PRC and several other Nations have complained that multilateral financial institutions and their governance no longer reflect the reality of the world economy, and have proposed reforms that they consider more in line with the current situation. The PRC has shown that it is willing to develop alternatives, such as the Asian Infrastructure Investment Bank (AIIB) and the CIPS, when it decides that the United States and its supporters are not responsive to the proposed reforms.

"Forcing Chinese businesses out of western-monitored financial institutions" runs the risk of China and its supporters developing alternatives that could challenge the U.S.-backed institutions. Many Mainland Chinese businesses already are listed on the Hong Kong Stock Exchange (HKEX), and thereby have access to capital from investors around the world. The SEC delisting Chinese companies would likely result in those companies listing elsewhere, either on the HKEX (if they are not already listed on the HKEX) or in Berlin, London, or Tokyo. Major U.S. investors would still be able to invest in the delisted Chinese companies via these other stock markets, and to buy Chinese bonds denominated in non-renminbi currencies, so the loss in Chinese access to investment capital would be small.

Q.2. There are thousands of Chinese students in colleges and universities across the United States. Many of those students go on to earn advanced degrees in STEM fields and are an important part of the academic research environment in the United States. However, when they graduate, the American immigration system forces those recently educated individuals to leave the U.S. and put their education to use elsewhere. How can we better leverage high-skilled immigration to more effectively compete in the global economy? Does the U.S. have a strategy for utilizing human capital to maintain a U.S. competitive advantage?

A.2. Current U.S. immigration policies and programs provide avenues by which some of the Chinese students who have studied in

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[6] Frank Chan, "HK Police Under Fire Over Use of Tear Gas", *Asia Times*, December 9, 2019.
[7] George Colclough, "Explainer: Why China-Made Tear Gas Is More Dangerous", *Hong Kong Free Press*, May 1, 2020.

the United States can remain in the country after they finish their degrees.[1] Quite a few Chinese students have benefited from these avenues, and some have become U.S. citizens. The 2018 survey of doctoral degree recipients conducted by the National Science Foundation found that 79.4 percent of the Chinese respondents intended to stay in the United States.[2]

There are potential barriers to foreign nationals educated in the United States remaining in the country, if they so desire. The available visas generally are of limited number and duration, and are often tied to employment, creating various problems for the foreign nationals, including the risk of exploitation by their employers. At the same time, some people are concerned that Chinese students may pose a risk if they are actually operatives for the PRC Government or Chinese companies seeking access to U.S. technology. The fear is that Chinese students are a potential source of governmental or corporate technological espionage.

If your goal is to establish a new avenue for Chinese and other foreign students to remain in the United States, contribute to the U.S. economy and society, and possibly become U.S. citizens, you may want to contact my colleagues at CRS who are experts on U.S. immigration policy.

Q.3. The Financial Action Task Force issued guidance encouraging Governments to work with financial institutions on containment efforts and emerging risks due to COVID–19. The Hong Kong Monetary Authority (HKMA) has acknowledged that anti–money laundering (AML) and terrorism illicit finance (TIF) prevention measures will be impacted. Is the U.S. working with Hong Kong or China to develop international standards to strengthen AML and TIF measures? Is the Financial Crimes Enforcement Network working with Hong Kong's Joint Financial Intelligence Unit to identify possible AML/TIF implications of COVID–19? According to the HKMA, Hong Kong is experiencing an increase in fraudulent banking websites, phishing attacks, and other consumer scams. How is the U.S. in a position to learn from these vulnerabilities and prevent them from taking hold here?

A.3. The Hong Kong Monetary Authority (HKMA) sent a letter to all authorized institutions (AIs) on April 7, 2020, on "Coronavirus disease (COVID–19) and Anti–Money Laundering and Counter-Financing of Terrorism (AML/CFT) measures." The letter shared observations and offered support, guidance, and assistance. The focus of the letter seemed to be on the risks of the increase in remote and online banking and financial transaction activity, and commercial scams and fraud. The FATF's guidance similarly discussed how greater use of remote working arrangements and the increase in online financial transactions has created an expanded market for online fraud, scams, security breaches, and ransomware.

In its 2019 report on Hong Kong, the State Department stated, "U.S. Federal law enforcement agencies continued to cooperate effectively with the Hong Kong disciplined services, which is com-

[1] For more information, see CRS Report IF11347, "Foreign STEM Students in the United States".

[2] National Science Foundation, "Survey of Earned Doctorates", table 53, *https://ncses.nsf.gov/pubs/nsf20301/data-tables/*.

posed of police, customs, and immigration elements." U.S. Treasury and FBI agents are located in Hong Kong, and work closely with their HKSAR counterparts to address AML/CFT issues. Presumably, those interactions provide an opportunity for both Governments to learn from each other's experiences and take suitable measures to minimize identified vulnerabilities. This close cooperation may be at risk, depending on how the Trump administration implements the changes in U.S. policy toward Hong Kong announced on May 28, 2020.

RESPONSES TO WRITTEN QUESTIONS OF SENATOR MORAN FROM PETER HARRELL

Q.1. According to reports, China is planning to launch its own digital currency, the Digital Currency Electronic Payment. Do you believe the launch of this digital currency has the potential to lessen the impact of U.S. sanctions, as more transactions are able to circumvent the U.S. global reserve currency model?

A.1. I am concerned that rising global use of digital currencies will undermine the impact of U.S. sanctions. A number of commentators have argued that the U.S. dollar remains dominant globally, and that that enduring dollar dominance means that the risks of cryptocurrency enabled sanctions circumvention are limited. But this argument misses the mark. First, at a conceptual level, it is entirely plausible that the U.S. dollar will remain dominant, but that there will be sufficient quantities of cryptocurrency related transactions that rogue actors like North Korea and Iran would be able to engage in enough transactions that the impact of U.S. sanctions on these rogue actors will be limited. Second, I look at the behavior of rogue actors themselves, and we see plenty of evidence that countries like Iran and North Korea are extremely interested in cryptocurrency as a sanctions circumvention tool. Clearly if Beijing sets up an effective global Chinese cryptocurrency payments system, that is going to be of great interest to U.S. adversaries and will likely help them evade sanctions, even if it does not pose a significant threat to the overall dominance of the U.S. dollar as a global reserve currency.

Q.2. In your work to develop sanctions on other countries for the previous Administration, what other nonfinancial options were considered? Were they utilized, and to what effect?

A.2. Over the last 15 years, the financial sector has been the focus of much U.S. sanctions policy. But as we are seeing with the Trump administration's recent focus on sanctions on the maritime sector, the U.S. has significant leverage over other economic sectors as well. I think we need a comprehensive approach to thinking about our economic leverage that looks at it across the board, and that is not only narrowly focused on our financial sector leverage.

Q.3. There is regular discussion that overuse of sanctions could lead to the erosion of the dollar's primacy. Do you take that seriously, and how should that impact our approach to Hong Kong?

A.3. I do not think that America's use of sanctions is likely to lead to a large-scale erosion in the use of the dollar, which is primarily driven by other global macroeconomic, financial, and trade policies.

That said, I do think that America's aggressive use of sanctions is spurring a number of Governments to get serious about establishing dedicated payment channels that do not use the dollar and will allow circumvention of sanctions. These have not come to scale yet, but this is a risk that U.S. policymakers need to take seriously.

Q.4. If existing or proposed sanctions can't deter the Chinese Government from a further crackdown—if China is willing to bear the costs as a matter of national importance—how would you recommend responding?

A.4. We have to be candid that U.S. sanctions are unlikely to fundamentally change Beijing's approach to Hong Kong. As you suggest, Senator, China has proven that it is prepared to bear costs to achieve its objectives, and I do not see that changing in the near or mid-term. This is why I have argued that we should situate our response to Hong Kong within a broader U.S. strategy towards China. We may not change China's policy on Hong Kong, but we may succeed in deterring other aggressive actions by China both within its own borders and globally.

RESPONSES TO WRITTEN QUESTIONS OF SENATOR MENENDEZ FROM PETER HARRELL

Q.1. There are several questions about the efficacy of broad new secondary sanctions on foreign banks which may or may not have knowingly contributed to undermining Hong Kong's autonomy.

Do you think that that sort of sanctions approach is likely to be effective in changing Beijing's behavior?

A.1. I think that U.S. secondary sanctions are reasonably effective in convincing major Chinese banks, and international banks operating in Hong Kong and China, to avoid business that U.S. sanctions prohibit. In recent weeks, for example, there has been press coverage of the fact that many banks with operations in Hong Kong are trying to identify Chinese officials who may be sanctioned over China's takeover of Hong Kong and that the banks will likely exit those relationships. I also think that sanctions can send an important diplomatic and moral signal of condemnation.

However, we need to be realistic that U.S. pressure is unlikely, at this point, to convince Beijing to withdraw its national security law or refrain from essentially terminating Hong Kong's political autonomy. Thus, we should think about the U.S. response as being not only about Hong Kong, but also about how we can try to deter Chinese aggression and repression elsewhere, such as against Taiwan and other Chinese neighbors.

Q.2. Do you have any concerns that this sort of secondary sanctions regime may have unintended consequences?

A.2. I am concerned that U.S. sanctions on China can have unintended consequences. China, unlike Iran or Venezuela, has a massive, sophisticated economy and is deeply connected with global markets. I have long urged the U.S. Government to much more rigorously assess and model the potential impacts of U.S. sanctions—both intended and unintended—to help mitigate unintended adverse consequences.

Q.3. Do you believe such an approach would garner the support of U.S. allies like the European Union, Japan, Australia, and others, whose support is critical to getting China to stop its assault on Hong Kong's freedoms?

A.3. I am optimistic that U.S. allies in Europe, at least, would join the U.S. in sanctioning individual Chinese officials responsible for repression in Hong Kong. Both the European Union and the U.K. have legal authorities to sanction Government officials involved in repression and human rights abuses, and I am optimistic that the growing global outcry over Beijing's authoritarianism, especially in Europe, would persuade allies to join the U.S. in a campaign of targeted sanctions.

Q.4. Would a more tightly target set of primary sanctions on financial institutions which knowingly acted to undermine Hong Kong be a more appropriate approach to financial sanctions?

A.4. I actually think that if the U.S. sanctions a foreign financial institution—which is a dramatic step that the U.S. should take only in rare cases where the financial institution has engaged in egregious wrongdoing at a policy level in many cases it makes sense to impose secondary sanctions on the institution, rather than imposing only primary sanctions. While imposing secondary sanctions, as opposed to just primary sanctions, may be more provocative to allies, primary sanctions on foreign financial institutions without secondary sanctions risks creating perverse incentives for financial institutions to simply set up channels that exist outside U.S. jurisdiction.

Q.5. Given the moral obligation we owe to the people of Hong Kong, would you recommend consideration of any separate visa treatment for Hongkongers subject to political prosecution or other human rights abuse? Are there other positive incentives—diplomatic support for democracy activists, for example—that we should consider along with coercive measures aimed at Beijing?

A.5. I fully support measures to expand the ability of ordinary Hongkongers to travel and study in the U.S. The recent Executive order on Hong Kong normalization included provisions that terminated preferential treatment for Hong Kong passport holders as compared to PRC passport holders and terminated the Fulbright exchange program. Both of these programs benefit regular Hongkongers and contribute to people-to-people exchanges on both sides. The United States should revoke both of these decisions and instead place increased scrutiny on those who have close ties to the CCP and related Government offices.

Q.6. Just last month, the Trump administration published the United States Strategic Approach to the People's Republic of China. How should the U.S. response to Hong Kong fit into that overall approach towards China and towards deterring the next incidence of Chinese aggression?

A.6. Within the United States Strategic Approach to the People's Republic of China, the Trump administration articulates a strategy to "prevail against the challenges the PRC presents and to compel Beijing to cease or reduce actions harmful to the United States' vital national interests and those of our allies and partners." The

U.S. response to defending Hong Kong's democracy through releasing statements and potentially freezing the assets of those who have undermined Hong Kong democracy sends a message to Beijing, as well as allies and partners, that the United States will defend the vital national interests of its allies and partners.

RESPONSES TO WRITTEN QUESTIONS OF SENATOR WARREN FROM PETER HARRELL

Q.1. Mr. Harrell, the United States has an array of policy options in response to China's decision to impose new national security laws on Hong Kong. How do we create real costs for Chinese State security officials as well as companies and individuals that promote violence against Hong Kong residents or limit Hong Kong's autonomy and freedoms, while limiting the blowback on U.S. and allied economies?

A.1. Senator, I think that targeted sanctions on Chinese officials can send a valuable diplomatic and political message, and the threat of sanctions against Chinese companies, such as AI companies potentially involved in surveillance, can deter some companies from actively supporting Chinese efforts to erode Hong Kong's autonomy and freedoms. But I also think that we need to be realistic about the limits of sanctions as a policy tool in shaping Chinese actions towards Hong Kong: sanctions are unlikely to fundamentally change Beijing's strategic calculus towards the territory. This is why I urge U.S. policymakers to embed our response to Hong Kong in a larger strategy toward China that focuses on constraining a range of Chinese malign activities, rather than a narrow focus on deterring a set of actions that, practically speaking, we are unlikely to deter.

Q.2. Mr. Harrell, your policy recommendations include directing the Treasury Department and other agencies involved in the Committee on Foreign Investment in the United States (CFIUS) to treat investments from Hong Kong-domiciled companies comparably to investments from mainland Chinese companies, as well as directing the Commerce Department to begin treating most exports of sensitive and dual-use goods to Hong Kong similarly to the way it treats exports of such goods to mainland China. Do the relevant Federal agencies need any additional authorities from Congress to implement these measures?

A.2. No. The Commerce Department and Treasury Departments have adequate authorities to implement these recommendations under existing law.

Entirely unrelated to Hong Kong, however, one area that Congress should look at legislative changes to strengthen U.S. tools to combat unfair Chinese practices is antitrust. I think that tougher enforcement of U.S. antitrust laws has significant potential to help fight predatory Chinese trade practices, particularly if U.S. lawmakers amend U.S. antitrust law to focus on a broader range of harms than antitrust law's current consumer-welfare focus.

Q.3. Mr. Harrell, in the wake of China's decision to impose new national security laws on Hong Kong, should the United States consider providing temporary protected status or some other status to

Hong Kong residents who credibly fear Chinese Government persecution?

A.3. The United States should consider providing temporary protected status or consider a way to allow those facing increased political pressure or Chinese Government persecution to claim asylum in the United States. However, in the short term, the U.S. Government should consider revoking the section of the Executive order on Hong Kong normalization that revokes privileged access for Hong Kong passport holders from that of PRC passport holders.

Q.4. Mr. Harrell, the Trump administration's National Defense Strategy views China through the lens of great power competition. In your written testimony, you urged the U.S. to use a range of tools in response to China's aggressive efforts to erode Hong Kong's autonomy, but you did not discuss military tools. Would an increase in U.S. defense spending have a meaningful impact on China's erosion of Hong Kong's autonomy?

A.4. Senator, the way we will ultimately prevail in great power competition with China is by making sufficient investments here at home that we continue to lead technologically and economically, as well as militarily. While we need adequate defense spending, the most important long-term spending priorities to win in an era of great power competition are smart domestic investments.

Q.5. Mr. Harrell, will China's decision to impose new national security laws on Hong Kong further embolden Beijing to escalate its posture toward Tibet and Taiwan?

A.5. Beijing's proposal and implementation of the National Security Law on Hong Kong is part of a longer trend towards maintaining and expanding territorial sovereignty and integrity. As clearly articulated by then-State Council Dai Bingguo in 2009, China's core national interests include upholding basic systems and national security, sovereignty and territorial integrity, and economic and social sustained development—this includes Tibet and Taiwan. Beijing's crackdown of Tibet has already happened. Before Chen Quanguo was promoted to Xinjiang Party Chairman, he oversaw the suppression of religious rights of Tibetan monks, implementing the practice of "collective punishment," where county-level governments within Tibet turned to impose collective punishment on families, communities, villages, or monastic institutions to deter individuals from engaging in "prohibited behavior." Similarly, while the detention of Tibetan monks have not been observed on the same level as the Uyghurs in Xinjiang, there have been similar reports of re-education centers for such. Now that Beijing has essentially dissolved one country, two systems, Taiwan is now its next biggest challenge to solve with regards to reunification.

RESPONSES TO WRITTEN QUESTIONS OF SENATOR CORTEZ MASTO FROM PETER HARRELL

Q.1. You spoke about the importance of situating the U.S. response to China's aggression in Hong Kong within a broader strategy, one that includes building resiliency here at home and among our close partners and allies. As you know, 2 years ago Congress reformed the CFIUS process. And, as you've mentioned, we're starting to see

some European countries taking steps to review Chinese investments in critical sectors. What more can the Treasury Department and the whole U.S. Government do to help those allies emulate a CFIUS like process?

A.1. Both Europe and several U.S. allies in Asia have recently either moved to expand the scope of their own national security reviews of inbound investment or are discussing doing so. In March, for example, the European Commission issued guidance with the goal or protecting European firms in the healthcare sector and other critical infrastructure from predatory takeovers. India in recent months has strengthened its review of investments from neighboring countries, a move primarily directed at China.

I would like to highlight two things the U.S. should do to help advance these efforts. First, with allies that are already strengthening their own national security reviews of inbound investments, the U.S. should work on sharing information about both trends in Chinese global investment and specific transactions to the greatest extent possible. Second, in parts of the developing world, for example in many African countries, the legal regimes and practical capacity to review inbound investments for national security concerns remains extremely limited. I recommend that the Treasury Department and State Department examine the feasibility of providing technical assistance to Governments to develop appropriate legal regimes and capacity, much as they currently provide capacity-building assistance on AML, counterterrorism finance, and other areas of regulatory law.

Q.2. At the hearing I posed a question to all witnesses about how American and European companies are receiving pressure from the Chinese Communist Party (CCP) to endorse the national security law and other CCP actions toward restricting freedom and civil liberties in Hong Kong. I appreciated your response on the extent of the issue of CCP influence on these companies. What can Congress do to support American companies and universities experiencing CCP Government pressure and propaganda? How can the U.S. Government incentivize or empower American companies to resist CCP pressure on issues of human rights and civil liberties?

A.2. The U.S. Government can continue to publicize and highlight the CCP's efforts to spread propaganda and to stifle free speech on campus. This includes not just educating private companies and universities on the threat that they face in terms of IP theft, but also more collaboration and feedback on propaganda efforts and threats to free speech. Congress can also support private companies and universities by releasing statements that condemn CCP Government pressure and propaganda. Regular U.S. Government reports, or think tank reports sponsored by the U.S. Government, on the threats that companies and universities face from Beijing can also highlight gaps of knowledge and allow companies and universities to identify where their vulnerabilities are. Congress should also encourage both universities and the private sector to create a code of conduct on their dealings with China to encourage them to adopt high-standard practices.

RESPONSES TO WRITTEN QUESTIONS OF SENATOR JONES FROM PETER HARRELL

Q.1. In a *Wall Street Journal* article, "U.S.–China Dispute Growing Harder To Solve", you were quoted saying that sanctioning portions of the Chinese Government or officials are "diplomatic messaging measures."

Should we assume that China is going to implement some form of the proposed security law and if so, what is the best way to influence the stringency of the law and the subsequent implementation of it?

A.1. China already has and will continue to implement the National Security Law in Hong Kong. The United States has already revoked Hong Kong's special economic status, revoked license exceptions for exports to Hong Kong, and the extradition treaty between the United States and Hong Kong, and none of these actions have deterred Beijing from continuing to implement the National Security Law. Unfortunately, Hong Kong, like Taiwan, Macau, and Xinjiang, are chief among Beijing's core national interests. As we are seeing with Hong Kong, China is prepared to bear significant costs in order to pursue its core interests and I think we should be realistic about the likelihood that measures such as targeted sanctions will cause Beijing to change its chosen path. However, Congress and the U.S. Government should nonetheless impose such sanctions to signal to Beijing its disapproval, to shape the global narrative, and to potentially deter Beijing from taking even more aggressive action in the future.

Q.2. As opposed to Mainland China, Hong Kong is not a manufacturing hub. The U.S. maintains a $23 billion trade surplus with Hong Kong. The territory exported $4.8 billion last year to the U.S., about 1 percent of what China exports to the United States. In 2018, Hong Kong was the 5th largest market for American consumer oriented agricultural products and the 7th largest market for total U.S. agricultural product exports.

Since the United States enjoys such a large trade surplus with Hong Kong, what would be the potential ramifications for Hong Kong, China, and American companies, particularly farmers, if the United States executed a similar tariff treatment towards Hong Kong as China?

A.2. As you note, Senator, the U.S. imports comparatively modest quantities of goods that are made in Hong Kong, with a total value of approximately $4.8 billion. Subjecting these goods to the tariff rates that the U.S currently imposes on China is going to have a comparatively small economic impact from macroeconomic perspective given the comparatively small value of the imports. The larger potential impact would, as your question implies, come if Hong Kong retaliates to the higher U.S. tariffs by subjecting U.S. goods exported to Hong Kong to higher rates, given that the U.S. had goods trade surplus totaling $31.0 billion with Hong Kong in 2018. While I take this risk seriously, and I think we need a careful evaluation of America's overall tariff strategy towards China, I also think that we fundamentally cannot continue to treat Hong Kong as separate from China where Beijing increasingly does not do so.

RESPONSES TO WRITTEN QUESTIONS OF SENATOR SINEMA FROM PETER HARRELL

Q.1. The SWIFT payment system is the backbone on which most financial transfers take place. However, China is developing its Cross-Border Inter-Bank Payments System (CIPS) as a SWIFT alternative. Right now, the Administration is pushing Chinese firms out of the western financial system and the Chairman of the Securities and Exchange Commission supports delisting Chinese companies from U.S. stock exchanges. Can you address the pro and cons of forcing Chinese businesses out of western monitored financial institutions?

A.1. The United States should avoid completely decoupling Chinese financial institutions from the U.S. financial system. Instead, the United States should push for transparency and accountability from Chinese firms that wish to be integrated into the U.S. financial system, and should require that they meet our standards. While the United States should not allow Chinese firms to raise money from U.S. companies for goals that are directly contrary to U.S. foreign policy goals and U.S. national security, complete financial decoupling between the United States and China reduces U.S. control over the global financial system, and decreases the leverage that the United States has with tools like sanctions.

Q.2. There are thousands of Chinese students in colleges and universities across the United States. Many of those students go on to earn advanced degrees in STEM fields and are an important part of the academic research environment in the U.S. However, when they graduate, the American immigration system forces those recently educated individuals to leave the U.S. and put their education to use elsewhere. How can we better leverage high-skilled immigration to more effectively compete in the global economy? Does the U.S. have a strategy for utilizing human capital to maintain a U.S. competitive advantage?

A.2. The United States should adjust its immigration policy to allow those highly educated individuals in STEM fields to remain in the United States and pursue a career. For example, since 2005, H-1B visas have been capped at 85,000 people per year, when over double the amount of people apply for H-1B visas every year. In addition, the Optional Practical Training program, which was recently revoked by the Trump administration, allows STEM students who are on a F-1 visa to work up to 3 years after graduation in the United States.

Q.3. The Financial Action Task Force issued guidance encouraging Governments to work with financial institutions on containment efforts and emerging risks due to COVID–19. The Hong Kong Monetary Authority (HKMA) has acknowledged that anti–money laundering (AML) and terrorism illicit finance (TIF) prevention measures will be impacted. Is the U.S. working with Hong Kong or China to develop international standards to strengthen AML and TIF measures? Is the Financial Crimes Enforcement Network working with Hong Kong's Joint Financial Intelligence Unit to identify possible AML/TIF implications of COVID–19? According to the HKMA, Hong Kong is experiencing an increase in fraudulent banking websites, phishing attacks, and other consumer scams.

How is the U.S. in a position to learn from these vulnerabilities and prevent them from taking hold here?

A.3. Both FinCEN and Hong Kong's Joint Financial Intelligence Unit are part of the Egmont Group, an international organization which allows members to exchange expertise and financial intelligence to combat AML and counterterrorist financing (CTF) issues. Both the United States and Hong Kong are both also part of the Financial Action. Task Force, which does work together to develop international standards to strengthen AML/CTF efforts, as well as other issues. If Hong Kong continues and decides to share information with the United States on the actors behind the fraudulent banking websites, phishing attacks, other consumer scams, and the tactics that they use, the United States can use this information to develop their own internal red flags to spot these actors and tactics to protect U.S. consumers.

RESPONSES TO WRITTEN QUESTIONS OF SENATOR MORAN FROM ERIC B. LORBER

Q.1. According to reports, China is planning to launch its own digital currency, the Digital Currency Electronic Payment. Do you believe the launch of this digital currency has the potential to lessen the impact of U.S. sanctions, as more transactions are able to circumvent the U.S. global reserve currency model?

A.1. The launch of the Digital Currency Electronic Payment system may pose certain risks to the effectiveness of U.S. economic sanctions, but it is important to keep digital currency projects such as this in proper context. Such initiatives, as a general matter, could be considered a challenge to the efficacy of U.S. economic sanctions because they facilitate nondollarized transactions. However, if China wanted to set up an exclusive economic zone that only relied on the Yuan for transactions, that system would likewise not be subject to U.S. jurisdiction. The point is that if a country wants to avoid U.S. sanctions, it could do so with fiat currency; it does not need a digital currency to facilitate such a system. It becomes a threat to U.S. sanctions power if the financial ecosystem in that zone becomes sufficiently large that it is wholly self-sustaining and doesn't require access to the U.S. financial system at all. In such a situation, the power of U.S. sanctions would be limited.

Q.2. You note the importance of coordinating with other like-minded countries to protect interests in Hong Kong. Are you aware of progress on that front?

A.2. I am not aware of specific United States Government initiatives.

Q.3. There is regular discussion that overuse of sanctions could lead to the erosion of the dollar's primacy. Do you take that seriously, and how should that impact our approach to Hong Kong?

A.3. Yes, that is a valid concern and one that needs to be considered each time the United States ramps up a sanctions program. To appropriately scope the impact and limit the risks to the dollar's primacy, I would recommend targeting those individuals directly involved in the efforts to impose the national security law in Hong Kong. Sanctions can be a powerful tool, and they are most effec-

tive—and have the most support among our partners, allies, and those in the private sector—when they are focused on specific, illicit activity. Targeting those individuals most directly involved will send a signal that the United States is deeply disturbed by such activity and will impose consequences in a smart and limited fashion.

Q.4. If existing or proposed sanctions can't deter the Chinese Government from a further crackdown—if China is willing to bear the costs as a matter of national importance—how would you recommend responding?

A.4. In this scenario, the United States should allow Hongkongers to emigrate to the United States. Many of the residents in Hong Kong are highly educated, with deep expertise in financial markets and other white-collar industries. Beyond the moral imperative at play here, helping those in Hong Kong emigrate to the United States is a win-win-win for the United States. It promotes the health of the U.S. economy by adding valuable new intellectual capital; undercuts China's ability to benefit from their talents and productivity; and helps those around the world who value democracy and freedom.

RESPONSES TO WRITTEN QUESTIONS OF SENATOR MENENDEZ FROM ERIC B. LORBER

Q.1. Under the 2019 Hong Kong Human Rights and Democracy Act, Congress provided the Administration with a new sanctions framework, including ways to invoke the Global Magnitsky law, and to use its broad IEEPA authorities. We did so in the hopes of giving the Administration tools to target responsible parties in Beijing, not just to deprive Hong Kong of its benefits as a separate customs and trade territory. What recommendations would you make to this Committee—and the Administration—about how to effectively target these authorities?

A.1. First and foremost, I would recommend that the Administration use these authorities to show a willingness to push back on China's efforts to undermine the rights of Hongkongers. While the use of such sanctions could be escalatory, it is clear that the Chinese are intent on escalating in Hong Kong and further incorporating the city into the CCP's authoritarian security State.

Second, I would recommend targeting those individuals directly involved in the efforts to impose the national security law in Hong Kong. Sanctions can be a powerful tool, and they are most effective—and have the most support among our partners, allies, and those in the private sector—when they are focused on specific, illicit activity. Targeting those individuals most directly involved will signal that the United States is deeply disturbed by such activity and will impose consequences in a smart and limited fashion.

Q.2. There are several questions about the efficacy of broad new secondary sanctions on foreign banks which may or may not have knowingly contributed to undermining Hong Kong's autonomy.

Do you think that that sort of sanctions approach is likely to be effective in changing Beijing's behavior?

A.2. The Chinese Communist Party has made clear in recent weeks that it will aggressively crack down on peaceful protesters and the prodemocracy movement in Hong Kong. Since the implementation of the national security law, which was more draconian than many expected, the CCP has worked with Hong Kong police authorities to silence dissent within the city. This is a hard case for sanctions to be effective, as the CCP has evidently determined that it is willing to risk punishment and international condemnation to take greater control of the city. Nevertheless, sanctions that target this activity and those supporting this activity (e.g., certain financial institutions) can be impactful in preventing the CCP from taking further actions. To date, the U.S. response to China undermining freedoms and rights in Hong Kong has been relatively muted. Aggressive use of existing authorities and newer authorities such as the Hong Kong Autonomy Act have the potential to change that dynamic and make it clear to the CCP that there will be a serious price to pay if they continue cracking down in Hong Kong.

Q.3. Do you have any concerns that this sort of secondary sanctions regime may have unintended consequences?

A.3. Any time the United States creates a primary or secondary sanctions program, there is a risk of unintended consequences. In this case, the primary risk pertains to targeting financial institutions that are economically important. For example, if the United States targeted major Chinese financial institutions for their support of individuals undermining the rights and freedoms in Hong Kong, this could have serious impacts on financial markets and on the U.S.–China relationship. In addition, there is also a risk that, by targeting financial institutions with secondary sanctions, they may decide to leave Hong Kong altogether, which could further allow the CCP to absorb the city into the mainland.

To limit these potential consequences, as I noted in my written testimony, the secondary sanctions must be carefully calibrated and imposed only when there is evidence that the financial institution knowingly provided significant support to the efforts of certain individuals or entities to undermine the rights and freedoms of those in Hong Kong. Such a powerful-yet-targeted approach would deter those financial institutions from knowingly helping such malign activities while at the same time ensuring that the United States does not sanction financial institutions in a way that does not achieve U.S. policy objectives.

Q.4. Do you believe such an approach would garner the support of U.S. allies like the European Union, Japan, Australia, and others, whose support is critical to getting China to stop its assault on Hong Kong's freedoms?

A.4. A multilateral sanctions campaign with the United States, Canada, Australia, the United Kingdom, the European Union, and Japan would be impactful. I believe that this campaign, as described above, could garner the support of these partners and allies if executed in close consultation with them. For example, if the United States were to use the Hong Kong Autonomy Act to designate a U.K. financial institution, clearly that would not garner support from the United Kingdom. However, if the United States embarked on a targeted, limited sanctions campaign that accounted

for the interests of these allies and partners and coordinated to the extent feasible with them, I think they would offer support and be willing to participate.

Coordination with key U.S. allies and partners must be part of any broader strategy the United States pursues in its competition with China. Given the international condemnation of the Chinese Communist Party's efforts to undermine the rights and freedoms of those in Hong Kong, enlisting these allies and partners on this specific issue should be a focus of this Administration as it aims to increase cooperation in its efforts to counter China across a range of topics.

Q.5. Would a more tightly target set of primary sanctions on financial institutions which knowingly acted to undermine Hong Kong be a more appropriate approach to financial sanctions?

A.5. I believe that a tightly focused set of primary sanctions could be an appropriate way to target financial institutions knowingly acting to undermine Hong Kong. However, in the case of the Hong Kong Autonomy Act and the prohibitions it delineates, I am not sure it would be more impactful or targeted. The penalties contained in the HKAA for foreign financial institutions include prohibitions on correspondent banking activities for designated banks. Such prohibitions—which would cut those financial institutions off from the U.S. financial system—would make it extremely difficult, if not impossible, for that financial institution to survive. It would effectively have the same impact as designating the financial institution as a Specially Designated National (SDN).

Q.6. Just last month, the Trump administration published the United States Strategic Approach to the People's Republic of China. How should the U.S. response to Hong Kong fit into that overall approach towards China and towards deterring the next incidence of Chinese aggression?

A.6. The U.S. response to Hong Kong should be a key element of the Administration's approach towards China. In particular, standing up for freedom-loving people in Hong Kong signals that the United States will not abandon those it supports in the face of Chinese aggression. While the United States must remain flexible in its relationship with China, the U.S. must also be willing to challenge China's malign activities when and where appropriate. The U.S. response to China's aggression in Hong Kong is important for deterring future Chinese efforts to undermine the freedoms and rights of Hongkongers and making it clear that the United States will not sit idly by as the CCP pursue aggressive policies around the world.

Further, coordination with key U.S. allies and partners must be part of any broader strategy the United States pursues in its competition with China. Given the international condemnation of the Chinese Communist Party's efforts to undermine the rights and freedoms of those in Hong Kong, there is opportunity to enlist these allies and partners on this specific issue as the Trump administration aims to increase cooperation in its efforts to counter China across a range of topics.

RESPONSES TO WRITTEN QUESTIONS OF SENATOR CORTEZ MASTO FROM ERIC B. LORBER

Q.1. You spoke about the importance of situating the U.S. response to China's aggression in Hong Kong within a broader strategy, one that includes building resiliency here at home and among our close partners and allies. As you know, 2 years ago Congress reformed the CFIUS process. And, as you've mentioned, we're starting to see some European countries taking steps to review Chinese investments in critical sectors. What more can the Treasury Department and the whole U.S. Government do to help those allies emulate a CFIUS like process?

A.1. The U.S. can take several steps to help our allies and partners emulate a CFIUS-like process. While many countries have already developed and are employing such a process (e.g., our allies in the European Union), many vulnerable and strategically important partners are just embarking on developing such processes. For these jurisdictions, providing insight into the key issue areas (e.g., whether to make certain transaction submissions mandatory or discretionary, what types of technologies should trigger a review, whether the CFIUS-like entity can unwind transactions) would be helpful as they consider how to best formulate these processes. A concerted campaign by the interagency to identify these jurisdictions and provide them with such technical support is an important initiative.

The U.S. Government can also do more to help foreign companies understand the threat posed by Chinese efforts to steal intellectual property or exploit their technology. In the United States, companies have become acutely aware of China's commercial espionage efforts, in part due to the success of these efforts. Companies in certain high-tech industries in other jurisdictions may not sufficiently understand these risks nor take the necessary legal and prudential steps to limit them. Working with partner Governments to highlight how China has engaged in commercial espionage in the United States—as well as recommending steps these non-U.S. companies may want to consider taking—would further bolster our partners' defenses against predatory Chinese economic practices that can undermine U.S. national security.

Q.2. At the hearing I posed a question to all witnesses about how American and European companies are receiving pressure from the Chinese Communist Party (CCP) to endorse the national security law and other CCP actions toward restricting freedom and civil liberties in Hong Kong. I appreciated your response on the extent of the issue of CCP influence on these companies. What can Congress to do support American companies and universities experiencing CCP Government pressure and propaganda? How can the U.S. Government incentivize or empower American companies to resist CCP pressure on issues of human rights and civil liberties?

A.2. This is a difficult issue for American companies, who now find themselves in a challenging position: continuing to want to do business in a market where they have historically enjoyed success while at the same time wanting to abide by U.S. laws and regulations and ensuring they do not undercut the freedoms and rights of the people of Hong Kong. The CCP has forced this choice on

them by effectively threatening certain multinational companies in Hong Kong that they must endorse the national security law or suffer the consequences, including a cut off from access to Chinese business in the city and on the mainland.

The United States can support its companies by bolstering them in the face of Chinese pressure. For example, the CCP has added and threatened to add U.S. companies to the so called "unreliable entities list," essentially a blacklist of companies that may not be able to do certain business in China. The purpose of this list is clear; to compel U.S. companies to abide by China's foreign policy preferences, including either endorsing or refusing to condemn the CCP's efforts to undermine the rights and freedoms of those operating in Hong Kong. The United States should consider offering incentives to these companies (e.g., tax incentives) as a way to offset this pressure. In particular, such incentives would help those U.S. companies continue to resist China's efforts to force them to abide by the CCP's authoritarian dictates.

RESPONSES TO WRITTEN QUESTIONS OF SENATOR JONES FROM ERIC B. LORBER

Q.1. In recent years, the U.S. has imposed unilateral sanctions, including the sanctions against Iran, Russia, and Venezuela. As a deterrent to Russia's overreach in Crimea, unilateral sanctions were considered, but determined to be not as effective as multilateral sanctions.

Following China's recent actions towards Hong Kong, other countries like Canada, Australia, the United Kingdom, and Japan condemned China's efforts and threatened sanctions should they follow through with threats included in the new national security law.

Would coordinated sanctions with Canada, Australia, United Kingdom, and Japan effectively influence China to alter their behavior towards Hong Kong? What is the possibility their hostility towards Hong Kong could escalate?

A.1. A multilateral sanctions campaign with the United States, Canada, Australia, the United Kingdom, and Japan would be both economically and symbolically impactful. First, it would signal to non-U.S. financial institutions the real risks of continuing business as usual in Hong Kong. These institutions may also find a lack of support from their home Governments if they do business with persons listed under the Hong Kong Autonomy Act. Second, it would make clear that the international condemnation of China's efforts to undermine the freedoms and rights of Hongkongers has teeth. While such an approach may not ultimately deter China from taking more aggressive action in Hong Kong, it would signal that countries around the world are willing and able to stand up to Chinese bullying and the CCP's authoritarian impulses.

Coordination with key U.S. allies and partners must be part of any broader strategy the United States pursues in its competition with China. Given international condemnation of the CCP's efforts to undermine the rights and freedoms of those in Hong Kong, enlisting these allies and partners should be a focus of this Administration as it aims to increase cooperation to counter China across a range of topics.

Q.2. As opposed to Mainland China, Hong Kong is not a manufacturing hub. The U.S. maintains a $23 billion trade surplus with Hong Kong. The territory exported $4.8 billion last year to the U.S., about 1 percent of what China exports to the United States. In 2018, Hong Kong was the 5th largest market for American consumer oriented agricultural products and the 7th largest market for total U.S. agricultural product exports.

Since the United States enjoys such a large trade surplus with Hong Kong, what would be the potential ramifications for Hong Kong, China, and American companies, particularly farmers, if the United States executed a similar tariff treatment towards Hong Kong as China?

A.2. The impact on aligning U.S. trade policy towards China with its stance towards Hong Kong would not necessarily negatively impact U.S. manufacturing and export of U.S.-origin products to Hong Kong. As the question notes, the United States enjoys a significant export surplus vis-a-vis Hong Kong, and the export of U.S. goods would not automatically be hit by U.S. tariffs.

However, China may increase tariffs in a targeted way on U.S. manufacturers sending goods to Hong Kong as retaliation for the change in U.S. tariff policy. Such action could negatively impact U.S. exporters of goods to Hong Kong. In addition, throughout the imposition of U.S. tariffs on China, Hong Kong has acted as an effective "pass through" whereby goods from China flow to Hong Kong and then to the United States. As a result, many U.S. tariffs do not apply to these goods. An alignment of U.S. tariff policy towards Hong Kong with its policy towards the mainland may increase the impact of U.S. tariffs on goods coming out of China because this "pass through" may no longer be an effective way to reduce the impact of these restrictions.

RESPONSES TO WRITTEN QUESTIONS OF SENATOR SINEMA FROM ERIC B. LORBER

Q.1. The SWIFT payment system is the backbone on which most financial transfers take place. However, China is developing its Cross-Border Inter-Bank Payments System (CIPS) as a SWIFT alternative. Right now, the Administration is pushing Chinese firms out of the western financial system and the Chairman of the Securities and Exchange Commission supports delisting Chinese companies from U.S. stock exchanges. Can you address the pro and cons of forcing Chinese businesses out of western monitored financial institutions?

A.1. There is a risk that, as Chinese financial institutions and companies move out of the financial piping established by the United States and European Nations (e.g., SWIFT), it could decrease visibility into the activities these financial institutions may be undertaking. That said, if Chinese financial institutions were trying to conduct transactions with U.S. or EU financial institutions using CIPS or another system, they would likely still need to provide relevant information to their U.S. or EU counterparts. Otherwise, those counterparts, fearing entanglement in potentially illicit activity, would be wary of doing such business. So while I do think there could be some impact on visibility, without a greater shift

away from transactions with U.S. and EU financial institutions, that impact may be limited.

It is also worth noting that, to the extent in which these Chinese financial institutions may not be abiding by relevant AML and sanctions laws and regulations, there is a real risk in allowing them to continue operating in U.S. and EU financial markets.

Q.2. There are thousands of Chinese students in colleges and universities across the United States. Many of those students go on to earn advanced degrees in STEM fields and are an important part of the academic research environment in the United States. However, when they graduate, the American immigration system forces those recently educated individuals to leave the U.S. and put their education to use elsewhere. How can we better leverage high-skilled immigration to more effectively compete in the global economy? Does the U.S. have a strategy for utilizing human capital to maintain a U.S. competitive advantage?

A.2. Leveraging human capital to maintain a U.S. competitive advantage is a key component of the U.S. competition with China and ensuring the continued success of the U.S. economy. While I cannot speak to the current U.S. strategy for utilizing such intellectual capital to ensure this continued success, I do think that the United States should help those in Hong Kong come to the United States. Many Hong Kong residents are highly educated, white-collar workers who would bring significant human capital to our economy. We should allow them to come to this country and become productive members of our economy if they so choose.

Q.3. The Financial Action Task Force issued guidance encouraging Governments to work with financial institutions on containment efforts and emerging risks due to COVID–19. The Hong Kong Monetary Authority (HKMA) has acknowledged that anti–money laundering (AML) and terrorism illicit finance (TIF) prevention measures will be impacted. Is the U.S. working with Hong Kong or China to develop international standards to strengthen AML and TIF measures? Is the Financial Crimes Enforcement Network working with Hong Kong's Joint Financial Intelligence Unit to identify possible AML/TIF implications of COVID–19? According to the HKMA, Hong Kong is experiencing an increase in fraudulent banking websites, phishing attacks, and other consumer scams. How is the U.S. in a position to learn from these vulnerabilities and prevent them from taking hold here?

A.3. I am not aware of any specific initiatives by FinCEN or other U.S. authorities to work with Hong Kong's Joint Financial Intelligence Unit to address the AML/TIF Implications of COVID–19.

RESPONSES TO WRITTEN QUESTIONS OF SENATOR MORAN FROM LEE CHEUK YAN

Q.1. There is regular discussion that overuse of sanctions could lead to the erosion of the dollar's primacy. Do you take that seriously, and how should that impact our approach to Hong Kong?

A.1. It is difficult to answer for me.

Q.2. If existing or proposed sanctions can't deter the Chinese Government from a further crackdown—if China is willing to bear the costs as a matter of national importance—how would you recommend responding?

A.2. With a reckless Government that do not care about the well being of its own people, it is sad that both Hong Kong People and Chinese People may have to suffer because the hegemony ideology of Xi Jingping.

RESPONSES TO WRITTEN QUESTIONS OF SENATOR SINEMA FROM LEE CHEUK YAN

Q.1. The SWIFT payment system is the backbone on which most financial transfers take place. However, China is developing its Cross-Border Inter-Bank Payments System (CIPS) as a SWIFT alternative. Right now, the Administration is pushing Chinese firms out of the western financial system and the Chairman of the Securities and Exchange Commission supports delisting Chinese companies from U.S. stock exchanges. Can you address the pro and cons of forcing Chinese businesses out of western monitored financial institutions?

A.1. I do not have the expertise to answer this.

Q.2. There are thousands of Chinese students in colleges and universities across the United States. Many of those students go on to earn advanced degrees in STEM fields and are an important part of the academic research environment in the United States. However, when they graduate, the American immigration system forces those recently educated individuals to leave the U.S. and put their education to use elsewhere. How can we better leverage high-skilled immigration to more effectively compete in the global economy? Does the U.S. have a strategy for utilizing human capital to maintain a U.S. competitive advantage?

A.2. There are now already a lots of very highly educated Chinese graduates being able to remain in U.S. including the princeling generation.

Q.3. The Financial Action Task Force issued guidance encouraging Governments to work with financial institutions on containment efforts and emerging risks due to COVID–19. The Hong Kong Monetary Authority (HKMA) has acknowledged that anti–money laundering (AML) and terrorism illicit finance (TIF) prevention measures will be impacted. Is the U.S. working with Hong Kong or China to develop international standards to strengthen AML and TIF measures? Is the Financial Crimes Enforcement Network working with Hong Kong's Joint Financial Intelligence Unit to identify possible AML/TIF implications of COVID–19? According to the HKMA, Hong Kong is experiencing an increase in fraudulent banking websites, phishing attacks, and other consumer scams. How is the U.S. in a position to learn from these vulnerabilities and prevent them from taking hold here?

A.3. I do not have the expertise to answer this question.

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IN FOCUS

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China Moves to Impose National Security Law on Hong Kong

Overview

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

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

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

NPC Decision

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

The NPC decision also states that the HKSAR government should complete local national security legislation required by the Basic Law "as soon as possible." In addition, Hong Kong's Chief Executive is instructed to "effectively prevent, stop, and punish acts and activities endangering national security," carry out national security education in Hong Kong, and report regularly to Beijing about Hong Kong's national security work.

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

Next Steps

Beijing

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

Hong Kong

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

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

Reasons for the NPC Action

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

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

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

Implications for Hong Kong

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

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

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

U.S. Response

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

Statements by China and the HKSAR Government

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

Issues for Congress

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

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

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