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HONG KONG HUMAN RIGHTS AND DEMOCRACY ACT, S. 2922

DECEMBER 12, 2014.—Ordered to be printed

Mr. MENENDEZ, from the Committee on Foreign Relations,
submitted the following

R E P O R T

[To accompany S. 2922]

The Committee on Foreign Relations, having had under consideration the bill S. 2922, to reinstate reporting requirements related to United States-Hong Kong relations, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

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I. PURPOSE

The purpose of S. 2922 is to reinstate reporting requirements related to United States-Hong Kong Relations.

II. COMMITTEE ACTION

S. 2922 was introduced by Senators Brown, Cardin, Rubio, Wicker, Feinstein, and Merkley on November 13, 2014. On December 11, 2014, the committee considered S. 2922 and ordered it reported, with an amendment, by a voice vote.

The committee took the following action with regard to amendments:

A Manager's Amendment was offered to the introduced bill, to clarify the certification requirement in the bill regarding the treatment of Hong Kong under United States law.

III. DISCUSSION

S. 2922 demonstrates continued congressional support for autonomy in Hong Kong consistent with the 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 (the Joint Declaration) and the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China (the Basic Law).

The committee views with grave concern the events leading up to the so-called "Umbrella Revolution" in Hong Kong this summer, and the subsequent efforts by Hong Kong and Beijing authorities to stifle legitimate free expression. In the committee's view, these actions and the underlying events are inconsistent with Hong Kong's autonomous status within the People's Republic of China.

The committee fully supports the right of the citizens of Hong Kong to be able to freely choose their own representatives, and to peaceful assembly and freedom of expression, all of which are enshrined in the Hong Kong Bill of Rights.

The committee believes that the roots of the protests in Hong Kong lie in the decision of the National People's Congress Standing Committee (NPCSC) in July, 2014, to prohibit the voters of Hong Kong from exercising their right to freely select nominees for the position of Chief Executive of Hong Kong. It is difficult to reconcile notions of universal suffrage with the system endorsed by the NPCSC, which will only allow for candidates vetted and approved by Beijing. It is likewise difficult to reconcile this system with the aspirations of the people of Hong Kong for autonomous self-government, democratic governance, and genuine "universal suffrage."

Hong Kong's Basic Law promises the people of Hong Kong that they will be able to elect their Chief Executive through "universal suffrage upon nomination by a broadly representative nominating committee in accordance with democratic procedures." Yet the NPCSC decision, which will allow the Election Committee of the Chief Executive to decide who can be placed on the ballot for election—including using criteria such as "love [for] the country and love [for] Hong Kong," which do not appear in the Basic Law—effectively undermines the spirit of the Basic Law and the commitments that China made when Hong Kong returned to its control.

These developments raise deep concerns in the committee about Beijing's respect for basic political and economic rights and the rule of law in Hong Kong, including restricting the right to peaceful assembly which is enshrined in the Hong Kong Bill of Rights, the Basic Law, and the International Covenant on Civil and Political Rights (ICCPR). Under Hong Kong's own laws, no restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and that are necessary in the interests of national security or public safety and public order. The suppression of the right to peaceful assembly and the right to free expression—rights that are afforded the people of Hong Kong under the Basic Law, and which are fully consistent with the notion of "one country, two systems"—is deeply troubling.

Beijing has made numerous statements over the years about its commitment to the Basic Law and its intention to respect the promise of the Basic Law to provide the people of Hong Kong with

a genuine say in their governance and future. Yet the recent decision of the NPCSC and the suppression and intimidation of peaceful protestors and opposition media—decisions that have now led to the protests in the streets of Hong Kong—indicate that Beijing has reneged on the promises it made to the people of Hong Kong.

Moreover, the committee is concerned that Beijing's undermining of the rule of law could potentially expand further and undercut the very principles that have underpinned Hong Kong's economic vibrancy, attractiveness for foreign investment, and financial independence.

It is in that spirit that the committee believes it is critical that the United States reinstate the reporting requirements related to United States-Hong Kong relations, and to require ongoing certification by the Secretary of State on whether Hong Kong is sufficiently autonomous to justify separate treatment different from the People's Republic of China in any new laws, agreements, treaties, or arrangements entered into between the United States and Hong Kong after the date of the enactment of this Act.

Section 1

Section 1 of S. 2922 provides the short title of the bill: the Hong Kong Human Rights and Democracy Act.

Section 2

Section 2 makes findings related to the Joint Declaration, the Basic Law, the NPCSC's 2007 determination that Hong Kong could elect the Chief Executive by universal suffrage in 2017 and the Legislative Council by universal suffrage beginning in 2020. In addition, Section 2 makes findings regarding concerns, reported by numerous governmental and non-governmental organizations and raised as part of the ongoing protests by the people of Hong Kong that the People's Republic of China is not acting consistently with its commitments to guarantee the autonomy of Hong Kong. The findings also note that the United States enjoys close economic, social, and cultural ties with Hong Kong and that Hong Kong enjoys a unique status as an international financial center where the rule of law and the rights and freedoms of its citizens are protected.

Section 3

Section 3 reaffirms the principles of the United States-Hong Kong Policy Act of 1992, urges the Government of the People's Republic of China to uphold its commitments to Hong Kong, and supports the establishment, by 2017, of a genuine democratic option for freely and fairly nominating and electing the Chief Executive. Section 3 also supports the establishment, by 2020, of open and direct democratic elections for all members of the Hong Kong Legislative Council, and supports press freedom and journalistic independence in Hong Kong.

Section 4

Section 4 reinstates the reporting requirements of the United States-Hong Kong Policy Act of 1992 for ten years and ensures that the appropriate committees in the House and Senate receive the report.

Section 5

Section 5, as amended in committee, requires the Secretary of State to annually certify to Congress that Hong Kong is sufficiently autonomous to justify separate treatment different than China under new U.S. laws, agreements, treaties, or arrangements. Section 5 also provides waiver authority and a carve-out for programs that support democracy, human rights, or the rule of law.

IV. COST ESTIMATE

In accordance with Rule XXVI, paragraph 11(a) of the Standing Rules of the Senate, the committee notes that the cost estimate provided by the Congressional Budget Office was not available for inclusion in this report. The estimate will be printed in either a supplemental report or the Congressional Record when it is available.

V. EVALUATION OF REGULATORY IMPACT

Pursuant to Rule XXVI, paragraph 11(b) of the Standing Rules of the Senate, the committee has determined that there is no regulatory impact as a result of this legislation.

VI. CHANGES IN EXISTING LAW

In compliance with Rule XXVI, paragraph 12 of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman).

United States-Hong Kong Policy Act of 1992

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**TITLE II—THE STATUS OF HONG KONG
IN UNITED STATES LAW**

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SEC. 202. PRESIDENTIAL ORDER.

(a) **PRESIDENTIAL DETERMINATION.**—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 201(a) to such law or provision of law.

(b) **FACTOR FOR CONSIDERATION.**—In making a determination under subsection (a) with respect to the application of a law of the United States, or any provision thereof, to Hong Kong, the President should consider the terms, obligations, and expectations expressed in the Joint Declaration with respect to Hong Kong.

(c) **PUBLICATION IN FEDERAL REGISTER.**—Any Executive order issued under subsection (a) shall be published in the Federal Register and shall specify the law or provision of law affected by the order.

(d) **TERMINATION OF SUSPENSION.**—An Executive order issued under subsection (a) may be terminated by the President with respect to a particular law or provision of law whenever the President determines that Hong Kong has regained sufficient autonomy to justify different treatment under the law or provision of law in question. Notice of any such termination shall be published in the Federal Register.

SEC. 202a. TREATMENT OF HONG KONG UNDER UNITED STATES LAW.

(a) **SECRETARY OF STATE CERTIFICATION REQUIREMENT.**—

(1) **IN GENERAL.**—*Not later than 90 days after the date of the enactment of the Hong Kong Human Rights and Democracy Act, and annually thereafter, the Secretary of State shall certify to Congress whether Hong Kong is sufficiently autonomous to justify separate treatment different from that accorded the People's Republic of China in any new laws, agreements, treaties, or arrangements entered into between the United States and Hong Kong after the date of the enactment of such Act.*

(2) **FACTOR FOR CONSIDERATION.**—*In making a certification under paragraph (1), the Secretary of State should consider the terms, obligations, and expectations expressed in the Joint Declaration with respect to Hong Kong.*

(3) **EXCEPTION.**—*The certification under this subsection shall not be required with respect to any new laws, agreements, treaties, or arrangements that support human rights, rule of law, or democracy in Hong Kong.*

(b) **WAIVER AUTHORITY.**—*The Secretary of State may waive the application of subsection (a) if the Secretary—*

(1) determines that such a waiver is in the national interests of the United States; and

(2) on or before the date on which the waiver takes effect, submits to the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives a notice of and justification for the waiver.

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TITLE III—REPORTING PROVISIONS

SEC. 301. REPORTING REQUIREMENT.

[Not later than March 31, 1993, March 31, 1995, March 31, 1996, March 31, 1997, March 31, 1998, March 31, 1999, March 31, 2000, March 31, 2001, March 31, 2002, March 31, 2003, March 31, 2004, March 31, 2005, and March 31, 2006 the Secretary of State] Not later than March 31, 2015, and annually thereafter for 10 years or until such earlier date that the Secretary of State certifies that Hong Kong has held free and fair elections for two consecutive Chief Executive and two consecutive Legislative Council periods, the Secretary of State shall transmit to the [Speaker of the House of Representatives] chairman of the Committee on Foreign Affairs of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate a report on conditions in Hong Kong of interest to the United States. This report shall cover (in the case of the initial report) the period since the date of enactment of this Act or (in the case of subsequent reports) the period since the most recent report pursuant to this section and shall describe—

(1) significant developments in United States relations with Hong Kong, including a description of agreements that have entered into force between the United States and Hong Kong;

(2) other matters, including developments related to the change in the exercise of sovereignty over Hong Kong, affecting United States interests in Hong Kong or United States relations with Hong Kong;

(3) the nature and extent of United States-Hong Kong cultural, education, scientific, and academic exchanges, both official and unofficial;

(4) the laws of the United States with respect to which the application of section 201(a) has been suspended pursuant to section 202(a) or with respect to which such a suspension has been terminated pursuant to section 202(d), and the reasons for the suspension or termination, as the case may be;

(5) treaties and other international agreements with respect to which the President has made a determination described in the last sentence of section 201(b), and the reasons for each such determination;

(6) significant problems in cooperation between Hong Kong and the United States in the area of export controls;

(7) the development of democratic institutions in Hong Kong; **[and]**

(8) the nature and extent of Hong Kong's participation in multilateral forums**[.]**; *and*

(9) *matters in which Hong Kong is given separate treatment under the laws of the United States from that accorded to the People's Republic of China and in accordance with this Act.*