

105TH CONGRESS
1ST SESSION

S. 1086

To support the autonomous governance of Hong Kong after its reversion
to the People's Republic of China.

IN THE SENATE OF THE UNITED STATES

JULY 29, 1997

Mr. HELMS introduced the following bill; which was read twice and referred
to the Committee on Foreign Relations

A BILL

To support the autonomous governance of Hong Kong after
its reversion to the People's Republic of China.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Hong Kong Reversion
5 Act”.

6 **SEC. 2. PURPOSES.**

7 The purposes of this Act are—

8 (1) to support the autonomous governance of
9 Hong Kong and the future well-being of the Hong
10 Kong people by ensuring the continuity of United

1 States laws with respect to Hong Kong after its re-
2 version to the People's Republic of China on July 1,
3 1997; and

4 (2) to outline circumstances under which the
5 President of the United States could modify the ap-
6 plication of United States laws with respect to Hong
7 Kong if the People's Republic of China fails to honor
8 its commitment to give the Special Administrative
9 Region of Hong Kong a high degree of autonomy.

10 **SEC. 3. FINDINGS.**

11 Congress makes the following findings:

12 (1) The Joint Declaration of the Government of
13 the United Kingdom of Great Britain and Northern
14 Ireland and the Government of the People's Repub-
15 lic of China on the Question of Hong Kong, done at
16 Beijing on December 19, 1984, is a binding inter-
17 national agreement that sets forth the commitments
18 made by both governments on the reversion of Hong
19 Kong to the People's Republic of China on July 1,
20 1997.

21 (2) The People's Republic of China in the Joint
22 Declaration pledges, among other things, that "the
23 Hong Kong Special Administrative Region will enjoy
24 a high degree of autonomy, except in foreign and
25 defence affairs . . .," that basic human rights and

1 freedoms “will be ensured by law . . .,” and that
 2 “[t]he legislature of the Hong Kong Special Admin-
 3 istrative Region shall be constituted by elections.”.

4 (3) Senior government officials of the People’s
 5 Republic of China have repeatedly assured a smooth
 6 transfer of Hong Kong to Chinese sovereignty, a
 7 successful implementation of the “one country, two
 8 systems” policy, long-term prosperity for Hong
 9 Kong, and continued respect for the basic rights of
 10 the Hong Kong people.

11 (4) Despite guaranteeing the autonomous gov-
 12 ernance of Hong Kong, several official acts and
 13 statements by senior officials of the Government of
 14 the People’s Republic of China reflect an attempt to
 15 infringe upon the current and future levels of auton-
 16 omy in Hong Kong. These acts or statements in-
 17 clude—

18 (A) initial proposals, which were later
 19 withdrawn, by officials of the Government of
 20 the People’s Republic of China to obtain con-
 21 fidential files on civil servants of the Hong
 22 Kong Government or require such civil servants
 23 to take “loyalty oaths”;

24 (B) the decision of the Government of the
 25 People’s Republic of China to dissolve the

1 democratically elected Legislative Council on
2 July 1, 1997, and the appointment of a provi-
3 sional legislature in December of 1996;

4 (C) the delineation by officials concerning
5 the types of speech and association that will be
6 permitted by the Government of the People's
7 Republic of China after the reversion;

8 (D) initial warnings, which were later with-
9 drawn, to religious institutions not to hold cer-
10 tain gatherings after the reversion; and

11 (E) the decision on February 23, 1997, of
12 the Standing Committee of the National Peo-
13 ple's Congress of the People's Republic of
14 China to repeal or amend certain Hong Kong
15 ordinances, including the Bill of Rights Ordi-
16 nance, the Societies Ordinance of 1992 (relat-
17 ing to freedom of association), and the Public
18 Order Ordinance of 1995 (relating to freedom
19 of assembly).

20 (5) Despite commitments in the Joint Declara-
21 tion guaranteeing the autonomous governance of
22 Hong Kong, several official acts of the Government
23 of the United Kingdom have damaged prospects for
24 the future autonomy of Hong Kong. These acts in-
25 clude—

1 (A) the conclusion of an agreement on the
2 Court of Final Appeal, which violates the Joint
3 Declaration; and

4 (B) a 1990 agreement with the People's
5 Republic of China to limit the number of demo-
6 cratically-elected seats in the Legislative Coun-
7 cil to one-third the number of seats in the
8 Council, which violates the Joint Declaration.

9 (6) The reversion of Hong Kong to the People's
10 Republic of China has important implications for
11 both United States national interests and the inter-
12 ests of the Hong Kong people. The United States
13 Government has a responsibility to ensure that Unit-
14 ed States interests are protected during and after
15 this transition, and it has a profound interest in en-
16 suring that basic and fundamental human rights of
17 the Hong Kong people are also protected.

18 (7) The United States-Hong Kong Policy Act of
19 1992 (Public Law 102-383; 22 U.S.C. 5701 et seq.)
20 sets forth United States policy concerning Hong
21 Kong's reversion to the People's Republic of China
22 on July 1, 1997, and Hong Kong's special status as
23 a Special Administrative Region of that country.
24 The Act ensures the continuity of United States
25 laws regarding Hong Kong while establishing a

1 mechanism in section 202 of that Act (22 U.S.C.
2 5722) whereby the President can modify the applica-
3 tion of United States laws with respect to Hong
4 Kong if the President “determines that Hong Kong
5 is not sufficiently autonomous to justify treatment
6 under a particular law of the United States, or any
7 provision thereof, different from that accorded the
8 People’s Republic of China”. In making this deter-
9 mination, the President shall consider “the terms,
10 obligations, and expectations expressed in the Joint
11 Declaration”.

12 (8) One of the principal purposes of Congress
13 in enacting the United States-Hong Kong Policy Act
14 of 1992 was to maintain Hong Kong’s autonomy by
15 ensuring that the United States will continue to
16 treat Hong Kong as a distinct legal entity, separate
17 and apart from the People’s Republic of China, for
18 all purposes, in those areas in which the People’s
19 Republic of China has agreed that Hong Kong will
20 continue to enjoy a high degree of autonomy, unless
21 the President makes a determination under section
22 202 of that Act.

23 (9) The United States-Hong Kong Policy Act of
24 1992 requires the Secretary of State to evaluate the
25 implementation of the Joint Declaration.

1 (10) Ultimately, the future of Hong Kong will
2 be determined by the willingness of the Government
3 of the People's Republic of China to respect its com-
4 mitments in the Joint Declaration to maintain the
5 freedoms now enjoyed by the people of Hong Kong
6 and to rely on the people of Hong Kong to govern
7 themselves.

8 **SEC. 4. CONGRESSIONAL DECLARATIONS.**

9 Congress makes the following declarations:

10 (1) Recognizing that the United States Govern-
11 ment and the Hong Kong Government have long en-
12 joyed a close and beneficial working relationship, for
13 example, between the United States Customs Serv-
14 ice, the Federal Bureau of Investigation, the Drug
15 Enforcement Administration, the Immigration and
16 Naturalization Service, the Secret Service, and their
17 corresponding agencies of the Hong Kong Govern-
18 ment, the United States urges the two governments
19 to continue their effective cooperation.

20 (2) Recognizing that the preservation of Hong
21 Kong's autonomous customs territory has important
22 security and commercial implications for the United
23 States and the people of Hong Kong, the United
24 States calls upon the People's Republic of China to

1 fully respect the autonomy of the Hong Kong cus-
2 toms territory.

3 (3) Recognizing that Hong Kong has histori-
4 cally been an important port of call for United
5 States naval vessels, the United States urges the
6 Government of the People's Republic of China to
7 consider in a timely and routine manner United
8 States requests for port calls at Hong Kong.

9 (4) Recognizing that Hong Kong enjoys a ro-
10 bust and professional free press with important
11 guarantees on the freedom of information, the Unit-
12 ed States declares that a free press and access to in-
13 formation are fundamentally important to the eco-
14 nomic and commercial success of Hong Kong and
15 calls upon the Government of the People's Republic
16 of China to fully respect these essential rights of the
17 Hong Kong people.

18 (5) Recognizing that the provisional legislature
19 is not a representative body and that its proposed
20 election law is designed to disadvantage the most
21 popular political party and political figures in Hong
22 Kong, Congress declares that elections for the Spe-
23 cial Administrative Region legislature should be con-
24 ducted in accordance with laws drafted and ap-

1 proved by the Hong Kong people or their democrat-
2 ically-elected representatives.

3 (6) Recognizing that the Joint Declaration re-
4 quires that the Special Administrative Region legis-
5 lature “shall be constituted by elections”, the United
6 States declares that the failure to have an elected
7 legislature would be a violation of the Joint Declara-
8 tion and calls upon the Government of the People’s
9 Republic of China to honor its treaty obligations.

10 (7) Recognizing that the Hong Kong people
11 have long enjoyed essential rights and freedoms as
12 enumerated in the Universal Declaration of Human
13 Rights, the United States—

14 (A) declares that the Bill of Rights Ordi-
15 nance is consistent with the Joint Declaration
16 and that strengthening controls on the freedom
17 to associate or assemble is a serious threat to
18 the basic freedoms of the Hong Kong people;
19 and

20 (B) calls upon the People’s Republic of
21 China, the National People’s Congress, and any
22 groups appointed by the Government of the
23 People’s Republic of China to leave all revisions
24 of Hong Kong law to a democratically-elected
25 legislature.

1 (8) Recognizing that under the terms of the
2 Joint Declaration the provisions of the International
3 Covenant on Civil and Political Rights will continue
4 to apply in Hong Kong, the United States—

5 (A) welcomes the public statement by the
6 Chief Executive-designate of Hong Kong that
7 the legislation that will replace repealed or
8 amended sections of the Societies Ordinance
9 and Public Order Ordinance will be the subject
10 of public consultation; and

11 (B) urges that the new legislation should
12 reflect both the wishes of the people of Hong
13 Kong, as clearly expressed through their demo-
14 cratically-elected representatives, and the provi-
15 sions of the International Covenant on Civil and
16 Political Rights.

17 (9) Recognizing that Hong Kong currently
18 maintains an efficient capitalist economy and trade
19 system by strictly adhering to the rule of law, by
20 honoring the sanctity of contract, and by operating
21 without corruption and with minimum and trans-
22 parent regulation, the United States calls upon the
23 Government of the People's Republic of China to
24 fully respect the autonomy and independence of the
25 chief executive, the civil service, the judiciary, the

1 police of Hong Kong, and the Independent Commis-
2 sion Against Corruption.

3 **SEC. 5. PRESIDENTIAL DETERMINATION UNDER SECTION**
4 **202 OF THE UNITED STATES-HONG KONG POL-**
5 **ICY ACT OF 1992 AND ADDITIONAL REPORT-**
6 **ING REQUIREMENTS.**

7 (a) IN GENERAL.—In determining whether Hong
8 Kong is not sufficiently autonomous to justify treatment
9 under a particular law of the United States, or any provi-
10 sion thereof, different from that accorded the People's Re-
11 public of China, as required by section 202(a) of the Unit-
12 ed States-Hong Kong Policy Act of 1992 (Public Law
13 102–383; 22 U.S.C. 5722(a)), the President, based upon
14 the assessments made pursuant to subsection (b) of this
15 section, as well as other information included in the re-
16 ports submitted under section 301 of the United States-
17 Hong Kong Policy Act of 1992 (22 U.S.C. 5731), shall
18 consider the performance of the Hong Kong Government
19 and the actions of the Government of the People's Repub-
20 lic of China.

21 (b) REQUIREMENTS FOR REPORTS TO CONGRESS.—
22 The Secretary of State shall include, in each report re-
23 quired by section 301 of the United States-Hong Kong
24 Policy Act of 1992, the following:

1 (1) EXISTENCE OF FREELY ELECTED LEGISLA-
 2 TURE.—An assessment by the Secretary whether the
 3 Hong Kong people have a legislature that is fairly
 4 and freely elected, which the Secretary shall deter-
 5 mine by taking into account the following:

6 (A) Whether the Hong Kong people are
 7 able to participate fully in elections as can-
 8 didates and voters without any political restric-
 9 tions or infringements on their basic rights of
 10 speech, assembly, and association.

11 (B) Whether the Hong Kong electoral sys-
 12 tem is designed to disadvantage any party or
 13 individuals.

14 (2) SUCCESSFUL AND TIMELY CONCLUSION OF
 15 AGREEMENTS AND TREATIES.—An assessment by
 16 the Secretary whether the Hong Kong Government
 17 or the People's Republic of China, or both, as the
 18 case may be, have cooperated with the United States
 19 Government in securing the following agreements or
 20 treaties:

21 (A) A bilateral investment treaty.

22 (B) An extradition treaty.

23 (C) An agreement on consular access in
 24 Hong Kong for United States citizens com-
 25 parable to that provided for in the consular con-

1 vention between the United States and the Peo-
2 ple's Republic of China.

3 (D) An agreement to preserve the United
4 States consulate, with privileges and immunities
5 for United States personnel.

6 (E) A mutual legal assistance agreement.

7 (F) A prison transfer agreement.

8 (G) A civil aviation agreement.

9 (3) CONTINUED COOPERATION FROM THE
10 AGENCIES OF THE HONG KONG GOVERNMENT.—An
11 assessment by the Secretary whether agencies of the
12 Hong Kong Government continue to cooperate with
13 United States Government agencies. The Secretary
14 shall cite in the report any evidence of diminished
15 cooperation in the areas of customs enforcement,
16 drug interdiction, and prosecution and prevention of
17 money laundering, counterfeiting, credit card fraud,
18 and organized crime.

19 (4) PRESERVATION OF GOOD GOVERNANCE AND
20 RULE OF LAW IN HONG KONG.—An assessment by
21 the Secretary whether the Hong Kong Government
22 remains autonomous and relatively free of corruption
23 and whether the rule of law is respected in Hong
24 Kong. The Secretary shall cite in the report any—

1 (A) efforts to annul or curtail the applica-
2 tion of the Bill of Rights of Hong Kong;

3 (B) efforts to prosecute for violations of, or
4 broaden the application of, laws against trea-
5 son, secession, sedition, and subversion;

6 (C) acts or threats against nonviolent civil
7 disobedience;

8 (D) interference in the autonomy of the
9 chief executive, the civil service, the judiciary,
10 or the police;

11 (E) increased corruption in the Hong Kong
12 Government; and

13 (F) efforts to suppress freedom of the
14 press or restrict the free flow of information.

15 (5) PRESERVATION OF THE AUTONOMY OF THE
16 CUSTOMS TERRITORY OF HONG KONG.—An assess-
17 ment by the Secretary whether the customs territory
18 of Hong Kong is administered in an autonomous
19 manner. The Secretary shall cite in the report any—

20 (A) failure to respect United States textile
21 laws and quotas;

22 (B) failure to enforce United States export
23 control laws or export license requirements;

1 (C) unauthorized diversions from Hong
2 Kong of high technology exports from the Unit-
3 ed States to Hong Kong;

4 (D) unprecedented diversion of Chinese ex-
5 ports through Hong Kong in order to attain
6 preferential treatment in United States mar-
7 kets; and

8 (E) misuse of the customs territory of
9 Hong Kong to implement the foreign policy or
10 trade goals of the Government of the People's
11 Republic of China.

12 **SEC. 6. PROHIBITION ON USE OF FUNDS FOR PARTICIPA-**
13 **TION OF HONG KONG PROVISIONAL LEGISLA-**
14 **TURE IN CERTAIN UNITED STATES INFORMA-**
15 **TION AGENCY PROGRAMS.**

16 (a) PROHIBITION.—Notwithstanding any other provi-
17 sion of law, no funds appropriated or otherwise made
18 available for the United States Information Agency may
19 be used for purposes of the participation of any member
20 of the Hong Kong provisional legislature in any academic,
21 professional, or cultural program of the United States In-
22 formation Agency, including any international visitors pro-
23 gram, any citizens exchange program, and any scholarship
24 or fellowship associated with any such program.

1 (b) HONG KONG PROVISIONAL LEGISLATURE DE-
2 FINED.—In subsection (a), the term “Hong Kong provi-
3 sional legislature” means the body appointed on December
4 21, 1996, in Shenzhen, China, to replace the Hong Kong
5 Legislative Council that was elected in 1995.

6 **SEC. 7. DEFINITION.**

7 In this Act, the term “Joint Declaration” means
8 Joint Declaration of the Government of the United King-
9 dom of Great Britain and Northern Ireland and the Gov-
10 ernment of the People’s Republic of China on the Question
11 of Hong Kong, done at Beijing on December 19, 1984.

