

[Asia Democracy Issue Briefing]

The Hong Kong National Security Law amidst Sino-US Rivalry

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Hong Kong people were shocked by the sudden enactment of the Hong Kong National Security Law (HKNSL) by China's National People's Congress (NPC) in May-June 2020. HKNSL signaled Beijing's hard line against the opposition movement and protests in Hong Kong. Throughout the two months since the law's enactment, Hong Kong's image as a free city has taken a severe blow. The HKNSL promptly drove the United States government to announce the end of "One Country, Two Systems" for Hong Kong, impose sanctions on China and Hong Kong officials, and pursue other punitive moves amidst a period of heightened Sino-U.S. tensions.

HKNSL can be seen as Beijing's response to the months of anti-extradition protests in Hong Kong since June 2019, and its various political fallout. In the beginning, the protests were directed against a bill that would allow criminal suspects residing in Hong Kong to be extradited to areas outside Hong Kong for trial, including mainland China. Critics saw the proposed law as a threat to the autonomy and human rights in Hong Kong, as many Hong Kong residents do not have strong confidence in mainland China's legal due process and rights protection. After the two million-people demonstrations in June 2019, the movement escalated into more violent clashes which were met with a forceful crackdown by the Hong Kong police. Protesters initiated a wide range of actions including peaceful protests, strikes, blocking traffic, and attacks on pro-government shops and police stations. Throughout the seven months of clashes in 2019, the Hong Kong police made more than 9,000 arrests, from which 2,000 were charged with various offences.

HKNSL was seen as a drastic move by Beijing to circumvent the normal legislative procedures in Hong Kong. It was met by accusations of violating the "One Country Two Systems" principle and risked foreign sanctions. Two developments during the 2019 protests were crucial for prompting Beijing's enactment of HKNSL. In 2019, Hong Kong politicians and activists lobbied extensively overseas for sanctions on China and Hong Kong, placing pressure on the U.S. Congress and government to pass the Hong Kong Human Rights and Democracy Act. The Act would enable the U.S. government to cancel Hong Kong's special trade status if it considers that the autonomy and freedom of Hong Kong are under threat to the extent that the "One Country, Two Systems" is no longer being upheld. The U.S. government may also sanction individuals responsible for damaging Hong Kong's human rights. The Act was passed by the U.S. Congress and signed by President Trump in November 2019. Hong Kong activists also lobbied for other western countries to follow the U.S. example by enacting Magnitsky-Act-

like legislations to sanction people who offend human rights in Hong Kong.

The other trend that alarmed Beijing was the rising support for pro-independence or self-determination ideas in Hong Kong. Anti-China or “localist” sentiments had been on the rise in Hong Kong since 2008, especially among the younger generation. After the 2014 Umbrella Movement failed to bring about full democracy in Hong Kong, residents had been disillusioned by the lack of democratic progress and tighter control from Beijing. They came to believe that Hong Kong would not enjoy true freedom and democracy under Chinese sovereignty. When “Liberate Hong Kong; Revolution of Our Times(光復香港, 時代革命),” a slogan coined by independentist Edward Leung, was used by many as a battle cry during the 2019 movement, Beijing saw the Anti-Extradition protests as a separatist movement.

It is believed that Beijing made the decision about HKNSL in the Fourth Plenum of the CCP Central Committee in October 2019, whose legislative process is suspected to have been delayed by the COVID-19 pandemic. Before the enactment of HKNSL there were no laws in Hong Kong to forbid international lobbying against China or Hong Kong, nor ban separatist ideas or actions. Article 23 of the Basic Law stipulates that the Hong Kong government should enact laws on its own to prohibit treason, secession, sedition, subversion, theft of state secrets, and prohibit foreign political organizations from conducting political activities in Hong Kong. In 2003, the Hong Kong government proposed a National Security Bill, but was forced to withdraw it after 500,000 people took to the streets to protest the Bill. By 2019, Hong Kong still had not enacted laws under Article 23, which Beijing saw as a major “constitutional loophole.”

HKNSL came as a shock for various reasons. Many in Hong Kong had believed that while Beijing was unhappy about the aforementioned “loophole,” the National Security Law would be enacted through Hong Kong’s legislative process as stipulated in the Basic Law. In contrast, the law was drafted in Beijing and within the national legislature, without prior consultations with Hong Kong. The contents of the law were decided by the NPC Standing Committee, and the provisions were disclosed on June 30, 2020, one hour before it came into effect. The Hong Kong Bar Association identified this as a violation of the Basic Law.

The provisions of the HKNSL are harsh and all-encompassing. The law generally seeks to forbid four categories of offences: (a) secession; (b) subversion; (c) terrorist activities; (d) collusion with foreign government or external elements. Anybody who organizes, plans, commits or participates in acts that are related to these offences, either with or without violence, and those who incite, advocate or provide financial support to these acts can be found guilty. “Principal offenders” can be sent to jail for no less than 10 years, up to life imprisonment. The law is deemed applicable to non-Hong Kong people and to acts outside Hong Kong (Article 58). A Committee for Safeguarding National Security would be set up in Hong Kong, together with an Office for Safeguarding National Security staffed by mainland officials, which will be responsible for supervising the implementation of the law, investigation and intelligence. The decisions by the Committee are not subject to judicial review in Hong Kong. A group of designated judges, appointed by the Hong Kong Chief Executive, will handle the court cases related to national security. If deemed necessary, trials for national security cases can be without a jury, be closed to the public and the media, and the suspect can be denied bail. Article 55 rules that if the case is too complex, involving foreign elements and there is an imminent threat to national security, the mainland judiciary can take over the case.

The writing of HKNSL has a clear eye on the 2019 protests and opposition movements from that period.

The “Collusion” section criminalizes those who “request” or “conspire with” a foreign country, institution, organization or individual to impose sanctions on Hong Kong or China. Violent street actions, strikes, the blocking of roads, rail tracks and public transport, which are protest repertoires from 2019, can all be charged under “terrorist activities,” and are punishable by long jail sentences. Filibusters by legislators or attacks on government buildings (e.g. police stations) can be charged under “subversion” since Article 22 (3) and (4) ban acts that “seriously interfering in, disrupting, or undermining the performance of duties and functions” of the Chinese and Hong Kong governments. Mainland officials will come to directly oversee national security matters, and it seems that when a case enters the realm of national security, the defendants can be denied basic legal rights usually enjoyed by individuals under the common law system.

Beijing may have underestimated the international responses to HKNSL. The anti-extradition protests since June 2019 have aroused a lot of western attention to and sympathy for Hong Kong. Amidst heightened Sino-U.S. rivalry, the Hong Kong issue has become an important item on the bilateral negotiation agenda. U.S. attitude to China has taken a sharp turn in recent years. The U.S. government increasingly views China as an economic rival and as a powerful autocratic country that threatens global democracy and freedom. Sympathizing with Hong Kong’s anti-extradition protests, and with the pressure to adopt sanctions that would deter China from further damaging Hong Kong’s freedom, the U.S. government expedited the passing of the Hong Kong Human Rights and Democracy Act in November 2019. The COVID-19 pandemic further aggravated Sino-U.S. relations, and heightened hostile sentiments of other western and non-western countries towards China. Support for Hong Kong in its battle against China became a bipartisan consensus in U.S. The imposition of HKNSL by the NPC led the U.S. to adopt sanctions against China and Hong Kong.

The passing of HKNSL also received condemnation and expressions of concern from Canada, Australia, the United Kingdom, the European Union, and others. The U.S. Congress swiftly passed a new Hong Kong Autonomy Act, which was signed into law on July 14 by President Trump. The official position of the U.S. government is that due to HKNSL, Hong Kong has lost its freedom and autonomy to merit a special trade status different from that of China. Therefore, with HKNSL, trade restrictions on China can also be imposed on Hong Kong. In August, the U.S. Customs and Border Protection Department announced that goods from Hong Kong could no longer bear the label “Made in Hong Kong,” but should use “Made in China” instead. On August 7, the U.S. announced sanctions on 11 officials from China and Hong Kong, including Chief Executive Carrie Lam, for their roles in the enactment of HKNSL and involvement in human rights violations in Hong Kong during the previous last year.

Other western countries have not yet followed the U.S. footsteps in adopting sanctions. Their immediate response was to stop extradition agreements with Hong Kong (including Canada, United Kingdom, France, Germany, Australia, New Zealand, Finland and the U.S.). The United Kingdom and other countries made policy changes that would facilitate Hong Kong people to migrate to or seek political refuge in their state. The United Kingdom (U.K.) government saw HKNSL as a breach of the 1984 Sino-British Joint Declaration, and declared that an estimated 2.9 million Hong Kong residents born before 1997 and are eligible for the British National Overseas (BNO) passport, would be allowed to reside and work in the United Kingdom for up to five years, and then convert to a full citizenship a year later.

The Chinese and Hong Kong governments have emphasized that HKNSL targets only a small number of separatists, terrorists, or foreign collaborators, and that the “One Country, Two Systems” principle and related freedoms enjoyed by Hong Kong people would not be affected. Yet the damages and negative image created by the law far exceed this. Political groups such as Demosisto, a young group led by Joshua Wong, and some other pro-independence groups, dissolved themselves after the enactment of the law. Activist and former legislator Nathan Law, who partook actively in international lobbying, left Hong Kong for London to continue his lobbying work. Politically sensitive books were pulled from shelves of libraries and bookstores.

During the two months after the enactment of HKNSL, the number of arrests has not been as extensive as many had feared. On July 1, ten protesters were arrested under HKNSL, mostly for chanting slogans or showing placards related to independence. On July 29, four members of a pro-independence student group, which had disbanded itself on July 1, were arrested for sharing a pro-independence declaration on the internet. Some pro-independence activists, who had fled Hong Kong by July 1, were placed on the wanted list. The most eye-catching arrests took place on August 10, two days after the U.S. announced sanctions on China and Hong Kong officials. Media tycoon Jimmy Lai, whose newspaper *Apple Daily* has been a most important and popular pro-democracy paper in Hong Kong, was arrested together with his two sons and associates. The photo showing 200 police officers searching the *Apple Daily* premise did irreparable damage to the image of press freedom in Hong Kong. Hong Kong’s reputation as a free city had taken a severe blow since the 2019 protests, and HKNSL has only exacerbated the problem.

Conclusion

Hong Kong has walked itself into the mega-chess game of Sino-U.S. rivalry within a renewed Cold War setup. Since 2019, activists and protesters in Hong Kong thought they needed to raise the stakes of confrontation with Beijing by demanding for western sanctions, looking to extract concessions from China and force political change. The hard-line response from Beijing, including HKNSL, quickly escalated the stakes. The freedom and autonomy in Hong Kong would become an important chip in the Sino-U.S. diplomacy for some time to come.

It is still too early to see the full impacts of HKNSL on the freedom and civil society development in Hong Kong. With its broad coverage, vague wordings and heavy penalty, HKNSL hangs as a Sword of Damocles over most dissidents and civil society groups in Hong Kong even without an extensive application. Western pressure and possible sanctions are able to temporarily constrain the law’s extensiveness and harshness. The maintenance of the freedom and autonomy of Hong Kong is taking on much complicated dimensions, embedded in the bigger picture of new Sino-U.S. confrontations. ■

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