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A Primer on Hong Kong's National Security Law

The first in an occasional series of essays about the law's impact on Hong Kong.

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[The Law of the People's Republic of China on Safeguarding National Security in Hong Kong](#) (NSL) was enacted by the Standing Committee of the National People's Congress on June 30, 2020, and brought into force that same night. Enacted with unusual haste and secrecy even for China, the law fundamentally changes the relationship between Beijing and Hong Kong. This essay addresses general questions surrounding the new law; subsequent essays in this series will explore specific provisions in greater depth.

What prompted the enactment of the NSL?

Beijing claimed that it was necessary to fill a legal vacuum and bring peace to Hong Kong's streets. However, the anti-government protests had largely stopped by 2020 due to restrictions on public gatherings during COVID. More likely, the NSL is part of a general plan to assert greater control over Hong Kong. This has been evident since at least 2014, when the [State Council published a white paper](#) claiming that the central

government exercises “comprehensive jurisdiction” over virtually all aspects of governance in the territory.

But isn't “national security” normally the responsibility of a national government?

Yes, but the Sino-British Joint Declaration (which set the terms for Hong Kong's return to Chinese rule) and the Hong Kong Basic Law (the regional constitution) expressly assigned responsibility for public order and criminal justice to the local government. These instruments also state that Hong Kong will enjoy independent judicial power, including that of final adjudication. That is why Hong Kong's highest court is called the “Court of Final Appeal” and why so many residents protested against the 2019 bill that provided for “case-by-case” extradition to mainland China. They were protesting against any weakening in the “firewall” that separated Hong Kong's criminal justice system from that of mainland China.

How does the NSL weaken that firewall?

The most flagrant violations are the new security institutions operating in Hong Kong, all supervised by Beijing. The Committee for Safeguarding National Security is the policy-making body and its actions are not subject to judicial review in Hong Kong courts. (NSL articles 12-15.) The Committee has already issued “[implementation rules](#)” giving the Hong Kong police unprecedented powers of search and surveillance. The NSL also established the Office for Safeguarding

National Security, staffed by China's secret police. (NSL articles 48-54.) They are not subject to local jurisdiction for acts performed in the course of their duties and their vehicles cannot be searched by local law enforcement. (NSL article 60.) Perhaps most worrying is article 55, which allows the central government to assert jurisdiction over a case and move the defendant to mainland China for trial. Although we expect that most cases will be tried in Hong Kong, the possibility of being transferred to the mainland will put fear in the hearts of even the most dedicated pro-democracy protesters.

What about the new criminal offenses? Do they also violate "One Country, Two Systems"?

This is a more complex issue. Article 23 of the Basic Law provides that:

Hong Kong "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." (Emphasis added.)

Supporters of the NSL argue that Beijing had every right to impose a national law because the 2003 bill to fully implement article 23 was

never enacted. But Hong Kong already had plenty of local ordinances prohibiting most of the acts specified in article 23. The Crimes Ordinance prohibited treason and sedition; the Official Secrets Ordinance protected sensitive government information; the Anti-Terrorism Ordinance prohibited terrorism; and the Societies Ordinance authorized the local government to prohibit organizations on grounds of national security. Thus, the only legislative "gap" related to acts of secession and subversion. Interestingly, however, the NSL is not confined to secession and subversion. It also prohibits "terrorist activities" and defines these offenses in a convoluted manner, making it difficult to predict how the new provisions will interact with Hong Kong's Anti-Terrorism Ordinance. The NSL also prohibits "collusion" with foreign elements, an offense defined so broadly as to include simply requesting a foreign government or organization to impose sanctions on Hong Kong or the PRC. Clearly Beijing had more on its mind than simply implementing article 23 when it enacted the NSL.

Is there anything good about the NSL?

Articles 4 and 5 state that civil liberties, including the rights protected by the International Covenant on Civil and Political Rights, will continue to be protected, providing local courts with a guide for interpreting vague provisions. However, it is difficult to see how some clauses— such as those defining "collusion" with foreign entities — can be interpreted to be ICCPR-compliant. Moreover, article 65 vests the

overriding power of interpretation of the NSL with the Standing Committee of the NPC, the same body that enacted the NSL. Thus, it can reign in Hong Kong judges if they interpret the NSL too liberally for Beijing.

Why have foreign governments reacted so strongly to a domestic law?

One reason is that the extraterritorial provisions of the NSL are exceptionally far-reaching. Anyone, regardless of nationality or residency, can be prosecuted for acts committed in Hong Kong, and the NSL deems an act to have been committed inside Hong Kong so long as the consequences are felt in the territory. (See articles 36 and 38.) Thus, if an American citizen successfully lobbies the US government to impose sanctions on Hong Kong or China, that person could be exposed to criminal liability in Hong Kong, although her actions were perfectly legal under US law. Individuals who are permanent residents of Hong Kong (and thousands of foreign citizens fall in that category) could be prosecuted for actions outside Hong Kong even if no consequences are felt there. (See article 37.) These provisions are clearly intended to intimidate people, especially those who live in Hong Kong or plan to travel to Hong Kong at some point in the future.

Will sanctions adopted by foreign governments help or hurt Hong Kong?

Many governments have suspended their extradition agreements with Hong Kong and are restricting the export of sensitive goods to

the territory. These sanctions will not persuade Beijing to withdraw the NSL and some (such as the Trump administration's demand that Hong Kong exports be labeled "made in China") may only hasten Hong Kong's economic integration with mainland China. However, foreign governments have every right to doubt whether Hong Kong is still operating a separate common law legal system from mainland China. Indeed, it appears that Beijing now intends to exercise direct control over Hong Kong law and policy. That is the opposite of what was promised in the Sino-British Joint Declaration.

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