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Sanctions and Human Rights: Lessons from Hong Kong

By [Carole J. Petersen](#)

The Sino-British Joint Declaration (JD) that set the terms for Britain's return of Hong Kong to China in 1997 promised that Hong Kong would enjoy an exceptionally high degree of autonomy, including a separate common-law legal system that respects civil liberties and an independent judiciary. On this basis, foreign governments agreed to treat Hong Kong as a separate legal system from mainland China for many purposes, including extradition agreements and trade. In the US, this policy was expressed in the [US-Hong Kong Policy Act](#), which conditioned Hong Kong's differential treatment on its ability to remain "sufficiently autonomous."

In 2019, at the height of Hong Kong's anti-government protests, Congress raised the stakes by enacting the [Hong Kong Human Rights and Democracy Act](#). In addition to requiring reports on any erosion of Hong Kong's autonomy, the legislation threatened to sanction individuals who violate human rights in the territory. This did not deter Beijing from imposing the National Security Law (NSL) in Hong Kong in 2020 or from interfering more overtly in local governance.

Congress then enacted the [Hong Kong Autonomy Act](#) and President Trump issued [Executive Order 13936](#), announcing that the US would "suspend or eliminate" its policy of treating Hong Kong differently from mainland China in a wide range of laws and regulations. The US Treasury now [maintains a web page](#) to explain a complex web of Hong Kong-related sanctions. It also [publishes lists](#) of officials who are subject to sanctions and visa restrictions and [warns US companies](#) that they could face liability if they engage in prohibited transactions with listed persons. Meanwhile, China has adopted its own sanctions targeting foreign politicians who have criticized its human rights record, as well as an Anti-Foreign Sanctions Law. The tit-for-tat sanctions war is on.

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Has the US response to Beijing's actions helped to promote human rights or preserve Hong Kong's autonomy? Sadly, I think that only a small number of discreet policy decisions will have any practical benefit. One example is the decision to provide [safe haven](#) for Hong Kongers who are in the US. Clearly, we have an obligation not to compel anyone to return to Hong Kong. But for the vast majority of Hong Kong residents, who have no plans to emigrate, US sanctions have exacerbated the conflict and worsened their situation. I suggest a more strategic and

targeted approach based on the following principles.

First, US politicians must not raise unrealistic expectations regarding the likely impact of sanctions. It appears that at least some Hong Kong protesters – such as the group that gathered in November 2019 outside the US Consulate – honestly believed that Beijing might change its policies in response to the threat of American sanctions. Congress should have known that Beijing would never soften its approach in response to US legislation. The sight of Hong Kong protesters waving US flags predictably hardened Beijing’s determination to bring the territory more tightly under its control.

Second, we need to consider the possibility that sanctions – particularly when threatened or imposed in the middle of an intense conflict – may be used by those in power to justify an even more authoritarian response. Beijing has repeatedly accused the US of fomenting unrest in Hong Kong and [it regularly points to US sanctions as support for its false claims](#). The Hong Kong government [has adopted a similar narrative](#), insisting that US sanctions were part of a larger scheme to destabilize Hong Kong and “suppress” China. It regularly presents this version of history as a justification for the NSL, as well as Beijing’s decision to overhaul Hong Kong’s election system.

Third, the US should avoid measures that appear petty or gratuitously punitive, such as Trump’s decision to [terminate the Fulbright exchange program for Hong Kong and China](#). The Fulbright program is an important tool of

soft diplomacy and could support academics who are [trying to maintain academic freedom](#) on Hong Kong’s campuses. Similarly, Trump mandated that goods imported from Hong Kong be stamped “made in China,” a decision that [Hong Kong has challenged in the WTO](#). If this labeling requirement has any impact, it will be to accelerate Hong Kong’s economic integration with the Mainland, which is counterproductive.

Fourth, any sanctions should come with a “sunset clause” so that the president has flexibility to address future developments. There is no sugarcoating the demise of Hong Kong’s democracy movement or the fact that [people are being prosecuted](#) for entirely peaceful speech acts. But the territory does still enjoy more civil liberties than mainland China, including religious freedom, greater access to the internet, a relative diversity of opinion in the press, and the right to independent legal representation. At this stage, we honestly do not know whether these limited rights and freedoms can be sustained. A good deal depends on how the local police and prosecutors exercise their considerable new powers and how Hong Kong’s common-law judges interpret and apply the NSL. As bad as the NSL is, there is a glimmer of hope because it states (in Articles 4-5) that the rule of law and human rights – including the rights stated in the International Covenant on Civil and Political Rights (ICCPR) – shall continue to be protected. In [HKSAR v. Lai Chee Ying](#), Hong Kong’s Court of Final Appeal (CFA) confirmed that the NSL should “as far as

possible” be given a meaning and effect that is compatible with the ICCPR. [In my view](#), the trial court failed to do this in the first completed trial under the NSL, [HKSAR v. Tong Ying Kit](#). But Tong has appealed his convictions and the appellate judges may do a better job of using the ICCPR as a guide to statutory interpretation. If so, this could help to mitigate some of the harsher effects of the NSL. In any case, whether the human rights situation stabilizes or not, presidents will need to be able to adjust the US response based on actual developments.

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Finally, the US should fully participate in the UN’s multilateral human rights mechanisms and give them more support. [The Trump administration’s withdrawal from the UN Human Rights Council](#) only made it easier for Beijing to defeat resolutions criticizing its actions, which decreased the Council’s credibility. Despite the Council’s flaws, the Biden administration was wise to reengage with it and successfully campaign for a seat at the table. If nothing else, the US can help other liberal democracies to defend the human rights values in the UN Charter and its monitoring mechanisms. In addition to the [Universal Periodic Review](#) process (which China will go through again in 2023), the UN human rights system includes numerous independent treaty-monitoring bodies and

mandate holders, who are not beholden to any government. They have not hesitated to issue statements criticizing Beijing, not only for its use of the NSL to [repress human rights in Hong Kong](#) but for its general disregard of the international human rights treaties that China voluntarily ratified. Of course, these treaty bodies and mandate holders rely primarily on “name and shame” as they have no coercive enforcement powers. For the many people who are outraged by Beijing’s violations of the JD, this will seem like a completely inadequate response. Some may find it more satisfying to learn that Hong Kong’s appointed chief executive [no longer has banking services](#) as a result of US sanctions. But for a tiny territory caught in the middle of a bilateral sanctions war, a UN monitoring mechanism provides a more productive path for the immediate future.

The US needs to acknowledge that there is no unilateral “sanction” that can repair what has been broken in Hong Kong. Nor are unilateral sanctions likely to change the way that the Chinese government responds to other criticisms of its human rights record. Thus, any further response from the US and other liberal democracies must be part of a holistic and strategic reassessment of our broader relationship with China, with full acknowledgement of the enormous threat that the current regime in Beijing poses.

[Carole J. Petersen](#) is professor of law at the William S. Richardson School of Law, University of Hawaii at Manoa. She taught law in Hong Kong from 1989-2006.

Watch the recording of Professor Petersen's October 20, 2021 webinar on the same topic [here](#).

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