RESOLVED, That the American Bar Association urges the United States, other nations and the United Nations to express their support and take actions in furtherance of such support for the autonomy, rule of law, judicial independence, and protection and respect for human rights in the Hong Kong Special Administrative Region (the “HKSAR”), as established by the 1984 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”);

FURTHER RESOLVED, That the American Bar Association supports enactment by the United States of legislation, or as appropriate, implementation of policies and procedures, that:

- condemns all acts by the People’s Republic of China (“the PRC”) that violate its obligations under international and national law, including the Joint Declaration and the Basic Law;
- calls upon all nations of the world to stand with the people of Hong Kong in support of the rule of law;
- provides for targeted sanctions, freezing of assets, travel bans and similar measures against persons or entities who materially contribute to the contravention of obligations under international or national law, as well as financial institutions that conduct significant transactions with persons or entities described above;
- id implements a process to give stipulates that any permanent resident of the HKSAR, with no other right of abode as provided under HKSAR law, access to seek protection through the refugee resettlement process, including at the U.S. Consulate General in Hong Kong and Macau, or if in or at the borders of the United States, through asylum or temporary protected status, until the United States Secretary of State certifies to the United States Congress, under the United States Hong Kong Policy Act of 1992, that the HKSAR has regained a high degree of autonomy; and
• commits resources to monitor and regularly report on the status of the autonomy, rule of law, judicial independence, and protection of and respect for human rights in the HKSAR; and

**FURTHER RESOLVED,** That the American Bar Association reaffirms its call upon the PRC to allow free movement of persons to and from the HKSAR and further urges the United States to use its influence to encourage the continuance and growth of democratic institutions in Hong Kong.
I. Introduction

The territory of Hong Kong, a British Crown Colony since 1841, reverted to the sovereignty of the People’s Republic of China (the “PRC”) on July 1, 1997, by means of the May 27, 1985 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”). The Joint Declaration, registered as a treaty with the United Nations on June 12, 1985, established the foundations for the autonomy, rule of law, judicial independence and protection and respect for human rights in the Hong Kong Special Administrative Region (the “HKSAR”). The Joint Declaration enumerates the “basic policies” for the HKSAR, which include: that while the HKSAR “will be directly under” the PRC’s control, the HKSAR “will enjoy a high degree of autonomy;” the continuance of the social and economic (capitalist) systems; and the protection of rights and freedoms. These “basic policies” are to continue for 50 years from July 1, 1997, until July 1, 2047. In addition, “[t]he provisions of the International Covenant on Civil and Political Rights as applied to Hong Kong shall remain in force.”

The HKSAR’s de facto constitution, the Basic Law of the Hong Kong Special Administrative Region of the People’s Republic of China (the “Basic Law”), was adopted by the PRC’s National People’s Congress (the “NPC”) on April 4, 1990. The Basic Law elaborates and strengthens the Joint Declaration’s foundations for democracy and the protection of human rights in the HKSAR. The Basic Law provides that the laws in force in the HKSAR shall be: i) the Basic Law; ii) laws previously in force in the HKSAR; and iii) laws enacted by the HKSAR legislature. Moreover, it reiterates the Joint Declaration’s provision that the International Covenant on Civil and Political Rights (the “ICCPR”) will remain in force and adds that the ICCPR will be implemented through the laws of the HKSAR. This implementation was effectuated through enactment of the Hong Kong Bill.
of Rights Ordinance (the “BORO”) by the HKSAR legislature on June 6, 1991. The BORO basically mirrors the ICCPR and came into force on June 8, 1991.

The autonomy, rule of law, judicial independence, and protection of and respect for human rights in the HKSAR have come under increasing attack as a result of actions of the PRC in recent years, as described in Section II of this Report. However, the PRC’s unilateral enactment of the sweeping Law of the People’s Republic of China Safeguarding National Security in the Hong Kong Special Administrative Region (the “NSL”) on June 30, 2020 is deeply concerning. ABA President Judy Perry Martinez issued a statement of concern regarding the NSL on July 1, 2020, the day after the law went into effect.

The process of the PRC’s adoption of the NSL and its imposition on the HKSAR, addressed in Section III, is troubling. Of even greater concern is the potential and impending negative effects of the NSL on the autonomy, rule of law, judicial independence, and rights and freedoms protected under the Basic Law, which effects are covered in Section IV. Therefore, this Resolution is urgently needed.

The NSL has been strongly condemned by governments, parliamentarians, and others, and the United States has taken action in response, as described in Section V, but there is a need for additional urgent action by the United States, other nations, and the United Nations. The Report ends with a brief conclusion in Section VI.

II. Background to National Security Law: Diminishment of HKSAR Democracy

In 1991, the American Bar Association, in Resolution 114A, urged the United States to “use its influence in encouraging the continuance and growth of democratic institutions” in the HKSAR. Yet, in contrast to this aspiration for the HKSAR, recent years have borne witness to the PRC’s reduced commitment to democracy and an increasing number of affronts to HKSAR’s independence and the authority and role of its key institutions meant to ensure its autonomy and the “One Country, Two Systems” principle.
Statements in recent years by PRC officials have signaled a shift in the PRC’s commitment to the Joint Declaration and the high degree of autonomy for the HKSAR. In 2017, Chinese Foreign Ministry officials stated that the Joint Declaration is “void”\textsuperscript{14} and the arrangements therein are “now history”.\textsuperscript{15} Also, in April 2020, the PRC’s Liaison Office of the Central People’s Government commented that the PRC and the Hong Kong and Macau Affairs Office have the right to exercise supervision over affairs regarding HK and Macau.\textsuperscript{16}

In contrast, the United Kingdom Government has clearly affirmed that the “Joint Declaration is a legally binding treaty, registered with the United Nations, which continues to remain in force. It remains as valid today as it did when it was signed....”\textsuperscript{17} The UK government also says that it “has an obligation and a right to monitor its implementation closely, and we are strongly committed to doing so.”\textsuperscript{18} Since there is no provision for withdrawal or termination of the Joint Declaration, it remains in full force for the PRC. Therefore, the PRC has the legal obligation to perform its commitments thereunder in good faith, pursuant to the principle of \textit{pacta sunt servanda} of the Vienna Convention on the Law of Treaties.\textsuperscript{19} Yet, despite its legal obligations under the Joint Declaration, the PRC has undertaken actions in recent years that are inconsistent with, and patently contravene, those commitments.

The PRC continues to maintain a process for the election of HKSAR’s Chief Executive by a 1,200 person election committee, comprised of four main sectors: i) professional, ii) industrial, commercial and financial, iii) social services, religious and other; and iv) legislative members, District Councilors, members of the Heung Yee Kuk rural group, and HKSAR representatives to China’s decision-making bodies. This composition ensures that the election committee is weighted by sectors aligned with the PRC with a minimal representation of the HKSAR’s general population, a population which is more hostile to the PRC.\textsuperscript{20} The PRC can therefore order or suggest to the Beijing-aligned electors, whom it wishes to have elected as Chief Executive.\textsuperscript{21} However, in contrast to the current

\textsuperscript{14} Tsoi, Grace. “\textit{Does China Think the Sino-British Joint Declaration is Void?}” Foreign Policy, December 18, 2014.
\textsuperscript{16} Hong Kong Bar Association, “\textit{Further Statement of the Hong Kong Bar Association on Article 22 of the Basic Law},” April 20, 2020. The ABA noted that this was troubling in its May 1, 2020 statement. “\textit{Statement of ABA President Judy Perry Martinez Re: Situation in Hong Kong},” American Bar Association, May 1, 2020.
\textsuperscript{17} Brooke-Holland, Louisa. “\textit{Hong Kong: the Joint Declaration}.” House of Commons Library, July 15, 2020. Since 1997, the United Kingdom Foreign Secretary has reported to Parliament at six-month intervals on the implementation of the Joint Declaration. The Joint Declaration does not contain a dispute provision.
\textsuperscript{18} Id.
\textsuperscript{19} Vienna Convention on the Law of Treaties, Article 26 provides “[e]very treaty in force is binding upon the parties to it and must be performed by them in good faith.” Both the UK (ratification June 25, 1971) and the PRC (ratification September 3, 1997) are parties to the Vienna Convention on the Law of Treaties.
\textsuperscript{21} Id.
practice, the Basic Law provides that the “ultimate aim” is for the Chief Executive of the HKSAR to be selected by “universal suffrage upon nomination by a broadly representative nominating committee.”\textsuperscript{22}

However, it was the extradition bill, proposed in February 2019, that led to months of widespread pro-democracy protests in the HKSAR.\textsuperscript{23} This bill would have allowed the extradition of persons from the HKSAR to the PRC, and raised significant concerns that human rights lawyers, journalists and activists, among others, would be targeted.\textsuperscript{24} The massive protests by millions of residents stopped the government from moving forward on the bill, and it was eventually withdrawn in September 2019.\textsuperscript{25} Yet in the same month, new regulations went into effect to allow PRC law to prevail in the West Kowloon railway terminus in the HKSAR and on all trains operating between the HKSAR and mainland China.\textsuperscript{26}

Moreover, the HKSAR government has disqualified pro-democracy figures from obtaining seats on the HKSAR’s Legislative Council. In November 2016, two persons elected to the HKSAR legislature were not allowed to take office when they criticized the PRC and did not swear allegiance to it when taking their oaths of office.\textsuperscript{27} In January and October 2018, the HKSAR Electoral Affairs Commission disqualified Demosistō Party candidate Agnes Chow and Labor Party candidate Lau Siu-lai, stating that their promotion of “self-determination” for HKSAR is “inconsistent” with the Basic Law.\textsuperscript{28} Further, a political party, the pro-independence Hong Kong National Party, was banned in September 2018 by the HKSAR government because, according to the authorities, it “poses a real threat to national security.”\textsuperscript{29} Then in October 2019, Joshua Wong, a well-known pro-democracy activist, was disqualified from standing in the upcoming District Council elections because of his political views.\textsuperscript{30}

The PRC’s progressive efforts to curtail democracy in the HKSAR have been particularly manifest in its infringement of the civil and political rights of HKSAR residents. In August 2018, Chinese Ministry of Foreign Affairs officials requested that the Hong Kong Foreign

\textsuperscript{22} Basic Law, Article 45.
\textsuperscript{24} Li, Jeff. “Hong Kong-China Extradition Plans Explained.” BBC News. BBC, December 13, 2019;
\textsuperscript{26} Shepherd, Christian. “China Says Part of Hong Kong Rail Station to Be Subject to Mainland Laws.” Reuters. Thomson Reuters, December 27, 2017.
\textsuperscript{27} Domonoske, Camila. “China Steps In To Bar 2 Newly Elected Hong Kong Legislators From Office.” NPR. NPR, November 7, 2016.
Correspondents Club cancel a talk by Andy Chan, a pro-independence activist.\(^{31}\) After the club refused to do so, HKSAR authorities rejected without explanation its vice-president’s application to renew his work visa.\(^{32}\) In March 2019, the HKSAR government denounced pro-democracy scholar Benny Tai, equating his hypothetical discussion of HKSAR independence with “a threat to national security.”\(^{33}\)

In April 2020, 15 prominent pro-democracy and rule of law advocates in the HKSAR, who were taking part in peaceful but “unauthorized assemblies,” were arrested. All those detained have been recognized for promoting the protection of rule of law, democracy and human rights in the HKSAR.\(^{34}\) The ABA President issued a statement of concern about their arrest on May 1, 2020.\(^{35}\) Following their arrests, the largest anti-government protests since the start of the Covid-19 pandemic occurred. Police arrested 115 protesters during those protests.\(^{36}\)

**III. Unilateral Adoption of the National Security Law by the PRC**

After nearly a year of protests, the PRC determined it needed to take control of the HKSAR.\(^{37}\) In late May 2020, under the auspices of implementing Basic Law Article 23, the NPC adopted a Draft Decision authorizing its Standing Committee to create a national security law for the HKSAR (the “Draft Decision”). The Draft Decision provided that the legal task for the Standing Committee was to:

- effectively prevent, stop and punish any act occurring in the HKSAR to split the country, subvert state power, organize and carry out terrorist activities and other behaviors that seriously endanger national security, as well as activities of foreign and external forces to interfere in the affairs of the HKSAR.\(^{38}\)

The NSL was promulgated by the Chief Executive of the HKSAR and added to Annex III of the Basic Law.\(^{39}\) However, the addition of the NSL to this Annex conflicts with the

\(^{31}\) Cheng, Kris. “Beijing Tries to Block pro-Independence Activist Andy Chan Talk at Hong Kong's Foreign Correspondents’ Club.” Hong Kong Free Press HKFP, August 3, 2018.


\(^{36}\) “Statement of ABA President Judy Perry Martinez Re: Situation in Hong Kong.” American Bar Association, May 1, 2020.

\(^{37}\) The Promise of Democratization in Hong Kong.” National Democratic Institute, Georgetown Law, p. 5, June 2, 2020.


HKSAR’s responsibility to enact laws that address national security. Specifically, Article 23 of the Basic Law provides that the HKSAR 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.)

Also, since the Basic Law provides that laws in Annex III are limited to those relating to defense and foreign affairs “as well as other matters outside the limits of the autonomy” of the HKSAR, and the NSL is clearly not related to defense or foreign affairs, the law should have been an amendment to the Basic Law. Thus, the Standing Committee’s addition of the NSL to Annex III is beyond the scope of its authority. Not only did the PRC abrogate the responsibility of the HKSAR to adopt national security laws, but the adoption of the law was done in contravention of the Basic Law.

In adopting the law, there was a total absence of meaningful consultation by lawyers, judges, police and HKSAR residents, the very persons who would be affected by the law. Consultation by the Standing Committee with the “Committee for the Basic Law of the [HKSAR] and the government of the Region,” as required under the Basic Law, does not appear to have been undertaken. In fact, no draft of the law was publicly provided before its entry into force.

The NSL introduces four crimes: (i) secession; (ii) subversion; (iii) terrorist activities and (iv) collusion with a foreign country or with external elements to endanger national security. However, the HKSAR has anti-terrorism laws, which it adopted following United Nations Security Council Resolution 1373 of September 28, 2001; it also has a law covering treason. Also, new laws on terrorism and foreign interference are not mentioned as requiring adoption by the HKSAR under the provisions of Article 23 of the Basic Law.

**IV. The Effects of the National Security Law**

The adoption of the NSL substantially furthers the ability of the PRC to undercut the autonomy and the rule of law in the HKSAR. It also enhances the PRC’s ability to

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40 [Basic Law](#), Article 18.
41 [Basic Law](#), Article 159.
42 [Basic Law](#), Article 18.
43 [NSL](#), Articles 20-30.
44 See Hong Kong, [Cap. 575 United Nations (Ant-Terrorism Measures) Ordinance](#) and [Cap. 200 Crimes Ordinance concerning treason](#).
implement measures to suppress the pro-democracy movement and restrict the rights and freedoms of HKSAR residents and others.

A. The National Security Law’s Effects on Autonomy and Rule of Law

The manner in which the NSL was adopted, detailed above, and the specific provisions of the NSL, as discussed below, constitute infringements upon HKSAR’s enjoyment of “a high degree of autonomy” as stipulated in the Joint Declaration and the Basic Law. The NSL provides that “the executive authorities, legislature and judiciary” of HKSAR shall “effectively prevent, suppress and impose punishment for any act or activity endangering national security,” thereby imposing obligations on these institutions that are not contained in the Joint Declaration or Basic Law.

Further, the NSL shall prevail in the event of any inconsistency with the “local laws of the HKSAR.” Consequently, not only does the NSL prevail when there is a difference between the terms of the NSL and the Basic Law as to the role and authority of the executive, legislature and judiciary, but also when there are differences with HKSAR criminal law provisions on antiterrorism, treason and sedition. Moreover, the NSL will prevail in the case of conflicts with the protection of rights and freedoms under the Basic Law and the BORO.

1. The National Security Law Curtails the Independence of the Judiciary

The NSL is a real and substantial threat to the independence of the judiciary and its ability to apply the individual rights and freedoms protected by the Basic Law and the BORO. First, the selection of judges to hear national security cases will be made based on the HKSAR Chief Executive’s list of approved judges. Appointment is on a yearly basis and judges chosen by the executive can be removed from the list if their words or deeds endanger national security, thereby limiting their freedom of speech and interfering with their ability to exercise their “judicial power independently, free from any interference,” as provided in the Basic Law.

Second, in “complex,” “serious” or situations of “major and imminent threat to national security” cases, the Office for Safeguarding National Security of the PRC may exercise jurisdiction, thereby depriving HKSAR appeals of final adjudication. This contravenes the Basic Law’s provisions that the HKSAR’s judiciary shall exercise judicial power for the

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45 Joint Declaration, para. 3(2). Basic Law, I, General Principles, Article 2.
46 NSL, Article 3.
47 NSL, Article 62.
49 NSL, Article 44.
50 NSL, Article 44.
51 Basic Law, Article 85.
52 NSL, Article 55.
HKSAR and that the Court of Final Appeal of the HKSAR shall be vested with the power of final adjudication.  

Third, the power of interpretation of the NSL will be vested in the NPC Standing Committee. Therefore, the PRC will have the authority to set aside decisions by the HKSAR judiciary in cases involving claimants’ exercise of their civil and political rights, such as free speech, assembly and association. The PRC exercised this authority in five previous situations, including in 2016 when two pro-independence legislators modified their oaths of office.  

Fourth, as noted above, the NSL provides that in case of a conflict of laws between the NSL and HKSAR laws, the NSL will prevail. Consequently, the HKSAR judiciary will be prohibited from exercising its full independent authority in deciding cases related to rights and freedoms contained in the Basic Law and the BORO that implements those rights in HKSAR law.

2. The National Security Law Interferes in the HKSAR’s Governmental Autonomy

The NSL’s requirement that the PRC establish an Office for Safeguarding National Security of the PRC in the HKSAR to supervise, guide, coordinate and support “the HKSAR in performing its duties on safeguarding national security,” and exercise jurisdiction over select cases, interferes in the HKSAR’s independence in its governmental and administrative functions. In particular, it violates Article 22 of the Basic Law, which provides that “No department of the Central People’s Government and no province, autonomous region, or municipality directly under the Central Government may interfere in the affairs which the [HKSAR] administers on its own in accordance with this Law.”

The NSL’s requirement that the HKSAR establish a Committee to Safeguard National Security, to be supervised by and accountable to the Central People’s Government, and the PRC’s appointment of a national adviser to the Committee, constitute further encroachments on the HKSAR’s autonomy.

As a result of the NSL’s requirements that the Office to Safeguard National Security and the Committee to Safeguard National Security be established, the PRC is intervening in the HKSAR’s responsibility to manage pro-democracy protests. These requirements also contravene Annex I of the Joint Declaration, which states that:

53 Basic Law, Articles 80 and 82.
55 Basic Law, Article 39 provides that “[t]he provisions of the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and international labour conventions as applied to Hong Kong shall remain in force in force and shall be implemented through the laws of the Hong Kong Special Administrative Region.” Also see 1991 Hong Kong Bill of Rights Ordinance, Cap. 383.
56 NSL, Articles 48, 49, and 55.
57 NSL, Article 12 and 15.
[t]he maintenance of public order in the [HKSAR] shall be the responsibility of the [HKSAR] Government. Military forces sent by the Central People’s Government to be stationed in the [HKSAR] for the purpose of defence shall not interfere in the internal affairs of the [HKSAR].

B. The National Security Law’s Threat to Individual Rights and Fundamental Freedoms

1. Freedom from Arbitrary Arrest and Detention

The four crimes proscribed in the NSL: secession, subversion, terrorism and foreign interference, are all broadly and vaguely defined. Consequently, it is unclear what acts may constitute a crime, and there exists a significant risk that the NSL will be applied in an arbitrary and disproportionate manner.

Also, since the NSL prevails over the Basic Law, there is no means to challenge the vague definitions of the crimes in the HKSAR as violations of rights protected under the Basic Law and the BORO. The law’s broad application also extends to acts committed outside the HKSAR by persons who are not HKSAR residents, thus potentially criminalizing any act of dissent against the PRC by anyone anywhere in the world. Moreover, the NSL reverses the presumption that suspects will be granted bail and suggests “there is no time limit on how long suspects can be held.”

2. The Right to a Fair Trial

The NSL’s authorization of the PRC’s exercise of jurisdiction over select cases, including those deemed by the PRC to be “serious” or “complex,” creates a substantial risk of transfer of the accused to mainland China to face trial and punishment, since the NSL provides that the Supreme People’s Court of the PRC “shall designate a court to adjudicate it.” Moreover, the law allows for exclusion of the media and the public from trials, denies the right to trial by jury, violates the accused’s right of appeal by denying judicial review, and undermines judicial impartiality by charging a PRC official to handpick judges.

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58 Joint Declaration, Annex I, Article XII.
59 NSL, Article 43.
61 NSL, Article 38.
63 NSL, Article 42.
65 NSL, Articles 55 and 56.
66 NSL, Article 41.
67 NSL, Article 46.
69 NSL, Article 44.
3. Freedom from Arbitrary Interference with Privacy

The broad powers of law enforcement authorities under Article 43 of the NSL, regarding searches, seizures, interceptions of communications, and seizure of travel documents, extend to requiring “an agent of authorities or a political organisation of a foreign country” to provide information, and are elaborated further in the Implementation Rules for Article 43 of the NSL. The Implementation Rules grant extensive police powers that allow for searches of private property without a warrant, covert digital surveillance, and interception of messages. Moreover, internet providers can be required to share data with police and restrict or prohibit access by any person to their internet messages and platforms.

4. Freedom of Expression and Rights to Association and Peaceful Assembly

The chilling effect of Article 43 of the NSL and the Implementation Rules on freedom of expression and the rights of association and peaceful assembly will likely be compounded by the vague wording and broad scope of the four crimes set forth in the NSL. The result is to criminalize the acts of pro-democracy activists and human rights defenders. For example, a person who “requests a foreign country or an institution, organization or individual” outside of the PRC or HKSAR to provoke by “unlawful means hatred among” HKSAR residents toward the PRC can be charged with “collusion with a foreign country.”

Thus, in making the incitement of hatred towards the PRC government a crime, the new law limits freedom of expression, which includes the right to hold opinions and to seek, receive and impart information and ideas through any media. The NSL requirement that the HKSAR “promote national security education in schools and universities,” constitutes a threat to academic freedom, which is causing uncertainty among scholars and teachers and forcing them to self-censor for “fear that the vaguely defined crime of collusion could be applied to international academic collaborations.” The NSL has already led the HKSAR Education Secretary to ban singing protest songs and other political expressions and slogans on campuses.

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70 NSL, Article 43.
72 Implementation Rules, paras. 1 and 6.
73 Implementation Rules, para. 4.
74 NSL, Article 29.
76 Universal Declaration of Human Rights, Article 19; International Covenant on Civil and Political Rights, [ICCPR] Article 19; BORO, Article 16.
Further, the NSL’s criminalization of “other dangerous activities, which seriously jeopardize public, health, safety or security”\textsuperscript{79} threatens press and internet freedoms and can result in removal of material from the internet and interference with social media.\textsuperscript{80} The effects of the law can already be seen by the deletion of social media accounts belonging to HKSAR residents and the increase in VPN (virtual private network) subscriptions.\textsuperscript{81} While States may restrict the right to free expression for legitimate national security concerns,\textsuperscript{82} peaceful expressions of opinions about independence do not constitute a threat to national security.\textsuperscript{83} In such cases, application of the NSL would violate the Basic Law and the BORO;\textsuperscript{84} the Johannesburg Principles on National Security, Freedom of Expression and Access to Information; and the Global Principles on National Security and the Right to Information (the “Tshwane Principles”).\textsuperscript{85}

5. Freedom to Participate in the Political Process/Freedom of Movement

The NSL is also a threat to the ability of HKSAR residents to participate in public affairs,\textsuperscript{86} leading to the disbandment of political opposition parties and the resignation of other activists.\textsuperscript{87} The HKSAR political party of activist Joshua Wong, Demosistō, disbanded mere hours after the adoption of the NSL.\textsuperscript{88} Moreover, under the NSL, people can be prevented from leaving the HKSAR.\textsuperscript{89}

6. Immunity for Authorities Under the NSL

The threats to individual human rights and freedoms are further heightened by the lack of accountability and justice for violations of those rights and freedoms by the staff of the Mainland National Security Agency and the Agency itself since they are not subject to the jurisdiction of HKSAR.\textsuperscript{90} The decisions of the Committee for Safeguarding National Security of the HKSAR are also exempt from judicial review.\textsuperscript{91}

\begin{footnotesize}
\textsuperscript{79} NSL, Article 24.
\textsuperscript{80} Rogers, Benedict. “When Thousands Stand up Again for Democracy in Hong Kong - UCA News.” ucanews.com, July 13, 2020.
\textsuperscript{81} Feng, Emily. “5 Takeaways From China’s Hong Kong National Security Law.” NPR. NPR, July 1, 2020.
\textsuperscript{82} ICCPR, Article 19(3)(b).
\textsuperscript{84} Basic Law, Article 27; BORO, Article 16.
\textsuperscript{86} See NSL, Article 29.
\textsuperscript{88} NSL, Article 43(2).
\textsuperscript{89} NSL, Article 60.
\textsuperscript{90} NSL, Article 14.
\end{footnotesize}
V. Further Action is Needed by the United States, Other Nations and the United Nations

The proposal, unilateral adoption, and imposition of the NSL by the PRC has elicited strong objections from governments, parliamentarians, bar associations and civil society, including the following:

- **United States Secretary of State certification to Congress**, pursuant to Hong Kong Human rights and Democracy Act of 2019, that the HKSAR no longer warrants separate treatment under US law (May 27, 2020)
- **UK Ambassador + 27 countries** (June 30, 2020)
- Patten-led group of 899 international Parliamentarians decry ‘Flagrant breach of the Sino-British Joint Declaration’ (July 2, 2020)
- European Parliament Resolution on the PRC national security law for Hong Kong and the need for the EU to defend Hong Kong’s high degree of autonomy (2020/2665)(RSP)) (June 19, 2020)
- **G7 Foreign Ministers’ Statement on Hong Kong** (June 17, 2020)
- **International Bar Association** ‘China’s National Security Law for Hong Kong contrary to Rule of Law’ (July 1, 2020)
- Bar Human Rights Committee of England & Wales: Hong Kong: China’s proposed national security laws should be withdrawn with immediate effect (May 27, 2020)
- **Statement of Hong Kong Bar Association on proposal of National People’s Congress to enact National Security Law in Hong Kong (25 May 2020)**
- **Amnesty International Statement** (July 1, 2020)

In response to the PRC’s actions, on July 14, 2020 the United States President issued an Executive Order determining that the HKSAR is no longer sufficiently autonomous and ordering elimination of the “special status” for the HKSAR under United States laws. In addition, the President announced new sanctions through both the Executive Order and the signing of the Hong Kong Autonomy Act, which was unanimously passed by Congress.

The Executive Order provides broad authority for asset freezing sanctions of foreign individuals and entities that are involved in, among others: developing, adopting or implementing the NSL; undermining democratic processes or institutions in the HKSAR; or limiting the freedoms of expression or assembly or arbitrary detention, torture or other gross violations of human rights. The Executive Order also expresses support for allowing persons from the HKSAR who face persecution or violence from the PRC to become eligible for lawful entry into the United States.

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94 Id., Section 4.
95 Id., Section 3(k).
The Hong Kong Autonomy Act directs the President to impose sanctions, including the denial of visas for travel to the United States and blocking assets that are subject to United States jurisdiction, of foreign persons who have “materially contributed” to the diminution in the HKSAR’s autonomy as well as sanctions on “foreign financial institutions” that engage in a “significant transaction” with such persons.\textsuperscript{96} In addition, the Act requires that the Secretary of State, in consultation with the Secretary of the Treasury, to submit a report to Congress identifying “persons” that materially contribute to the failure of the PRC to meet its obligations under the Joint Declaration or the Basic Law.\textsuperscript{97}

The American Bar Association believes that further action is needed from the United States as well as other nations and the United Nations to ensure that the institutions that safeguard the protection of those rights and underpin the HKSAR’s democracy, including the judiciary, are not further endangered. The PRC’s decision to have the NSL take effect one hour before the 23\textsuperscript{rd} anniversary\textsuperscript{98} of the handover of Hong Kong by the UK to the PRC denotes the PRC’s intention to increase its control over the HKSAR and its people.

The real and present danger of the NSL is evidenced by the authorities’ immediate enforcement of the law which has included: (i) removal of books written by pro-democracy authors from public libraries to determine if they violate the new law;\textsuperscript{99} implementation of the PRC’s internet firewall on the HKSAR;\textsuperscript{100} arrest of 10 protestors and collection of DNA samples from them;\textsuperscript{101} and arrest, on charges of incitement to participate in an unlawful assembly, of pro-democracy politician Tam Tak-chi, who won an unofficial primary poll organized by the opposition to select candidates for HKSAR’s Legislative Council.\textsuperscript{102} These actions are, in all probability, only the beginning of the PRC’s use of the NSL to undermine the autonomy, democratic institutions and rights and freedoms in the HKSAR.

Accordingly, the American Bar Association supports enactment by the United States of legislation that: (i) condemns acts by the PRC that violate its obligations under international and national law, including the Joint Declaration and the Basic Law; (ii) asks other countries to support the people of the HKSAR and the rule of law; (iii) imposes sanctions against persons and entities who materially contribute to the contravention of the PRC’s obligations to the HKSAR under international and national law; (iv) permits HKSAR residents to be eligible for asylum in the United States; and (v) commits resources to monitoring and regularly reporting on the status of the HKSAR’s autonomy, judicial independence, protection and respect for human rights and the rule of law.

\textsuperscript{96} Id.
\textsuperscript{97} Id., Section 5(a) and 5(b).
\textsuperscript{98} “Hong Kong security law: What is it and is it worrying?” BBC News. BBC. June 30, 2020.
\textsuperscript{102} “Hong Kong police arrest pro-democracy politician set to run for legislature,” Reuters. July 17, 2020.
pending legislative initiatives that are consistent with the proposed Resolution are listed in the General Information Form attached to this Report.

The American Bar Association also reaffirms and reiterates its call, made in Resolution 91M114A, for the free movement of persons to and from the HKSAR and urges the United States to use its influence to encourage the continuance and growth of democratic institutions in the HKSAR.

**VI. Conclusion**

The unilateral introduction and imposition of the NSL on the HKSAR serves as a significant turning point in the PRC’s actions to diminish the autonomy, curtail the rule of law, and restrict the exercise of rights and freedoms in the HKSAR. Not only has the role and authority of the HKSAR legislature been abrogated, but the independence of the HKSAR judiciary, which supports and safeguards the civil and political rights essential to democracy in the HKSAR, are profoundly threatened. The impacts of the NSL on the human rights of residents of the HKSAR are already being felt. In sum, the ABA believes that urgent action is required by the United States, other nations, and the United Nations to ensure that the rule of law and human rights in the HKSAR are not further endangered.

Respectfully submitted,

John J. Morrissey, President,  
Massachusetts Bar Association  

August 2020
1. Summary of the Resolution(s). This resolution urges the United States, other nations and the United Nations to support the rule of law, human rights and judicial independence in the Hong Kong Special Administrative Region (the “HKSAR”), as such was established by the 1984 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”). This resolution also condemns the People’s Republic of China’s enactment of new national security legislation that violates principles expressed in the Joint Declaration and the Basic Law, calls for the nations of the world to support the people of Hong Kong in support of the rule of law, supports the imposition of sanctions against entities and persons who contravene these principles, allows for permanent residents of the HKSAR to apply for asylum wherever otherwise appropriate, including at United States consular offices, and calls for the commitment of resources sufficient to monitor and report on rule of law issues in HKSAR. Finally, this resolution calls on the People’s Republic of China to allow free movement of persons to and from the HKSAR and further urges the United States to use its influence to encourage the continuance and growth of democratic institutions in Hong Kong.


3. Has this or a similar resolution been submitted to the House or Board previously? No

4. What existing Association policies are relevant to this Resolution and how would they be affected by its adoption? Relevant ABA policies covering rule of law, governance issues, threats/violations of human rights include:

   • 1991M114A urges the United States government to use its influence in encouraging the continuance and growth of democratic institutions in Hong Kong;

   • 2018A106B “recognizes the important role that nonlawyer human rights defenders, journalists and others play in protecting justice and the rule of law, and deprecates attacks on those professions, as well as on individuals, aimed at silencing or intimidating human rights voices.”;

   • 2018A106A urges all governments to abide by their obligations to uphold an international order based on the rule of law; to respect human rights and
fundamental freedoms recognized by national and international law; to refrain from any attack on the independence of the judiciary, legal profession, and systems of justice.....to ensure adequate remedies, including protective measures, reinstitution of licenses, and damages, to victims of such attacks;

• 2007A110D adopting Principles on Judicial Independence and Fair and Impartial Courts;
• 2007A110E supporting international standards on judicial independence;
• 2019M113B - respect for human dignity

This resolution fills in gaps to address Hong Kong/PRC situation directly and permit further policy in this area.

5. If this is a late report, what urgency exists which requires action at this meeting of the House?

Foundational laws since 1991 guaranteed Hong Kong certain autonomy. Now, new legislation from China ignores Hong Kong autonomy and has imposed new security restrictions that threaten not only Hong Kong's legislative autonomy but also its judicial independence. This followed a year of intimidation and crackdown on protests.


Here are hyperlinks and summaries of legislation, currently pending in Congress, that is consistent with the proposed resolution:

**S. 3892 Hong Kong Victims of Communism Support Act**
This bill would make certain Hong Kong residents eligible for asylum status. To qualify, an individual must have the right of abode in Hong Kong since birth and must have maintained continuous residency in Hong Kong since birth. Under this bill, an otherwise qualified individual would not be denied asylum because of a politically motivated adverse government action, such as an arrest. The bill would also require the Department of State to report to Congress a strategy for providing assistance to other countries offering to provide migration services and asylum to eligible Hong Kong permanent residents.

**H.Res. 994 and S.Res. 608**
This bill would condemn the imposition of national security legislation with respect to Hong Kong, as well as the use of violence and imprisonment as means of repression; urge the United States to protect its interests in Hong Kong and the freedom of the people of Hong Kong; call upon the Hong Kong Chief Executive to allow the people of Hong Kong to exercise their rights, and encourage the
formation of an international coalition to demand that China adhere to its international obligations.

**S. Res. 596 and H. Res. 974 A**
This bill condemns the new national security law as a violation of China’s international obligations; urges the US government to use all diplomatic means including targeted sanctions to compel this PRC government to rescind it; and calls upon other countries to support the people of Hong Kong.

**H.R.6947 Hong Kong Freedom Act**
This bill would authorize the President to recognize Hong Kong as a separate and independent country from China.

**S. 2758 and H.R. 5725**
This bill would direct the President to impose sanctions on, and freeze assets belonging to, individuals and entities responsible for suppressing freedoms in Hong Kong. It would direct the President to impose property and visa-blocking sanctions on any foreign person who is an official of Hong Kong's government or China’s government and who knowingly suppresses freedom of speech, association, procession, or demonstration in Hong Kong. These sanctions would also apply to foreign individuals or entities acting on behalf of or cooperating with such a government officials. The bill would also direct the President to block property transactions involving Chinese nationals, entities owned or controlled by China's government, and officers and senior officials of such entities, if those individuals or entities attempt to undermine the autonomy, basic liberties, and human rights of the people of Hong Kong.

**H.R. 4270**
This bill would direct the President to prohibit the issuance of licenses to export certain defense items and services to the Hong Kong Police Force or the Hong Kong Auxiliary Police Force. Items subject to the prohibition would include defense articles and services on the U.S. Munitions List and certain crime-control and detection technology and software. The prohibition will not apply to a particular license if the President certifies to Congress that the covered exports are important to U.S. national interests and foreign policy goals. The prohibitions terminate when the President certifies to Congress that (1) the covered Hong Kong forces have not engaged in gross human rights violations for the one-year period leading up to the certification, (2) there has been an independent examination of human rights concerns related to the covered forces' crowd-control tactics, and (3) the Hong Kong government has adequately addressed such concerns. The bill would require the Department of State and the Department of Commerce to report to Congress as to items subject to the prohibition that have been exported to the Hong Kong forces covered in the bill in the last five years.
**H.R. 4551 and S. 1824**

This bill would direct the Department of State to report to Congress on China’s activities in relation to Hong Kong. The report would assess how the Chinese government extradites or coercively moves foreign nationals, including U.S. citizens, from Hong Kong to mainland China. It would also describe how China uses Hong Kong to avoid U.S. export controls, duties on imported goods, and sanctions. The bill would require the State Department report on China's use of Hong Kong security agencies to (1) conduct espionage against foreign nationals, (2) conduct influence operations, and (3) violate civil liberties protected under Hong Kong law.

7. **Brief explanation regarding plans for implementation of the policy, if adopted by the House of Delegates.**

   Continue programming, rule of law letters, presidential statements and lobbying efforts for legislation.

8. **Cost to the Association.** (Both direct and indirect costs) None.

9. **Disclosure of Interest.** (If applicable) N/A

10. **Referrals.** This resolution and report has been referred to date to:

    - Center for Human Rights;
    - ABA Rule of Law Initiative;
    - Section of International Law;
    - Criminal Justice Section.

11. **Name and Contact Information** (Prior to the Meeting. Please include name, telephone number and e-mail address). *Be aware that this information will be available to anyone who views the House of Delegates agenda online.*

    **Massachusetts Bar Association:**

    Michael Greco
    Michael.greco@klgates.com
    (617) 470-5852

    Kevin Curtin
    kevinjcurtin@me.com
    (508) 423-0140

    **ABA Section of International Law:**
12. Name and Contact Information. (Who will present the Resolution with Report to the House?) Please include best contact information to use when on-site at the meeting. Be aware that this information will be available to anyone who views the House of Delegates agenda online.

Steven Richman
srichman@clarkhill.com
+1 609 785 2911
EXECUTIVE SUMMARY

1. Summary of the Resolution.

This resolution urges the United States, other nations and the United Nations to support human rights, the rule of law and judicial independence in the Hong Kong Special Administrative Region (the “HKSAR”), as established by the 1984 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”).

This resolution also condemns the People’s Republic of China’s enactment of new national security legislation that violates principles expressed in the Joint Declaration and the Basic Law, calls for the nations of the world to support the people of Hong Kong in support of the rule of law, supports the imposition of sanctions against entities and persons who contravene these principles, allows for permanent residents of the HKSAR to apply for asylum wherever otherwise appropriate, including United States consular offices, and calls for the commitment of resources sufficient to monitor and report on rule of law issues in HKSAR.

Finally, this resolution calls on the Peoples Republic of China to allow free movement of persons to and from the HKSAR and further urges the United States to use its influence to encourage the continuance and growth of democratic institutions in Hong Kong.

2. Summary of the issue that the resolution addresses.

This resolution addresses violations of foundational rule of law principles that are part of the relationship between Hong Kong and the People’s Republic of China, attacks on the independence of lawyers and the judiciary, immigration issues and pending U.S. legislation.

3. Please explain how the proposed policy position will address the issue.

This resolution expands current policy that is more general and particularizes issues relating to Hong Kong by identifying specific acts and features of the new security legislation and override of Hong Kong autonomy.

4. Summary of any minority views or opposition internal and/or external to the ABA which have been identified.

None known.