

Congressional-Executive Commission on China
“Hong Kong’s Summer of Discontent and U.S. Policy Responses”
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Chairman McGovern, Co-Chairman Rubio, and Members of the Commission,

Thank you for this hearing opportunity. It is an honor for me to stand in solidarity with the frontline activists. I want to thank the Commission members for their critical support for the Hong Kong people and leadership on the *Hong Kong Human Rights and Democracy Act* and the *Protect Hong Kong Act*.

Over the past three months, the whole world has witnessed a historic David and Goliath standoff. Against all odds, the Hong Kong people are standing up to the powerful, authoritarian regime in Beijing. In this historic battle, they are not only fighting for the democratic future of 7.4 million Hong Kong people, but they also holding the regional and global frontline on preserving human dignity and rights for all people.

The past “summer of discontent” is in fact part of years of ongoing resistance by the Hong Kong people against Beijing’s encroachment on Hong Kong’s autonomy, rights, and freedoms. This peaceful resistance has included mass demonstrations against the proposed Article 23 security legislation¹ (2003), against official brainwashing of the so-called patriotic education² (2012), and against the gutting of promises of genuine universal suffrage³ (2014). After the clearance of the Occupy Central sites in December 2014, democracy activists left a promise inscribed on the concrete sidewalks: *We will return*. They have kept that promise.

Instead of Beijing’s hoped for movement fatigue, the protests are moving into the 15th week pressing for five non-negotiable demands, supported by unflagging solidarity and broad participation of diverse sectors of Hong Kong society. The out-of-control lawless actions of the Hong Kong police have only provided mobilization fuel for the Hong Kong people to “add oil.”

As Chairman Mao said: “Where ever there is suppression, there will be resistance!”⁴ The Communist Party of China leadership understands and fears this, as highlighted by Xi Jinping’s ramped-up invocation of Cultural Revolution “struggle” (*douzheng* 斗争) terminology.⁵

What actions can the international community and, specifically the U.S. government, take to further support Hong Kong people in what will clearly be a long struggle?

We need to first address the tensions that were baked into the One Country, Two Systems framework, perhaps making One Country into One System an inevitable outcome. Taiwan’s

President Tsai Ing-wen's takeaway⁶ from the current political crisis in Hong Kong hits the nail on the head—not only is One Country, Two Systems not a viable model for Taiwan, but the Hong Kong example proves that dictatorship and democracy cannot co-exist.

Rule of law and why it matters

An independent functioning rule of law is essential to protecting rights and preserving Hong Kong's promised autonomy. However, glaring rule of law deficits in the mainland “rule the country by law” approach (aside from the obvious fact it is *not* a rule of law) have implications for Hong Kong's rule of law.

- First, the mainland Chinese state Constitution and numerous high-level policy pronouncements legitimize the principle that *subordinates law to the leadership of the Party*.⁷ Anyone who challenges or is perceived to challenge the Party's leadership or disagrees with its policies or criticizes “Xi Jinping Thought on Socialism with Chinese Characteristics for a New Era” (now also enshrined in the state Constitution) runs the risk of criminal prosecution, on charges including inciting subversion and subversion of state power, which carry potential heavy prison sentences. The reintroduction of Article 23 security legislation in Hong Kong will inevitably carry the imprints of the Party's concept of national security.

Notwithstanding the fact that independence is clearly not one of the five demands of the protests, Beijing's invocation of terrorism, splittism, and separatism (China's “three evils” approach”) is also building a foundation for the reintroduction of Article 23 security legislation.

- Second, the demand for complete loyalty to the Party from not only Party members, but also from judges, lawyers, teachers, media workers, and every sector of society, guts the independence of the legal profession⁸ and media,⁹ —two key pillars for ensuring a rule of law. But Hong Kong is not the mainland—yet. Despite efforts like the proposed *National Anthem Law* and forced loyalty requirements, loyalty, pride, and love cannot be legislated.
- Third, the Party has expanded its control beyond the administrative branch (where Party committees are already installed in government organs at all levels) to the legislative¹⁰ and judicial organs.¹¹ Most recently, on September 10, 2019, a Central Inspection Group of the Party announced that in addition to its inspection tours of the Supreme People's Court, Supreme People's Procuratorate, and Ministry of Justice, it would also work *inside* the SPC, SPP, and MOJ for two months.¹² Party control of Hong Kong via the Macao Hong Kong Liaison offices is now more direct and public.

It is not surprising then that the Hong Kong people, foreign business, and the international community were alarmed by the prospect of being subjected to such a “rule the country by law” system—one also marked by rights violations including torture and abuse in detention, forced disappearance, televised confessions, and criminalization of and crackdowns on legitimate exercise of rights.

In addition, developments in Hong Kong have contributed to undermining its long-established rule of law and eroding public faith and confidence in the government, the legal system, and law enforcement, including:

- Selective arrests and politicized prosecution of protesters, high-profile democracy activists, and legislators, and the imposition of disproportionately heavier sentences related to misuse and application of the *Public Order Ordinance*.
- Police acting with impunity trampling on rights to peaceful assembly and expression and to freedom from torture, ill-treatment, or abuse. Allegations of police misconduct include the use of excessive force in violation of international standards, refusal to show ID cards or other official identification, increasing incidents of torture and abuse, and delay in providing medical attention and restriction to access to lawyers. We see evidence of this impunity every day, in video after video.
- The use of “decoy” undercover police disguised as protestors (initially denied by the authorities) to conduct surveillance, sow distrust, participate in crowd control actions, and conduct arrests.
- Concerns regarding the role of mainland police and security forces in cooperation with the Hong Kong police. For example, in August 2018, the *People’s Daily* announced the establishment of the Greater Bay Area Police Cooperation Mechanism, among Guangdong, Hong Kong, and Macao.¹³ Part of or related to this mechanism, the Guangdong’s Public Security Department (*gongan ting* 公安厅) has conducted training of key Hong Kong police personnel in Guangdong.
- Concerns regarding potential infiltration by or use of mainland security or police forces in Hong Kong territory have also been generated by contested videos capturing officers using *putonghua* or phrases not commonly used by Hong Kong people such as “comrade” (*tongzhi*, 同志),¹⁴ and a photo showing a police badge belonging, on record, to a female officer worn by a male officer.¹⁵
- The Notice of No Objection has granted the police the legal tool to clamp down on any peaceful protests. Therefore, Hong Kongers face the ridiculous situation where the police can deny application for a Notice of No Objection filed by a group for a peaceful assembly to protest police violence. More importantly, this misuse of the procedure undermines the right to peaceful assembly under international standards by imposing unduly restrictive administrative requirements on the exercise of the right.

Instead of addressing the rampant police violence and misconduct and misuse of law that is fueling public anger and protests, the Chief Executive has maintained a hardline echoing Beijing’s law-and-order rhetoric and economic priorities. She has refused to establish an independent commission of inquiry as demanded by the protesters and in fact recommended by the UN Human Rights Committee in 2013 in addition to its recommendation that there be training for the police. Instead, she is relying on a toothless Independent Police Complaints

Council (IPCC) fact-finding study exercise that is woefully inadequate in terms of independence, credibility, and even competency.¹⁶

Why the UN and international human rights standards must be defended

China's aggressive activism at the UN is undermining international standards, weakening existing human rights mechanisms and processes, and restricting the participation of independent civil society voices. This cuts the Hong Kong people (as well as human rights defenders in mainland China and Tibetan and Uyghur communities) from the key international platform available to press for accountability for human rights abuses by China. Instead of the West's hoped-for convergence, China is not only not playing by the rules, it is also vocally and persistently asserting a set of relativist criteria that it alone can unilaterally apply.¹⁷ A Chinese official stated at the conclusion of China's 2013 UPR: "What I want to emphasize is that whether the shoes fit, only the person knows. On the human rights situation of China, the people who are most qualified to speak are the people of China."¹⁸

With this rhetoric, the Party-state conflation of itself, the nation, and 1.4 billion people is then deployed to deflect criticism of China's rights records and accuse its critics of "hurting the feelings of the Chinese people." Efforts to raise rights concerns regarding the 1.4 billion wearers of the shoes are attacked as interference with domestic affairs and China's sovereignty. This rhetorical strategy helps to intimidate and silence China's critics and deflect accountability from the state; and it also undermines international standards and processes for monitoring, assessing, and promoting human rights protections.

In addition to this rhetorical strategy, through its membership in the NGO Committee of the UN Economic and Social Council (ECOSOC), China works to block ECOSOC accreditation of any NGO it views as critical of China, and therefore considered anti-China. GONGOs do not face objections such as the point of order interruptions of Denise Ho's recent intervention at the Human Rights Council. The intervention last week by Patsy Ho, the representative of the Hong Kong Federation of Women, (an NGO with ECOSOC special consultative status since 2000),¹⁹ is illustrative. She defended the SAR government's handling of the protests and accused the Hong Kong protesters of "child exploitation" and more. Patsy Ho, the co-chairwoman and executive director of Macao casino operator MGM China Holdings, is also a Standing Committee member of the Beijing Municipal Committee of the Chinese People's Political Consultative Conference.²⁰

While the U.S. has strongly criticized the ineffectiveness of the Human Rights Council, its leadership remains influential in the international community and within the UN system to counter these trends.

When China has to rotate off and cannot run for Human Rights Council membership in 2020, this will be a good opportunity to get traction on key issues such as reforms of the NGO accreditation process and expansion of civil society participation. Although China can and will undoubtedly remain active as an observer state, and work through its proxy client states,

it will not have a vote and will be more procedurally limited. The U.S. should use its observer status and strengthen alliances with other democratic states to build joint concrete actions and strategies.

In addition, more effective use of international normative statements and recommendations regarding Hong Kong would be constructive to counter Beijing's vociferous assertions of its sovereignty and accusations of the international community's "interference." Some recent examples include statements of concern by the UN High Commissioner for Human Rights and by four UN special procedures.²¹

China strategic deployment of its "Discourse power"

China's strategic deployment of its "discourse power" (*huayu quan* 话语权) and Beijing's narrative of protester violence contribute to disempowering (as intended) the frontline democracy movement's efforts to get its own story/stories out to the Hong Kong public, people on the mainland, and the international community.

Since the CPC announced its "big external propaganda" project in 2009, China has invested billions to compete with Western media. The key goal then and now is to "constantly enhance the dominance and discourse power in the ideological field"²² to tell the China story. High-level pronouncements, in particular those by Xi Jinping, emphasize the priority of "enhancing China's influence and discourse power in regional and global governance."²³

In addition to its disinformation campaign, including the egregious use by *China Daily* on September 11, 2019 of a photo depicting the destruction of the World Trade Towers to warn of terrorist attack by Hong Kong protesters, Beijing is advancing a narrative of violence to frame the Hong Kong protests that is echoed uncritically by international community. Within this frame, the Hong Kong police—protected in full tactical gear, armed with rubber bullets, guns, tear gas, pepper spray, and batons, and wielding the coercive power of the state—is presented as one "side" of escalating violent clashes with civilian protesters. Hence calls for "both sides" to de-escalate that deflects attention from police accountability for its excessive use of force in violation of international standards, and its complicity with non-state violence, such as the triad-related attacks in Yuen Long.

More importantly, the narrow violence narrative framing of the situation on the ground is erasing or marginalizing (intentionally) the proliferation of creative and peaceful protest actions by diverse sectors of the Hong Kong population.

- Students are participating in class-boycott actions, forming a "human chain" of joined hands,²⁴ shouting slogans across different campuses,²⁵ and singing "Do You hear the People sing" during opening ceremony for the academic year when the Chinese national anthem was played. The motto of the school is "Live to Learn, Learn to Live."
- Elderly citizens—"silver-hair" volunteers—have organized "protect the children" actions²⁶ or marched to support younger protesters.²⁷

- Hong Kong people of all ages and backgrounds come together to sing “Glory to Hong Kong”—the Hong Kong protest anthem—in malls, streets, metro stations, and neighborhood gatherings, all shared on proliferating viral videos.²⁸ And Christians sing “Sing Hallelujah to the Lord” during marches and assemblies.²⁹
- A young child leads a call and response —香港人，加油 (Hong Kong people, add oil!) —from a flyover as the stream of marchers pass below.³⁰
- Since August, tenants in Hong Kong’s residential estates shout out their windows every night at 10 p.m. protests slogans with calls and responses echoing across different neighborhoods in Hong Kong.³¹
- During the “Hong Kong Way” human chain formed by over 200,000 people stretching over 60 km (37 miles) across the city on August 23, citizens climbed up to the iconic Lion Rock, their cellphones forming an unending line of light in the dark night.³²
- Since late June, Lennon Walls have appeared all over Hong Kong, in almost every district, and also in communities globally, including Japan, Canada, U.S., U.K., and Australia.
- Last Friday was Mid-Autumn Festival: A bakery shop in Sai Wan made moon cakes with protest slogans in support of Hong Kong citizens and anti-extradition movement.³³
- In typical creative humorous Hong Kong fashion, Hong Kongers are creating art, such as miniature figurines of protesters, with a life-like accurate details³⁴ or a Hong Kong version of a Goddess of Democracy.³⁵

This is what is happening on the ground. Hong Kong people are practicing democracy and exercising their freedoms for as long as possible. Hong Kongers are making the road by walking it. That is the real revolution already underway.

Thank you again for convening this hearing. I look forward to your questions.

¹ University of Hong Kong Faculty of Law, “Research on Article 23,” *Human Rights Portal*, <http://www.law.hku.hk/hrportal/basic-law/research-article-23>, last visited Sept. 18, 2019.

² Joyce Lau, “Thousands protest China’s plans for Hong Kong Schools,” *The New York Times*, Jul. 29, 2012, <https://www.nytimes.com/2012/07/30/world/asia/thousands-protest-chinas-curriculum-plans-for-hong-kong-schools.html>.

³ Sharon Hom, “The ‘Occupy Central 9’ cases: Rule of law or rule by law in Hong Kong?” *The Jurist*, Apr. 30, 2019, <https://www.jurist.org/commentary/2019/04/sharon-hom-central-9-rule-of-law-hong-kong/>.

⁴ Quotations of Chairman Mao, No. 5, Wei Yu Lv, (毛语录：5、哪里有压迫，哪里就有反抗！), <http://www.wyl.cc/geyan/lizhimingyan/1517760.html>, last visited Sept. 18, 2019.

⁵ In a speech to the Central Party School Youth Cadres Training Class on September 3, 2019, President Xi Jinping invoked the term “struggle” (*douzheng* 斗争) 58 times. Wang Zihui, “‘Struggle!’: Xi Jinping’s speech has deep meaning” (“斗争”！习近平这篇讲话大有深意), *Xinhua*, Sept. 4, 2019, http://www.xinhuanet.com/politics/xxjxs/2019-09/04/c_1124960210.htm.

⁶ Emerson Lim, “Hong Kong proves democracy, authoritarianism cannot coexist: Tsai,” *Focus Taiwan*, Aug. 20, 2019, <http://focustaiwan.tw/news/aip/201908200010.aspx>.

⁷ “The socialist system is the basic system of the People’s Republic of China. The leadership of the Communist Party of China is the defining feature of socialism with Chinese characteristics. Disruption of the socialist

system by any organization or individual is prohibited.” Article 1, para. 2, Constitution of the People’s Republic of China, promulgated by the National People’s Congress on December 4, 1982 (amend. Mar. 11, 2018), available at <http://en.pkulaw.cn/display.aspx?cgid=311950&lib=law>. See also Article 9, Regulations on Procedures for the Formulation of Administrative Regulations (promulgated by the State Council of the P.R.C. on Nov. 16, 2001, revised Dec. 22, 2017, effective May 1, 2018), available at www.gov.cn/zhengce/content/2018-01/16/content_5257039.htm. “The legislative affairs department of the State Council shall . . . draft the annual legislative work plan of the State Council, submit the proposed plan to the Party Central Committee and the State Council, and publish it to society after approval.” *Id.*

⁸ Jerome A. Cohen, “A looming crisis for China’s legal system,” *Foreign Policy*, Feb. 22, 2016, <https://foreignpolicy.com/2016/02/22/a-looming-crisis-for-chinas-legal-system/>.

⁹ See “Countries and regions: China,” *Reporters Without Borders*, <https://rsf.org/en/china>, last visited Sept. 18, 2019.

¹⁰ Effective May 1, 2018, the requirement that “legislation must be approved by the party committee” is written into the law for the first time since the Mao era. See “Revised *Regulations on the Procedures for the Formulation of Administrative Regulations* and revised *Regulations on the Formulation of Rules* are promulgated” (修订后的《行政法规制定程序条例》和《规章制定程序条例》公布), Ministry of Justice of the P.R.C., Jan. 17, 2018, http://www.moj.gov.cn/organization/content/2018-01/17/552_113641.html.

¹¹ “The Central Inspection Group No. 4’s mobilization meeting to inspect the Supreme People’s Court’s Communist Party Group has been held” (中央第四巡视组巡视最高人民法院党组工作动员会召开), Supreme People’s Court of the P.R.C., Sept. 10, 2019, <http://www.court.gov.cn/zixun-xiangqing-183772.html>.

¹² “The Supreme People’s Court’s Opinions on Deepening the Comprehensive Reform of the Judicial System of the People’s Court – Outline of the Fifth Five-Year Reform Program of the People’s Courts (2019-2023)” (最高人民法院 关于深化人民法院司法体制综合配套改革的意见 ——人民法院第五个五年改革纲要 (2019—2023)), Supreme People’s Court of the P.R.C., Feb. 27, 2019, <http://www.court.gov.cn/zixun-xiangqing-144202.html>.

¹³ “Police of Guangdong, Hong Kong, Macao discuss joint establishment of Greater Bay Security Area; plan establishment of leading mechanism for Greater Bay Police Cooperation” (粤港澳警方商议共建平安湾区 拟建立大湾区警务协作领导机制), *People’s Daily*, Sept. 8, 2018, <http://hm.people.com.cn/n1/2018/0908/c42272-30280788.html>.

¹⁴ In video taken of police outside Prince Edward MTR station, one officer says in Cantonese, “同志齊，同志齊，走得” (00:23). 【9.8 直播實錄】防暴警收隊講：同志齊，同志齊，走得, *Epoch Times*, Sept. 8, 2019, https://www.youtube.com/watch?v=vp80x5NYb_M. In video of police coming out of Causeway Bay station, they are seen throwing tear gas at a journalist, and an officer shouts in Mandarin, “左边、左边!” (00:22). @TuCaoFakeNews, Sept. 9, 2019 at 8:39 AM, <https://twitter.com/TuCaoFakeNews/status/1170859300886966273>.

¹⁵ A photo of a male police officer shows a badge number that corresponds to the record of a female officer. @liushihui, Jun. 13, 2019 at 7:11 AM, <https://twitter.com/liushihui/status/1138947067504541696>.

¹⁶ “Rights group questions suitability of Canadian appointee to watchdog,” *The Standard*, Sept. 6, 2019, <http://www.thestandard.com.hk/breaking-news.php?id=134228&sid=4>. Carrie Lam’s announcement of two more appointments to IPCC contributes to further straining of credibility: Paul Lam is a veteran barrister, former chairman of the Hong Kong Bar Association, who was criticized for his mild stance and general silence during the co-location controversy and wide public concerns about the encroachment of mainland laws on Hong Kong territory. Helen Yu is a retired veteran civil servant who served as a senior consultant for Carrie Lam’s election campaign when she ran for the Chief Executive. Yu also openly criticized suggestions for an independent commission of inquiry. Inviting a new international expert to serve on the IPCC special panel for conducting the study on incidents also raises questions. Gerry McNeilly, formerly Ontario’s Independent Police Review Director, was caught in a scandal involving an independent investigation against a Toronto police officer that was overturned by the Court in January 2019 because McNeilly had backdoor, undisclosed communications with the police.

¹⁷ Human Rights in China, “Stakeholder submission to the Human Rights Council in advance of the Third Periodic Review of the People’s Republic of China,” March 2018, https://www.hrichina.org/sites/default/files/hric_china_upr_2018_submission.pdf.

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- ¹⁸ “China Review – 17th session of the Universal Periodic Review,” *UN Web TV*, Oct. 22, 2013, <http://webtv.un.org/search/china-review-17th-session-of-universal-periodic-review/2760262774001/?term=&lan=english&cat=Universal%20Periodic%20Review&sort=date&page=47>.
- ¹⁹ “ECOSOC consultative status database,” *United Nations Department of Economic and Social Affairs*, <https://esango.un.org/civilsociety/consultativeStatusSummary.do?profileCode=1928>, last visited Sept. 18, 2019.
- ²⁰ Catherine Wong, “Businesswomen to defend Hong Kong government’s handling of protests at UN,” *South China Morning Post*, Sept. 8, 2019, <https://www.scmp.com/news/china/diplomacy/article/3026188/businesswomen-defend-hong-kong-governments-handling-protests>.
- ²¹ Mr. David Kaye (USA), Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Mr. Michel Forst (France), Special Rapporteur on the situation of human rights defenders; Mr. Clement Nyaletsossi Voule, Special Rapporteur on the right to peaceful assembly and association; Mr. Nils Melzer Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, “China/Hong Kong SAR: UN experts urge China to respect protesters’ rights,” *OHCHR*, Sept. 12, 2019, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24979&>.
- ²² Unofficial translation by HRIC.
- ²³ Unofficial translation by HRIC. In August, 2016, Xi Jinping pointed out at the symposium on promoting the construction of the “Belt and Road Initiative”: “[We must] introduce China’s standards, rules and concepts to gradually form a set of multilateral governance rules with Chinese imprints, expand the global partnership network based on our country, and enhance China’s influence and discourse power in regional and global governance.”
- ²⁴ Holmes Chan, “High school students form ‘human chain’ in support of Hong Kong protest movement,” *Hong Kong Free Press*, Sept. 9, 2019, <https://www.hongkongfp.com/2019/09/09/high-school-students-form-human-chain-in-support-of-hong-kong-protest-movement/>.
- ²⁵ “‘We need to elect our own government’ Joshua Wong Interview (2/2),” DW News, Sept. 11, 2019, <https://www.youtube.com/watch?v=RkRA6OgHg8k>.
- ²⁶ GoodNeighbournd, “守護孩子行動,” Sept. 5, 2019, <https://www.facebook.com/GoodNeighbournd/photos/a.1563622323932137/2095083654119332/>.
- ²⁷ “9,000 people take part in Silver Hair Silent March expressing support for young protesters” (9000 人參與銀髮族靜默遊行 表達長者支持年輕抗爭者), *The Stand News*, Jul. 17, 2019, <https://thestandnews.com/politics/9000-人參與銀髮族靜默遊行-表達長者支持年輕抗爭者>.
- ²⁸ See Stand News compilation of videos of “Glory to Hong Kong” sung in various malls in Hong Kong, <https://thestandnews.com/politics/睇片-遍地開花-多區市民自發高歌-願榮光歸香港>.
- ²⁹ <https://www.youtube.com/watch?v=ySwM0lppiBM>.
- ³⁰ “香港 818-小孩带头喊‘香港人’ 民众高声回应‘加油’,” *Voice of America*, Aug. 20, 2019, <https://www.youtube.com/watch?v=bTw7RMcc1pI>.
- ³¹ Stand News Facebook post, <https://www.facebook.com/standnewshk/videos/昨晚十時-光復香港口號遍各區/669737560213012/>.
- ³² “The Hong Kong Way 香港之路 和你拖上獅子山 8.23,” KASH Aerial Photography, Aug. 28, 2019, <https://www.youtube.com/watch?v=62uQEgMPIWQ>.
- ³³ “Hong Kong bakery makes anti-extradition moon cakes” (殺鞦韆？香港餅舖推出「反送中」月餅), *Liberty Times Net*, Aug. 19, 2019, <https://news.ltn.com.tw/news/world/breakingnews/2889580>.
- ³⁴ Made by Hong Kong People Facebook Page, 香港人製造, <https://www.facebook.com/MIHK818>.
- ³⁵ “Statue of Hong Kong’s Goddess of Democracy” (網民製《香港民主女神像》暫放中大), *Ming Pao*, Sept. 1, 2019, <https://news.mingpao.com/pns/要聞/article/20190901/s00001/1567277228764/網民製《香港民主女神像》-暫放中大>.