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'POSSIBLE REPERCUSSIONS OF CHINA'S NATIONAL SECURITY LAW FOR HONGKONG'

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The National Security Law (NSL) was passed by China's National People's Congress (NPC) Standing Committee (SC) on June 30, 2020, amidst considerable concern and controversy in Hongkong. There was no doubt that the Law would be passed especially because of the political turmoil in Hongkong which had lasted throughout the preceding year. Though the US and particularly UK, the former colonial master of the territory, had cautioned against enactment of the NSL saying it violated the provisions of the handover in 1997 and the guarantees given by China under the "one country, two systems" that allow Hongkong to retain some fundamental rights, Beijing pushed ahead.

2. The rapidly deteriorating China-US relationship, ensuing tensions and the fraught international environment, were compelling factors that ensured Xi Jinping and the Chinese Communist Party (CCP) leadership would not yield and push through this law, regardless of the Trump Administration's threats. While the NSL was listed on the agenda of the NPCSC, its details were kept secret until after it was passed, with even the Chief Executive (CE) of the Hongkong Special Administrative Region (HKSAR) Carrie Lam being kept ignorant of its provisions.

3. The 66-Article Law effectively gives Beijing powers it has never had before to shape life in Hong Kong. While critics say it curtails protest and freedom of speech, China asserted it will return "stability" to Hongkong. Provisions of the NSL do, however, go against The Basic Law, which states that Chinese laws cannot be applied in Hong Kong unless they are listed in Annex III.

4. In separate Sections the NSL criminalises any act of:

- secession (breaking away from the country);
- subversion (undermining the power or authority of the central government);
- terrorism (using violence or intimidation against people); and
- collusion with foreign or external forces

5. Articles 38 and 54 of the Law are of particular concern and confirm Beijing's authority over the HKSAR. Article 38 states: "This Law shall apply to offences under this Law committed

against the Hong Kong Special Administrative Region from outside the Region by a person who is not a permanent resident of the Region.” Article 54 stipulates: “The Office for Safeguarding National Security of the Central People’s Government in the Hong Kong Special Administrative Region and the Office of the Commissioner of the Ministry of Foreign Affairs in the Hong Kong Special Administrative Region shall, together with the Government of the Hong Kong Special Administrative Region, take necessary measures to strengthen the management of and services for organs of foreign countries and international organisations in the Region, as well as non-governmental organisations and news agencies of foreign countries and from outside the mainland, Hong Kong, and Macao of the People’s Republic of China in the Region”.

6. Salient provisions of the NSL include that:

- Crimes of secession, subversion, terrorism and collusion with foreign forces are punishable by a maximum sentence of life in prison;
- Damaging public transport facilities can be considered terrorism;
- Those found guilty will not be allowed to stand for public office;
- Companies can be fined if convicted under the law;
- Beijing will establish a new security office in Hong Kong, with its own law enforcement personnel - neither of which would come under the local authority's jurisdiction;
- This office can send some cases to be tried in mainland China;
- In addition, Hong Kong will have to establish its own national security commission to enforce the laws, with a Beijing-appointed adviser;
- Hong Kong's Chief Executive will have the power to appoint judges to hear national security cases, raising fears about judicial autonomy;
- Beijing will have power over how the law should be interpreted, not any Hong Kong judicial or policy body. If the law conflicts with any Hong Kong law, the Beijing law takes priority;
- Some trials will be heard behind closed doors;
- People suspected of breaking the law can be wire-tapped and put under surveillance;
- Management of foreign non-governmental organisations and news agencies will be strengthened; and
- The law will also apply to non-permanent residents and people "from outside [Hong Kong]... who are not permanent residents of Hong Kong".

7. While the UK has not yet reacted substantively except for deciding that Huawei will not be involved in the 5G roll-out and offering an easy route to permanent residence visas to 300,000 Hongkong residents, the US has made some moves, keeping in mind that the measures could harm Hong Kong citizens and US interests more than they would impact Xi Jinping and the CCP.

8. The Trump Administration has withdrawn trade benefits extended to Hongkong for many decades by the US and this will have an adverse impact on Hongkong trade. For a start it mandated (August 11) that all goods made in Hong Kong for export to the United States will need to be labelled as made in China after September 25. Such restrictions are likely to particularly impact Hongkong's position as the window for China's imports of dual use technology and equipment at a time when the US is already squeezing the supply of critical hi-tech items to China. On August 19, the US State Department notified that three bilateral agreements with Hongkong had been suspended, or terminated, on the ground that Beijing had eroded the high degree of autonomy it had guaranteed to Hongkong. The three agreements provided for the surrender of fugitive offenders, the transfer of sentenced persons and reciprocal tax exemptions on income derived from the international operation of ships.

9. One action that might introduce a degree of caution among Hongkong and Chinese Mainland officials is the US provision for sanctioning officials in China and Hongkong who take active part in framing or implementing repressive policies against the people. The Party Secretary of Xinjiang, Chen Quanguo reacted to being named as one such individual, and commented that he is not affected as he has no assets in the US. He is, however, the only official to have publicly made such a comment. Hongkong officials, however, might find themselves in a more difficult position as many of them have acquired properties and kept funds in the US, Canada, Australia, New Zealand etc. making them vulnerable. HKSAR CE Carrie Lam is one among the 11 Mainland and Hong Kong officials recently sanctioned by the US government, and consequently her younger son Joshua Lam Yeuk-hay, who was pursuing a PhD in Mathematics at Harvard, had to abruptly leave Boston in late July and return to Hongkong.

10. Though Beijing has said Hong Kong should respect and protect rights and liberties while safeguarding national security, many people fear the loss of Hong Kong's freedoms with this law. Professor Johannes Chan, a legal scholar at the University of Hong Kong told BBC before the passage of the law: "It is clear that the law will have a severe impact on freedom of expression, if not personal security, on the people of Hong Kong." He added "Effectively, they are imposing the People's Republic of China's criminal system onto the Hong Kong common law system, leaving them with complete discretion to decide who should fall into which system." There are reports of people deleting Facebook posts, and concerns that candidates opposing the national security law will be disqualified from running in elections. Many are afraid that Hong Kong's judicial independence will be eroded and its judicial system will look increasingly similar to mainland China's.

11. The repercussions of the NSL are being felt elsewhere too. Joshua Wong, who has been lobbying foreign governments to help the cause, quit his Demosisto party. The arrest of Apple Daily owner Jimmy Lai and 23-year old democracy activist Agnes Chow on August 10 morning sent shockwaves across the territory. Many residents came out in support of Jimmy Lai and

to show solidarity purchased extra copies of the Apple Daily -- whose sales jumped five-fold - which declared on its front page "Apple Daily will fight on!" A student representative of a student union placed an advertisement declaring: "Through blood, toil, tears and sweat, we will strive on. However difficult it may be, Hongkongers will eventually restore our city." The protests appear to have prompted the authorities to release Jimmy Lai the next day on a bail of HK\$ 300,000 and surety of HK\$ 200,000.

12. Other pro-democracy activists like Sunny Cheung, Nathan Law Kwun-chung, Wayne Chan, Honcques Laus, Samuel M. Chu (son of Rev. Chu Yiu-ming and one of 3 founders of the Occupy movement in 2014), Ray Wong Toi-yeung and Simon Cheng, a former employee of the British Consulate-General in Hong Kong, have fled Hongkong and sought asylum in the UK where they plan to set up a "parliament-in-exile". Veteran pro-democracy activist, Joseph Cheng, left Hong Kong for Australia where he said "People will not bow to this suppression, but they will also be very careful. It's natural they don't want to get arrested, and there will be all sorts of innovative and symbolic acts." Calls have gone out to people to make their purchases from "yellow stores", or shops that support the pro-democracy movement. The determination shown by the pro-democracy activists thus far and the huge one million plus turn outs for the protest marches are indication that the ground is fertile for disruptive activities to continue in Hongkong.

13. There is an international dimension to Beijing's action. Boldly backing the pro-democracy movement in Hongkong, Taiwan's President Tsai Ing-wen on June 18, announced formation of an office to assist Hongkong residents coming to Taiwan. The 'Taiwan-Hongkong Services and Exchange Office' was established on July 1. On June 30, the day the NSL was passed, she tweeted "China's disregard for the will of Hong Kong's people proves that "one country, two systems" is not viable. Many things have changed in #HongKong since 1997, but #Taiwan's commitment to supporting those #HKers who want freedom & democracy has never changed. #StandWithHongKong". With this tweet she has confirmed unacceptability of the "one country, two systems" formula to Taiwan and put a question mark on China's plans for reunification. Tension across the Taiwan Strait has consequently risen.

14. Anticipating such events, China appears set on expanding the scope and reach of the NSL. The CCP-owned Global Times (August 17) warned that "Hong Kong secessionists fleeing to the UK and promoting the "parliament in exile" severely breach and blatantly defy Article 29 of the national security law for Hong Kong" and "that those people, along with UK organizations or individuals who sponsored them, will face legal punishment no matter their whereabouts and face severe sanctions from China". The warning was repeated by China's Ambassador to the UK, Liu Xiaoming, who said that harbouring a so-called "parliament in exile" in the UK will set new severe obstacles to bilateral ties. Tian Feilong, a legal expert on Hong Kong affairs at Beihang University in Beijing, said Article 29 states that a person who conspires with a foreign country or an institution, organization or individual outside the mainland, Hong Kong and Macao, shall be guilty of an offense. "No matter where they are, be they in Hong Kong or outside of it, the mainland and SAR governments have the right to punish them". Whether UK will support such a "parliament-in-exile" – it hasn't yet shown the spine to confront China – will be an important factor that determines whether Hongkong acquiesces quietly or not.

15. The effect of China's National Security Law imposed on Hong Kong is being felt in American college campuses. On July 23, the Association for Asian Studies issued a statement advising professors to exercise caution while teaching courses that may "offend" governments. Classes at some elite universities are reported to have decided to carry the warning label this Fall: 'This course may cover material considered politically sensitive by China'. Schools are examining measures to try to shield students and faculty from prosecution by Chinese authorities. At Princeton University, students in a Chinese politics class will use codes instead of names on their work to protect their identities. At Amherst College a professor is considering anonymous online chats so students can speak freely. Harvard Business School may excuse students from discussing politically sensitive topics if they are worried about the risks.

16. The potential for the discontent in Hongkong to evolve into long-term civil disorder will be a concern for the CCP leadership. If a resistance movement emerges in Hongkong it could undermine Xi Jinping's position and make it difficult for the CCP to justify the reunification of Taiwan with the mainland. At the least this will delay the CCP's 'China Dream'.

17. India needs to take note of China's assertiveness in implementing the NSL as also its recent sensitivity to criticism by the Indian media of Chinese President Xi Jinping, as evident in the case recently involving an Indian media organisation. In order to safeguard the freedom of speech of Indian nationals and avoid their harassment from prosecution by China, it would be prudent to examine whether any of the Ministries of the Government of India have signed Agreements/MoUs with China assuring the return, or incarceration, of individuals sentenced to imprisonment by China and, if so, to terminate such Agreements/MoUs.

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