

**Prepared Statement**

**By**

**Veron Hung, JSD.**

**Associate**

**Carnegie Endowment for International Peace**

**1779 Massachusetts Avenue, NW**

**Washington, DC 20036**

**Presented at**

**Hearing on Recent Developments in Hong Kong**

**Before**

**Subcommittee on Asia and the Pacific,  
House International Relations Committee**

**On**

**June 23, 2004**

## **SUMMARY**

In the seventh year after Hong Kong's reversion to China, the former British colony experienced several challenges that have generated widespread concerns regarding the implementation of "one country, two systems." Yet, recent steps taken by Beijing and pro-democracy advocates in Hong Kong show their strong interest in developing constructive dialogue to mend their differences. Such dialogue would help develop mutual trust, which is crucial for democratic development in Hong Kong and the successful implementation of the "one country, two systems" principle.

The United States should welcome this progress. Any changes to the U.S. policy towards Hong Kong as stated under the U.S.-Hong Kong Policy Act are, therefore, premature. In addition, they could undermine Hong Kong's confidence and prosperity that the United States has committed to play an active role in maintaining, hinder the U.S. efforts in promoting political and legal reforms in China, and damage the economic interests of the United States in Hong Kong and the country's security interests in Asia.

## **INTRODUCTION**

During the first few months of the seventh year after Hong Kong's reversion, Beijing, to the great relief of Hong Kong's population and to the satisfaction of the international community, did not respond negatively to last July's 500,000-strong protest. Polls taken after the protest demonstrate that over 80 percent of respondents called for universal suffrage of Hong Kong's chief executive in 2007 and all legislators in 2008, the earliest allowed under the Basic Law, Hong Kong's mini-constitution. Believing that such strong demand for universal suffrage was fueled primarily by public dissatisfaction with Hong Kong's economic difficulties, Beijing facilitated economic growth by allowing more mainland Chinese to visit the city and granting Hong Kong businesses special trade benefits. Hong Kong's economy quickly revived. The population's confidence in the central government grew.

This rosy picture turned bleak in the remaining months. The landslide victory of pro-democracy candidates in district level elections held in November 2003 and an unexpectedly large demonstration of almost 100,000 on New Year's Day made Beijing realize that economic recovery did not dampen the public's desire for universal suffrage. The central government shifted to take a heavy-handed approach to handle the situation. The following months saw Hong Kong evolve through a series of challenges that has aroused widespread concerns about the implementation of "one country, two systems."

This testimony highlights these challenges and their impact on the implementation of the "one country, two systems" principle in Hong Kong, analyzes the prospects of democratization beyond the 10-year transition period set forth in the Basic Law, and discusses whether the United States should change its policies towards Hong Kong.

## I. Challenges and Their Impact

Hong Kong experienced three major challenges during the last few months of the seventh post-handover year.

### A. The Interpretation of the Basic Law

In early April 2004, the Standing Committee of China's National People's Congress ("NPC") interpreted two provisions of the Basic Law's annexes. One provision – paragraph 7 of Annex I -- concerns the electoral method of Hong Kong's chief executive. It states that "if there is a need" to amend the electoral method of the chief executives for the terms "subsequent to the year 2007," any amendment must be made with the endorsement of a two-thirds majority of Hong Kong's legislature and consent of the chief executive. The amendment must also be reported to the Standing Committee of the NPC "for approval." The other provision – part III of Annex II -- concerns the electoral method of Hong Kong's legislators and uses similar expressions except that any amendment to the electoral method must be reported to the NPC Standing Committee "for the record."

Before the interpretation was issued, the phrases "subsequent to the year 2007," "for the record", and "if there is a need" had generated heated debates. Pro-democracy advocates, the Hong Kong government and two mainland drafters of the Basic Law opined that "subsequent to the year 2007" includes year 2007, but some mainland experts and pro-Beijing figures in Hong Kong disagreed. The NPC Standing Committee decided that the phrase includes year 2007. This interpretation is welcome.

As regards the phrase "for the record," there was an opinion that the Basic Law itself provides a clear answer. Article 17(2) states that all laws – which, pro-democracy advocates argued, include electoral laws -- enacted by Hong Kong's legislature must be reported to the NPC Standing Committee "for the record" and that "the reporting for record shall not affect the entry into force of such laws." However, according to Article 17(3), the Standing Committee can reject any law passed by Hong Kong if it violates those provisions of the Basic Law concerning affairs within the responsibility of the central government or the relationship between the central government and Hong Kong. Any rejected laws shall immediately become invalid but the invalidation shall not have retroactive effect, unless stated otherwise in Hong Kong's laws.

This opinion was wrong, according to Qiao Xiaoyang, Deputy Secretary-General of the NPC Standing Committee, who was responsible for answering questions concerning the interpretation of the Basic Law. Mr. Qiao stated that Article 17 addresses the issue of reporting Hong Kong's local laws as a matter of record but part III of Annex II concerns "legislation on the constitutional level" and, therefore, "reporting as a matter of record here is different from reporting as a matter of record in Article 17." In other words, Mr. Qiao continued,

“the entire amendment process [provided under part III of Annex II] will take effect only after it has been reported to the NPC Standing Committee as a matter of record in accordance with the law. This interpretation fully shows that the central authorities have the power to decide on the development of Hong Kong’s political structure from beginning to end. This conforms to the Basic Law.”

The absence of a subject in the phrase “if there is a need” sparked some controversies about who has the power to decide whether a need exists. The pro-democracy force in Hong Kong suggested that the absence of a subject in the phrase meant that an amendment to the method for electing the chief executive or legislators could be initiated in Hong Kong and should, if endorsed by two-thirds of all the members of the local legislature and approved by the chief executive, be passed on to Beijing “for approval” or “for the record.” Perceiving such interpretation as denying the central government’s power to decide on the development of Hong Kong’s political structure, the NPC Standing Committee interpreted the phrase “if there is a need” to mean that Hong Kong’s chief executive must submit a report to the Standing Committee if an amendment is needed, and the Standing Committee shall decide whether or not there is indeed such a need. Mr. Qiao explained that as the chief executive represents the entire city, his report “should represent the views of various circles, sectors, and strata in Hong Kong.”

Responses to Beijing’s interpretation of the Basic Law were mixed. Some legal experts found it “a mild interpretation” and necessary for clarifying the above ambiguities. Others, while acknowledging Beijing’s power to interpret the Basic Law, argued that Beijing should use this power sparingly and cautiously and the interpretation was unnecessary and put “one country, two systems” and Hong Kong’s high degree of autonomy at risk. Public confidence in the central government and Hong Kong government plummeted. Only 50 percent of 1,022 respondents in a poll taken after the incident said that they had confidence in the “one country, two systems” concept, compared to 57 percent recorded in an earlier poll. The percentages of respondents who said they had trust in the central government and in the Hong Kong government were 38 percent and 28 percent respectively, comparing to 43 percent and 34 percent in a previous poll.

## B. The April 26 Decision

Following the interpretation of the Basic Law, Chief Executive Tung Chee-hwa submitted a report to the NPC Standing Committee. He recommended changes to the method for electing the chief executive and legislators in and after 2007, but also listed stringent conditions for such a change.

On April 26, 2004, the NPC Standing Committee adopted a decision to rule out universal suffrage of Hong Kong’s leader in 2007 and all legislators in 2008. It also ruled that the ratio of legislators directly elected by geographical constituencies to those elected by professional and business groups called functional constituencies shall remain

one to one. Yet, the Standing Committee decided that other changes to existing electoral methods are possible so long as they are consistent with the principle of proceeding in a “gradual and orderly” manner, as laid down in the Basic Law. Current Chief Executive Tung Chee-hwa was chosen by an 800-member committee. In September 2004, half of 60 legislators will be directly elected, while the other half will be returned by functional constituencies.

Beijing said that the April 26 decision marked a “new starting point,” not the end, of democratic development in Hong Kong. Critics were furious and some called it “a naked use of power with no legal basis.” The media lamented April 26, 2004 as “a sad day for China.”

### C. The Resignation of Three Talk-Show Hosts

In May, three outspoken radio talk-show hosts resigned, alleging explicitly or implicitly that Beijing pressured or threatened them to quit. Although the evidence is elusive, six out of 10 people surveyed believed that political pressure had induced these broadcasters’ resignations.

Overall, these three incidents have presented challenges to the autonomy, rule of law, and civil liberties in Hong Kong. Worries about erosion of these values have mounted. Public confidence in the implementation of “one country, two systems” has dropped. In a poll, two-thirds of the respondents said that the political atmosphere was worsening. Over half opined that the central government was overly involved in Hong Kong. More than 200 professionals and scholars signed a statement, declaring that they were “greatly disturbed” by the increasing erosion of Hong Kong’s core values, which, according to their definition, include, *inter alia*, human rights, the rule of law, and the upholding of professionalism.

## II. Prospects of Democratization beyond the Ten-Year Transitional Period

The April 26 decision makes it clear that the earliest possible time to have universal suffrage of Hong Kong’s Chief Executive and all legislators is 2012. Nevertheless, methods for electing the Chief Executive in 2007 and legislators in 2008 could be more democratic than the current mechanism. The prospects of having universal suffrage in Hong Kong in the near future and the degree of democracy the city can enjoy in 2007 and 2008 will hinge on whether Chinese leaders can dispel their fear of democratic development in Hong Kong.

The Chinese Communist Party fears that democratization in Hong Kong would affect the party’s control over Hong Kong and would have spillover effects in China, which would, in turn, undermine the party’s governance in the country. Such fear also explains Beijing’s resistance to testing universal suffrage in Hong Kong even though the city satisfies the condition of adequate education level as mentioned by Premier Wen Jiabao during his interview with the Western media in late 2003. Mr. Wen explained that, due to the population’s inadequate education level, China can only have direct elections

in villages, introduce suffrage for the election of people's deputies at the level of townships and counties, and practice indirect elections for the leadership of provinces, autonomous regions, municipalities, and central authorities.

Beijing's fear of democratic development in Hong Kong is enormous. This is reflected in the high price that Beijing was willing to pay when it interpreted the Basic Law and issued the April 26 ruling. Chinese leaders knew very well that their actions would cause a major blow to public confidence in Hong Kong, draw condemnations from the international community, and tarnish the image of "one country, two systems" so severely that Taiwanese would find peaceful reunification under this formula untenable. In fact, even though the majority of Hong Kong people oppose independence for Taiwan, they have lost so much faith in the "one country, two systems" model that approximately 37.6 percent of 1,027 respondents in a poll said the model would not be suitable for Taiwan.

Such enormous fear also blurs Chinese leaders' vision, causing them to take measures that are disproportionate to the actual situation in Hong Kong. Take the April 26 decision as an example. Before it was made, polls showed that public support for universal suffrage in 2007 and 2008 had dropped from over 80 percent last July to about 50 percent. A growing number of Hong Kong people had faced the political reality that Beijing would not approve full democracy in the near future. The drop in support for universal suffrage in those two years was most obvious after Beijing interpreted the Basic Law. Pragmatic politicians and scholars had also begun proposing alternative reform plans. Some suggested, for example, that the size of a committee that is responsible for electing Hong Kong's chief executive should be expanded from 800 members to at least two thousands.

Beijing should be pleased to see these changing attitudes in Hong Kong society and could, therefore, have decided to leave the entire electoral reform matter to the city. Beijing could have felt assured that given these changing attitudes, it would be extremely unlikely that any "universal suffrage by 2007" proposal would win the votes of two-thirds of Hong Kong legislators. Even if this might happen, the proposal could not be ultimately adopted without approval from Chief Executive Tung Chee-hwa, Beijing's man, and Beijing itself.

Beijing's failure to assess the actual situation in Hong Kong also shows that Mr. Tung as well as pro-Beijing advisers and Chinese officials in Hong Kong have not fulfilled their role in keeping Beijing fully informed. Their inability to understand the public also explained their failure to predict a series of events happened in Hong Kong. They underestimated the size of the demonstrations held on July 1, 2003 and January 1, 2004. They did not expect the landslide victory of pro-democracy candidates in district level elections held in November 2003. They mistakenly believed that economic benefits would dampen the public's desire for full democracy.

To dispel Chinese leaders' enormous fear of democratic development in Hong Kong, pro-democracy advocates in the city must establish a dialogue with these leaders to

work out their differences with no further delay. Developments over the past ten days have been encouraging. Apparently driven by poll results that showed the public's strong request for a more moderate approach in dealing with Beijing, democrats softened their tone on political issues and expressed interest in meeting with Chinese leaders. Beijing has given positive responses.

Last Friday's successful meeting between democrats and Mr. Tung as well as Mr. Tung's unconditional pledge to help some democrats regain access to the mainland marked a significant progress. This may pave the way for constructive dialogue between the pro-democracy camp and Beijing. The dialogue would help them develop mutual trust, which is crucial for democratization in Hong Kong and the successful implementation of the "one country, two systems" principle.

### III. U.S. Policies towards Hong Kong

The series of challenges that Hong Kong has faced over the past several months has raised doubts in the international community including the United States about the autonomous status of the territory. There have been suggestions that the President should exercise his power under the U.S.-Hong Kong Policy Act to change the U.S. policy towards Hong Kong.

Under this act, the United States offers Hong Kong treatment different from that accorded to mainland China. This treatment covers a wide range of areas including export controls, customs, air services, as well as cultural and educational exchanges. Should the President, after consulting with Congress, find that Hong Kong is "not sufficiently autonomous" to justify this special treatment, he may issue an Executive order to suspend any of these policies.

The United States should not make any changes to the U.S. policy towards Hong Kong as stated under the U.S.-Hong Kong Policy Act for four reasons:

- It is premature to decide that Hong Kong is "not sufficiently autonomous."

Although the three incidents described above have raised grave concerns about the implementation of "one country, two systems" in the city, there is no solid evidence to show that they have negated the high degree of autonomy exemplified in many other aspects of governance in Hong Kong. In its recent U.S.-Hong Kong Policy Act Report, which assesses developments in Hong Kong spanning from last April to the time before the issuance of the interpretation of the Basic Law, the U.S. State Department rates highly the implementation of "one country, two systems" in the city.

Moreover, the interpretation of the Basic Law and the April 26 ruling were mainly made as a result of Beijing's misjudgment of the actual situation in Hong

Kong. They do not necessarily show Beijing's intent to breach its promise of implementing the "one country, two systems" principle. Had Beijing had such intent to breach the promise, it could have done so earlier. Instead, the first six and a half post-reversion years saw Hong Kong maintain a high degree of autonomy and this achievement was widely recognized by the international community including the United States.

Beijing's judgment of the actual situation in Hong Kong would improve after it meets with Hong Kong's pro-democracy advocates. Their dialogue would also facilitate democratization in Hong Kong and the successful implementation of the "one country, two systems" principle. The United States should welcome this progress and must not change its stance prematurely.

- Any changes could undermine Hong Kong's confidence and prosperity that the United States has committed to play an active role in maintaining.

Under the U.S.-Hong Kong Policy Act 1992, the United States pledges to "play an active role, before, on, and after July 1, 1997, in maintaining Hong Kong's confidence and prosperity" and "Hong Kong's role as an international financial center." Some supporters of Hong Kong suggest that changes in the U.S. policy towards Hong Kong will have no punitive impact on Hong Kong, but will merely serve as a clear message to China that the United States has given up hope of "one country, two systems." This is not accurate. Such a message will go beyond Chinese leaders to reach foreign investors. The message itself will severely damage Hong Kong's confidence and prosperity that the United States has pledged to maintain. Hong Kong people need encouragement but not punishment.

- Any changes could hinder the U.S. efforts in promoting political and legal reforms in China.

The governmental and non-governmental sectors in the United States have played an effective role in supporting political and legal reform programs in China. Any changes to U.S. policies towards Hong Kong would escalate U.S.-China tensions. This would make the resumption of U.S.-China human rights dialogue more unlikely and might provoke China to terminate other technical assistance projects jointly organized by Americans and Chinese.

- Any changes could damage the economic interests of the United States in Hong Kong and the country's security interests in Asia.

Any changes to U.S. policies towards Hong Kong could also affect U.S. businesses operating in and with the city. Hong Kong is ranked second among the top ten countries/cities with which the United States has a trade surplus. As of April 2004, the year's surplus was about US\$2.3 billion. More than 1,100 American firms operate in the city with more than US\$ 38.5 billion invested.

Any changes to U.S. policies towards Hong Kong could undermine the security interests of the United States. These changes might breed anti-American sentiments in Hong Kong, one of the most Westernized cities in Asia, as well as in mainland China. This could weaken Beijing's interest in employing more political and economic leverage to persuade North Korea to dismantle its nuclear weapons and ballistic missile programs, upon which both U.S.-China relations and security in Asia depend.

For these four reasons, I urge Congress not to consider any changes to the U.S. policy towards Hong Kong as authorized under the U.S.-Hong Kong Policy Act.