

Position and Response Paper on the Hong Kong National Security Law

Mainland Affairs Council

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I. Introduction

The Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region (Hong Kong National Security Law) imposed by the Chinese Communist Party (CCP) disregards the freedoms and rights of the Hong Kong people. This has sparked serious concern among international society whereby world democracies all voiced opposition and condemnation. The law not only violates freedoms and rights guaranteed under the Hong Kong Basic Law, but also contradicts the universal values and international obligations set out under the United Nations Charter, Universal Declaration of Human Rights, International Covenant on Civil and Political Rights, and International Covenant on Economic, Social and Cultural Rights.

The Hong Kong National Security Law shines a light on Beijing's broken promises of "Hong Kong governed by the Hong Kong people," "a high degree of autonomy," and "to remain unchanged for 50 years." It also erodes the rule of law and judicial independence in Hong Kong, which have undergirded Hong Kong's status as Asia's financial center. The United States, United Kingdom, Canada, Australia and other democracies have issued statements calling on the CCP government to comply with international

regulations and honor its international commitments to Hong Kong people's rights and autonomy. Amid such development, countries have also formulated policies and restrictive measures in response, indicating the extent of international concern over erosion of the rights of the Hong Kong people under the national security law.

Taiwan has been in the vanguard of democracy in Asia. We have always adhered to universal values, which know no borders, and upheld national sovereignty and democratic principles. Therefore, we have expressed grave concern over the trampling of the freedom, democracy and human rights in Hong Kong under the national security law and joined the world in voicing condemnation. We oppose violation of democracy and human rights by the CCP under the false pretext of national security, which has affected regional security and created international social unrest. The government of the Republic of China (ROC), holding firm to the spirit of freedom and democracy as well as universal human rights, will continue to watch developments in Hong Kong closely, provide humanitarian assistance to the people of Hong Kong, and formulate related response measures.

II. Controversy over and Impact of the Hong Kong National Security Law

1. A draconian law that infringe on democracy and human rights

Controversies over the law include:

(1) Having broadly defined offenses, lacks legal clarity, and being in violation of the principle of no punishment without law:

The four major national security offenses defined in the Hong Kong National Security Law — secession, subversion of state power, terrorist

activities, and collusion with foreign and external forces to endanger national security — are vaguely worded and broadly defined, raising widespread doubts. For example, does discussion of the future of Hong Kong consider an act of secession? Is supervision of the Hong Kong government and its administration in accordance with the Basic Law equivalent to subversion of state power? Do calls for international attention to CCP's unilateral and arbitrary actions regarding Hong Kong mean "collusion with foreign powers"? Does support Hong Kong's democracy and freedom on social media fall afoul of the law for "inciting secession"? Consider the above scenarios, it is clear that numerous provisions of the Hong Kong National Security Law lack legal certainty and predictability over what constitutes objective elements of behavior, in which is clear violation of the principle of *nulla poena sine lege* (no punishment without law).

(2) Asserting wide-ranging extraterritorial jurisdiction which violates the sovereignty of countries worldwide:

The assertion of jurisdiction under the Hong Kong National Security Law reaches beyond Hong Kong citizens to include anyone in Hong Kong and covers offences committed on vessels or aircraft registered in Hong Kong. It also applies to suspected offenses committed against Hong Kong, namely the four major national security crimes, by persons, regardless of nationality or residency status, outside the territory. In other words, foreigners simply exercising freedom of speech while abroad could be arrested upon entry to or transit in Hong Kong for advocating "Hong Kong independence" and supporting democracy and human rights in Hong Kong.

The extraterritorial jurisdiction of the law is expansively in its scope. Some HongKongers referred to the law as a "legislation for the universe" since it gives the power to authorities to wantonly hunt down people beyond the borders of CCP's rule. In addition, US Secretary of State Mike Pompeo said Article 38 of the law was "an affront to all nations."

(3) Deeply infringing on the freedoms of thought, speech, and media, internet freedom and natural rights:

The Hong Kong National Security Law creates a chilling effect and prompts self-censorship since people can be charged with violations on the slightest pretext. Enforcement measures under the Implementation Rules for Article 43 of the Hong Kong National Security Law (hereinafter as "the Implementation Rules") allow relevant authority, with or without court warrant, to arbitrarily search for evidence, conduct covert interception of communication, freeze or confiscate property, and order suspects to surrender travel documents, provide information, and remove messages endangering national security. The Implementation Rules expand police powers and seriously violate personal, media, and internet freedom, property rights, privacy, and trade secrets.

Under the Hong Kong National Security Law, persons suspected of violating the law can be denied bail (unless there is sufficient grounds to believe the suspect will not continue to commit acts endangering national security). The law not only raises the specter of secret trials as case can be heard by court in closed session on the grounds of its relations to State secrets and public order, it can also waive trials by jury, leaving no guarantee of judicial human rights.

(4) Causing resurgence of the "extradition (to China) bill" to abet the CCP's "hostage diplomacy":

Despite that Hong Kong government still holds jurisdiction over criminal cases under the Hong Kong National Security Law, it is also specified in Article 55 that the Office for Safeguarding National Security of the Central People's Government in the Hong Kong Special Administrative Region (hereinafter as "the Office") can assert jurisdiction if a case is deemed "to involve a foreign country or external elements," "unable for the Hong Kong Special Administrative Region (HKSAR) to effectively enforce the law," or "an imminent threat to national security." Therefore, cases pursuant to Article 55 shall be investigated by the Office, prosecuted by the Supreme People's Procuratorate and adjudicated by the Supreme People's Court.

This creates the possibility of extraditing suspects to China for interrogation and trial — a version of the extradition provision under the "extradition (to China) bill" that was shelved. Over the long term, considering that the CCP can use the law to openly impose its "hostage diplomacy", Canada and Australia have already announced to suspend extradition agreements with Hong Kong, while many other democratic countries have discussed to take related actions.

(5) Undermining Hong Kong's judicial independence as jurisdiction and the power of final adjudication expressly stipulated in the Basic Law faltered:

From granting Hong Kong chief executive the power to appoint judges overseeing national security cases to according decisions made by the Committee for Safeguarding National Security of HKSAR not amenable to judicial review, the Hong Kong National Security Law itself is a clear subversion of checks and balances through separation of executive and judicial powers. Moreover, adding on the above-stated possibility of extraditions to China for trials, the law in effect denies the jurisdiction and power of final adjudication stipulated under Hong Kong's Basic Law, and has grave repercussions for Hong Kong's judicial independence.

(6) Empowering CCP national security agencies to override the Hong Kong government and rule by "Red Terror" behind the scenes:

According to the Hong Kong National Security Law, the Office will not be subject to Hong Kong's jurisdiction while carrying out its duties; in addition, the Office and its personnel "enjoy other rights and immunities provided by laws of the Region." However, the fact that related content being extremely opaque makes Hong Kong prone to a "Red Terror." With Luo Hui-ning, the CCP-designated director of the Liaison Office of the Central People's Government in the HKSAR, serving as the national security advisor on the Committee for Safeguarding National Security of HKSAR, it has raised concern among the public over the undermining of Hong Kong's high degree of autonomy, worrying that Luo would further attend to Hong Kong affairs and direct actions by the Hong Kong government behind closed doors.

(7) Lacking democratic legitimacy due to absence of legislative scrutiny and broad consent of the Hong Kong people:

Article 23 of the Hong Kong Basic Law expressly provides that the HKSAR "shall enact laws on its own" to prohibit any act of treason, secession, or sedition. However, by means of subrogation and without substantially solicited public consent, the CCP bypassed the Hong Kong's Legislative Council to brazenly push through the draconian law, which restricts the freedom and human rights of the people of Hong Kong, in a speedy process. The CCP also exploited the "back door" of the Basic Law to have the Hong Kong National Security Law listed in Annex III of the Basic Law to achieve its objective of asserting political control over Hong Kong. Hence, all things considered, the Hong Kong National Security Law lacks democratic legitimacy is nothing but self-evident.

2. Far-reaching Negative Impact of the Hong Kong National Security Law

(1) Limits freedoms of speech and media curtails internet freedom, undermines the rights and interests of the people in Hong Kong and severely narrows the space for democracy:

Under the shroud of the Hong Kong National Security Law, numerous civic organizations in Hong Kong have disbanded and primaries that are customary in democratic countries were interpreted by the CCP as "illegal manipulation." Over the long run, diversity of opinion and space for democracy in Hong Kong will be further curtailed as freedom and human rights face serious setbacks.

(2) Raises concern and strengthens opposition among international society, exemplifies the exportation of authoritarian system that challenges universal values, and undermines regional security and stability:

Under its 2015 National Security Law, mainland China defined the remit of its national security to cover outer space, international sea bed, and polar regions. In doing so, the CCP seeks to command a legal high point from which to expand externally and extend its sovereignty, while also broadens the definition of its national core interests. In addition, through the Hong Kong National Security Law, the CCP attempts to export its domestic practices of suppressing freedom of thought. With these moves, Beijing has systematically and gradually expanded its power, which in turn elevates instability and risk in the region.

(3) Infringes on the rights and interests of Taiwan's civic organizations, representative office, and citizens in Hong Kong and stifle relations between Taiwan and Hong Kong and even normal cross-Strait exchanges:

Taiwan and Hong Kong has maintained close social interactions and exchanges. However, there is considerable concern and worry that Taiwanese people traveling to Hong Kong for visit, study, or business, or even transit could face unreasonable harassment or infringement of rights by the CCP or Hong Kong government due to the domino effect set off by the Hong Kong National Security Law and the Implementation Rules.

III. ROC Government's Policy Position

1. Continue to support the Hong Kong people in their fight for freedom and democracy and provide them care and humanitarian aid: Taiwan will not change its long-term position of caring and support for democracy and freedom in Hong Kong. We have also joined the international society in lending our helping hand to the oppressed people of Hong Kong and actively providing necessary assistance in keeping with humanitarian principles and existing laws and regulations.

2. Firmly protect Taiwan's freedom and democracy while join the international community in supporting universal values: The CCP's outrageous moves to break its promises to Hong Kong have shown that "one country, two systems" is completely incompatible with democracy and freedom. The government is determined to firmly protect Taiwan's democracy, freedom, national sovereignty, and security, while continues to join other democracies in resisting CCP as it exports its authoritarian system.

3. Fully endeavor to maintain the safety of Taiwanese people and safeguard the rights and interests of Taiwan's representative office in Hong Kong: The government will do everything in its power to fully protect the human rights and personal safety of Taiwanese people in the face of the threat posed by the Hong Kong National Security Law. We are also committed to defending the rights and interests of the Taipei Economic and Cultural Office in Hong Kong (hereinafter "the representative office") so that it may continue to protect the safety of the people of Taiwan. We once again emphasize that the representative office was established through negotiations and an exchange of letters between the two sides. Under the

agreement, Hong Kong should guarantee that the representative office would not be subject to any political interference. Taiwan will take necessary and strong countermeasures against any action that undermines the rights and interests of the representative office.

IV. Response Measures by the ROC Government

1. Closely watch developments in Hong Kong at all times and issue warnings to remind the Taiwanese public of the risks involved in travel to the Mainland, Hong Kong, and Macao:

(1) The development of democracy and human rights in Hong Kong has always been of concern for Taiwan's ruling and opposition parties as well as the society. Taiwan is a democratic, free, and diverse society where the people enjoy full freedom of thought, speech, and privacy of correspondence. The CCP, however, is at odds with the rationality of civilized nations for being deeply cautious about and afraid of universal values.

(2) The government will duly issue advisory news material on the developments in Hong Kong. We encourage Taiwanese people to carefully assess the risks of traveling to or transiting in mainland China, Hong Kong, and Macao and suggest that such travel be avoided if there are concerns. The MAC has added a special section on its website informing the public regarding actions that could be considered in violation of the Hong Kong National Security Law and providing information on emergency services in Hong Kong and Macao, including the Registry of Movement by Taiwanese People Traveling to Hong Kong and Macao. The government will make every effort to protect the safety of Taiwanese people. The MAC will also

conduct periodic review of developments in Hong Kong and provide related reports for public reference.

(3) Taiwanese people encounter emergencies in Hong Kong may contact the 24-hour emergency hotline of the representative office at 852-6143-9012 for assistance.

2. Strengthen notification mechanisms for travels to Hong Kong and Macao and underpin safety advocacy for civil servants visiting Hong Kong and Macao:

Taiwan has formulated Operating Guidelines for Notification on Travel to Hong Kong and Macao for Official Duties by Public Servants of the Executive Yuan and Affiliated Institutions regarding the safety of civil servants traveling to Hong Kong and Macao. Amid the current situation, the MAC has urged all agencies to strengthen notification mechanisms for government employees traveling to Hong Kong and Macao on official business. Along with drafted notes of precautions, which are provided to both central and local government agencies, the MAC has also reminded governments at all levels to implement internal controls to strengthen management of personal travels, such as tourism and visiting family and friends.

3. Carry out full function of the Taiwan-Hong Kong Office for Exchanges and Services and take concrete actions to care for Hong Kong people:

(1) In response to the CCP's imposition of the Hong Kong National Security Law, an action of which has caused unrest in Hong Kong society, the MAC,

by instruction of the President and Premier, mapped out the Humanitarian Aid Project (hereinafter as “the Project”). Under the existing Taiwan and Hong Kong exchange promotion platform, the Taiwan–Hong Kong Economic and Cultural Co-operation Council, the Project established a service window called the Taiwan-Hong Kong Office for Exchanges and Services (hereinafter as “the Exchanges and Services Office”) to provide streamlined service and necessary care for the people of Hong Kong.

(2) Since its formal operation on July 1, 2020, the Exchanges and Services Office has provided consultation and assistance services to Hong Kong people coming to Taiwan for study, employment, investment, entrepreneurship, immigration, residency, and civic organization exchanges. Down the road, the Exchanges and Services Office will also pragmatically handle and review matters related to humanitarian assistance and care for Hong Kong people through public-private partnerships, subject to national security consideration and existing laws and regulations,.

4. Deliberate plans to attract outstanding enterprises and talent from Hong Kong to strengthen Taiwan's development capacity:

The Hong Kong National Security Law and global economic and trade situation have increased uncertainty over Hong Kong’s political and economic environment and sparked an exodus of industries and talent.

Taiwan is well-positioned to be the first choice for talent and corporations relocating from Hong Kong. It holds the geographical proximity, shares similar lifestyles and cultures, not to mention having the advantages of being a democratic, free, multicultural society with rule of law and a vigorous economy. Therefore, considering the current situations

and in the wake of global industrial chain restructuring, relevant government agencies have been actively deliberating approaches and opening-up measures to attract enterprises, capital, and talent from Hong Kong to Taiwan to strengthen Taiwan's development capacity.

5. Maintain contact and cooperation with other countries to safeguard strategic mutual assistance for democracy:

The sweeping jurisdiction of the Hong Kong National Security Law threatens every democracy- and freedom-loving people on the planet. World's democracies have taken actions in response to CCP's interference in Hong Kong, including issuing statements condemning China, suspending extradition agreements with Hong Kong, rolling out countermeasures, and facilitating immigration process. The government will continue to maintain close contact and cooperation with other countries, duly adjust Hong Kong-related measures, and strengthen strategic mutual assistance to protect democracy in the Asia Pacific region.

6. Urge relevant parties to jointly maintain normal exchanges between Taiwan and Hong Kong and protect the rights and interests of Taiwanese people and institutions in Hong Kong:

Taiwan and Hong Kong have always maintained close economic, trade, and personnel interactions. Stable Taiwan-Hong Kong relations help to guarantee the rights and interests of exchanges between the people of Taiwan and Hong Kong. This being the case, Taiwan calls on the CCP and the Hong Kong government to keep the well-being of the people in mind,

refrain from overstating or meddling in matters at hand, and jointly maintain normal exchanges between Taiwan and Hong Kong. Taiwan's representative office in Hong Kong will continue to and persist in promoting Taiwan-Hong Kong exchanges and cooperation as well as providing services to the people of both sides, in accordance with the consensus reached between the two governments. However, contingency plans have also been drawn up in anticipation of the fallout of the Hong Kong National Security Law.

7. Strengthen management of Mainland-related personnel and capital coming to Taiwan from Hong Kong and Macao and upgrade national security response measures:

The Hong Kong National Security Law has seriously infringed on the high degree of autonomy and rule of law in Hong Kong. The CCP has also taken ceaseless effort to intensify infiltration and control of Hong Kong and Macao through various means. Therefore, to ensure national security and protect the rights and interests of the people, the government has strengthened management of personnel and capital inflow from Hong Kong and Macao, of which closely linked to the Mainland, by revising related regulations. We will also comprehensively review and adjust the order and rules of exchanges between Taiwan and Hong Kong and dynamically strengthen national security response measures considering, among other factors, the situation in Hong Kong and across the Taiwan Strait, actions by the CCP and Hong Kong government, and policies taken by major nations.

8. Recognize the calculated and ill-intentioned nature of "one country, two systems" and unite the public against the political schemes of the CCP:

The Hong Kong National Security Law not only signifies Beijing's broken promises to Hong Kong, but also shows the world the true nature of CCP's one-party authoritarian system and the calculated ill-intention behind the so-called "one country, two systems" formula. With its actions in Hong Kong, along with the absurdly proposed "one country, two systems model for Taiwan", mainland China has shown at every turn the futility of its political schemes for Taiwan. As the people of Taiwan unite to resist the CCP's ambitions and infiltration of the island and staunchly defend Taiwan's democracy and national security, they can also rest-assured that the government is fully prepared for CCP's unreasonable expansion of power.

V. Conclusion

Many countries have national security-related laws. However, the legislative process in democracies involves due process and requires that the legislation adheres to the rule of law and protects human rights. However, the CCP has used national security-related laws as tools to consolidate its one-party authoritarian system, clamp down on internal affairs, and seek external expansion. Such was the case with the Mainland's 2015 National Security Act and so it is now with the Hong Kong National Security Law. Public opinion surveys commissioned by the MAC and other institutions showed that the vast majority of the public do not support the Hong Kong National Security Law imposed by the CCP and believe that the law not only infringes on democracy, freedom, and judicial independence in Hong Kong, but also undermines Hong Kong's "one country, two systems."

The CCP has long had a deplorable record on human rights and the rule of law. It ignores international norms and advances hegemonic expansion under the so-called "Chinese Dream". These actions have awakened the international community to confront actions by the CCP as it seeks to expand influence abroad and export authoritarianism.

In the face of the CCP's draconian law, we should further cherish our hard-won democratic way of life, be prepared for all eventualities, and commit to maintaining national sovereignty and security. Taiwan upholds universal human rights values and stands with other democracies around the world. We also hope that all freedom- and peace-loving countries will join us to support the people of Hong Kong in their fight for freedom and democracy as well as to protect security, peace, and stability in the Asia-Pacific region.