

Though negotiations between ByteDance and CFIUS over deal terms and proposed mitigation measures appear to have occurred throughout the fall, little had been made public until TikTok filed a petition in the D.C. Circuit on November 10, asking the court, which has original jurisdiction in CFIUS cases, to enjoin the CFIUS action and the related divestment order.⁶⁴ The filing alleges that ByteDance submitted a proposed mitigation plan to CFIUS on November 6, and affirms that ByteDance “intend[s] to file a motion to stay enforcement of the Divestment Order only if discussions reach an impasse and the government indicates an intent to take action to enforce the Order.”⁶⁵ Two days later, the plaintiffs filed a notice in the D.C. district court indicating that the government had granted a fifteen-day extension in the CFIUS review process.⁶⁶ The government granted a further extension to December 4, 2020.⁶⁷ Press reports indicate that although the government has declined to grant an additional extension, ByteDance and CFIUS continue to negotiate.⁶⁸

INTERNATIONAL HUMAN RIGHTS AND HUMANITARIAN LAW

United States Terminates Hong Kong’s Special Status Due to National Security Law Imposed by Beijing

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In June 2019, protests erupted in Hong Kong after its government proposed an extradition agreement with mainland China. Alarmed by the protests, the Central Committee of the Chinese Communist Party announced that it would consider new national security measures for Hong Kong. On June 30, 2020, China’s National People’s Congress Standing Committee (NPCSC) passed the “Law of the People’s Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region.” While the law was under consideration, the United States responded by declaring that Hong Kong was no longer significantly autonomous from mainland China and beginning the process of ending Hong Kong’s special status under U.S. law. The United States and its allies continue to criticize Hong Kong’s deteriorating autonomy from China, pointing to the postponement of elections in Hong Kong as further evidence.

The Sino-British Joint Declaration on the Question of Hong Kong governs China’s relationship with Hong Kong.¹ Pursuant to the “one country, two systems” principle enshrined

⁶⁴ Petition for Review at 1–2, 34, *TikTok Inc. v. Comm. For. Inv. U.S.*, No. 1:20-cv-02658-CJN (D.C. Cir. Nov. 10, 2020) (Doc. 1).

⁶⁵ *Id.* at 19.

⁶⁶ Plaintiffs’ Notice of Extension of CFIUS Matter, *TikTok Inc. et al. v. Trump et al.*, No. 1:20-cv-02658, (D.D.C. Nov. 13, 2020) (Doc. 56).

⁶⁷ Plaintiffs’ Notice of Extension in CFIUS Matter, *TikTok Inc. et al. v. Trump et al.*, No. 1:20-cv-02658 (D.D.C. Nov. 25, 2020) (Doc. 58).

⁶⁸ David Shepardson & Echo Wang, *U.S. Not Extending TikTok Divestiture Deadline, But Talks Will Continue*: Sources, REUTERS (Dec. 4, 2020), at <https://www.reuters.com/article/us-usa-tiktok-exclusive-idUSKBN28F00V>.

¹ The Basic Law serves as Hong Kong’s constitution and further codifies the declaration. Hong Kong Special Administrative Region Government Information Services Department, *Hong Kong: The Facts, The Basic Law*

in the declaration, Hong Kong's Special Administrative Region is allowed to maintain a capitalist system free of mainland China's socialist policies until 2047—fifty years after the British government returned Hong Kong to Chinese control.² Because of its autonomy from China, Hong Kong has long enjoyed a special status under U.S. law, retaining many of the same independent agreements and protections that it had before its reincorporation into China.³

In June 2019, protests began in Hong Kong after its government sought to enact a law allowing extradition of defendants to mainland China for prosecution of certain crimes.⁴ Although the Hong Kong government withdrew the bill, protests continued with new demands for political reform.⁵ The Central Committee of the Chinese Communist Party responded by announcing in October 2019 that it would consider new national security measures in Hong Kong.⁶ Just one month later, the U.S. Congress passed the Hong Kong Human Rights and Democracy Act of 2019, expressing support for Hong Kong's autonomy and requiring annual certification from the executive branch of whether Hong Kong remains sufficiently autonomous to justify continued special status under U.S. law.⁷ Nonetheless, the Chinese government proceeded with its plans, and in May 2020, it announced that the National People's Congress would review the proposal to establish new national security laws in Hong Kong.⁸

The May announcement prompted swift reactions from the United States. On May 27, U.S. Secretary of State Michael Pompeo reported to Congress that Hong Kong no longer had significant autonomy from mainland China, stating:

No reasonable person can assert today that Hong Kong maintains a high degree of autonomy from China, given facts on the ground While the United States once hoped that free and prosperous Hong Kong would provide a model for authoritarian China, it is now clear that China is modeling Hong Kong after itself.⁹

On May 29, President Donald Trump announced that he would take steps to end the U.S. special relationship with Hong Kong. Trump noted, “[t]his week, China unilaterally imposed control over Hong Kong security” in “plain violation of Beijing’s treaty obligations with the United

(Dec. 2015), available at https://www.gov.hk/en/about/abouthk/factsheets/docs/basic_law.pdf [<https://perma.cc/FC8R-BRHT>].

² See *id.*

³ Jean Galbraith, *Contemporary Practice of the United States*, 114 *AJIL* 304 (2020).

⁴ *Id.*

⁵ See *id.*

⁶ Chris Buckley, *China Vows Tougher Security in Hong Kong. Easier Said Than Done.*, *N.Y. TIMES* (Nov. 11, 2019), at <https://www.nytimes.com/2019/11/06/world/asia/hong-kong-protests-china-national-security.html>; Chris Buckley, *China Says It Will Roll Out “National Security” Steps for Hong Kong.*, *N.Y. TIMES* (Nov. 6, 2019), at <https://www.nytimes.com/2019/10/31/world/asia/hong-kong-protests-china.html>. For details on the legislative process that led to the adoption of the national security law, see SUSAN V. LAWRENCE & MICHAEL F. MARTIN, *CHINA’S NATIONAL SECURITY LAW FOR HONG KONG: ISSUES FOR CONGRESS*, CONG. RES. SERV. 6–9 (Aug. 3, 2020).

⁷ Galbraith, *supra* note 3, at 304–05.

⁸ Rick Gladstone, *What Happens to Hong Kong Now?*, *N.Y. TIMES* (May 21, 2020), at <https://www.nytimes.com/2020/05/21/world/asia/china-hong-kong-national-security-law.html>.

⁹ U.S. Dep’t of State Press Statement, P.R.C. National People’s Congress Proposal on Hong Kong National Security Legislation (May 27, 2020), at <https://www.state.gov/prc-national-peoples-congress-proposal-on-hong-kong-national-security-legislation> [<https://perma.cc/K9SL-NZLP>].

Kingdom in the Declaration of 1984 and explicit provisions of Hong Kong's Basic Law."¹⁰ Because "China has replaced its promised formula of 'one country, two systems' with 'one country, one system,'" Trump explained, the United States would "begin the process of eliminating policy exemptions that give Hong Kong different and special treatment."¹¹ The State Department ended exports of U.S.-origin military equipment to Hong Kong,¹² and the Commerce Department announced export controls on sensitive U.S. technology, suspending existing export license exceptions.¹³ Congress also reacted with a bipartisan call for new sanctions on China.¹⁴

On June 30, China's NPCSC passed the "Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region" and added it to Hong Kong's Basic Law.¹⁵ The stated purpose of the new national security law is to "prevent, curb and punish acts of secession, subversion of state power, terrorist activities, and collusion with foreign or external forces to endanger national security."¹⁶ Key provisions of the law include the establishment of a new security office controlled by mainland China, the establishment of a Hong Kong national security commission that includes an adviser appointed by mainland China, authority for Hong Kong's chief executive to appoint judges for national security cases, and deference to the new national security law if there is a conflict with Hong Kong law.¹⁷

In a speech to the UN Human Rights Council, Chief Executive of Hong Kong Carrie Lam defended the new law as an answer to the "gaping hole" in Hong Kong national security.¹⁸ She invoked the unsuccessful 2003 attempt by the Hong Kong government to pass national security laws as evidence of Hong Kong's inability to independently fulfill the Basic Law's requirement that Hong Kong enact laws to safeguard national security.¹⁹ Furthermore, she asserted that the law would not alter Hong Kong's autonomy, stating:

The law will not affect Hong Kong's renowned judicial independence. It will not affect legitimate rights and freedoms of individuals which are protected under the Basic Law

¹⁰ Donald J. Trump, Remarks on United States Actions Against China, 2020 DAILY COMP. PRES. DOC. 405, at 2 (May 29, 2020).

¹¹ *Id.*

¹² U.S. Dep't of State Press Statement, U.S. Government Ending Controlled Defense Exports to Hong Kong (June 29, 2020), at <https://www.state.gov/u-s-government-ending-controlled-defense-exports-to-hong-kong> [<https://perma.cc/5XVD-84Y2>].

¹³ U.S. Dep't of Commerce Press Release, Statement from U.S. Secretary of Commerce Wilbur Ross on Revocation of Hong Kong Special Status (June 29, 2020), at <https://www.commerce.gov/news/press-releases/2020/06/statement-us-secretary-commerce-wilbur-ross-revocation-hong-kong> [<https://perma.cc/YCN4-VEEH>].

¹⁴ Senator Pat Toomey Press Release, Toomey, Van Hollen Introduce Sanctions Bill to Defend Hong Kong's Autonomy (May 21, 2020), at <https://www.toomey.senate.gov/newsroom/press-releases/toomey-van-hollen-introduce-sanctions-bill-to-defend-hong-kongs-autonomy> [<https://perma.cc/8QSU-UR36>].

¹⁵ Promulgation of National Law 2020, LN 136 of 2020, at 1 (June 30, 2020), available at <https://www.gld.gov.hk/egazette/pdf/20202444e/es220202444136.pdf> [<https://perma.cc/N7GJ-789T>].

¹⁶ Government of the Hong Kong Special Administrative Region Press Release, Video Message by Chief Executive at United Nations Human Rights Council Meeting (June 30, 2020), at <https://www.info.gov.hk/gja/general/202006/30/P2020063000655.htm> [<https://perma.cc/7XX4-Q5JW>].

¹⁷ Grace Tsoi & Lam Cho Wai, *Hong Kong Security Law: What Is It and Is It Worrying?*, BBC (June 30, 2020), at <https://www.bbc.com/news/world-asia-china-52765838>.

¹⁸ Press Release, *supra* note 16.

¹⁹ *Id.*

and the relevant provisions of international covenants as applied to Hong Kong. They include, among others, the freedom of speech, of the press, of assembly, of demonstration, and of procession.²⁰

She criticized foreign objections to the law by pointing to the “double standard” of other countries passing their own national security laws but criticizing China for enacting laws “to protect every corner of its territory and all of its nationals.”²¹

On July 14, President Trump signed into law the Hong Kong Autonomy Act,²² which authorizes sanctions on officials or institutions that undermine Hong Kong’s semiautonomous status.²³ Pursuant to the Hong Kong Autonomy Act and other preexisting statutes, Trump issued an executive order determining that Hong Kong was “no longer sufficiently autonomous to justify differential treatment” and directing executive departments to take actions necessary to alter various legal regimes.²⁴ Among other steps, the executive order directs federal agencies to revoke license exceptions and remove special regulatory treatment of Hong Kong for purposes of export control regulations and to give notice of U.S. intent to terminate several agreements with Hong Kong.²⁵ The executive order also authorizes sanctions against foreign persons who are involved in implementing the national security law or who, among other things, are “responsible for . . . actions or policies that threaten the . . . autonomy of Hong Kong” or “censorship or other activities . . . that prohibit, limit, or penalize the exercise of freedom of expression or assembly by citizens of Hong Kong.”²⁶

Pursuant to the executive order, the Treasury Department sanctioned Lam and other Hong Kong and Chinese officials for “undermining Hong Kong’s autonomy and restricting the freedom of expression or assembly of the citizens of Hong Kong.”²⁷ The State Department notified the Hong Kong government on August 19 that it would suspend or terminate bilateral agreements on “the surrender of fugitive offenders, the transfer of sentenced persons, and reciprocal tax exemptions on income derived from the international operation of ships.”²⁸ On September 14, the State Department also issued a travel advisory to “reconsider travel” to Hong Kong.²⁹ The advisory states:

²⁰ *Id.*

²¹ *Id.*

²² Hong Kong Autonomy Act, Pub. L. No. 116-149, 134 Stat. 663 (2020).

²³ *Id.* at 669–71.

²⁴ Exec. Order 13,936, 85 Fed. Reg. 43,413, 43,413 (July 14, 2020).

²⁵ *Id.* at 43,414–15.

²⁶ *Id.* at 43,415–16.

²⁷ U.S. Dep’t of Treasury Press Release, Treasury Sanctions Individuals for Undermining Hong Kong’s Autonomy (Aug. 7, 2020), at <https://home.treasury.gov/news/press-releases/sm1088> [<https://perma.cc/D3KU-VR5K>]. On November 9, 2020, the State Department sanctioned four more PRC and Hong Kong officials. U.S. Dep’t of State Press Release, Designations of Four PRC and Hong Kong Officials Threatening the Peace, Security, and Autonomy of Hong Kong (Nov. 9, 2020), at <https://www.state.gov/designations-of-four-prc-and-hong-kong-officials-threatening-the-peace-security-and-autonomy-of-hong-kong> [<https://perma.cc/VY7P-7SRM>].

²⁸ U.S. Dep’t of State Press Release, Suspension or Termination of Three Bilateral Agreements with Hong Kong (Aug. 19, 2020), at <https://www.state.gov/suspension-or-termination-of-three-bilateral-agreements-with-hong-kong> [<https://perma.cc/7QZQ-589P>].

²⁹ U.S. Dep’t of State, Hong Kong Travel Advisory (Sept. 14, 2020), at <https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories/hong-kong-travel-advisory.html> [<https://perma.cc/TGK4-L3N8>].

Since the imposition of national security legislation on July 1, the [People's Republic of China (PRC)] unilaterally and arbitrarily exercises police and security power in Hong Kong. The PRC has demonstrated an intention to use this authority to target a broad range of activities it defines as acts of secession, subversion, terrorism, and "collusion" with foreign countries. The new legislation also covers offenses committed by non-Hong Kong residents or organizations outside of Hong Kong, which could subject U.S. citizens who have been publicly critical of the PRC to a heightened risk of arrest, detention, expulsion, or prosecution.³⁰

Other countries have also expressed strong opposition to the national security law through both unilateral and multilateral actions. Several countries, such as the United Kingdom and Canada, suspended their own extradition agreements with Hong Kong.³¹ The G7 Foreign Ministers released a statement in June, prior to the passage of the law, that sought to dissuade China from proceeding.³² The statement argued that:

China's decision is not in conformity with the Hong Kong Basic Law and its international commitments under the principles of the legally binding, UN-registered Sino-British Joint Declaration. The proposed national security law would risk seriously undermining the "One Country, Two Systems" principle and the territory's high degree of autonomy.³³

In an October meeting of the UN General Assembly Third Committee, German Ambassador Christoph Heusgen presented a joint statement of thirty-nine countries, including the United States, expressing concern that the national security law violates China's international law obligations, especially rights guaranteed by the International Covenant on Civil and Political Rights and the Sino-British Joint Declaration.³⁴

In contrast, other countries voiced their support for China.³⁵ In a joint statement announced by Pakistan's permanent representative to the United Nations, over fifty countries supported the national security law as a legitimate exercise of sovereignty by the Chinese government, stating that "[n]on-interference in the internal affairs of sovereign states is an important principle enshrined in the Charter of the United Nations and a basic norm of

³⁰ *Id.*

³¹ Austin Ramzy, *Citing New Security Law, U.S. Warns of Hong Kong Travel Risk*, N.Y. TIMES (Sept. 24, 2020), at <https://www.nytimes.com/2020/09/15/world/asia/us-hong-kong-travel-warning.html>.

³² U.S. Dep't of State Press Release, *G7 Foreign Ministers' Statement on Hong Kong* (June 17, 2020), at <https://www.state.gov/g7-foreign-ministers-statement-on-hong-kong> [<https://perma.cc/RD67-H5KM>].

³³ *Id.*

³⁴ Permanent Mission of the Federal Republic of Germany to the United Nations, *Statement by Ambassador Christoph Heusgen on Behalf of 39 Countries in the Third Committee General Debate* (Oct. 6, 2020), at <https://new-york-un.diplo.de/un-en/news-corner/201006-heusgen-china/2402648> [<https://perma.cc/P98C-7QRP>]. The statement was joined by Albania, Australia, Austria, Belgium, Bosnia & Herzegovina, Bulgaria, Canada, Croatia, Denmark, Estonia, Finland, France, Haiti, Honduras, Iceland, Ireland, Italy, Japan, Latvia, Liechtenstein, Lithuania, Luxembourg, the Republic of the Marshall Islands, Monaco, Nauru, the Kingdom of the Netherlands, New Zealand, North Macedonia, Norway, Palau, Poland, Slovakia, Slovenia, Spain, Sweden, Switzerland, the United Kingdom, and the United States. *Id.*

³⁵ Shannon Tiezzi, *Which Countries Support China on Hong Kong's National Security Law?*, DIPLOMAT (Oct. 9, 2020), at <https://thediplomat.com/2020/10/which-countries-support-china-on-hong-kongs-national-security-law>.

international relations” and asserting that “Hong Kong affairs are China’s internal affairs that brook no interference by foreign forces.”³⁶

Actions by the Hong Kong government since the passage of the national security law have caused further alarm. On July 31, the Hong Kong government announced that it would postpone the September 2020 legislative election by one year, citing the coronavirus pandemic as the main reason for the delay.³⁷ The postponement announcement came one day after the government barred twelve pro-democratic candidates from running in the election.³⁸ The Hong Kong government justified the candidates’ disqualification on the grounds that they “could not genuinely uphold the [Basic Law] and could not therefore perform the duties of a” legislature member due to their participation in certain “behaviours.”³⁹ Behaviors declared to be against the Basic Law included, among others:

advocating or promoting Hong Kong independence, self-determination or changing the system of the [Hong Kong Special Administrative Region (HKSAR)] by supporting Hong Kong independence as an option for self-determination; soliciting intervention by foreign governments or political authorities in relation to the HKSAR’s affairs; [or] expressing an objection in principle to the enactment of the National Security Law by the Standing Committee of the National People’s Congress and its subsequent promulgation.⁴⁰

Opposition candidates accused the government of election fraud, arguing the postponement sought to counteract the momentum these candidates enjoyed due to public outrage over the national security law.⁴¹ The foreign ministers of Australia, Canada, New Zealand, the United Kingdom, and the United States released a joint statement decrying the disqualification of candidates and the postponement of elections.⁴² The statement declared:

We support the legitimate expectations of the people of Hong Kong to elect Legislative Council representatives via genuinely free, fair, and credible elections. We call on the Hong Kong government to reinstate the eligibility of disqualified candidates so that

³⁶ *Id.* The statement was joined by Afghanistan, Algeria, Angola, Antigua & Barbuda, Bahrain, Bangladesh, Belarus, Burundi, Cambodia, Cameroon, the Central African Republic, China, Comoros, Congo, Cuba, Djibouti, Dominica, Egypt, Equatorial Guinea, Eritrea, Gabon, Grenada, Gambia, Guinea, Guinea Bissau, Iran, Iraq, Laos, Madagascar, Mauritania, Morocco, Mozambique, Myanmar, Nepal, Nicaragua, Niger, Pakistan, Palestine, Philippines, Russia, Somalia, Saudi Arabia, South Sudan, Sri Lanka, Sudan, Syria, Tanzania, Togo, Uganda, the United Arab Emirates, Venezuela, Yemen, and Zimbabwe. During the speech, “the Democratic Republic of Korea” is listed after “Cuba,” so there is confusion as to whether the country is North Korea or the Democratic Republic of Congo. *Id.*

³⁷ Austin Ramzy, *Hong Kong Delays Election, Citing Coronavirus. The Opposition Isn’t Buying It*, N.Y. TIMES (July 31, 2020), at <https://www.nytimes.com/2020/07/31/world/asia/hong-kong-election-delayed.html>.

³⁸ Tiffany May, Austin Ramzy & Elaine Yu, *Hong Kong Is Keeping Pro-democracy Candidates Out of Its Election*, N.Y. TIMES (July 29, 2020), at <https://www.nytimes.com/2020/07/29/world/asia/hong-kong-arrests-security-law.html>.

³⁹ Government of the Hong Kong Special Administrative Region Press Release, HKSAR Government Supports Returning Officers’ Decision to Invalidate Certain Nominations for Legislative Council General Election (July 30, 2020), at <https://www.info.gov.hk/gia/general/202007/30/P2020073000481.htm> [<https://perma.cc/3K57-AUXZ>].

⁴⁰ *Id.*

⁴¹ Ramzy, *supra* note 37.

⁴² U.S. Dep’t of State Press Release, Joint Statement on the Erosion of Rights in Hong Kong (Aug. 9, 2020), at <https://www.state.gov/joint-statement-on-the-erosion-of-rights-in-hong-kong> [<https://perma.cc/Q9N2-B5GU>].

the elections can take place in an environment conducive to the exercise of democratic rights and freedoms as enshrined in the Basic Law. Beijing promised autonomy and freedoms under the “One Country, Two Systems” principle to the Hong Kong people in the Sino-British Joint Declaration, a U.N.-registered treaty, and must honor its commitments. We urge the Hong Kong government to hold the elections as soon as possible.⁴³

Countries have also opened their borders to asylum seekers from Hong Kong, prompting protests from the Hong Kong and Chinese governments.⁴⁴ British Prime Minister Boris Johnson announced in June 2020 that the United Kingdom would allow Hong Kong residents with British overseas passports to receive visas and seek British citizenship.⁴⁵ In September, the U.S. Department of State submitted the President’s Report to Congress on the Proposed Refugee Admissions for Fiscal Year 2021.⁴⁶ The report includes Hong Kong refugees as a group that will receive priority, marking the first time Hong Kong has been included in the annual refugee admissions proposal.⁴⁷ On October 27, 2020, President Trump approved these refugee admissions determinations.⁴⁸ Congress is also considering three bills that would increase protections for Hong Kong refugees in the United States.⁴⁹

The situation in Hong Kong continues to evolve. On November 11, 2020, the NPCSC approved a measure allowing lawmakers deemed disloyal to Beijing to be removed from office.⁵⁰ As a result, four pro-democracy legislators were ousted from the Hong Kong Legislative Council, and the remaining fifteen pro-democracy legislators announced they would resign in solidarity.⁵¹ Secretary of State Pompeo condemned the disqualification of the four pro-democracy legislators, stating:

Beijing has eliminated nearly all of Hong Kong’s promised autonomy, as it neuters democratic processes and legal traditions that have been the bedrock of Hong Kong’s stability and prosperity. . . . We will hold accountable the people responsible for these actions and policies that erode Hong Kong’s autonomy and freedoms. We stand with the disqualified pan-Democratic lawmakers, the pro-democracy lawmakers who resigned in protest, and the people of Hong Kong.⁵²

⁴³ *Id.*

⁴⁴ Austin Ramzy & Maria Abi-Habib, *As China Clamps Down, Activists Flee Hong Kong for Refuge in the West*, N.Y. TIMES (Oct. 24, 2020), at <https://www.nytimes.com/2020/10/24/world/asia/hong-kong-asylum-seekers.html>.

⁴⁵ *Id.*

⁴⁶ U.S. Dep’t of State Press Release, Transmission of the President’s Report to Congress on the Proposed Refugee Admissions for FY21 (Sept. 30, 2020), at <https://www.state.gov/transmission-of-the-presidents-report-to-congress-on-the-proposed-refugee-admissions-for-fiscal-year-2021> [<https://perma.cc/H5AV-QXYZ>].

⁴⁷ Ramzy & Abi-Habib, *supra* note 44.

⁴⁸ Presidential Determination No. 2021-02, 85 Fed. Reg. 71,219 (Nov. 6, 2020).

⁴⁹ Ramzy & Abi-Habib, *supra* note 44.

⁵⁰ Austin Ramzy, Tiffany May & Elaine Yu, *China Targets Hong Kong’s Lawmakers as It Squelches Dissent*, N.Y. TIMES (Nov. 11, 2020), at <https://www.nytimes.com/2020/11/11/world/asia/hong-kong-protest-democracy.html>.

⁵¹ *Id.*

⁵² U.S. Dep’t of State Press Release, Disqualification of Pan-Democratic Lawmakers in Hong Kong (Nov. 12, 2020), at https://www.state.gov/disqualification-of-pan-democratic-lawmakers-in-hong-kong/#nav__primary-nav [<https://perma.cc/43D6-4T2K>].

The United States also released a joint statement with foreign ministers of Australia, Canada, New Zealand, and the United Kingdom calling the disqualifications a breach of the Sino-British Joint Declaration and asking China to reinstate the legislators.⁵³ On December 7, the United States announced additional sanctions directed against fourteen vice chairpersons of the NPCSC for their role in adopting the national security law.⁵⁴ In response, China announced that “it would revoke visa exemption treatment for U.S. diplomatic passport holders visiting Hong Kong and Macau” and impose “reciprocal sanctions” on unspecified “U.S. officials, members of Congress, personnel at non-governmental organisations, and their family members.”⁵⁵

INTERNATIONAL CRIMINAL LAW

United States Imposes Economic Sanctions and Visa Restrictions on International Criminal Court Officials

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On September 2, 2020, the Trump administration announced that the United States had added the International Criminal Court (ICC) prosecutor, Fatou Bensouda, and the head of the Office of the Prosecutor’s Jurisdiction, Complementarity, and Cooperation Division, Phakiso Mochochoko, to the Treasury Department’s Office of Foreign Assets Control List of Specially Designated Nationals and Blocked Persons.¹ The action followed Executive Order 13,928, signed in June, which authorized economic sanctions and visa restrictions on ICC employees who are investigating whether U.S. forces committed war crimes in Afghanistan.² Governments and human rights groups decried the sanctions as an attack on international justice.

The sanctions freeze any assets that Bensouda or Mochochoko may have within the United States or that are otherwise subject to U.S. law, and the designation subjects them to visa restrictions, effectively preventing their travel to the United States.³ In a press release announcing the sanctions, U.S. Secretary of State Mike Pompeo stated:

⁵³ U.S. Dep’t of State Press Release, Joint Statement on Hong Kong (Nov. 18, 2020), at <https://www.state.gov/joint-statement-on-hong-kong-2> [<https://perma.cc/K7DC-GVS2>].

⁵⁴ U.S. Dep’t of State Press Release, Designations of National People’s Congress Officials Undermining the Autonomy of Hong Kong (Dec. 7, 2020), at <https://www.state.gov/designations-of-national-peoples-congress-officials-undermining-the-autonomy-of-hong-kong/> [<https://perma.cc/TX2J-PCR7>].

⁵⁵ Reuters Staff, *China Revokes Visa Exemptions for U.S. Diplomat Passport Holders Visiting Hong Kong, Macau*, REUTERS (Dec. 10, 2020), at <https://www.reuters.com/article/us-usa-china-sanctions/china-revokes-visa-exemptions-for-us-diplomat-passport-holders-visiting-hong-kong-macau-idUSKBN28K0N4>.

¹ U.S. Dep’t of State Press Release, Actions to Protect U.S. Personnel from Illegitimate Investigation by the International Criminal Court (Sept. 2, 2020), at <https://www.state.gov/actions-to-protect-u-s-personnel-from-illegitimate-investigation-by-the-international-criminal-court> [<https://perma.cc/T4BN-WVEH>].

² Exec. Order No. 13,928, 85 Fed. Reg. 36,139 (June 11, 2020).

³ *Id.*; U.S. Dep’t of Treasury Press Release, Blocking Property of Certain Persons Associated with the International Criminal Court Designations (Sept. 2, 2020) at <https://home.treasury.gov/policy-issues/financial-sanctions/recent-actions/20200902> [<https://perma.cc/8HKS-39ES>].