

Exploring the fury over HK's national security law

Ker Sin Tze

For *The Straits Times*

The recent move by China's National People's Congress (NPC) to approve the enactment of a national security law for Hong Kong has whipped up a storm.

Critics have decried it as the end of Hong Kong as we know it. The United States and Britain have condemned China for breaching the guarantees of autonomy in the Sino-British Joint Declaration on Hong Kong's handover.

US President Donald Trump has also threatened to remove Hong Kong's preferential tariff and other privileges.

How dire is the situation, given what we know so far?

First, it must be made clear that much is unclear at this stage.

For instance, while Mr Trump has threatened sanctions and the removal of various privileges, his administration has provided no details on what steps will be taken or who will be targeted. Similarly, details of the draft legislation have not been revealed. What is known is that the law is aimed at acts of secession, subversion, terrorism and foreign interference in Hong Kong. Critics warn that Hong Kong's autonomy and freedom are threatened by plans to allow China to set up in the territory its own institutions responsible for security.

But the national security law (NSL) is a work in progress and much work will be needed to make sure that whatever is introduced works within the framework of Hong Kong's common law legal system.

Why then the intense opposition in Hong Kong to the NPC's intervention?

The latest uproar and the months-long street protests before it are perhaps better understood if one examined the make-up of Hong Kong society. Although the residents are predominantly ethnic Chinese, their backgrounds are diverse. Some are former nationalist China military personnel, former civil servants, businessmen, industrialists, and ordinary people who fled China to avoid persecution from various political campaigns in the past. These people are basically anti-communist and dislike China.

There are also former British colonial officials and police officers from India. As an international metropolis, Hong Kong has also drawn many people originally from Western countries and South-east Asia. These people enjoy the lifestyle that the city offers but a



Hong Kong riot police clashing with protesters last month. Many questions have arisen over how the new national security law will be administered, enforced and adjudicated. How this is put into practice has stoked great fear and opposition in the city. PHOTO: NYTIMES

significant number of them are always suspicious and fearful of China's intentions and actions.

And then there are Hong Kong's angry youth – idealistic and also seething with frustration at the local government over a range of issues, including a lack of accountability to the people as well as its failure to address bread-and-butter issues such as jobs and unaffordable housing.

These snapshots of Hong Kong society explain why there is always a large number of people in protest marches against Beijing and the local government.

THE MUCH-POSTPONED ARTICLE 23

China was fully aware of the complex challenges Hong Kong would pose after the 1997 handover. In negotiating with Britain for its return in 1984, China insisted, and Britain agreed, on the inclusion of Article 23 in the Basic Law, the territory's mini-Constitution.

Article 23 states Hong Kong "shall enact laws on its own to prohibit any act of treason, secession, sedition, subversion against the Central Government, or theft of state secrets, to prohibit foreign political organisations or bodies

from conducting political activities" and to prohibit Hong Kong's "political organisations and bodies from establishing ties with foreign political organisations or bodies".

And yet, despite that constitutional duty, for the past 23 years, Hong Kong failed to enact the national security legislation. Only one attempt was made – in 2003 by then Chief Executive Tung Chee Hwa – but that was abandoned after half a million people protested against the Bill.

Given the furious reaction last year to Chief Executive Carrie Lam's abortive attempt to enact a controversial extradition Bill and the collapse of social order since, it should not come as a surprise that China decided the central government had to take over the business of drawing up the national security law; in its view, the odds of Hong Kong's Legislative Council (Legco) being able to pass one on its own before 2047 – when the 50-year transition period comes to an end – was virtually zero.

CHALLENGES TO THE NATIONAL SECURITY LAW

The path ahead for the NSL promises to be rocky, challenged not only on the streets, but also on the

legal front. As provided in the Basic Law, there are two ways to enact a law. The Hong Kong government could do it on its own by tabling the proposed Bill at the Legco for debate and approval. The second option is to enact a law by promulgation. In this case, once the clauses of the NSL are finalised by the Standing Committee of China's Parliament, the NSL can take effect after it is promulgated by the Chief Executive. The NSL can be placed under Annex III of Article 18 of the Basic Law to be regarded as legally enacted.

There exists, however, a technical difficulty as to whether it is appropriate and allowable to place the NSL under Annex III.

The Hong Kong Bar Association argues that the Chinese Parliament can enact laws related only to national defence, foreign affairs and other matters outside "the limits of Hong Kong's autonomy". As the NSL deals with matters such as secession and subversion, which are similar to those specified under Article 23, it is argued that these are not outside the limits of autonomy and the NSL has, therefore, no place under Annex III of Article 18.

Many questions have also arisen over how the NSL will be administered, enforced and

adjudicated. As provided in the draft, a local branch of China's National Security Bureau will be established to collect information and investigate any suspected cases for prosecution and trial by the existing judiciary. How this is put into practice has stoked great fear and opposition in Hong Kong, with critics pointing to the harsh and arbitrary exercise of such powers on the mainland.

WEATHERING U.S. BLOWS

In announcing plans to revoke Hong Kong's special trade status, President Trump accused China of having "replaced its promised formula of one country, two systems, with one country, one system".

A question which many people are asking is whether China will honour the "one country, two systems" promise until 2047. Or will it become "one country, one system" soon if the social unrest persists in Hong Kong?

Both China and Hong Kong have enjoyed rapid and uninterrupted growth since 1997. There is no reason for China to dismantle the "one country, two systems" framework and change its course for Hong Kong for the remaining 27

years. It makes even less sense to do so at a time when economies around the world are in a Covid-19-induced crisis.

Given the grim economic outlook for the city and globally, the Hong Kong government's inability to deal with continuing social turmoil does both the city and China no good. Seen from this perspective, the NSL is more of a tourniquet to restore order.

As with physical tourniquets, there are risks, not least damaging the city through cutting the vital flow of trade and funds as a result of US punitive measures. This leads to the other pressing question – how badly hit will Hong Kong be by US actions?

If preferential tariffs are removed for Hong Kong-manufactured goods, the impact is limited as much of its manufacturing industries have already shifted to the mainland. Entrepot trade is responsible for the bulk of Hong Kong's exports. In fact, the US exports much more than it imports from Hong Kong. In recent years, the service sector accounted for more than 90 per cent of Hong Kong's gross domestic product, compared with under 2 per cent from the local manufacturing industry.

However, the hit to Hong Kong's status as an important financial hub could be significant if investors' confidence is shattered. Nevertheless, given its record and the current stakes, China is expected to pour all resources to defend and rescue the Hong Kong dollar and stock market.

For now, the exact scope of the NSL and US action are still being shaped, with many factors in play.

These include the impact of punitive measures on the more than 1,300 American companies in Hong Kong and Mr Trump's campaign calculations in a presidential election year.

In the current bust-up over Hong Kong, one of the many arenas in which bitter Sino-US rivalry is being fought, the great danger is that the biggest threat to all parties is being overlooked – the Sars-CoV-2 virus. The microbe continues to inflict ongoing damage to economies worldwide.

A Pyrrhic victory awaits whoever comes out on top of this fight over Hong Kong.

Far better for all countries, particularly the US and China, to focus on fighting the coronavirus and develop a new framework collectively to deal with the new economic realities of the post-Covid-19 era.

stopinion@sph.com.sg

• Dr Ker Sin Tze is currently adjunct professor at both the National University of Singapore and Nanyang Technological University. He served as consul-general at the Singapore Consulate in Hong Kong from 2007 to 2012.